

June 26, 2023

Federal Housing Finance Agency
Office of Fair Lending Oversight
400 7th Street, S.W., 9th Floor
Washington, D.C. 20219
Submitted electronically via FHFA.gov

Re: Comments on the Federal Housing Finance Agency's Notice of Proposed Rulemaking on Fair Lending Oversight and Equitable Housing Finance, 88 Fed. Reg. 25,293 (Apr. 26, 2023)

Dear Federal Housing Finance Agency,

The Language Access Task Force of Americans for Financial Reform (AFR) submits the following comments in strong support of the Federal Housing Finance Agency (FHFA)'s Notice of Proposed Rulemaking on Fair Lending Oversight and Equitable Housing Finance. 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 to advocate for improved language access for borrowers with limited English proficiency (LEP borrowers) as they navigate the financial marketplace.

We strongly support all major components of the proposed rule, including the decision to codify the requirement that the Enterprises create and maintain Equitable Housing Finance (EHF) plans. With proper structure and clear guidelines, the Equitable Housing Finance plans can be a powerful tool to ensure our conventional mortgage market works to narrow, instead of widen, our country's racial wealth gap. We also support the decision to formalize FHFA's efforts to ensure regulated entity compliance with fair lending and fair housing laws, and the decision to incorporate unfair and deceptive acts and practices into FHFA's fair lending oversight program. Finally, we are pleased that the proposal codifies the requirement that the Enterprises use the Supplemental Consumer Information Form ("SCIF") to collect information on borrower language preference at loan origination. To ensure that these proposed regulations are effective at improving access to homeownership for underserved borrowers, we recommend that FHFA:

- Strengthen and clarify the proposed rule's guidelines on EHF plan development, assessment, and accountability; and
- Clarify that the Enterprises should require mortgage servicers to collect information on borrower language preference.

In addition, FHFA should require the Enterprises to compel lenders and servicers to provide limited English proficient borrowers with meaningful language access, including translated vital documents and oral interpretation.

In these comments, we discuss 1) necessary structural improvements to the Equitable Housing Finance plan framework, 2) FHFA's authority to supervise regulated entities for compliance with the FTC Act's prohibition on unfair and deceptive acts and practices, 3) FHFA's authority to

supervise regulated entities for compliance with fair lending laws, 4) how FHFA's proposal to codify the mandatory collection of consumer language preference information will benefit borrowers with limited English proficiency, and 5) additional recommendations for further action by FHFA to ensure that borrowers with Limited English proficiency have access to sustainable housing opportunities.

1. Necessary structural improvements to the Equitable Housing Finance plan framework

FHFA should draw on its Duty to Serve (DTS) regulation and the evaluation guidance it issued for that rule to ensure proper oversight of the GSEs' Equitable Housing Finance plans. The proposed rule does not currently set out clear guidelines for plan development, but only very broad procedures for timing and the requirement for public input. The proposed rule also does not allow FHFA to reject inadequate plans, contain any defined metrics for measuring success and failure, feature any system intended to rate Enterprise performance under the plans, or even require uniform formatting between the two plans. These shortcomings dilute the promise that the plans could have in making meaningful change to address racial inequity in our housing markets, and limit the ability for the public to meaningfully weigh in. FHFA's DTS framework would serve as a helpful model to address these pitfalls, as the DTS framework contains all of these important features.

In addition, FHFA should commit to a relatively granular disclosure of the success or failure of the Enterprise's plans. Simply disclosing that FHFA has deemed a plan successful does not give the public the information necessary to evaluate specific aspects that are succeeding or failing, rendering public input less effective. Disclosing granular success and failure is essential for a test-and-learn system with meaningful public input, and should be incorporated into the final rule.

