



August 3, 2020

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Department of the Treasury
400 7th Street SW Suite 3E-218
Washington, D.C. 20219

RE: Advance Notice of Proposed Rulemaking - National Bank and Federal Savings Association Digital Activities [Docket ID OCC-2019-0028; RIN 1557-AE74; 85 FR. 40827]

To Whom It May Concern:

The AFR Language Access Task Force¹ submits these comments in response to the Office of the Comptroller of the Currency (OCC)'s Advance Notice of Proposed Rulemaking on National Bank and Federal Savings Association Digital Activities. Our comments focus on how the OCC can encourage banks to better serve consumers with limited English proficiency (LEP) and use technology to provide greater language access and improved banking services.

A. The OCC should encourage its regulated banks to use technology to better serve LEP consumers.

When it comes to “new ways to conduct the very old business of banking” in a manner that promotes financial inclusion for all communities, it is essential to better address the needs of limited English proficient (LEP) consumers.

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. According to the 2017 American Community Survey, approximately 25.9 million individuals, roughly 9% of the U.S. population, were considered limited English proficient (LEP). LEP refers to anyone above the age of five who reported speaking English less than “very well,” according to 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,

¹ Americans for Financial Reform Education Fund (AFREF) is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. AFR's Language Access Task Force was convened by AFREF to advocate for improved language access for borrowers with limited English proficiency as they navigate the financial marketplace. Members of the AFR Language Access Task Force include Americans for Financial Reform Education Fund, Center for Responsible Lending, Connecticut Fair Housing Center, Consumer Action, Empire Justice Center, National Fair Housing Alliance, National Consumer Law Center (on behalf of its low-income clients), National Coalition for Asian Pacific American Community Development (CAPACD), and UnidosUS.

followed by Chinese, spoken by 7% of the LEP population.² These individuals who are not proficient in English have much greater difficulty navigating the financial marketplace and resolving challenges when they arise.

Access to the financial marketplace for LEP consumers has increasingly drawn the focus of regulators, lenders, and consumer advocates. The Federal Housing Finance Agency has undertaken significant efforts to expand access to the mortgage market for LEP communities.³ The Consumer Financial Protection Bureau has also encouraged financial institutions to better serve LEP communities.⁴ New York City recently adopted rules requiring that debt collectors must ask about language preference, track consumers' language preference, inform consumers of any available translations services, and point consumers to a glossary of debt-related terms available on the city's website.⁵ In the same way, the OCC should promote inclusion by emphasizing language access standards for all national banks across the range of products and services they may provide.

LEP individuals need to access services in their own language before, during, and after a financial transaction. While marketing may occur in the person's preferred language, too often the financial transaction documents and any subsequent contact (oral or written) are English-only. A report by the Kleimann Communications Group produced for Fannie Mae and Freddie Mac found that where translated documents are not available, LEP borrowers must resort to relying on friends and family members – and sometimes children – to convey crucial financial information.⁶ Placing the burden of interpreting technical, legal, or financial information on individuals who lack financial expertise compromises the consumer's ability to make a well-informed decision. It also means that sensitive financial information will be revealed to the third party who is helping with the translation. The Kleimann study found that consumers feel vulnerable when they cannot review documents in their language. Even for those who speak some English, they would still prefer to have translated documents to double check their understanding.⁷ The study found that providing translated documents would eliminate a

² Jeanne Batalova and Jie Zong, "Language Diversity and English Proficiency in the United States," Migration Policy Institute (Nov. 11, 2016), <http://www.migrationpolicy.org/article/language-diversity-and-english-proficiency-united-states>.

³ See Americans for Financial Reform's Language Access Task Force, Comments on the Federal Housing Finance Agency's Request for Input on Improving Language Access in Mortgage Origination and Servicing (July 31, 2017), https://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/comments-afr-task-force-fhfa-rfi-language-access.pdf and Supplemental Comments (Sept. 1, 2017), https://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/letter-fhfa-lep-2nd-submission.pdf; Americans for Financial Reform, Fair Treatment of Homeowners with Limited English Proficiency (May 26, 2016), <http://ourfinancialsecurity.org/2016/05/language-access-press-release/>.

⁴ Consumer Fin. Prot. Bureau, Spotlight on Serving Limited English Proficient Consumers (Nov. 2017), https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf; Consumer Fin. Prot. Bureau, Supervisory Highlights (Oct. 2016) at 20-25, https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf.

