

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on February 10, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the committee:

Melissa Calderwood, Principal Analyst, Research Department
Tad Kramar, Vice President, Federal Home Loan Bank of Topeka (Attachment 1)
Natalie Haag, Security Benefit Group (Attachment 2)
Bill Sneed, American Investors Life (Attachment 3)
Matt Goddard, Heartland Community Bankers (Attachment 4)
Kathleen Olsen, Kansas Bankers Association (Attachment 5)
Haley DaVee, Kansas Credit Union Association (Attachment 6)
Cindy Hermes, Kansas Insurance Department
Casey Halsey, J. E. Dunn Construction Group, Inc. (Attachment 7)

The Chair called the meeting to order and welcomed everyone to the meeting.

Hearing on

SB 139 - Insurance, deposits and securities, Federal home loan bank

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of the bill. Ms. Calderwood stated that this bill would include a Federal Home Loan Bank as defined as a financial institution in the insurance code. This would allow Federal Home Loan Banks to hold cash, securities, real estate deeds, mortgages and other assets with the Insurance Commissioner, she said. She added that all such deposits would be held in trust for use and benefit of such company and such company's policyholders and creditors. She said Federal Home Loan Banks would be required to meet all regulatory requirements. She said this bill would allow Federal Home Loan Banks to obtain a "nominee name" for an insurance company in which the company's securities may be registered or may arrange for securities to be held in a clearing corporation. She said the Kansas Insurance Department indicates the bill could be implemented within the agency's existing staff and resources.

Tad Kramar, Vice President and Assistant General Counsel of the Federal Home Loan Bank of Topeka testified in support of **SB 139**. Mr. Kramar said FHLBank Topeka is regulated by the Federal Housing Finance Agency in Washington, D.C. and has been providing custodial services for its member institutions for more than forty years. He said Finance Agency's Examination Manual states that the FHLBanks provide a secure and convenient method for clearing and safekeeping securities for the FHLBanks and their members. He said consequently, last year the National Association of Insurance Commissioners adopted amendments to expressly include the Federal Home Loan Banks as authorized custodians of insurance company assets under the NAIC Model Act on Custodial Agreements and Use of Clearing Corporations and the NAIC Model Regulation on Custodial Agreements and the Use of Clearing Corporations. He added that **SB 139** follows the NAIC amendments. K.S.A. 40-229a allows insurance company assets to be deposited with Kansas financial institutions acceptable to the Kansas Commissioner of Insurance. He said **SB 139** would amend it to include federal Home Loan Banks in the definition of "financial institution" and to modify the references to banking regulators and banking laws so that the Federal Home Loan Banks' regulator and the Federal Home Loan Bank Act would be included. (Attachment 1)

Natalie Haag, 2nd Vice President, Director of Government Affairs/Assistant General Counsel, Security Benefit Life Insurance Company, testified in support of **SB 139**. She stated **SB 139** amends the Kansas Insurance Code to clarify that the Federal Home Loan Bank is authorized to custody an insurance company's assets.

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 10, 2009, in Room 136-N of the Capitol.

Life Insurance Company, testified in support of **SB 139**. She stated **SB 139** amends the Kansas Insurance Code to clarify that the Federal Home Loan Bank is authorized to custody an insurance company's assets. She said currently, Kansas law allows state and federal banks to custody assets of an insurance company; however, none of the protections currently in place regarding custodial relationships or any of the regulatory authority the Kansas Insurance Department will have over them will be modified as a result of this statutory change. (Attachment 2)

William W. Sneed, Legislative Counsel, American Investors Life Insurance Company, testified in support of **SB 139**. He said this proposal would modify the Kansas Insurance Code to specifically allow the Federal Home Loan Bank to act as a custodian to an insurance company's assets. He noted that Kansas law currently allows state and federal banks to custody assets of an insurance company and **SB 139** does not alter the current framework of requirements governing custodial relationships. He said further that under this bill, the Kansas Insurance Department would continue to have regulatory authority over such custodial arrangements. (Attachment 3)

The Chair closed the hearing on **SB 139**.

Hearing on

SB 163 - Consumer protection, mortgage trigger lead

Melissa Calderwood gave an overview of the bill. Ms. Calderwood stated **SB 163** would amend the Consumer Protection Act to include the definitions of "lender" and "mortgage trigger lead." A "mortgage trigger lead" is defined as a consumer report obtained under the Federal Fair Credit Reporting Act where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for credit. In addition, **SB 163** would require that in written or oral solicitations for products or services based on mortgage trigger leads, the solicitation must clearly state that the solicitor is not affiliated with the lender or broker with which the consumer initially applied, and that the solicitation was based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge of the lender or broker with which the consumer initially applied. She said failure to comply with this requirement would be considered a deceptive act or practice under the Kansas Consumer Protection Act.

