



The CFPB and Other Federal Agencies Should Adopt Strong Language Access Protections for Homeowners and Other Consumers

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Executive Summary

As the demographics of the United States evolve, the number of U.S. residents for whom English is not a first language and who speak English with limited proficiency has increased dramatically. In 2014, approximately 9 percent of the U.S. population was limited English proficient (LEP). These individuals use financial products and services, but those who are not proficient in English have greater difficulty navigating the marketplace. Because the financial services market is aimed primarily at English language speakers, people with limited English proficiency may be confused about the products and services marketed to them, encounter barriers to making well-informed decisions, and are vulnerable to abusive practices. It is imperative that we protect consumers for whom English is not a primary language.

While this brief focuses on housing as a first step in expanding market access for LEP borrowers, comparable measures are needed throughout the financial marketplace. The mortgage market is a crucial part of the national economy as well as a key building block of wealth in communities and enhancing access for LEP homeowners would support the growth of the housing sector and of LEP market participation more broadly. Unfortunately, LEP borrowers are among the most vulnerable consumers targeted by fraud and predatory practices. The Consumer Financial Protection Bureau (CFPB) in particular plays an important role in protecting all consumers in the financial services marketplace, including LEP consumers, and is in a unique position to lead on this issue. With its multilingual, online communications to LEP consumers, the CFPB has taken some important initial steps in responding to the changing dynamics of today's consumer market, but there is much more to be done to meet American consumers' linguistic and cultural needs. They are some of the very families we had in mind when fighting for the creation of the CFPB. These families should be held at the forefront of the CFPB's and other agencies' initiatives. The CFPB should work with the Federal Housing Finance Agency (FHFA) and the Federal Housing Administration (FHA) of the Department of Housing and Urban Development (HUD), as well as the federal banking agencies, to expand LEP access and align requirements across agencies.

Towards these goals, we make the following recommendations for improving the mortgage marketplace for LEP consumers:

- 1. Enhance mortgage servicing protections for homeowners with limited English proficiency.*

2. *Provide protections for mortgage applicants with limited English proficiency.*
3. *Expand existing supervision and examination procedures, beginning with mortgage oversight, to include a review of language accessibility.*
4. *Improve language access to the CFPB's Consumer Complaint Services.*
5. *Improve opportunities for mortgage applicants and homeowners with limited English proficiency to find a HUD-approved housing counseling agency with a counselor who speaks their preferred language.*
6. *Provide affirmative written guidance/regulations to financial institutions on standards for addressing language access.*
7. *Update data fields for the Home Mortgage Disclosure Act (HMDA) to include the preferred language spoken by the applicant.*
8. *Establish a federal interagency working group to examine strategies for improving data collection and tracking language preferences of borrowers through the mortgage process, including revision of the mortgage application and the Uniform Borrower's Assistance Form (UBAF).*

Background

Language access remains a significant hurdle for many communities seeking access to the financial marketplace. In 2014, approximately 25.3 million individuals, some 9 percent of the U.S. population, were considered limited English proficient (LEP). Limited English proficient refers to anyone above the age of 5 who reported speaking English less than “very well,” as classified by the U.S. Census Bureau. Approximately five-sixths (83.4%) of all LEP residents speak one of eight languages: Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole. About 64% of the LEP population speaks Spanish, followed by Chinese, spoken by 6% of the LEP population.¹

Collectively, Asian Americans and Pacific Islanders (AAPI) speak more than 100 different dialects and represent more than 50 different ethnic groups. Many low-income AAPI communities also include a high proportion of LEP families. Approximately 76% of Asian Americans speak a language other than English at home.² Of these, 46% are considered limited English proficient.³

Full access to financial services remains a formidable challenge for LEP consumers. Many industry players conduct market research to tailor their sales pitches to members of the LEP community, including advertising financial products to LEP consumers in their own languages. But what happens when it is time to sign the loan papers and after the sale is completed? Typically, once LEP consumers are sold the product, they receive complicated information

¹ U.S. Census Bureau, *2010–2014 American Community Survey 5-Year Estimates*, American Community Survey (Washington, DC: U.S. Census Bureau) Table B16001 (accessed February 22, 2016).

² U.S. Census Bureau, *2010–2014 American Community Survey 5-Year Estimates*, American Community Survey (Washington, DC: U.S. Census Bureau) Table B16005D (accessed February 29, 2016).

³ *Id.*

regarding all of the important terms in English. They often rely on children to understand legal terms and other highly-specialized terminology. Where are the language services or translated documents when a family needs help refinancing or faces financial hardship and seeks assistance?

