



December 10, 2024

The Honorable Rohit Chopra
Director, Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Chopra:

The Community Home Lenders of America (CHLA)¹ notes with extreme disappointment that Congress has stripped out language that would rein in abusive mortgage trigger leads from the National Defense Authorization Act (NDAA) conference report. While we understand there may be efforts to find another legislative vehicle for this provision, we believe it is time for administrative action to curb the explosion of deceptive and harassing texts, emails and phone calls that immediately follow a mortgage application.

Therefore, CHLA writes to ask the Consumer Financial Protection Bureau to use authorities under the Fair Credit Reporting Act (FCRA) to adopt the provisions that were stripped from the NDAA.

CHLA first wrote the CFPB a **Letter** over two years ago, in November 2022, highlighting abusive trigger lead solicitations – and pointing out they commonly violate the legal requirement under FCRA that they be a “*firm offer of credit.*” CHLA reiterated these concerns in a June 2024 letter to the CFPB, in which we labeled abusive trigger lead solicitations “*junk calls.*”

A “firm offer of credit” is defined under FCRA as an offer of credit or insurance that “*will be honored if the consumer is determined, based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer.*”

When credit card companies make pre-screened credit card offers to consumers, they base eligibility for the credit card on a consumer’s credit score only. Thus, it is easy to see how they meet the requirement for a firm offer of credit. The same is true for many other consumer loan trigger lead solicitations.

However, this is demonstrably **not** true for almost most mortgage loans. Qualification for mortgage approvals are based on the mortgage applicant meeting numerical debt to income ratios and on the loan amount requested meeting numerical loan to value ratios. Lenders do not receive this data in the trigger lead process. Thus, CHLA does not see how a pre-screened trigger lead mortgage offer can meet the firm offer of commitment requirement unless the lender has or had a relationship with the mortgage applicant.

The firm offer of credit requirement has been loosely interpreted to date and it is difficult to monitor, so it is understandable that the practice of mortgage trigger leads has been widespread. However, tightening up on the standards for a firm offer of credit could substantially rein in abusive mortgage trigger leads.

Therefore, CHLA asks the CFPB to issue guidance (if necessary through rulemaking) stating that the presumption is that a mortgage trigger lead solicitation does not meet the firm offer of credit requirement – and is therefore not permissible – UNLESS the mortgage lender has originated the borrower’s existing mortgage loan or the lender has an existing relationship with the borrower.

¹ CHLA is the only national trade association focused exclusively on small and mid-sized independent mortgage banks (IMBs).

We would note that this framework is consistent with the language of the NDAA trigger lead provisions.

We would also note that such a presumption that the lender does not meet the firm offer of credit requirement (unless they originated the existing loan or have a relationship with the borrower) could theoretically be overcome. However, the lender would have to clearly demonstrate that their mortgage loan qualification is limited to information solely contained in the credit report – which is generally only the borrower’s FICO credit score.

We recognize there may be other ways to rein in abusive mortgage trigger lead solicitations. Since the current consumer opt-out process does not work in time to prevent trigger leads when the mortgage applicant takes an application, CHLA has previously suggested that the rules could be changed to simply give the borrower the option whether or not to receive mortgage trigger lead solicitations at the time they take out the mortgage application. However, this change would probably require an act of Congress.

We would also note there may be other federal laws under which regulators could issue guidance to rein in abusive mortgage trigger lead solicitations, such as the Telephone Consumer Protection Act (TCPA) as and the CAM-SPAM Act.

However, we believe the most direct and effective way to address these problems administratively is through the approach suggested in our letter.

In conclusion, it is clear that there is overwhelming bi-partisan support for ending abusive mortgage trigger lead solicitations. It is commendable that Congress got close to doing so. But consumers cannot afford to wait two more years for uncertain Congressional action on this issue.

CHLA calls on the CFPB to finish the job by using regulatory authority over the FCRA to carry out the trigger lead provisions dropped from the NDAA - by adopting a common sense interpretation of what is required to meet the “firm offer of credit” requirement.

We thank you for consideration of these recommendations.

Sincerely

COMMUNITY HOME LENDERS OF AMERICA

CC: Hon. Lina Kahn
Chair, Federal Trade Commission