CRACKING THE CODE

UNDERSTANDING AND OVERCOMING LANGUAGE BARRIERS IN CONSUMER FINANCE

National Consumer Law Center
Fighting Together for Economic Justice

September 2024

National Consumer Law Center
Fighting Together for Economic Justice

ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state governments and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

NCLC.ORG

ABOUT THE AUTHOR

Nicole Cabañez is a Skadden Fellow at the National Consumer Law Center (NCLC). Her work focuses on improving market access for consumers with limited English proficiency across various aspects of consumer financial law, including mortgage servicing, debt collection, and credit reporting. She also specializes in the intersection between consumer finance and immigrant justice issues, including remittances, consumer reporting for individuals with individual tax ID numbers (ITINs), and access to banking issues for new arrivals.

Before joining NCLC, she worked as an intern in the Enforcement division of the Consumer Financial Protection Bureau. Nicole received her B.A. in sociology from the University of Pennsylvania and her J.D. from Yale Law School.

ACKNOWLEDGMENTS

The author would like to thank Sarah Mancini, Alys Cohen, Abby Shafroth, Chi Chi Wu, April Kuehnhoff, and Michelle Deakin for editorial contributions to this report and Ella Halpine for layout and design. She also sends gratitude and admiration to the tireless advocates around the country who represent consumers with limited English proficiency and have shared their learnings with NCLC.

NCLC also thanks the Skadden Foundation and Kathleen Rubenstein, whose support made this report possible.

CRACKING THE CODE

UNDERSTANDING AND OVERCOMING LANGUAGE BARRIERS IN CONSUMER FINANCE

1. INTRODUCTION

Language barriers exist across every facet of life in the United States, but they are particularly pervasive in markets for consumer financial products and services. From the moment someone requests their credit report or seeks to open a bank account or apply for credit, to when distressed accounts go into collections and people face the threat of debt collection lawsuits, garnishments, negative credit reporting, and other consequences, consumers with limited English proficiency are rarely accommodated in their preferred language. At every turn, consumers with limited English proficiency are at a heightened, near constant risk of serious misunderstanding as they conduct their financial affairs. These barriers exist regardless of immigration status and can plague someone for decades, as it can take years of exposure to a new language to gain the proficiency required to fully understand financial disclosures and documentation.[1]

This reality is especially alarming given how common it is for individuals to have limited English proficiency (LEP) in our society. Around 25.9 million individuals in the United States, roughly 8.2% of the U.S. population over the age of 5, are limited English proficient, meaning they have a limited ability to read, write, speak, or understand English.[2] The United States also has more immigrants than any other country in the world, with roughly 14% of the U.S. population having been born in another country, totaling 47 million people.[3] This population's share of the total U.S. population is likely to grow, as the foreign-born population is expected to be the driving force behind American population growth as soon as 2030.[4]

At every turn, consumers with limited English proficiency are at a heightened, near constant risk of serious misunderstanding as they conduct their financial affairs.

Language barriers also frequently intersect with other vulnerabilities across the consumer financial marketplace. For example, consumers with limited English proficiency are more likely to be foreign-born, to be noncitizens, and to live in poverty or financial precarity than their English-speaking counterparts.[5] Thus, the added barriers and vulnerabilities that exist for these separate populations—noncitizens, new arrivals, and individuals living in poverty—often raise the stakes for consumers with LEP. Put simply, there is often very little margin for miscommunication among these groups.

Yet, tremendous inconsistencies in both the quantity and the quality of language services across the market persist. For instance, while some financial institutions offer some language services, particularly at the sales stage, it is nearly impossible for consumers to shop for providers that offer language services that would meet their needs throughout the product or service's life cycle or when things go wrong. Providers rarely publish information regarding which language services they offer at every stage of a provider-consumer relationship. What's more, even those providers that offer some language services when a consumer takes out a loan often do not guarantee those services for the life of that loan or the rest of the product's life cycle. A consumer may apply for a loan completely in their native language, only to have their loan statements and other important communications handled exclusively in English. And when financial institutions do offer some services, such as bilingual staff and third-party oral interpretation services, they are often inferior to the services offered in English, or worse, they provide incomplete and misleading information.[6] Finally, when LEP consumers fall on hard times, required notices intended to inform consumers of their rights and resources that might be available to help them are rarely provided in languages other than English.

When financial institutions do offer some services, such as bilingual staff and third-party oral interpretation services, they are often inferior to the services offered in English, or worse, they provide incomplete and misleading information.

This report covers the ways that financial institutions across the financial services industry serve, or fail to serve, people with limited English proficiency. While there are diligent efforts by legal services providers, housing counselors, community based organizations, and federal, state, and local government actors to attempt to fill in the gaps created by industry, and there is much that financial institutions could do voluntarily to improve the way they serve LEP customers, these approaches cannot guarantee consistent language access. The goal of this report is to chart a course for policy reforms that would lead to consistent and meaningful language access in the financial sector by financial providers. Immigrants and other individuals with limited English proficiency cannot fully participate in our society if they are not able to engage with the financial system on fair and transparent terms. Nor can they be expected to trust financial institutions when they are forced to sign documents they don't understand. While community-based organizations play an important role in helping LEP individuals navigate our financial system, they cannot do all the work for the industry as a whole, nor should they.

The recommendations in this report focus on three high-impact areas: consumer reporting and tenant screening, debt collection, and loan servicing. While some of these recommendations are context-specific, there are also some general themes: uniform requirements; bilingual Spanish-English access; tagline disclosures; and widely available oral interpretation. Whenever possible, all four of these principles should be incorporated in consumer protection law to ensure that LEP consumers have a fair chance in navigating our financial system and exercising their rights.

2. HARMS OF A FINANCIAL SYSTEM WITHOUT MEANINGFUL LANGUAGE ACCESS

There are many harms that flow from the failure of the financial system to accommodate the linguistic needs of our diverse population.

Inconsistent access to translated materials and to bilingual interpreters forces consumers to rely on others, such as children and other family members or friends, to interpret highly technical documents involving personal and sensitive information.[7] This practice is problematic and risky for several reasons.

First, it puts well-meaning family members in an uncomfortable position to interpret documents when they do not have the technical experience or a full picture of their loved one's financial affairs. Relying on children to interpret important, highly technical documents can also have a lasting negative impact on those children, particularly when children must deliver devastating news (as is often the case in debt collection and foreclosure) to their parents.[8] This practice can also lead to misunderstandings, as communicating through untrained and uninformed representatives can yield incomplete or incorrect interpretation, which can prevent consumers from understanding and acting on their rights or opportunities to prevent adverse consequences.[9] Relying on other people creates an environment ripe for potential abuse, as these third parties might not present information objectively, and may purposefully manipulate or omit key information.[10] LEP consumers deserve the right to navigate their financial affairs independently.

Relying on family members or friends to interpret is rife with problems.

- It puts well-meaning people in an uncomfortable position of assisting without technical knowledge or information about sensitive financial affairs.
- It puts children in the position of having to tell their parents devastating news about debt collection or foreclosure, an experience with long-lasting effects on the child.
- It leads to miscommunications, which may have adverse consequences for a person's financial affairs.
- It presents opportunities for potential abuse, as the third party interpreter may have their own interests in the situation.

Second, the lack of consistent language access throughout the various components and life cycle of a financial transaction and service heightens the risk of abuse and deception by companies that provide financial products and services to LEP consumers. LEP consumers are eager to participate in our economy, and often choose providers (and refer family members) according to whether the provider communicates in the consumer's preferred language. This eagerness to participate in our system, coupled with our mainstream system's failure to accommodate LEP consumers' most basic language needs, creates an environment ripe for abuse. For instance, subprime lenders across the market frequently advertise in other languages to lure in LEP customers.[11] These lenders also hire bilingual loan officers to negotiate the deals, and then, in many cases, provide incomplete or misleading translations to consumers, or no translations at all. In automobile sales, dealers frequently employ bilingual sales staff, but instruct financing staff to communicate with consumers exclusively in English. This practice likely contributes to higher interest rates and dealer-imposed prices for add-on products among Hispanic and Latino carbuyers.[12] At its worst, these conditions can lead to bilingual sales representatives describing one set of terms orally, with English-only documents presenting a very different set of terms.

Third, the lack of uniform language access across consumer financial markets also contributes to a heightened susceptibility to predatory financial companies and products, including outright fraud, among LEP consumers. Bad actors fill the void created by mainstream financial institutions' frequent failure to provide even basic language services, and exploit these market gaps. For example, foreclosure rescue scammers tend to target LEP consumers[13] precisely because mortgage servicers do not regularly attempt to communicate with consumers in their preferred language. Debt relief and credit repair scams flourish in LEP communities, in part because credit reporting agencies and debt collectors themselves do not have a uniform practice of offering language services.

When LEP consumers are unable to communicate with their providers, they are often unable to exercise their rights under federal law and receive benefits under loss mitigation programs.

Phantom debt collection scams, telemarketing scams that harass consumers into paying debts they do not owe, also frequently target LEP consumers.[14] In fact, according to an FTC fraud survey, Latino/Hispanic consumers were 2.5 times more likely to be a victim of a debt-related scam than non-Latino white counterparts, with several of these scams taking advantage of LEP consumers by advertising to them in Spanish.[15]

Fourth, when LEP consumers are unable to communicate with their providers, they are often unable to exercise their rights under federal law and receive benefits under loss mitigation programs. For example, in a study of the 16 largest mortgage servicers across the country, the Consumer Financial Protection Bureau's (CFPB) Office of Supervision Policy found that while the number of non-LEP borrowers who had a delinquent account without a loss mitigation option in place after exiting forbearance decreased over the study period, the same figure remained constant for LEP borrowers.[16] Distressed LEP homeowners were either not accessing loss mitigation options that could have helped save their homes, or were not accessing those home-saving options at the same rate as English speaking homeowners. Inconsistency in the availability and quality of language assistance in our consumer financial markets leads to worse outcomes for LEP consumers.

The failure to serve our country's substantial LEP population is no coincidence. It is, at best, the result of decades of disinvestment and disinterest in serving immigrant communities across our economy. At worst, it is the result of perverse market incentives—providers often benefit from consumers being confused.

Agencies across federal, state, and local governments have taken numerous steps to document these language barriers across our system and to encourage industry participants to better serve these often vulnerable consumers, with little success.[17] The next section of this report provides an overview of existing language access laws at the federal and state level. We then document the voluntary efforts across several areas of our consumer financial system and explain why these efforts have fallen short. We conclude by identifying legal authority under existing laws to empower government actors at various levels to impose clear language access requirements and policy recommendations for how these requirements should be shaped.

