

IN TRANSLATION FOR THE LATINO MARKET TODAY: ACKNOWLEDGING THE RIGHTS OF CONSUMERS IN A MULTILINGUAL HOUSING MARKET

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The Federal Truth in Lending Act (TILA) requires lenders to disclose the full cost of credit to borrowers. In the case of linguistic minorities, California law goes one step further. Under California Civil Code section 1632, lenders are required to provide unexecuted translations of loan documents to consumers whose language of proficiency is Spanish, Chinese, Tagalog, Vietnamese, or Korean. Recently, the Northern District Court of California has read this language to apply to mortgage loans originated by real estate brokers. This Article considers the needs of consumers in a multilingual housing market and then offers a sketch of California Civil Code section 1632, which is important consumer protection legislation. Despite its technical uncertainties (and there are a few), section 1632 represents an important step toward affirming the economic, legal, and civil rights of consumers who, by virtue of their language proficiencies, are vulnerable in credit markets.

THE LATINO MARKET TODAY: WORKING TOWARD ECONOMIC INCLUSION

The most recent housing boom unleashed a variety of new mortgage products on consumers.¹ Of particular use to and by Latino consumers were adjustable rate mortgages (ARMs) and individual tax identification number mortgages (ITINs). ARMs are different in function and risk than fixed rate mortgages (FRMs), though both types of mortgage products are typically collateralized by the buyer's home. But unlike ARMs, which adjust in accordance with market indices, ITIN mortgages are a higher interest rate variant of a fixed rate product.

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¹ See, e.g., *A Long Runway for the Soft Landing*, UCLA ANDERSON FORECAST, Apr. 2, 2007, at Nation-11 (citing Lehman Brothers' "Characteristics of the Mortgage Market 2001 vs. 2006" report). According to the Lehman Brothers' analysis, use of subprime mortgages increased from 6.3% in 2000 to 14.0% in 2006; use of interest-only/negative amortization loans increased from 2.0% in 2000 to 26.0% in 2006; use of loans with loan-to-total values in excess of 90% increased from 4.8% in 2000 to 14.7% in 2006; and limited documentation products increased from 7.0% in 2000 to 20.0% in 2006. *Id.*

During this most recent housing boom, ARMs were marketed to a particular set of consumers: those who lacked a meaningful cash down payment; those who had a compromised credit score; those who intended to stay in the property for a short-term period; or those who wanted the bargain of the initial ARM rate but who planned to refinance as the ARM adjusted upward.² FRMs, by comparison, were and still are marketed to buyers who can afford a traditional, twenty percent cash down payment and who have solid credit scores. In terms of minimizing default risk over time, FRMs are generally preferable to ARMs because, with an FRM, a buyer can finance a real estate purchase at both a fixed interest and a fixed payment rate over the life of the mortgage, a practice popularized by building and loan associations in the late 1800s.³ Thus the least costly mortgage product over time, from a consumer's point of view, is an FRM that finances eighty percent of a house purchase, with payments amortized from the first to the last month.⁴

ITINs are specialized, fixed-rate products of particular interest because they are designed to reach the immigrant house buyer.⁵ Consumers can qualify for the ITIN product on either a traditional or non-traditional demonstration of creditworthiness.⁶ Whereas a financially established Latino consumer will tend to rely on more traditional markers of creditworthiness, including credit card payments, mortgage payments, and home equity loan payments, a less financially established Latino consumer in the United States might need to rely on novel measures of creditworthiness. These methods include proof of tax payments (as tracked by an individual tax identification number rather than a Social Security number (SSN)) and proof of on-time recurring payments of bills like rent, day care, and utilities for a period of at least one year.⁷ The fact that ITIN consumers also tend to be foreign-born immigrants who lack SSNs is of little or no consequence to the lenders. Until the recent and acute outbreak of anti-immigrant sentiment in the

² See Jo Carrillo, *Dangerous Loans: Consumer Challenges to Adjustable Rate Mortgages*, 5 BERKELEY BUS. L.J. (forthcoming 2008).

³ See LENDOL CALDER, FINANCING THE AMERICAN DREAM: A CULTURAL HISTORY OF CONSUMER CREDIT 64-69 (1999) (detailing how purchases of homes in the late nineteenth century, like today, were typically made with borrowed funds).

⁴ Financing eighty percent of the purchase avoids the additional cost to a borrower of private mortgage insurance (PMI). See, e.g., *The Basics of Private Mortgage Insurance (PMI)*, BANKRATE.COM, June 1, 2001, <http://www.bankrate.com/brm/news/mtg/20010601b.asp>.

⁵ Miriam Jordan, *Unlikely Mortgage Winner—Illegal Immigrant Loans Have Been Solid Bets; Threats are Looming*, WALL ST. J., Oct. 9, 2007, at C1 (stating that ITIN mortgages “represent a fraction of the \$2.8 trillion mortgage market”).

⁶ See, e.g., Preferred Non-Traditional Credit Reporting Service (PRBC), <http://prbc.com/consumers/how/mortgage.php> (last visited Mar. 2, 2008). PRBC allows a credit file to be created from bill payment histories based on recurring payments like rent, utilities, phone, cable, insurance, and daycare. PRBC customers need only produce a name, address, and Social Security number or individual tax identification number to start the PRBC process, which at this time is confidential. Moreover, PRBC credit reports are accepted by the FHA, Fannie Mae, and Freddie Mac. *Id.*

⁷ *Id.*

United States, some regional and national banks regarded ITIN mortgages as an important part of the emerging banking market.⁸

Indeed, as defaults rise and housing sales and prices decline in 2008 it will soon be possible to analyze the performance of ARMs and ITINs nationally. Both products were marketed to and used by Latino homeowners in this most recent housing boom.⁹ Banks like Solera National Bank,¹⁰ MGIC Investment,¹¹ Mitchell Bank,¹² and Wells Fargo¹³ have provided these products and in so doing affirmed their nascent commitment to the contemporary Latino market, comprised as it is of foreign and native-born, and Spanish and English proficient consumers.¹⁴ Other banks, like Bank of

⁸ See Jordan, *supra* note 5, at C1 (quoting Scott Hastings, Director of Marketing for Citizens Home Loan Inc., a North Carolina-based lender active in thirty states with twenty percent of its loans in ITIN mortgages, as saying, “Our default level is almost zero It’s an absolutely promising market. These Hispanic families will pay their mortgage before anything else,” and noting that “ITIN-mortgage applicants are largely blue-collar, illegal-immigrant workers with only modest incomes. But they undergo more scrutiny—and provide more documentation—than candidates for stated-income mortgages and other subprime loans, for example. Most banks also ask applicants to show they have been filing taxes—with an ITIN—for at least two years.”); Robin Sidel, *Banks Court Illegal Immigrants with Loans: Mortgages Are Offered As Growing Trend Sparks Reluctance, Criticism*, WALL ST. J., May 3, 2007, at C1.

