

June 8, 2016

The Honorable Mel Watt
Director
Federal Housing Finance Agency

Dear Director Watt:

Very recently the undersigned trade associations learned that the Federal Housing Finance Agency (FHFA) as well as Fannie Mae and Freddie Mac are considering a last minute addition to the new Uniform Residential Loan Application (URLA), in the form of a question that will ask borrowers to indicate their language preference. While we support a range of efforts to ensure that borrowers are well informed during the mortgage process, the inclusion of such a question on the redesigned form raises several serious compliance and legal concerns that strongly weigh against including it on the form or, at the very least, warrant a full vetting through a notice and comment process before its inclusion.

A question on language preference on the URLA would:

- 1. Require Lenders to Ask Borrowers Sensitive Questions Before the Interactions and Implications of Other Rules are Understood and Addressed.** Inclusion of a language preference question raises numerous compliance questions under the Dodd-Frank mortgage rules including Know Before You Owe, the Truth in Lending Act, Equal Credit Opportunity Act and the Fair Housing Act. These laws are outside the purview of the Federal Housing Finance Agency and within the purview of the Consumer Financial Protection Bureau (CFPB), the Department of Housing and Urban Development (HUD), the Department of Justice (DOJ) and other agencies. The questions include, to name a few: What is the extent of lender and consumer responsibility where a consumer prefers a particular language? What constitutes sufficient translation? How should costs be incurred, disclosed and defrayed? What if any cost or other limits should apply?
- 2. Create Expectations Among Consumers that Can't Be Met.** The consumer who provides language preference information at the lender's request will reasonably expect that they will receive communication in such language. Otherwise, why was the question asked? There are, however, an estimated 350 languages spoken in the United States and, at this point, no rules that guide lenders on what they should do in light of a borrower's response
- 3. Provide an Inferior Means of Obtaining and Analyzing Data.** Census, American Housing Survey or the National Survey of Mortgage Borrowers and Home Mortgage Disclosure Act (HMDA) data offer much broader-based datasets on homebuyers and prospective homebuyers for public policy analysis. If data is to be gathered, it should reside in one of these datasets and it should be collected and reported in accordance with their requirements.
- 4. Detract from Other More Promising Avenues.** More promising approaches would involve the FHFA working with the CFPB, HUD and other agencies to determine a government-wide approach to limited English proficiency (LEP) consumers in the mortgage process and in the marketplace generally.
- 5. Potentially Expose Lenders to Liability.** If the borrower indicates a non-English preference and the lender does not proceed in that language, the lender may expose itself to Unfair, Deceptive and Abusive Acts and Practices (UDAAP) liability. Merely asking the question also may open the

lender to the charge that it has used language preference as a proxy to learn more about the ethnicity of the borrower than the other government monitoring information may allow.

- 6. Open Both Lenders and Borrowers to Considerable Origination Costs.** If the lender believes it is expected to obtain translation services and no rules apply, there are no limits on the obligation and such costs. Notably, there have been no cost/benefit analyses of the costs of including this question considering that the costs of providing translation services potentially in all languages.
- 7. Open Servicers to New Obligations and Increase Borrowers' Servicing Costs.** Considering the question is on the loan application, the borrower may also rightfully expect that all communications on the mortgage including the loan's servicing may be in the preferred language. This will increase the cost of servicing and necessitate adjustments to those rules as well.
- 8. Require Translation Services Without Accompanying Government or GSE Materials.** While the Loan Estimate and the Closing Disclosure are available only in English and Spanish, we know of no plans to expand the language offerings for these documents or to translate the accompanying Homebuyers Toolkit into other languages. We also know of no effort by the GSEs to translate their note, deed of trust or other materials into numerous languages.

At this point, the inclusion of the subject question would only create confusion, uncertainty and potential liability. Given the implications across federal agencies, we urge the FHFA to abandon this proposal or, at the very least, seek broader interagency and stakeholder input before proceeding further with this addition to the URLA.

We greatly appreciate your consideration of our views on this important issue. We would also greatly appreciate an opportunity to meet with you concerning it at your earliest convenience.

Thank you.

Sincerely,

American Bankers Association
Consumer Bankers Association
Consumer Mortgage Coalition
Credit Union National Association
Housing Policy Council
Independent Community Bankers of America
Mortgage Bankers Association
National Association of Federal Credit Unions

cc:

Timothy Mayopoulos
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