3. LANGUAGE ACCESSIBILITY: WHAT DOES IT MEAN, WHO IS CURRENTLY REQUIRED TO PROVIDE IT, AND WHY ARE FINANCIAL INSTITUTIONS BEHIND THE CURVE?

While LEP consumers are at a heightened risk for predatory schemes that take advantage of their inability to understand English, language accessibility is about more than preventing this abuse by financial providers. Rather, language access in any context entails providing LEP individuals with reasonable access to the same services as English-speaking individuals.[18] Put another way, conversations about the language accessibility of our marketplace center around the degree to which our consumer financial markets are *positioned to accommodate* LEP consumers.

This report focuses on reducing language barriers on a market-wide basis, not simply ensuring that those select companies that choose to accommodate LEP consumers do so in a manner that does not deceive or abuse them. Without language inclusion on a market-wide basis, there will continue to be a dual-market system with LEP consumers being served by only a narrow subset of providers and opportunistic scammers that choose to exploit that exclusion in novel ways.[19] Yet, despite the importance of ensuring that our financial system is accessible to LEP consumers, the legal obligations that often compel language access in other contexts either do not apply to the provision of financial services or have not yet been interpreted in ways that provide clarity regarding the extent of those obligations.

Without language inclusion on a market-wide basis, there will continue to be a dual-market system with LEP consumers being served by only a narrow subset of providers and opportunistic scammers that choose to exploit that exclusion in novel ways.

A. Federal Statutory Language Access Obligations

Title VI of the Civil Rights Act of 1964 requires that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[20] Courts have interpreted Title VI's requirements to include a right to language assistance when needed to provide meaningful access to federally funded programs.[21] In 2000, the Clinton Administration expanded on this relationship between national origin discrimination and a failure to provide language assistance when it issued Executive Order 13166.

The Executive Order requires that every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons.[22] The Executive Order also establishes separate obligations for federal agencies to serve LEP individuals, such as creating and regularly updating language access plans, examining the services the agency provides to "develop and implement a system by which LEP persons can meaningfully access those services," and requiring that recipients of agency funds provide meaningful language access to individuals with LEP. The legal basis for this latter aspect of the Executive Order are agency regulations promulgated under Title VI forbidding funding recipients from administering their programs in ways that could generate a disparate impact against protected classes. Following the prohibition against national origin discrimination in the Title VI context, Congress and agencies have imposed further statutory and regulatory language access obligations in the education[23] and healthcare[24] contexts.

While Title VI obligations have long existed for recipients of federal financial assistance, they rarely apply in the consumer financial context. Federal financial assistance in the consumer financial context typically comes in the form of either explicit or implicit guarantees or insurance products, and these forms of assistance have been exempted from Title VI.[25] Moreover, lines of federal financial assistance in the financial services context are often opaque and temporary, meaning it can be especially difficult for individuals to determine whether an entity received federal funds and where obligations to provide language assistance begin and end.

While Title VI obligations have long existed for recipients of federal financial assistance, they rarely apply in the consumer financial context.

Other civil rights laws that more readily apply to the consumer financial context have not yet been interpreted to require meaningful language access. The Fair Housing Act and Equal Credit Opportunity Act (ECOA), which bar actions that deny housing or provide worse credit terms to a protected class–including on the basis of national origin–have not been read to impose an affirmative mandate to provide language services.[26] Some courts have determined that failing to rent to LEP prospective tenants, or otherwise mistreating LEP individuals on the basis of their English proficiency, may violate federal civil rights laws on account of the relationship between national origin and LEP status.[27] Similarly, the CFPB has noted in its Supervisory Highlights that steering non-English speaking consumers to some products and not others is likely to violate the ECOA.[28] Yet, both the CFPB and the courts have stopped short of affirmatively requiring providers to *assist* consumers by providing language services.[29] In fact, some courts have gone so far

as to imply, in dicta, that offering services in English-only is the easiest way to ensure compliance with federal civil rights laws, directly contradicting the logic underpinning the LEP guidance and Executive Order 13166 in the Title VI context.[30]

The result is that severely resource-constrained institutions in the sectors governed by clear language access obligations, such as public schools, nonprofit hospitals, and housing counseling organizations, routinely provide language assistance, while some of the largest and most profitable financial providers do not.

The result is that severely resource-constrained institutions in the sectors governed by clear language access obligations, such as public schools, nonprofit hospitals, and housing counseling organizations, routinely provide language assistance, while some of the largest and most profitable financial providers do not.

B. Federal Bans on Unfair and Deceptive Practices

Federal prohibitions against unfair, deceptive, and abusive acts and practices (UDAAPs) also do not, on their own, confer a uniform obligation on the part of financial institutions to provide language assistance to LEP consumers. This is by design–prohibitions against unfair and deceptive business practices are crafted to prevent abuse in our markets, not set minimum standards of conduct. Thus, regulations promulgated by both the Federal Trade Commission (FTC) and the CFPB that impose translation requirements for certain required disclosures when the sale or marketing are conducted in a language other than English are usually designed to prevent providers from *exploiting* language barriers, not imposing a general obligation to affirmatively provide language assistance to consumers who may need it.[31]

For example, the FTC's Used Car Rule requires that dealers provide a Spanish-language version of the Buyer's Guide to consumers when the auto sale has been conducted in Spanish.[32] Similarly, the FTC's policy statement pertaining to advertising practices specifies that where the FTC requires certain disclosures contained within advertising materials to be "clear and conspicuous," those disclosures must be translated into the language of the advertisement's "target audience."[33] These requirements hinge on a company's voluntary decision to engage consumers in non-English languages, and focus on ensuring that companies that target LEP populations do not hide, withhold, or contradict information contained within required disclosures. However, they do not require that the entire market undertake reasonable efforts to ensure that LEP consumers are able to understand that key information.

What's more, translation requirements established under UDAP frameworks typically focus on translation obligations at a transaction's inception; they focus on a consumer's understanding of the transaction's key terms. They have not yet been used to establish translation obligations for all required communication with LEP consumers throughout the remainder of the consumer-provider relationship; in other words, there is not yet a "life of loan" translation obligation.[34] For example, while some mortgage lenders have recently begun voluntarily incorporating the use of model translations into the origination process, we have not observed the same progress in loan servicing[35] or debt collection.[36] Thus, documents that inform consumers of the ongoing state of their financial obligations, such as periodic statements, and documents alerting consumers of their rights in the event that they experience hardship, such as foreclosure notices or debt validation notices, are frequently only provided to consumers in English regardless of the language used at origination.

Finally, even when a deceptive practices law requires competent, effective communication between consumers and their providers, regulations are often silent as to *how* providers should be attempting to communicate with LEP consumers. These shortcomings in the existing legal framework mean that in practice, LEP consumers receive substantially different, often diminished, rights under federal consumer law, often when they need the protections most.

C. State Translation Laws Fail to Promote Uniform Language Access

Several states have incorporated translation requirements into their UDAP statutes and regulations. Such provisions typically require businesses to provide translated contracts when businesses negotiate or advertise in other languages.[37] A handful of these laws, including the law in California, apply to most commercial transactions, while some apply only to specific market segments, such as door-to-door sales or rent-to-own.

Examples of State Translation Laws

CALIFORNIA

Any person engaged in trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean must—before a contract is signed—provide a complete translation of the negotiated contract in the language of negotiation. Businesses must also provide translations of any subsequent documents that significantly alter the terms of the original contract. Cal Civil Code § 1632 (general); 1632.5 (mortgages other than those made by nationally chartered banks and credit unions).

MASSACHUSETTS

It is a violation of the state's Unfair and Deceptive Acts and Practices (UDAP) statute for a mortgage broker or lender to fail to take reasonable steps to communicate the material facts of a transaction in a language that is understood by the borrower. Reasonable steps may include using an interpreter and providing the borrower with a translated copy of any disclosure forms required under federal or state law. 940 Mass. Code Regs. § 8.05.

DISTRICT OF COLUMBIA

Transactions are barred as unfair or deceptive where, among other factors, a person in the marketplace for consumer goods or services has "knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reasons of… ignorance, illiteracy, or inability to understand the language of the agreement." D.C. Code § 28-3904(r)(5).[38]

These laws are not ideal tools to improve market-wide language access for the same reasons as the federal laws discussed above: for the most part, the obligations to provide translated documents are only triggered by the business's voluntary decision to negotiate or advertise in non-English languages; and even the most sweeping statutes decline to extend translation mandates to downstream communications between consumers and their providers.[39] Thus, businesses that would prefer to avoid any risk of liability under these laws may believe that they can do so through English-only policies or by requiring that LEP consumers communicate with lender personnel through an English-speaking family member.[40] Similarly, mainstream financial institutions get to use the pretext of heightened compliance risk to continue to avoid making the investment necessary to properly serve these language groups. Further, under this system, providers that have the financial incentives to target LEP consumers will continue to exploit the mainstream market's failure to serve LEP consumers by using their language capabilities to lure LEP consumers in, but are generally under no obligation to continue to provide language support to those customers after the initial sale or agreement.

What's more, these laws can be difficult for private parties to enforce in court. The question of what conversations constitute "negotiations," and at what point a sale could be said to have been conducted or "primarily" negotiated in another language is often subjective and unclear.[41] In cases where the consumer can speak some English, evidence to show that any conversations took place in another language may be difficult to find, especially years after the negotiations took place. And while the consumer's level of English proficiency is not relevant to determining the language in which the negotiations took place, defendants can still point to the consumer's comfort level with the English language to try to establish that the negotiations took place in English, or that the consumer was acting as their own interpreter during the course of negotiating the transaction in their native language.[42] Making translation obligations dependent on the language used in negotiations also allows, and can even incentivize, providers to engage in a language-driven bait-and-switch, in which the provider markets in another language but, when the potential customer actually appears, the provider suddenly has no bilingual staff available.

Translation requirements that attach once a business advertises in non-English languages present their own enforcement challenges. Consumers often do not retain records of past advertisements and other promotional material, and neither do many businesses. And while a consumer is likely to remember being approached by a salesman, they may be less likely to remember the specifics from an advertisement years later.

The evidentiary hurdles to enforcing these laws, coupled with gaping loopholes allowing for ad-hoc interpreters,[43] insufficient private remedies,[44] and limited public enforcement mean that these laws have had a limited impact in addressing the abuse of language status, much less providing market access to these communities.

Consumer Education is important but not sufficient.

