

Consumer Mortgage Coalition

July 31, 2017

Federal Housing Finance Agency
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](#)

To Whom It May Concern:

The Consumer Mortgage Coalition (“CMC”), a mortgage industry trade association, is very pleased to submit comments in response to the Federal Housing Finance Agency’s (“FHFA’s”) Request for Input (“RFI”) on the issue of improving language access in mortgage lending and servicing for borrowers with limited English proficiency (“LEP”).

FHFA’s request seeks input on actions the two government-sponsored enterprises, Fannie Mae and Freddie Mac, (“the GSEs), could take to promote access to mortgage credit for mortgage-ready LEP borrowers and to ensure that LEP borrowers have access to information necessary to understand the mortgage process.¹

The RFI is principally focused on collecting data on borrower language preferences using a standard industry form that is designed by the GSEs, such as the URLA, an addendum to the URLA, and/or the Uniform Borrower Assistance Form. We appreciate that the RFI acknowledges the industry’s previously articulated concerns about pursuing this initiative.

We also appreciate FHFA’s commitment to design any question on language preference so that it would not:

- Discourage new borrowers;
- Create new obligations or liabilities for the originator, servicer, or other parties;
- Create new rights for borrowers; and
- Create borrower expectations that the transaction will occur in a language other than English.

¹ According to FHFA, LEP borrowers consist of individuals who have a limited ability, or no ability to read, speak, write or understand English. It also includes individuals who are proficient in English, but would prefer to communicate in another language, or “preferred language” – i.e., (“PL”) borrowers.

We remain very concerned with this initiative, however, because we do not believe that FHFA can mitigate against legal and regulatory challenges surrounding the addition of the language preference on each individual loan application or addendum to the form. Despite its best intentions, FHFA simply cannot control how other governmental entities, courts, or private plaintiffs will interpret the language and the potential obligations resulting from the language preference question on the document.

As FHFA knows, in September 2016, HUD's General Counsel's Office issued Guidance², which asserted that discriminating on the basis of LEP, either intentionally or through a disparate impact analysis, may be a proxy³ for national origin discrimination, which is prohibited under the Fair Housing Act. In addition, the Consumer Financial Protection Bureau ("CFPB") and the Department of Justice ("DOJ") have brought three enforcement actions⁴ in the past few years involving LEP consumer and alleged violations of the Fair Housing Act, the Equal Opportunity Act, and/or federal prohibitions against Unfair, Deceptive or Abusive Acts and Practices, including an action involving marketing in Spanish but providing documents in English.⁵

Today, there were [7,099 distinct languages](#), according to [Ethnologue](#). Even if FHFA were to limit translation requirements to select languages, litigation is likely to ensue for those who speak languages not provided this accommodation.

In addition, FHFA's proposal might inadvertently result in investors shying away from LEP borrowers because of the increased litigation risk that will be associated with those loans. This would be a very unfortunate and perverse result.

Aside from the legal and regulatory issues that would arise with this initiative, there are significant systemic risk issues that FHFA, along with the other financial services regulators, need to consider. We recommend that FHFA review this initiative with the federal and state safety and soundness regulators before proceeding any further.

If FHFA's goal is data collection only, we would recommend that the agency first identify its ultimate purpose in collecting the data, and then proceed to streamline the data collection effort. There are a number of existing datasets that can be used for public policy analysis, including the Census, the American Housing Survey, the National Survey of Mortgage Borrowers, and the Home Mortgage Disclosure Act. We would recommend that FHFA use those resources. If additional data is to be collected, then it should reside

² [HUD Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency](#), September 15, 2016.

³ [LEP status is not a prohibited basis under the Fair Housing Act](#), Mayer Brown Legal Update, July 18, 2017, Footnote No. 6.

⁴ See Complaint, *United States v. Home Loan Auditors, LLC et. al.*, No. 1: 16-cv-0439.

⁵ [¿Qué Idioma Prefiere? FHFA Considers Requiring Lenders to Ascertain Language Preferences to Identify Limited English Proficiency Borrowers](#), Mayer Brown Legal Update, July 18, 2017

in one of those datasets and be collected and reported in accordance with their requirements.

Examining the Requirements for a Government/Industry-Wide Translation System

If FHFA's ultimate purpose for requiring the collection of language preference information is to have the industry communicate with each borrower in their preferred language, then it is important for FHFA to fully understand the scope of the operational requirements entailed in such an initiative. The following is a brief review.

- Mortgage Origination

Should FHFA proceed towards this goal, FHFA will need to select one translation company that will be the official government-sanctioned and approved translation company so that translations are standardized and can be legally relied upon by the industry. That translation company will then need to develop systems that can communicate, on a real-time basis, with each industry participant and across all of the industry's platforms. Those systems will need to be able to immediately and seamlessly translate all written and verbal communications, including e-mails, texts, telephone conversations, etc. It is also important to remember that each transaction is personalized to the individual consumer and individual property the consumer is trying to purchase or refinance.

The translations would need to be provided on a real-time basis because the mortgage industry is required to send various mortgage documents and contracts to consumers within specified periods of time. In addition, many consumers choose to lock-in their interest rate at the beginning, or at some point during the mortgage transaction. Without a real-time and seamless translation system, unnecessary delays might result in consumers' rate locks expiring. Consumers already face delayed closings and lost rate locks because of the CFPB's regulatory requirements. This initiative could make the current situation worse.