⁵ NYC Dep't of Consumer Affairs, Notice of Adoption (June 11, 2020), *available at* <https://rules.cityofnewyork.us/content/notice-adoption-debt-collectors>.

⁶ Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), *available at* <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-FinalReport-June-2017.pdf>.

⁷ *Id.* at 8-9.

significant barrier that prevents or delays LEP individuals from buying a home.⁸ In addition to needing better access to the mortgage market, LEP consumers are less likely to have a bank account. Households where only Spanish is spoken are unbanked at five times the rate of households where Spanish is not the only language spoken.⁹

While language access is important for all bank customers, it is especially important when services are provided primarily online or through mobile devices and do not give consumers the option of visiting a brick and mortar branch. While LEP consumers have challenges with in-person transactions as well, the difficulty of overcoming limited English proficiency is even greater when communications are entirely through written communications. Even telephone communications can be more difficult when language is a barrier than talking to someone face to face.

The OCC should ensure that as banks develop greater reliance on technology and internet-based applications, they take the following steps to expand access for LEP consumers:

- Ensure that web portals and mobile apps are accessible in languages other than English, beginning with Spanish and continuing to expand to the most prevalent LEP languages within a bank's service area;
- Communicate with customers in languages other than English (orally and in writing);
- Include mechanisms for collecting and retaining customers' language preference in the customer's electronic and paper file;
- Transfer language preference information to assignees, servicers, collectors, or other relevant parties;
- Allow customers to fill out applications and provide supporting documentation (like bank statements and gift letters) in languages other than English;
- Provide oral interpretation through multi-lingual staff or third-party vendors, and in the case of mortgage-related transactions, HUD-approved housing counseling agencies; and
- Provide contracts and required disclosures in the customer's preferred language for informational purposes.

The expanded use of technology should make these goals even more attainable for banks, and therefore, should be made a priority. Which of these elements are most important or relevant will vary depending on the services provided by a bank. In addition, third party vendors may be helpful in providing oral interpretation and other services related to in-language explanations of key documents.¹⁰

Banks that offer innovative services primarily online have a tremendous opportunity to support inclusion by offering language access. By developing websites and applications that are available in Spanish, with the goal of including other top languages over time, as well as telephone or online chat support in-language, these banks could provide access to the LEP community with great impact at a relatively low cost.¹¹

⁸ *Id.* at 10.

⁹ Consumer Fin. Prot. Bureau, Spotlight on Serving Limited English Proficient Consumers (Nov. 2017), at 13.

¹⁰ See, e.g., <https://talkuments.com/services/>.

¹¹ See Consumer Fin. Prot. Bureau, Spotlight on Serving Limited English Proficient Consumers (Nov. 2017) at 18.

The OCC should emphasize the need for compliance with fair lending laws, including the Equal Credit Opportunity Act. One key aspect of fair lending compliance is to avoid steering by not having differential product offerings for LEP and non-LEP borrowers.¹² Banks have an obligation to make their financial services available broadly, so as not to exclude protected groups. The greatest fair lending risk would arise from a failure to have a language access plan in place and take steps to serve the LEP community, especially in light of available translated resources and technology which make their use reasonably cost-effective.¹³

As the COVID-19 epidemic ravages communities, and disproportionately communities of color, outreach regarding available help in languages other than English, and enabling consumers to communicate and seek help in other languages, is of utmost importance. FHFA is encouraging mortgage servicers to provide information about mortgage forbearances in other languages by translating the servicer scripts into the top five LEP languages.¹⁴ The OCC should ensure that its regulated entities make similar efforts to communicate with LEP borrowers about temporary and long-term payment relief available during the pandemic.

If you have any questions, please contact Linda Jun at linda@ourfinancialsecurity.org.

Sincerely,

AFR Language Access Task Force

¹² See Consumer Financial Protection Bureau, Supervisory Highlights, Issue 13 (Oct. 2016), http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf

¹³ See, e.g., Federal Housing Finance Agency's Mortgage Translations website, <https://www.fhfa.gov/MortgageTranslations> (providing translated documents and glossaries of key mortgage-related terms in Spanish, Chinese, Vietnamese, Korean, and Tagalog).

¹⁴ FHFA Makes Translated Covid-19 Resources Available in Six Languages on LEP Site (June 16, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Makes-Translated-COVID-19-Resources-Available-in-Six-Languages.aspx>.