⁹ See Miriam Jordan, *Legal and Illegal, Welcome: Small Banks for Latinos Move into the Void, Serve a Hungry Market*, WALL ST. J., Nov. 10, 2007, at B1; see also Michael Frias, *Linking International Remittance Flows to Financial Services: Tapping the Latino Immigrant Market*, SUPERVISORY INSIGHTS, Winter 2004, at 17, 20, available at <http://www.fdic.gov/regulations/examinations/supervisory/insights/siwin04/siwin04.pdf> (noting how the provision of one bank service to a bank customer can lead to the provision of other basic (savings and checking accounts) and advanced (mortgages) bank services, and noting that in the Midwestern United States, Wells Fargo opened up 400,000 accounts to clients holding *Matricula Consular* cards (Mexican issued identification cards) in the period from November 2001 to May 2004, with an average of 22,000 new accounts per month in 2004).

¹⁰ See, e.g., Renee McGraw, *Solera Bank Aims for Hispanic Biz*, DENV. BUS. J., Apr. 14, 2006, available at <http://denver.bizjournals.com/denver/stories/2006/04/17/story2.html>.

¹¹ See MGIC Homeownership Today, <http://www.mgic.com/emergingmkt/emgmktoverview.html> (last visited Feb. 23, 2008). MGIC states its emerging markets purpose as follows: “Our Emerging Markets programs and offerings focus on serving the needs of the nation’s ‘underhoused’ populations. MGIC defines emerging markets as households that are lower-income, minority, younger, disabled, and/or immigrant. This also includes people who might benefit from programs designed to address issues of fairness, affordability, and access to market-cost home loans.” *Id.*

¹² See, e.g., Mitchell Bank, http://www.mitchellbank.com/l_mortgage.htm (last visited Feb. 23, 2008). Mitchell Bank is a locally-owned bank in Wisconsin that equates mortgage lending with community investing. *Id.*

¹³ See, e.g., News Release, Wells Fargo, Wells Fargo Provides an Online Financial Resource Center to the Fastest Growing Population in the United States With the Launch of Servicios en Español (Oct. 15, 2002) (identifying the Latino community as the third-largest ethnic group on-line), available at <https://www.wellsfargo.com/press/Serviciosenespanol10152002>.

¹⁴ See Martin J. Gruenberg, Vice Chairman, Fed. Deposit Ins. Corp., Remarks at the Symposium on Banking the Latino Market (Oct. 16, 2006) (discussing banking opportunities in the Latino community in four key areas: (1) education for those customers transitioning from the cash economy; (2) basic banking services like checking and savings accounts; (3) advanced banking services like mortgages, personal, and business loans; and (4) services for the affluent Latino customer), available at http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1606_1.html.

America, reached out to the immigrant community only to retract in the face of criticism from anti-immigrant sectors.¹⁵

Nevertheless, the trend is clear. In a country where Latinos number 40 million today and are projected to number 100 million by 2030, there is an emergent primary mortgage market (bank to consumer) that is underserved.¹⁶ There is also a profitable secondary mortgage market (bank to investor) that supports the use of ITINs for immigrant consumers. For example, the for-profit Hispanic National Mortgage Association (Hannie Mae) buys ITIN loans from lenders who service the Latino community, and then packages those loans into securities.¹⁷ Hannie Mae, which is backed on this project by Deutsche Bank,¹⁸ projects that the \$2 billion in loans generated thus far will grow to \$85 billion in loans to Latinos by mid-century.¹⁹ Therefore, whether this emergent market is embraced by MGIC (which notes that “where there is growth there is opportunity”²⁰) or Wells Fargo (which waxes euphemistically about its commitment to “the Latino market today”²¹) the message cannot be ignored. Latino consumers are an important emerging market for the banking, lending, and investing industries and, as consumers, Latinos are in need of a “Hispanic-centric approach” to marketing, banking, lending, and the legal protection of hard earned assets.²²

¹⁵ See Jordan, *supra* note 9, at B1 (reporting on criticism Bank of America faced from customers when it issued a credit card for undocumented immigrants early in 2007); see also Daniel B. Wood, *Bank's Credit Cards for Noncitizens Raise Ire*, CHRISTIAN SCI. MONITOR, Mar. 13, 2007, at USA 2; Daniel B. Wood, *The American Dream Is . . . in the cards: Critics: Credit Cards Help Keep Undocumented Workers in U.S.*, CHI. SUN TIMES, Mar. 14, 2007, at Daily Controversy 6 (describing the immigration controversy that erupted when Bank of America tested a credit card that does not require a Social Security number in California).

¹⁶ PEW HISPANIC CTR., TABLE 12: HISPANIC POPULATION BY STATE: 2006, available at <http://pewhispanic.org/files/factsheets/hispanics2006/Table-12.pdf>.

¹⁷ Hispanic National Mortgage Association, About HNMA, <http://www.hnma.com/about-hnma.html> (last visited Feb. 23, 2008).

¹⁸ See News Release, Deutsche Bank, Deutsche Bank Completes Acquisition of Mortgage IT Holdings (Jan. 3, 2008) (announcing that Deutsche Bank has “entered into a joint venture with the Hispanic National Mortgage Association to provide loans to Hispanic and immigrant borrowers” in the United States), available at http://www.db.com/ir/en/content/ir_releases_5502.htm?dbquery=1%3AHispanic+Mortgage+Association.

¹⁹ See Jordan, *supra* note 9, at B1 (quoting HNMA-provided figures).

²⁰ MGIC Homeownership Today, *supra* note 11.

²¹ News Release, Wells Fargo, *supra* note 13.

²² See, e.g., CapturaGroup, <http://www.capturagroup.com/case-study2.html> (last visited Mar. 2, 2008) (referencing Hispanic-centered services); Ilumina Mortgage, <http://www.iluminamortgage.com/english/about.shtml> (last visited Mar. 2, 2008) (stating that “HNMA believes that the mortgage industry as a whole has not been responsive to [Hispanics’] needs, thus limiting their access to credit and other homeownership opportunities.”); see also Hispanic National Mortgage Association, HNMA Retail, <http://www.hnma.com/hnma-retail.html> (last visited Feb. 23, 2008) (“Ilumina is a retail mortgage origination company jointly owned by HNMA and Wells Fargo with the mission of addressing the unmet needs of the Hispanic borrower with a differentiated and Hispanic-centric approach to mortgage lending. Ilumina combines the mortgage experience, industrial strength, infrastructure and reputation of Wells Fargo with the cultural understanding, community credibility, commitment and Hispanic strategies of HNMA. Ilumina will transform the mortgage experience for millions of Hispanic borrowers across the U.S.”).