Matthew Goddard, Heartland Community Bankers Association, testified in support of **SB 163**. Mr. Goddard states that **SB 163** requires greater disclosure to consumers by users of mortgage trigger leads. He said the bill does not prohibit anything, but rather attempts to ensure that consumers are educated about who is making an unsolicited offer of mortgage credit. He said a mortgage trigger lead is defined in **SB 163** as a credit report obtained under the prescreened offer of credit provisions of the federal Fair Credit Reporting Act where the issuance of the report is "triggered" by an inquiry in response to an application for credit. He noted that federal law preempts state law when it comes to a prescreened offer of credit and therefore, under the Fair Credit Reporting Act, individual states cannot prohibit the sale of mortgage trigger leads and **SB 163** does not. (Attachment 4)

Kathleen Taylor Olsen, Kansas Bankers Association and Haley DaVee, Kansas Credit Union Association also provided written testimony in support of **SB 163**. (Attachments 5 and 6)

The chair closed the hearing on **SB 163**.

Action on

SB 49 - Insurance coverage, mental health, alcoholism drug abuse or other substance use disorder benefits.

Cindy Hermes, Kansas Insurance Department, asked that working this bill be postponed due to complications with the bill. She said the Department is not sure the bill was written appropriately.

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 10, 2009, in Room 136-N of the Capitol.

The Chair said to make sure the bill complies with the federal government, she would hold the bill. She said the Committee would not be working **SB 49** at this time.

Action on

SB 126 - Controlled insurance program act

The Chair said because Casey S. Halsey, Executive Vice President and General Counsel for J.E. Dunn Construction Group, Inc., did not testify at the hearing on **SB 126**, she was going to allow him to testify before working the bill.

Mr. Halsey testified in opposition to **SB 126**. In summary, Mr. Halsey said that **SB 126** has many faults and defects. He said the proponents of this bill have highlighted the faults of a few bad programs to condemn an approach which has brought increased sophistication and enhanced benefits of insurance for many construction projects. He said he believes such legislation is not required. He said if it is the intention of the Committee and the Senate as a whole to move this legislation ahead, he would like the opportunity to propose an amendment to **SB 126**. (Attachment 7)

Senator Masterson moved to pass SB 126 out favorably. Senator Taddiken seconded. Motion passed.

The next meeting is scheduled for February 11, 2009.

The meeting was adjourned at 10:30 a.m.

TESTIMONY OF THE FEDERAL HOME LOAN BANK OF TOPEKA

On

SENATE BILL No. 139

I am Tad Kramar, Vice President and Assistant General Counsel of the Federal Home Loan Bank of Topeka. On behalf of FHLBank Topeka, I thank you for giving us the opportunity to testify in support of SB 139.

FHLBank Topeka promotes housing and economic development by providing wholesale funding and related products and services that help member financial institutions provide affordable credit to foster strong and vibrant communities. FHLBank Topeka was created in 1932 as a federally-chartered government sponsored enterprise. It is wholly-owned by its member financial institutions, comprised of commercial banks, thrifts, credit unions and insurance companies chartered in Kansas, Nebraska, Colorado and Oklahoma. FHLBank Topeka has maintained the highest credit rating – triple A – from both Moody’s and Standard and Poor’s. It has \$58 billion in assets and over \$2.3 billion in capital.

FHLBank Topeka is regulated by the Federal Housing Finance Agency (Finance Agency) in Washington, D.C. and has been providing custodial services for its member institutions for more than forty years. The Finance Agency’s Examination Manual states: “The FHLBanks provide a secure and convenient method for clearing and safekeeping securities for the FHLBanks and their members.”

Consequently, last year the National Association of Insurance Commissioners (NAIC) adopted amendments to expressly include the Federal Home Loan Banks as authorized custodians of insurance company assets under the NAIC Model Act on Custodial Agreements and Use of Clearing Corporations and the NAIC Model Regulation on Custodial Agreements and the Use of Clearing Corporations.

SB 139 follows the NAIC amendments. K.S.A. 40-229a allows insurance company assets to be deposited with Kansas financial institutions acceptable to the Kansas Commissioner of Insurance. SB 139 would amend it to include Federal Home Loan Banks in the definition of “financial institution” and to modify the references to banking regulators and banking laws so that the Federal Home Loan Banks’ regulator and the Federal Home Loan Bank Act would be included.

K.S.A. 40-2a20 allows Kansas property and casualty insurance companies to designate a state or national bank to obtain a nominee name in which the insurance company’s securities may be registered, and to arrange for such securities to be held in a clearing corporation. K.S.A. 40-2b20 does the same for Kansas life insurance companies. SB 139 would amend both to make it clear that Federal Home Loan Banks can obtain nominee names for insurance companies and arrange for their securities to be held in a clearing corporation.

As of January 31, 2009, FHLBank Topeka held \$32 billion in current par value of other institutions’ securities in safekeeping, along with \$15 billion of its own securities. Passage of SB 139 would benefit the State of Kansas because it would confirm that Kansas insurance companies can place their securities in safekeeping with a safe, conservatively managed, triple

*FII Committee
2-10-09
Attachment 1*

A-rated institution that has ably served Kansas banks, thrifts, credit unions and insurance companies since 1932. In addition, lending and collateral transactions between the FHLBank and its insurance company members are more efficiently handled when the insurance company's securities are held by the FHLBank instead of going through third parties.