In conjunction with efforts to encourage industry to provide language access, government actors at various levels have published consumer education materials in other languages to improve financial literacy for populations with limited English proficiency and to assist community based organizations that serve these groups.[45]

While these materials can be quite valuable to immigrants and newcomers, they are no substitute for timely, relevant information unique to the consumer's specific financial situation. This is especially true because financial providers often communicate information about the consumer's financial situation at times that are particularly relevant to consumers. Lenders are often in the best position to provide information about the specific loan that the consumer is trying to receive. Car dealers are in the best position to convey information about the specific car the consumer wants to purchase. Banks are in the best position to convey information about the terms of a consumer's account or the status of any dispute. General consumer education, no matter how thorough and important, cannot replace effective communication between individuals and their financial providers.

4. PAST FEDERAL EFFORTS TO ENCOURAGE VOLUNTARY STEPS HAVE PROVED INEFFECTIVE

Financial regulators have taken several steps to document the problems that language barriers create for consumers in the financial marketplace and to encourage industry to voluntarily provide LEP consumers with assistance. But these efforts have resulted in only incremental impact on the market. An example of these coordinated steps comes from the mortgage market, where federal government actors, led by the Federal Housing Finance Agency (FHFA), have attempted to coax industry to improve language assistance. FHFA oversees Fannie Mae and Freddie Mac, the two Government Sponsored Enterprises (GSEs) that purchase over half of the mortgage loans made in the United States. The GSEs are private entities, but have a Congressional charter and federal backing related to their public-oriented mission. This section catalogs these federal efforts to enhance language access in the mortgage market to demonstrate that gentle encouragement and the provision of model translations has not resulted in substantial gains in language access, even in areas where lenders are financially incentivized to reach LEP consumers and even where regulators have clarified that providing some access without full life of loan access is permissible.

Government efforts to expand language access in the mortgage market largely began in 2017, when the FHFA scorecard for assessing Fannie Mae and Freddie Mac's compliance

The study also found that consumers frequently feel vulnerable when they cannot review documents in their preferred language, and that even those who speak some English would still prefer to have translated documents to double check their understanding and refer back to whenever they have a question.

with their mission and Congressional charter required the GSEs to assess "the impact of language barriers throughout the mortgage life cycle" and develop a plan to improve access to credit for LEP borrowers.[46] The agency crafted a Language Access Multi-Year Plan through which the GSEs would fulfill the obligations imposed through the scorecard.[47] As part of developing this plan, the GSEs and FHFA conducted a fact-gathering initiative. This initiative included commissioning the Kleimann Communication Group to conduct a study, which included a series of interviews and focus groups with LEP consumers, lenders, and servicers, the results of which were later published in a report in April 2017.[48]

The Kleimann study found that where translated documents are not made available to LEP consumers, borrowers must resort to relying on friends and family members – and sometimes children – to convey crucial financial information.[49] English-only written communications also force LEP consumers to solely rely on their memories to recall information without a written document to consult later.[50] The study also found that consumers frequently feel vulnerable when they cannot review documents in their preferred language, and that even those who speak some English would still prefer to have translated documents to double check their understanding and refer back to whenever they have a question.[51] The study concluded that providing translated documents would eliminate a significant barrier that prevents or delays LEP individuals from buying a home.

A. Voluntary Efforts to Collect Language Preference Data Did Not Meaningfully Change Industry Practices

One month after releasing the results of the Kleimann study, FHFA issued a request for information on issues experienced by LEP consumers throughout the mortgage life cycle, and later reopened the request for information to specifically collect input on whether to add a preferred language question to the Uniform Residential Loan Application (URLA). Consumer advocates supported incorporating a question on preferred language at the application stage because it would provide for better data collection on loan applications and performance for LEP borrowers, and it would enable lenders and servicers to direct in-language resources to the consumers that needed them.[52] Without a system for collecting

and maintaining that information, LEP consumers would need to re-establish their language needs every time they communicated with their lenders.[53]

Many industry representatives, however, expressed opposition to the idea of systematically collecting this information from mortgage applicants. Their rationale was that asking consumers about their preferred language would create the misimpression that a borrower could expect to be accommodated in their preferred language.[54] Industry players claimed they wanted to avoid creating an expectation that they could not live up to. They made this argument despite the fact that FHFA had crafted a disclaimer in the draft URLA stating that services may or may not be available in any given language. Consumer advocates pointed out that asking the question was an important first step to effectively serving LEP consumers.

Unfortunately, after initially adding the question to the URLA, FHFA, after a change in leadership, removed it. Later, after a subsequent change in leadership at the agency, it was added to an optional form, the Supplemental Consumer Information Form (SCIF).[55] During the period of several years when this language preference form was optional for mortgage originators, it appears this form generally was not used in the industry.

In addition to voluntary data collection regarding borrower language preference, both the FHFA and FHA created vast repositories of translated model forms and notices in the top five most commonly spoken languages among the U.S. LEP population: Spanish, Chinese, Korean, Vietnamese, and Tagalog.[56] These documents were housed in FHFA's Mortgage Translations Clearinghouse. FHFA and the CFPB worked together to develop glossaries of commonly used terms in both the mortgage context specifically, and in the financial context generally, to assist "service providers," including industry providers, in developing resources to better serve consumers with LEP.[57]

B. CFPB Efforts to Clarify Risk and Liability Also Did Not Move the Needle

The CFPB has also encouraged industry players to take reasonable steps to serve LEP consumers effectively. For example, in November 2017 the Bureau published a Spotlight on serving limited English proficient consumers, which summarized the findings of various consumer and industry interviews with the intention to "raise awareness about the issues that LEP consumers face when participating in the consumer financial marketplace."[58] The spotlight featured some generalized practices among those providers that do offer language assistance to consumers, while also noting that written information is generally not available in languages that are not English, and that some providers do not offer any

forms of oral language assistance to their customers.[59] The CFPB has also leveraged its supervisory authority to document industry treatment of LEP consumers; in its Fall 2016 Supervisory Highlights, it described varying ways that industry provided language assistance in manners that comply with fair lending laws, as well as language-based violations of fair lending laws. These violations focused on non-English language advertisements steering LEP consumers towards specific products, or bilingual staff failing to notify consumers of product benefits for which they would otherwise qualify.[60] Through these publications, the Bureau attempted to delineate the acceptable from the unacceptable practices in the marketplace serving LEP consumers.

The CFPB issued an official request for information in June 2020 on the ECOA and Regulation B. The agency specifically asked about the challenges the industry faces in serving LEP consumers and whether it should issue clarifying guidance to encourage the industry to better serve LEP consumers in their preferred language.[61] In response, industry reiterated concerns over fair lending and UDAP "compliance risks" associated with providing language assistance to LEP consumers. Specifically, industry actors expressed concern over whether they could offer services in some languages and not others,[62] whether they could collect consumer language preference information,[63] and whether they could offer language assistance at only a few points throughout a product's life cycle.[64] They claimed that risk of liability, and uncertainty around such potential liability, was a major impediment to them servicing LEP consumers in-language.[65]

The CFPB directly responded to these concerns when it issued its Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency in 2021.[66] In that statement, the CFPB explained that failing to provide language assistance across a product's life cycle in all 350+ languages spoken by U.S. adults does not, itself, violate fair lending laws, and it expressed approval for a "phased" approach to providing language services to LEP consumers, so long as the company used documented and verifiable information on consumer language needs (such as the stated language preference of its current customers or U.S. Census Bureau demographic or language data).[67] The CFPB also clarified that financial institutions may mitigate certain compliance risks by providing LEP consumers with disclosures in non-English languages describing the limits of any language services provided throughout the product life cycle.[68] Finally, the CFPB provided a framework for prioritizing when a company should consider translating or interpreting a particular

CFPB regulations that set forth disclosure and notice requirements already include permissive language on whether a provider can communicate with consumers in non-English languages.

communication, which focused on whether the communication conveys essential information about credit terms and conditions (e.g., loan pricing), and whether the communication was about borrower obligations and rights, including those related to delinquency and default servicing, loss mitigation, and debt collection.[69]

What's more, as if the industry needed further reassurance that providing language assistance in a reasonable, tiered way was legal, CFPB regulations that set forth disclosure and notice requirements already include permissive language on whether a provider can communicate with consumers in non-English languages.[70]

None of these coordinated, years-long efforts by the CFPB, FHFA, and other government actors were sufficient to galvanize broad language access in the consumer financial industry broadly or even in the mortgage industry, where the efforts were most heavily targeted. Language access remains limited in mortgage origination, despite the financial incentives to attract new customers by expanding language access. In default mortgage servicing, when the primary financial incentives for providers are to keep costs low and to foreclose when consumers fall behind, companies are especially unlikely to make the initial capital investments required to properly assist LEP consumers in distress.[71] Indeed, data continue to show that in the high stakes context of default mortgage servicing, LEP consumers frequently do not receive service in their preferred language.[72] This is concerning as there are concrete rights that consumers in default have to effective notice and communication with their servicers as they are being evaluated for loss mitigation options and opportunities to avoid foreclosure.[73] Failing to take reasonable steps to provide these notices in a language that can be understood amounts to a failure to provide the underlying substantive protections that our federal laws provide.

Failing to take reasonable steps to provide these notices in a language that can be understood amounts to a failure to provide the underlying substantive protections that our federal laws provide.

The impact of these efforts demonstrates that absent a clear requirement to provide language assistance, efforts to encourage the financial services industry to provide language assistance of their own accord are likely to continue to be insufficient to improve access on a market-wide basis. In the interim, millions of LEP consumers are losing out on substantive protections.

5. IMPORTANT RECENT STEPS BY REGULATORS ARE MOVING TOWARD REQUIRING LANGUAGE ACCESS

The FHFA finally began *requiring* mortgage lenders to ask consumers for their preferred language for loans eligible for purchase by the GSEs beginning in March 2023, by making the Supplementary Consumer Information Form mandatory as part of the loan application process. Loan servicers are also required to obtain the responses to the language preference question, maintain that data in a "queryable" format in the consumer's loan file, and transfer that information along with the servicing of the loan.[74] In August 2023, the Federal Housing Administration (FHA) began requiring lenders originating FHA-insured loans to use the SCIF as part of their application process, and as of August 19, 2024, FHA requires servicers to collect, maintain, and transfer this information.

