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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

To Whom It May Concern,

Eastman Credit Union (ECU) is a federally insured Tennessee state chartered credit union. ECU is the largest credit union in Tennessee and serves over 183,000 members with branches in Tennessee, Texas, and Virginia. ECU is commenting on the Federal Housing Finance Agency's (the "Agency's") request for input on issues facing qualified mortgage borrowers with Limited English Proficiency ("LEP") through the mortgage life cycle process, including lending and servicing.

ECU applauds the Agency's efforts to identify solutions for challenges faced by LEP borrowers as well as those confronted by lenders and other third party service providers in the mortgage life cycle process. ECU would like to offer the comments outlined below.

I. Federal Regulations

a. Disclosures in languages other than English

While most consumer federal financial regulations allow for disclosures in languages other than English, the translation is not required. The Real Estate Settlement Procedures Act (Reg. X), Equal Credit Opportunity Act (Reg. B), and NCUA's Truth in Savings Act all allow for disclosures to be delivered in a language other than English provided that an English version is available upon request. The Truth in Lending Act (Reg. Z) states that advertisements may not provide some terms in English and other terms in a different language. Additionally, Regulation Z allows for the Loan Estimate and Closing Disclosure to be provided in a foreign language provided copies in English are available upon request. The Electronic Funds Transfer Act (Reg. E) has specific rules with regard to providing remittance transfer disclosures in foreign languages.

Consistency is needed. Currently, lenders are left to their own discretion in deciding whether to translate disclosures. If the purpose of disclosures is to promote the informed use of consumer credit, the borrower must understand the information presented. Industry needs clear rules governing when and how to disclose the terms and conditions of products and services LEP consumers require in the most effective method.

b. Fair Lending and Discrimination Considerations

Pursuant to the Equal Credit Opportunity Act ("ECOA") and the Fair Housing Act ("FHA"), it is unlawful for any creditor to discriminate against consumers based on race, color, religion, national origin, sex, family or marital status, disability, or age. While language is not listed as a protected class under either ECOA or FHA, language is correlated to national origin and could give rise to disparate impact claims of discrimination. For instance, failing to adequately serve a certain segment of the population because of language barriers could give rise to disparate impact claims based on national origin.

Agencies such as HUD and the Justice Department have made it clear that action will be brought against lenders who discriminate based on a protected class. Without a strict mandate to provide translated copies of loan documents, lenders may choose to conduct business only in English due to limited resources. This policy may, in effect, restrict access to credit for LEP borrowers and put the lender at risk of a fair lending discrimination claim based on national origin.

c. UDAAP Claims

Even if an institution is providing consumer financial products and services in compliance with federal regulations, there are potential issues that could arise under the Unfair Deceptive and Abusive Acts or Practices (“UDAAP”). The Act defines “unfair” as something that is likely to cause or actually causes substantial injury to consumers, which is not reasonably avoidable by consumers, and the injury is not outweighed by countervailing benefits to consumers. “Deceptive” is generally defined as a representation or omission that is likely to mislead or actually misleads a consumer and is material to the consumer, where the consumer is acting reasonably under the circumstances. “Abusive” is a representation or omission that:

1. Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
2. Takes unreasonable advantage of
 - a. A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service,
 - b. The inability of the consumer to protect the consumer’s interests in selecting or using a consumer financial product or service, or
 - c. The reasonable reliance by the consumer on the financial services provider to act in the interests of the consumer.

The Consumer Financial Protection Bureau (“CFPB”) has failed to issue regulations under its UDAAP rulemaking authority. UDAAP practices are defined by enforcement actions and civil suits. Due to the lack of guidance, lenders are left to speculate what actions may be cited in the future as unfair, deceptive or abusive. Such action can potentially occur at any stage of the transaction, including advertising, marketing, disclosures, contracts, billing and account statements, servicing and collection activities.

Assume the following scenario:

A lender advertises in Spanish to attract Spanish-speaking borrowers and provides account opening disclosures and the loan contract in Spanish so that the borrower will have a full understanding of the loan terms and conditions. The lender contracted with a third party to supply translated documents for this purpose, however, the lender, is not equipped with staff proficient in Spanish and, therefore, services the loan in English. The lender is at a high risk of a deceptive or abusive violation under UDAAP for marketing and consummating the transaction to the LEP borrower in one language and servicing the loan in another.

