

Federal Housing Finance Agency  
Request for Information  
May 25, 2017  
**Improving Language Access in Mortgage Lending and Servicing**

Responses Submitted By:  
George Baker, Founder and CEO  
Talk'uments, LLC  
gbaker@talkuments.com  
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**Abstract:**

**Current Consumer Information Delivery Model**

The mortgage industry's current consumer information delivery model is antiquated and flawed. The current delivery model lacks the flexibility to adequately address the needs of consumers, especially limited English proficiency (LEP) and preferred language (PL) borrowers. The industry's information delivery model is problematic for native English speakers so its duplication and use, in whole or in part, for LEP/PL borrowers will not achieve the desired results sought by FHFA and the Enterprises.

From loan origination to loan closing, the mortgage industry on average requires borrowers to read and sign over 150 pages of loan disclosures; many replete with legalese. Native English speaking Americans read at an average 7<sup>th</sup> to 8<sup>th</sup> grade level<sup>1</sup> and according to a 2016 FINRA Foundation study<sup>2</sup>, nearly two thirds of Americans cannot pass a basic financial literacy test. Surveys conclude that borrowers generally don't understand disclosures.<sup>3</sup> This determination,

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<sup>1</sup> The U.S. Department of Education's National Assessment of Adult Literacy, 2003, Article Reference Clear Language Group:  
<http://www.clearlanguagegroup.com/readability/>

<sup>2</sup> FINRA Foundation, National Capability Study, 2016, Study: <http://www.usfinancialcapability.org/results.php?region=US>

<sup>3</sup> James M. Lacko and Janis K. Pappalardo, 2005, Improving Consumer Mortgage Disclosures:  
<https://www.ftc.gov/sites/default/files/documents/reports/improving-consumer-mortgage-disclosures-empirical-assessment-current-and-prototype-disclosure-forms/p025505mortgagedisclosureexecutivesummary.pdf>

in part, led to the enactment of the Consumer Financial Protection Bureau's (CFPB) 2000 page mortgage disclosure rule, commonly known as "TRID" or "Know Before You Owe." Translated disclosure/loan documents, *if read*, may be difficult to understand by LEP/PL borrowers due to the borrowers' diverse educational/cultural backgrounds and lack of familiarity with baseline mortgage/financial facts and with mortgage-specific jargon.

Generally, salespeople are the principal educator of all borrowers, including LEP/PL borrowers. These "educators" include Realtors for the home buying process and Loan Originators (loan advisors, loan officers, loan brokers) for the mortgage finance process. Inherent in this relationship is an unmonitored conflict of interest between education and sales. When a conflict arises between education and sales, sales generally prevails.

Mortgage lenders are fully liable for their Loan Originators' actions. But, they have no reliable method to monitor what Loan Originators say -- or fail to say -- to all borrowers, including LEP/PL borrowers. In most cases, time constraints reduce Loan Originators' ability to properly educate borrowers on key aspects of the mortgage loan cycle since sales, not education, is the key measurement by which their job performance is evaluated.

At present, LEP/PL borrowers depend heavily on bilingual Realtors and Loan Originators for loan information and counsel. This creates a language dependency paradigm or situation where Realtors and Loan Originators are the primary source of loan information and advice for LEP/PL loan applicants. Trust, or the perception of being able to trust a same language Realtor and/or Loan Originator for honest answers and knowledgeable responses to questions, is central to this relationship.<sup>4</sup> At worse, this language dependency paradigm fosters potential abuse of LEP/PL borrowers. At best, access to information from Realtors, Loan Originators and/or from other sources is limited.

In short, the mortgage industry's consumer information delivery model does not promote a good borrower experience. Furthermore, it exposes lenders to unnecessary legal, regulatory and enforcement actions or fines by generating unnecessary consumer complaints associated with miscommunications and misunderstanding. Information is not conveyed in a manner sought by or best suited for borrowers to understand, and language dependency paradigms are problematic. The mortgage industry needs to provide what consumers are expecting and receiving from other industries - technology solutions for consumer oriented issues.

FHFA and the Enterprises are "committed to improving the ability of mortgage-ready borrowers to understand and participate in all facets of the mortgage life cycle, including marketing, origination, servicing and loss mitigation, regardless of the language they speak." As a *primary*

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<sup>4</sup> Kleimann Communications Group, 2017, April, Language Access for Limited English Proficiency Borrowers: <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf>

focus, translation of documents and the development of additional multilingual “people oriented” resources are expensive considerations to develop, maintain, and most importantly publicize for use. If primary focus is placed on document translation and increased “people-oriented” resources to aid LEP/PL borrowers, the end result is predictable. By doing this, we are simply duplicating (in other languages) the current flawed consumer information delivery model, which we already know has limited effectiveness in English.