Many LEP homeowners encounter enormous difficulties accessing loan modifications because servicers do not have staff who are able to communicate in their languages. In a 2014 survey designed to understand servicer compliance with the CFPB servicing regulations, 48% of housing counselors reported that servicers rarely or never provided written communications to LEP borrowers in their preferred language. A counselor in Oregon City, Oregon stated: “I have clients whose primary language is Spanish, Chinese, Russian, etc. I have never seen documents provided in any language other than English.”⁴ In addition, 44% of counselors said assigned points of contact were rarely or never fluent in the borrower’s preferred non-English language. A housing counselor from Chicago stated: “My clients...never received any translation service from their servicers.”⁵

In New York State, 5.6 million people speak a language other than English at home.⁶ Of the 2.6 million who speak Spanish, 1.2 million are considered LEP.⁷ On Long Island where 281,000 residents are LEP,⁸ homeowners are encountering problems in accessing loan modifications. For example, a Spanish speaking homeowner who later became a client of a service provider in Empire Justice Center’s network moved out of his home upon receiving an initial foreclosure notice because he did not realize that he might be eligible for a loan modification. Another Spanish-speaking homeowner was solicited by a scammer about foreclosure prevention “help.” The homeowner paid \$14,000 to the scammer but did not receive any assistance in saving his home before finding free legal assistance.⁹

In neighborhoods across the country, networks of community-based organizations help thousands of LEP families who have been targeted for business but abandoned when they run into trouble. LEP families need access to the financial system and need to know their rights before, during and after the transaction. While lenders seek out business from these emerging markets, it is also essential that they provide the customer support needed to grow a healthy market sector that also benefits communities. They must adjust and improve their business practices to meet diverse needs at all stages of the process. Full access for limited English

⁴ *Are Mortgage Servicers Following the New Rules* (Washington, DC and Philadelphia, PA: National Council of La Raza and National Housing Resource Center, January 2015), at 8, available at http://www.nclr.org/Assets/uploads/Publications/mortgageservicesreport_11215.pdf (accessed Feb. 29, 2016).

⁵ *Id.* at 9.

⁶ U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates, as found at: <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

⁷ *Id.*

⁸ *Id.*

⁹ Client stories from Empire Justice Center.

proficient people is particularly important in the mortgage markets important because of the importance of homeownership in creating wealth and contributing to family and community stability.

We commend the CFPB for taking initial steps to expand access for LEP consumers. For example, the CFPB published five different Spanish-language action letters regarding debt collection, providing instructions on how to send an English-language version of a letter to communicate with a debt collector. The Bureau’s LEP-related provisions in its servicing supervision manual also take useful steps, although we recommend additional measures. The burden of interpreting financial services jargon and communicate with lenders and servicers should not rest solely on consumers. Many times it is the process of consumers translating or interpreting for themselves that obscures key details about the loan and puts them at risk of receiving a loan they can’t afford. If a family gets past English-only form letters or other documents, they are often still hampered by next steps with providers who only speak English.

The mission of the CFPB is to “implement, and where applicable, enforce Federal consumer financial laws consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”¹⁰ The CFPB must pursue this goal with regard to all communities throughout the United States, which means taking the steps necessary to protect LEP consumers. Working with FHFA, FHA and the federal banking agencies, the CFPB can and should develop needed LEP protections that can be consistently applied across the market.

Legal Authority

The CFPB has the authority to take substantial steps toward providing language access in the mortgage market.¹¹ Title X of the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹² established the CFPB to “regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.”¹³ The CFPB is entrusted with implementing and enforcing the federal consumer financial laws “for the purpose of ensuring that *all consumers have access* to markets for consumer financial products and services and that markets for consumer financial products and services are *fair*, transparent, and

¹⁰ 12 U.S.C. § 5511(a).

¹¹ While this discussion focuses on the CFPB’s legal authority, banking regulators also share much of this authority in connection with their oversight duties. FHFA and FHA also have wide latitude in administering the GSE and FHA programs respectively.

¹² 12 U.S.C. §§ 5481 *et seq.*

¹³ *Id.* § 5491(a); *see also Morgan Drexen, Inc. v. Consumer Fin. Prot. Bureau*, 785 F.3d 684, 686-87 (D.C. Cir. 2015) (summarizing the CFPB’s authority in implementing and enforcing the Federal financial consumer laws).

competitive.”¹⁴ To facilitate LEP consumers’ access to the marketplace, the CFPB can exercise its authority under the Dodd-Frank Act, Real Estate Settlement Procedures Act (“RESPA”), Unfair, Deceptive, or Abusive Acts or Practices (“UDAAP”), and Equal Credit Opportunity Act (“ECOA”), and Title VI of the Civil Rights Act of 1964 (“Title VI”) to ensure that LEP borrowers have access to the mortgage market and are not treated unfairly.