But to effectively service the Latino market today, the *type* of mortgage product available—ARM versus ITIN—is key to both consumer and investor success. Clearly, in light of the current mortgage crisis “there is little [investor] appetite to take on what appears to be a risky asset.”²³ Yet open-minded patience promises big rewards for investors if one considers that foreign and native-born Latinos are an upwardly mobile group, many of whose individual members are interested in business generation and thus are in need of personal and business banking services.²⁴ Additionally, whereas U.S. born Latinos might focus on civil rights and racism, immigrant and first generation Latinos are just as sensitive to important economic lessons from their countries of origin—lessons on devaluation, high inflation, debt defaults, confiscation of assets (including bank deposits), and the widespread unavailability of credit.²⁵ Of the 40 million Latino/Hispanics in the United States today, the Federal Deposit Insurance Corporation estimates that approximately 13 million do not have an account at a federally insured financial institution,²⁶ leaving about 12 million of these Latino consumers to deal almost exclusively in cash.²⁷ Despite these significant barriers to inclusion in the U.S. economic mainstream, the Latino population as a whole is working toward economic inclusion. The Pew Hispanic Center reported, for example, that in the past decade (1995–2005), while wages declined overall, the percentage of low-income Latino immigrants declined while that of low-middle, middle, and high-middle income earners rose.²⁸

Additionally, over the last half-decade home ownership rates among self-identified Latinos in the United States, a group that includes foreign and native-born Latinos, and thus immigrants (documented and undocumented) and U.S. citizens, rose from 46% in 2000 to 48.3% in 2005.²⁹ There are competing ways to read this figure. Compared to homeownership rates generally, which are at 69%, the 48% Latino-only homeownership rate is low, indicating that significant barriers to homeownership still exist for Latinos.³⁰

²³ Jordan, *supra* note 5, at C1.

²⁴ See Gruenberg, *supra* note 14.

²⁵ See Hispanic National Mortgage Association, Barriers to Hispanic Homeownership, <http://www.hnma.com/barriers-to-hispanic-homeownership.html> (last visited Feb 23, 2008).

²⁶ See, e.g., Frias, *supra* note 9, at 17, 19.

²⁷ *Id.* at 18; see also Gruenberg, *supra* note 14.

²⁸ See Jordan, *supra* note 9, at B1 (citing Pew Hispanic Center statistics); RAKESH KOCHHAR, PEW HISPANIC CTR., JOBS LOST, JOBS GAINED: THE LATINO EXPERIENCE IN RECESSION AND RECOVERY (2003), available at <http://pewhispanic.org/files/reports/21.pdf>; RAKESH KOCHHAR, PEW HISPANIC CTR., THE WEALTH OF HISPANIC HOUSEHOLDS, 1996–2002 (2004), available at <http://pewhispanic.org/files/reports/34.pdf>.

²⁹ This increase in homeownership rates was seen in some, but not all, minority groups. See, e.g., BETSY GUZMAN, THE HISPANIC POPULATION: CENSUS 2000 BRIEF (2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-3.pdf> (showing 2000 U.S. Latino or Hispanic homeownership at forty-six percent); U.S. CENSUS BUREAU, HOUSING VACANCIES AND HOME OWNERSHIP (2007), available at <http://www.census.gov/hhes/www/housing/hvs/annual07/ann07t20.html> (showing a rise in Hispanic or Latino home ownership from 42.1% in 1995 to 49.5% in 2005 and a rise in Black homeownership from 42.7% in 1995 to 48.2% in 2005).

³⁰ See also Jo Carrillo, *Irregularities in Mortgage Disclosures: Classwide Rescission Under the Truth in Lending Act*, 25 CAL. REAL PROP. J. 3, 3 (2007) (analyzing risk from new

But compared to projections for the continued growth of the Latino population, a 48% homeownership rate, though low, coupled with Latino upward mobility suggests that this percentage will increase over time, especially given that the Latino population is the fastest growing minority group in the United States today due to immigration, higher than average birth rates, and a high concentration of workers who, on average, are ten years younger than the U.S. population as a whole.³¹

As an emerging market sector, then, the Latino population is broad-based. It runs the gamut from newly arrived immigrants to Mexican-Americans whose nineteenth century ancestors' property rights were guaranteed under the 1848 Treaty of Guadalupe.³² It is a population in need of basic banking education at the cash economy end of the spectrum and advanced banking services at the affluent end of the spectrum. It is a population that is at once excluded from and included in the mainstream credit market. Its representatives hail from all parts of the United States and the Spanish-speaking world. While Latinos too often get treated as a monolithic, essentializable group by those who have little or no knowledge of the Latino experience, in actuality the Hispanic/Latino population is a multi-national, multi-racial, multi-ethnic, multi-cultural, multi-religious and, most importantly for this analysis, multi-lingual population.³³ As a group, Latinos in the United States might be likened to Europeans in the United States in the sense that whether one's country of origin is England or France can make a difference to one's cultural identity, just as whether one's country of origin is Mexico, Nicaragua, Guatemala, Chile, or the United States can make a difference to one's Latino/Hispanic identity.

In conclusion, the Latino market today—Wells Fargo's euphemism for native and foreign-born Latino consumers—is big business.³⁴ Latinos are reported to control \$700 billion of consumer spending power, a figure expected to “grow at 8% annually until 2010, [at] a rate of growth significantly higher than that of the general population.”³⁵ More and more banks

lending products to new homeowners and suggesting that the homeownership rate is subject to decrease as well as increase).

³¹ Hispanic National Mortgage Association, *The Hispanic Market*, <http://www.hnma.com/the-hispanic-market.html> (last visited Feb. 23, 2008).

³² See, e.g., Guadalupe T. Luna, “*This Land Belongs to Me: Chicanas, Land Grant Adjudication, and the Treaty of Guadalupe Hidalgo*,” 3 HARV. LATINO L. REV. 115 (2000); see also LAURA E. GÓMEZ, *MANIFEST DESTINIES: MAKING OF THE MEXICAN AMERICAN RACE* (2007) (examining history of Mexican-Americans in the United States through the turn of the twentieth century).

³³ Advertisers are beginning to take note of the subtleties of identity in the Latino community, as is the Census, which in some data separates the Latino population by country of origin and race. See, e.g., Stephanie Kang, *Advertising: Pitches to Hispanics Get More Nuanced*, WALL ST. J., Jan. 8, 2008, at B7 (citing an MRM Worldwide study of average hours spent weekly on different forms of media by first generation and second generation Hispanics in the United States, with watching TV and personal Internet use topping the list for both generations).

³⁴ See News Release, *supra* note 13 (highlighting Wells Fargo's commitment to “the Latino community today”).