### **An Effective Solution for LEP/PL Borrowers**

*The most effective solution for LEP/PL borrowers and for all other mortgage-ready borrowers is lender provided interactive educational technology (IET) that starts at point of sale and continues through-loan servicing. The process also includes web links and references to translated documents and additional language resources. FHFA and the Enterprises will achieve the desired results they seek if they focus on this approach. Incentivized use of IET provides easily understandable information to borrowers in formats they prefer (visual and written), differentiated by a borrower’s chosen language and by levels of financial experience. Through this solution, with translated documents and language resources as secondary considerations, FHFA and the Enterprises will achieve a measurable and substantive end result.*

### **Why Use Interactive Educational Technology (IET)?**

In brief; interactive educational technology should be provided by lenders to all borrowers starting at the pre-application phase and continuing through loan servicing. Borrower use of IET *supplements* a lender’s disclosure and people-process by providing automated, predetermined, consistent, and understandable information flows to all borrowers, including LEP/PL borrowers. IET captures a borrower’s loan-specific data from a lender’s loan origination system and creates an educational learning experience differentiated by native or preferred language and by levels of financial experience. Through the use of interactive video, infographics, slide shows, text and FAQs – soon to be followed by interactive mortgage AI benefits – IET explains key aspects of mortgage lending in a format preferred and understood by borrowers.

Examples of pre-application IET learning modules for LEP/PL borrowers include: educational material on Mortgage Loan Products Explained, Understanding Loan Costs, Application Documents Made Easy and the Mortgage Process (Do’s and Don’ts).

Through the use of IET, a lender will be able to document that a LEP/PL borrower understands their specific loan. IET allows lenders to explain the features, benefits and risks of the borrower’s chosen loan product providing learning modules specific to the borrower’s actual Loan Estimate/Closing Disclosure, Application and Closing Documents. IET learning modules can be expanded, without limit, to explain such items as Appraisals and Title Insurance. As an example; Budgeting Basics and Credit Management IET learning modules are available for first time LEP/PL homebuyers.

Upon completion of the IET and prior to closing, an *Informed Borrower Certificate* (IBC) is generated for each consumer. The IBC is a compilation of the consumer's learning experience, including their preferred language, keystroke tracking, time spent learning about their loan product, loan costs and related paperwork, and answers to knowledge questions and attestations. This IBC supplements lenders existing compliance protocols, improves loan quality, and reduces liability related to regulatory or legal matters.

### **A Lender's Check & Balance System for what Loan Originators Say or Fail to Say to Borrowers**

IET also acts as a check and balance system for unmonitored communication between Loan Originators and borrowers. Lenders can economically provide IET to all market-ready loan applicants on a predetermined, consistent and standardized basis. It can be argued that documenting a borrower's comprehension of loan terms and their agreement with them is as important as ensuring all required legal disclosures and information has been provided to them.

From a productivity perspective, borrower incentivized use of IET allows all market-ready loan applicants, including LEP/PL borrowers, to learn about their specific loan any time they wish to log on to their account. Loan Originators have a consumer educational aid that enhances their sales productivity by systematically answering a variety of routine questions like, "What does this form mean? What is private mortgage insurance and how much does it cost? What is an escrow account? Or, How much is my recording fee and, by the way – what is a recording fee?"

### **Lower Lender Compliance, Regulatory and Legal Costs.**

Integrating borrower incentivized use of IET into a lender's compliance management system will lead to cost savings associated with legal, compliance (ATR, QM, UDAAP, LEP, ADA), examination, regulatory, audit and enforcement fees.

Interactive educational technology is the highest form of consumer protection. The use of IET exceeds regulatory requirements with compliance to the spirit of the law. IET holds the promise for lenders of hedging costs and enforcement actions due to mortgage infractions of today and eliminating or greatly curtailing consumer regulations of tomorrow.

### **IET for Loan Servicing**

Many consumers, and especially LEP/PL borrowers, are confused by the transfer of loan servicing, escrow calculations, payment changes, and aspects associated with loss mitigation efforts and remedies. IET can supplement a servicer's efforts to inform and educate borrowers on actions, issues and options associated with repaying their mortgage loan. As with loan originations, servicing-oriented IET allows consumers to receive the information they need, specific to their loan, in the way they want to receive it. It can also provide links to translated

documents, references to additional language resources and phone numbers for same language service representatives.

### **Better Borrower Experience**

For most of the past decade, lenders and technology providers supporting the mortgage industry have been primarily focused on implementing and keeping up with new compliance requirements. That's been at an opportunity cost of improving the customer experience. IET's time is now, both because it improves overall compliance, but also because it dramatically improves the borrower experience. Providing a good consumer experience should be a top priority for all lenders, large or small. The quality of service lenders provide will either enhance or degrade borrower loyalty to a lender's brand and business. The lender that proves to be responsive to customer questions, concerns, complaints, or other needs (LEP/PL borrowers) gains a clear competitive advantage.