2. FHFA's authority to supervise regulated entities for compliance with the FTC Act's prohibition of unfair and deceptive acts and practices

Our coalition supports FHFA's decision to add oversight of unfair or deceptive acts or practices to FHFA's fair housing and fair lending oversight program. Ensuring that FHFA regulated entities comply with Section 5 of the Federal Trade Commission Act is consistent with FHFA's authority as a federal financial regulator to supervise regulated entities for compliance with federal laws and regulations, which includes applicable consumer protection laws. Moreover, adding federal consumer protection law to FHFA's fair housing and fair lending oversight programs will aid in the office's mission to improve equity in the market for conventional mortgage credit, support overall regulated entity safety and soundness, and serve the public interest.

It is entirely appropriate, and beneficial, for prudential regulators to ensure compliance with a broad array of laws and regulations, in addition to their obligation under their enabling statutes to monitor the safety and soundness of the financial institutions they oversee. Language in a federal financial regulator's enabling statute, authorizing or requiring it to ensure compliance

with applicable laws, is sufficient to give it authority to supervise entities for compliance with federal consumer protection laws. For example, both the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation have long derived their authority to supervise financial institutions for compliance with the FTC Act from Section 8 of the Federal Deposit Insurance Act (FDIA),¹ which empowers the “appropriate banking agency” to take action whenever the agency determines that an insured institution has violated “any law or regulation.”²

Similarly, the Safety and Soundness Act gives FHFA the general enforcement authority to ensure that “that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out.”³ The Act also grants the FHFA Director the authority to “exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity,”⁴ including the duty to ensure that “the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest.”⁵ These broad delegations of authority enable FHFA to supervise regulated entities for compliance with a wide range of federal laws, including the prohibition against “unfair or deceptive acts or practices in or affecting commerce” in Section 5(a) of the FTC Act.⁶ Ensuring compliance with federal consumer protection law is firmly in service of the public interest, and will be directly in service of these duties.

3. FHFA’s authority to supervise regulated entities for compliance with fair lending laws

We support FHFA’s proposal to codify in regulation its existing authority to supervise for and enforce compliance with fair housing and fair lending laws. As discussed earlier in these comments, the Safety and Soundness Act empowers FHFA to oversee its regulated entities’ compliance with “other applicable law”⁷ and to engage in enforcement for noncompliance with law.⁸ This broad authority includes the authority to supervise regulated entities for compliance with federal fair lending laws. The proposed rule is also consistent with the longstanding practices of other federal regulators, who routinely supervise regulated entities for compliance with the Fair Housing Act and Equal Credit Opportunity Act.⁹

To further clarify FHFA’s supervision and enforcement authority in this area, we recommend amending the regulations to ensure that the supervision and enforcement authority for the Division of Housing, Mission, and Goals aligns with the same authority granted to the Division of

¹ See e.g., Interagency Guidance Regarding Unfair or Deceptive Credit Practices, 1 (August 22, 2014), available [here](#).

² 12 U.S.C. § 1818(b)(1), (e)(1), and (i)(2).

³ 12 U.S.C. § 4511(b)(2).

⁴ 12 U.S.C. § 4513(a)(2)(B).

⁵ 12 U.S.C. § 4513(a)(1)(v).

⁶ 15 U.S.C. § 45(a).

⁷ 12 U.S.C. § 4511(b)(2).

⁸ 12 U.S.C. § 4631.

⁹ See, e.g., FFIEC, *Interagency Fair Lending Examination Procedures* (2009), available [here](#).

Enterprise Regulation, which is responsible for safety and soundness supervisory examinations. The regulations that currently describe FHFA's structure describe the supervisory authority, and the activities authorized within this supervisory function, for both the Deputy Director of the Division of Enterprise Regulation,¹⁰ and the Division as a whole.¹¹ However, the regulations describing the roles for the Deputy Director of the Division of Housing, Mission, and Goals and the office as a whole do not include such language. We believe conforming the language between these two divisions would further clarify FHFA's authority to supervise regulated entities for compliance with fair lending laws. We also recommend that FHFA significantly increase staffing within the fair lending oversight program, including lawyers, economists, and analysts.

