

To: Federal Housing Finance Authority
Office of Housing and Regulatory Policy
400 7th Street, S.W. 9th Floor
Washington, D.C. 20219

Re: Improving Language Access in Mortgage Lending and Servicing Request for Input dated May 25, 2017.

From: Vendor Regulatory Work Group

Date: July 10, 2017

The Vendor Regulatory Work Group is an informal working group comprised of representatives from various companies which typically offer software and other types of information technology and compliance support to residential mortgage lenders.

We are providing this summary of key technology considerations and appreciate the opportunity to provide this input. This input is the opinion of individual members of the work group and does not necessarily represent the opinions or viewpoints of our employers.

Translation Challenges & Liability Concerns

Model Forms vs Industry Translations

Creating multiple language forms based on models provided within regulations or other resources is not difficult from a technology perspective. However, the task of having industry participants actively translate the forms presents a variety of serious challenges.

- **Industry Translations** Liability for translation is a primary concern
- **UDAAP Liability** There is uncertainty as to how liability could be prevented from arising under translated documents, particularly UDAAP claims regarding the translation.
- **Federal Preemption Needed** Absent federal preemption of state law, each state and Federal government agency may have a different set of criteria for determining the extent of liability that can arise, which places a heavy compliance burden and cost on industry vendors to ensure that all translated documents are compliant with all applicable regulations.
- **Bilingual Staffing Limitations** Adequate staffing of bilingual staff may be difficult in many areas and for many vendors in particular where knowledge of the mortgage industry in addition to translation skills would be required. This includes not only vendor staffing for the translation itself, but quality assurance, training

and support staff. General bilingual communication skills do not necessarily equate to bilingual translation skills.

Translated Data

A clear distinction needs to be made on whether only forms will be translated, or forms and data must be translated for LEP applicants. For instance, if printing a disclosure regarding the property the label for the address would be considered the form and be translated, but would the address itself, which is considered data, need to be translated or could the address print on the form in English as long as the form itself was in the specified language of the consumer's choice. This also occurs in fields that describe loan programs, payment periods, ARM Adjustments, balloon payments, descriptions of settlement services etc.

Additional challenges arise with the need to translate the data that prints to the forms:

- **Delayed Delivery** Adequately translating documents may cause delays in delivering documents in a timely fashion. For example, if a creditor has to manually translate the contents of a Loan Estimate, the creditor may have a hard time delivering the LE within the time constraints set forth under 12 CFR § 1026.19(e).
- **Variation by Creditor** Some documents provided to applicants (such as the Loan Estimate) are done in order to permit the consumer to “shop” among various creditors to find the best deals for themselves. In order for this to be effective, the Loan Estimates provided must be uniform. However, if each vendor/creditor must provide its own translation then when there are several ways a word, phrase, or sentence can be translated and restructured, different vendors/creditors' translations could vary when describing an identical loan program. This could defeat the purpose of the Loan Estimate to be a “shopping tool” for consumers.

Technical and Formatting Challenges

Documents contain three characteristics which are affected by translation:

- **Static Text** Standardized-form text (“static text”) which is required to appear on the document regardless of the loan terms (e.g. the label “Loan Amount” on page 1 of the LE is static text).

- **Dynamic Text** Loan-specific text (“dynamic text” or “data” as described above) which varies from loan-to-loan (e.g. the text inputted under “Can this amount increase after closing?” for “Loan Amount” on page 1 of the LE is dynamic text). This text is generated from data input and extracted in multiple software systems.
- **Layout** The format and layout of the document, such as spacing, font size, bold or italic font effect, and lines and tables to govern positioning.

Some of the many issues caused by translation in these regards include the following:

