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

*Supplemental Comments on the Federal Housing Finance Agency's Request for Input on
Improving Language Access in Mortgage Origination and Servicing Submitted by
Americans for Financial Reform's Language Access Task Force*

Submitted electronically via FHFA.gov

Introduction

The undersigned members of the Americans for Financial Reform (AFR) Language Access Task Force¹ respectfully submit these further comments in response to FHFA's Request for Input: Improving Language Access in Mortgage Lending and Servicing (RFI), including analysis of responses from lenders and borrowers collected during the URLA Round 7 Consumer Testing Briefing ("URLA Briefing") that the Federal Housing Finance Agency (FHFA) conducted in July 2016. This comment is a continuation of comments AFR submitted in this RFI on July 31, 2017. We appreciate FHFA's commitment to identifying the issues surrounding the inclusion of a question regarding a borrower's language preference on the Uniform Residential Loan Application (URLA) as well as understanding the challenges and opportunities created by the inclusion of such a question. We thank FHFA for the opportunity to provide further comment based on the findings of the URLA Briefing.

Systematic collection of a homeowner's language preference is essential to expanding language access.

As we wrote in our earlier response to this Request for Input,² "[m]aintaining information on language preference over the entire life of the loan is critical because borrowers need to interact with their lenders and servicers at many different times over the life of a loan." Further, we argued that universally used forms like the Uniform Residential Loan Application (URLA) and Uniform Borrower Assistance Form (UBAF) were the logical mechanism to collect such information in order to maintain it over the life of the loan. Nothing articulated in the industry association comments or others echoing their claims has rebutted any of these core arguments.

¹ AFR is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. AFR's Language Access Task Force was convened by a subgroup of organizations in the AFR coalition to advocate for improved language access for borrowers with limited English proficiency (LEP) as they navigate the financial marketplace. For the past two years, our task force has been focused specifically on improving language access in mortgage lending and servicing, the very subject of this RFI.

² Available at <http://ourfinancialsecurity.org/wp-content/uploads/2017/08/AFR-Task-Force-Response-to-FHFA-RFI-on-Language-Access-7-31-2017.pdf>.

First, systematic collection of information from borrowers is essential to the success of many other recommendations to expand language access. For example, increasing the availability of standard forms and notices in languages other than English will only be useful to the extent that originators and servicers know the borrower’s language preference, and therefore can utilize them. No comments opposing the inclusion of language preference on the URLA suggested an alternative mechanism that would similarly provide universal and end-to-end availability to originators and servicers of information regarding the borrower’s language preference.

Second, documenting borrower preference does not increase the legal obligations of a mortgage originator or mortgage servicer. After more than a year, industry comments still do not articulate a single legal theory under which systematically recording language preference would significantly increase originator or servicer liability. (Indeed, the principal industry associations submitted a legal opinion, albeit one based on assertion rather than analysis, which specifically disclaims that including language preference on the URLA would increase such liability.³) Moreover, comments opposing inclusion on the URLA do not address any state laws. Our analysis demonstrates that inclusion of language preference on the URLA would not significantly increase lender requirements under these state laws.

As our earlier comment notes, a lender’s knowledge of a borrower’s lack of understanding of English does not trigger additional requirements in all but two states. In Massachusetts, a lender that knows a borrower does not understand English must take “reasonable steps” to ensure borrower understanding. In New York, such a lender with such knowledge must provide foreclosure notices in-language. Neither of these modest requirements is a reason to facilitate a lender’s willful blindness to the language needs of a borrower.

Moreover, even when a mortgage originator or servicer’s knowledge of a borrower’s lack of understanding of English triggers additional legal obligations, recording the borrower’s language preference on the URLA is highly unlikely to increase the lender’s liability because it is highly unlikely that a mortgage originator would have no other reason to know of a borrower’s lack of understanding of English. As such, even in Massachusetts and New York, lenders would face these modest state-law requirements based on other sources of information regardless of whether the borrower’s language preference is systematically recorded.

Third, to the extent that systematically recording borrower preference would enable *enforcement* of existing legal obligations, avoiding such enforcement is not a legitimate aim of public policy. Indeed, federal policy – via the Home Mortgage Disclosure Act and other federal laws – strongly favors *facilitating* data collection to facilitate the enforcement of fair lending laws. And, assuming lenders are not discriminating on the basis of national origin or language, there would be no increase in enforceable liability at all.

³ Comment of American Bankers Association, Consumer Bankers Association, Housing Policy Council of the Financial Services Roundtable, and Mortgage Bankers Association (Appendix A) (July 31, 2017) (“Mortgage industry participants would have strong arguments against these potential claims.”)

Asking about language preference on the URLA should not deter lenders or servicers from providing language services.

The arguments that an URLA language preference question would lead to adverse responses by market participants are unpersuasive.

One industry commentator suggested that taking measures to increase language access would lead to the “perverse effect” of mortgage originators or servicers intentionally avoiding serving homeowners who do not speak English.⁴ Given that recording borrower preference does not in fact increase an originator or servicer’s legal obligations, such an incentive is implausible. In any case, an originator or servicer intentionally discriminating against borrowers based on their language preference, such as by avoiding serving them at all, would violate the Equal Credit Opportunity Act and Fair Housing Act – creating a far greater risk of liability than taking steps to better serve customers with limited English proficiency.