Accordingly, we at the Federal Home Loan Bank of Topeka enthusiastically support and request approval of Senate Bill No. 139. Thank you.

Tad Kramar
Vice President and Assistant General Counsel
Federal Home Loan Bank of Topeka
Tad.Kramar@FHLBTopeka.com
785-438-6013

SENATE BILL 139

Testimony Presented by:

Natalie G. Haag

2nd Vice President

Dir. of Gov't Affairs/Asst. Gen. Counsel
Security Benefit Life Insurance Company
Topeka, Kansas

Madam Chair and members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 139. Senate Bill 139 amends the Kansas Insurance Code to clarify that the Federal Home Loan Bank is authorized to custody an insurance company's assets. Currently, Kansas law allows state and federal banks to custody assets of an insurance company. None of the protections currently in place regarding custodial relationships or any of the regulatory authority the Kansas Insurance Department will have over them will be modified as a result of this statutory change.

Security Benefit would request your support of SB 139. Additionally, the subject matter is not controversial and we would request it be placed on the consent calendar.

*FI&I Committee
2-5-09
Attachment 2*

Polsinelli

Shalton | Flanigan | Suelthaus PC

Memorandum

TO: THE HONORABLE RUTH TEICHMAN, CHAIR
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
AMERICAN INVESTORS LIFE INSURANCE COMPANY

RE: S.B. 139

DATE: FEBRUARY 10, 2009

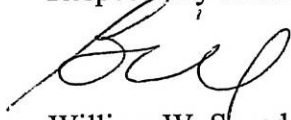
Madam Chair, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for American Investors Life Insurance Company ("AIL"). AIL is a member of Aviva USA, one of the largest sellers of fixed annuities in the United States. AIL is a Kansas domestic insurer located in Topeka, Kansas. We appreciate the opportunity to testify as a proponent of S.B. 139.

This proposal would modify the Kansas Insurance Code to specifically allow the Federal Home Loan Bank to act as a custodian to an insurance company's assets. Kansas law currently allows state and federal banks to custody assets of an insurance company, and S.B. 139 does not alter the current framework of requirements governing custodial relationships. Further, under this bill, the Kansas Insurance Department would continue to have regulatory authority over such custodial arrangements.

Finally, inasmuch as the subject matter of S.B. 139 is completely noncontroversial in nature, we would urge the Committee to act favorably on the bill by requesting that it be placed on the Senate Consent Calendar.

As always, we appreciate the opportunity to speak to the Committee, and I am happy to stand for questions at your convenience.

Respectfully submitted,



William W. Sneed

*FI&I Committee
2-5-09
Attachment 3*

WWS:kjb

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Matthew S. Goddard, Vice President

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Topeka, Kansas 66603
Office (785) 232-8215 • Fax (785) 232-9320
mgoddard@hcbankers.com

To: Senate Financial Institutions and Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 10, 2009

Re: Senate Bill 163

The Heartland Community Bankers Association appreciates the opportunity to appear before the Senate Financial Institutions and Insurance Committee to express our support for Senate Bill 163.

Senate Bill 163 requires greater disclosure to consumers by users of mortgage trigger leads. The bill does not prohibit anything, but rather attempts to ensure that consumers are educated about who is making an unsolicited offer of mortgage credit.

A mortgage trigger lead is defined in SB 163 as a credit report obtained under the prescreened offer of credit provisions of the federal Fair Credit Reporting Act where the issuance of the report is "triggered" by an inquiry in response to an application for credit. Procedurally, a mortgage trigger lead operates like this: John Doe applies for a loan with ABC Savings Bank which then runs a credit report on John Doe. The credit reporting agency provides the credit report to ABC Savings Bank. However, provided the applicant meets predetermined credit criteria established by the purchaser of the lead, the credit reporting agency also notifies lenders who have chosen to purchase mortgage trigger leads that John Doe has applied for a mortgage loan. John Doe then gets an unsolicited phone call the next day with a loan offer from XYZ Mortgage.

The anecdotal evidence we have seen is that the representative from XYZ Mortgage does not always explain who they are with or how they obtained the consumer's information. This leads the loan applicant to believe ABC Savings Bank sold their loan application information to someone else. This undermines consumer confidence in our banking system and its protection of private information.

Federal law preempts state law when it comes to a prescreened offer of credit and therefore, under the Fair Credit Reporting Act, individual states cannot prohibit the sale of mortgage trigger leads. The State of Minnesota passed legislation banning the sale of mortgage trigger leads and a District Court quickly struck down the law. However, the approach taken in SB 163 focuses on disclosure. This was done in Connecticut, Maine and Wisconsin, none of which have seen a court challenge.