4. How codifying the mandatory collection of consumer language preference information will benefit borrowers with limited English proficiency

We commend FHFA for proposing to formalize the requirement that the Enterprises collect, maintain, and report data on borrower language preference. Having worked with FHFA collaboratively on these issues since 2015, our coalition recognizes that the decision to implement this data collection requirement came only after a uniquely thoughtful, inclusive, and thorough multi-year process.

Our coalition has long supported FHFA's efforts to require lenders and servicers to obtain information on borrower language preference.¹² As we have explained in past submissions, without a uniform system for collecting information on borrower language preference borrowers, and loan performance, suffer.¹³ Before FHFA began requiring originators to use the Supplemental Consumer Information Form (SCIF) as part of the loan application process, there was no uniform system for lenders and servicers to learn a borrower's language preference. Even a matter of months before FHFA implemented the SCIF requirement, industry practices varied widely when it came to collecting information on borrower language preference.¹⁴ This put the onus of requesting accommodations on LEP borrowers any time they needed to contact their lenders and servicers, causing unnecessary delay and additional barriers to language access.

¹⁰ 12 C.F.R. §1200.2(b)

¹¹ 12 C.F.R. §1200.2(e)(2)

¹² See, e.g., Americans for Financial Reform, Comments on the Federal Housing Finance Agency's Request for Input on Improving Language Access in Mortgage Origination and Servicing, (Jul. 31, 2017), available [here](#); Americans for Financial Reform, Supplemental Comments on the Federal Housing Finance Agency's Request for Input on Improving Language Access in Mortgage Origination and Servicing, (Sept. 1, 2017) available [here](#); Press Release, National Consumer Law Center, Advocates Welcome Mandatory Collection of Language Preference Data by Fannie Mae and Freddie Mac (Mar. 1, 2023) available [here](#).

¹³ Americans for Financial Reform, Comments on the Federal Housing Finance Agency's Request for Input on Improving Language Access in Mortgage Origination and Servicing, 7 (Jul. 31, 2017) available [here](#)

¹⁴ Consumer Financial Protection Bureau, Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021, 23 (May 2022) available [here](#).

Without a standardized approach to collecting language preference information, LEP borrowers face worse outcomes. For example, a 2022 CFPB study of sixteen large, national mortgage servicers found that even among those servicers that reported that they collect or maintain information about borrowers' language preference, the quality and completeness of the data varied widely, with nearly a quarter of borrower language preferences marked as "unknown."¹⁵ For LEP borrowers and those whose language preference was marked as "unknown," the number of delinquent loans without a loss mitigation option in place after exiting forbearance remained constant, while the same figure steadily declined throughout the study period for non-LEP borrowers.¹⁶ These findings are disappointing, but not surprising. Without information on borrower language preference, servicers are functionally limited when they attempt to direct limited in-language resources to borrowers. Industry should not be allowed to use a lack of readily available information to avoid facing the consequences of failing to meet the language needs in their borrower population. Identifying borrower language preference is the first step to improving these outcomes.

Collecting a borrower's preferred language at the mortgage application stage not only arms lenders, servicers, and regulators with the data they need to improve these outcomes, but it also allows LEP borrowers to be connected with bilingual housing counselors who can help them navigate the loan origination and/or servicing process. As we discuss later in these comments, lenders and servicers still mainly communicate with LEP borrowers in English, and language services are often still unavailable for most LEP borrowers. However, HUD-approved housing counseling agencies have an obligation to provide meaningful access to their programs and services to individuals with LEP under Title VI of the Civil Rights Act and corresponding HUD LEP Guidance.¹⁷ Thus, systematically documenting borrower language preferences at the loan application stage enables lenders to refer applicants to services that are more likely to meet their language needs.

5. Recommendations for further action to ensure that borrowers with limited English proficiency have access to sustainable housing opportunities

- a. *Clarify that the Enterprises should be required to obtain language preference information for loans originated before March 1, 2023*

The language of proposed § 1293.31 is broad: each "Enterprise shall collect, maintain, and provide to FHFA. . . the language preference of applicants and borrowers."¹⁸ However, the Enterprises currently only require servicers to collect and maintain this information if obtained

¹⁵ *Id.*

¹⁶ *Id.*, at 24.