In July 2024, the CFPB proposed watershed language access amendments to the regulation that implements the Real Estate Settlement Procedures Act (RESPA), Regulation X. This regulation sets out minimum standards and procedures for mortgage servicers in evaluating homeowners for loss mitigation when they are behind on their mortgage payments, and in doing so, helps homeowners avoid preventable foreclosure. Currently, as described above in this report, mortgage servicers are only *permitted* to provide required documents in non-English languages, but are not *required* to affirmatively accommodate LEP consumers. The proposal includes several measures to require language access, including mandatory bilingual English/Spanish essential notices, brief "tagline" disclosures explaining how a consumer can get assistance in five languages, and a requirement to provide and connect consumers with interpreters upon request.[75] This proposal is the first sweeping language access mandate of its kind in the mortgage industry, and is discussed in more detail below in the recommendations section.

6. RECOMMENDATIONS AND PRIORITY AREAS

We need unequivocal government action to see meaningful improvements in the language accessibility of our financial system, especially in areas that are less responsive to the need to attract new customers. For example, lenders competing with each other for market share among particular language groups in the United States have an incentive to serve those consumers at the time that is likely to make the biggest difference to their bottom line—at the point of sale, or in marketing efforts that bring in potential customers. In those contexts, where there are potential market incentives to provide language access, it might make the most sense for legal language requirements to focus more on preventing abuse and deception by ensuring that disclosures are provided in the language of the sales transaction,

We need unequivocal government action to see meaningful improvements in the language accessibility of our financial system, especially in areas that are less responsive to the need to attract new customers.

or any advertising or marketing materials used by the provider. However, many providers in the consumer financial system do not have these incentives to attract new customers. For example, a debt collector may communicate with an LEP consumer often, but that debt collector's primary client is the creditor, not the consumer who owes the debt, and market incentives to effectively and accurately communicate with the consumer, particularly about rights and relief, are lacking. And even providers that have incentives to provide language access in marketing and initial sales may not have sufficient incentives to continue to provide language support later in the life cycle of the product or service.

Communications that are subject to these perverse incentives are often of great consequence to LEP consumers—and often implicate consumer financial protections that hinge on effective notice. Consumer protections often do not take the form of freestanding obligations that attach automatically. Rather, in many circumstances across consumer financial law, consumers must be the ones to raise their hands to assert their rights against their creditors and their creditors' agents. But a consumer cannot exercise these rights unless they know that they have them. This section describes our recommendations across several of these high-impact areas: consumer reporting and tenant screening, debt collection, and loan servicing.

While some of these recommendations are context-specific, there are also some general themes.

1. **Uniform requirements. For the highest-stakes communications and notices, regulatory requirements should be framed in a uniform manner that establishes baseline requirements for the entire industry subject to the regulation, regardless of whether a company has chosen to market to LEP consumers.** If a consumer financial law is meant to provide a right to effective communication, or information about how to navigate hardship, or a dispute, it is because lawmakers have determined that communication in that context is important. These rights should extend to all LEP consumers, whether their providers have taken voluntary steps to serve them in other contexts or not.
2. **Bilingual Spanish-English access. For high-stakes communications and notices, a bilingual document in both English and Spanish sent to all consumers as a matter**

of course would provide accessible information for a large proportion of LEP consumers. This method requires minimal recordkeeping from businesses, would have an immediate impact, and is already done by many industries, including product safety and healthcare.

3. **Tagline disclosures. Brief tagline disclosures, or "babel notices," offer an opportunity for providers to alert LEP consumers of the availability of in-language resources without needing to mail translations to every consumer in the full range of languages.** These notices can be an effective way of ensuring that LEP consumers learn about the notice's general subject matter, and that there may be resources available to assist them in understanding the notice's content.
4. **Widely available oral interpretation. Third-party oral interpretation services enable providers to serve consumers in a wide range of languages, as long as there are safeguards to ensure that interpreters are competent and that service is rendered in a timely manner.** Mandates for oral interpretation should always encompass a broad range of languages, as technological advancements in third-party oral interpretation have enabled providers to provide assistance in hundreds of languages at a reasonable cost.[76] The Department of Justice's guidance to recipients of federal financial assistance under Title VI and Executive Order 13166 is instructive here. In that context, recipients of federal financial assistance should make oral interpretation widely available in any given language, while there are numeric thresholds for when the recipient is expected to provide translated vital documents in a particular language.[77]

Whenever possible, all four of these principles should be incorporated in consumer protection law to ensure that LEP consumers have a fair chance in navigating our financial system and exercising their rights.

A. Consumer Reporting and Tenant Screening Recommendations

Credit reports and other types of "consumer reports" (as they are called under the Fair Credit Reporting Act (FCRA)) are a critical aspect of modern American life. Lenders use credit reports to determine whether to extend credit to somebody and under which terms.[78] Landlords frequently use reports or scores purchased from specialized tenant-screening consumer reporting agencies (CRAs) when screening rental applicants.[79] Employers often use background check reports, and sometimes credit reports, in hiring decisions.[80] Insurers use credit reports and specialized insurance credit scores to determine the premiums they will charge new and existing policyholders. In 2018, the Department of Homeland Security even proposed to use credit reports in immigration cases, to determine whether an individual was likely to become a "public charge."[81] In short, credit reports and other consumer reports can dictate whether someone is deemed trustworthy enough to participate in our society.

Yet despite their critical importance, it is well-documented that these reports frequently contain errors.[82]

In part because of the frequency and pervasiveness of these errors, Congress amended the FCRA in 2003 to require the "Big Three" nationwide CRAs (Equifax, Experian, and TransUnion) and nationwide specialty CRAs (including nationwide tenant-screening CRAs) to provide consumers with a free report once during any 12-month period.[83] Sometimes referred to as annual "file disclosures," they are often lengthy documents containing detailed information about a consumer's credit and payment history. Specialty consumer reports, such as tenant screening reports, often contain both credit histories and additional highly sensitive information obtained through public records sources, such as eviction filings and criminal records. These disclosures allow consumers the opportunity to review their files to make sure that the information within their reports is accurate before the report is sold to a prospective creditor, landlord, or employer, as well as the opportunity to review reports for accuracy after a denial.

Yet, in spite of their critical importance to consumers, two of the three nationwide CRAs, Experian and TransUnion, do not offer credit reports in any language besides English. Equifax, the only credit bureau that offers translated reports, now offers consumer reports in English and Spanish.[84] Experian and TransUnion flatly refused to offer any translated consumer reports even after advocates directly called on them to do so at the height of the pandemic, when immigrants comprised a large share of essential workers and were bearing the brunt of the financial and human consequences of the COVID-19 pandemic.[85] And when New Jersey enacted a statute requiring the nationwide CRAs to provide credit reports to New Jersey consumers in other languages, the industry trade association, the Consumer Data Industry Association (CDIA), filed a pre-enforcement lawsuit alleging that the state law was preempted by the FCRA.[86] So far that suit has been unsuccessful.[87]

Language barriers in consumer reporting are perhaps most salient in the rental housing context, where they can exacerbate existing barriers. Housing is a core necessity, and affordable housing for low-income renters is at an all-time low supply.[88] A lack of language access in tenant screening reports can increase vulnerabilities in obtaining and maintaining safe and sustainable rental housing for LEP tenants. Without translated documents, LEP tenants who do not have access to qualified interpreters may not have a meaningful opportunity to understand why a housing provider denied their rental application or if the

Language barriers in consumer reporting are perhaps most salient in the rental housing context, where they can exacerbate existing barriers.

basis of the denial was accurate. Critical documents that should be translated include the required adverse action notice disclosing that a denial is based in part on information in a consumer report, and the consumer report itself.

In April 2023, NCLC conducted a survey of attorneys, advocates, and counselors who assist renters. An overwhelming majority of respondents (79%) answered that they had not observed private landlords offering language assistance to prospective tenants.[89] This figure was lower but still quite high (55%) for subsidized housing providers that have a duty under Title VI to provide meaningful language access.[90] Mandatory translated adverse action notices and consumer file disclosures would better arm LEP renters when navigating this often confusing and stressful process of looking for a new home for their families. It would improve their ability to identify and correct errors that frequently appear in tenant screening reports that can make housing inaccessible.

Recommendations:

The CFPB, in a future FCRA rulemaking, should require that the nationwide CRAs and tenant screening CRAs (or specialty CRAs) offer free annual reports in the most commonly spoken languages among consumers with LEP.[91] The CFPB has broad authority to implement this requirement—requiring language access promotes "the purposes and objectives of [the FCRA]."[92] One of the objectives of the FCRA is that credit reporting "meet[] the needs of commerce … in a manner which is fair and equitable to the consumer, with regard to the *confidentiality*, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter."[93]

Providing English-only credit reports compromises the confidentiality of those reports, because LEP consumers are forced to rely on third parties to translate the reports. It also leads to an unfair likelihood that the information contained in the report will be misunderstood by the consumer, and can be expected to lead to higher rates of long-term unresolved consumer reporting errors and reporting inaccuracies among LEP consumers.

Providing English-only credit reports compromises the confidentiality of those reports, because LEP consumers are forced to rely on third parties to translate the reports.

The FCRA also requires that every consumer reporting agency "clearly and accurately disclose to the consumer" the contents of that consumer's file at the time they make the request.[94] Credit reports, and any disclosure for that matter, cannot be considered "clear" if one in every 12 consumers will be categorically and predictably unable to understand those disclosures.

The CFPB should also develop and issue model adverse action notices in the eight languages most frequently spoken by LEP individuals nationally, to enable landlords, housing providers, and creditors to inform LEP consumers and prospective tenants of the reasons their applications for credit or housing were denied. Translated tagline disclosures or "babel notices" should be placed on the English language versions of the notices to alert consumers that translations are available.

State legislators and banking regulators should also feel empowered to follow in New Jersey's footsteps and require consumer reporting agencies to translate free annual reports and adverse action notices in other languages.

In summary, language access in the credit reporting context should include:

- **Free translated annual reports and tagline notifications.** The CFPB, along with state bank regulators and legislators, should require CRAs to provide translated free annual reports in the most commonly spoken languages among individuals with LEP and to place tagline disclosures on the English-language notice to alert consumers that such translations are available.
- **Translated adverse action notices, starting with bilingual Spanish-English notices.** The CFPB should require that entities that use consumer reports, such as landlords, employers, and creditors, provide translated adverse action notices, at least in both English and Spanish. The CFPB and state regulators could develop model translated notices to ensure accuracy and clarity.
- **Title VI clarification to ensure landlords provide translated adverse action notices to prospective tenants.** The Department of Housing and Urban Development should amend its Title VI implementing regulations to explicitly include private landlords who accept Housing Choice Vouchers in its definition of "recipient;" this would clarify that such landlords must provide language access, such as translated adverse action notices, to prospective tenants.