Senate Bill 163 amends the Unfair Trade and Consumer Protection Act, K.S.A. 50-626, to make it a violation of the Act if the initial phase of any loan solicitation based on a mortgage trigger lead does

not clearly and conspicuously state that the solicitor is not affiliated with the lender with whom the consumer applied for credit and that the solicitation is based on personal information that was purchased from a consumer reporting agency without the knowledge or permission of the lender with whom the consumer initially applied. The Unfair Trade and Consumer Protection Act is enforced by the Kansas Attorney General.

To avoid any possible inconveniences to the customer and their business relationships, Senate Bill 163 exempts from its provisions a credit report obtained by a lender the consumer applied for credit with as well as a lender that has an outstanding extension of credit to the consumer.

Again, the Senate Bill 163 does not prohibit the sale or use of mortgage trigger leads. If a consumer would benefit from an unsolicited offer of mortgage credit, the bill does nothing to stop that from happening. What the bill does do, however, is safeguard the interests of Kansas consumers by making sure that whoever makes that unsolicited offer of credit discloses to the consumer that they are not affiliated with the consumer's mortgage lender and that they explain how they obtained the consumer's information.

The Heartland Community Bankers Association respectfully requests the Senate Financial Institutions and Insurance Committee recommend Senate Bill 163 favorable for passage.



February 21, 2006

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~
~~XXXXXXXXXX~~
~~XXXXXXXXXX~~

Dear ~~XXXXXXXXXX~~

As the Mortgage industry becomes more competitive, getting new business in the door is a critical component for your success. Lists and standard pre-approval programs are no longer bringing in the prospects they once did. Response rates from Radio and TV advertising are likely slipping.

Being aggressive and having a great offer are important, but more important than ever is timing. How will you know when a consumer is ready for a mortgage loan? Will you know before your competitors do?

We have developed a tool to provide you an unprecedented level of insight into a consumer's mortgage purchase behavior. Experian *Prospect Triggers* gives you a level of visibility that is unique in the marketing world. Within 24 hours of a consumer applying for a mortgage loan with another company, you will know. How powerful would that be for your organization?

With *Prospect Triggers* from Experian you can :

- Receive a daily list of consumers who have actively applied for a mortgage loan within the past 24 hours and who meet your pre-approval criteria!
- Set credit score limitations as well as credit attributes. For example, you may only want to deal with consumers in a certain FICO score range, or consumers with a certain amount of revolving debt and no prior mortgage. It is entirely up to you!
- Feel confident knowing that you have a steady flow of pre-approved credit active consumers that need your product.

I ask for the opportunity to talk to you further about this exciting new tool. This is a solution that can positively impact ~~XXXXXXXXXX~~ bottom line. *Prospect Triggers* brings an unprecedented new level of precision to your marketing programs.

If you would like to contact me, please call 913 345 8395 or e-mail me at david.vaninwegen@experian.com. Otherwise, I will call you the week of February 27th to follow up and answer any questions you might have regarding this innovative solution.

Sincerely,

David Van Inwegen
Account Executive
Experian

Prospect TriggersSM

Make a firm offer of credit to consumers who initiated credit activity just 24 hours earlier

Now you can dramatically increase the response rate to your preapproved credit offers by reaching consumers at the precise time they actively are shopping for credit. With Experian's Prospect Triggers,SM you can identify opportunities as they occur and make firm credit offers, as often as daily, to consumers who meet your credit criteria.

Superior data freshness and timely delivery

Experian®, the industry leader in event-based triggering solutions, brings a new level of timeliness and precision to the prescreen process. Historically, prescreen relied on dated information to identify consumers who might be looking for credit. Prospect Triggers is the first preapproved marketing solution to target consumers based on their actual credit behavior within the past 24 hours — nationwide — and to deliver that data to you daily.

You can make timely credit offers by mail, phone or e-mail to increase response rates, reduce overall acquisition costs and boost profitability, reaching credit-active consumers before your competitors do.

Prospect Triggers is ideal for:

- Mortgage and home-equity lenders
- Credit card issuers
- Banks
- Retailers
- Automotive lenders

Incorporates your credit criteria

Experian will monitor a prospect list that incorporates your credit criteria. We can generate a prospect list for monitoring using one of the following three items:

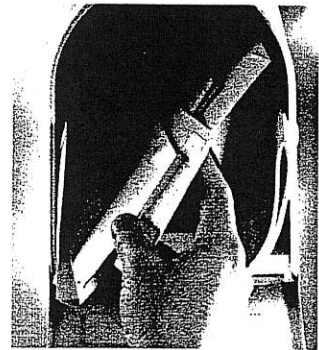
- Experian's ExtractPlus,SM a comprehensive nationwide database of credit-active consumers
- Your current prescreen list
- A prospect list from an outside source

Uses new trade and inquiry triggers —

Experian identifies highly responsive, credit-active consumers who are prime candidates for your preapproved offers and notifies you within 24 hours when those consumers actively are seeking credit.

Segments and suppresses less-creditworthy consumers — You can use scores and attributes to segment your criteria. Back-end screening helps to eliminate consumers with recent derogatory activity.