³⁵ Hispanic National Mortgage Association, *supra* note 28.

have already expressed an intention to provide financial services to Latino consumers in culturally relevant Hispanic-centered ways, and they have expressed an additional commitment to provide those services in the consumer's language of comfort. According to Wells Fargo, a large national bank, "7.6 million Latinos accessed the Internet in June [2002], jumping 13 percent year-over-year as compared to 6.7 million the previous year, making Latinos the third largest ethnic group online,"³⁶ and "Latino [owned] businesses (in Los Angeles alone) . . . increased by 96 percent in the last decade."³⁷ FDIC Vice Chairman Martin J. Gruenberg presented consistent information in a symposium on banking services and the Latino population in 2006 when he noted, "as the Latino population grows, Latino-owned businesses grow with it, averaging three times the national growth rate for all businesses between 1997 and 2002."³⁸ Based on this information, regional and national banks (like Wells Fargo) have teamed up with Hannie Mae, which is backed (as mentioned above) by Deutsche Bank, to provide services (in Spanish and/or English) for Latino consumers.³⁹

Without a doubt, the Latino population's growth, purchasing power, perceived work ethic, and perceived commitment to family and home has grabbed the attention of the banking and lending industries. This is true across the Latino socio-economic (class) spectrum. Additionally, even though foreclosure rates for ARMs are currently high and climbing, ITIN-mortgage foreclosure rates remain low. According to one bank analyst, by the third quarter of 2007, subprime (ARM) foreclosure rates were 9.3%, prime market foreclosure rates were 1%, and ITIN-mortgage delinquency rates were an astonishingly low 0.5%.⁴⁰ In stating support for ITINs, the same analyst stressed that the "default level [on ITIN-mortgages] is almost zero [It is] an absolutely promising market. These Hispanic families will pay their mortgage before anything else."⁴¹

There is no doubt that the American Dream lives in Latino homes in the United States today,⁴² even though racism against Latinos in the United States is of concern to Latinos generally.⁴³ There is no question that this population's full economic inclusion in the U.S. economy will happen. And it is abundantly clear that the goods and service providers who orient themselves to the Latino consumer will profit. For, despite prejudice and anti-immigrant sentiment aimed indiscriminately at all segments of the Latino

³⁶ See News Release, *supra* note 13.

³⁷ *Id.*

³⁸ See Gruenberg, *supra* note 14 (citing U.S. CENSUS BUREAU, GROWTH OF HISPANIC-OWNED BUSINESSES TRIPLES THE NATIONAL AVERAGE (2006)).

³⁹ See Ilumina Mortgage, *supra* note 22.

⁴⁰ See Jordan, *supra* note 5, at C1.

⁴¹ *Id.*

⁴² See Mark Jewell, *A New Wave of American Dreamers: Immigrants' Homebuying Dreams Lift Slumping Market, Prospects for Rebound*, N. COUNTY TIMES, Jul. 31, 2007, available at http://www.nctimes.com/articles/2007/07/31/business/news/20_13_557_30_07.txt.

⁴³ See, e.g., PEW HISPANIC CTR., 2007 NATIONAL SURVEY OF LATINOS: AS ILLEGAL IMMIGRATION ISSUE HEATS UP, HISPANICS FEEL A CHILL (2007), available at <http://pewhispanic.org/reports/report.php?ReportID=84>.

population (foreign born and native-born alike), Latinos are a key part of the U.S. economy today.⁴⁴

In California, the state with the highest number of Latino residents, many counties have near-majority self-identified Latino populations.⁴⁵ Retailers acknowledge, if not welcome, Spanish-speaking consumers.⁴⁶ Advertisers study identity differences in foreign and native-born Latino consumers' tastes, preferences, and material aspirations.⁴⁷ Bankers offer basic and advanced services for the Spanish-only consumer as well as for the bilingual consumer whose language of comfort is Spanish.⁴⁸ In other words, goods and service providers regard Latino consumers as a profitable, capable, dependable, and upwardly mobile, though exceedingly diverse, population. The diversity of the Latino population generally, the fact that many Latinos are U.S. citizens, and the importance of the Latino population to the economy as a whole are factors that guarantee that the Latino population will find its way into the economic mainstream of the United States, even if anti-immigrant forces prevail in the short term.

The market has spoken. How will the law respond?

II. TILA AND THE LANGUAGE GAP IN MORTGAGE DISCLOSURES

TILA⁴⁹ is a federal consumer protection law whose purpose is to facilitate "economic stabilization" through "the informed use of credit" by consumers.⁵⁰ To carry out this purpose, the Federal Reserve Board promulgates Regulation Z⁵¹ as a tool with which to interpret TILA's mandates as to the form and content of closed- and open-ended credit disclosures.⁵² Regulation Z requires that a lender's disclosures to a consumer be clear, conspicuous, and "in a form that the consumer may keep" (meaning take home), and that important finance charge and annual percentage rate information be even more conspicuously noted.⁵³

⁴⁴ *Id.*

⁴⁵ See PEW HISPANIC CTR., STATISTICAL PORTRAIT OF HISPANICS IN THE UNITED STATES, 2006 (2008), available at <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=35>; PEW HISPANIC CTR., *supra* note 16. California is reported as the state with highest number of Latino residents at 13,087,981, followed by Texas at 8,379,992. California has the second highest Latino population in terms of percentage of population at 35%, trailing behind New Mexico at 44.7%. *Id.* Additionally, California has over 5 million eligible Hispanic voters, which constitute 28% of all U.S. Hispanic eligible voters. See PEW HISPANIC CTR., HISPANICS IN THE 2008 ELECTION (2008), available at <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=40>.

⁴⁶ See, e.g., Kang, *supra* note 33, at B7 (detailing the efforts of companies like Microsoft, General Motors, AT&T, and Procter & Gamble to court Hispanic consumers).

⁴⁷ See *id.*

⁴⁸ See *supra* notes 10-13.

⁴⁹ Truth in Lending Act (codified in scattered sections of 15 U.S.C.).

⁵⁰ 15 U.S.C. § 1601(a) (2000).

⁵¹ 12 C.F.R. § 226 (2007).

⁵² *Id.* § 226.17 (governing form of disclosure); *id.* § 226.18 (governing content of disclosure).

⁵³ See *id.* §§ 226.17-226.18.

