

August 29, 2017

The Honorable Melvin L. Watt  
Director  
Federal Housing Finance Agency  
400 7<sup>th</sup> Street, SW  
Washington, DC 20219

cc: Office of Housing and Regulatory Policy

**RE: Improving Language Access in Mortgage Lending and Servicing**

Dear Director Watt:

The American Bankers Association (ABA), the Consumer Bankers Association (CBA), the Housing Policy Council of the Financial Services Roundtable (HPC), and the Mortgage Bankers Association (MBA), which together represent the banking and real estate finance industries, thank the Federal Housing Finance Agency (FHFA) for providing an additional opportunity to comment on issues faced by qualified mortgage borrowers with Limited English Proficiency (LEP).<sup>1</sup> In particular, we appreciate the public release of additional information developed through testing of the Uniform Residential Loan Application (URLA) conducted by the Kleimann Communication Group (Kleimann) in July 2016 for Fannie Mae and Freddie Mac (the Enterprises).<sup>2</sup>

As FHFA is aware, the undersigned sent a detailed response<sup>3</sup> to the Request for Input (RFI) issued in May 2017.<sup>4</sup> In this earlier response, we expressed the industry's commitment to serving LEP borrowers and its support of government entities establishing standards and providing resources for better serving such borrowers. We also indicated, however, that we were profoundly concerned with the possibility of FHFA and the Enterprises moving forward to include a question on borrower language preference on the URLA at this time, particularly given the considerable legal risks highlighted by outside counsel and the operational and customer service challenges associated with such a question.

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<sup>1</sup> FHFA, "FHFA Reopens and Extends Deadline to September 1 on RFI to Improve Access to Credit for Qualified Mortgage Borrowers with Limited English Proficiency," August 4, 2017. Available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Reopens-and-Extends-Deadline-on-LEP-RFI-to-Sept-1.aspx>.

<sup>2</sup> Kleimann Communication Group, "URLA Round 7 Consumer Testing Briefing," July 21-22, 2016. Available at: [https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Round-7-SanFran\\_7-29-16.pdf](https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Round-7-SanFran_7-29-16.pdf).

<sup>3</sup> ABA, CBA, HPC, and MBA, "RE: Improving Language Access in Mortgage Lending and Servicing," July 31, 2017. Available at: <https://www.fhfa.gov//AboutUs/Contact/Pages/input-submission-detail.aspx?RFID=708>.

<sup>4</sup> FHFA, "Improving Language Access in Mortgage Lending and Servicing Request for Input," May 25, 2017. Available at: [https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Language\\_Access\\_RFI.pdf](https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Language_Access_RFI.pdf).

The newly-released results of the URLA testing conducted by Kleimann include both borrower and lender reactions to various forms of a possible URLA question regarding the language preference of the borrower. Notably, a majority of borrowers indicated that they believed that *asking* such a question would lead to services being provided in the selected language. This expectation is understandable and is exactly why such a question should not be included on the URLA until the necessary resources are developed and/or centralized in an accessible manner.

The results of the Kleimann testing highlight that, from the borrower perspective, there were varying opinions about the usefulness of such a question. Most respondents generally viewed the language preference question positively, noting that it could be helpful in providing assistance to LEP borrowers. Some respondents, however, found it to be unnecessary or unclear.<sup>5</sup> Those borrowers who expressed concerns focused largely on the possibility for their answers to a language preference question to be used in a discriminatory manner, thereby negatively impacting their access to credit. This testing was conducted in July 2016, and further testing on this point may be helpful to understand if borrower attitudes towards a government-mandated collection of language preference information have changed.

As noted above, the presence of a language preference question also generated firm borrower expectations regarding the translation services and documents they anticipated receiving from the lender moving forward. Some borrowers expected that the lender would provide them with a translator or with forms or letters in their preferred language. At least one state requires accommodations be made for LEP borrowers once a language preference is indicated, and since there are no government-translated forms available, this requirement has proven to be costly and extremely burdensome.<sup>6</sup> While many servicers have language lines to assist with communications, a large effort to provide written translations has not been made due to lack of clarity as to which dialects to use and how costs could be defrayed. Other borrowers were unsure about the resources to be provided by the lender or whether their answer could lengthen or otherwise alter the application process.