B. Debt Collection Recommendations

There is no national requirement for creditors or debt collectors to collect, maintain, and report data on consumer language needs. As a result, it can be difficult for consumer advocacy groups and government agencies to measure the effect that language barriers have on consumers with debts in collections. However, New York City's Department of Consumer and Worker Protection (DCWP) conducted a study on language access among city-licensed debt collectors and found that only 20% of debt collectors in the sample reported providing translated collection letters when communicating with LEP consumers.[95]

What's more, after interviewing LEP consumers, DCWP found that consumers could not readily access the language services that debt collectors purported to offer.[96] For example, DCWP observed that consumers would often have their calls to language lines go straight to recorded voicemail messages with English-only options,[97] or they would have to wait long stretches of time to speak to a representative in their preferred language.[98] Some consumers were even asked questions in English after repeatedly asking for language assistance, and many supposedly multilingual representatives conducted their calls in a mix of English and the consumer's preferred language, rendering the conversation "incomprehensible" to some LEP consumers.[99]

The study found that defendants with Latino/Hispanic-predicted last names were sued for collection more than twice as often as their non-Latino white counterparts, despite the fact that they had slightly fewer accounts in collection, fewer delinquent accounts, and fewer bankruptcies.

Similarly, a study by the non-profit Debt Collection Lab used Bayesian Improved Surname Geocoding to predict the race and ethnicity of consumer defendants in civil debt collection cases, and then compared filing rates to the racial and ethnic distribution of the general population.[100] The study found that defendants with Latino/Hispanic-predicted last names were sued for collection more than twice as often as their non-Latino white counterparts, despite that they had slightly fewer accounts in collection, fewer delinquent accounts, and fewer bankruptcies.[101] While sued more frequently, consumers with Latino names were also less likely to file an answer to the lawsuit, even when the study controlled for income and family composition.[102] While not addressed specifically in the study, language barriers in communications with debt collectors and creditors, as well as in the courts,[103] could contribute to the higher rates of collection lawsuits and lower rates of answers to such lawsuits among Latino consumers.

While the CFPB received comments raising these concerns and pushing for key protections for LEP consumers in the 2019 Regulation F rulemaking under the Fair Debt Collections Practices Act,[104] the final rule fell short of providing LEP consumers with access to their rights under federal law. As is the case with language access in other consumer contexts, the requirement to provide material in other languages is triggered by the collector's voluntary use of the language to communicate with the consumer and is therefore left at the ultimate discretion of individual debt collectors. For instance, under the Fair Debt Collection Practices Act implementing regulation, Regulation F, debt collectors must provide certain disclosures in "the same language or languages used for the rest of the communication in which the debt collector conveyed the disclosures."[105] Thus, the obligation to translate the

required notification that “this communication is from a debt collector” only attaches when the debt collector voluntarily chooses to communicate in another language. Similarly, debt collectors must provide Spanish-language validation notices only if they choose to include another entirely optional Spanish disclosure on English-language notices.[106] Otherwise, the decision to send a Spanish language validation notice is entirely discretionary.[107]

These two policies illustrate a similar distinction that exists in other consumer law contexts: translation requirements that attach at the ultimate discretion of individual companies do not provide broad language access; they provide a thin layer of protection against abusive practices that specifically exploit language barriers. Debt collectors under this scheme cannot use foreign languages to threaten or intimidate LEP consumers into making payments without also informing them that the entity contacting them is a debt collector trying to collect on a debt. However, no federal obligation to make reasonable efforts to communicate with LEP consumers exists. Both goals are important, but exclusively imposing translation requirements on those debt collectors that choose to communicate with consumers in non-English languages without imposing a baseline language access requirement systematically denies LEP consumers the opportunity to learn about their rights in debt collection. Those debt collectors that decide that communicating in non-English languages is not in their best interest can continue to confuse and mislead LEP consumers with English-only communications that fail to clearly communicate the consumer’s rights. In fact, that may often be the cheapest compliance solution under this regime.

Recommendations:

The debt validation notice is an example of a federally required debt collection notice that would benefit from a uniform translation requirement. First, validation notices serve a critical role in alerting consumers of their rights under state and federal fair debt collection law within a short period of time after a debt collector attempts to collect.[108] LEP consumers should be entitled to receive the same access to information about these important consumer rights as English-speaking consumers, as quickly as possible. Secondly, the information contained in the notice can largely be standardized, and it is thus amenable to producing model translations that industry could be required to provide at minimal cost. Indeed, the CFPB provided a model translated validation notice when it promulgated Regulation F, but it declined to require that debt collectors use the translated notice, either to the general population or to Spanish-speaking consumers specifically.[109] Passing on this opportunity has meant that many debt collectors are not making use of the CFPB-provided Spanish translations. For example, in a survey six months after Regulation F took effect, 59.4% of consumer advocate respondents reported that debt collectors were generally not providing the CFPB’s optional Spanish Language disclosures.[110]

Some jurisdictions are already starting to make progress in this area. For example, on January 1, 2023, the District of Columbia began requiring that debt collectors provide validation notices to all consumers in both English and Spanish, unless another language was "principally used in the original contract with the consumer or by the debt collector in the initial oral communication with the consumer," in which case the debt collector must provide the validation notice to the consumer in both English and that other language.[111] We recommend that state and local regulators and the CFPB follow in Washington D.C.'s footsteps by requiring, at the very minimum, debt collectors to provide bilingual Spanish-English language validation notices to all consumers.

Official translations of model forms ensure that translated information is complete and accurate, lowering the administrative costs associated with providing access and reducing compliance risks for regulated entities, while also ensuring that consumers are not misled by poorly translated documents.

We also recommend that the CFPB, as well as state and local agencies, build on the CFPB's creation of a model Spanish language validation notice by publishing model translated validation notices in the top languages spoken by LEP individuals. Further, we recommend that the CFPB, state, and local regulators require debt collectors to provide translated validation notices whenever model forms are made available in that language for consumers who speak those languages. Official translations of model forms ensure that translated information is complete and accurate, lowering the administrative costs associated with providing access and reducing compliance risks for regulated entities, while also ensuring that consumers are not misled by poorly translated documents. With documents like the validation notice, that are easily standardized, model forms are a way to strike this balance. Consumers can be made aware of the availability of such translations through tagline or "babel notices" on the English version of the document. In addition, the CFPB and state and local regulators should mandate the provision of oral interpretation, as this allows for access to the widest range of LEP consumers.

For those jurisdictions that want to provide more robust protections, debt collectors could be required to provide key follow up correspondence upon request in other languages. Importantly, any requirements to provide assistance downstream during the follow up process should apply uniformly, and should not hinge on the voluntary decision to provide baseline information in another language, especially when that information conveys information on consumer rights.

Government actors should refrain from including language in regulations merely *permitting* regulated entities to provide translations. These statements suggest that providing translations is otherwise legally risky in situations without an express statement providing that permission. Moreover, adding this language is unlikely to shift the calculus for many regulated entities that do not currently offer any language assistance to LEP consumers. As New York City's Department of Consumer and Worker Protection (DCWP) aptly put it in its report on the topic, "many debt collectors are unlikely to produce validation notices in languages other than English if they are not incentivized or mandated to do so. As such, allowing them to include a statement about Spanish-language notifications is substantively pointless."[112]

Finally, government actors should be wary of imposing additional translation requirements on entities that *voluntarily* choose to provide translated validation notices. Mandating subsequent translations will likely discourage debt collectors from voluntarily providing translated validation notices to avoid incurring additional requirements. State, local, and federal government actors could guard against this risk by first implementing a baseline language access requirement for the initial notice, before imposing additional obligations on those debt collectors that use foreign languages in other communications.

In summary language access in the debt collection context should include:

- **Bilingual Spanish-English validation notices, translated notices in other top languages, and tagline disclosures for consumer awareness.** The CFPB, through amendments to Regulation F, and state and local regulators should require that all debt collectors provide debt validation notices bilingually (in English and Spanish) to all consumers and require that debt collectors provide translated debt validation notices to consumers with LEP upon request. Debt collectors should be required to include tagline disclosures on the English language validation notice to alert consumers that such translations are available. Regulators could publish model translations in the top languages spoken by LEP individuals to ensure accuracy and clarity.
- **Oral interpretation.** Federal, state, and local regulators should also require that debt collectors provide meaningful language access to LEP consumers by requiring them to engage in reasonable efforts to ensure consumer understanding, such as mandatory oral interpretation.

C. Loan Servicing Recommendations

Loan servicers are the intermediaries between borrowers and their creditors as they pay down their debts. Consumers rely on their servicers to apply their payments to their loan balances according to their contracts and to answer questions about the status of their accounts. When consumers experience financial hardship, such as illness or job loss, making contact with their loan servicer is often the first step to effective damage control–managing the process of applying for, and receiving, options that may be available to manage the loan, such as forbearances, loan modifications, or payment relief. There is simply no way for a servicer to service a distressed loan effectively if they cannot communicate with borrowers. Yet, there are no uniform standards for language access in loan servicing, whatever language assistance a loan servicer provides is currently left to that servicer's individual discretion. Further, loan servicers' main customers are lenders, not individual consumers. Thus, unlike in the loan origination context, where there may be an incentive to attract new customers by providing better services in other languages, there are fewer incentives for servicers to make the necessary investments to provide effective language services.

The result is that consumers with LEP generally have no ability to shop for a loan servicer that will meet their language needs. Even shopping for a lender that provides language assistance at the beginning of a transaction does not guarantee that the provider or any servicer they may contract with will offer assistance to LEP consumers downstream, even for the most high-stakes customer service interactions. When payment relief options such as repayment plans, forbearances or loss mitigation are readily available to consumers that need it, this gap in services costs LEP consumers unnecessary delay, stress, and money.

The themes and recommendations within this section apply to the servicing of a range of loan products, from credit cards, to mortgages, to student loans, because these problems persist across the servicing of almost any kind of loan account. Yet, many of these recommendations stem from learnings and observations from LEP homeowners attempting to access available, possibly home-saving, loss mitigation options with their mortgage servicers. As discussed earlier, language barriers in the mortgage industry have been studied extensively, and there have been numerous government efforts to improve language access on a voluntary basis. These efforts yielded inconsistent results, in a regulatory

Sending these essential notices bilingually will ensure that the majority of LEP mortgage borrowers have some baseline information about how to save their homes when they are most likely to need that information.

environment that was intended to avoid unnecessary home loss in a uniform manner.[113] In July 2024, however, the CFPB proposed the first language access mandate of this kind in its proposed amendments to the mortgage servicing rules in Regulation X.

