

United States Senate

WASHINGTON, DC 20510

October 16, 2019

The Honorable Mark A. Calabria
Director
Federal Housing Finance Agency
400 7th Street, SW
Washington, DC 20219

Dear Director Calabria,

We write to express our concern that the Federal Housing Finance Agency (FHFA) directed Fannie Mae and Freddie Mac (the GSEs) to remove the language preference question and information about housing counseling and homeownership education information from the redesigned Uniform Residential Loan Application (URLA) which was scheduled for mandatory use beginning on February 1, 2020. We ask you to reconsider your decision so that the language preference question and housing counseling agency information are included in the redesigned URLA, not a voluntary second form.

In November 2017, FHFA decided to place the language preference question and housing counseling agency information on the redesigned and revised URLA. FHFA's decision resulted from a years-long effort to better fulfill FHFA's statutory mandate to deliver access to credit across diverse markets and support homeownership opportunities to mortgage-ready borrowers. As you know, the revised URLA was carefully crafted in a thoughtful multi-year process by staff from the FHFA, Fannie Mae and Freddie Mac to include the language preference question and housing counseling agency information. FHFA received hundreds of public comments in support of these additions. FHFA responded to public feedback through the Request for Information by noting that the language preference question and housing counseling agency information are integral to the GSEs' goal of improving access to mortgage loan products and credit for a growing and diverse segment of America's housing finance market.ⁱ Communities with larger limited English proficiency populations have lower homeownership rates.

Although some in the mortgage industry expressed concern about the language preference question due to perceived legal liability and uncertainty, FHFA and the Consumer Financial Protection Bureau (CFPB) took the necessary legal steps to clarify that identifying borrowers' language preferences is vital industry data collection and does not create new risk of an Equal Credit Opportunity Act (ECOA) or other fair lending violations.ⁱⁱ ECOA prohibits withholding loan products or offers based on language preference (e.g. discrimination on the prohibited basis of national origin).ⁱⁱⁱ Failing to provide translation or non-English assistance based on a borrower's stated preference fails to rise to an ECOA violation, which the CFPB affirmed when it officially approved the revised URLA in 2017.^{iv} In fact, even without asking about a borrower's language preference, lenders could face legal liability for failing to adequately disclose loan terms.^v

The revised URLA language preference section clearly informed borrowers that selecting a non-English preference would not guarantee service in that language.^{vi} In fact, the section explicitly stated that the “loan transaction is likely to be conducted in English” regardless of the borrower’s selection and that communications in the preferred language may not be available.^{vii} The section further listed housing counseling agency information so that borrowers could access language resources through HUD-approved counseling agencies.^{viii} Therefore, the concern expressed by some industry groups that asking borrowers to select a language preference creates impractical consumer expectations is without cause.

That is why it is so surprising that the FHFA has now arbitrarily decided to remove this basic data collection point from the URLA and place it on a voluntary form. Voluntary forms are not adequate disclosures. Lenders will be under no obligation to use the new, voluntary form, and it is unclear how many will elect to do so. This will result in disparate treatment among borrowers who use different lenders. Additionally, there is no guarantee that the voluntary form will remain with the loan file. This leaves subsequent loan servicers without basic communication information about their borrowers. We know that many limited-English proficient borrowers experienced language barriers when they tried to get help from their servicers during the Financial Crisis. In some cases, such barriers prevented borrowers from taking advantage of loan modifications for which the borrower was eligible. The voluntary form will also undermine any efforts to collect market-wide data on language access needs. Without this vital information, policymakers and lenders will once again be left wondering how well the market is truly serving diverse borrowers.

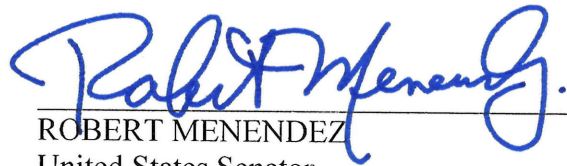
The revised URLA was an important step toward increasing language access throughout the mortgage market. Access to sustainable, affordable homeownership is critical for underserved and limited English-proficient borrowers. Ultimately, it is in the commercial interest of all those working in the mortgage market to prepare to serve all mortgage-ready borrowers.^{ix}

We urge you to rescind your decision to remove the language preference question and housing counseling access information from the redesigned URLA and work to build on FHFA’s efforts to improve accessibility to mortgage loan products for diverse borrowers throughout the mortgage market. We look forward to your response by November 18, 2019.

Sincerely,



CATHERINE CORTEZ MASTO
United States Senator



ROBERT MENENDEZ
United States Senator

Sherrod Brown

SHERROD BROWN
United States Senator

Elizabeth Warren

ELIZABETH WARREN
United States Senator

Amy Klobuchar

AMY KLOBUCHAR
United States Senator

Richard Blumenthal

RICHARD BLUMENTHAL
United States Senator

Edward J. Markey

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United States Senator

Bob Casey, Jr.

