



IMPROVING LANGUAGE ACCESS IN MORTGAGE LENDING AND SERVICING REQUEST FOR INPUT

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Division of Housing Mission and Goals

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I. Introduction

The Federal Housing Finance Agency (FHFA) was established by the Housing and Economic Recovery Act of 2008 (HERA) and is responsible for the effective supervision, regulation, and housing mission oversight of Fannie Mae and Freddie Mac (the Enterprises) and the Federal Home Loan Bank System (collectively the regulated entities).¹ FHFA's mission is to ensure that the regulated entities operate in a safe and sound manner and that they serve as a reliable source of liquidity and funding for housing finance and community investment. Since 2008, FHFA has also served as conservator of the Enterprises.

FHFA's *2017 Scorecard for Fannie Mae, Freddie Mac, and Common Securitization Solutions (2017 Scorecard)* requires the Enterprises to identify major obstacles for borrowers with limited English proficiency (LEP) in accessing mortgage credit, analyze potential solutions, and develop a multi-year plan appropriate for the Enterprises to support improved access.² FHFA is requesting public input on issues faced by qualified LEP borrowers throughout the mortgage life cycle, including mortgage lending and servicing. FHFA seeks to better understand the experiences of these borrowers and the mortgage industry participants who serve them in order to advance FHFA's statutory mandate, which includes supporting access to credit across different market segments to provide homeownership opportunities to creditworthy borrowers.³ FHFA is committed to improving the ability of mortgage-ready borrowers to understand and participate in all facets of the mortgage life cycle, including marketing, origination, servicing, and loss mitigation, regardless of the language they speak.

¹ This Request for Input (RFI) does not address the activities of the Federal Home Loan Bank System.

² <https://www.fhfa.gov/AboutUs/Reports/Pages/2017-Scorecard-for-Fannie-Mae-Freddie-Mac-and-Common-Securitization-Solutions.aspx>

³ 12 USC 4513; *The 2014 Strategic Plan for the Conservatorships of Fannie Mae and Freddie Mac*, Federal Housing Finance Agency, May 13, 2014.



To assist in this effort, FHFA is issuing this Request for Input (RFI) to learn more about the procedures and tools that originators, servicers, and other parties in the mortgage lending process presently employ to assist LEP borrowers, identify existing requirements, including laws and regulations that guide practices for interacting with LEP borrowers, and better understand the challenges in effectively serving this population. FHFA recognizes that the Enterprises, mortgage industry participants, and other government agencies have taken meaningful steps to address language access issues for LEP borrowers and is also mindful of the roles that the Enterprises play in the secondary market, which are distinct from the roles that other industry participants (brokers, lenders, servicers, etc.) have in the primary market. FHFA is seeking input on actions the Enterprises could take, appropriate to their role as secondary market participants, to promote access to mortgage credit for mortgage-ready LEP borrowers and to ensure that LEP borrowers have access to information necessary to understand the mortgage process.⁴

This project aims to build on what has already been accomplished by identifying prudent and feasible next steps for the Enterprises and FHFA to undertake in a multi-year effort. FHFA seeks to understand what is necessary to ensure that translated documents, many of which are currently available, are properly used as assistive tools and that borrowers understand that the mortgage transaction itself will be conducted in English, as is currently the U.S. practice. FHFA also recognizes that with so many languages spoken in the U.S. it would be impractical to try to generate comprehensive solutions for all borrowers in all languages. The project will focus on how to target the provision of services in a practical way that advances services for the most borrowers.

This RFI seeks input related to LEP borrowers. For purposes of this RFI, individuals who have a limited ability, or no ability, to read, speak, write, or understand English are referred to as borrowers with limited English proficiency or LEP borrowers. Individuals who are able to read, speak, write, and understand English but prefer to communicate in a language other than English are referred to as preferred language or PL borrowers. The Enterprises and FHFA believe that addressing issues related to LEP borrowers will typically benefit PL borrowers as well.

⁴ This RFI focuses on single-family mortgages and does not address LEP issues related to other consumer finance products such as automobile loans, credit cards, and student loans.