The degree to which disclosures are understandable is another important component of TILA's reach. Courts have consistently held that mandated disclosures be evaluated against an objective ordinary consumer standard.⁵⁴ The ordinary consumer standard is an interpretive mechanism meant to insure that the information that makes its way to the consumer is understandable and informative, particularly regarding the cost and obligation of the proposed loan. But nowhere in these key provisions and regulations regarding what costs must be disclosed does federal law address the language in which these important disclosures should be made. For that reason, TILA's mandates, even as interpreted by Regulation Z, leave open an important question in a multilingual housing market: how does the ordinary consumer standard apply in a case where a consumer's language proficiency is in a language other than English?⁵⁵

Unless and until Congress (through TILA) addresses the relationship between language proficiency and the ordinary consumer standard, the important federal protections that TILA offers both to consumers and to the economy cannot extend to a large number of linguistic minorities who live within the borders of the United States. Nor can those protections extend to the U.S.-based businesses and industries that rely on those consumers for support. Indeed, to be effective under TILA's ordinary consumer standard, disclosures must be in a written form that the consumer can take home to evaluate outside the pressure of the deal.⁵⁶ Yet federal law to date overlooks the relationship between language proficiency, lender clarity as to cost of credit, and consumer understanding.

TILA's purpose is to inform consumers about the costs of credit.⁵⁷ It does this by requiring that lenders use plain language in a conspicuous typeface, provide a useful summary of extensive loan origination documents, and adhere to interpretive tools like the objective ordinary consumer standard. But how can the ordinary consumer get full disclosure about the cost of credit when that consumer's language proficiency is in a language other than

⁵⁴ See, e.g., *Andrews v. Chevy Chase Bank*, 240 F.R.D. 612 (E.D. Wis. 2007); *Sneed v. Beneficial Finance Co.*, 410 F. Supp. 1135 (1976) (stating that disclosures "must be made in a manner understandable by the ordinary layman who . . . is truly in unfamiliar waters often pursued by unabating financial pressures when he seeks financial assistance"); *Kilbourn v. Candy Ford-Mercury, Inc.*, 209 F.R.D. 121 (W.D. Mich. 2002); see also Carrillo, *supra* note 2; cf. *Brown v. SCI Funeral Services, Inc.*, 212 F.R.D. 602 (S.D. Fla. 2003) (noting the importance to the consumer of getting a copy of material disclosures that can be taken home, kept and possibly reviewed again).

⁵⁵ Even provisions prohibiting predatory lending do not address the borrower's language proficiency. See, e.g., 15 U.S.C. § 1639(h) (2000) (providing that "[a] creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages . . . based on consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment"); CAL. FIN. CODE § 4973(f)(1) (West 2007) (defining lender obligations to certain loans with a special emphasis on criteria that may legitimately be used to evaluate the borrower's ability to repay the loan).

⁵⁶ 12 C.F.R. § 226.17 (governing form of disclosure); *id.* § 226.18 (governing content of disclosure).

⁵⁷ 15 U.S.C. § 1601(a) (2006).

English? What use is an English-only document to a consumer who speaks only Spanish? Is it too idealistic to expect that federal law, through TILA, might be amended to address the needs of these Latino consumers of credit?

PART III: CALIFORNIA CIVIL CODE SECTION 1632—
A STATUTORY GOLDEN GATE

In 1973, the California legislature passed Assembly Bill 212 (A.B. 212) to protect the rights of Spanish-language consumers.⁵⁸ At the time, California only required sellers to provide home solicitation contracts (as well as notifications of the right to cancel the contracts) in the language in which sales presentations were made.⁵⁹ Moreover, California had not yet adopted Uniform Commercial Code § 2-403, with its unconscionability provisions.⁶⁰ Assemblyman Richard Alatorre introduced A.B. 212 as a way to “help protect the Spanish-speaking consumer as well as the reputable merchant”; A.B. 212 did this by requiring “a merchant who advertises in the Spanish language [to] make available a Spanish version of the contract upon request of the consumer.”⁶¹

Initially titled “Contracts: Advertising in Spanish,” A.B. 212 was broadly protective.⁶² It authorized Spanish-language consumers to request an unexecuted translation of English-language contract documents upon pain of rescission.⁶³ A.B. 212 applied to direct for-profit providers of goods, services (including insurers), loans, and housing as well as to indirect providers

⁵⁸ A.B. 212, 1973 Assem., Reg. Sess. (Cal. 1973).

⁵⁹ CAL. CIV. CODE § 1689.7(a) (West 1974) (“[I]n a home solicitation contract or offer the buyer’s agreement or offer to purchase shall be written in the same language, e.g., Spanish, as principally used in the oral sales presentation.”).

⁶⁰ California adopted UCC § 2-403 (1962) in 1979 as CAL. CIV. CODE § 1670.5 (West 1979), which reads:

(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

⁶¹ Letter from Richard Alatorre, California Assemblyman, to Ronald Reagan, Governor of California (Sept. 14, 1973) (on file with the Harvard Latino Law Review and with author).

⁶² A.B. 212.

⁶³ See, e.g., *Review of Selected 1974 California Legislation: Business Associations: Spanish Translation of Contracts*, 6 PAC. L.J. 163 (1975) (providing an abbreviated review of CAL. CIV. CODE § 1632 (1974)); *Review of Selected 1975 California Legislation: Business Associations and Professions: Contracts in Spanish*, 7 PAC. L.J. 276 (1976) (same); Carl P. Blaine, Comment, *Breaking The Language Barrier: New Rights for California’s Linguistic Minorities*, 5 PAC. L.J. 648, 670-72 (1974) (analyzing A.B. 212); Dwight Preston, Comment, *No Hablo Ingles*, 11 SAN DIEGO L. REV. 415, 418-19 (1974) (analyzing the view that the burden of understanding a contract is on the consumer as long as the contract is not fraudulent); Leslie R. Ramos, *Review of Selected 2007 California Legislation: Civil: Chapter 202: California Pro-*

like advertisers and other media services.⁶⁴ This meant that if a local car-dealer advertised cars in Spanish through any Spanish-language medium, A.B. 212 would apply to that dealer's transaction.⁶⁵ If a regional car dealership advertised (in any language) that it had the capability to conduct on-site business in Spanish, A.B. 212 would also apply to any transactions originated by that dealer's local affiliates.⁶⁶ And if a creditor lent money secured by real property, personal property, or wages, A.B. 212—as initially proposed—would apply in that case as well.⁶⁷ Because A.B. 212 was consumer protection legislation, it was designed to reach Spanish-language consumers in the ways in which they were solicited in the market: directly by sellers and indirectly by the media.