Authority under Dodd-Frank and RESPA. In establishing the Mortgage Servicing Rules, the CFPB relied on its rulemaking authority under the Dodd-Frank Act and RESPA to mandate a uniform loss mitigation framework that establishes appropriate mortgage servicing standards in the private market. These rules also further consumer protections by requiring that borrowers receive a *full and fair opportunity* to be evaluated for a loss mitigation option.¹⁵ One such source of authority under the Dodd-Frank Act is 12 U.S.C. § 5532(a), which authorizes the CFPB to prescribe rules to “ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.”¹⁶ These opportunities only will be available to LEP borrowers when further progress has been made to make the mortgage market accessible to them.

The CFPB already has recognized its authority to address barriers in accessing essential mortgage information needed to pursue foreclosure alternatives and help avoid unnecessary costs and fees.¹⁷ For example, the CFPB relied on this provision when proposing to extend the Mortgage Servicing Rules to successors in interest. LEP borrowers face similar challenges particularly because of their inability to understand English-only communications. The CFPB should similarly extend protections under the Mortgage Servicing Rules to LEP borrowers to ensure that LEP borrowers have meaningful access to loss mitigation options in their preferred language. This can be done in a reasonable and efficient fashion without placing undue financial

¹⁴ 12 U.S.C. § 5511(a) (emphasis added). The CFPB Mortgage Servicing Rules framework is analogous to Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12182, that prohibits discrimination by public accommodations and services operated by private entities. The ADA provides a national mandate to ensure meaningful access for persons with disabilities, 42 U.S.C. § 12101, similar to the CFPB’s mandate to ensure all consumers have access to the markets for consumer financial products and services.

¹⁵ Section-by-Section Analysis, § 1024.41, 78 Fed. Reg. 10,815, 10,818 (Feb. 14, 2013) (emphasis added). The CFPB specifically cited 12 U.S.C. §§ 2605(k)(1)(C), 2605(k)(1)(E), and 2617(a). *See* Section-by-Section Analysis, § 1024.41, 78 Fed. Reg. at 10,822, which provide rulemaking and regulatory authority to further broad objectives.

¹⁶ Section-by-Section Analysis, § 1024.41, 78 Fed. Reg. at 10,822. The CFPB’s authority under section 5532(a) is broad as it “may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.” 79 Fed. Reg. 74,176, 74,180 (Dec. 15, 2014).

¹⁷ 79 Fed. Reg. at 74,183.

burden on financial institutions. Clear, sensible requirements from the CFPB also would create bright lines that limit any concerns about liability stemming from ambiguous guidelines.

Authority to prohibit unfair, deceptive, and abusive acts and practices. The CFPB also has supervisory, rulemaking, and enforcement authority in implementing the prohibition against any unfair, deceptive, or abusive act or practice by a “covered person” or “service provider.”¹⁸ Under the Dodd-Frank legal regime, a mortgage servicer’s failure to provide translated documents and competent interpreters may constitute a UDAAP violation, particularly if the product or service is marketed in a language other than English. An act or practice constitutes an abusive act or practice when it materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service and/or the consumer’s reasonable reliance on a person to act in the interests of the consumer.¹⁹ A mortgage company that markets a mortgage in a foreign language but then fails to service the mortgage in that same language may be engaging in an abusive act or practice because such act or practice materially interferes with the ability of an LEP borrower to understand the terms or conditions of available loss mitigation options. Additionally, the servicer’s awareness of an LEP borrower’s inability to understand English and the servicer’s refusal to provide language access could be seen as taking unreasonable advantage of the borrower. This same conduct could also potentially constitute an unfair and/or deceptive practice under the statute.²⁰

ECOA authority. The CFPB has supervisory, rulemaking, and enforcement authority under the ECOA and Regulation B.²¹ The ECOA applies to those servicers that are creditors, such as those who participate in a credit decision about whether to approve a mortgage loan modification.²² The statute makes it unlawful to discriminate against any borrower with respect to any aspect of a credit transaction on the basis of a prohibited distinction, including on the basis of national

¹⁸ 12 U.S.C. §§ 5511(c)(4), 5512(b)(1), 5531(a), 5532(a)), 5536(a)(1)(B), 5481(6), (26).

