

August 24, 2020

Director Kathleen Kraninger
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Re: Language Access Roundtable Discussion

Dear Director Kraninger:

Thank you for inviting us to participate in the Bureau's July 29 roundtable discussion of issues facing limited English proficient (LEP) consumers in the mortgage market. We greatly appreciate your attention, and the attention of your staff, to these important issues. LEP borrowers face many challenges that impede their full participation in the consumer marketplace, including, specifically, their ability to obtain and preserve ownership of a home. Many LEP consumers are people of color who have historically been excluded from homeownership and wealth-building opportunities in this country and are disproportionately hard hit by the COVID-19 pandemic today. We write to follow up on some of the most important points made in the roundtable discussion regarding how the Bureau can best promote these goals and support stable homeownership for LEP borrowers.

COVID-19 Presents an Urgent Need for In-Language Mortgage Servicing Outreach to LEP Consumers

As you know, the COVID-19 pandemic has caused millions of homeowners to struggle to pay their mortgages. Many of those homeowners have sought, and obtained, a forbearance to provide temporary relief from mortgage payments while they seek a return to full employment. Yet a significant number of homeowners have defaulted on mortgage payments without obtaining a forbearance – putting them at elevated risk of foreclosure, particularly as foreclosure moratoria begin to expire. Early data from the U.S. Census Bureau's Pulse Survey shows that people of color are both more likely to have missed a mortgage payment in recent months and more likely to have missed a payment without being placed in a forbearance. The vast majority of the LEP population comes from communities of color. As of 2015, 62% of the LEP population in the United States was Hispanic or Latino, 22% Asian, and 4% Black.¹ The Pulse survey results released June 30, 2020 show that about 17% of Black homeowners and 8% of Hispanic or Latino homeowners had missed a mortgage payment in May, compared with 4% of White homeowners.² Moreover, among homeowners who had missed a payment, Black homeowners were more likely to be missing payments without having been enrolled in a forbearance by a

¹ Migration Policy Institute, Language Diversity and English Proficiency in the United States (Nov 11, 2016), <https://www.migrationpolicy.org/article/language-diversity-and-english-proficiency-united-states-2015>.

² National Consumer Law Center, A Looming Crisis: Black Communities at Greatest Risk of COVID-19 Foreclosure (July 2020), https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Covid_Black_Forbearance_Foreclosure.pdf.

ratio of 4.0 to one, Hispanic or Latino borrowers at a ratio of 2.2 to one, and White homeowners at a ratio of 1.4 to one.³

There is good reason to believe that the disparate access to forbearance plans has been caused in part by disparate access to information. In a recent survey of housing counselors from around the country, over half of respondents had heard from homeowners stating that they did not know they could request a forbearance. Seventy percent of counselors responding had interacted with homeowners who did not enter into a forbearance due to a fear of a lump sum payment that would be due at the end of the forbearance period.⁴ Since almost all federally-backed mortgage borrowers will qualify for a permanent mortgage relief option, without the need for a lump sum payment, this fear reflects an information gap. Further evidence of an information gap stems from the fact that Black and Hispanic or Latino borrowers are more likely than White borrowers to have an FHA loan, and servicers of FHA loans have been shown to have “incomplete, inconsistent, dated, and unclear” information about forbearance options on their websites.⁵

No population faces greater challenges in obtaining information about available mortgage relief than LEP borrowers. LEP borrowers are more likely to face long hold times if they are attempting to speak with their servicer by phone with oral interpretation. Many servicer websites do not contain any information on COVID-19 mortgage relief options in languages other than English, and do not even provide links to available translated agency websites.

We appreciate the Bureau’s decision to collaborate with other federal agencies to host a joint agency website that has now been translated into the top eight LEP languages. However, borrowers are unlikely to find this website unless they know to look for it. Most borrowers looking for help online will visit only their own servicer’s website and will find no information there about the joint agency Coronavirus relief website’s existence or the fact that it has been translated into eight languages.

The alarming numbers of borrowers, including borrowers of color and LEP borrowers, who are not taking advantage of the forbearance options available to them calls for more aggressive outreach by the Bureau and other federal government housing agencies. Failure to obtain a forbearance puts borrowers on a path to foreclosure, which has enormous consequences for family stability, economic security and – in the middle of the current pandemic – the health and safety of individuals, families and the larger community. Given the racial and ethnic make-up of the delinquent borrowers who are not seeking forbearance, these foreclosures would also exacerbate our country’s enormous racial gaps in homeownership and wealth. For all these reasons, we urge the Bureau to work with its partner agencies to launch an aggressive outreach campaign to get the word out about the protections provided under the CARES Act and how borrowers can obtain them. This campaign, which should coordinate with housing counseling,

³ *Id.*

⁴ National Housing Resource Center, Forbearance and Delinquency Summary of Housing Counselor Survey (July 20, 2020), <https://www.hsgcenter.org/wp-content/uploads/2020/08/Survey-results-Forbearance-and-Delinquency2.pdf>.

⁵ Office of Inspector General, Dep’t of Housing and Urban Dev’t, Some Mortgage Loan Servicers’ Websites Offer Information about CARES Act Loan Forbearance that is Incomplete, Inconsistent, Dated, and Unclear (April 27, 2020), <https://www.hudoig.gov/reports-publications/topic-brief/some-mortgage-loan-servicers-websites-offer-information-about>.

legal services and other community-based organizations that are trusted resources in local communities, should be multi-lingual and utilize multiple media channels. These include, among others, social media, targeted print media, radio and TV. It should start immediately, adapt messages as needs change, and run until this crisis has ended. Our organizations stand ready to lend our assistance with crafting the messages and amplifying the campaign.