¹⁷ Executive Order 13166, 3 C.F.R. §13166 (2001); Department of Housing and Urban Development, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. 2732, (Jan. 22, 2007), available [here](#); Department of Housing and Urban Development Office of Housing Counseling, Housing Counseling Limited English Proficiency (LEP) Toolkit (May 2021), available [here](#).

¹⁸ Fair Lending, Fair Housing, and Equitable Housing Finance Plans, 88 Fed. Reg. 25293, 25309 (proposed Apr. 26, 2023) (to be codified at 12 C.F.R. pt. 1293.31)

through the origination process beginning on March 1, 2023.¹⁹ This narrower interpretation does a disservice to borrowers who took out their mortgages before March of this year, and will result in a prolonged and very gradual startup to language preference data collection. This “trickle down” model severely limits the extent of useful language preference information available to FHFA, and the accessibility of loss mitigation to existing LEP GSE borrowers.

FHFA should consider clarifying that the mandate to obtain this information applies to all loans purchased by the Enterprises, not merely loans originated after March 1, 2023. This clarification could be implemented through various means, as routine loan servicing presents many opportunities for servicers to ask, and record, information on borrower language preference. Servicers communicate with borrowers on a routine basis through periodic statements and the yearly escrow analysis, and they send written communications to borrowers when the loan is first sent to servicing and whenever the loan's servicing is transferred.

LEP mortgage borrowers who are struggling to pay their mortgage payments also continually ask their servicers for resources in their preferred language. During default servicing, servicers send the required Early Intervention notice required by 12 CFR 1024.39 to delinquent borrowers, other outreach letters required by the GSEs, and in some cases “blind” offers of loan modification. Servicers also speak with borrowers on the phone as part of the streamlined loss mitigation process. These servicing communications all pose opportunities for servicers to collect information on borrower language preference, both to monitor loan performance for these vulnerable borrowers, and to better serve them. FHFA should require servicers to make use of these opportunities now, and should not wait the years that it would take for new originations to overcome existing loans.

FHFA could implement a requirement that servicers obtain information on borrower language preference at various points, through both routine and default servicing. Servicers should orally request information on borrower language preference at the first oral contact with any borrower, and whenever a consumer requests to speak with a non-English speaking representative. This will ensure that servicers collect and maintain information on language preference for the borrowers in the greatest need for immediate assistance— those calling to ask questions or begin the loss mitigation process.

In addition, servicers should be required to request borrower language preference in writing, through a SCIF-like form included as an addendum to key documents and notices. Such documents could include the Early Intervention notice required under the Real Estate Settlement Procedures Act (RESPA),²⁰ in any “hello letter” sent by the transferee servicer upon a servicing transfer, along with the yearly escrow analysis, and in connection with any loan modification written application.

¹⁹ Fannie Mae, Servicing Guide, Fannie Mae Single Family 64 (May 10, 2023), available [here](#); Freddie Mac, Seller/Servicer Guide, Freddie Mac Single Family 1301-4 (May 03, 2023), available [here](#).

²⁰ 12 C.F.R. 1024.39.

At a minimum, FHFA should begin language preference collection for delinquent borrowers by incorporating a SCIF-like form into the Early Intervention notice or the Borrower Solicitation Package required by the Fannie and Freddie Servicing Guides.²¹

- b. Require the Enterprises to implement policies requiring all Enterprise counterparties to provide meaningful language access to LEP borrowers*

While identifying a borrower's language preference is the foundation for effective language access, that alone will not ensure that mortgage lenders and servicers will offer any language access for LEP borrowers. Lenders and servicers must take affirmative steps to assist them. Without language assistance, LEP borrowers must rely on family members and third parties to interpret critical, often personal or embarrassing financial documents. This system of forcing LEP borrowers to provide their own language support not only denies them the dignity of being able to appear as their full selves in these transactions, but it also exposes them to the risk that their family member may make a mistake in interpreting these highly technical documents and conversations. This reality is unacceptable. To truly improve access to the mortgage market for eligible LEP consumers, and improve outcomes for existing LEP homeowners, lenders and servicers must utilize translated key documents, and they must widely provide oral interpretation services to LEP borrowers.