A fully compliant process — All triggered consumer names are run through Experian's pander/opt-out file, and the process fully complies with all Fair Credit Reporting Act and FACT Act requirements.



**Make the most of a time-sensitive
opportunity**

When a qualified consumer is actively seeking credit, you need to be there with your marketing message. With Experian's Prospect Triggers, you can reach the right people at the right time, bringing a new level of precision and profitability to your credit marketing programs.

**To find out more about Prospect
Triggers, contact your local Experian
sales representative or call
800 333 4930.**

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FTC Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Division of Consumer & Business Education

Shopping For a Mortgage?

Your Application May Trigger Competing Offers

If you apply for a mortgage, your inbox, answering machine, and mailbox may fill up quickly with competing offers from other mortgage companies. It's not that the company you applied to is selling or sharing your information. Rather, it's that creditors – including mortgage companies – are taking advantage of a federal law that allows them to identify potential customers for the products they offer, and then market to them. The Federal Trade Commission, the nation's consumer protection agency, wants you to know why your application for a mortgage may trigger competing offers, how you can use them to your benefit, and how to stop getting them if that's your choice.

The unsolicited calls, emails, and letters about competing offers often are called “prescreened” or “pre-approved” offers of credit. They are based on information in your credit report that suggests you meet criteria set by the creditor making the offer – for example, you live in a certain zip code, you have a certain number of credit cards, or you have a certain credit score. Credit bureaus and other consumer reporting companies sell lists of consumers who meet the criteria to insurance companies, lenders, and other creditors.

When you apply for a mortgage, the lender usually gets a copy of your credit report. At that point, an “inquiry” appears on your report showing that the lender has looked at it. The inquiry indicates you're in the market for a loan. That's why mortgage companies buy lists of consumers who have a recent inquiry from a mortgage company on their credit report. Federal law allows this practice if the offer of credit meets certain legal requirements.

Clearly, some mortgage companies benefit from the practice. But the FTC says consumers can benefit, too: prescreened offers can highlight other available products and make it easier to compare costs while you carefully check out the terms and conditions of any offers you might consider.

Still, some people may prefer not to receive prescreened offers of credit and insurance at all. Here's how to stop them:

- 1. Call 1-888-5-OPTOUT (1-888-567-8688) or visit www.optoutprescreen.com.** When you call this toll-free number or visit the website, you will be asked to provide certain personal information, including your home telephone number, name, Social Security number, and date of birth. The information you provide is confidential, and will be used only to process your request to opt out. Don't enter any personal information until you have checked for indicators that the site is secure – a lock icon on your browser or a web address that begins *https*.

Opting out of prescreened offers does not affect your ability to apply for credit or to get it. Your opt out request will be processed within five days, but it may take up to 60 days before the prescreened offers stop coming. If you have a joint mortgage, both parties need to opt out

to stop the prescreened offers. If or when you want to opt back in, use the same telephone number or website.

2. Put your phone number on the federal government's National Do Not Call Registry to reduce the telemarketing calls you get at home. To register your phone number or to get information about the registry, visit www.donotcall.gov, or call **1-888-382-1222** from the phone number you want to register. You will get fewer telemarketing calls within 31 days of registering your number. Your number stays on the registry for five years, until it is disconnected, or until you take it off the registry.

That said, the FTC wants you to know that many companies use other tools to identify marketing prospects, and that the Do Not Call Registry won't shield you from all telemarketers – for example, those with which you have a business relationship. Even if you opt out of prescreened offers and put your number on the National Do Not Call Registry, you can expect some unsolicited offers.

For more information about the Fair Credit Reporting Act, the law that spells out the terms under which companies can check credit reports, visit www.ftc.gov/credit.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

FEDERAL TRADE COMMISSION	ftc.gov
1-877-FTC-HELP	FOR THE CONSUMER

February 2007



Mortgage triggers' prompt complaints

Brian Bergstein, Associated Press
Saturday, June 2, 2007

BOSTON -- As a former mortgage broker, Adryenn Ashley thought she knew what to expect when she refinanced her house in March. Yet Ashley was unprepared for one twist she encountered: a barrage of phone calls and e-mails from rival lenders vying to sell her a better mortgage.

Some of the callers apparently knew just how much money she was borrowing. Others made such misleading come-ons such as "We need to update your information" or "We need to complete your application," Ashley recalls.

"I have privacy concerns over that," she said from her home in Petaluma. "My information should be confidential."

These days, mortgage shoppers like Ashley are supreme telemarketing targets, thanks to "trigger leads" that the credit reporting bureaus sell to lenders the instant a consumer's credit file is pulled by a loan officer. So when Ashley's lender checked her credit to prepare her loan, dozens of other mortgage companies were tipped off. These alerts can be had for a few bucks per name if bought in bulk.

This is legal -- though not necessarily for much longer. A few states have been exploring restrictions on the practice, and last week, Minnesota's governor approved a block on most trigger leads. A ban is pending in Massachusetts.