The July 2024 CFPB proposal includes several measures that are worth replicating across various loan servicing contexts. First, the CFPB proposes to require mortgage servicers to send certain required notices in both English and Spanish to every borrower, regardless of whether that borrower expressed that Spanish was their preferred language. These notices are the Early Intervention Notice, sent within 36 days of a borrower's missed payment; an end-of-forbearance notice sent to borrowers' whose forbearances are ending soon; and a determination notice alerting consumers as to the servicer's decision on whether the borrower qualifies for loss mitigation.[114] Sending these essential notices bilingually will ensure that the majority of LEP mortgage borrowers have some baseline information about how to save their homes when they are most likely to need that information.

Second, the CFPB proposes to require that mortgage servicers select five additional languages, and that those three vital loss mitigation documents be made available in those five languages upon borrower request.[115] Third, the CFPB proposal sets out a requirement that servicers provide oral interpretation services for specific oral communications in five languages during the loss mitigation process,[116] allowing LEP consumers the opportunity to ask questions throughout the loss mitigation process. To ensure that borrowers understand that they can ask for language assistance, the CFPB proposal requires servicers to make use of "babel" notices, alerting borrowers that the notice is available in that language, and that oral interpretation is available upon request.[117] These proposed requirements apply to all mortgage servicers subject to the regulation, and ensure that LEP borrowers trying to save their homes have the same rights to communicate with their servicers as English-speaking borrowers.

Recommendations

The CFPB should finalize its July 2024 proposal to mandate language access in certain aspects of mortgage servicing, and should take steps to ensure that companies that service other loan products have similar baseline obligations to effectively communicate with LEP consumers.

In addition, when the federal government is the original creditor, as is the case with many student loans, the government agency acting as the lender should require that all of its servicers provide baseline levels of language access for the most vital communications between LEP borrowers and their loan servicers. This should, at a minimum, include any communications relating to loans in default or approaching default, and any communications

relating to account disputes and applications for available payment plans, forbearance, deferment, stopped collection, and discharge programs. This will not only improve the quality of service, but should be a critical aspect of complying with the mandate in Executive Order 13166, interpreting Title VI, that federal agencies make their services accessible to individuals with LEP.[118]

In summary, language access in the loan servicing context should include:

- **Oral interpretation.** The CFPB and other relevant federal and state agencies should require that loan servicers provide interpretation to virtually all LEP consumers, by requiring that they make reasonable efforts to ensure maximum possible understanding by LEP consumers, especially in communications concerning loss mitigation or opportunities to avoid default or other adverse consequences.
- **Spanish-English bilingual essential notices.** The CFPB and all other relevant federal and state agencies should require servicers to provide essential notices to all consumers in both English and Spanish.
- **Translated essential notices in other LEP languages and tagline disclosures to alert consumers these translations are available.** The CFPB and all other relevant federal and state agencies should require servicers to provide essential notices in the most commonly spoken languages among individuals with LEP upon request, and should require that all English-language essential notices include "tagline" disclosures in those languages alerting consumers to the availability of interpretation or translation services. Regulators could provide model translations to ensure accuracy and clarity.

7. CONCLUSION

Language barriers plague every corner of our consumer financial markets, leading to a cycle of exclusion-based abuses and avoidable losses fueled by systemic misunderstanding between consumers and their providers. Federal financial regulators and state lawmakers have the authority and mandate to narrow these gaps by imposing uniform language access requirements for those communications that are the highest stakes for consumers with LEP. Without swift and meaningful action, LEP consumers will continue to be vulnerable as they navigate our financial system and will continue to be denied the rights that our federal consumer laws are meant to provide.

ENDNOTES

1. Why It's So Hard to Learn Another Language After Childhood, *Time*, (May 2, 2018), https://time.com/5261446/language-critical-period-age/.
2. U.S. Census Bureau, 2017–2021 American Community Survey 5-Year Estimates, American Community Survey (Washington, DC: U.S. Census Bureau) Table DP02 (accessed May 2, 2024), available at https://data.census.gov; Why We Ask Questions About Language Spoken at Home, U.S. Census Bureau, (accessed May 2, 2024), available at https://www.census.gov/acs/www/about/why-we-ask-each-question/language/.
3. Jeffrey Passel & Jens Manuel Krogstad, What we know about unauthorized immigrants living in the U.S., Pew Research Ctr. (Nov. 16, 2023), available at https://www.pewresearch.org/short-reads/2023/11/16/what-we-know-about-unauthorized-immigrants-living-in-the-us/.
4. Jonathan Vespa, Lauren Medina, & David M. Armstrong, Demographic Turning Points for the United States: Population Projections for 2020 to 2060, U.S. Census Bureau, 11 (issued March 2018, Revised February 2020), available at https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1144.pdf.
5. Jung Hyun Choi, Amalie Zinn & Laurie Goodman, Language Proficiency and Homeownership Access, Urban Inst., 12 (Dec. 2023), available at https://www.urban.org/sites/default/files/2024-01/Language%20Proficiency%20and%20Homeownership%20Access.pdf; Jie Zong and Jeanne Batalova, The Limited English Proficient Population in the United States, Migration Policy Institute (July 8, 2015), available at www.migrationpolicy.org.
6. *See*, *e.g.,* Ramos v. Westlake Serv., 195 Cal.Rptr.3d 34, 36 (Cal. Ct. App. 2015) (consumer received a translation for a contract to purchase a used vehicle, but the translation excluded mention of add-ons, including optional GAP insurance.); Thelemaque v. Fremont Inv. & Loan, No. 2011 WL 2734490 at *1 (Mass. Dist. Ct. Mar. 23, 2011) (loan officer and closing attorney misrepresented to borrower in his native Haitian Creole that they would be able to refinance in six months; lender also misstated the borrowers' income despite borrowers providing proof of accurate income); Gonzalez v. Ameriquest Mortg. Co., 2004 WL 2472249 (N.D. Cal. Mar. 1, 2004) (brokers made oral and written misrepresentations in Spanish that monthly payments would be no more than a certain amount and closing costs would be minimal; English contract required a much higher payment and significant closing costs).
7. Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), https://www.fhfa.gov/sites/default/files/2023-04/Borrower-Language-Access-Final-Report-June-2017.pdf.
8. "It Shouldn't Rest on Me:" Providing Meaningful Language Access and Avoiding the Use of Children as Interpreters– Resources for Law Enforcement, (May 2019), https://esperanzaunited.org/en/knowledge-base/enhancing-court-access/avoiding-the-use-of-children-as-interpreters/ (summarizing research on the prevalence and consequences of using children as interpreters); Sanmeet Kaur, The trauma of bridging worlds as a child translator: Unpacking the heavy expectations placed on immigrant children who learn the language of their new homes far quicker than their parents, Gal–dem (April 29, 2021), https://web.archive.org/web/20240418162457/https://gal-dem.com/the-trauma-of-bridging-worlds-as-a-child-translator/.

9. *See, e.g.*, Caraway L Timmins, The Impact of language barriers on the health care of Latinos in the United States: a review of the literature and guidelines for practice. Journal of Midwifery & Women's Health, 47 (2), 80-96; California Commission on Access to Justice, Language Barriers to Justice in California, A Report of the California Commission on Access to Justice, at 25 (Sept. 2005) ("use of unqualified persons as interpreters . . . may result in genuine injustice where—through no fault of the court, the litigants, or the translator—critical information is distorted or not imparted at all").

10. Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), https://www.fhfa.gov/sites/default/files/2023-04/Borrower-Language-Access-Final-Report-June-2017.pdf.

11. *See, e.g.*, New York City Dep't of Consumer & Worker Prot., Used and Abused by the Used Car Industry: Predatory Lending in the Secondhand Auto Industry 12-13 (Apr. 2017); Press Release: Attorney General James Delivers Restitution to New Yorkers Cheated by Auto Dealership (Nov. 17, 2020), https://ag.ny.gov/press-release/2020/attorney-general-james-delivers-restitution-new-yorkers-cheated-auto-dealership.

12. John Van Alst & Carolyn Carter, Auto Add-Ons Add Up: How Dealer Discretion Drives Excessive, Arbitrary, and Discriminatory Pricing, 27 (Oct. 1, 2017), https://www.nclc.org/resources/auto-add-ons-add-up-how-dealer-discretion-drives-excessive-arbitrary-and-discriminatory-pricing/.

13. *See, e.g.*, "HUD files charge alleging California foreclosure rescue companies scammed Hispanic homeowners," HUD archives, HUD No. 16-002 (Jan. 12, 2016), https://archives.hud.gov/news/2016/pr16-002.cfm.

14. *See e.g.*, Dep't. Of Justice, Three Peruvian Men Sentenced To Significant Terms Of Incarceration For Overseeing Call Centers That Threatened And Defrauded Spanish-Speaking U.S. Consumers, (Sept. 3, 2020), https://www.justice.gov/opa/pr/three-peruvian-men-sentenced-significant-terms-incarceration-overseeing-call-centers; FTC v. Centro Natural Corp., No. 14:23879 (S.D. Fla. June 26, 2015) (securing a preliminary injunction against a group of telemarketers that targeted thousands of Spanish speaking consumers and harassed them into settling "phantom" debts that the consumers did not owe by impersonating government officials).

15. Federal Trade Commission, Combating Fraud in African American & Latino Communities, The FTC's Comprehensive Strategic Plan, 12 (Jun. 15, 2016), https://www.ftc.gov/system/files/documents/reports/combating-fraud-african-american-latino-communities-ftcs-comprehensive-strategic-plan-federal-trade/160615fraudreport.pdf.

16. Consumer Financial Protection Bureau, Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021, 23–24 (May 2022), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.

17. *See, e.g.*, April Kuehnhoff & Yaniv Ron-El, Evaluating Regulation F: A Six-month Check-up on New Federal Debt Collection Regulations, National Consumer Law Center, 33-34 (Nov. 2022), https://www.nclc.org/resources/evaluating-regulation-f/; National Consumer Law Center, Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures (Feb. 21, 2024), https://www.nclc.org/resources/homeowners-at-risk-nationwide-survey-reveals-critical-gaps-the-cfpb-must-address-to-prevent-foreclosures/.

18. Migration Policy Institute, Frequently Asked Questions on Legal Requirements to Provide Language Access Services, https://www.migrationpolicy.org/programs/language%C2%A0access-translation-and-interpretation-policies-and-practices/frequently-asked#:~:text=What%20is%20language%20access%3F,services%20as%20English%2Dspeaking%20individuals.