Encouraging lenders and servicers to take voluntary steps to improve language access is unlikely to make a lasting change in industry practices. FHFA, the Enterprises, and the CFPB have already taken numerous steps to encourage lenders and servicers to voluntarily provide language assistance to LEP borrowers, and to reassure the industry that there is no fair lending risk associated with offering complete and accurate translations to consumers, even for only some lines of business and only for some languages.²²

To these ends, FHFA has translated, and made available, a broad array of mortgage origination and servicing documents and glossaries in the five most commonly spoken LEP languages in the country. FHFA has also provided, in the same five languages, a model language translation disclosure, to mitigate against the concern that consumers may come to expect all communications in their preferred language, if the lender offers only some materials in their preferred language. The CFPB has also published guidance on serving consumers with limited English proficiency. This guidance explicitly states that a phased approach to expanding language services to consumers, one that offers translations in some languages and not others, or some documents and not others, does not violate fair lending laws.²³ Despite these attempts to address industry's stated concerns, direct service providers continue to find English-only communications with borrowers to be the industry norm, and industry continues to assert that

²¹ Fannie Mae, Servicing Guide, Fannie Mae Single Family, 299 (May 10, 2023), available [here](#); Freddie Mac Single Family 9101-4 (May 03, 2023), available [here](#)

²² Consumer Financial Protection Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, 86 Fed. Reg. 6306, 6309- 6310 (Jan. 13, 2021), available [here](#).

²³ *Id.*

“regulation,” costs, and fair lending compliance risk, are insurmountable barriers to their good intentions.²⁴

Requiring lenders and servicers to give borrowers government-translated notices, forms, and disclosures is the only way for regular use of these translations to become the industry standard. To this end, FHFA should require that the Enterprises condition their purchase of mortgage loans on a counterparty’s agreement to provide meaningful access to consumers with LEP. FHFA should define “meaningful access” as providing oral interpretation services to LEP borrowers, and providing translations for vital documents in specific languages.

To ensure consistency with CFPB guidance on the topic of serving consumers with LEP, FHFA should also define the term “vital documents” as any document or communication that “conveys essential information about credit terms and conditions (e.g., loan pricing), or about borrower obligations and rights, including those related to delinquency and default servicing, loss mitigation, and debt collection.”²⁵

In our experience, the most crucial documents in loan origination include the loan application and the Loan Estimate and Closing Disclosure, followed by the note and security instrument. In mortgage servicing, essential documents to provide in translation include the RESPA Early Intervention notice and the similar Borrower Response Solicitation Package required by the Fannie and Freddie Servicing Guides.²⁶ The Fannie Form 745 and Freddie Publication 829, which comprise the GSEs’ Borrower Response Solicitation Package, have already been translated into the top five LEP languages. Thus, this crucial loss mitigation notice could be required immediately. Over time FHFA should direct the GSEs to also require translation of the notice required under 12 CFR 1024.41(b)(2) (which notifies the borrower within five days of a loss mitigation application that it has been received and what else is needed to complete the application), the loan modification application form, the periodic mortgage statement, and the yearly escrow analysis.

We recommend that FHFA implement this requirement using a two-tiered approach. First, lenders and servicers should provide all vital documents in both English and Spanish to all borrowers. Second, translated vital documents must be provided whenever a consumer has expressed a preference for a language with an available translation template provided by one of the Enterprises. We recommend this approach for several reasons. Nearly one in twelve individuals in the U.S., around 8.2% of the population is LEP.²⁷ About 64% of this population speaks Spanish, followed by Chinese.²⁸ Given the likelihood that an LEP borrower will require Spanish language services, providing Spanish translations of key notices before better

²⁴ Podcast Lost in translation: Why non-English speakers can struggle at banks, American Banker, (Mar. 9, 2023), available [here](#).