Potential Congressional action is brewing as well. The House Financial Services Committee, chaired by Rep. Barney Frank, D-Mass., is investigating the issue in advance of hearings it expects to hold on a broad review of the credit-reporting agencies, according to committee spokesman Steven Adamske.

Such hearings could find that trigger leads have drawn some powerful enemies.

The proposed ban in Massachusetts, for example, was floated by the state bankers' association. Its chief operating officer, Kevin Kiley, fears that "the trust that has been established between the bank and the consumer has been essentially undercut" because of trigger leads.

"Why should a bank be in a situation where it invests millions of dollars in a branch network and advertising, if I can go out and just buy leads?" Kiley said. (On Web message boards frequented by mortgage brokers, the act has a more colorful name: It's called "snaking a deal.")

The National Association of Mortgage Brokers, whose membership includes many customers of trigger leads, officially isn't a fan of them. Its president, Harry Dinham, laments that many buyers of the alerts aren't really in a position to make a firm offer of credit, as required by the Fair Credit Reporting Act.

Even so, Dinham says a ban would be overkill. He'd prefer to see the leads sold only on consumers who elect to put their names on the trigger lists. As it stands now, leads about your interest in a mortgage can be sold unless you bother to opt out from all prescreened credit solicitations. That requires calling 1-888-567-8688 or going to www.optoutprescreen.com.

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Mortgage triggers' prompt complaints

The credit agencies defend their sale of trigger leads by arguing that it promotes competition, which keeps prices down. That stance has support at the Federal Trade Commission, which says consumers can benefit from the practice.

"It is absolutely false to say the first lender or broker that a consumer goes to is definitely going to have the best offer," said Stuart Pratt, director of the Consumer Data Industry Association, the credit reporting agencies' trade group.

Pratt insists that the credit agencies, led by the three largest -- Experian, TransUnion and Equifax -- check their trigger leads against anti-telemarketing Do Not Call lists.

However, it's unclear how well that step works or is being followed. Ashley, for example, believes she was already on the Do Not Call list. Same with Matthew Tuttle, who runs a wealth-management firm in Stamford, Conn.

"I'm getting these calls five months after I refinanced," Tuttle said. "Refinancing is a pain enough -- I'm not doing it again, especially not for a recording," he said.

The length of Tuttle's onslaught might not be unusual. Pace University publicist Cara Halstead Cea said she and her husband have averaged at least a call a day for 14 months now. "We understand you are looking to refinance," the callers still intone. The frenzy prompted the couple to get caller ID so they can answer the phone with their own script: "If this is about refinancing, we're all set. Please take us off your list."

Mortgage triggers have been sold for at least a few years, but they have become more of an issue recently. Kiley at the Massachusetts Bankers Association believes this is because the home-buying binge early in the decade caused an explosive growth of mortgage brokers and mortgage companies that now, in a cooling market, are redoubling efforts to win business.

Trigger leads also have cascaded because of a vast data-collecting infrastructure created by the credit bureaus and amplified by innumerable information brokers who serve as resellers. "Borrowers Trigger'd Yesterday Delivered via email to you Today," reads an ad on Google for one broker's site, MortgageTriggers.com.

Such resellers offer to filter trigger alerts for mortgage lenders by dozens of criteria, including consumers' location, credit scores and home value. DailyTriggerLeads.com says buyers of its alerts can "eliminate Hispanics or select them."

The owner of one marketing service -- who refused to be identified by name, fearing negative repercussions for his company -- said he has been selling mortgage triggers for almost two years, accounting for about 20 percent of his revenue. He said he presumes his product increases the chance a consumer will get a mortgage offer that keeps the mortgage banker honest and the playing field fair.

That's how he can sleep at night, he said.



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washingtonpost.com

Opt Out of Uninvited Mortgage Offers

By Kenneth R. Harney
Saturday, September 9, 2006; F01

Picture this: You apply for a loan from a local mortgage company on a Monday afternoon. By Tuesday morning, you're getting unsolicited phone pitches from out-of-state lenders who seem to know a lot about your personal finances:

- Your credit scores.
- Your outstanding credit card balances and other revolving credit accounts.
- The approximate market value of your home and how much you owe on it.
- Your home address and obviously, your phone number.

Thousands of loan applicants around the country are receiving uninvited pitches such as these, sometimes just 12 hours after getting a mortgage quote. But now a major mortgage industry group is planning a campaign to put a damper on the practice.

"There are very serious privacy, identity-theft and bait-and-switch issues involved here," said Roy DeLoach, executive vice president of the 27,000-member National Association of Mortgage Brokers. "It's outrageous that simply applying for a home loan should open up a person's sensitive personal information."

The practice targeted by the mortgage brokers is known in the industry as "trigger list" marketing -- a warp-speed version of the "pre-screened" credit card offers you get routinely. It works this way: When your local mortgage company checks your credit to provide you a rate quote, one or more of the national credit bureaus take that inquiry and essentially turn it into a marketing product.