¹⁹ 12 U.S.C. § 5531(d).

²⁰ An act or practice is unfair when the act or practice causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers; and such substantial injury is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c)(1). A representation, omission, act, or practice is deceptive when a representation, omission, act or practice misleads or is likely to mislead the consumer; the consumer’s interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and the misleading representation, omission, act, or practice is material. CFPB Supervision and Examination Manual V.2 (Oct. 2012) at UDAAP 5 (citing FTC Policy Statement on Deception).

²¹ 12 U.S.C. §§ 5481(12), 5512.

²² 15 U.S.C. § 1691a(e); CFPB Mortgage Servicing Examination Procedures (Jan. 2014) at Procedures 3, available at http://files.consumerfinance.gov/f/201401_cfpb_mortgage-servicing-exam-procedures.pdf.

origin.²³ Discrimination based on an individual's inability to speak or read English is a form of discrimination based on national origin.²⁴

A mortgage servicer's failure to provide language access services to LEP borrowers in the loss mitigation process may constitute unlawful discrimination under the ECOA. In such cases, LEP borrowers receive less favorable treatment than other borrowers in the servicing of their loans, particularly where the loan was marketed in another language and now the borrowers are confronted with English-only communications.

LEP borrowers have experienced difficulties in accessing loss mitigation options due to:

- an inability to obtain key documents in languages other than English;²⁵
- servicers not accepting documents submitted in languages other than English;²⁶ and
- difficulty accessing language interpretation services from servicers.²⁷

Advocates have also reported the use of abusive, derogatory, and intimidating comments by servicer representatives based on the borrower's national origin, immigration status, and English proficiency. Such conduct may constitute discrimination on the basis of national origin because LEP borrowers are treated less favorably than English-speaking borrowers.

A servicer's exclusion of eligible non-English borrowers from products or services may also constitute unlawful discrimination under the ECOA. In 2014, the Department of Justice and the Consumer Financial Protection Bureau jointly settled a credit card discrimination case with

²³ 15 U.S.C. § 1691(a)(1).

²⁴ National Consumer Law Center, *Credit Discrimination* § 3.3.3.3 (6th ed. 2013); *cf. Lau v. Nichols*, 414 U.S. 563 (1974) (recognizing that national origin discrimination is discrimination based on person's ancestry, including language, and recipients of federal funding have affirmative obligation under Title VI to ensure LEP persons have meaningful access to participate in public programs).

²⁵ See U.S. Government Accountability Office, *Troubled Asset Relief Program: More Efforts Needed on Fair Lending Controls and Access for Non-English Speakers in Housing Programs*, GAO-14-117837 (Feb. 2014) at 28, available at <http://gao.gov/assets/670/660712.pdf>; Cal. Reinvestment Coalition, *Chasm Between Words and Deeds IX: Bank Violations Hurt Hardest Hit Communities* (Apr. 2013), at 12, available at <http://calreinvest.org/news/banks-violate-national-mortgage-settlement-and-ca-homeowners-bill-of-rights-protections-new-survey-of-housing-counselors-reveals>.

²⁶ *Are Mortgage Servicers Following the New Rules* (Washington, DC and Philadelphia, PA: National Council of La Raza and National Housing Resource Center, Jan. 2015).

²⁷ See U.S. Government Accountability Office, *Troubled Asset Relief Program: More Efforts Needed on Fair Lending Controls and Access for Non-English Speakers in Housing Programs*, GAO-14-117837 (Feb. 2014), available at <http://gao.gov/assets/670/660712.pdf>; Cal. Reinvestment Coalition, *Chasm Between Words and Deeds IX: Bank Violations Hurt Hardest Hit Communities* 12 (Apr. 2013), available at <http://calreinvest.org/news/banks-violate-national-mortgage-settlement-and-ca-homeowners-bill-of-rights-protections-new-survey-of-housing-counselors-reveals>.

Synchrony Bank (formerly known as GE Capital Retail Bank).²⁸ Synchrony was ordered to pay \$225 million to consumers, including \$169 million for discrimination on the basis of national origin, by excluding from receiving special debt relief offers individuals who indicated a preference to communicate in Spanish or had a mailing address in Puerto Rico.²⁹

Fair Housing Act. HUD is responsible for administering the Fair Housing Act.³⁰ The Fair Housing Act prohibits discrimination in “residential real estate transactions” on the basis of a protected class.³¹ Similar to the ECOA, the Fair Housing Act bans credit discrimination on the basis of national origin,³² and language-based discrimination is a proxy for national origin discrimination.³³ “Residential real estate transactions” include loans or other financial assistance

²⁸ *In the Matter of Synchrony Bank, f/k/a GE Capital Retail Bank*, File No. 2014-CFPB-0007, consent order issued (June 19, 2014), available at http://files.consumerfinance.gov/f/201406_cfpb_consent_order_synchrony-bank.pdf.