²⁵ Consumer Financial Protection Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, 14 (Jan. 13, 2021) available [here](#).

²⁶ (Fannie Guide Section D-2-04; Freddie Guide Section XXXX).

²⁷ U.S. Census Bureau, 2021 American Community Survey 5-year Estimates (2021), available [here](#).

²⁸ Jeanne Batalova and Jie Zong, Language Diversity and English Proficiency in the United States, Migration Policy Institute (Nov. 11, 2016), available [here](#).

information is available about borrower language preference will immediately improve access to the mortgage market for LEP borrowers, and help prevent foreclosures. Default dual-language documents are already used in so many aspects of our society; a transaction as significant and expensive as someone's mortgage should employ this approach as well.

In addition, requiring lenders and servicers to provide Enterprise-approved translations whenever a vital document is available in the consumer's preferred language will enable language access to improve as data improves, and as the pool of publicly available, accurate document translations grows. This recommendation also enables the agency to respond to growing populations among LEP groups without changing the underlying mandate. For instance, if another language group grows in prominence across the nation, or in a significant region, the Enterprises may begin providing translated vital documents in that language, and lenders and servicers would be required to use them. This two-tiered approach will strike an appropriate balance between the immediate need to improve language accessibility across the market, and the need for the regime to be flexible enough to shift with demographic changes.

We understand these changes will require industry to make some initial capital investments, but there are technological advancements that would enable lenders and servicers to provide meaningful access at reasonable cost. Many of these advancements came out of necessity – Title VI of the Civil Rights Act has long been interpreted to require recipients of federal funds to provide meaningful access to their services and programs to persons with LEP.²⁹ This interpretation, in conjunction with other laws, has required entities with far fewer resources to provide meaningful language access, and has enabled entire highly-specialized and technical industries, such as healthcare, to provide meaningful language access.³⁰ Even cash-strapped legal services organizations and housing counseling agencies have found ways to serve LEP clients out of necessity.³¹ If these organizations are capable of routinely offering language assistance to LEP individuals, our country's largest lenders and loan servicers are similarly capable.

What's more, the capital investments required to provide meaningful language access have largely already been incurred by the Enterprises and FHFA, as the most expensive and complex aspects of providing written materials in non-English languages is the translating and subsequent consumer testing. The only initial investments lenders and servicers would need to make relate to integrating these translations into their existing systems— a one-time investment

²⁹ *Lau v. Nichols*, 414 U.S. 563, 569 (1974) (holding that a failure to accommodate non-English speaking public school students violated Title VI and implementing regulations); *Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), *rev'd on other grounds*, 532 U.S. 275 (2001); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI).

³⁰ Executive Order 13166, 3 C.F.R. §13166 (2001); Dep't of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Jun. 6, 2002), available [here](#).

³¹ See e.g., Housing Counseling Limited English Proficiency (LEP) Toolkit, 13-14, (Mar. 2021), available [here](#); Legal Aid Foundation of Los Angeles (offering client intake services in six languages, and advertising other languages are available using oral interpretation), available [here](#).

that would pay dividends by allowing lenders to attract more LEP customers, and help lenders avoid losses by improving the chances that LEP borrowers facing hardship will find a sustainable loss mitigation option that works for them. These costs, while significant for some lenders, are outweighed by the benefits to borrowers and lenders alike.

- c. *In conjunction with the Equitable Housing Finance Plans, work with the GSEs to develop accountability systems, such as Language Access Plans, for the Enterprises and for lenders and servicers to regularly evaluate and make progress in market access to LEP borrowers*

Finally, we recommend that FHFA consider requiring the Enterprises to develop and maintain accountability systems to regularly evaluate the language needs of their service populations, and to continually improve language access for LEP borrowers. We recommend that this system take the form of a language access plan, a system commonly used by federal agencies to consider how to improve services to individuals with LEP.³² In fact, several years ago, FHFA worked with the Enterprises to develop the Language Access Multi Year Plan, which set out a series of milestones that the agency and the GSEs would endeavor to accomplish over a two-year span, from 2018 to 2020.³³ This plan laid the groundwork for FHFA's efforts to improve language access for Enterprise-purchased mortgage loans, including the Mortgage Translations Clearinghouse and the model language translations disclosure mentioned previously, and the Language Access Working Group, on which many members of this coalition were honored to serve.³⁴ These accomplishments demonstrate the power in publicly setting intentions, and allowing stakeholders the opportunity to participate.

