

BUSINESS AND ECONOMIC DEVELOPMENT

Resolution BED-19-30

RESOLUTION TO ADVANCE CONSUMER PROTECTION IN ONLINE LEAD GENERATION

WHEREAS, according to the Federal Trade Commission (“FTC”), lead generation is the process of identifying and cultivating individual consumers who are potentially interested in purchasing a product or service;

WHEREAS, “lead generation” means to initiate consumer interest or inquiry in consumer financial products through online marketing, direct response advertising, telemarketing, or other similar consumer contact; engage in the business of selling leads for loans; generate or augment leads for other persons for, or with the expectation of, compensation or gain; or refer consumers to other persons for loans for, or with the expectation of, compensation or gain;

WHEREAS, a lead may consist of consumer’s information, including consumers’ names, addresses, occupations, telephone numbers, home and email addresses, military statuses, credit ratings, dates of birth, bank routing and account numbers, employers’ names, and pay schedules, or may involve more detailed and potentially sensitive information such as Social Security or consumer account numbers;

WHEREAS, the goal of online lead generation is to connect companies with consumers so that they can convert leads generated online into sales;

WHEREAS, according to the FTC, online lead generation is nearly ubiquitous in the modern marketplace but, because they operate behind the scenes, consumers and many businesses know little about what they do and how they do it;

WHEREAS, the Consumer Financial Protection Bureau (“CFPB”) has found that some lead generation companies have failed to ensure that consumers were adequately informed about the use and selling of personal information during the lead generation process;

WHEREAS, the FTC also recognized that the lead generation process is often not transparent about consumer information going to lender instead of the lead generator, being sold multiple times, or being auctioned off to the highest bidder irrespective of that bidder’s legitimate need for that information;

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WHEREAS, the process of collecting, preparing, and selling consumer leads can be quite complex, and the roles played by different entities in the lead ecosystem can vary and overlap significantly;

WHEREAS, the lead generation ecosystem is typically comprised of: publishers, which are the consumer-facing websites which encourage consumers to submit information in order to connect with certain products; aggregators, which collect consumer information from multiple publishers in order to consolidate the data for sale to end buyer; and the end-buyer of the leads, often lenders seeking to acquire new customers;

WHEREAS, the payday and installment lending lead generation industry, in particular, is a significant part of the lead marketplace, where lenders employ lead generators to cater to consumers seeking unsecured personal loans. To immediately underwrite and fund such loans, many lenders ask their lead generators to collect detailed personal and financial information associated with each loan application, including the consumer's employers, Social Security number, and financial account numbers;

WHEREAS, consumers are often unaware that their information is going to a lead generator and not an actual lender;

WHEREAS, consumers are often unaware that their information may be further sold to a "data aggregator" which take the leads from various websites, consolidates them and prepares them for sale to lenders;

WHEREAS, consumers are also often unaware that, behind the scenes, their information may also be sold multiple times to multiple lenders interested in their information in order to make an offer;

WHEREAS, the consumer also unaware that the offer made to that consumer is often from the lender which paid the most for that lead, not necessarily the lender with the best product for that consumer;

WHEREAS, because lead generators are often not transparent about the parties involved in a particular transaction, it is often hard for consumers to know exactly which entity has access to their sensitive personal information;

WHEREAS, because of that same difficulty in identifying the parties involved, some experts believe that this creates a situation where lead generators are more likely to engage in deceptive marketing, knowing that it is difficult to identify exactly which entity made the deceptive representations;

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WHEREAS, the FTC and the CFPB have taken enforcement actions against lead generators for misrepresenting the products being offered, misrepresenting the use of consumer's personal information or for selling consumer's information without verifying that the entities purchasing the consumer information are engaged in legitimate businesses and are appropriately licensed to operate in the states in which they are offering consumer financial products; and

WHEREAS, the practice of lead generation in lending results in potentially unlawful conduct and the lack of transparency by lead generators makes it difficult for consumers and regulators to hold lenders and the lead generators accountable.

THEREFORE BE IT RESOLVED, that the National Black Caucus of State Legislators (NBCSL) supports the creation of a regulatory framework which, 1) requires lead generators to be registered and/or licensed with state regulators prior to facilitating or brokering any loans to consumers; 2) subjects those lead generators to state examination authority; 3) requires lead generators to provide clear disclosures and contact information to consumers of those who have been given access to consumer information; 4) ensures that lead generators are subject to both state and federal consumer financial protections including, but not limited to, the Truth In Lending Act and requirements against Unfair, Deceptive and Abusive Acts and Practices and/or regulations on lead generation from the Federal Trade Commission and the Consumer Financial Protection Bureau, among others; and 5) precludes lead generators from selling leads to lenders which are themselves, not licensed or registered to offer those loans in a given state;

BE IT FURTHER RESOLVED, that lead generators should not violate the lending laws in the states that they operate;

BE IT FURTHER RESOLVED, that lead generators should not fail to clearly and conspicuously identify the lead generator and the purpose of the contact in its written and oral communications with a consumer;

BE IT FURTHER RESOLVED, that lead generators should not fail to provide the ability to opt out of any unsolicited advertisement communicated to a consumer via an electronic mail address;

BE IT FURTHER RESOLVED, that lead generators should not sell, lease, exchange or otherwise transfer or release the electronic mail address or telephone number of a consumer who has requested to be opted out of future solicitations;

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BE IT FURTHER RESOLVED, that lead generators should not collect, buy, lease, exchange or otherwise transfer or receive an individual's Social Security number or bank account number to any person or entity which does not have a legitimate business need for that information;

BE IT FURTHER RESOLVED, that lead generators should not use information from a trigger lead to solicit consumers who have opted out of firm offers of credit under the federal Fair Credit Reporting Act;

BE IT FURTHER RESOLVED, that lead generators should not represent to the public, through advertising or other means of communicating or providing information, including, but not limited to, the use of business cards or stationery, brochures, signs or other promotional items, that such lead generator can or will perform any other activity requiring licensure under this title, unless such lead generator is duly licensed to perform such other activity or exempt from such licensure requirements;

BE IT FURTHER RESOLVED, that lead generators should not refer applicants to, or receive a fee from, any person who is required to be licensed under this title, but was not so licensed as of the time of the performance of such lead generator's services;

BE IT FURTHER RESOLVED, that lead generators should not assist or aid and abet any person in the conduct of business requiring licensure under this title when such person does not hold the license required; and

BE IT FINALLY RESOLVED, that the NBCSL send a copy of this resolution to the President of the United States, the Vice President of the United States, members of Congress, and other federal and state government officials as appropriate.

SPONSOR: Delegate Angela Angel (MD)

Committee of Jurisdiction: Business and Economic Development Policy Committee

Certified by Committee Chair: Representative W. Curtis Thomas (PA)

Ratified in Plenary Session: Ratification Date is November 30, 2018

Ratification is certified by: Representative Gregory W. Porter (IN), President