We understand from your comments during the roundtable discussion that the Bureau has taken additional steps to attempt to reach homeowners with information about Coronavirus mortgage relief. We would appreciate more information about those steps, so that we can better partner with the Bureau to encourage the use of the resources resulting from such efforts. Please direct us to any form servicer notices, social media campaigns, and any other outreach materials in various languages. We would also be interested in usage information, such as the number of people that have viewed the Coronavirus mortgage relief website pages in each of the available languages and any information about servicers using relevant materials in their outreach.

As foreclosure moratoria are set to expire soon, including possibly the Fannie Mae and Freddie Mac moratoria, it is more important than ever to reduce the number of borrowers who have defaulted on their mortgage but have not obtained a forbearance. We understand that you see outreach to LEP consumers, including in-language information about Coronavirus mortgage relief options, as an important part of the Bureau's mission. Given how critical mortgage relief is for struggling borrowers during this time, we ask that the CFPB direct the servicers and lenders under its supervision to notify their borrowers of the availability of forbearance and how to request this assistance for all loans not in forbearance. We appreciate your concern on behalf of these at-risk homeowners and look forward to a continuing dialogue with the Bureau about how best to increase the uptake for forbearances and other home-saving options among the LEP community and communities of color.

Language Access in Mortgage Origination and Servicing Must Be Expanded

We also appreciate the Bureau's focus on what, if any, steps can be taken to encourage lenders and servicers to provide more access to translated documents and oral interpretation in both the origination and servicing of mortgage loans.

Our organizations have been working on language access issues for years and have been engaged in discussions with federal agencies around increasing access to the mortgage market for LEP consumers since 2016. We have gathered examples of consumers who have been harmed by a lack of information in their language.⁶ We have commented on the efforts of FHFA to increase the use of translated mortgage documents, both in writing⁷ and as participants in FHFA's Language Access Task Force.

⁶ Americans for Financial Reform Language Access Task Force, Barriers to Language Access in the Housing Market: Stories from the Field (May 2016), https://ourfinancialsecurity.org/wp-content/uploads/2016/05/AFR_LEP_Narratives_05.26.2016.pdf.

⁷ Americans for Financial Reform 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://ourfinancialsecurity.org/wp-content/uploads/2017/08/AFR-Task-Force-Response-to-FHFA-RFI-on-Language-Access-7-31-2017.pdf>; Supplemental Comments (Sept 1, 2017), <https://ourfinancialsecurity.org/wp-content/uploads/2017/10/FHFA-LEP-RFI-2nd-submission-of-AFR-et-al-9-1-17-1.pdf>.

Throughout these ongoing discussions, lenders and servicers have expressed concerns regarding their potential exposure to liability if they provide translated documents in some but not all languages, or if they provide translations of some but not all documents.

The Bureau has provided helpful guidance in the past regarding effective Compliance Management Systems and ways for lenders and servicers to mitigate risk by having a thoughtful, data-informed language access plan.⁸ The Bureau has commented that many lenders and servicers are serving LEP consumers in effective ways that do not create enforcement risk. The Bureau has also pointed to practices that can expose servicers to risk, including activities that steer LEP borrowers to only certain products.⁹

If the Bureau intends to take further action beyond the Supervisory Highlights it has already published on this subject, then any engagement related to serving LEP borrowers in a way that complies with ECOA and is not unfair, deceptive, or abusive should be done through a public notice-and-comment rulemaking. These are complex issues. The obligations of a lender or servicer vary depending on their size, the footprint of the communities they serve, and the available documents that have been translated by government agencies. It is crucial that the CFPB take the requisite time to conduct research, hear from all stakeholders and carefully consider all feedback and perspectives before moving forward with any proposed action in this area.

When lenders seek assurances that they may provide translated versions of certain documents but not others, or when they pursue the ability to provide translations at origination followed by ongoing servicing that will be conducted entirely in English, this raises significant questions regarding the expectations created for borrowers and whether such conduct should be considered unfair or deceptive. Borrowers may be more likely to arrange help interpreting English documents during the home-buying process (perhaps from a bilingual real estate agent or trusted advisor), and are therefore even more likely to need documents in their preferred language as the loan is serviced over time—especially if they experience a hardship and need to apply for loss mitigation. We recognize the lending industry’s concern about expanding access for LEP consumers, but if the Bureau is considering regulatory action to facilitate that goal, it must do so by fully vetting the issues in a careful and public rulemaking process. The risk of unintended consequences is significant, and any agency action must have as its first priority to do no harm.

We commend the Bureau for its attention to these issues and look forward to further engagement in order to encourage safe and responsible lending to LEP communities. If we can provide additional information, please feel free to contact Linda Jun, linda@ourfinancialsecurity.org, or Sarah Mancini, smancini@nclc.org.

⁸ 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.

⁹ *Id.*

Sincerely,

Americans for Financial Reform Education Fund
Center for Responsible Lending
Connecticut Fair Housing Center
Consumer Action
Empire Justice Center
National CAPACD
National Community Stabilization Trust
National Consumer Law Center
National Fair Housing Alliance
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