II. Background

Role of the Enterprises

The Enterprises' primary role in the housing finance market is to provide liquidity to lenders through the purchase and guarantee of mortgages that meet the credit risk criteria of the Enterprises. The purchased loans are either held in portfolio or packaged into mortgage-backed securities for sale to investors. The Enterprises' role as secondary market participants determines the role that they can play in promoting access to the mortgage process for LEP borrowers. The Enterprises, for example, do not originate or service mortgage loans and do not regulate lenders or servicers. They also do not create or enforce applicable laws. However, the Enterprises may set standards and guidelines for their counterparties. Due to their size, resources, and activities, they impact and influence others in the industry. As such, public input regarding the steps that the Enterprises could take to promote access to mortgage credit for LEP borrowers should be mindful of the role of the Enterprises in the secondary mortgage market.

Sizing the LEP Population

The number of LEP individuals and their share of the population in the United States has increased considerably over the past few decades.⁵ According to the most recent American Community Survey, 9 percent of the U.S. population, or over 25 million individuals, are considered LEP.⁶ Among LEP persons in the U.S., 64 percent speak Spanish, 7 percent speak Chinese, 3 percent speak Vietnamese, 2 percent speak Korean, 2 percent speak Tagalog, 2 percent speak Russian, and fewer speak dozens of other languages.⁷

The U.S. Census Bureau's 2014 national projections anticipate that, by 2060, the share of population that is foreign born will grow to 19 percent of the population from about 13 percent today.⁸ Given what U.S. Department of Housing and Urban Development has called the "close nexus between limited English proficiency ('LEP') and national origin,"⁹ it is reasonable to

⁵ Jie Zong and Jeanne Batalova, "The Limited English Proficient Population in the United States," (Migration Policy Institute, 2015).

⁶ Estimates from 2011-2015 American Community Survey: B16001: Language Spoken at Home by Ability to Speak English for the Populations 5 Years and Older. LEP individuals are those that speak English less than very well.

⁷ Id.

⁸ Sandra L. Colby and Jennifer M. Ortman, "Projections of the Size and Composition of the U.S. Population: 2014 to 2060," (U.S. Census Bureau, 2015),

<https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1143.pdf>

⁹ U.S. Department of Housing and Urban Development, "Office of General Counsel Guidance on Fair Housing Act



expect that LEP consumers will constitute a growing share of mortgage borrowers in the coming decades.

LEP Borrower Resources

Various mortgage industry participants have made resources available to improve the mortgage process for LEP/PL borrowers and help existing and future LEP/PL borrowers navigate and understand the mortgage lifecycle. Some originators provide marketing materials and translated loan documents in various LEP languages. Some originators and servicers have processes specific to LEP borrowers, and a large number use third-party language-line providers for phone assistance.

The Enterprises offer information and translated documents, primarily in Spanish, on their respective websites. Both Enterprises offer origination documents in Spanish, including the Uniform Residential Loan Application (URLA),¹⁰ as well as Spanish translations of uniform security instruments (mortgages and deeds of trust), notes, and other origination-related documents.¹¹ Fannie Mae offers a notice that informs borrowers that the transaction will be conducted in English and that translations will be used to assist them in the process,¹² and offers Spanish translations of servicing documents such as the Uniform Borrower Assistance Form (UBAF) and a notice of servicing transfer.¹³ Fannie Mae also requires its servicers to employ multilingual staff to communicate with borrowers whose mortgage loans they service or to make translation services available to these borrowers if applicable.¹⁴ Freddie Mac offers a translated version of the UBAF and the Statement of Assets and Liabilities form in Spanish.¹⁵ Freddie Mac also has general requirements that servicers must help delinquent borrowers explore alternatives to foreclosure and provide counseling that explains potential options.¹⁶

Protections for Persons with Limited English Proficiency,” (2016).