Information gathered through the URLA Briefing supports asking about language preference on the URLA.

The findings of the URLA Briefing provide further evidence of the utility of including a question asking a borrower’s language preference on the URLA. In June 2016, FHFA asked 18 borrowers, who spoke English and another language fluently, and four lenders, who spoke English, about their reactions to a copy of the English URLA containing a language preference question. When FHFA asked participants about their reactions to the language preference question, the responses from the lenders and borrowers were notably different. While lenders expressed concern that borrowers would be uncomfortable with the language preference question, most borrowers reported that the question was helpful and thought it should be included in the URLA. Responses from borrowers in the URLA Briefing suggested that the inclusion of this question on the URLA would be helpful for Limited English Proficient (LEP) borrowers to “understand the process and be more comfortable with the process”⁵ of purchasing a home. Borrowers also reported that the inclusion of the question would “empower” LEP borrowers by making it possible for them not to rely on family and friends for translation, and would provide assistance to immigrants, “which helps them not be taken advantage.”⁶

The AFR Language Access Task Force believes that it is important to collect information about the borrower’s preferred language at the beginning of the mortgage process through the URLA as a necessary means for improving language access for LEP borrowers as they proceed on the path to qualification and origination. Not including language preference on the URLA would be a serious setback for mainstreaming language access and for helping consumers who are not fluent in English get correct and understandable information. During the subprime lending boom and the foreclosure crisis, people who were not fluent in English often misunderstood critical

⁴ Comment of Consumer Mortgage Coalition (July 31, 2017) (“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.”).

⁵ URLA Round 7 Consumer Testing Briefing (“URLA Briefing”), p. 12

⁶ *Id.* p. 12

information or were misled because the communications were not in a language they could understand.⁷ Below we discuss a few of the reasons that the URLA language preference question is important:

- Asking the borrower’s language preference offers the borrower an opportunity to self-determine/self-select a language based on her own perceived needs.
- Identifying a borrower’s language preference in the beginning would help facilitate meaningful access to the mortgage process by giving service providers advance notice of potential barriers. Knowing a borrower’s preferred language can facilitate access to oral interpretation services, clarification of mortgage terms and the process in-language, and enhanced communication and understanding with the service provider (loan officer, servicer, as examples) at different stages of the mortgage process. Consumer advocates and borrowers from across the country have consistently reported that LEP borrowers – even if they demonstrate fluency in the English language – would prefer access to translations of key mortgage documents in their preferred language to ensure that they do not misunderstand essential terms, such as “escrow” or “closing.”⁸
- Findings from Kleimann Communication Group’s *Language Access for Limited English Proficiency Borrowers: Final Report* (the “Kleimann Report”) and reports from the National CAPACD’s Housing Counseling Network are consistent in reporting that LEP borrowers commonly rely on family members or friends for language assistance, in particular when they have little or no access to professional translation services or translated documents. Placing the burden of interpreting technical, legal or financial information on individuals who lack professional training and knowledge of the mortgage process compromises the borrower’s ability to make a well-informed decision. Asking all borrowers their preferred language and putting them in touch with already existing language services provides LEP borrowers with improved access to mortgage lending.

The URLA Briefing provided insight into how to ask the language preference question.

While they reacted differently to whether to include the language preference question on the URLA, the lenders and most participating borrowers in the URLA Briefing appeared to agree substantially on the wording and structure of the question. Both borrowers and lenders ranked Option 4 most favorably, and we agree that Option 4 is the best option. Members of the Task Force believe the wording of Option 4 would facilitate transparency and provide greater understanding and comfort for the borrower in the process. The content of Option 4 explains that lenders do not commit to “communicate or to provide documents in your preferred

⁷ Americans for Financial Reform, Letter to Mel Watt, Timothy Mayopoulos, and Donald Layton (Mar. 23, 2016), <http://ourfinancialsecurity.org/2016/03/letter-to-regulators-doing-better-by-mortgage-applicants-who-are-not-fluent-in-english/>.

⁸ Americans for Financial Reform, *Barriers to Language Access in the Housing Market: Stories from the Field* (May 2016), http://ourfinancialsecurity.org/wp-content/uploads/2016/05/AFR_LEP_Narratives_05.26.2016.pdf; see also Kleimann Communication Group, *Language Access for Limited English Proficiency Borrowers: Final Report* (April 2017), <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf> (“Kleimann Report”).

language,”⁹ but that providing this information may allow lenders to assist the borrower or identify a provider that can offer assistance in-language.

Borrowers made helpful suggestions in the URLA Briefing, including the placement of a language preference question as near to the top of any form as possible, asking borrowers if they would like language assistance (i.e. translated documents, interpreter) if it were available, and providing translated forms online if a borrower affirmatively requests language assistance. In our discussion below, we further comment on a few suggestions made by lenders and borrowers in the URLA Briefing.

