

November 15, 2022

Julia R. Gordon  
Assistant Secretary for Housing, Federal Housing Commissioner  
Department of Housing and Urban Development  
451 7th St., S.W.  
Washington, D.C. 20410

Re: Strengthening language access for FHA borrowers

Dear Commissioner Gordon:

We write to request that HUD strengthen the current requirements related to origination and servicing of Federal Housing Administration (FHA) mortgages for borrowers with limited English proficiency (LEP). We applaud HUD's LEP access provisions for borrowers in delinquency or default, as well as the agency's recently-released Language Access Plan, which helps assess needs, promotes the availability of written translations and oral interpretation, and seeks to increase LEP access. To expand upon these laudable efforts, and to align FHA with recent developments at the Federal Housing Finance Agency (FHFA), we urge HUD to take additional steps to serve LEP borrowers.

In particular, we recommend that FHA implement the following changes:

1. Require lenders and servicers to ask borrowers about their language preference and then record the information and convey it along with any servicing transfer;
2. Require that lenders and servicers provide Spanish language disclosures to all borrowers, use available translated documents from the FHFA clearinghouse and other federal agency sources where the homeowner has expressed a language preference in one of the available languages, broadly provide oral interpretation for LEP homeowners, and offer additional access for other languages where possible;
3. Require lenders and servicers to take reasonable steps to provide meaningful access to all LEP borrowers—not simply those in delinquency or default—and to inform borrowers of available language services;
4. Require originators and servicers to create and periodically update their own language access plans; and
5. Begin tracking and publishing language access data for FHA counterparties.

## Language Access Affects Access to Homeownership and Foreclosure Prevention

The mortgage industry currently lacks a unified approach to providing language access for LEP applicants and borrowers. Findings from a study commissioned by Fannie Mae and Freddie Mac (“the GSEs”) and performed by the Kleimann Communication Group highlight the need for stronger oversight in this area. For example, interviews with industry participants in New York found no consistent method of collecting borrowers’ language preference; information gathered was sometimes placed in the electronic record, sometimes kept in the paper file, and sometimes not retained; only one company had an official policy on serving LEP borrowers; no participant said that it routinely provided closing or servicing documents in-language; and one servicer provided ad hoc correspondence in other languages. Industry participants in New York believed providing translated documents was important (rating it a 4 out of 5), and believed providing in-language documents resulted in a lower frustration level, higher comfort level, better understanding, and clearer communication with borrowers.<sup>1</sup>

The Kleimann study also shows that mortgage servicers generally lack a consistent approach to working with LEP borrowers. Interviews with servicers in Dallas found that only a few servicers have set up a system for recording language preference in the loan file. Servicers reported that there were no best practices or formalized processes across servicers. Most servicers believed that the language barrier, rather than financial literacy, was the primary obstacle to communicating with LEP borrowers, as their financial literacy was comparable to that of non-LEP borrowers. On average, 15% of the customer base of the Dallas servicers interviewed was comprised of LEP borrowers, and one servicer had 65% LEP customers.<sup>2</sup>

LEP consumers experience significant harms as a result of inability to access information in their preferred language. In a survey of advocates assisting LEP homeowners done by Americans for Financial Reform (AFR) in 2016, one homeowner relying on a friend for interpretation closed on an unaffordable interest-only loan. Another homeowner, struggling to seek loss mitigation, received a four-page missing document notice in English that gave him a 30-day deadline to return the listed documents, or risk foreclosure of his home. The letter stated near the end, “This document is important, call us to translate.” But when the borrower called the number provided, he was able to get only unhelpful, generic information in Spanish, and then was referred back to the English customer service number.<sup>3</sup> Foreclosure rescue scammers and other financial predators tend to target LEP consumers precisely because the lack of in-language information from reputable sources leaves these consumers more vulnerable to fraudulent schemes.<sup>4</sup>

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<sup>1</sup> Kleimann Commc'n Group, Language Access for Limited English Proficiency Borrowers: Final Report (April 2017), available [here](#).