Lenders interviewed by Kleimann also responded with concerns regarding the proposed language preference questions. These concerns included their potential legal liability if communicating in a language other than English or providing a translator, the accuracy of translations provided to borrowers, and borrower expectations that lenders are committing to provide certain services. Lenders also recommended that any translated forms, including the URLA itself, should come from a more centralized source, such as the Consumer Financial Protection Bureau.

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<sup>5</sup> While the Kleimann testing did not use a focus group with limited English proficiency to test the URLA question, the use of a language preference question with a multilingual focus group reflects how the question will be received by many borrowers. Also, FHFA has only proposed inquiries based on language preference rather than language proficiency. The confusion and lack of clarity revealed by the testing is thus representative of what many borrowers would feel when confronted by this question. To our knowledge, FHFA has not tested the question with limited English proficiency borrowers.

<sup>6</sup> MA 940 CMR 8.05(3). Available at: <http://www.mass.gov/courts/docs/lawlib/900-999cmr/940cmr8.pdf>.

While the results of this testing should not be treated as conclusive, we believe the concerns raised strongly confirm the need for further testing, research, and public outreach prior to the inclusion of any language preference question on the URLA. More importantly, such testing should not delay the development of resources for LEP borrowers and could occur concurrently or in an iterative fashion to improve the materials developed to assist these borrowers.

Borrowers fluent in English continue to complain about the complexity of mortgage documents and communications despite the enormous efforts of the entire industry to simplify terms and convert documents to plain language. Some industry participants would like to see more work undertaken to further simplify mortgage documents and communications to enable them to be used more easily on electronic platforms. Once these efforts have been completed, it should be more manageable to make these documents and communications available in non-English languages.

The results of the Kleimann testing also emphasize the importance of clarity for borrowers. As we have previously stated, to further aid borrowers and reduce confusion, any government or Enterprise LEP resources available to borrowers should be centralized and standardized. This effort, which should feature the development of a clearinghouse of translated forms and other resources for LEP borrowers, would mitigate the difficulties associated with locating such resources and reduce discrepancies that may lead to borrower uncertainty.<sup>7</sup> In order to achieve this objective, government agencies and the Enterprises will need to work together to develop common forms, terminology, and definitions. This process is likely to be a lengthy one, but we believe it will prove worthwhile.

The concerns expressed by both borrowers and lenders align with many of those which our associations highlighted in our earlier response to FHFA. Given the relatively small samples utilized in this round of testing, we do not view the results as definitive, but instead as important insights that warrant further research and analysis. Accordingly, we urge FHFA and the Enterprises to refrain from including a question regarding language preference on the URLA at this time. A more prudent approach would involve wider and more detailed testing of various forms of a language preference question to better identify—and alleviate—the concerns of both borrowers and lenders.

We would also urge FHFA and the Enterprises not to delay implementation of the new URLA due to the need for additional testing and analysis of a language preference question given the benefits that a redesigned, more consumer-friendly URLA will provide. Such testing and analysis should constitute a key component of the “multi-year effort” envisioned in the RFI issued by FHFA. As we approach year-end 2017, any delays to the finalization of the URLA could significantly hamper lenders’ compliance

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<sup>7</sup> An earlier study produced by Kleimann noted that “The issue for LEP populations is NOT a lack of resources; the issue IS a lack of awareness of these resources.” See: Kleimann Communication Group, “Language Access for Limited English Proficiency Borrowers: Final Report,” April 2017. Available at: <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf>.

efforts. If research and consumer testing demonstrate the need for an LEP inquiry, FHFA and the Enterprises could always revisit the decision or produce an addendum at a later date.

As we have noted to FHFA and the Enterprises on numerous occasions, our members strongly support efforts to better understand the challenges faced by LEP borrowers and to better serve the LEP population with sustainable, affordable mortgage credit. We appreciate the release of the results of additional borrower and lender testing conducted by Kleimann, and believe these results warrant further consideration and underscore the need for much more thorough testing, research, and analysis. Finally, these results make clear that it would be premature and counterproductive to include a question on language preference on the URLA until such work is completed. We therefore respectfully request that FHFA and the Enterprises finalize the redesigned URLA without a language preference question at this time.

We remain committed to working with FHFA and the Enterprises on this important issue. Should you have questions or wish to discuss these comments, please contact Ken Markison, MBA Vice President and Regulatory Counsel, at (202) 557-2930 or [kmarkison@mba.org](mailto:kmarkison@mba.org).

Sincerely,

**American Bankers Association  
Consumer Bankers Association  
Housing Policy Council of the Financial Services Roundtable  
Mortgage Bankers Association**