IET technology provides not only what borrowers want but also allows lenders to anticipate customer needs, tailor business processes to best serve customers, and ultimately improve business efficiencies and the borrower experience.

### **IET Provides Trackable and Measurable Results**

IET is also a primary tracking source of consumer behavior. Keystroke tracking and answers to knowledge questions and attestations provide significant insight into consumer behavior of either individual loan borrowers or anonymized loan borrowers in aggregate. The ability to study primary mortgage consumer behavior delineated by multiple factors, including native language, on thousands if not millions of mortgage borrowers is invaluable and not available today.

### **Improved Loan Quality**

An Enterprise survey<sup>5</sup> of approximately 40 thousand first time/repeat fixed-rate borrowers, along with a recent survey on the NeighborWorks<sup>6</sup> home counseling database of first time/repeat borrowers, illustrated a correlation between borrower education and decreased loan delinquency rates. In brief, home counseling resulted in as much as a 30 percent drop in loan delinquency rates. While interactive educational technology is not a home counseling

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<sup>5</sup> Gabriela Avila, Hoa Nguyen, Peter Zorn, 2013, The Benefits of Pre-Purchase Homeownership Counseling, Freddie Mac's Models, Mission and Research Division. Paper prepared for presentation at the 2013 Federal Reserve System Research Conference: [http://www.freddiemac.com/perspectives/pdf/benefits\\_of\\_pre\\_purchase.pdf](http://www.freddiemac.com/perspectives/pdf/benefits_of_pre_purchase.pdf)

<sup>6</sup> Jeanne Fekade-Sellassie. National Mortgage News, 2016, April 15, GSE Duty to Serve Should Include Homeowner Counseling, Education: <https://www.nationalmortgagenews.com/opinion/gse-duty-to-serve-should-include-homeowner-counseling-education>

service, the educational process employed by IET mirrors many aspects of home counseling. Unlike home counseling services that are available only to a *sliver* of mortgage loan applicants and typically only provided prior to actually applying for a loan, IET can be broadly distributed to every market-ready loan applicant. Data is still emerging and is not yet available to definitively conclude that IET will lower loan delinquency rates like home counseling has done, but expectations are that it will.

## Conclusion

Particularly with the advent of digital mortgages, FHFA, the Enterprises and others should think “outside the box” for unique solutions to purvey educational information to all market-ready applicants, including LEP/PL borrowers. In a regulated business, mortgage lenders are used to doing what regulators tell them to do; not more, not less. This environment does not foster innovation. As a consequence, many lenders are rooted in traditional practices and lack foresight and ingenuity. Consequently many lenders view new ideas with complacency. This practice leads to a notion that *“The system was never broken. It was built that way.”*

The view that IET is “just another thing borrowers have to do,” is naïve. The advantages of IET for LEP/PL borrowers far outweigh the inefficiencies of a voluminous paper/digital form system that is dependent on people resources with varying degrees of mortgage knowledge, communication skills and possible conflicts of interests. For decades, the industry has sought to increase borrower understanding by having them sign more and more pieces of paper. That process has proven to be ineffective and it’s time for a paradigm shift that focuses on actually achieving consumer understanding and comprehension and not one that simply has them sign documents they don’t read.

IET provides LEP/PL and all other market-ready borrowers with what they want – interactive educational technology<sup>7</sup> with easy access to additional resources (links, referenced information). There is no need for a large public awareness advertising campaign to push IET, since IET is delivered at point of sale. IET cuts a lender’s regulatory and legal costs associated with consumer complaints, enforcement actions, or fines and if widely used by the industry, will be a hedge against future regulatory actions like TRID (which cost the industry about 2 billion dollars or \$209 per loan<sup>8</sup>). IET provides to lenders and the industry a trackable and measurable consumer behavior database and is anticipated to improve loan quality. Incentivizing borrower use of IET eliminates any perceived consumer hassle, assures high borrower participant rates and provides measurable results for all market participants.

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<sup>7</sup> Steve Deggendorf, Economic & Strategic Research Group. 2015, October 30, National Mortgage News, Are Mortgage Lenders Missing Out on Mobile Opportunities:

<sup>8</sup> Stratmor Group Press Release, 2016, March 23, Stratmor Survey Results - TRID Impact and Experience:  
[https://docs.google.com/document/d/1aqcAIlLbgyGrydFgCRJBETQ1AGVAv7T1\\_Jqn1EuQh0/edit#](https://docs.google.com/document/d/1aqcAIlLbgyGrydFgCRJBETQ1AGVAv7T1_Jqn1EuQh0/edit#)

In a digital environment, with the exception of a couple of legally required forms, IET will eventually replace paper/digital forms. Presenting *information* (not forms) to consumers in a manner they seek and understand, acknowledged by their digital signature, will become the norm.

Traditionally, the Enterprises have led the mortgage industry by introducing, advocating and incentivizing the use of new technologies for the explicit purpose of making the industry better and/or more efficient. Interactive educational technology from pre-application through loan servicing, designed by preferred language, levels of experience and learning preference is visibly transformative.