²⁹ *Id.* The consent order also alleged UDAAP violations relating to the marketing and sale of Synchrony’s credit card add-on products. *Id.*

³⁰ 42 U.S.C. § 3610. The United States Attorney General, as head of the Department of Justice, has civil enforcement authority under the Fair Housing Act.

³¹ 42 U.S.C. § 3605. Section 3604 of the Fair Housing Act bars discrimination in the terms or conditions of the sale of any dwelling, the provision of services or facilities in connection with a dwelling, the advertising of any dwelling, and when making housing unavailable. 42 U.S.C. § 3604. Most courts have held that sections 3604 and 3605 are not mutually exclusive, but some courts have found that section 3604 does not apply to mortgage financing cases when the borrower already acquired the dwelling at issue. *Compare* *Gibson v. Household Int’l, Inc.*, 151 Fed. Appx. 529 (9th Cir. 2005) (plaintiff failed to provide any authority that section 3604 applies to claims involving non-purchase money loans); *Eva v. Midwest Nat’l Mortg. Bank, Inc.*, 143 F. Supp. 2d 862, 886 (N.D. Ohio 2001) (section 3604 relates to acquiring a home, while section 3605 applies to the making or purchasing of loans or providing other financial assistance for maintaining a dwelling previously acquired) *with* *Neals v. Mortg. Guar. Ins. Corp.*, 2011 WL 1897442, at *3 (W.D. Pa. Apr. 6, 2011) (section 3604 reaches post-acquisition discrimination), adopted by 2011 WL 1897452 (W.D. Pa. May 18, 2011); *Beard v. Worldwide Mortg. Corp.*, 354 F. Supp. 2d 789 (W.D. Tenn. 2005) (predatory lending targeted at African-American communities states claim under sections 3605 and 3604(b)). The DOJ argued successfully that section 3604(a) covers “discrimination that adversely affects the availability of housing,” *see* Brief of the United States As Amicus Curiae in Support of Plaintiffs’ Opposition to Defendants’ Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment 21, *Hargraves v. Capital City Mortg. Corp.*, 140 F. Supp. 2d 7 (D.D.C. 2000), and, arguably, language-based discrimination in the mortgage market adversely affects the availability of housing to LEP consumers.

³² 42 U.S.C. §§ 3604, 3605; 24 C.F.R. § 100.110(b).

³³ *Cf. Lau v. Nichols*, 414 U.S. 563 (1974) (recognizing that national origin discrimination is discrimination based on person’s ancestry, including language, and recipients of federal funding have affirmative obligation under Title VI to ensure LEP persons have meaningful access to participate in public programs). The Fair Housing Act also prohibits credit discrimination based on an applicant’s status as handicapped or disabled. 42 U.S.C. §§ 3604, 3605. This protected class encounters comparable barriers in accessing important mortgage-related information as LEP consumers. Federal regulators should also provide clearer guidance to the mortgage industry to redress equal access problems faced by disabled or

used to purchase, build, improve, repair, or maintain a dwelling or secured by residential real estate.³⁴ Loan modifications fall under the definition of residential real estate transactions.³⁵

Prohibited practices under the Fair Housing Act include “[p]roviding, failing to provide, or discouraging the receipt of loans or other financial assistance in a manner that discriminates in their denial rate or otherwise discriminates in their availability because of . . . national origin.”³⁶ Arguably, mortgage lenders or servicers that fail to provide language access services to LEP borrowers are imposing barriers that discourage LEP consumers from obtaining a mortgage loan or accessing loss mitigation options in violation of the Fair Housing Act. HUD has the authority to issue guidance to lenders and servicers to prevent such violations.

