



To: The Division of Housing Mission and Goals, Federal Housing Finance Agency
From: Docutech
Subject: Improving Language Access in Mortgage Lending and Servicing
Date: July 5, 2017

To Whom It May Concern:

The Federal Housing Finance Agency ("FHFA") has issued a request for input to "Improve Access to Credit for Qualified Mortgage Borrowers with Limited English Proficiency" (<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Issues-Request-for-Input-to-Improve-Access-to-Credit-for-Qualified-Mortgage-Borrowers-with-Limited-English-Proficiency.aspx>), concerning language support for mortgage documents supplied to credit applicants who have limited English proficiency ("LEP").

Docutech is a mortgage document vendor which creates and supplies mortgage documents to mortgage lenders. As such, we are well acquainted with the various laws and investor requirements regarding support for LEP and what the ramifications are for complying with these requirements. We would, therefore, like to provide input on this important matter.

Responses to Posed Questions

In Section V of the document entitled “Improving Language Access In Mortgage Lending and Servicing Request for Input”, FHFA has posed series of questions regarding support for LEP. The following are our responses to some of the questions which impact document vendor services.

Question A1 – What processes and tools are in use today by originators and/or servicers to facilitate the origination and servicing of mortgages for LEP/PL borrowers? Who develops these tools? Are they fully utilized and, if not, why? How could these processes and tools be improved?

Docutech is not an originator or a mortgage servicing vendor and cannot appropriately address these questions. We anticipate that most providers in this space will face obstacles similar to the ones we are presented with, as outlined in the rest of this document.

Question A2 – What processes and tools are in use today by other mortgage industry participants (such as real estate agents, housing counselors, nonprofit consumer advocates, and vendors) to facilitate transactions with LEP borrowers? Who develops these tools? Are they fully utilized and, if not, why? How could these process and tools be improved?

We are able to provide Spanish-translated copies of certain documents which are required under various state laws, as long as the language required to be provided is promulgated officially by State agencies. For example, we are able to provide:

- A Spanish copy of the Loan Estimate (“LE”) and Closing Disclosure (“CD”), required under 12 CFR § 1026.19(e) & (f), based on Spanish-language versions of these forms promulgated as Model Forms H-28 under 12 CFR Pt. 1026, App. H.
- The Spanish-language versions of the LE and CD are also required under California and Texas laws (specifically Cal. Civ. Code § 1632.5, Tex. Fin. Code Ann. § 341.502, and 7 Tex. Admin. Code ch. 90, Subchapter G), for loans also subject to 12 CFR § 1026.19(e) & (f). However, other Spanish-language documents must be provided for loans not subject to *Ibid*. These documents are provided by the California Department of Business Oversight (<http://www.dbo.ca.gov/forms/>) and under Texas administrative law (7 Tex. Admin. Code § 90.703[a][3]).
- Similar to California and Texas, Oregon also requires translated copies of the LE and CD to be provided for loans subject to 12 CFR § 1026.19(e) & (f). For all other loans, translated copies of the Good Faith Estimate (“GFE”) required under 12 CFR § 1024.7 and the Truth-in-Lending Disclosure required under 12 CFR § 1026.18 must be provided. In addition to all of these, a “general disclosure” is required (see Or. Rev. Stat. § 86A.198 & Or. Admin. R. 441-865-0060).

Translated copies of all of these forms are provided by the Oregon Division of Financial Regulation on their website (<http://dfr.oregon.gov/business/mortgage-industry/Pages/transl-disclosures.aspx>).

- For Texas home equity loans (aka “Texas 50[a][6] loans”), a Spanish-language version of the “Texas Notice Concerning Extensions of Credit” required under Tex. Const. art. 16, § 50(g) is required to be provided (see also 7 Tex. Admin. Code § 153.51). A translated copy of this form is provided by the Finance Commission of Texas on their website (see <https://www.fc.texas.gov/homeinfo/homeinfo.html>).