Talk'uments, an example of IET provides what FHFA and the Enterprises are seeking: to “insure that all market-ready borrowers have informed access to information necessary to understand the mortgage process.” For full market adoption, the Enterprise’s should influence the development of IET and incentivize its use by lenders in the industry.

An example of Talk'uments Interactive Educational Technology can be found here:

<https://vimeo.com/210956818>

## **Federal Housing Finance Agency, May 25, 2017 RFI Questions:**

### **A. Existing Processes and Tools**

**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?**

The mortgage industry does not employ or mandate English proficiency tests, so this question presupposes that originators and services have adequately identified LEP/PL borrowers and presupposes that lenders/servicers actively seek to identify LEP/PL borrowers.

In cases where this determination is obvious, the most common methodology employed by originators and servicers is the use of bilingual employees and home counseling services to address LEP/PL borrower issues, concerns, problems and questions.

Translated documents for loan originations, processing, closing and loan servicing are sporadically available by lender/servicer(s) depending on legal concerns, perceived consumer need, usefulness and language availability. A lack of industry oversight, standardization and legal consistency concludes the use of translated information by lender/servicer(s) to be haphazard, limited and random.

As a cautionary note, at times the reliance of LEP/PL borrowers on a single language lender/servicer employee creates a language dependency paradigm that may not serve the best interest of said borrowers. Most noticeable prior to 2008, abuse of Hispanic borrowers who were solely dependent on Spanish-speaking loan originators resulted in higher rate/cost loans followed by a higher proportion of home foreclosures, post 2008.

Improvement lies within the context of technology. Interactive educational technologies (IET), can be economically provided by lenders to every market-ready mortgage loan applicant, including LEP/PL borrowers, to ensure the applicants understand their mortgage terms, loan product, paperwork, loan options, procedures and borrower responsibilities.

**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 processes and tools be improved?**

Individuals and companies related to the mortgage industry have limited resources to address the needs of LEP/PL borrowers. With the exception of standardized home mortgage counseling, most LEP/PL borrowers rely on Realtors who share a similar culture and language for advice,



direction and recommendations. This situation, as illustrated in question A1, creates a language dependency paradigm.

Information and translated documents are available through various websites (Consumer Financial Protection Bureau, HUD, Fannie Mae, Freddie Mac, and Advocacy Groups) but usage of these tools and resources is limited. Most LEP/PL borrowers have no knowledge that these tools exist and general descriptions of loan products, costs and process do not provide answers to *specific questions*.

Improvement lies within the context of technology. *Pre-application* educational technologies that are available in multiple languages can be economically provided to every market-ready mortgage loan applicant prior to loan application. At point of sale, web links or references to additional information can be provided at no cost.

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

In the mortgage industry, the concept of learning who is or is not proficient in English is subjective and identification of LEP/PL borrowers is not advocated by many lenders due to legal concerns and contractual time constraints associated with loan settlements. In short, identification of LEP borrowers is not currently desired as it adds another layer of complexity and time to the mortgage approval process. Unless a loan applicant has noticeable and distinct issues with speaking English, identification of limited English proficiency does not occur.

The only viable LEP/PL solution is to allow a borrower to *self-identify the language they prefer* to use as an educational aid to learn about their mortgage transaction.

**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?**

A mortgage transaction is a regulated legal transaction. All legal transactions are based on English common law. In this author's opinion, lenders and other mortgage industry participants may be exposed to legal action if translated documents *of their own making* are used, in lieu of English documents, for LEP/PL borrowers. Therefore, translated documents can never replace English documents and providing multiple copies of documents in different languages is problematic and inefficient.

Some translated documents, used for educational purposes only, are available from HUD, the Consumer Financial Protection Bureau (CFPB) and the Enterprises. These documents are rarely viewed or referenced by LEP/PL loan applicants due to: (1) A lack of awareness of their

existence, (2) that most of the documents are translated only in Spanish or sometimes a few other languages, (3) document complexity and (4) related lack of understanding due to financial inexperience or financial literacy.

It would be erroneous to assume that a LEP/PL borrower would be fully informed of a mortgage transaction by referencing translated mortgage documents. Surveys show that native English speakers do not understand mortgage documents due to their complexity, legalese and volume. Translated documents by themselves would not create a different outcome.

Language resources need to be developed to address the growing LEP/PL market. Advocacy should not center on translated documents that few will understand but on language IET available throughout the loan lifecycle. Interactive educational technology can educate LEP/PL borrowers on their specific loan request (features, benefits, risk of loan product), costs, paperwork, process, and borrower responsibility in their native language, based on their level of financial experience and centered on their learning preferences.

It is in the best interest of lenders and other market participants to provide interactive educational technology throughout the mortgage lifecycle (originations to servicing) to all loan applicants. In today's technology/digital world, all industry participants would be better served by thinking about the effective transmission of consumer information – absent the confines of a document or form.