Title VI. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.³⁷ In *Lau v. Nichols*,³⁸ the Supreme Court held that a person’s language is so closely intertwined with his or her national origin that language-based discrimination is a proxy for national origin discrimination. Thus, failing to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI. Executive Order 13166, issued in 2000, clarified the LEP obligations under Title VI of federal agencies and “recipients of federal financial assistance.” These entities must take “reasonable steps to provide meaningful access to programs and services to LEP individuals.”³⁹

Under Executive Order 13166’s clear mandate, the CFPB and other federal regulators are required to provide language access services to LEP borrowers. As noted, the CFPB has taken great strides in providing language access services to LEP consumers. But the CFPB has the opportunity and obligation to make additional improvements, particularly with its Consumer Complaint Services.⁴⁰ HUD and the Federal Housing Finance Agency should work with the

handicapped consumers under the Fair Housing Act and other relevant statutes. *Cf. Webster Bank v. Oakley*, 265 Conn. 539, 830 A.2d 139 (2003) (finding that Title III of the Americans with Disabilities Act regulates a lender's provision of access to its mortgage loans, including mortgage servicing).

³⁴ 42 U.S.C. § 3605(b)(1). A residential real estate transaction also includes the selling, brokering, or appraising of residential real property. 42 U.S.C. § 3605(b)(2).

³⁵ Loan modifications are subject to the protections of the Fair Housing Act under 42 U.S.C. § 3604(a), 3604(b), and 3604(f) and as “residential real estate related transactions” within the meaning of 42 U.S.C. § 3605(b). *See* Dep’t of Treasury, Supplemental Directive 09-02 (Apr. 21, 2009) (stating that the Department of Treasury and HUD believe that loan modifications under the HAMP program are subject to the protections of the Fair Housing Act).

³⁶ 24 C.F.R. § 100.120(b)(2).

³⁷ 42 U.S.C. § 2000d *et seq.*

³⁸ 414 U.S. 563 (1974).

³⁹ Exec. Order No. 13,166, 65 Fed. Reg. 50,123 (Aug. 16, 2000).

⁴⁰ *See* Recommendation #4, *infra*.

CFPB to align expectations and requirements for adequate language access services within their respective agencies to improve their services to the LEP communities they serve.

Recommendations

1. ***Enhance mortgage servicing protections for homeowners with limited English proficiency.*** Regulations and supervision should expand servicer duties to LEP homeowners.
 - a. Servicers should be required to provide free, contemporaneous oral interpretation services for homeowners who request it, including but not limited to referral to a HUD-approved housing counseling agency with appropriate language capacity. Oral interpretation should be provided by individuals who both speak the relevant language and are adequately schooled in the terms of art.⁴¹ The CFPB should continue to develop glossaries for such purposes. (The issue of glossaries is further discussed under recommendation 4, below.)
 - b. Any file where a borrower has communicated or sought to communicate with the servicer or lender in a language other than English should be flagged and include the borrower's preferred language.
 - c. Servicers should be required to provide key documents in the borrower's preferred language, including the periodic statement, the loss mitigation application, denial notices, and loss mitigation offers, including but not limited to the trial period plan. Translated documents should be provided nationally in at least eight languages⁴² in addition to English. Any servicer with a significant percentage of customers in a local market whose native language is something other than English should also provide key documents in such language(s). The requirements should be responsive to future growth of other immigrant groups.
 - d. Servicers should be required to accept key documents in languages other than English, especially where the document provided to the applicant was in such language, where the documents are in such language as part of routine business practice (such as bank statements in Puerto Rico), or where they are issued by a government (such as Social Security income documentation or HAMP applications). Documents generated by the homeowner, such as a hardship affidavit, also should be accepted in languages other than English.

⁴¹ As the New York court system has noted in its report, oral interpretation must be done by properly trained personnel in order to provide effective access to a complex process. Advisory Group to New York State-Federal Judicial Council, *Interpreters in Federal and New York State Courts: Recommended Best Practices* (May 18, 2015).

⁴² The eight languages most commonly spoken by LEP residents are Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole. *See* note 1, *supra*, & accompanying text.

- e. The CFPB and federal regulators should explore whether contracts such as loan modifications can be executed in languages other than English and recorded with an English translation. If not, recordation of non-English information-only documents that accompany (and are translated versions of) the recorded documents should be further explored.
- f. As with other provisions, private liability by servicers for non-compliance, including for damages, would substantially increase compliance with such requirements.

2. *Provide protections for mortgage applicants with limited English proficiency.*

- a. Mortgage originators should be required to ask applicants in which language they would prefer to communicate. The applicant's language preference should be kept with the applicant's HMDA information. If the mortgage application is successful and the loan is originated, the language preference should become part of the loan file and should be provided to the loan servicer (and all future loan servicers).
- b. Written communications to the mortgage applicant should be available in at least eight languages other than English when requested by a prospective applicant.
- c. Key documents for the mortgage applicant should be in a reasonable number of preferred languages, including the TILA-RESPA Integrated Disclosure, the Uniform Residential Loan Application, and requests for documentation.
- d. The originator should provide loan officers who are fluent in the preferred language, provide competent oral interpretation, or contract with HUD-approved housing counseling agencies with the preferred language competencies.