<sup>2</sup> *Id.* at 24.

<sup>3</sup> Americans for Financial Reform, Barriers to Language Access in the Housing Market: Stories from the Field at 4 (May 2016), available [here](#).

<sup>4</sup> *See, e.g.*, HUD files charge alleging California foreclosure rescue companies scammed Hispanic homeowners, HUD archives, HUD No. 16-002 (Jan. 12, 2016), available [here](#).

In an October 2020 AFR survey of eighty consumer advocates from around the country, 49% of respondents had encountered LEP consumers who had difficulty when obtaining a mortgage loan because documents were provided entirely in English. Similarly, 50% of respondents had worked with LEP homeowners who had difficulty communicating with their servicer about their mortgage in their preferred language. Forty out of eighty respondents stated that it was “very common” for LEP consumers to be receiving all loan correspondence in English. Twenty-nine respondents said it was very common for loss mitigation to be conducted entirely in English, even for LEP homeowners.<sup>5</sup>

Despite many reports of a lack of language access, the October 2020 AFR survey results also showed that some lenders and servicers are extending language access opportunities – making it clear that this can be done. Respondents listed seven lenders that are providing translated documents at mortgage origination, and many more that are providing bilingual loan officers or oral interpretation during the loan application process. Fifteen percent of respondents had encountered LEP consumers who were given at least some translated documents when the loan was made. In the servicing context, ten servicers were identified by respondents as providing at least some translated servicing documents (and many more providing oral interpretation), and 24% of respondents had encountered LEP consumers who were receiving at least some servicing documents in their preferred language.<sup>6</sup>

We are at a crucial juncture for FHA and its borrowers. Many are facing delinquency (or imminent delinquency) and foreclosure and are seeking loss mitigation, a process we know is enhanced by language access for LEP homeowners. As FHA seeks to broaden its reach, services for LEP individuals can help expand access to homeownership to qualified LEP borrowers. Below, we discuss our recommendations in greater detail.

## **Recommendations**

### **1. Require lenders and servicers to ask borrowers about their language preference, record the information, and convey it with any servicing transfer.**

Identifying a homeowner’s language preference is the basis for effective language access. HUD should require lenders to ask borrowers (including applicants) about their language preference. The Federal Housing Finance Agency (FHFA) recently announced that as of March 1, 2023, the GSEs will begin requiring lenders to present the Supplemental Consumer Information Form (SCIF) to borrowers as part of the application process and “to report any data collected from the

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<sup>5</sup>Americans for Financial Reform Coalition Comments in Response to the Consumer Financial Protection Bureau’s Request for Information on the Equal Credit Opportunity Act and Regulation B (Dec. 1, 2020), Survey of Housing Counselors and Legal Services Advocates, Appendix A, p. 31, available [here](#).

<sup>6</sup> *Id.*

SCIF to the Enterprise purchasing the loan.”<sup>7</sup> The SCIF, currently available in six languages, gives loan applicants the opportunity to indicate their language preference, presenting English, Chinese, Korean, Spanish, Tagalog, Vietnamese, or “Other” as options.<sup>8</sup> The GSEs also will be requiring servicers as of March 2023 to maintain language preference data and to transfer that information with the servicing.<sup>9</sup>

The Consumer Financial Protection Bureau (CFPB), in a January 13, 2021, statement, confirmed that questions identifying a mortgage applicant’s language preference do not violate either the Equal Credit Opportunity Act (ECOA) or Regulation B.<sup>10</sup>

To expand language access for FHA borrowers and align with FHFA, HUD should require lenders to use a form like the SCIF or add a language preference question to the HUD Addendum to the Uniform Residential Loan Application. In addition, because of FHA’s substantial delinquency numbers due to COVID hardships, we urge HUD to require servicers to inquire about language preference as a routine part of servicing as well as during default servicing, both orally and through certain documents that could contain a SCIF-type form or question. HUD should not wait until the language preference information makes it to servicers from new originations; many existing FHA borrowers need in-language servicing now in order to have effective access to loss mitigation.