**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?**

It is common for lenders and servicers to use bilingual origination staff, to address the needs of LEP/PL borrowers. Unfortunately, that process is almost always entirely informal, and occasionally against company policies that require all transactions be completed only in English. In addition, lender's operations staff, investors, and due diligence firms do not always have the same resources, or agree on how particular words or terms are translated. Further, permitting a consumer to receive initial loan information in a foreign language, but requiring them to submit loan requirements like Letters of Explanation, bank statements, servicing or other documents only in English allows for confusion, potential abuse, and inefficiencies.

No formal process or best practices exist today for working with LEP/PL borrower's throughout the mortgage loan lifecycle. In addition, there is no current system for tracking or communicating a consumer's language preference as loans or servicing rights are sold. Consequently, there is no consistent, effective or duplicable approach. Originating lenders and loan servicers do things differently from each other and at times unsystematically. Lenders and servicers predominantly rely on individuals who possess different skill sets, knowledge and memory to serve LEP/PL borrowers resulting in arbitrary conclusions.

In addition, relying on bilingual staff presumes lenders and servicers are able to recruit and retain people both bilingual and knowledgeable enough to be qualified to provide such services. That is not the case. This scarcity is exemplified by the limited availability and high cost associated with translation services for mortgage transactions. While some of the largest lenders use these services, they are largely unknown to most lenders and industry participants.

Providing information in a consumer's native language, but without the context or acumen necessary to explain mortgage transactions actually poses greater risk than providing no translation at all. Consumers will believe and trust the information they received from the translator is accurate, even if the information being provided is not.

## **B. Current Barriers to Address Language Access**

**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**

Several barriers to mortgage credit exist for LEP and PL borrowers. Concepts associated with debt, its management and repayment are new to some LEP/PL borrowers. Cultural backdrops may limit experience in credit management and basic budgeting; primarily in cash oriented societies. Financial experiences and financial literacy may be limited. Misuse of short term easily accessible credit card debt leads to a lower credit standing resulting in limited (if any) mortgage credit options. Additionally, some LEP borrowers, work for cash limiting their ability to document income for loan qualifying purpose.

Mortgage terms, disclosures and a general misunderstanding of loan product features are confusing to many native English speakers. These challenges are compounded for LEP/PL borrowers. As an example, consider adjustable rate loans. How is the concept of fluctuating interest rates based on an index and margin limited by interest rate or payment caps effectively conveyed to LEP/PL borrowers? As a loan is being processed, LEP/PL borrowers may not fully understand PMI/MIP loan insurance requirements, title insurance, appraisals and/or home insurance premiums. On loan refinances, what does "no closing costs" or "lender paid closing costs" really mean? Is it best to pay for loan refinance closing costs or should they be added to the loan amount?

Once a loan is closed, the servicing rights may be transferred. Many LEP/PL borrowers might be confused about making their monthly payments to another lender. Inevitably the question arises, "will this change my payment?" Loan servicing systems today are primarily based on decades old accounting oriented technology. LEP/PL borrowers may be confused about monthly payment increases due to escrow changes, payment changes for variable rate loans,

changes to home insurance requirement or new flood zone determinations.

Loss mitigation procedures and remedies are complex and may be difficult for many LEP/PL borrowers to understand. Employment or income changes may result in missed mortgage payments. Misunderstandings or lack of knowledge on proper remedies may result in loan foreclosure.

**B2: Please identify any practices that could be particularly effective in ensuring LEP borrowers can understand and participate in the mortgage process.**

Practices employed today for LEP/PL borrowers, while limitedly helpful, but that need to continue include: home counseling, translated documents and bilingual services provided by lender/servicers. Reference materials from HUD, the Consumer Financial Protection Bureau, Fannie Mae and Freddie Mac should also continue to be available and expanded into additional languages. Key to its use is the awareness that it exists.

The most effective way to ensure LEP/PL borrowers understand and participate in the mortgage process is adoption of technology based IET solutions. The use of IET to explain key aspects of each segment of the mortgage cycle should be available at point of sale, in multiple languages, based on financial experience levels, and specific to the LEP/PL borrower's loan transaction. Without cost, IET can also provide links or references to translated documents and other resources for those LEP/PL borrowers who seek additional information.

**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 overwhelming majority of all market participants are NOT aware of available language/translation services or resources for LEP/PL borrowers. LEP/PL borrowers depend on family and bilingual Realtors and Loan Originators for loan information and guidance. Paramount for LEP/PL borrowers is trust or perceived trust of people and sources of information.

Loan Originators are either not aware of language/translation resources, prohibit their use out of legal and/or regulatory concerns, or in nefarious cases, wish to foster a language dependency paradigm that leaves them in control. Promoting the use of language/translation services without a structure, context, or commonly accepted method for doing so is putting the cart before the horse. Until standards are in place that ensure resources are acceptable and available they should not be promoted.