II. State Law

Some jurisdictions have enacted laws requiring the translation of certain loan documents into the language of the borrower. Those jurisdictions include Arizona, California, District of Columbia, New Mexico, Oregon, Pennsylvania and Texas.

Texas mandates that when a consumer loan or a home equity loan is negotiated in Spanish, then a copy of the Truth in Lending (“TIL”) disclosure must be provided in Spanish. When a contract for a closed-end secondary mortgage loan is negotiated in Spanish and credit terms are negotiated in Spanish, the loan contract and TIL must be provided in Spanish. When discussions with a borrower for a homestead loan are conducted primarily in a language other than English, then the “Twelve Day Disclosure” must be provided in that language. Under Texas Constitution, the Notice required for home equity loans must be provided in the language primarily used when discussing the loan.

The California Translation Act, passed in 1976, states that any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, must deliver a translation of the contract in the language in which it was negotiated.

As with federal regulations, there is a great need for consistency among the various state laws as well as consistency between state and federal law. Lenders’ resources may be limited preventing them from servicing loans from beginning to end in any language other than English. To comply with state law requirements, lenders will likely institute policies to only negotiate loan terms in English. While this is permitted under state law, it carries a high risk of a fair lending violation claim as stated above.

III. Agency Guidance

The CFPB’s Supervision and Examination Manual directs examiners to question how the institution services loans held by LEP borrowers. Specifically, examiners are to evaluate whether the institution:

- Flags files that require non-English language assistance
- Provides options for customer service calls for languages other than English
- Has customer service personnel available to provide assistance in languages other than English and the training and authority levels of such personnel
- Provides translations of English language documents to LEP borrowers

The Federal Trade Commission is focused on protecting LEP consumers from unlawful collection practices as stated in a 2015 memorandum to the CFPB.

HUD released guidance in 2016 giving examples of less discriminatory alternatives to language-related policies that refuse to deal with anyone who does not speak English. Among those alternatives, HUD included:

- Allowing the borrower a reasonable time to take a document to be translated
- Obtaining written or oral translation services or drawing upon the language skills of staff members
- Allowing the borrower to bring a family member who speaks English or another person to interpret, agreeing to communicate through these individuals

Federal agencies are penalizing unscrupulous lenders under existing regulations and statutes, such as fair lending laws, UDAAP, and the Fair Debt Collection Practices Act. It is quite clear that discriminatory and abusive behavior will not be tolerated. What is unclear is what lengths institutions must go to avoid these claims.



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IV. Translation and Interpreter Services

HUD states that use of translation services is a less discriminatory practice than refusal to transact with LEP borrowers. While use of translation and interpreter services may solve the problems raised by fair lending, other questions remain. Who is liable for misinterpretations or faulty explanations? Should the lender require specific credentials and qualifications of an interpreter? If so, does this place an unreasonable burden on the LEP borrower, once again, raising fair lending implications?

The interpreter will be privy to private personal and financial information of the borrower. Should the lender require anyone acting as an interpreter to sign a confidentiality agreement to protect the borrower's privacy?

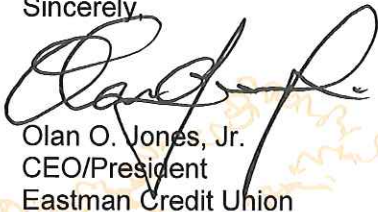
A 2015 report from the U.S. Census Bureau included tables detailing hundreds of languages that U.S. residents speak at home. Are lenders expected to provide translated copies of documents in each and every language spoken by residents in a particular core-based statistical area? Federal agencies have not stated as such, but there is the expectation that lenders will serve the communities in which they are located and provide equal access to credit for all.

Most lenders do not have the resources to translate every document generated to consummate and service a loan to another language. Even if the lender is capable of translating from English to Spanish, there are hundreds of languages spoken within the United States, as the U.S. Census Bureau report demonstrates. Third party vendors will be vital in the effort to fully serve LEP borrowers from the beginning of the loan cycle to its end. Third party vendors should be required to certify that the translated copy is a full and exact translation of the loan terms and conditions to withstand judicial scrutiny and be enforceable if ever challenged.

Conclusion

ECU respectfully requests the Agency consider our comments and concerns. As detailed in this letter, there are numerous considerations to be studied. Resolving these matters is not an easy task and ECU appreciates the Agency's attempt to identify all relevant obstacles faced by both LEP borrowers and lenders.

Sincerely,



Olan O. Jones, Jr.
CEO/President
Eastman Credit Union