- Static text, while it can be initially translated and largely left alone afterwards, must be re-translated any time requirements for the document change. Depending on the advance notice provided by the entity requiring the document this may make delivery of updated documents to lenders unfeasible in a timely manner.
- Dynamic text is particularly troublesome for a variety of reasons:
 - **Need for Instantaneous Translations** Due to its fluid nature, and absent any uniformly adopted standard in vocabulary among industry participants, data entered will need to be constantly translated – and possibly re-translated so the recipient and future reviewers of the documents know what the first translation said. If translated data received by one participant does not meet the translation standards of the recipient of that data the loan may be rejected or redisclosed outside of the prescribed timing. While it is possible to automate this process with existing technology the translation may be imperfect and may not accurately reflect the terms of the loan. Thus manual translation/review may still be required to avoid UDAAP issues.
 - **Wholesale Risk** The requirement for wholesale lenders to use the same descriptions for itemized services that were disclosed by mortgage brokers is already problematic and would be compounded significantly by translated documents. It is conceivable that many wholesale lenders would be unable to translate the LEP forms provided in certain languages by mortgage brokers. This could greatly restrain the availability of credit through such channels. At the same time, requiring wholesale lenders to accept all LEP translations opens them to liability for bad translations and risk in supporting servicing in those languages.
 - **Data Entry** The method of data entry will differ among participants, depending on their hardware and software requirements. For example, a Spanish-keyboard is formatted differently than an English-keyboard, which complicates any automated process based upon keystroke entries. This also limits the ability for bilingual staff to function as loan processors or compliance reviewers because they may need to make changes in two languages. This

would require them to have much more time to enter data in the non-English text through selection from specialized characters or have access to the second language keyboard as well as typing skills in both languages. The qualified pool of workers will be greatly diminished by these skill requirements and the productivity will be greatly reduced. Even if workers can function on two keyboards, typographical errors are likely to rise and management may not have the ability to perform first line quality control that is taken for granted in English.

- **Too Many Options** While there can be some uniformity with dynamic text in cases involving standardized words (e.g. the “Yes” and “No” dynamic text which prints on the Integrated Disclosures), customized text can lead to thousands of varieties of translations (e.g. information which prints after “Other:” in the “Taxes, Insurance, and Assessments” sections on the Integrated Disclosures). This creates exponentially greater risk in loan servicing where there are hundreds of standard letters that may be customized by users during delinquencies, loan modifications, and foreclosures.
- **Prescribed Text** Statutorily prescribed text would also have to be addressed in all cases where prescribed, such as preceding title related services with the prescribed text “Title – “ or ending the service description of optional services with the prescribed text “(optional)”.

The layout and format of document may be affected due to the following:

- **Spacing Restrictions** The length of characters for translated words or phrases may be longer than the original text (e.g. Oregon has translated “prepayment penalty” to “Штраф за досрочное погашение займа” in Russian, expanding the phrase by 13 characters).; some are shorter (e.g. “Yes” in English is “да” in Russian). This can retract or expand spacing and margins, causing words to “spill outside” of the areas in which they are designated to be disclosed, etc.)
- **Directional Text** Some languages, such as Arabic and Hebrew, read from right-to-left. Out of a matter of necessity, static text on forms (even prescribed ones, such as the Integrated Disclosures) would have to be re-formatted completely to accommodate this. Does ending the service description with (“optional”) as prescribed for the Loan Estimate and Closing Disclosure mean on the left in right-to-left languages?
- **Numeric Data** Many languages use different formats for numbers. For example, most European languages use a comma instead of a point for indicating decimal places. Persian and Urdu use Eastern Arabic numerals, rather than the Arabic Numerals used in Latin-based languages.

- **Data Integration** From a technical standpoint, supporting some or all of these variants will be problematic, particularly if not all vendors support these variations. It is quite conceivable that a document vendor's software system does not support, say, Cyrillic characters, while an LOS does. Such a discrepancy will cause data to be imported improperly in the document vendor's system and generating the necessary dynamic text on documents will be impossible.

Integration Challenges

From a document vendor standpoint, the only way to know if the borrower in a particular loan transaction has LEP is if this information is passed to the document preparation system through an LOS. Therefore, the onus is on the mortgage broker or mortgage lender to send this information in a field, assuming the LOS even supports such a field.

MISMO Field For the most part, loan data is contained within a MISMO-standard file. As far as we know, there isn't a standard location for language preference, in order to "move" this data from an LOS to a document vendor system.

UDAAP Concerns

Under 12 USCA § 5531(a), the CFPB is authorized to "take any action . . . to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law." An act can be considered to be "abusive" if it "materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service" (*Ibid.* § 5531[d][1])

Violations for Not Disclosing Considering the "open-ended" nature of interpreting this provision of law (for example, see "CFPB Supervision and Examination Manual, v. 2.0, UDAAP 9), it is conceivable that failing to provide disclosures translated in the language that the borrower indicates preference for could be considered an "abusive" practice, particularly if the borrower has "limited English proficiency" (LEP), in which case providing English text would materially interfere with the consumer's understanding of the terms of the loan.