Outreach efforts should be directed to lenders, not the public. Advertising the availability of language/translation services to the public is premature before ensuring lenders are able to offer services in languages other than English. Advertising to the public would also be price prohibitive as multiple impressions over several years are needed to gain public awareness and trust. Lenders are easy to target, present at the point of sale and are the primary educators of LEP/PL borrowers. Public education and incentives directed at borrowers, lenders and servicers for the use of economically available multilingual interactive educational technology would achieve far better results.

## **C. Potential Actions to Improve Language Access – Short Term**

**C1: Please provide input on whether particular measures described above (*translated documents, Enterprise support language translation services, creation of a central clearinghouse, increase awareness/funding for non-profit housing counselors, public education measures, additional glossaries or tools, best practices, interagency workgroups*) should or should not be considered for FHFA and the Enterprises to undertake to improve language access and explain why? Which measures should be given top priority and why?**

The use of interactive educational technology (IET) offered in various languages holds the most promise of wide adoption and use by market participants and should be embraced, adopted and promoted by FHFA and the Enterprises. IET combined with *publication of best practices, enhanced industry knowledge along with interagency working groups that evaluate solutions, progress and guidance* is the only effective solution to address LEP/PL borrowers. Other FHFA proposed approaches to the LEP/PL issue are problematic due to legal and regulatory risk, economic considerations, execution issues, public awareness problems and industry adoption concerns.

Translation of additional origination and servicing documents begs the question: “How helpful are the current translated documents to LEP/PL borrowers?” How many LEP/PL borrowers actually access this resource? If they know about this resource will it be helpful? Will they read these translated documents? If translated mortgage documents follow the same format (word volume, legalese etc.) as English documents, will LEP/PL borrowers be as confused about mortgage terms and practices as their native English speaking counterparts?

Updated guide requirements from the GSE’s for language translation services are problematic. As previously mentioned, how do lenders clearly identify LEP/PL borrowers? If identified, how much will translation services cost? Who incurs the cost? How is an effective outcome measured?

The idea of providing a centralized clearinghouse of language-oriented resources for LEP/PL borrowers sounds useful, but its success will be limited in actual practice. LEP/PL borrowers will continue to rely on their Realtors and Loan Originators for advice and guidance versus seeking

information from a clearinghouse repository that provides general mortgage related information. The process of buying a home is still a relationship oriented endeavor.

***Combined Answer for Questions C2, C3, C4, C5, & C9***

**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?**

**C3: Are there short-term actions that originators and servicers could take to improve understanding and assist borrowers in their preferred language?**

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

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

**C9: What other specific actions could FHFA and the Enterprises take, alone or in concert with others, that could be implemented in the short-term?**

Affordably priced interactive educational technology, written in both Spanish and English, exists today. It's price, design, value and availability to all market-ready borrowers beginning *at point of sale* portends its wide adoption. As mentioned many times, this technology is an educational aid designed to explain to borrowers all aspects of the mortgage cycle from pre-application to loan servicing. It's available for immediate use and is engineered to be flexible enough to meet the long term changing needs of all mortgage-ready borrowers (i.e. additional languages – Chinese, Vietnamese, Korean and Tagalog; capabilities to address ADA borrowers; smart AI; learning module expansion, etc.). FHFA and the Enterprises should have an active role in influencing the development of interactive educational technology and should demonstrate their support of such tools by providing lenders rep and warrant relief and pricing incentives for consumers that obtain an IBC.

***Combined Answer for Questions C6, C7, & C8***

**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?**

**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?**

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

A clearinghouse of LEP resources and language translation services will be of minimal use and value to LEP/PL borrowers. First, LEP/PL borrowers need to know or be made aware that these resources exist. Not all LO's or Realtors will publicize the existence of these resources as this additional step may hinder or draw-out the home sales and loan closing process. Review of a cost/benefit analysis to develop, maintain and to advertise these resources at a frequency necessary to foster public awareness, would prove to be price prohibitive. Who will pay this expense?

**D. Potential Actions to Improve Language Access – Long Term**

*Data Tracking*

**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?**

IET has the ability to track hundreds of pieces of data including preferred language. IET also tracks keystrokes associated with the process of a borrower learning about their loan product, related costs (LE and CD), and paperwork along with answers to knowledge questions and attestations (primary consumer behavior). Lenders have the ability to analyze data either on a per loan basis or in aggregate. IET is a primary source for information on mortgage related consumer behavior. This data can be used to study trends, behavior, loan data and demographics. As an IET vendor, we do not share lender specific data. Aggregated data, absent personal identifiable information, may be shared with others.