Then-Governor Ronald Reagan vetoed A.B. 212 on October 1, 1973, out of concern that it “would go far beyond the author's intent of insuring a fair marketplace.”⁶⁸ The Governor was particularly concerned that “a significant number of television, radio, newspapers and other businesses would be forced by financial considerations to eliminate their Spanish-language advertising in the Spanish-language media” if A.B. 212 were allowed to become law.⁶⁹ Despite his veto, Reagan urged the Legislature to take “immediate action in January [1974] . . . to create legislation which will not be destructive of institutions of importance to the Spanish-speaking community, while meeting the needs of insuring a fair and equitable marketplace in our state.”⁷⁰

Less than a year later, Reagan signed into law a pared-down version of A.B. 212 in the form of California Civil Code section 1632.⁷¹ Most significantly, for purposes of this analysis, section 1632—as passed in 1974—did not apply on its face to Spanish-language media, nor did it apply to providers of credit secured by real property, meaning that it did not apply on its face to mortgage loans or home equity loans.⁷² Thus if a consumer bought a car, he or she could request an unexecuted copy of the car finance loan in Spanish, but if that same consumer signed a mortgage to buy a house—a

vides Further Protection for Seniors Contemplating Reverse Mortgage Loans, 38 McGEORGE L. REV. 45 (2007).

⁶⁴ A.B. 212.

⁶⁵ *Id.*

⁶⁶ *See, e.g.*, Letter from David Negri, Legislative Advocate, Independent Auto Dealers Ass'n of Cal., to Ronald Reagan, Governor of California (Sept. 20, 1973) (on file with the Harvard Latino Law Review).

⁶⁷ A.B. 212.

⁶⁸ Veto Message from Ronald Reagan, Governor of California, regarding A.B. 212 (Oct. 1, 1973) (“A.B. 212 in its present form would go far beyond the authors' intent of insuring a fair marketplace. Concern has been expressed that both the Spanish-language media and businesses which supply the Spanish-speaking community could be unintentionally harmed if the bill were approved.”) (on file with the Harvard Latino Law Review); *see also* CAL. DEP'T OF CONSUMER AFFAIRS, ENROLLED BILL REPORT, A.B. 212, 1973 Assem., Reg. Sess. (Cal. 1973) (indicating that although the department had supported past similar bills, it recommended vetoing A.B. 212).

⁶⁹ Veto message from Ronald Reagan, *supra* note 68.

⁷⁰ *Id.*

⁷¹ CAL. CIV. CODE § 1632(b) (West 1974).

⁷² *Id.*

decidedly larger and more important transaction in any given consumer's life—he or she had no direct rights under section 1632 to request a translation of the mortgage documents.⁷³

Opposition to A.B. 212 came in several forms, including concerns about excluding languages other than Spanish,⁷⁴ translation issues,⁷⁵ and the role of English in the United States,⁷⁶ but the 1974 version of section 1632 nevertheless only allowed for Spanish-language translations.⁷⁷ It was not until 2003—twenty-nine years after its original passage—that the legislature amended section 1632 to allow consumers to request translations in four additional languages commonly spoken in California, namely Chinese, Tagalog, Vietnamese, and Korean.⁷⁸ Although the 2003 version of section 1632 expanded its language coverage, its original and limited contract coverage was kept, meaning that if a consumer bought a car, she could request unexecuted translations of the loan documents, now in one of five languages (depending on the consumer's language of proficiency) under section 1632, but if that same consumer bought a house, she was not directly entitled to mortgage documents in her language of proficiency.⁷⁹ In 2006, the legislature took the plunge into mortgages when it amended section 1632 to include reverse mortgages.⁸⁰

In response to the subprime lending crisis, Assembly Members Sally J. Lieber and Joe Coto proposed amendments to section 1632 again in 2007. The proposed amendments kept the expanded language coverage (Spanish, Chinese, Tagalog, Vietnamese, and Korean) and the reverse mortgage coverage, but expanded 1632's protection to mortgage contracts and other contracts for which the consumer gives a security interest in the family home.⁸¹ Thus, under the 2007 proposed amendments to section 1632—which, if signed into law, will become operable in 2009—a California consumer will

⁷³ *Id.*

⁷⁴ See, e.g., Letter from Ken Corkhill, Executive Director, Independent Auto Dealers Ass'n of Cal., to Ronald Reagan, Governor of California (Sept. 10, 1973) (asking "Why should we limit making contracts available only in Spanish?") (on file with the Harvard Latino Law Review).

⁷⁵ See Letter from Clayton R. Jackson, Executive Vice President, Ass'n of Cal. Ins. Cos., to Ronald Reagan, Governor of California (Sept. 22, 1973) (detailing problems translating legal concepts) (on file with the Harvard Latino Law Review).

⁷⁶ See Letter from Allen M. Garfield, Secretary, Auto. Leasing Ass'n, to Ronald Reagan, Governor of California (Sept. 28, 1973) (arguing that a full translation should not be necessary "since English is the language of the United States") (on file with the Harvard Latino Law Review).

⁷⁷ CAL. CIV. CODE § 1632(b) (West 1974).

⁷⁸ 2003 Cal. Stat. Ch. 589 (enacting S.B. 146, amending CAL. CIV. CODE § 1632) substituted "Spanish, Chinese, Tagalog, Vietnamese, or Korean" for "the Spanish-language" in the introductory clause of subdivision (b).

⁷⁹ CAL. CIV. CODE § 1632 (West 2003).

⁸⁰ 2006 Cal. Stat. Ch. 202 (enacting S.B. 1609, amending CAL. CIV. CODE § 1632) (including reverse mortgages among the contracts covered). For a discussion of the risks associated with reverse mortgage marketing, see Ramos, *supra* note 63 (discussing how reverse mortgages increase the potential for fraud as perpetrated by lenders against elderly non-English speaking homeowners).

⁸¹ A.B. 512, 2007 Assem., Reg. Sess. (Cal. 2007).

be able to request an unexecuted translation of loan documents, including mortgage documents, in his or her language of proficiency, so long as that language is Spanish, Chinese, Tagalog, Vietnamese, or Korean.⁸²

Astonishingly, in section 1632's long history only one California state case addressed the 1974 version of section 1632: *Reyes v. Superior Court*.⁸³ *Reyes* was initially filed in small claims court, where Defendant Household Finance Corporation of California (HFC) prevailed on a \$750 car loan in default.⁸⁴ *Reyes*, the consumer, appealed that judgment.⁸⁵ Later, an Imperial County Superior Court affirmed the small claims court judgment and rendered a deficiency judgment in favor of HFC.⁸⁶ *Reyes* petitioned the court of appeal for a writ of mandate ordering the county superior court to vacate its judgment.⁸⁷ The court of appeal agreed with *Reyes* that while the state Automobile Sales Finance Act covered the car transaction, the separately enacted section 1632 also entitled *Reyes* to an unexecuted Spanish translation of his loan contract.⁸⁸

The court of appeal found that even though *Reyes*, who spoke only Spanish, had not requested an unexecuted translation of the English loan contract at purchase, and even though HFC had not posted a notice regarding its ability to conduct business in Spanish at its premises—both clear factual bases for invoking section 1632's protections—section 1632 was “presumptively applicable in light of *Reyes*' complete inability to understand English.”⁸⁹ In other words, because HFC had done business with *Reyes* in Spanish, section 1632 placed an implicit duty on HFC to establish compliance with the statute's terms. This was so even though HFC's claim against *Reyes* fell under a separate statute altogether.⁹⁰ Moreover, under the appellate court's reading of section 1632, HFC's duty extended not just to the original loan contract, but to all other later-in-time subsidiary documents that could “substantially change the parties' rights and obligations,” like deficiency and repossession notices.⁹¹

⁸² *Id.* (“On or before January 1, 2009, the Secretary of the Business, Transportation and Housing Agency shall, by rule, create a form drafted in each of the languages set forth.”).