So-called "lead generator" companies and some lenders themselves are eager to know the identities of people who are in the process of shopping for a mortgage -- and they pay the credit bureaus for those hot prospects.

Generally the prospects have to fit credit and geographic profiles that the lenders have set in advance. For example, one customer might want only the identities and contact information of people in the Los Angeles area with FICO credit scores above 700 who have applied or inquired about a jumbo home mortgage within the past 24 hours.

Another might want only the credit and contact information of Washington or Chicago residents who applied for a zero-down-payment loan no more than 12 hours ago. The fresher the information, the better, marketers say.

The credit bureaus defend their right to sell applicants' personal financial information, arguing that it is simply a zippier form of marketing pre-screened target prospect lists for credit offers -- something they have been doing for years.

Tim Summers, a vice president at Experian, one of the three dominant national credit bureaus, wrote in an e-mail that his company's "Prospect Triggers" program "provides consumers with choice and potentially

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significant cost savings by delivering relevant information at the decision-making point instead of weeks after a mortgage lending choice has been made."

Summers said the program meets "all requirements" under federal credit and privacy statutes.

The National Association of Mortgage Brokers disagrees. When credit bureaus sell overnight trigger lists to third-party lead generators, the brokers argue, they fail to comply with a key provision of the Fair Credit Reporting Act: that anyone receiving consumers' personal information must be in the position to make a "firm offer of credit" or have previously received permission from the consumer to obtain credit file data. Third-party lead generators obtain no permission and are in no position to make credit offers, firm or otherwise.

The brokers also contend that even lenders who obtain trigger lists may not be in the position to make the firm offers that the law requires. A firm offer for a mortgage is vastly different from a firm offer for, say, a credit card. The mortgage process is more complex, and rates and fees are more difficult to quote on the basis of a credit score alone.

To make a firm loan quote, DeLoach said, "you need to know a consumer's income, you need to have an appraisal" -- you need to know a lot more than telephone marketers have in hand.

The biggest problem, however, may be the confusion that overnight trigger marketing brings to the mortgage business. Your local lender or broker quotes you one rate and estimated fees. But now one or more outside lenders -- whose reputation for honesty or service you know nothing about, and who are in possession of your personal financial data without your permission -- intervene and offer a lower rate.

Are the rate quotes for real? Or will they morph into costly bait-and-switch deals weeks or months from now?

You really can't know. But what you can do is remove yourself from all potential trigger list come-ons by opting out. Much as with the federal Do Not Call program, you can opt out of pre-screened offers by going to <http://www.optoutprescreen.com/> or by calling this toll-free number: 888-567-8688.

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4-11



February 10, 2009

To: Senate Financial Institutions and Insurance Committee

From: Kathleen Taylor Olsen
Kansas Bankers Association

Re: SB 163: Mortgage Trigger Leads

Madam Chair and Members of the Committee:

Thank you for the opportunity to present to the Committee written testimony in support of **SB 163** which amends the Kansas Unfair Trade and Consumer Protection Act. The bill would add a new section to K.S.A. 50-626 which lists practices that are considered to be deceptive.

We have received calls from our member banks, frustrated by the fact that a customer has been contacted by another lender shortly after applying for a loan with the bank. The customer usually assumes that the bank has sold its loan application information to these other lenders and is typically angry. In the time that it takes the bank to assure the customer that it was a third party who sold this information, the customer is completely confused and still is angry.

While SB 163 does not prohibit the practice of selling mortgage trigger leads, it does provide some safeguards against this confusion by the customer and will greatly improve the loan application process.

Thank you and we respectfully request that the Committee act favorably on **SB 163**.

*FI&I Committee
2-5-09
Attachment 5*



KANSAS CREDIT UNION ASSOCIATION

To: Senate Financial Institutions and Insurance Committee

**From: Haley DaVee, Director of State Legislative & Public Affairs
Kansas Credit Union Association**

Date: Tuesday, February 10, 2009

Re: Written Support of Senate Bill 163

The Kansas Credit Union Association, on behalf of the 86 state-chartered and 23 federally-chartered Kansas credit unions, appreciates this opportunity to provide written comment in support of SB 163.

SB 163 would require greater disclosure to consumers by lenders utilizing mortgage trigger leads. Other states have taken steps to require full disclosure of unsolicited offers of mortgage credit and KCUA supports the passage of this legislation in Kansas.

Requiring full disclosure from users of mortgage trigger leads is ultimately a consumer protection measure. Kansas credit unions recognize the consumer's interest in preserving the privacy of their personal information. When consumers receive unsolicited offers of mortgage credit from lenders who utilize mortgage trigger leads and these solicitations do not disclose the source of their lead, it can cause the consumer to question the security of their information at Kansas credit unions.

The Kansas Credit Union Association respectfully requests that the Senate Financial Institutions and Insurance Committee recommend SB 163 as favorable for passage.

*FIFI Committee
2-5-09
Attachment 6*



**TESTIMONY BEFORE THE
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
REGARDING SENATE BILL 126**

By Casey S. Halsey
Executive Vice-President and General Counsel
JE Dunn Construction Group, Inc.
February 10, 2009

Thank you, Madame Chair, and members of the Committee.