¹⁰ See <https://www.fanniemae.com/singlefamily/spanish-resources-for-lenders> or <http://www.freddie.mac.com/uniform/spanish.html>

¹¹ See <http://www.freddie.mac.com/uniform/spanish.html>, <https://www.fanniemae.com/singlefamily/security-instruments>, or <https://www.fanniemae.com/singlefamily/notes>

¹² <https://www.fanniemae.com/singlefamily/spanish-resources-for-lenders>

¹³ See <https://www.fanniemae.com/singlefamily/spanish-resources-for-servicers>

¹⁴ See Fannie Mae Servicing Guide, "A4-1-01: Staffing, Training, Procedures, and Quality Control Requirements," <https://www.fanniemae.com/content/guide/servicing/a4/1/01.html>

¹⁵ See <http://www.freddie.mac.com/uniform/spanish.html>

¹⁶ See Freddie Mac Servicing Guide, "9102.1: General requirements for Servicing delinquent Mortgages," <http://www.freddie.mac.com/singlefamily/guide/bulletins/pdf/032217Guide.pdf>



Federal government agencies have also translated a number of key loan documents and taken other steps to support LEP borrowers. For example, the Consumer Financial Protection Bureau (CFPB) website, which can be accessed from links on the Enterprises' websites, contains several documents translated into Spanish, including the loan estimate, closing disclosure, and home loan toolkit.¹⁷ CFPB also is able to offer assistance to LEP individuals in more than 180 languages through its complaint hotline. The Federal Housing Administration requires its mortgagees to provide information to delinquent borrowers about language access services that they offer and has produced Spanish, Chinese, and Vietnamese translations of its "Save Your Home: Tips to Avoid Foreclosure" brochure.¹⁸

While these resources are helpful, FHFA continues to hear from a variety of stakeholders that limited English proficiency negatively impacts access to credit and that there is a need for more services in this area.¹⁹ Additionally, FHFA and Enterprise interviews of a limited sample of LEP borrowers suggest there are language, educational, and cultural barriers that impact access to credit.

LEP Borrower Challenges

Borrowers with limited English proficiency face many challenges, including comprehension of mortgage terms within the transaction itself, understanding communications from their loan servicer about the status of their loan, and identifying options if they encounter difficulties making their mortgage payment. Qualified borrowers may avoid applying for a mortgage due to concerns with conducting the transaction in English. Conversely, some LEP borrowers might rely too heavily on others who are not sufficiently familiar with the mortgage process to accurately translate conversations, mortgage documents, concepts, and terms. In addition, while there are currently resources for LEP borrowers, many borrowers are either unaware of their location or existence. LEP borrowers may be at increased risk of being steered into a predatory loan and in turn, may have difficulty navigating possible loss mitigation options if they fall behind on mortgage payments.²⁰

¹⁷ See <https://www.consumerfinance.gov/es/>

¹⁸ FHA Single Family Housing Policy Handbook (2016), 4000.1, Section III.A.2.h; https://portal.hud.gov/hudportal/HUD?src=/topics/avoiding_foreclosure

¹⁹ Letter to FHFA from the National Housing Resource Center, The Leadership Conference on Civil and Human Rights, and Americans for Financial Reform et. al, March 23, 2016; Mortgage Bankers Association, "Language Access in Mortgage Banking," <https://www.mba.org/issues/residential-issues/language-access-in-mortgage-banking>

²⁰ Americans for Financial Reform, "Barriers to Language Access in the Housing Market: Stories from the Field,"



Originators and servicers cite uncertainty about how they can provide services or resources in languages other than English without taking on additional legal risk or incurring regulatory consequences, as well as concerns over the costs of providing these services. Facilitating mortgage origination and servicing interactions in languages other than English is made more difficult by the many languages and language dialects spoken in the United States. Translation services or resources must be technically accurate as well as understandable by the borrower, and they must be provided in a way that does not create unrealistic borrower expectations or discourage borrowers. There are indications that lenders and servicers, like borrowers, may be unaware of resources or services currently available to help them communicate in languages other than English. Addressing these many needs may require investment in systems, processes, or trained personnel.

Project Approach

Consumer, civil rights organizations, and other organizations raised concerns with FHFA about the availability of mortgage services to support LEP/PL borrowers. These organizations reported that servicers often do not communicate effectively with LEP borrowers who were delinquent or facing foreclosure because they often did not know the language of the borrower. To address these concerns, in 2016 the Enterprises and FHFA considered including a question about borrower language preference in the URLA that could enable lenders and servicers to identify the language preference of their borrowers and potentially communicate with them in that language. The mortgage industry expressed concerns with the operational and legal implications of collecting such information. Ultimately, FHFA decided not to include the question at that time and, instead, decided to examine this issue more broadly.