In addition to the challenges described above, FHFA and the translation company it selects also will need to work with the County Recorder offices across the country since the deeds will be in a range of languages. According to the [Property Industry Recording Association](#), approximately 20% of the County Recorder offices still operate on a paper-based system, so processes will need to be implemented to accommodate those offices, as well.

- Mortgage Servicing

The industry and investors in mortgage loans have a vested interest in trying to keep consumers in their homes, if at all possible. Foreclosure is the most expensive outcome

for investors, so it is an outcome that the mortgage servicing industry, on behalf of their investor clients, tries to avoid.

The mortgage servicing industry strives to work through the difficult situations that arise when a consumer defaults on their loan. Again, if all communications were to be required in the consumer's preferred language, FHFA's selected, official translation company and its systems will need to be able to provide real time translations, seamlessly, across the industry's platforms for all types of communications – written, telephone, e-mail, text, etc. -- with the consumer and/or their representative or counsel.

Unfortunately, foreclosures sometimes do happen. Should a preferred language requirement be implemented, there is the possibility that a consumer might allege that they did not understand the terms of the mortgage contract and use that as a defense to foreclosure. This would be yet another tool that could be used to artificially delay foreclosures.

Foreclosures that are artificially delayed actually harm the communities and neighborhoods where the property is located. In some jurisdictions, communities are being forced to cope with abandoned properties where foreclosures should have been processed more quickly. In other instances, homeowners have been living in their homes for many years without making a mortgage payments. In each of these situations, the property often deteriorates, resulting in neighborhood blight. This has a negative impact on the values of the other properties in the neighborhood, and is harmful to those homeowners' financial interests and, sometimes, the safety of their neighborhoods, if the abandoned properties are being used for nefarious purposes.

- Cost

Obviously, the cost of this endeavor would be very significant. If consumers are forced to pay for this initiative, their closing costs will be driven up significantly to cover the dramatic increase in costs of originating a mortgage loan as a result of this initiative. These increases would add to the dramatic increases in closing costs that have already occurred as a result of the CFPB's regulations. At the same time, credit will be even more constrained than it is currently as investors become even more reluctant to invest in mortgages that have even a remote chance of defaulting. The result will be that fewer potential borrowers will be able to afford or qualify for a loan, particularly first-time, low- to moderate-income homebuyers and, potentially, LEP borrowers.

In order to avoid these results, we believe that FHFA should pay for cost of the translation company it selects and the systems that firm will need to develop and implement. In addition, FHFA also will need to reimburse all of the industry participants for any and all costs they incur related to this proposal, including any increased litigation costs resulting from this initiative. And, FHFA will need to compensate the County

Recorder offices for any costs they incur as a result of this initiative. We would not recommend that either Fannie Mae or Freddie Mac be responsible for the cost of this endeavor because they will likely pass those costs along to the industry and, ultimately, consumers.

Since FHFA would bear the cost of this endeavor, as it solicits bids, the agency would then be better able to prepare an accurate cost-benefit analysis of this project. This would assist FHFA in then making an informed policy decision as to whether or not to proceed.

Examining How LEP Borrowers Are Currently Served

America is a nation of immigrants that has a rich history of welcoming and assimilating people from the around the world into our country. America's diversity, combined with the unlimited opportunities our nation's freedoms afford, is our strength as a country.

Throughout the nation's history, LEP borrowers have bought and sold real estate, as well as engaged in a range of other business and personal transactions during their lives in this country. Both consumers and the industry have taken a market-based approach in carrying out these transactions, including transactions involving the purchase and ownership of a home.

The industry is very aware that its ability to continue to serve diverse markets is vital to its future success. According to the Joint Center for Housing Studies (JCHS) at Harvard University, as many as 17 million new U.S. households will be formed from 2010 to 2025, and as many as 13 million of these new households will be comprised of minority families, including LEP borrowers. This data necessitates that the industry continue to make a concerted approach to reach out and serve diverse customers. The industry's initiatives have included expanding and changing companies' marketing and fulfillment strategies, and deploying recruiting and partnership strategies that reflect the changing consumer base.

In addition, it should be noted that when buying a home, LEP borrowers often are assisted by a family member or friend who helps guide them through the transaction. Similarly, in situations where the homeowner incurs financial difficulty and is in default on their loan, often they enlist the assistance of family members, friends, or counsel.

This market-based approach is quite efficient, and has served consumers well throughout our nation's history.

Suggestions to Further Assist LEP Borrowers

If FHFA would like to provide further assistance to LEP borrowers, however, it might consider funding counseling services that could provide translation assistance. Should

FHFA decide to pursue such an initiative, we would recommend that FHFA work with other governmental agencies, including HUD, to first identify all of the currently-available housing counseling assistance programs and related funds, and then determine where translation services might be provided as an added service if they are needed.

In addition, FHFA might consider surveying the existing translation technology tools that are already available (e.g., [Google Translate](#); [Jibbigo](#)), and then review those tools to determine if additional glossaries need to be added or developed that would be useful to LEP borrowers.

We appreciate your consideration of our views and concerns, and look forward to working with FHFA on cost-effective and workable ideas that would further assist LEP borrowers.

Sincerely,



Anne C. Canfield
Executive Director