3. *Expand existing supervision and examination procedures to include a review of language accessibility.* The CFPB and regulatory agencies ensure that financial institutions enable equal access for consumers, including those who are members of protected classes. Toward that end, we make the following recommendations for improving supervision and exam procedures. While they are focused on the existing CFPB supervision manual, similar concepts apply to all federal banking agencies:

- a. Expand/update the supervision and exam manual to include more questions for the examiners to ask related to language access in mortgage servicing. Currently the ECOA Baseline Review Module includes a set of strong questions related to serving borrowers with limited English proficiency.⁴³ We recommend expanding this list of mortgage servicing questions to include the following:

⁴³ CFPB Supervision and Exam Manual, ECOA Baseline Review at 11 (Module IV, section e), available at http://files.consumerfinance.gov/f/201307_cfpb_ecoa_baseline-review-module-fair-lending.pdf.

- i. Is the financial institution able to accept documents in other languages, i.e., income documentation, hardship letters, etc.?
 - ii. Does the financial institution provide training for oral interpreters and does it ensure that interpreters (including third-party contractors) are competent in the specialized financial services vocabulary in those languages?
 - iii. How and when does the financial institution notify consumers of services provided in languages other than English?
 - iv. Does the financial institution track the language preference of the borrower when the borrower expresses a preference to communicate in a language other than English and when the loan is transferred between entities or between departments?
- b. Expand/update the supervision and exam manual to include questions related to language access on the sections related to mortgage origination. We recommend including the following questions in the exam manual:
- i. Does the institution conduct advertising and market its mortgage products in languages other than English? If so, evaluate the lender's advertising materials and disclosures across all media, including print, television, radio, telephone solicitation scripts, and electronic media including the Internet, social media, email and text messages. How do these compare to English language materials and media?⁴⁴ Do advertising and marketing materials in English and languages other than English emphasize different credit products?⁴⁵
 - ii. Does the institution flag files of customers who require non-English language assistance? If so, how is this flagged?
 - iii. Is the language preference of the borrower tracked when the file is transferred across the departments?
 - iv. Do calls for customer service have an option for languages other than English? If so, how are those calls processed?
 - v. Does the institution have customer service personnel available to provide assistance in languages other than English?
 - vi. If customer service personnel are available to provide assistance in languages other than English, are they dedicated customer service personnel (as opposed to personnel who have other roles, but are available to translate on an as-needed basis)?
 - vii. Do customer service personnel who are available to provide assistance in languages other than English receive the same training, and have the same authority, as other customer service personnel?

⁴⁴ Adapted from CFPB Exam Manual: Short-Term, Small Dollar Lending: Module 1 – Marketing (Procedures at 6), available at <http://files.consumerfinance.gov/f/2012/01/Short-Term-Small-Dollar-Lending-Examination-Manual.pdf>.

⁴⁵ Adapted from CFPB Exam Manual, ECOA Baseline Review, *supra*, at 9 (Module III, section 1).

- viii. Are translations of English language documents (mortgage applications, notices, disclosures loan documents) provided for LEP borrowers?
- ix. Are financial institutions able to accept documents in other languages, i.e., income documentation, etc.?
- x. Does the financial institution provide training for oral interpreters and does it ensure that interpreters (including third-party contractors) are competent in the specialized financial services vocabulary in those languages?
- xi. How and when does the financial institution notify consumers of services provided in languages other than English?
- c. Convene a training or briefing, with consumer and consumer-advocate presenters, on issues related to language access for supervisory staff and examiners.

4. *Improve language access to the CFPB's Consumer Complaint Services.*⁴⁶ We are encouraged that the CFPB's contact centers are able to assist consumers with complaints in over 180 languages. We caution the CFPB against relying solely on similar Language Line services to provide adequate access for LEP borrowers and urge the CFPB to raise the standards for interpretation services. Further, the CFPB has reported that it is not receiving complaints in other languages at a rate comparable to those received in English. We believe there is a direct correlation between CFPB's lack of outreach in languages other than English and the number of complaints received from LEP borrowers. For improving the Consumer Complaint Services, we recommend that the CFPB:

- a. Increase its outreach about the complaint line in languages other than English.
- b. Develop glossaries of key financial terminology and processes to enhance accurate recordation of complaints about credit cards, mortgages, bank accounts and services, private student loans, vehicle and other consumer loans, credit reporting, money transfers, debt collection, payday loans, prepaid cards, credit repair and debt settlement services, title and pawn loans, and virtual currencies that can serve as guides for interpreters.
- c. Hire bilingual staff fluent in at least seven languages in addition to English for CFPB's contact centers and ensure that they receive proper training on the technical terminology of financial products.
- d. Require CFPB vendors to ensure standards of certification or training for its contracted telephone language interpreters to ensure that interpreters are competent to interpret technical terminology on financial products.
- e. Develop translated materials that provide consumers with updates regarding steps taken and resolutions to their submitted complaints.