⁸³ See *Reyes v. Superior Court*, 173 Cal. Rptr. 267 (Cal. Ct. App. 1981) (applying section 1632 to default and repossession notices).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 267-68.

⁸⁷ *Id.* at 268.

⁸⁸ See CAL. CIV. CODE § 1632(b) (West 1974) (covering a “contract or agreement” and “every term and condition in that contract or agreement,” but not speaking specifically to deficiency or repossession notices). Thus, the *Reyes* court had to define a contract or agreement “to include later documents which substantially change the parties' rights and obligations” like deficiency and repossession notices. *Reyes*, 173 Cal. Rptr. at 268.

Today, CAL. CIV. CODE § 1632 (b) (West 2007) is titled “Translation of Contracts Negotiated in Language Other Than English.”

⁸⁹ *Reyes*, 173 Cal. Rptr. at 268.

⁹⁰ *Id.*

⁹¹ *Id.* See also CAL. CIV. CODE § 1632(g) (West 2007) (the term “contract” or “agreement” includes “the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties.” It does not include “any subsequent documents authorized or contemplated by the origi-

The court of appeal regarded *Reyes* as a straightforward application of section 1632, not as an interpretation.⁹² The court of appeal could have based its holding on the common law contract theory of mutual assent, but it chose instead to base its decision on section 1632, a statute that applies to contracts that are negotiated in Spanish (thus presumably meeting the contract requirement of mutual assent) but that are then reduced to writing in English.⁹³

Courts in the Ninth Circuit have upheld complaints invoking section 1632 in the mortgage arena.⁹⁴ In *Ruiz v. Decision One*, a Spanish-speaking consumer brought a rescission action against a mortgage lender alleging predatory practices in a mortgage refinance.⁹⁵ The plaintiffs argued that the 2003 version of section 1632 created a duty on the part of the lender to provide translation documents to the consumer.⁹⁶ The mortgage lender countered that section 1632(b)(2) on its face excluded “loans secured by real property” from its coverage—which, as noted above, is the case under the current version of section 1632 but would no longer be the case if A.B. 512 were signed into law. The court allowed the plaintiff’s section 1632 claim to go forward, notwithstanding section 1632(b)(2)’s clear exclusion of mortgage loans.⁹⁷ The court based its decision on a different section of section 1632, section 1632(b)(4), which extends the statute’s application to loans secured by real property, made primarily for “personal, family or household purposes,” and negotiated by a real estate broker under the authority of section 10240 of the California Business and Professions Code.⁹⁸ In this way, *Ruiz* interpreted section 1632 to cover mortgage loans even prior to the California Assembly’s passage of the 2007 amendments, by invoking section 10240’s imposition of duties on certain professionals like mortgage brokers.

nal document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchase in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.”)

⁹² *Reyes*, 173 Cal. Rptr. at 268.

⁹³ *Id.*; see § 1632(h) (clarifying that section 1632 is inapplicable where the party negotiates terms of a contract with his or her own interpreter, so long as the interpreter is fluent in the language, but is not a minor and is not furnished by the other party).

⁹⁴ See, e.g., *Plata v. Long Beach Mortgage Co.*, No. C05-02746 JF, 2005 U.S. Dist. LEXIS 38807 (N.D. Cal. Dec. 13, 2005) (secondary liability claim against mortgage company allowed under section 1632 because Spanish-speaking plaintiffs had negotiated with the broker in Spanish but were only provided loan documents in English); *Ruiz v. Decision One Mortgage Co.*, No. C06-02530 HRL, 2006 U.S. Dist. LEXIS 54571 (N.D. Cal. Jul. 25, 2006) (secondary liability claim against mortgage company allowed for failure to provide Spanish-language loan documents).

⁹⁵ *Ruiz*, 2006 U.S. Dist. LEXIS 54571 at *2.

⁹⁶ *Id.* at *12.

⁹⁷ *Id.*; see also *Munoz v. Int’l Home Capital Corp.*, No. C 03-01099 RS, 2004 WL 3086907 (N.D. Cal. May 4, 2004); *Gonzalez v. Ameriquet Mortgage Co.*, No. C 03-00405 JSW, 2004 WL 2472249 (N.D. Cal. Mar. 1, 2004); *Gutierrez v. PCH Roulette, Inc.*, No. H024243, 2003 WL 22422431 (Cal. Ct. App. Oct. 24, 2003) (section 1632 is not unconstitutional).

⁹⁸ See *Ruiz*, 2006 U.S. Dist. LEXIS 54571 at *13-14; see also CAL. BUS. & PROF. CODE § 10240 (regulating real estate brokers’ written statements to the borrower).

CONCLUSION

Today, California has over 13 million Latino residents, many of whom speak Spanish both at home and in the marketplace.⁹⁹ Indeed, in this recent mortgage crisis, reports have been made of brokers who negotiated terms in languages other than English, but then originated (and closed) mortgages in English.¹⁰⁰ Even in cases where significant changes in payment terms were not alleged, the issue of language facility and its relation to broker/lender overreaching has been raised.¹⁰¹ After all, how can an ordinary consumer understand mortgage documents—including minimally-required TILA disclosure statements—when those documents are written in a language in which the consumer is not proficient? Do these language difficulties raise the specter of unconscionability or consumer fraud? Can there be mutual assent where a contract is simplistically explained in one language but then complexly explained in an executed document that is written in English?

In an effort to protect the rights of linguistic minorities in the market, consumer advocacy groups urged the California Legislature to amend California Civil Code section 1632.¹⁰² If A.B. 512 is signed into law, California will codify a view similar to the one expressed in *Ruiz*, the federal case just discussed that allowed a consumer to allege the 2003 version of section 1632 as a basis for rescission of a mortgage loan. However, even as it stands section 1632 recognizes the importance of mortgage lending to California consumers whose language of proficiency is not English. This is especially important given the risky home loan products on the market. The risk inherent to an ARM is that it adjusts in tandem with a measurable market interest rate index, thus making it a complex product whose ultimate cost is difficult to assess *and to disclose* with accuracy at origination even under the best

⁹⁹ See SHIRIN HAKIMZADEH & D'VERA COHN, PEW HISPANIC CTR., ENGLISH USAGE AMONG HISPANICS IN THE UNITED STATES (2007), available at <http://pewhispanic.org/reports/report.php?ReportID=82>.