In all of these cases, the Spanish-language disclosures required to be given are provided either under administrative law or by publication of state enforcement agency websites. Other laws do not promulgate the language that is to be used, thus placing the onus of compliance on creditors to properly translate the disclosures into another language. For example:

- Under Arizona law, a specific notice is required to appear, in both English and Spanish, “on each note or agreement evidencing a consumer lender loan” (Ariz. Rev. Stat. Ann. § 6-631[B])
- Under Texas law, a notice informing borrowers of the entity to whom they may submit complaints must be provided “in the language in which a transaction is conducted” (see 7 Tex. Admin. Code §§ 11.37, 64.10, 76.122, 90.105, & 91.121).
- Under Illinois law, if a retail transaction is conducted in a language other than English, the transaction results in a contract, and the retailer acted as the consumer’s interpreter in conducting the transaction, a specific statement must be provided to the consumer in the consumer’s native language (see 815 Ill. Comp. Stat. Ann. 505/2N[b])
- For Real Estate Law licensees, California law requires a translated copy of the TIL to be provided in cases where transactions are conducted in a language other than English (see Cal. Civ. Code § 1632). Translated copies of the TIL are not officially provided by either the U.S. Government (*e.g.* the CFPB) or California (*e.g.* the Department of Business Oversight).
- While not explicitly required by any laws, it is customary for legal documents and disclosures made and given in connection with loans secured by property in Puerto Rico to be written in both English and Spanish. While Fannie Mae does provide sample legal documents in Spanish for such transactions (see <https://www.fanniemae.com/singlefamily/security-instruments>), there is no official support for translated disclosures required under P.R. Laws. Ann. tit. 7, §§ 1057a(14) & 2713, tit. 26, § 2713 and P.R. Regs. CIF Reg. 5722(10)(B) & (11).

Disclosures for these requirements are not fully supported, for a variety of reasons:

- Under California law, if the credit transaction is conducted primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, then certain disclosures must be provided in these languages (see Cal. Civ. Code §§ 1632 & 1632.5). Under Oregon law, certain disclosures must be translated

into the language primarily used in conducting the transaction (see Or. Rev. Stat. § 86A.198), though authority is granted to Oregon agencies to provide translated documents in three most used foreign languages in the state (Spanish, Russian, and Vietnamese). As will be described later in this document, software support for languages that use non-Latin characters (such as Russian, Chinese, Vietnamese, and Korean) does not exist, therefore these disclosures cannot be populated, even if official translated copies are provided.

- Questions still abound as to what extent the disclosures should be provided in the translated language. For example, while a copy of the Spanish LE can be provided in the manner set forth in Model Form H-28(A) of 12 CFR Pt. 1026, App. H, does the text which may need to be added to the form on a loan-by-loan basis also need to be translated into Spanish (*e.g.* does the text which needs to appear under the heading “¿Puede aumentar este monto despues del cierre?” need to be translated into Spanish, or can it remain in English)? This issue is covered in more detail later in this document.
- It is technically possible for us to generate a static version of a translated document, but that poses problems for any dynamic document sections that should display or not display based on loan data. For example, the Adjustable Payment table should appear on the Loan Estimate under appropriate circumstances. This kind of dynamic document production cannot be done with a static version of a translated document. Similar to the above obstacles, our software support for languages that use non-Latin characters is non-existent.
- To trigger these documents, clients must set an indicator within our software in order for our software to identify where Spanish language documents are to print or not. This indicator can be set on a loan program basis or a loan-to-loan basis. We are completely dependent upon our clients setting this indicator and have no way of knowing – based on the loan date sent to our system – whether the borrower has LEP or not.

Question A3: How and when do originators, servicers, and other mortgage industry participants typically learn a borrower has limited English proficiency?

Since our company does not interact with borrowers, we are completely dependent on our clients to specify whether a loan is provided to a borrower who has LEP. Clients could do this by setting an indicator, which can be done on a loan-to-loan basis or based upon a loan program. Our software is unable to automatically make this identification based solely on the loan data that is currently imported into our system, but it could certainly be a collected data point.

Question A4: To what extent are existing translated documents used by the industry? Are they useful? How are they used? What could increase their usage? Are more translations needed (i.e., translations into more languages or translations of more documents)? Who should develop these translations? Where should these documents be housed?