ROBERT P. CASEY, JR.
United States Senator

Mazie Hirono

MAZIE K. HIRONO
United States Senator

Kirsten Gillibrand


KIRSTEN GILLIBRAND
United States Senator

Kamala Harris

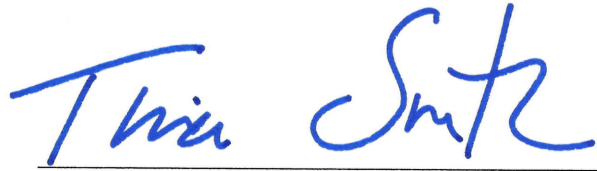
KAMALA D. HARRIS
United States Senator

Bern Sanders

BERNARD SANDERS
United States Senator



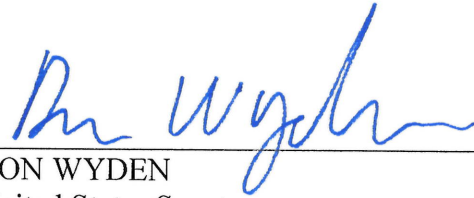
BENJAMIN L. CARDIN
United States Senator




TINA SMITH
United States Senator



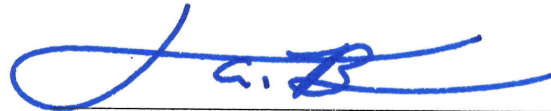
JEFFREY A. MERKLEY
United States Senator



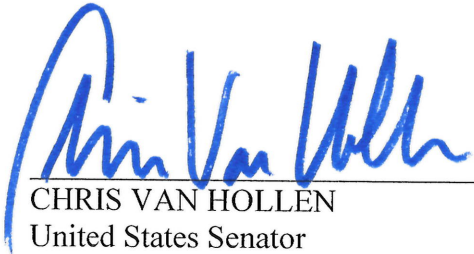
RON WYDEN
United States Senator



PATTY MURRAY
United States Senator



CORY A. BOOKER
United States Senator



CHRIS VAN HOLLEN
United States Senator

ⁱ Federal Housing Finance Agency. “Preferred Language Question to be Added to the Redesigned Uniform Residential Loan Application.” *Federal Housing Finance Agency*. October 20, 2017 (hereinafter “FHFA Announces Language Question”). Available at: <https://www.fhfa.gov/Media/PublicAffairs/Pages/Preferred-Language-Question-to-be-Added-to-the-Redesigned-Uniform-Residential-Loan-Application.aspx> (last visited on September 12, 2019).

ⁱⁱ Consumer Financial Protection Bureau. “Final Redesigned Uniform Residential Loan Application Status under Regulation B.” *Consumer Financial Protection Bureau*. November 20, 2017, 3 (“Bureau staff has determined that the final redesigned URLA is in compliance with § 1002.5(b) through (d).”). Available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_urla-language-preference-question_bureau-official-approval_112017.pdf (last visited September 12, 2019). See also Consumer Financial Protection Bureau. “Identification of language preference on the Uniform Residential Loan Application.” *Consumer Financial*

Protection Bureau. November 20, 2017. Available at: <https://www.consumerfinance.gov/about-us/blog/identification-language-preference-uniform-residential-loan-application/> (last visited on September 12, 2019).

iii 15 U.S. Code § 1691, *et seq.* (2010); 12 C.F.R. part 1002 (“Regulation B”) (2019).

iv Consumer Financial Protection Bureau. “Final Redesigned Uniform Residential Loan Application Status under Regulation B.” *Consumer Financial Protection Bureau*. November 20, 2017, 3 (“Bureau staff has determined that the final redesigned URLA is in compliance with § 1002.5(b) through (d).”). Available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_urla-language-preference-question_bureau-official-approval_112017.pdf (last visited September 12, 2019).

v 12 U.S. Code § 5531, *et seq.* (2010).

vi Fannie Mae. “Uniform Residential Loan Application: Freddie Mac Form 65, Fannie Mae Form 1003” *Fannie Mae* (2018), 1. Available at: https://www.fanniemae.com/content/guide_form/urla-borrower-information.pdf (last visited September 12, 2019).

vii *Id.* See also FHFA Announces Language Question, *supra* note i.

viii *Id.*

ix See U.S. Census Bureau. “2016 American Community Survey 1-Year Estimates, Table B16001: Language Spoken at Home by Ability to Speak English for the Population 5 years and Over” (2016) (reporting that around 65 million people, about 21 percent of the U.S. population over the age of five years, speak a non-English language; two-fifths of these possess limited proficiency in English). Available at: <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk> (last visited September 12, 2019).