19. *See, e.g.*, Press Release: CFPB and Justice Department Sue Developer and Lender Colony Ridge for Bait-and-Switch Land Sales and Predatory Financing (Dec. 20, 2023) (Predatory seller-financing scheme used in-language marketing materials to lure in low-income immigrants), https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-sue-developer-and-lender-colony-ridge-for-bait-and-switch-land-sales-and-predatory-financing/.

20. 42 U.S.C. § 2000d.

21. Lau v. Nichols, 414 U. S. 563 (1974) (abrogated on other grounds).

22. Executive Order 13166, 3 C.F.R. §13166 (2001).

23. 20 U.S.C. §1703(f) (requiring states to "take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs").

24. Regulations implementing Section 1557 of the Affordable Care Act's prohibition on national origin discrimination require that any entity that receives HHS funding and provides or administers health-related services are required to provide meaningful language access to each individual with LEP "eligible to be served or likely to be directly affected" by the recipient's programs and activities. Nondiscrimination in Health Programs and Activities, Department of Health and Human Services, 89 Fed. Reg. 37522, 37699 (May 6, 2024) (to be codified at 45 C.F.R. 92.201).

25. 42 U.S.C. §2000d-4.

26. 42 U.S.C. §3604(a); 15 U.S.C. §1691(a).

27. CNY Fair Housing v. Swiss Village LLC, 2022 WL 2643573 (N.D.N.Y. July 8, 2022); Spike Body Works v. Byline Bankcorp, Inc. 2021 WL 3849647, at *5 (N.D. Il. Aug. 27, 2021) (noting that the Seventh Circuit has yet to address the question of whether exploiting language barriers can constitute national origin discrimination); Consumer Fin. Protection Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, (Jan. 21, 2021), https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/archive-closed/statement-regarding-the-provision-of-financial-products-and-services-to-consumers-with-limited-english-proficiency/.

28. *See* CFPB, Supervisory Highlights: Fall 2016, 21-26 (Oct. 2016), https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf.

29. CNY Fair Housing, 2022 WL 2643573, at *6.

30. Vialez v. New York City Hous. Auth., 783 F. Supp. 109, 123–24 (S.D.N.Y. 1991) ("Nothing could be fairer than to apply the English language uniformly to all tenants of whatever national origin"); Soberal-Perez v. Heckler, 717 F.2d 36, 42 (2d. Cir. 1983) (failing to translate notices of denial to Spanish did not violate Equal Protection Clause); Frontera v. Sindell, 522 F.2d 1215, 1219–20 (6th Cir.1975) (English-only civil service exam did not violate Equal Protection Clause or 42 U.S.C. §§ 1981, 1983 and 1985).

31. *E.g.,* 12 C.F.R. § 1005.31(g) (requiring remittance transfer providers to translate required disclosures in every language used to solicit consumers); 16 C.F.R. § 455.5 (requiring car dealers to provide a Spanish translation of the required "window form" and certain contract disclosures if the sale was conducted in Spanish). For a detailed discussion of federal translation requirements that take this form, see National Consumer Law Center, Federal Deception Law §12.4.2.

32. 16 C.F.R. §§ 455.2, 455.5.

33. 16 CFR §14.9.

34. The theory that initial contacts with a consumer in non-English languages (such as marketing, or conducting the sale in the consumer's preferred language) may trigger downstream translation obligations, on account of those initial contacts creating a reasonable belief that the provider would assist the LEP consumer in their preferred language, is a relatively undeveloped area of the law that may eventually change.

35. National Consumer Law Center, *Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures* (Feb. 21, 2024), https://www.nclc.org/resources/homeowners-at-risk-nationwide-survey-reveals-critical-gaps-the-cfpb-must-address-to-prevent-foreclosures/.

36. April Kuehnhoff & Yaniv Ron-El, Evaluating Regulation F: A Six-month Check-up on New Federal Debt Collection Regulations, National Consumer Law Center, 33-34 (Nov. 2022), https://www.nclc.org/resources/evaluating-regulation-f/.

37. *See e.g.*, Cal. Civ. Code § 1632 (West); Del. Code Ann. tit. 6, § 4404 (door-to-door sales); Nev. Rev. Stat. § 598.9733. For an exhaustive list of state laws that impose translation requirements on businesses, see National Consumer Law Center, Federal Deception Law, §12.4.3.

38. Although the D.C. code uses the terms "in sales or leases," this includes the sale of consumer credit mortgage lending. *See DeBerry v. First Government Mortg. and Investors Corp.*, 743 A.3d 699, 701 (D.C. Ct. App. 1999); *Cooper v. First Gov't Mortgage and Investors Corp.*, 206 F.Supp.2d 33 (D.D.C. 2002).

39. For example, California defines "agreement" to include "any subsequent document making substantial changes in the rights and obligations of the parties" but excludes "any subsequent documents authorized or contemplated by the original 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 purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document." Ca. Civ. Code §1632(g). On the other hand, some statutes provide for some translated notices at a later point. *E.g.*, N. Y. Real Prop. Acts. §1304(5) (requiring mortgage lenders and servicers to provide translated pre-foreclosure notices if they know the borrower has limited English proficiency).

40. California's translation law has an exemption for transactions negotiated through consumer-provided interpreters. *See* Ca. Civ. Code §1632(h)(1). At least one court in California found that communicating through a consumer's minor child did not violate the act, because the transaction was conducted in English by English speaking lender personnel. *See, e.g.*, Lopez v. Asbury Fresno Imports, LLC, 234 Cal. App. 4th 71, 76, 183 Cal. Rptr. 3d 696, 699 (2015).

41. Gutierrez v. PCH Roulette, Inc., No. H024243, 2003 WL 22422431, at *10 (Cal. Ct. App. Oct. 24, 2003) (car salesman discussing contract terms with a consumer in Spanish constituted sufficient evidence to determine that a transaction was primarily conducted in Spanish, even if following conversations with financing personnel took place in English).

42. Esparza v. Ford, 2017 WL 1534664, at *5 (Cal. Ct. App. Apr. 28, 2017) (Defendant arguing that California translation law only applies when the consumer cannot communicate in English); ING Bank v. Ahn, 717 F. Supp. 2d 931, 933 (N.D. Cal. 2010) (evidence of plaintiff's English proficiency, including PHD thesis authored in English, was not relevant to determining whether negotiations took place in English).

43. Ca. Civ. Code §1632(h)(1).

44. The most sweeping statute, Ca. Civ. Code §1632, and laws modeled after it, such as Nev. Rev. Stat. § 598.9733, only provides rescission as a remedy, which requires consumers to give up all the benefits that they've received under the contract in order to be released from the contract's obligations. This remedy can often be impractical for consumer-plaintiffs. *See, e.g.*, Sabia v. Orange Cnty. Metro Realty, Inc., 173 Cal. Rptr. 3d 485, 507 (Ct. App. 2014)(consumer plaintiff using violation of Ca. Civ. Code §1632 as the basis for an unconscionability claim, and not under §1632, because the only available remedy is rescission, which the plaintiff was not seeking); Dekker v. Vivint Solar, 2020 WL 2556956, (N.D. Ca. May 20, 2020)(finding California Translation Act claim failed because the plaintiff did not plead that he was able to return value of estimated energy savings from solar panels).

45. Consumer Financial Protection Bureau, Helping multilingual communities and newcomers, https://www.consumerfinance.gov/language/; New York Department of Consumer and Worker Protection, Glossary of Common Debt Collection Terms, https://www.nyc.gov/site/dca/consumers/Glossary-of-Common-Debt-Collection-Terms.page.

46. Federal Housing Finance Agency, 2017 Scorecard for Fannie Mae, Freddie Mac and Common Securitization Solutions, 3 (Dec. 15, 2016), https://www.fhfa.gov/sites/default/files/2023-03/2017-Scorecard-for-Fannie-Mae-Freddie-Mac-and-CSS.pdf.

47. Federal Housing Finance Agency, Language Access Multi-Year Plan (May 2018), https://www.fhfa.gov/sites/default/files/2023-03/lep-multi-year-plan.pdf.

48. Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report (April 2017), https://www.fhfa.gov/sites/default/files/2023-04/Borrower-Language-Access-Final-Report-June-2017.pdf.

49. *Id.* at 15.

50. *Id.* at 7.

51. *Id.* at 9.

52. *See, e.g.*, Americans for Financial Reform, Comments on the Federal Housing Finance Agency's Request for Input on Improving Language Access in Mortgage Origination and Servicing, (Jul. 31, 2017), https://www.nclc.org/resources/comments-on-fhfas-request-for-input-on-improving-language-access-in-mortgage-origination-and-servicing/; Americans for Financial Reform, Supplemental Comments on the Federal Housing Finance Agency's Request for Input on Improving Language Access in Mortgage Origination and Servicing, (Sept. 1, 2017), https://www.nclc.org/resources/comments-to-fhfa-on-improving-language-access-in-mortgage-origination-and-servicing/.

53. *Id.* at 4.

54. *See, e.g.*, MBA comment to FHFA request for information, https://www.fhfa.gov/sites/default/files/discussion_topics/Attachments/721/JointTrades_LEP_August2017.pdf.

55. https://www.fhfa.gov/sites/default/files/2023-04/urla_ulad_announcement.pdf, https://ourfinancialsecurity.org/2019/08/joint-statement-advocates-oppose-fhfas-decision-remove-language-preference-question-loan-application/

56. Mortgage Translations, Fed. Housing Fin. Agency, https://www.fhfa.gov/mortgage-translations#:~:text=Welcome%20to%20the%20Mortgage%20Translations,English%20proficiency%E2%80%8B%20(LEP); Language Access Resources: Translated Mortgage Documents, U.S. Dep't. Hous. & Urban Dev, Office of Hous. and Fed. Hous. Administration, https://www.hud.gov/program_offices/housing/translations.

57. *See, e.g.*, Consumer Financial Protection Bureau, Glossaries of Translated Financial Terms, https://www.consumerfinance.gov/consumer-tools/educator-tools/adult-financial-education/tools-and-resources/#translated-financial-terms; Glossaries, Fed. Hous. Fin. Agency, https://www.fhfa.gov/mortgage-translations/glossaries.

58. Consumer Fin. Prot. Bureau, Spotlight on serving limited English proficient consumers: Language access in the consumer financial marketplace, (Nov. 22, 2017), https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf.

59. *Id.* at 9, 12.

60. *See* CFPB, Supervisory Highlights: Fall 2016, 21-26 (Oct. 2016), https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf.