¹⁰⁰ See *Ruiz*, 2006 U.S. Dist. LEXIS 54571 at *13.

¹⁰¹ See, e.g., Jonathan Karp and Miriam Jordan, *How Subprime-Loan Mess Hit Poor Immigrant Groups*, WALL ST. J., Dec. 6, 2007, at A1 (identifying vulnerable consumer groups as “Latinos throughout California, Caribbean and African borrowers in the New York area, and Russian immigrants in Philadelphia” and other “immigrants with limited English” who trusted brokers who spoke their language to negotiate mortgage contracts); Letter from Richard Alatorre, *supra* note 61 (discussing overreaching in car loans).

¹⁰² The 2007 Amendments to section 1632 of the California Civil Code were supported by groups like the California Coalition for Rural Housing, the Center for Responsible Lending, the City of Oakland Community and Economic Development Agency, the Mexican American Legal Defense and Educational Fund, the Mortgage Broker Association for Responsible Lending, and the Fresno Interdenominational Refugee Ministries, to name a few. It was opposed by the California Association of Life and Health Insurance Companies, the California Bankers Association, the California Chamber of Commerce, the California Financial Services Association, the California Independent Bankers, the California Mortgage Bankers Association, the California Motor Car Dealers Association, and the California Retailers Association. See Bill Analysis: A.B. 512, http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0501-0550/ab_512_cfa_20070911_104428_sen_floor.html (last visited Mar. 3, 2008).

linguistic conditions.¹⁰³ The risk inherent to the ITIN is lower by comparison because it is a fixed rate product whose total cost at origination can be fully amortized in arithmetical terms. Even so, how a consumer understands the ITIN product—and thus its ultimate “performance”—also depends upon full disclosure of the product’s costs.¹⁰⁴ At the federal level, TILA covers mortgage disclosures for both these products separately, but it treats them the same for purposes of disclosure. This is because under TILA, the question of important, understandable information that a consumer must know is based on issues (topics in relation to open- or closed-ended loan products) not on the linguistic characteristics of the consumer.¹⁰⁵

With section 1632 and its 2003, 2006, and proposed A.B. 512 (2007) amendments, California has broached the theoretically important issue of how language facility and consumer protection are linked. How a consumer interprets the obligations he or she might be assuming, in turn, links language facility to the core of contract law, and specifically to theoretical issues about a consumer’s ability to understand, participate, and thus knowingly agree to and carry out contract terms. California did this first by reaffirming section 1632, a statute that gives consumers who speak one of the five most widely spoken languages in California—other than English—the right to request unexecuted translations of consumer loans and by retaining as authority a case that imposes an affirmative duty on the lender to provide translations when it is apparent that the consumer’s language proficiency is in a language other than English.¹⁰⁶ But even though consumers are entitled to loan documents in their language of proficiency, lenders retain significant rights under section 1632, since the enforceable contract is the English contract, not the translation. In terms of policy, section 1632 is important legislation that gives linguistic minorities a chance to participate fully in credit markets, and, by so doing, acknowledges the property rights of

¹⁰³ See, e.g., Carrillo, *supra* note 2; see also Richard Stanton & Nancy Wallace, *Anatomy of an ARM: The Interest Rate Risk of Adjustable Rate Mortgages*, 19 J. REAL EST. FIN. & ECON. 49, 62 (1999) (concluding that the interest rate sensitivity of an ARM depends significantly on three key factors: “contract terms, the dynamics of the index underlying the mortgage, and on the prepayment behavior of the mortgage holders,” and that “ignoring any of these interacting factors will lead to significant errors in measuring and hedging the interest rate risk of these mortgages”); cf. Home Equity Loan Consumer Protection Act (HELCPA), Pub. L. 100-709, 102 Stat. 4725 (1988) (addressing disclosure requirements and limitations on index selection).

¹⁰⁴ See generally Carrillo, *supra* note 30 (discussing risks inherent in fixed and adjustable rate mortgage products and consumer remedies); Carrillo, *supra* note 2 (discussing disclosure issues related to fixed and adjustable rate mortgage products).

¹⁰⁵ See Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1637(a), § 1638, § 1639 (these code sections detail material disclosures that must be made by the lender to the consumer in this order: § 1637(a) applies to open end consumer credit plans secured by the consumer’s principal dwelling (or home equity lines of credit); § 1638 applies to transactions other than under an open end credit plan including residential mortgage transactions; and § 1639 applies to certain high cost mortgages detailed under Reg. Z, 12 C.F.R. § 226.32 (2007)).

¹⁰⁶ See *Reyes v. Superior Court*, 173 Cal. Rptr. 267, 267 (Cal. Ct. App. 1981).

this politically vulnerable population, while still respecting the concerns of lenders.

For thirty-five years, section 1632 has been widely ignored even in the state that boasts the highest number of residents whose language proficiency is in a language other than English.¹⁰⁷ Only one California case has been decided under section 1632's terms, though recently (because of the subprime mortgage crisis) the Northern District Court of California has allowed complaints to go forward on the basis of section 1632's protections.¹⁰⁸ Section 1632 has remained virtually unanalyzed in the law review literature.¹⁰⁹ To my knowledge section 1632 is not taught in law schools. And, finally, California's statutory effort to protect the economic rights of linguistic minorities has not been used by consumer protection advocates, at least not until now. If amended, section 1632 will expressly allow any linguistically qualified consumer to request a translation of purchase, mortgage, or lease documents upon pain of rescission. Admittedly, the amended version of section 1632 lacks important rescission triggers, an omission that no doubt will subject it to future litigation.¹¹⁰ But even so, section 1632, as it currently stands, represents the linguistic wave of the future in consumer rights.

¹⁰⁷ See STATISTICAL PORTRAIT OF HISPANICS IN THE UNITED STATES, *supra* note 45; HISPANIC POPULATION BY STATE, *supra* note 45.

¹⁰⁸ See, e.g., *Reyes*, 173 Cal. Rptr. at 268; *Ruiz v. Decision One Mortgage Co.*, No. C06-02530 HRL, 2006 U.S. Dist. LEXIS 54571 (N.D. Cal. Jul. 25, 2006).

¹⁰⁹ See Blaine, *supra* note 63 (analyzing A.B. 212 as originally written, not section 1632 as passed).

¹¹⁰ See, e.g., Carrillo, *supra* note 2 (discussing TILA's rescission time frames).