Servicers should be asking about and documenting language preference at first oral contact, in the early intervention notice required under the Real Estate Settlement Procedures Act (RESPA), in any “hello letter” sent by the transferee servicer upon a servicing transfer, and in connection with any loan modification written application or oral conversation. In order to fully embed language access into FHA servicing for all other borrowers, servicers should also be required to inquire in writing about language preference through a SCIF-type form within one year of FHA’s new LEP policies. This can be done as part of the yearly escrow analysis or in a separate letter.

As with FHFA, FHA lenders and servicers should transmit language preference information to FHA, track language preference information in the consumer’s file, and transfer these preferences when the loan servicer changes to enhance language access through the life of the loan. Maintaining this information also will provide essential data for lender and servicer language access plans, as discussed below.

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<sup>7</sup> Fed. Hous. Fin. Agency, FHFA Announces Mandatory Use of the Supplemental Consumer Information Form (May 3, 2022), available [here](#).

<sup>8</sup> Fannie Mae, Supplemental Consumer Insurance Form, Fannie Mae/Freddie Mac Form 1103 (May 2022), available [here](#).

<sup>9</sup> Fannie Mae, Servicing Guide Announcement, SVC-2022-06, (Aug. 10, 2022), available [here](#).

<sup>10</sup> Consumer Fin. Prot. Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, 14 (Jan. 13, 2021), available [here](#).

- 2. Require that lenders and servicers provide Spanish language disclosures of essential documents to all borrowers, transmit essential origination and servicing documents translated by federal agencies where the homeowner has expressed a language preference in one of the available languages, and broadly provide oral interpretation for LEP homeowners.**

*Universal Spanish translations of essential documents.* HUD currently requires servicers to provide certain information for avoiding foreclosure “at a minimum, in Spanish,” with “an advisement to seek translation or other language assistance.”<sup>11</sup> About 64% of the LEP population speaks Spanish, followed by Chinese.<sup>12</sup> Given the likelihood that an LEP borrower will require Spanish language services, the agency should work with the FHFA and CFPB to develop and require general use of Spanish language translations for vital origination and servicing documents in communications with all FHA borrowers.

Routine availability of the most important origination documents in Spanish will promote access to credit and serve the goal of expanding FHA’s reach. Providing Spanish translations of key servicing notices before better information is available about borrower language preference will help prevent foreclosures, serving FHA borrowers and the Mutual Mortgage Insurance Fund.

For example, the early intervention notice under RESPA, recently published in Spanish by the CFPB, is crucial because it notifies homeowners in the early stages of delinquency of the importance of communicating with their servicer and that loss mitigation options may be available. Spanish translations of loan modification application materials will also help improve outcomes.

COVID-19’s impacts have been most severely felt in immigrant communities and communities of color. The same communities that have been disproportionately excluded from homeownership and wealth-building opportunities are seeing their housing and economic stability disproportionately threatened by the economic challenges of the pandemic. FHA must work to ensure that servicers’ policies do not exacerbate the present challenges faced by LEP consumers, but rather encourage servicing and loss mitigation practices that incorporate strong language access.

*Translated documents in other languages.* When a homeowner expresses a language preference, FHA should require lenders and servicers to use all available essential documents in the FHFA Mortgage Translations Clearinghouse and/or translated by the CFPB or HUD. Documents stored in the FHFA Clearinghouse are currently available in Spanish, traditional Chinese, Vietnamese, Korean, and Tagalog. The CFPB, meanwhile, makes translated documents available in these five languages as well as Russian, Arabic, and Haitian Creole. Lenders and servicers should be

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<sup>11</sup> HUD Handbook 4000.1, §III.A.2(x)(A)(1), available [here](#).