**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?**

Trackable standardized data collection, oriented around consumer behavior and consumer demographics (language), creates efficiencies within the mortgage cycle and provides useful information to lenders, servicers and to the Enterprises. The most obvious example are efficiencies oriented around verbal, written or electronic transmission of information to borrowers from lender/servicers in the borrower's language of choice. The liability is on lenders/servicers to make sure a borrower understands mortgage information, particularly in tenuous situations like loss mitigation. By tracking language preference, the industry also has the opportunity to analyze data by language preference subsets. For example, what areas of

the mortgage process do Spanish speaking borrowers understand the least? How does this compare to English, Chinese, Vietnamese, Korean, Tagalog or Russian speaking borrowers?

***Combined Answer for Questions D3 & D5***

**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?**

**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?**

As previously mentioned, IET has the ability to generate an *Informed Borrower Certificate* or IBC. The IBC collects language data, keystrokes associated with the process of a borrower learning about their loan product, costs and their related paperwork along with answers to knowledge questions and attestations (primary consumer behavior). An IBC has a unique identification number, similar to a MERS number. This unique identifier allows a market participant to look up a loan and to capture loan information, i.e. language, through a central repository.

Originations and servicing systems that have API capabilities can append additional origination and/or servicing data to the IBC. All data is useful to track and analyze. Clustered data for example may highlight shared consumer characteristics or trends and/or patterns. Analysis of similar types of consumer income and employment data may allow lenders to determine, within a high degree of probability, more financially stable loan applicants. Consumer credit history similarities and patterns may be a harbinger of future events. Aggregated and anonymized consumer behavior data identifies loan product/process issues and/or appeal along with inefficiencies in the mortgage cycle. Credit offerings for consumer profiles can be analyzed. Data is important to all market participants, particularly for national housing policy officials and advocates.

**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?**

Under state law there is impact by states like CA (Civil Code 1632) and RI (proposed Bill H6139),



who mandate issuance of documents and disclosures in a limited number of alternative languages, as well as other requirements, if a loan originator “negotiates” in a language other than English. There are also significant implications surrounding UDAAP and under advertising laws like TILA, which are likely to find a practice Unfair, Deceptive, and/or Abusive where lenders advertise, communicate, or otherwise engage with consumers in their native language, but only provide loan disclosures and documents in English.

The possibility of mitigating legal risks is a question that needs to be answered by law and policy makers and is difficult for industry to answer. That being said, I believe there are steps a lender can take that SHOULD mitigate such risks. Under UDAAP and the spirit behind the state laws listed above, the risk is that lenders and/or loan originators may provide information in a consumer’s native language that may be contrary to, or otherwise be inaccurate when compared to what’s included on loan documents and disclosures. Using a tool that explains the basic information from those documents and disclosures in plain language and in the consumer’s native language provides an opportunity to improve comprehension, as well as test and document a consumer’s actual understanding. Tools that improve the information delivery process and foster consumer financial education enable better informed consumers, regardless of the language they speak.

**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?**

Please mark the language you would prefer for communications about your loan (if available):  English  Chinese  Korean  Spanish  Tagalog  Vietnamese  Other: \_\_\_\_\_

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. However, it may let them assist you or direct you to persons who can assist you.

This question contains multiple components. First, there’s an imbedded assumption that questions related to language preference should be included on a standardized form. I do not agree with that assertion. There are better and more dynamic ways of capturing this information than relying on paper or standardized forms, such as use of a database that catalogs, stores and transmits a language preference indication from a consumer (think MERS for language preference). Next, asking for a language preference implies something will be done with the information the consumer provides. Currently there is no process for collecting, reporting, responding to, or a defined purpose for using that data, therefore the reason for obtaining it must be questioned. This information should only be collected when a specific purpose for how to use it is prepared that complements and addresses the next likely expectation from consumers, which is, now provide me information or materials in the language preference indicated.

In addition, use of a field like “Other,” which permits consumers to enter unfiltered information poses significant risk to the reliability and statistical significance of the data. That is, if consumers were to enter Swahili versus Kiswahili, they would be reported as two separate and distinct categories; however both responses indicate a preference for the same language. In addition, string fields that permit free entry text are prone to both spelling and data entry errors from the consumer entering the information, as well as the person who must update systems upon reviewing a written document. A much simpler way to accommodate this process, if it were to be included, is to use a defined list in a dropdown that contains all acceptable values.

Finally, it is inconclusive and unlikely to be able to be determined prospectively, whether the suggested disclaimer text, or any disclaimer for that matter, will actually provide any relief from regulatory or litigation risk and liability. The suggestion to include it however, validates the importance of the above responses, as well as those in Section E below.