- As outlined in the answer to question A2, state and agency provided document translations constitute the most-used resource for providing non-English translations to LEP borrowers.
- A good way to increase usage of non-English forms is to ensure that the forms are translated as accurately as possible. The current translations of required documents are of varied quality. Another way to increase usage would be to make the forms easily available in the same physical and internet locations as the English versions of the forms.
- Since our business is not directly borrower-facing, we have no way to know whether more document translations are needed beyond the frequency of our clients requesting more translated documents. Up to this point it has not been a major question, but it does come up occasionally.
- It is our opinion that document translation should be executed by the same organizations that promulgate the documents. For example, the CFPB should provide translations of the Loan Estimate and Closing Disclosure, and state mortgage agencies should provide translations of their required documents. These translated documents should also be maintained and updated by these same agencies/organizations.

Question A5: To what extent do originators and servicers use bilingual staff or translation services to assist LEP/PL borrowers? If so, how well does this work? How can these efforts be supported?

While our company does not originate or service loans, we would like to comment on this question. Due to the fact that some disclosure requirements do require us to translate certain text into a foreign language, we do seek candidates for positions at our company who are capable of doing such translations. However, due to our location (in Idaho), nearly all candidates either do not know a foreign language or they only know Spanish. Even if one only considers Spanish, dialects differ, much in the same way that English will differ from state to state or country to country (*e.g.* Mexican Spanish is slightly different than Puerto Rican Spanish; both are slightly different than Columbian Spanish; *etc.*). Thus, while we may be able to translate documents into Spanish, such Spanish may not be the same native Spanish of the borrower (which can be a technical violation of certain state laws). Support for other languages is very limited, based on locality and the limited pool of talented candidates to choose from.

The only practical way to support a wide variety of languages is if the state agencies or departments always provide a translation of all required documents in each language that must be supported. Expecting mortgage-related businesses, especially very small ones, to provide their own accurate translation of required documents is a non-starter. Only very large organizations could field the resources needed to accomplish this.

Question B1: What are the most significant barriers that exist for LEP individuals in gaining access to the mortgage lending process? Are these barriers also applicable to PL borrowers? Please address the entire mortgage life cycle (from the marketing phase through origination and servicing) in your response.

While we do not deal directly with borrowers, our supposition is that the most significant barriers are reading comprehension and availability. If LEP individuals don't know how the mortgage process works, and/or don't know where to go to learn how the mortgage process works, participation will be limited.

Question B3: Are mortgage industry participants fully aware of the existing services and materials available to assist LEP borrowers? Would public education measures (including measures targeted to lenders and servicers) be useful in connecting LEP borrowers to the services and materials available? What methods of outreach would work best for LEP borrowers (radio, television, social media, etc)?

The only resources we have consistently used are the non-English model forms and translations provided by state/agency sources. Online translation services (Google Translate, etc.) are also used occasionally. If there are other helpful resources available, being educated on those resources would be beneficial for us.

Before targeting LEP borrowers with mortgage assistance services, research should be undertaken to discover the most effective way to execute an outreach program.

Question C1: Please provide input on whether particular measures described above should or should not be considered for FHFA and the Enterprises to undertake to improved language access and explain why? Which measures should be given top priority and why?

Translation of mortgage forms and disclosures into the languages most commonly spoken by LEP borrowers would provide the most significant improvement for LEP borrowers and the mortgage lenders/vendors trying to assist them. These translations should be officially provided or endorsed by the entities tasked with providing and/or regulating the disclosures.

Endorsement of specific language translation services could also alleviate a lot of concerns. Since few organizations will have the resources to hire someone proficient in each language that might be required, an approved auto-translator would be very helpful. This is especially true if some fields on the non-English documents will be required to populate in the translated language

Question C2: Please identify any other short-term practices or actions that FHFA and the Enterprises could take to assist originators and servicers that may improve understanding and assist borrowers in their preferred language?

See the above question. Officially provided and approved translations or translation systems are the top priority.

Question C4: Are there short-term actions that may assist other mortgage industry participants in serving borrowers in their preferred language?