<sup>12</sup> Jeanne Batalova and Jie Zong, Language Diversity and English Proficiency in the United States, Migration Policy Institute (Nov. 11, 2016), available [here](#).

required to use translated essential documents as they become available in other languages from the Bureau, FHFA, or HUD, as well as, ideally, other governmental agencies. Federal agencies should review national LEP trends to consider expanding the pool of materials available in-language. HUD, and lenders and servicers, should also develop policies that take into account significant regional concentrations of LEP borrowers who may speak a language that is not one of the top national LEP languages, and undertake efforts to include additional languages as appropriate. Given that Asian-American, Native Hawaiian, and Pacific Islander (AANHPI) communities are the fastest growing populations in the country, HUD should work with the CFPB and FHFA to expand the availability of translations in additional AANHPI languages.

We encourage you to work with stakeholders to designate which origination and servicing documents are essential and thus should be provided in-language, where available, for LEP borrowers. In determining which documents and services should be prioritized for LEP access, the CFPB has suggested that financial institutions consider “whether the communication conveys essential information about credit terms and conditions (e.g., loan pricing), or about borrower obligations and rights, including those related to delinquency and default servicing, loss mitigation, and debt collection.”<sup>13</sup> We find this standard to be a helpful starting point.

Based on our experience, we believe that essential documents to be made available in-language include, for origination, the loan application, Loan Estimate, Closing Disclosure, note, and security instrument. For servicing, essential documents to provide in translation include the RESPA Early Intervention notice, the notice required under 12 CFR 1024.41(b)(2) that notifies the borrower within five days of a loss mitigation application that it has been received and what else is needed to complete the application, the loan modification application form, the periodic mortgage statement, and the yearly escrow analysis.

Lenders and servicers should populate the translated forms with specific information about the borrower’s loan. The translated form should be comparable to the English-language form, not a summary. For example, in a loan origination, the translated Loan Estimate and Closing Disclosure should include the actual terms of that borrower’s loan. The documents can indicate that the English language document is the official form. Both the English and translated documents should be provided to LEP borrowers so they can refer to them later.

The provision of translated documents can go a long way toward providing meaningful language access. While marketing may occur in a person’s preferred language, too often the financial transaction documents and any subsequent contact (oral or written) is English-only. The Kleimann Communications Group, in research provided to the GSEs, found that where translated documents are not available, LEP borrowers must resort to relying on friends and family members – and sometimes children – to convey crucial financial information. Placing the burden of interpreting technical, legal, or financial information on individuals who lack financial

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<sup>13</sup> Consumer Fin. Prot. Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, 14 (Jan. 13, 2021), available [here](#).

expertise compromises the consumer’s ability to make a well-informed decision. It also means that sensitive financial information will be revealed to the third party who is helping with the translation. The Kleimann study found that consumers feel vulnerable when they cannot review documents in their language. Even those who speak some English would still prefer to have translated documents in order to double check their understanding. The study found that providing translated documents would eliminate a significant barrier that prevents or delays LEP individuals from buying a home. Spanish, Korean, and Chinese-speaking focus group participants all expressed a preference to receive documents in their primary language.<sup>14</sup>

The burden for lenders and servicers to incorporate the use of government-translated documents is reasonable, especially as compared to the significant benefit to LEP consumers in increasing their comprehension of loan terms, account status and loss mitigation options. Moreover, failing to provide reasonable access to LEP borrowers presents fair lending risk.<sup>15</sup> Additional clarity on this topic could give lenders and servicers comfort and guidance that would spur progress. Lenders and servicers should also be reassured by the CFPB’s January 2021 LEP Statement, which provides a framework by which financial institutions can better serve LEP consumers.<sup>16</sup>

*Oral interpretation.* HUD should also require that lenders and servicers be able to provide oral interpretation, either through language lines, bi-lingual staff, or through partnerships with HUD-approved housing counseling agencies with language capacity. Language lines offer cost-effective oral interpretation services on-demand in a range of industries, from healthcare to public benefits, in hundreds of languages.<sup>17</sup> These services can be available to help borrowers who are unable to obtain written communications in-language and also can be useful in helping homeowners troubleshoot problems, such as during the application process or as part of loss mitigation. Proper training is essential— staff must know both how to access these services and the situations when they must plan to use them, and interpreters must have subject-specific language knowledge. Oral interpretation, done well, is a key tool for expanding access to credit and foreclosure prevention for LEP homeowners.