In addition, FHFA and the Enterprises are taking a number of other steps to gather information about issues facing LEP borrowers, experiences of mortgage industry participants in serving LEP borrowers, and options for improving language assistance for LEP borrowers. FHFA and the Enterprises are conducting individual borrower interviews and focus groups as well as industry and stakeholder outreach on issues related to LEP borrowers. FHFA has also reviewed existing research and is gathering data on the experience of LEP borrowers by including questions on the *National Survey of Mortgage Originations* and the *American Survey of Mortgage Borrowers*.²¹ The information that FHFA and the Enterprises gather through this RFI and related efforts will

May 2016.

²¹ <https://www.fhfa.gov/Homeownersbuyer/Pages/National-Survey-of-Mortgage-Originations.aspx>



help inform additional steps that could potentially be taken to further support LEP borrowers and the mortgage industry's ability to serve them throughout the mortgage life cycle.

III. Legal Issues

Any steps taken to improve language access must be developed in a way that complies with applicable Federal and state legal and regulatory requirements. FHFA encourages commenters to provide input on these requirements and to identify any other relevant requirements that should be considered.

Mortgage industry participants are required to comply with applicable Federal and state laws throughout the mortgage life cycle. These requirements include treating LEP borrowers fairly throughout the mortgage origination process and the mortgage servicing process under Federal and state fair lending laws, as well as Federal and state laws prohibiting unfair, deceptive, or abusive acts and practices. In addition, a number of states have adopted specific requirements for certain transactions involving LEP borrowers. For example, in mortgage transactions, California law generally requires certain disclosures to be provided in the borrower's language if a transaction was negotiated in certain languages other than English.²²

This RFI solicits input on whether there are other applicable laws or regulations that FHFA and the Enterprises should consider and how FHFA can ensure that any actions taken do not conflict with an originator's and servicer's ability to comply with applicable Federal and state law. This RFI also solicits input on whether particular actions to promote language access would potentially trigger liability under Federal or state law. FHFA similarly would be interested in knowing if there are gaps in the current regulatory structure that impact how lenders and servicers interact with LEP borrowers.

IV. Key Principles in Considering Next Steps

This section provides a discussion of principles and considerations to aid stakeholders in providing feedback.

FHFA believes there are steps that it and the Enterprises can undertake to assist the mortgage industry in addressing the challenges of serving LEP borrowers. Given its understanding of

²² See Cal. Civ. Code § 1632



these challenges, FHFA has identified the following key principles to guide development of appropriate next steps:

- **Work within the existing legal and regulatory structure.**
- **Identify and support actions for the most prevalent languages for LEP borrowers.**
- **Identify and support actions that address the most critical needs of LEP borrowers.**
- **Ensure proposed solutions do not create unrealistic borrower expectations for services or documents.**
- **Coordinate actions with industry stakeholders (including originators, servicers, technology providers, vendors, consumer advocates, and counselors) and government agencies to avoid or mitigate any market disruption.**

V. Questions

The following sections present a number of questions that FHFA considers important to the effort to improve language access for mortgage-ready borrowers. FHFA welcomes public input on these questions as well as any of the issues discussed in this RFI.

A. Existing Processes and Tools

FHFA is requesting information on existing processes that assist potential and qualified borrowers with limited English proficiency. Mortgage industry participants leverage bilingual staff, translated documents, and language translation vendors to facilitate mortgage transactions during origination and servicing. Better understanding of current operational processes may allow the sharing of best practices and constraints across the industry.

Question A1: What processes and tools are in use today by originators and/or servicers to facilitate the origination and servicing of mortgages for LEP/PL borrowers? Who develops these tools? Are they fully utilized and, if not, why? How could these processes and tools be improved?

Question A2: What processes and tools are in use today by other mortgage industry



participants (such as real estate agents, housing counselors, nonprofit consumer advocates, and vendors) to facilitate transactions with LEP borrowers? Who develops these tools? Are they fully utilized and, if not, why? How could these processes and tools be improved?

Question A3: How and when do originators, servicers, and other mortgage industry participants typically learn a borrower has limited English proficiency?

Question A4: To what extent are existing translated documents used by the industry? Are they useful? How are they used? What could increase their usage? Are more translations needed (i.e., translations into more languages or translations of more documents)? Who should develop these translations? Where should these documents be housed?