Due to the extraordinary amount of work which would be necessary to support more comprehensive support for LEP borrowers, the only short-term actions which could practically be implemented would be for the GSEs to provide standard, translated documents in languages which support Latin characters, that could be used as “read along” disclosures (*i.e.* documents which the borrower could use to help understand provided English-language versions). Creating and supporting such documents – as long as the text is static – would be simple enough to do in the short-term.

Question C5: If these short-term actions target borrowers who speak particular languages, what should those languages be?

These languages would ideally have Latin characters, since there is no software support for other types of alphabets and numerals. Based on the languages promulgated under California and Oregon authorities, languages that could be supported short-term would be Spanish, Tagalog, and (possibly) Vietnamese. The most common languages needed will vary by region.

Question C6: Would the development of a clearinghouse of LEP resources be useful? If yes, who should develop and fund it? Where should the information be located to be most easily retrievable by LEP borrowers and industry participants?

LEP resources would be quite helpful if they include either translated documents (preferred) or tools to help in the translation of documents (not as preferred, but this would be better than most of what is currently available). From our experience, it is best to retrieve the documents from the World Wide Web. Publications on either Fannie Mae or Freddie Mac’s websites (or both) would be the most helpful, but any webpage that can be easy to navigate to should be adequate. The more centralized these resources are, the better, but we understand that it is unlikely that all the responsible agencies would feel comfortable having their documents hosted by an outside agency.

Question C7: Should greater emphasis be placed on providing borrowers with language translation services? Who should provide such services? How should the provision of these services be funded? How should borrowers be informed or directed to such services?

Since the amount of work involved in maintaining compliant non-English versions of mortgage disclosures is so significant, it does make more sense to provide a translation service if one is needed. Frequently LEP borrowers bring friends or relative with them to translate, but most of these translators are unfamiliar with the mortgage process themselves. Having a translator able to meet with LEP borrowers who understand both the language and the mortgage documents would be beneficial, especially since a translator could respond to questions directly, which would be impossible if the language assistance were limited to translated model forms. Once a program of this type were developed, loan originators could refer LEP borrowers to these services.

However, such a program would incur a significant cost. The question remains as to who would bear the financial burden of these translation services.

Question C8: What are the potential costs in time and money of these measures? If desirable, how should they be funded?

It depends on which tools and resources were implemented. In any case, implementation and support would be needed for any translation services or documents. Additionally, those in the mortgage industry would have to add support for those resources, as applicable. For example, the CFPB provided Spanish translations of the Loan Estimate and Closing Disclosure. But, each document provider and Loan Origination System had to implement that Spanish version within their respective systems. Depending on the target language, that could mean anything from generating a doc template written in that language to requiring a software update to support an entirely different set of characters. The fonts for non-Latin characters can be very expensive, with some being as much as \$250,000 to license.

Without model forms, the costs of translating documents skyrocket. At one point, our company considered hiring a third-party contractor to translate our documents into Spanish. The cost to do so was approximately \$16,000 a month. Couple this with any number of other languages which may be required (under California law, there are eight) and the costs quickly calculate to around \$1 million or more a year – just in translation costs (other costs, such as quality checking the translation to ensure it is compliant in all jurisdictions it will print in, are not included). This illustrates the fact that, while potential costs could vary, they would most likely be very significant.

Question D1: Does your organization track borrower language? What data are currently tracked? What purpose does the collection of the data serve? How is the data collected, tracked, reported, and used? Does your organization share the data, and if so with whom? Have you encountered any legal issues associated with the collection of that data?

Our company does not track the borrower's language, as there are currently no imported data points which indicates the borrower's preferred language. We do have an indicator for Spanish-language documents, but this indicator must be set by the client. This data point is used to provide certain Spanish and bi-lingual disclosures. We do not share the data with anyone beyond what is needed to generate the correct documents.

Question D2: Would it be useful to collect data on borrower language preference in a standardized manner, integrate data into standardized origination and servicing data, and track data for the life of a loan? How might you make use of such information?

Collecting and integrating the data in a standardized manner would certainly help to ensure uniformity across all systems, particularly loan origination systems and document vendor systems. For our purposes, the data would only be used to determine which translated documents to provide for each loan, but banks could use the information to allocate their resources more efficiently to those who need

it. Borrower language preference could be collected and tracked along with the demographic data that is already required to be collected.