### **3. Require both lenders and servicers of forward and reverse mortgages to take reasonable steps to provide meaningful access to all LEP borrowers with FHA**

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<sup>14</sup> Kleimann Comm’n Group, Language Access for Limited English Proficiency Borrowers: Final Report (April 2017), available [here](#).

<sup>15</sup> Dep’t of Hous. & Urb. Dev., Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, (Sept. 15, 2016) available [here](#); Consumer Fin. Prot. Bureau, Mortgage Servicing Covid-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021, 26 (May 2022) (“Failure to serve LEP consumers could give rise to violations of the Equal Credit Opportunity Act, regardless of servicers’ data collection practices”), available [here](#).

<sup>16</sup> Consumer Fin. Prot. Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency (Jan. 13, 2021), available [here](#).

<sup>17</sup> Federal, State, and Local government agencies often use language lines to offer oral interpretation to LEP program beneficiaries. LanguageLine Solutions is an example of a provider in this space; they charge less than four dollars per minute for over the phone interpretation services in 240 languages. LanguageLine Solutions, available [here](#).



**mortgage loans—not simply those in delinquency or default—and to inform borrowers of available language services.**

HUD’s Single Family Housing Policy Handbook, or Handbook 4000.1, currently requires forward mortgage servicers to “take reasonable steps to provide meaningful access to persons with Limited English Proficiency (LEP), such as providing oral interpretation and/or written translation of vital documents” whenever such borrowers are in delinquency or default.<sup>18</sup> We urge HUD to expand this mandate to include all borrowers. Providing language access throughout the life of the loan will help borrowers avoid delinquency and assist servicers in providing loss mitigation when a delinquency first occurs.

Furthermore, “reasonable steps to provide meaningful access” should, as discussed above, encompass providing key documents to borrowers in their preferred language where such documents are available, including Spanish translations as a matter of course, and offering reasonable access to oral interpretation, whether through a language line or by maintaining bilingual staff. Language access plans, discussed below, can serve as a means for establishing what is reasonable for a particular institution.

Additionally, as NCLC highlighted in a recent comment to HUD, HUD should extend the LEP access requirements for forward mortgages to reverse mortgagees.<sup>19</sup> The Home Equity Conversion Mortgage (HECM) section of the Handbook should incorporate the “reasonable steps to provide meaningful access” communication standard outlined above.<sup>20</sup>

Finally, provision of language services will be most effective where applicants and borrowers are informed of their availability. Homeowners who express a language preference should be informed about mortgage-related language services available in their language and the company’s website also should prominently display such information. This information should be provided in writing within a designated time frame (for example, 30 days) after the consumer conveys a non-English language preference either in writing or over the phone.

The CFPB has noted that financial institutions can “mitigate certain compliance risks by providing LEP consumers with clear and timely disclosures in non-English languages describing the extent and limits of any language services provided throughout the product lifecycle.”<sup>21</sup> Through these disclosures, institutions can “provide information about the level of non-English language support as well as communication channels through which LEP consumers can obtain

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<sup>18</sup> HUD Handbook 4000.1, §III.A.2(iv)(A), available [here](#).

<sup>19</sup> Nat’l Consumer Law Center, Comments of the National Consumer Law Center, on Behalf of its Low-Income Clients, to the U.S. Department of Housing and Urban Development On the Draft Home Equity Conversion Mortgage Sections of Single Family Housing Policy Handbook 4000.1, available [here](#); Office of Single Family Housing Drafting Table, at 4 (Jan. 31, 2022), available [here](#).