While the 2018-2020 language access plan accomplished many of its goals,³⁵ there was not a formalized system to ensure that the Enterprises continued expanding on these accomplishments once the plan expired, or the goals in the plan were met. We suggest that the Enterprises renew these freestanding plans, and incorporate a system to ensure that plans are continually updated and do not lapse for extended periods of time.

The Equitable Housing Finance Plans provide an accountability structure similar to the Language Access Multi Year Plan, but we nonetheless recommend that FHFA implement this additional structure entirely focused on assessing borrower language needs and improving language access. We recommend implementing a separate structure for several reasons. First, limited English proficiency is a characteristic, but not a defining feature, of particular groups or populations in our country. While limited English proficiency presents certain common challenges to accessing our mortgage market, differing communities and language groups will predictably face different barriers to our mortgage market due to differences in cultures, immigration status, experiences with discrimination, and other socioeconomic variables. Improving language access in the mortgage market might reduce language barriers, but may

³² Language Access Plans, LEP.gov, available [here](#).

³³ Language Access Multi-Year Plan, Fed. Hous. Fin. Agency (May 2018), available [here](#)

³⁴ *Id.* at 5-6.

³⁵ *Id.* at 3-4.

not improve access to homeownership overall for specific communities. The Equitable Housing Finance Plan framework's focus on "target populations" should instead focus on holistically addressing the specific barriers that an underrepresented group, with a range of shared experiences, faces in our conventional mortgage market. In short, limited English proficiency is only one barrier faced by many entirely distinct communities. Language needs will also change as the demographic characteristics of our country evolve. Language access policy should be responsive to these changes, and that can only be achieved through sustained, periodic efforts to identify emerging language groups, barriers, and expand in-language resources. Language Access plans provide a venue for these efforts.

FHFA should also require the Enterprises to encourage, if not require, lenders and servicers to create, maintain and regularly update their own language access plans. These plans will establish a roadmap whereby lenders and servicers consider the languages most commonly spoken by their LEP mortgage customers, the most important information for these customers to understand, and steps they can take to improve language access given available resources and costs.³⁶ These considerations may guide a lender or servicer's decisionmaking in expanding the language assistance it offers beyond the baseline requirements discussed in the previous section.

Finally, regulated entities, lenders, and servicers should be required to submit their language access plans to FHFA, or make them publicly available on the company's website. This will empower consumers to choose lenders that will meet their needs, or have plans to improve services in their preferred language, and it will enable legal services attorneys and housing counselors to understand the available in-language resources when an LEP client comes to them for assistance. It also will serve as public accountability to the goals espoused in the plans.

Conclusion

We applaud FHFA for taking steps to formalize its fair lending oversight program, including the decision to add Section 5(a) of the FTC Act to the supervisory program, the Equitable Housing Finance Plans, and the requirement that the Enterprises collect information on borrower language preference through the SCIF. We look forward to continuing to work with FHFA and the Enterprises on these issues.

For further discussion, please contact Nicole Cabañez, Skadden Fellow at the National Consumer Law Center at ncabanez@nclc.org, and Alys Cohen, Senior Staff Attorney at the National Consumer Law Center at acohen@nclc.org.

Sincerely,

³⁶ Dep't of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Jun. 6, 2002), available [here](#).

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

Americans for Financial Reform Education Fund

Consumer Action

National Coalition for Asian Pacific American Community Development (National CAPACD)

National Fair Housing Alliance

National Housing Resource Center

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