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Acting Director Joseph Otting
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Acting Director Otting:

I am writing regarding an issue that may not have drawn your attention during your first few weeks as Acting Director of the Federal Housing Finance Agency (FHFA), but that is important to the Housing Policy Council¹ (HPC) and our member firms. FHFA, along with the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation (collectively, the GSEs), has been working to identify and address homeownership challenges facing consumers with limited English proficiency (LEP). HPC members broadly support the intent of the FHFA, but would like to request that you, in your dual capacity as Acting FHFA Director and Comptroller of the Currency, invite the participation of other regulatory agencies in this critical policy dialogue. We believe that regulatory engagement will help to mitigate the potential for unintended consequences.

For context, FHFA and GSEs began their LEP initiative in 2016, when they proposed revising the Uniform Residential Loan Application (URLA) to allow consumers to note their preferred language. Stakeholders expressed concerns, including the risk that consumers might find such a question potentially discriminatory or be left with the false expectation that the lender would provide documents and services in the language selected. In response to these concerns, FHFA and the GSEs opted to forego the change at that time.

In 2017, however, FHFA and the GSEs once again proposed adding the language preference question to the URLA. To address the concerns above, they also proposed additional text to clarify that the loan was “likely to be conducted in English,” that “communications may NOT be available in your preferred language,” and that answering the question “will NOT negatively affect your mortgage application.” Although

¹ The Housing Policy Council (HPC) is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable home ownership opportunities in support of vibrant communities and long-term wealth-building for families

members of the industry remained concerned, FHFA and the GSEs ultimately decided to add the question to the form. Absent reconsideration, lenders must begin using the revised URLA in 2020.

In addition to the URLA question, FHFA and the GSEs are working to implement a multiyear plan to identify and address the unique needs of LEP consumers, including:

- A **Language Access Working Group** to allow FHFA, the GSEs, members of the housing industry and consumer organizations to share insights
- **Translations of the URLA** in the five most common languages spoken by LEP households in the United States
- A new **Standalone Disclosure**, reiterating that the loan is likely to be conducted in English
- **Translated Glossaries** of mortgage and real estate terms
- An **Online Clearinghouse** of resources to assist lenders, servicers, and housing counselors in serving LEP borrowers
- A call-center based **Language Access Line** to connect LEP borrowers with assistance in their preferred language

HPC members share the desire to increase outreach to LEP consumers, and believe the multiyear plan is a good faith, well-intentioned effort to address legitimate challenges. However, we nonetheless have concerns with the approach thus far.

In the effort to build and launch the Online Clearinghouse, FHFA and the GSEs have encountered some of the same difficulties in creating, maintaining, and implementing the use of translated documents that the broader industry also faces. The initial set of documents come from different sources and are therefore not translated consistently and do not comport with the site's own Spanish Glossary. Additionally, because there are hundreds of documents, letters, and forms that could be necessary over the life of a mortgage, the Clearinghouse does not include all documents needed to support consumers over the mortgage lifecycle. FHFA has also included a disclaimer of liability for the translations' content or accuracy. This gives lenders pause on how much they can rely on the Clearinghouse documents. Further, FHFA and the GSEs are now moving on to produce translated documents in another language, rather than refining the Spanish documents for consistency with the Glossary.

As a result, the reservations originally raised by stakeholders in 2016, when FHFA first proposed the language preference question on the URLA, remain. FHFA's own research shows that the question causes some applicants to believe lenders will provide documents in their language, notwithstanding accompanying disclaimers that the loan is "likely to be conducted in English," and that "communications may NOT be available in your preferred language." (When the URLA is accompanied by the new Standalone Disclosure, consumers appear to better understand that they may *not* receive such translations, but many also reported disappointment or anger at that realization).

It is this type of misunderstanding that leaves lenders uneasy. Although many provide *verbal* assistance in other languages – either through multilingual staff or interpreters – *written* materials remain a significant challenge. Creating, implementing and maintaining translated documentation is costly and operationally difficult. This is particularly true in mortgage lending, which can involve dozens of documents and systems over the life of a loan, technical terminology, and potential liability for translation errors. Objective research conducted for FHFA by an independent firm, Kleimann Communication Group, noted that variations in dialects and cultural nuances pose an additional challenge when attempting to translate documents to be uniformly understandable.² It will take many years and significant resources to develop capabilities for full-cycle mortgage services in multiple languages.

By initiating the plan without a regulatory framework, FHFA and the GSEs have created a significant gap that will lead to confusion and uncertainty. There are no clear, consistent statutory or regulatory requirements to guide lenders. This potentially leaves lenders vulnerable to legal action, particularly by those who misconstrue the actions of FHFA and the GSEs as creating new legal obligations. While the work underway could be characterized as the first step in a long process, the actions of FHFA and the GSEs could also be easily misinterpreted as setting new requirements. Although FHFA and the GSEs communicated with industry and advocacy organizations, they did not engage other regulators in the policy dialogue, and the plan neither reflects or aligns with any pre-existing regulatory requirements, nor envisions development of such rules.

Servicers and investors will likely share these concerns, as most servicers cannot meet customer needs in multiple languages either. The URLA question creates a new type of “flag” or indicator that could potentially follow a loan file in a manner that may create risk for all parties involved, which consequently, could affect investor acceptance. Investors may downgrade the value of these less-liquid assets, which could, in turn, drive pricing decisions.

Ironically, these issues might be exacerbated for those few lenders and servicers who *have* attempted to provide some subset of services in non-English languages. Financial institutions could reduce their liability by simply doing nothing, rather than offering compartmentalized or partial assistance. The consequence could be an unfortunate retreat from LEP activities, an outcome objectionable to all, most certainly the growing number of financial institutions seeking to expand their outreach to LEP customers.

We applaud FHFA’s commitment to developing a strategy to reach consumers whose primary language is not English. Our members are also dedicated and eager to serve LEP customers, who represent a growing segment of the homebuying and homeowner population. Both collectively and individually, our members are diligently working to build infrastructure and expertise to meet the needs of non-English speakers. But without clear guidance, lenders and servicers are vulnerable to false interpretations

² <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf>

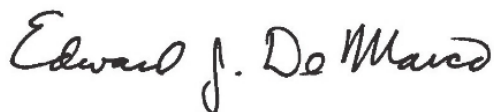
or misleading characterizations of their responsibilities and, thus, the possibility of legal action.

Therefore, we are requesting that clear guidance and an agreed-upon approach by all relevant regulatory bodies serve as the framework for the FHFA effort. A regulatory plan of action would ground the FHFA Language Access Plan, serving as a roadmap for the agency's actions. Regulations would complement the creation, compilation, and distribution of new resources to serve LEP consumers *and* provide a level of legal certainty (safe harbor) to the lending community that would stimulate and motivate additional engagement. In your dual oversight capacity, serving as the Comptroller of the Currency *and* Acting FHFA Director, you are ideally positioned to help initiate and lead a coordinated regulatory effort, by inviting the participation of Federal and state regulators to discuss how best to establish practical and appropriate rules that can be uniformly applied and enforced.

We are asking that you dedicate resources to a review of the FHFA and GSE activities, to determine how best to proceed, while engaging officials from other agencies – including CFPB, HUD, FTC and others – to participate in this policy discussion. Ideally, this discussion would lead to the development of standards for institutions serving LEP individuals. This might be accomplished through a No Action Letter or Regulatory Sandbox, allowing industry participants to test and innovate, and helping to ensure that any final regulatory obligations are designed to effectively serve LEP customers. Of primary importance is a regulatory scheme that (a) clearly defines practices that are, and are not, considered unfair, deceptive and/or abusive, and (b) acknowledges that companies may provide a limited set of services, or services in only certain languages, without threat of legal action for disparate treatment.

We would welcome the opportunity to discuss these concerns with you or officials from the OCC or FHFA, should you want to further explore our request before taking any action. If you have any questions, would like additional insight on these issues, or would like to set up a meeting with HPC or our members, please contact Meg Burns, Senior Vice President for Mortgage Policy, at 202-589-1926.

Yours truly,

A handwritten signature in black ink that reads "Edward J. DeMarco". The signature is written in a cursive, slightly slanted style.

Edward J. DeMarco
President
Housing Policy Council