61. Request for Information on the Equal Credit Opportunity Act and Regulation B, 85 Fed. Reg. 46600, 46601 (Aug. 03, 2020).

62. *See, e.g.*, Comment from American Bankers Association on CFPB Request for information on the Equal Credit Opportunity Act and Regulation B, 3-4, (Dec 1, 2020), https://www.regulations.gov/document/CFPB-2020-0026-0001/comment?pageNumber=4.

63. Comment from U.S. Bank on CFPB Request for information on the Equal Credit Opportunity Act and Regulation B, 3, (Dec 1, 2020), https://www.regulations.gov/comment/CFPB-2020-0026-0110.

64. Comment from American Bankers Association on CFPB Request for information on the Equal Credit Opportunity Act and Regulation B, 3-4, (Dec 1, 2020), https://www.regulations.gov/document/CFPB-2020-0026-0001/comment?pageNumber=4; Comment from Bank Policy Institute on CFPB Request for information on the Equal Credit Opportunity Act and Regulation B, 7, (Dec 1, 2020), https://www.regulations.gov/comment/CFPB-2020-0026-0116.

65. Comment from U.S. Chamber of Commerce on CFPB Request for Information on the Equal Credit Opportunity Act and Regulation B 2-3 (Dec. 1, 2020), https://www.regulations.gov/comment/CFPB-2020-0026-0136; Comment from Bank Policy Institute on CFPB Request for information on the Equal Credit Opportunity Act and Regulation B, 2, (Dec 1, 2020), https://www.regulations.gov/comment/CFPB-2020-0026-0116; Comment from U.S. Bank on CFPB Request for information on the Equal Credit Opportunity Act and Regulation B, 2, (Dec 1, 2020), https://www.regulations.gov/comment/CFPB-2020-0026-0110.

66. Consumer Fin. Protection Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, (Jan. 21, 2021), https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/archive-closed/statement-regarding-the-provision-of-financial-products-and-services-to-consumers-with-limited-english-proficiency/.

67. *Id.* at 11, 13.

68. *Id.* at 12.

69. *Id.* at 14.

70. *See, e.g.*, 12 C.F.R. §1006.34(e) (permitting debt collectors to send validation notices in non-English languages); 12 C.F.R. §1026.27 (permitting disclosures required by Truth in Lending Act implementing Regulation, Regulation Z, to be made in other languages so long as an English version is provided upon request); 12 C.F.R. §1024.32(a)(2) (permitting mortgage servicing disclosures required by the Real Estate Settlement Procedures Act implementing regulation, Regulation X, to be made in other languages so long as an English version is provided upon request).

71. Diane E. Thompson, Why Servicers Foreclose When They Should Modify, 17 (Oct. 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1502744.

72. National Consumer Law Center, *Homeowners at Risk: Nationwide Survey Reveals Critical Gaps the CFPB Must Address to Prevent Foreclosures* (Feb. 21, 2024); Americans for Financial Reform Education Fund (AFR) Language Access Task Force, Comments to the Consumer Financial Protection Bureau Request for Information on the Equal Credit Opportunity Act and Regulation B, Appendix A&B, https://www.nclc.org/resources/comments-to-the-cfpb-request-for-information-on-the-equal-credit-opportunity-act-and-regulation-b-docket-no-cfpb-2020-0026/.

73. *E.g.*, 12 C.F.R. §1024.39 (Early intervention requirements); 12 C.F.R. §1024.40(a)(2) (requirement that servicers make available, by telephone, personnel assigned to the borrower to respond to the borrower's questions, and help the borrower with available loss mitigation options).

74. Fannie Mae, Servicing Guide, Fannie Mae Single Family 62 (May 8, 2024); Freddie Mac, Seller/Servicer Guide, Freddie Mac Single Family 1301-4 (May 03, 2023).

75. Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties; 89 Fed. Reg. 60204, 60226-27 (July 24, 2024).

76. *See, e.g.*, Language Line Solutions, https://www.languageline.com/.

77. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41464 (June 18, 2002).

78. Automated Injustice, National Consumer Law Center, 9 (Jan. 2009), https://www.nclc.org/resources/automated-injustice-how-a-mechanized-dispute-system-frustrates-consumers-seeking-to-fix-errors-in-their-credit-reports/.

79. Chi Chi Wu, Ariel Nelson, et. al., *Digital Denials: How Abuse, Bias, and Lack of Transparency in Tenant Screening Harm Renters*, National Consumer Law Center (Sept. 26, 2023), https://www.nclc.org/resources/digital-denials-how-abuse-bias-and-lack-of-transparency-in-tenant-screening-harm-renters/; TransUnion SmartMove, TransUnion Independent Landlord

Survey Insights (Aug. 7, 2017), https://www.mysmartmove.com/blog/landlord-rental-market-survey-insights-infographic (85% of landlords run an eviction report on all applicants and 90% run credit and criminal background checks on all applicants).

80. Chi Chi Wu & Ariel Nelson, *Mission Creep: A Primer on Use of Credit Reports & Scores for Non-Credit Purposes*, National Consumer Law Center, (Aug. 3, 2022), https://www.nclc.org/resources/mission-creep-a-primer-on-use-of-credit-reports-scores-for-non-credit-purposes/.

81. 83 Fed. Reg. 51,114 (Oct. 10, 2018).

82. Lisa Gill, *Credit Report Error Complaints Surge. Here's Why You Should Check Yours*, Consumer Reports, (Feb. 15, 2024), https://www.consumerreports.org/money/credit-scores-reports/credit-report-error-complaints-surge-check-your-report-a1194343465/; Chi Chi Wu, Sarah Bolling Mancini, Michael Best, *Automated Injustice Redux: Ten Years After a Key Report, Consumers Are Still Frustrated Trying to Fix Credit Reporting Errors*, National Consumer Law Center, (Feb 1, 2019), https://www.nclc.org/resources/automated-injustice-redux-ten-years-after-a-key-report-consumers-are-still-frustrated-trying-to-fix-credit-reporting-errors/.

83. 15 U.S.C. § 1681j(a)(1)(C), added by Pub. L. No. 108-159, § 211(a)(2) (2003).

84. Equifax Offers Credit Reports in Spanish Online and By Mail, Equifax, (Sept. 13, 2021), available at https://www.equifax.com/newsroom/all-news/-/story/equifax-offers-credit-reports-in-spanish-online-and-by-mail-1/.

85. Letter to Chi Chi Wu from the Consumer Data Industry Association (CDIA), (Oct. 29, 2020), available at https://www.nclc.org/resources/letter-to-chi-chi-wu-from-the-consumer-data-industry-association-cdia/.

86. Consumer Data Industry Association v. Platkin, 2024 WL 1299256 (March 27, 2024).

87. Consumer Data Industry Association v. Platkin, 2024 WL 1299256 (March 27, 2024) (appeal pending).

88. Anna Bahney, The US housing market is short 6.5 million homes, CNN.com (Mar. 8, 2023), https://www.cnn.com/2023/03/08/homes/housing-shortage/index.html.

89. National Consumer Law Center, Comments on Tenant Screening Request for Information by FTC and CFPB, 76-77 (May 30, 2023), https://www.nclc.org/resources/comments-on-tenant-screening-request-for-information-by-ftc-and-cfpb/.

90. *Id.*

91. National Consumer Law Center, Petition for Rulemaking at CFPB Regarding Debt Collector Furnishing, Language Access, Credit Reporting Ombudsperson Office, (Mar. 3, 2023), available at https://www.nclc.org/resources/petition-for-rulemaking-at-cfpb-regarding-debt-collector-furnishing-language-access-credit-reporting-ombudsperson-office/.

92. 15 U.S.C. § 1681s(e).

93. 15 U.S.C. § 1681(b).

94. 15 U.S.C. §1681(g)(a).

95. New York Department of Consumer and Worker Protection, Lost in Translation: Findings from Examination of Language Access by Debt Collectors, 18 (Sept. 2019), available at https://www.nyc.gov/assets/dca/downloads/pdf/partners/LEPDebtCollection_Report.pdf.

96. *Id.* at 16-17.

97. *Id.*

98. *Id.*

99. *Id.*

100. Dalié Jiménez, Claire Johnson Raba, Madeleine G. Larock, Nancy Montalbano, and Cindy Xu; California Debt Collection Lawsuits, Geography, Credit, and Race/Ethnicity: An Exploration, Debt Collection Lab, 28, (June 1, 2024), https://debtcollectionlab.org/research/california-debt-collect-lawsuits.

101. *Id.* at 17.

102. *Id.* at 27.

103. Remarks of Assistant Attorney General Kristen Clarke, National Center for State Courts, Language Access in the Courts Convening (Oct. 26, 2023), https://www.lep.gov/sites/lep/files/media/document/2023-10/2023.10.23%20NCSC%20Language%20Access%20Convening-final.pdf.

104. Letter to the CFPB Addressing the Bureau's Approach to Consumers with Limited English Proficiency (Nov. 30, 2020), https://www.nclc.org/resources/bureaus-approach-to-consumers-with-limited-english-proficiency-lep-consumers/.

105. 12 C.F.R. §1006.18(e)(4).

106. 12 C.F.R. §1006.34(e)(2).

107. 12 C.F.R. §1006.34(e)(1).

108. 12 C.F.R. §1006.34(a)(1)

109. Debt Collection Practices (Regulation F) 86 Fed. Reg. 5766, 5833-34 (Jan. 19, 2021) (declining to require debt collectors to provide translated validation notices).

110. April Kuehnhoff & Yaniv Ron-El, *Evaluating Regulation F: A Six-month Check-up on New Federal Debt Collection Regulations*, National Consumer Law Center, 33-34 (Nov. 2022), https://www.nclc.org/resources/evaluating-regulation-f/.

111. Code of the District of Columbia § 28–3814(m)(2)(C).

112. Lost in Translation, at 12.

113. Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 Fed. Reg. 10696, 10709 (Feb. 14, 2013).

114. Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties; 89 Fed. Reg. 60204, 60226 (July 24, 2024).

115. Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties; 89 Fed. Reg. 60204, 60226-27 (July 24, 2024).

116. *Id.*

117. Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties; 89 Fed. Reg. 60204, 60227 (July 24, 2024).

118. Executive Order 13166.

National
Consumer Law
Center

Fighting Together
for Economic Justice

NATIONAL HEADQUARTERS

7 Winthrop Square, Boston, MA 02110
(617) 542-8010

NCLC.ORG

WASHINGTON OFFICE

Spanogle Institute for Consumer Advocacy
1001 Connecticut Ave, NW, Suite 510
Washington, DC 20036
(202) 452-6252