Question A5: To what extent do originators and servicers use bilingual staff or translation services to assist LEP/PL borrowers? If so, how well does this work? How can these efforts be supported?

B. Current Barriers to Address Language Access

FHFA understands that LEP borrowers may have difficulties accessing mortgage services in languages other than English and seeks to identify appropriate measures to improve access to the mortgage lending process.

Question B1: What are the most significant barriers that exist for LEP individuals in gaining access to the mortgage lending process? Are these barriers also applicable to PL borrowers? Please address the entire mortgage life cycle (from the marketing phase through origination and servicing) in your response.

Question B2: Please identify any practices that could be particularly effective in ensuring LEP borrowers can understand and participate in the mortgage process.

Question B3: Are mortgage industry participants fully aware of the existing services and materials available to assist LEP borrowers? Would public education measures (including measures targeted to lenders and servicers) be useful in connecting LEP borrowers to the services and materials available? What methods of outreach would work best for LEP borrowers (radio,



television, social media, etc)?

C. Potential Actions to Improve Language Access – Short Term

FHFA recognizes that process improvement recommendations may be limited or extended in duration depending on operational, legal, and system impacts. FHFA seeks input on potential short-term recommendations (with implementation cycles of less than 18 months) that may allow the industry to make significant improvements in the near future.

During FHFA's initial explorations of potential approaches to improving language access, the following have been proposed by various entities as potentially useful measures. FHFA presents these ideas to aid stakeholders in providing feedback on potential improvement measures and encourages suggestions of other actions for consideration.

- Translation of additional origination and/or servicing documents into languages commonly spoken by LEP borrowers. This could include translating consumer-facing documents presently translated into Spanish into other languages.
- Enterprise support for language translation services (e.g., updates to guide requirements).
- Creation of a centralized clearinghouse of resources to serve LEP borrowers.
- Increase awareness of multi-lingual nonprofit housing counselors and/or funding for language translation services by nonprofit housing counselors.
- Public education measures to enhance borrower and industry knowledge.
- Additional translations of glossaries or tools (or creation of new tools) that help borrowers navigate and understand the mortgage process.
- Publication (by FHFA and the Enterprises, or in concert with others) of originator and servicer best practices for serving LEP borrowers.
- Development of an interagency working group to address and provide guidance on how mortgage industry participants should work with LEP/PL borrowers.

Question C1: Please provide input on whether particular measures described above should or should not be considered for FHFA and the Enterprises to undertake to improve language access and explain why? Which measures



should be given top priority and why?

- Question C2: Please identify any other short-term practices or actions that FHFA and the Enterprises could take to assist originators and servicers that may improve understanding and assist borrowers in their preferred language?
- Question C3: Are there short-term actions that originators and servicers could take to improve understanding and assist borrowers in their preferred language?
- Question C4: Are there short-term actions that may assist other mortgage industry participants in serving borrowers in their preferred language?
- Question C5: If these short-term actions target borrowers who speak particular languages, what should those languages be?
- Question C6: Would the development of a clearinghouse of LEP resources be useful? If yes, who should develop and fund it? Where should the information be located to be most easily retrievable by LEP borrowers and industry participants?
- Question C7: Should greater emphasis be placed on providing borrowers with language translation services? Who should provide such services? How should the provision of these services be funded? How should borrowers be informed or directed to such services?
- Question C8: What are the potential costs in time and money of these measures? If desirable, how should they be funded?
- Question C9: What other specific actions could FHFA and the Enterprises take, alone or in concert with others, that could be implemented in the short-term?

D. Potential Actions to Improve Language Access – Long Term

FHFA recognizes that some process improvement recommendations may involve extensive efforts over an extended duration depending on the operational, legal, and system impacts. FHFA seeks input on potential long-term actions (with implementation timelines greater than 18 months) that may allow the industry to take effective long-term improvement actions.



Data Tracking

FHFA is aware that some participants in the mortgage process track borrower language preference, but that this data may not be incorporated into automated loan origination or servicing systems, or communicated between an originator and a loan's servicer(s). The Enterprises could consider whether to facilitate the standardization and tracking of this data through the Uniform Mortgage Data Program.