- As suggested by borrowers in the URLA Briefing, in addition to putting the language preference question on the URLA (using Option 4 or similar language), we also support encouraging lenders to orally or visually ask the question, “Do you need language assistance?”¹⁰ to indicate to borrowers that language assistance may be available to them. It is important to signal the availability of language services in multiple ways. One way to ask this question (triggering borrowers to self-identify and seek available services) might be to use the language identification cards and posters published by certain language line providers, or something similar.¹¹
- Both borrowers and lenders suggested placing the preferred language section at the front of the URLA, and we agree with this suggestion. It is important that the LEP borrower know they can ask for language assistance if available at the very beginning of the lending process and before completing a lengthy form in English.
- While both borrowers and lenders expressed concerns of potential discrimination and the appearance of singling out LEP borrowers with the inclusion of the question, these concerns can be addressed by providing a disclosure that explains the purpose of the question.

Borrower expectations and perceptions can be addressed through disclosures.

Borrowers who participated in the interview portion of the URLA Briefing apparently had firm expectations that translated materials, or a translator, would be offered or provided by the lender.¹² On the other hand, borrowers who participated in the FHFA focus groups did not draw this conclusion, and after the URLA Briefing, had questions about whether someone would be available to translate the forms or if no language assistance would be provided.

Lenders, both in the URLA Briefing and in public comments, have raised concerns that asking about language preference creates the expectation that language services will be provided. This concern can be addressed through a brief, clear explanation, along the lines of the text laid out in

⁹ URLA Briefing, p. 4.

¹⁰ URLA Briefing, p. 15.

¹¹ See, e.g., Language ID Poster and Desktop Display, <https://www.language.com/client-services/support-materials>.

¹² URLA Briefing, p. 14.

Option 4. Lenders, or Fannie Mae and Freddie Mac, could develop a disclosure document and have it translated into the top eight languages spoken by LEP consumers that explains in more detail the purpose of collecting language preference information (to provide services where available and track the evolving needs of their client community) and states that while a lender may not have services available in your language at this time, they will provide a list of any appropriate housing counseling agencies with that language capacity. The form could also explain that the lender is prohibited by law from taking any discriminatory action based on language preference. Disclosures about the lender's obligations and limitations would address concerns about setting unrealistic expectations and about the perceived risk of discrimination. More education about what language services and resources are available in LEP communities will further address these concerns about expectations. Finally, the issuance of approved official translations from FHFA and other government sources will limit problems with the actual translations themselves, and the Kleimann Report indicates that LEP borrowers are well aware of the complexities of translations and already take steps to round out their understanding.

We understand that each lender's ability to provide in-house language services will vary. We encourage lenders and servicers to capitalize on the capacity of HUD-approved housing counseling agencies that have staff with both extensive knowledge of mortgage lending and servicing and oral interpretation skills in various languages.

In the URLA Briefing, lenders indicated the need for more translated documents and the need for those translations to come from a "higher source." We support the increased availability and use of official translated versions of documents made available by FHFA, CFPB, and other government agencies to minimize problems with translations. We also agree with borrowers' reports of the importance of access to translated documents, and urge FHFA to require lenders, servicers and the GSEs to make key materials available in multiple languages.

Industry commentators have argued that language preference may be considered sensitive personal information, or be misunderstood as a commitment by the lender to provide end-to-end language services. Such assertions are unsupported. The Kleimann Report showed that of LEP individuals interviewed, no one was offended by the idea of someone offering to translate documents, nearly all were willing to use an oral interpretation service, and most would request translation if they thought it was available.¹³ Some LEP individuals expressed an overwhelming need, not merely a preference, for receiving translated documents.¹⁴ Language preference is routinely requested, along with other demographic information, by health care providers, educational institutions, and others. Placing language preference along with other demographic information is unlikely to create either discomfort or unrealistic expectations by the customer.

Lenders and servicers should be required to notify all borrowers in writing about language services and how to access them. Additionally, FHFA should examine ways for companies with a strong presence in a market *and* a significant number of potential LEP borrowers with less common languages to address their language access needs as well.

¹³ Kleimann Report at 20.

¹⁴ *Id.* at 14.

Conclusion

Both the responses gathered in the URLA Briefing and the Kleimann Report demonstrate that LEP borrowers would benefit tremendously from the inclusion of a language preference question on the URLA and increased access to interpreters and translated documents. While lenders have expressed concerns about liability and the appearance of discrimination, these concerns can be addressed through disclosures, education, and approved translations, and thus do not provide justification for not including a language preference question on the URLA. As detailed in our original July 31, 2017 comments and summarized above, inclusion of a language preference question on the URLA does not increase liability for lenders and would provide enormous benefit to potential LEP borrowers. Including the language preference question on the URLA is an important step to improving language access in the mortgage lending market for LEP borrowers. Therefore, we strongly urge FHFA to include the language preference question on the URLA, to better serve the increasing number of LEP borrowers on their pathway to homeownership.

Sincerely,

Americans for Financial Reform

Connecticut Fair Housing Center

Consumer Action

Empire Justice Center

Mobilization for Justice, Inc.

National CAPACD

National Consumer Law Center (on behalf of its low-income clients)

National Fair Housing Alliance

National Housing Resource Center