⁴⁶ While this discussion focuses on current CFPB complaints procedures and recommendations for future changes, similar approaches should be adopted by the federal banking agencies.

- f. Revise CFPB’s complaint intake form to include the option for the consumer to indicate language preference.
 - g. Update the published Consumer Complaint Database to include reporting on the preferred language of the consumer and whether the complaint is related to a language access issue.
5. ***Improve opportunities for mortgage applicants and homeowners with limited English proficiency to find a HUD-approved housing counseling agency with a counselor who speaks their preferred language.*** The CFPB’s “Find a Housing Counselor” page is a consumer friendly and useful tool for helping housing consumers locate a HUD-approved housing counseling agency close to them. However, it is only useful to consumers who are fluent in English. In order to make the page useful to LEP consumers, we recommend that the CFPB:
- a. Identify which housing counseling agencies have counselors who are fluent in specific languages and allow consumers to search by counselor language capacity to find a counselor who speaks their preferred language.
 - b. Translate the “Find a Housing Counselor” page into multiple languages.
6. ***Provide affirmative written guidance/regulations on standards for addressing language access in financial institutions.*** This document should address the following components:
- a. Provide guidance on oral interpretation and the translation of written materials and notices. This should include guidance on which key documents should be translated, when oral interpretation is essential for communicating with the consumer, and standards regarding necessary training for interpreters.
 - b. Produce a standard glossary of key mortgage and financial terminology in languages other than English. This is an important first step in providing guidance to financial institutions on standard vocabulary and reducing the barriers for translation of key mortgage documents, disclosures, statements and other communication with LEP consumers.
 - c. The CFPB and federal regulators should clearly state that it is an acceptable practice for the mortgage originator to ask the mortgage applicant his or her language preference.
7. ***Update data fields for the Home Mortgage Disclosure Act (HMDA) to include the preferred language spoken by the loan applicant.*** We commend the CFPB for including disaggregated data on race and ethnicity in its recent rule on the Home Mortgage Disclosure Act (HMDA). Collecting this key piece of data will be instrumental in better understanding the lending disparities among communities. In addition, we recommend that the CFPB take the rule one step further to require lenders to report the language in which the loan was negotiated and the language of the loan application and closing documents. Improved data collection is a key component to better understanding the barriers and possible solutions to language access. Language preference is a key indicator of the extent to which limited English proficient communities have access to financial services

and products and therefore a critical data field that requires collection and monitoring.

8. ***Establish and lead a federal interagency working group to examine strategies for improving data collection and tracking of language preferences of borrowers through the mortgage process including revision of the mortgage application and the Uniform Borrower's Assistance Form (UBAF).*** The CFPB should establish and lead a federal interagency working group to examine strategies for improving data collection and tracking of language preferences of borrowers through the mortgage lending process and to examine the level of access available to those borrowers. We recommend including language preference as a field that is recorded and tracked on the Uniform Borrower's Assistance Form (UBAF), the mortgage application that can be tracked throughout the life of the loan, and/or through any other available mechanism used in the origination and servicing stages.

Conclusion

The CFPB has taken some important initial steps in recognizing the needs of LEP consumers. The CFPB and federal banking regulators should go further in establishing rules and procedures to make the financial system fully and fairly accessible to these consumers, an important and growing segment of the market. Mortgage origination and servicing must be a key element in that effort. While this work will be an ongoing process, progress is urgently needed. AFR's members look forward to working with the CFPB and federal banking agencies to make progress for LEP homeowners and other LEP consumers.

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A [companion paper](#) tells the stories of LEP homeowners.

The organizations that collaborated on the papers include: National Consumer Law Center (on behalf of its low-income clients), National CAPACD, National Council of La Raza, Empire Justice Center, National Housing Resource Center, Consumer Action, National Fair Housing Alliance, and MFY Legal Services, Inc.

Americans for Financial Reform is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, AFR is working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole.