

FHFA Finalizes Language Preference Question on Revised URLA

On October 20, 2017, the Federal Housing Finance Agency (FHFA) announced its controversial decision to add a preferred language question to the revised Uniform Residential Loan Application (URLA).¹ After receiving more than 200 public comments in response to its Request for Information (RFI),² the FHFA decided to include a revised version of the question, despite concerns raised by many in the mortgage industry.

The FHFA's decision concludes more than 16 months of tension with the industry regarding

whether the revised URLA should ask mortgage loan applicants to disclose their language preference. In August 2016, the FHFA decided to pull the proposed preferred language question amid strong industry opposition.³ However, after requesting public comments through a formal RFI in May 2017, the agency decided to move forward with a modified version of the question.

Below is the text of the revised language preference question to be included in the redesigned URLA.

PREFERRED LANGUAGE QUESTION TEXT:

Language Preference – Your loan transaction is likely to be conducted in English. This question requests information to see if communications are available to assist you in your preferred language. Please be aware that communications may NOT be available in your preferred language.

Optional: Mark the language you would prefer, if available:

English Chinese Korean Spanish Tagalog Vietnamese Other: _____

I do not wish to respond

Your answer will NOT negatively affect your mortgage application. Your answer does not mean the Lender or Other Loan Participants agree to communicate or provide documents in your preferred language. However, it may let them assist you or direct you to persons who can assist you.

Language assistance and resources may be available through housing counseling agencies approved by the U.S. Department of Housing and Urban Development. To find a housing counseling agency, contact one of the following federal government agencies:

- U.S. Department of Housing and Urban Development (HUD) at (800) 569-4287 or www.hud.gov/counseling.
- Consumer Financial Protection Bureau (CFPB) at (855) 411-2372 or www.consumerfinance.gov/find-a-housing-counselor.⁴

Notably, the FHFA has revised the text of the question to add additional disclaimer language advising applicants that the loan transaction is “likely” to be conducted in English and that communications may not be available in the applicant’s preferred language. The FHFA also has revised the text of the question to state more clearly that the applicant’s answer “does not mean the Lender or other Loan Participants agree to communicate or provide documents in [the applicant’s] preferred language.” The other notable change to the text is the inclusion of information about resources provided by the U.S. Department of Housing and Urban Development (HUD) and the Consumer Financial Protection Bureau (CFPB) to identify housing counseling agencies that may be proficient in the applicant’s preferred language. This change is perhaps the most beneficial to applicants because it provides tangible information about potential in-language resources that applicants can access to assist them with the mortgage loan application process.

We previously [discussed](#) a number of issues raised by the proposed inclusion of a language preference question in the revised URLA.⁵ Although the revised text of the question does a better job of putting applicants on notice that non-English language assistance may not be provided by the lender, it does not resolve many of the questions we raised previously. Specifically, what is a lender supposed to do with the language-preference information that it is now required to collect? How does the collection of this information in and of itself serve the goal of promoting access to credit for limited English proficiency (LEP) consumers? And, if a lender or servicer voluntarily provides information or documents to an applicant in his or her preferred language, is there a continuing obligation to communicate with the borrower in that language throughout the lifecycle of the mortgage loan?

Even with the enhanced disclaimers in the revised preferred language question, the FHFA cannot control how other governmental entities, courts or

private plaintiffs may seek to use this information to pursue legal actions (even if such actions ultimately are unmeritorious).⁶ Another concern is that the applicants themselves will be confused or misled by the inclusion of such a question. This concern is particularly salient because the question is designed to capture information about applicants who may not speak English as a first language and may not have the ability to understand the nuanced wording of the question.⁷

In recent public remarks, FHFA Director Melvin Watt indicated that this was a “tough decision” but that the FHFA has taken steps to address concerns raised by the industry by adding “clear disclosures” and “set[ting] the right borrower expectations.”⁸ Director Watt also stated that the decision ultimately came down to two factors: (1) the FHFA concluded that the revised wording of the question would mitigate potential legal concerns for lenders, and (2) the FHFA concluded that it was the “right time” to start providing lenders with this information because it is unlikely that there will be additional revisions to the URLA in the near future.⁹

Although the goal of providing increased access to in-language resources and increased access to credit for LEP consumers is commendable, the FHFA still has not connected the dots on how the collection of language preference information by lenders will help achieve these goals. With the exception of the additional information that will be provided to applicants regarding HUD-approved counseling agencies, requesting information about applicants’ language preferences is more likely to lead to confusion and uncertainty than to provide tangible benefits to LEP consumers. Moreover, if the FHFA intends to use the collection of language preference information to require mortgage industry participants to provide more in-language resources for LEP consumers down the road, it must examine the potential costs and compliance burdens that would be associated with providing accurate

information and documents in some or all of the six languages listed in the preferred language question. These costs would likely be considerable—especially for many of the smaller players in the mortgage industry.

For the time being, lenders will be required to collect language preference information from mortgage loan applicants with the implementation of the revised URLA. Lenders have the option of using the new URLA starting in July 2019. Use of the revised URLA will become mandatory for Fannie Mae and Freddie Mac loans in February 2020, by which time, if GSE reform were to pass, the FHFA might no longer exist.

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Endnotes

¹ News Release, Fed. Housing Finance Agency, Preferred Language Question to be Added to the Redesigned Uniform Residential Loan Application (October 20, 2017), <https://www.fhfa.gov/Media/PublicAffairs/Pages/Preferred-Language-Question-to-be-Added-to-the-Redesigned-Uniform-Residential-Loan-Application.aspx>.

² Fed. Housing Finance Agency, Improving Language Access in Mortgage Lending and Servicing Request for Input (May 25, 2017), https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Language_Access_RFI.pdf.

³ <https://www.mba.org/Documents/8-1-16%20response%20to%20MBA%20Trade%20Associations%20re%20URLA.pdf>

⁴ See https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Preferred_Language_Question.pdf (emphasis in original).

⁵ Laurence E. Platt and Tori K. Shinohara, Qué Idioma Prefiere? FHFA Considers Requiring Lenders to Ascertain Language Preferences to Identify Limited English Proficiency Borrowers, Mayer Brown Legal Update (July 18, 2017), <https://www.mayerbrown.com/Que-Idioma-Prefiere-FHFA-Considers-Requiring-Lenders-to-Ascertain-Language-Preferences-to-Identify-Limited-English-Proficiency-Borrowers-07-18-2017/>.

⁶ Director Watt has stated publicly that the FHFA has discussed the preferred language question with the CFPB and “ha[s] been assured that it will receive safe harbor approval under the Equal Credit Opportunity Act as part of the CFPB’s review of the revised URLA.” See Melvin Watt, Director, Fed. Housing Finance Agency, Remarks at Mortgage Bankers Association Annual Convention and Expo 2017 (October 23, 2017), available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/Prepared-Remarks-of-Melvin-L-Watt-Director-of-FHFA-at-Mortgage-Bankers-Association-Annual-Convention-and-Expo-2017.aspx>.

⁷ See 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>.

⁸ See Melvin Watt, Director, Fed. Housing Finance Agency, Remarks at Mortgage Bankers Association Annual Convention and Expo 2017 (October 23, 2017), available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/Prepared-Remarks-of-Melvin-L-Watt-Director-of-FHFA-at-Mortgage-Bankers-Association-Annual-Convention-and-Expo-2017.aspx>; see also News Release, Fed. Housing Finance Agency, Preferred Language Question to be Added to the Redesigned Uniform Residential Loan Application (October 20, 2017),

<https://www.fhfa.gov/Media/PublicAffairs/Pages/Preferred-Language-Question-to-be-Added-to-the-Redesigned-Uniform-Residential-Loan-Application.aspx>.

⁹ Melvin Watt, Director, Fed. Housing Finance Agency, Remarks at Mortgage Bankers Association Annual Convention and Expo 2017 (October 23, 2017), available at <https://www.fhfa.gov/Media/PublicAffairs/Pages/Prepared-Remarks-of-Melvin-L-Watt-Director-of-FHFA-at-Mortgage-Bankers-Association-Annual-Convention-and-Expo-2017.aspx>.

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