Question D3: If collected, does technology exist to move language preference data from origination to servicing systems, and between servicing systems when a loan is sold? If yes, which systems are used to accomplish this, and are they proprietary or third party systems? If no, what would need to be done to enable the transfer, in a standardized way, from origination to servicing? What are the operational barriers to tracking new data elements in origination and servicing systems?

For the most part, loan data is contained within a MISMO-standard XML file. I don't think there is currently a standard location for language preference, but it can be added in a custom section. We would need to create a field within our system and associate it with a standard MISMO location, which is relatively straightforward. Since the language preference is a single data point, it should be easy to track and share as necessary, but the additional docs/processes/etc. that are triggered by that preference would require much more work.

Question D4: Does collecting information about borrower language preference trigger any additional (beyond what would otherwise exist) legal obligations or potential liability under state or Federal laws? Please identify specific legal provisions. Is it possible to mitigate these legal risks by framing the collection in a particular way?

There is already very specific verbiage in place for collecting demographic information; that would probably need expanded to include language preference as well. Similarly, any document with disclosures about discrimination based on gender, nationality, etc. would need to be updated to cover language preference as well.

It is difficult to say how each state or mortgage agency would respond to a requirement to collect language preference. In general, each state and Federal government agency may have a different set of criteria for determining the extent liability to which liability can arise under each document, which places a heavy compliance burden on industry vendors to ensure that all translated documents are fully compliant.

Question D5: If a decision were made to collect borrower language preference, how should such information be collected? Where and when in the origination process and servicing process should it be added? What data other than language preference might be useful to collect and why?

If such a decision were made, the data should be collected as early in the loan process as possible, in order to comply with California and Oregon state laws which require translated disclosures to be provided when the terms of the loan are negotiated in a foreign language. The earlier this information is collected in the process, the sooner translated disclosures can be provided and potential UDAAP violations can be mitigated. Including a language preference on the Uniform Residential Loan Application may be the most practical step forward. Of course, questions would have to be addressed, such as whether a borrower could select more than one preferred language.

Since many people speaking non-English languages are also fluent in English, it would probably be beneficial to know whether the borrower would like a translator, if such services are offered.

Question D6: Would LEP/PL borrowers be uncomfortable with answering a question about their preferred language? If so, how should this be weighed in considering whether to collect data on language preference?

It is difficult to know how borrowers would respond to such a question, but it is conceivable that it could make some people uncomfortable. However, the advantages of having the mortgage process explained in a language they are fluent in would most likely outweigh any discomfort they may feel about disclosing their preferred language.

Question D7: If a language preference question were to be asked on a standardized form, would the version below address relevant concerns? If not, why? What else might you suggest as an alternative or improvement?

We believe this language would mostly be adequate in allowing borrowers with LEP to indicate their preference, without imposing an obligation on the creditor to provide documents in the preferred language. We would suggest that the disclaimer language be modified to state the following:

“By law, your answer will NOT affect your mortgage application. Your answer does not commit the Lender or Other Loan Participants to communicate or provide documents in your preferred language and does not impose any additional legal obligations on them to do so. However, your answer may let them assist you or direct you to persons who can assist you.”

Also, since a borrower with LEP will likely be indicating this preference, it may be best to have each selection listed using the terminology of the language selected. For example, rather than simply having “Spanish” listed, list “Spanish (Español)”, to help the borrower with LEP identify the language he or she is selecting a preference for.

Question D11: What emerging technologies such as apps, artificial intelligence, optical recognition, etc., exist that could address some of the challenges faced by the mortgage industry and LEP borrowers?

Translation software and apps (e.g. “Google Translate”) may be useful tools in translating documents into various languages (both static and dynamic text), but only if such tools were sanctioned by FHFA and a “safe harbor” of compliance was extended for the use of such tools (which are not 100% accurate), as long as the tool was used in a *bona fide* manner.

Artificial intelligence and optical recognition will probably need to mature for a few years to become more useful to LEP borrowers.

Question D12: Are there practices used by other sectors (e.g., health care, transportation) to address limited English proficiency that could be applicable to the mortgage industry?