My name is Casey Halsey. I am Executive Vice-President and General Counsel of JE Dunn Construction Group. I appreciate the opportunity to present testimony in opposition to SB 126.

JE Dunn is a national contractor headquartered in Kansas City. JE Dunn does a great deal of work in Kansas (including this Statehouse) and has hundreds of employees who work or live in Kansas (including myself). JE Dunn has been heavily involved in Controlled Insurance Programs ("CIP's") for the last ten years and has itself enrolled nearly \$5 billion of projects in such programs.

The Committee heard testimony last Tuesday that cast much dispersion on the use of CIP's for construction projects. These included suggestions that the programs were used primarily for profit, were detrimental to subcontractors, and potentially degraded the protection of workers and Owners. Whether or not this is true depends on whose program is used. It is certainly not true of the programs employed by JE Dunn. It was also mentioned that if used at all, they work best on mega projects, such as power plants. JE Dunn has used these programs effectively on many projects of varying size, including hospitals, schools, office buildings and prisons. Specifically, we have employed CIP's on hospitals in Salina, Lawrence and Leavenworth, among others.

What can be said is that there are great benefits to be obtained by the use of CIP's by all parties. Subcontractors could never afford or have the leverage to negotiate the quality of coverage that can be obtained by a CIP program sponsor. These include dramatically increased limits, elimination of exclusions, and general broadening of coverage. Additionally, sponsors have used the economic efficiencies of CIP's to fund improved safety programs, such as worker orientation, drug testing, safety seminars and worker incentives. JE Dunn returned over \$100,000 to projects for worker incentives last year alone.

Discussion was had last week on the issue of safety violations, fines and OSHA. OSHA is the federally mandated minimum standard of worker safety. I trust no one would take exception to Contractors or Owners wanting to enforce a higher standard which benefits directly the health and welfare of the workers on site. JE Dunn, for example, enforces a strict tie-off rule which is not required by OSHA. Although JE Dunn has not used fines, some contractors and Owners have to good effect. We do not think this tool should be eliminated when the goal is worker safety. The speakers last week also took exception to the "return to work" provisions of most CIP's. Such programs greatly reduce worker recovery times and reduce the Work Comp history which is attributable to a subcontractor through NCCI reporting even though benefits are provided through a CIP. They also have ADA implications.

*F I & I Committee
2-5-09
Attachment 7*

Another point of controversy was the termination of programs prior to completion of the projects. It doesn't make any sense for a program to be terminated prior to the work being substantially completed because you lose the major benefits of today's CIP, completed operations coverage for that work. This is a significant change as compared to traditional coverages provided by a subcontractor, who must each year buy a new policy to provide completed operations coverage in that year. Most CIP's provide a built-in 10 year term of completed operations coverage that does not require additional premiums or policies. This is a significant benefit for Owners who can rest assured that their projects will continue to have coverage for construction liabilities without relying on the continued purchase of additional policies in the years following completion. Traditionally, contracts only called for 2 years coverage after completion. CIP's have greatly increased this protection.

Two other issues were troubling to us. First, the proponents of this bill, although silent as to their intention, have drawn into the potential breadth of this legislation the coverages provide by Builder's Risk insurance. These coverages have often had large deductibles, especially when provided by Owners. These policies have rarely been part and parcel of a "Controlled Insurance Program". However, the language of this proposed legislation is broad enough to include this type of policy in it's terms. Second, the legislation calls for sharing of claims information with "all participants" which is non-competitive if not illegal under HIPPA.

One area in which we agree is in regard to project limits and Self Insured Retentions ("SIR"). JE Dunn programs have no SIR, but do have deductibles, as do almost all insurance policies. However, we limit the Subcontractor's participation to only \$2500 per occurrence. Most JE Dunn sponsored CIP's also have per project limits to provide a fresh set of limits for each project. Subcontractors have the right to do as JE Dunn has on projects with SIR's and aggregated limits; don't bid them.

CIP's have brought organized and unified insurance coverage to traditionally uneven and under protecting construction insurance. Both Subcontractors and Owners, as well as the general public, benefit from higher limits, broader coverage and no additional cost. Remember that subcontractors are at most crediting their contract for what they would have paid anyway for their traditional coverage. In this respect, they get the best bargain of all, more coverage for the same price. The only party suffering a loss is the insurance agent who has lost the commission from the subcontractor.

We believe that this SB 126 has many faults and defects, not all of which have been addressed in my remarks. The Proponents of this bill have highlighted the faults of a few bad programs to condemn an approach which has brought increased sophistication and enhanced benefits of insurance for many construction projects. We believe such legislation is not required. However, if it is the intention of this Committee and the Senate as a whole to move this legislation ahead, we would like the opportunity to propose an amendment to its terms to address those issues.

I appreciate the opportunity to address this Committee and would be pleased to entertain your questions. Thank you.