Violations When Disclosing Similarly, providing translated disclosures opens up the lender (and vendor) to additional UDAAP liability in the case that a translation was inaccurate, imprecise, or simply subject to more than one interpretation.

Violations for Late Disclosures As described above, mortgage brokers and creditors may require more time to provide translated disclosures. However, we fear that providing English disclosures timely and LEP disclosures later could be deemed a UDAAP violation.

Wholesale and Secondary Market Concerns

Without model forms it is possible that wholesale lenders and investors may require documents to be translated in certain ways, which would cause LOS and document vendors to program their systems to accommodate numerous variants of translated documents – thereby increasing the cost of such systems.

This could also impact the salability of a loan to wholesale lenders or on the secondary market based on how/if the documents are translated to the particular party's standard.

Servicing Rights An additional concern is that the servicing rights may not be transferrable if the language selected by the consumer is not supported by a particular servicer. This would be particularly problematic when selling entire pools of loans.

Enforceable Contracts In addition, some of the more “legalese” text in consumer documents (such as promissory notes, security instruments, addenda and riders to both, statements sworn to under perjury, *etc.*), by their nature, require that the terms being agreed to be precise. It may be difficult to get such precision in translation. Without such precision, perspectives between parties upon the same terms may be skewed (*e.g.* the consumer may have a different idea of what he is agreeing to – based on the translated text, than what the creditor believes), which causes there to be “no meeting of the minds” and the validity of loan terms can be challenge on this premise thus making loans more difficult to sell on the secondary market. These challenges already arise in courtroom battles over technical contract language written in English, it will be compounded exponentially when the parties have to hire translators as expert witnesses to explain to judge and jury that the consumer believed something else because of a translation.

- **Secondary Participant Exemption Necessary** The absence of a single and clearly defined risk standard could lead to the unintended consequence of rendering certain transactions/translations unmarketable or priced for an increased risk on wholesale and secondary markets and result in restricting credit access to consumers with LEP. For this reason, there should be clear exemptions for wholesale and secondary market investors including exemption from claims brought at foreclosure.

Burdensome Costs

Without model forms, the costs of translating documents skyrockets. One document vendor estimated \$16,000 per month in costs for hiring a third-party contractor to translate documents into Spanish. Spanish is a very common language with many skilled translators so other languages could have a much higher cost. Additionally, creditors and servicers will have to have sufficient translation staff to handle their loan volumes, so those costs will be much higher for lenders and servicers than for vendors.

Beyond the translation costs are also other costs, such as quality assurance, support and development.

Because static- and dynamic-text must continuously be translated, along with data used to generate dynamic-text, it becomes imperative for industry participants to hire translators, the services of which can be quite expensive depending how translating specialists are compensated. It may also be difficult to find qualified candidates for such positions, because the positions involve more than just translating words; such specialists will also need to help with the integration of software systems with each other and have a general understanding of software programs. Finding, say, a Spanish Major college graduate is one thing; finding one who also is an expert in mortgage software is another.

Clarifications Needed

Further input is dependent on additional information including:

- Can HUD Home Counselors be relied upon for translation / guidance? What if there are no HUD counselors with those language skills in the area?
- What source can vendors rely upon for approved / standardized translations?
- Can a document be provided in English with populated information and then a static translation document absent of dynamic data or must dynamic data be translated as well?
- What languages should take precedence?
- Which documents must be translated?
- Will OMB forms be available in translated formats?

Potential Short Term Solution

Providing a “read-along” translated version of the document.

- For example, rather than providing a single, translated copy of the Loan Estimate to the borrower, a completed copy of the English-version LE (complete with data in English) could be provided to the consumer, with a blank, translated copy, which the consumer could use as a reference to help him understand the English-version.
- Creating these “read-along” versions, while it would increase costs, would be simpler to implement, particularly if standardized translated forms are provided by Federal or State governments, or GSEs, which would lend to uniformity among industry participants.

- This solution would require a standardized disclaimer/disclosure to the consumer indicating that English document is the legally binding document, particularly in reference to security instruments and notes.