Some sectors make sure to have translators on staff, and/or train employees in at least the basics of languages that employee might expect to hear. Something like that might be helpful to mortgages as well.

Question E1: Are there legal or regulatory obligations FHFA should be aware of as it considers recommendations on enhancing processes for the borrower's preferred language? Are there any gaps in the current legal or regulatory structures that, if addressed by the appropriate Federal or state agency could facilitate originators and servicers working with LEP borrowers?

Yes. The chief law that should be a concern are the UDAAP provisions, which could be applied to make creditors and/or service providers liable under both Federal and State law if the borrower indicates a language preference, but the creditor and/or service provider is unable to accommodate such language preference. It may be considered an "unfair" practice if the borrower is not able to adequately negotiate the terms of the loan in a secondary language (English); it may be considered a "deceptive" practice if the creditor does not provide translated documents, even though he is aware that the borrower has limited LEP – in fact, it may still be considered a "deceptive" practice if the creditor does provide translated documents, yet the translations have defects, despite the creditor's or service provider's good faith efforts to ensure a correct translation.

Translated legal documents, such as those for Puerto Rico where the document is in both English and Spanish, may cause undue financial hardship on borrowers with LEP, since dual language documents will increase the number of pages submitted for recording purposes and most counties still charge recording fees based on the number of pages submitted.

Federal and State laws which require the format of certain disclosures to be exact or within certain formats would frequently be violated. For example, under Regulation Z, the LE and CD must provided substantially in the same format as the model forms set forth under 12 CFR Pt. 1026, App. H. These formats *cannot* be complied with in some languages, where words may be significantly longer than their English equivalents. In such cases, any approved non-English document might look very different from the English version. Additionally, some languages contain fundamental differences from Latin-based languages, such as English. For example, some languages such as Hebrew and Arabic are written out "right-to-left" rather than "left-to-right." This would cause the format of the loan documents to be very different – which causes legal problems for documents set forth under specific regulation. Some languages use a comma rather than a period to specify decimal places. Some languages (such as Persian and Urdu) use Eastern Arabic numbers, rather than the Arabic ones used in Latin-based languages.

Providing disclosures within legally required timeframes could also be difficult, especially if the lender was required to provide disclosures in an uncommon language. 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).

A final concern is that, with legal documents such as the promissory note and security agreement, the language in these documents must be precise, since the parties to these documents are legally bound to the terms of them. If such documents are translated and the translated documents are legally binding, there may be a lack of understanding between the parties if the English documents contain provisions which inadvertently contradict the same provisions in the translated documents.

Question E2: Would implementation of any of these specific actions trigger additional requirements or potential liability under state or Federal laws? Please explain how with specific reference to the laws at issue. Are there ways that FHFA or the Enterprises could mitigate these legal risks?

Violations of Regulation Z can potentially cause creditors to be liable up to one million dollars a day for each violation. Under common law contract provisions, if a legal contract is entered into, but there is no “meeting of the minds,” the contract is not considered binding and is null and void. This can occur if a document is not properly translated, leading the consumer to believe that certain terms of the contract mean one thing, while the creditor believes that they mean another.

There is nothing the FHFA can do to mitigate Regulation Z risk, other than to work in association with the CFPB to amend Regulation Z to permit the formats of the LE and CD to be modified to accommodate translated text. As for common law, if the FHFA can provide properly translated documents and hold sellers to the GSEs “harmless” for any errors in translation that could cause the loan to be null and void, this would mitigate this risk.

Other regulations require specific language to be used. It’s an open question whether a translated language would satisfy the requirements of such regulations. Translations would need to be reviewed and approved by every entity promulgating mortgage requirements.

Question E3: Are there additional risks FHFA should consider?

Even if non-English languages were supported with translation, model forms, and interpreters, consideration would need to be given to LEP borrowers who were impaired with poor eyesight, hearing, etc. Would Braille need to be supported?

What criteria would be used to determine what languages needed to be accommodated for? Some languages are spoken by very few people. Would there be a requirement that a certain number of people in the United States must speak the language as their primary language in order for it to have official LEP support?

Troubleshooting documents in non-English languages could occasionally be difficult unless companies continually kept people on staff that could read the documents fluently.