#### *Other Long Term Options*

#### ***Combined Answer for Questions D8 & D9***

**D8: Are there other long-term actions FHFA and the Enterprises could take, alone or in concert with others, that would help originators and servicers in assisting LEP borrowers?**

**D9: Please identify any other long-term practices or actions that originators, servicers, and other mortgage participants could take to ensure that LEP borrowers understand and participate in the mortgage process.**

FHFA and the Enterprises should evaluate the mortgage industry’s consumer information delivery model, not just for LEP/PL borrowers, but for all market-ready borrowers. Our current model institutionalizes a transfer of knowledge to borrowers through a plethora of confusing static forms (paper or digital), and fosters an unchecked and unmonitored dependency on salespeople (Loan Originators) for loan information. Our outdated consumer information delivery model affords little to no flexibility to effectively meet the challenges of LEP/PL borrowers and disabled borrowers (a 2018 initiative).

Long term actions should include conveying information to borrowers in formats that they most desire and understand delineated by learning preferences, language and by level of financial acuity. FHFA and the Enterprises need to reevaluate the importance of conveying information, not forms (with the exception of a few legally required documents), to consumers. A self-identification process used by the borrower is required. Borrowers will understand more about the mortgage process if they, through the use of technology, are allowed to choose how they want information delivered to them. We currently use a “one fits all” system which is equivalent to pushing a square peg through a round hole for many borrowers. It just doesn’t

work.

The smooth flow of data from one system to another is critical as this allows industry participants to study specific loan data or anonymized aggregated data for trends and patterns categorized by to language and many other factors.

### ***Combined Answer for Questions D10 & D11***

**D10: What are possible improvements to originator, servicer, and other mortgage industry participants' customer service activities to further assist LEP/PL borrowers? What are the potential costs in time and money of the proposed improvements?**

**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?**

Customer service activities would be well served and complimented by the use of IET. IET provides consistent and standardized information on a pre-determined basis. LEP/PL borrowers require more time and attention than native English speaking borrowers. Allowing IET to answer most questions improves on the productivity and usefulness of customer service personnel; allowing them more time to answer specific borrower questions or to address areas of confusion. IET costs are minimal and variable compared to fixed costs associated with expanding customer service personnel.

Technology is the only solution to modernize the mortgage industry's archaic consumer information delivery model. Desktop and mobile technology is currently available for educational purposes. The second generation of interactive educational technology will include interactive mortgage AI capabilities. This means that in addition to interactive media, every loan application will have its own "Siri" or "Alexa" to answer specific borrower questions in their own native language.

**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?**

We lack first-hand knowledge to adequately answer this question. Please excuse our non-response.

## **E: Legal, Regulatory, and Other Impacts**

**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?**

Related to mortgage lending specifically, there are no current Federal laws or regulations specifically addressing LEP, to the best of my knowledge. As discussed above however, there are many areas of existing laws that may have bearing on, or impact associated with LEP. Proclamations from Agencies like HUD that language [preference] is a proxy for national origin and has standing in Fair Lending and Fair Housing Act (FHA) analysis is one example of how a law not specifically related to mortgage lending certainly still has implications. Under UDAP and UDAAP authority FTC and CFPB respectively, as well as many state's business codes and laws, there have been actions brought claiming that advertising or engaging with a consumer in a language other than English and asking them to sign documents only in English is a violation.

That being said, there is a real opportunity for FHFA to take a leadership role in creating a collaborative process to help define best practices, industry expectations and behavior. By setting minimum standards for satisfying compliance with LEP requirements there is the opportunity to both serve the needs of this important group of consumers, as well as assure lenders they can serve this group without being punished for doing so. To that end, please do not buy into the fallacy that sending another document a consumer doesn't read or understand will solve this problem. We must utilize modern technology and processes to bring information to consumers, how they want to receive it, which is increasingly online and in a mobile context. Whatever standards, requirements or regulations are put in place around LEP, it is critical they allow a dynamic set of solutions and not rely on antiquated information delivery process we know don't work.

### **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?**

The best way to mitigate risk is to create a collaborative process that involves all relevant stakeholder's perspectives. Including diverse opinions and contributions allows all, or at least most issues to be identified. FHFA is in a unique position as neither Regulator, nor Examiner but still an authority to most of the industry. It is also uniquely situated to facilitate a dialogue between industry, associations, consumer advocacy groups, federal, and state regulators to come up with standards that are acceptable by everyone. It's critical to avoid a patch-quilt of regulations imposed at federal and 50 state's perspectives, as doing so would make it nearly impossible for standardization or consistency and solutions that genuinely serve consumers and not just regulatory requirements.

### **E3: Are there additional risks FHFA should consider?**

There are two risks I think stand out most clearly. The first risk is regulations being created

before an adequate understanding of the issues, or continuing a paradigm that is no longer effective. That is, relying simply on translated documents will not work. Many English speaking consumers don't read the disclosures they get now, and if they do, they rarely understand them. Why would we translate confusing language? Use of interactive consumer financial education technology empowers understanding at a basic concepts level, which are then easily translated to multiple languages.

The second risk is; doing nothing or ignoring the issue fails to serve the LEP population of consumers. This is both an obvious credit availability issue, but also critical for lenders to continue to grow their business. The population on LEP consumers is growing, not shrinking and lenders want to serve this market.