Data on borrower language preference could be collected using a standard industry form that is designed by the Enterprises, such as the URLA, an addendum to the URLA, and/or the UBAF. If FHFA and the Enterprises were to include a question on language preference, the question would be designed with the objective that it not discourage borrowers, not create new obligations or liabilities for the originator, servicer, or other parties, not create new rights for borrowers, and not create borrower expectations that the transaction will occur in a language other than English.

Question D1: Does your organization track borrower language? What data are currently tracked? What purpose does the collection of the data serve? How is the data collected, tracked, reported, and used? Does your organization share the data, and if so with whom? Have you encountered any legal issues associated with the collection of that data?

Question D2: Would it be useful to collect data on borrower language preference in a standardized manner, integrate data into standardized origination and servicing data, and track data for the life of a loan? How might you make use of such information?



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- Question D3: If collected, does technology exist to move language preference data from origination to servicing systems, and between servicing systems when a loan is sold? If yes, which systems are used to accomplish this, and are they proprietary or third party systems? If no, what would need to be done to enable the transfer, in a standardized way, from origination to servicing? What are the operational barriers to tracking new data elements in origination and servicing systems?
- Question D4: Does collecting information about borrower language preference trigger any additional (beyond what would otherwise exist) legal obligations or potential liability under state or Federal laws? Please identify specific legal provisions. Is it possible to mitigate these legal risks by framing the collection in a particular way?
- Question D5: If a decision were made to collect borrower language preference, how should such information be collected? Where and when in the origination process and servicing process should it be added? What data other than language preference might be useful to collect and why?
- Question D6: Would LEP/PL borrowers be uncomfortable with answering a question about their preferred language? If so, how should this be weighed in considering whether to collect data on language preference?
- Question D7: If a language preference question were to be asked on a standardized form, would the version below address relevant concerns? If not, why? What else might you suggest as an alternative or improvement?

Please mark the language you would prefer for communications about your loan (if available):

- ☐ English ☐ Chinese ☐ Korean
☐ Spanish ☐ Tagalog ☐ Vietnamese
☐ Other: _____

By law, your answer will NOT affect your mortgage application. Your answer does not commit the Lender or Other Loan Participants 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.



Other Long Term Options

- Question D8: Are there other long-term actions FHFA and the Enterprises could take, alone or in concert with others, that would help originators and servicers in assisting LEP borrowers?
- Question D9: Please identify any other long-term practices or actions that originators, servicers, and other mortgage participants could take to ensure that LEP borrowers understand and participate in the mortgage process.
- Question D10: What are possible improvements to originator, servicer, and other mortgage industry participants' customer service activities to further assist LEP/PL borrowers? What are the potential costs in time and money of the proposed improvements?
- Question D11: What emerging technologies such as apps, artificial intelligence, optical recognition, etc., exist that could address some of the challenges faced by the mortgage industry and LEP borrowers?
- Question D12: Are there practices used by other sectors (e.g., health care, transportation) to address limited English proficiency that could be applicable to the mortgage industry?

E. Legal, Regulatory, and Other Impacts

FHFA recognizes that process improvements may entail legal and regulatory risks and that it is necessary to ensure that new measures do not conflict with state or federal laws or regulatory requirements.

- Question E1: Are there legal or regulatory obligations FHFA should be aware of as it considers recommendations on enhancing processes for the borrower's preferred language? Are there any gaps in the current legal or regulatory structures that, if addressed by the appropriate Federal or state agency could facilitate originators and servicers working with LEP borrowers?



Question E2: Would implementation of any of these specific actions trigger additional requirements or potential liability under state or Federal laws? Please explain how with specific reference to the laws at issue. Are there ways that FHFA or the Enterprises could mitigate these legal risks?

Question E3: Are there additional risks FHFA should consider?

VI. Public Input Instructions

FHFA invites interested parties to provide written input on the questions listed above within 45 days of the publication of this document, no later than Monday, July 10, 2017. FHFA also invites additional input on the topics discussed in this document that are not directly responsive to these questions. Please submit all responses to the Federal Housing Finance Agency, Office of Housing and Regulatory Policy, 400 7th Street, S.W., 9th floor, Washington, D.C., 20219. Input may also be submitted electronically using a response form at FHFA.gov. All input received will be made public and posted without redaction to FHFA's website.