<sup>20</sup> HUD Handbook 4000.1, §III.A.2(iv)(A), available [here](#).

<sup>21</sup> Consumer Fin. Prot. Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency (Jan. 13, 2021), available [here](#).



additional information and ask questions.”<sup>22</sup> While the language on the SCIF making clear that services may or may not be available in the applicant’s language is useful, it does not provide the range of information contemplated by the broader disclosure discussed here. HUD should explicitly require disclosures regarding language services to promote compliance with LEP service standards and to manage borrowers’ expectations.

#### **4. Require originators and servicers to create and periodically update their own language access plans.**

HUD should require lenders and servicers to create and periodically update their own language access plans to encourage long-term, LEP-accessible policies. These LAPs would assist in establishing language access beyond the baseline requirements recommended above, as well as providing guidance on how to implement those universal standards. HUD’s own Language Access Plan provides a helpful template on how to assess needs, increase the availability of oral interpretation and written translations, train staff, and consult with stakeholders to expand LEP access.<sup>23</sup> Similarly, the FHFA’s Language Access Multi-Year Plan outlined the agency’s intent to create and add to the aforementioned translations clearinghouse, develop a standardized glossary of real estate-related terms in the five most common non-English languages spoken by LEP households in the United States, and establish a language access line.<sup>24</sup> In addition to implementing our other recommendations, HUD should require FHA lenders and servicers to develop similarly comprehensive plans to meet the needs of their LEP borrowers and mitigate their compliance risks.

Mortgage lenders and servicers are obligated to avoid discriminating on the basis of race or national origin under the Fair Housing Act, the Equal Credit Opportunity Act, and state antidiscrimination laws. Language Access Plans can help lenders and servicers meet these obligations. As the Supreme Court has observed, language is closely tied to national origin, and practices that disfavor LEP individuals can have a disparate impact based on national origin.<sup>25</sup> In the United States, 61% of persons born in Latin America and 46% of persons born in Asia are LEP, as compared with 2% of persons born in the United States.<sup>26</sup>

HUD has explained the close relationship between LEP status and national origin in a memorandum regarding compliance with the Fair Housing Act.<sup>27</sup> HUD stated that entities covered by the Fair Housing Act would violate the statute by implementing a

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<sup>22</sup> HUD Handbook 4000.1, §III.A.2(iv)(A), available [here](#).

<sup>23</sup> *Language Access Plan, 2021-2026*, Dep’t of Hous. & Urb. Dev., available [here](#).

<sup>24</sup> *Language Access Multi-Year Plan*, Fed. Hous. Fin. Agency (May 2018), available [here](#).

<sup>25</sup> *Lau v. Nichols*, 414 U.S. 563 (1974) (overruled on other grounds, *Alexander v. Sandoval*, 532 U.S. 275 (2001) (concluding no private right of action to enforce disparate impact claims under Title VI)); Dep’t of Hous. & Urb. Dev., Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency (Sept. 15, 2016), available [here](#); Executive Order 13166, 3 C.F.R. §13166 (2001).

<sup>26</sup> Dep’t of Hous. & Urb. Dev., Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, (Sept. 15, 2016), available [here](#).

<sup>27</sup> *Id.*

policy or practice that has an unjustified discriminatory effect on LEP consumers, because LEP status is closely tied to national origin. Liability would follow if the conduct at issue either is not “necessary to achieve a substantial, legitimate, nondiscriminatory interest” of the lender, or if it is necessary to such an interest but a less discriminatory alternative exists. HUD opined that it will be difficult for mortgage lenders and housing providers to identify interests that are considered substantial, legitimate, and nondiscriminatory, as many of the typical arguments raised in the employment context (such as a need to speak English in order to perform job requirements) will not apply in the housing context.

In reasoning through possible justifications for various practices, HUD explained that refusing to provide an LEP borrower with translated documents that are readily available to the lender would not likely be justified. HUD also stated that avoiding compliance with state consumer protection laws, such as translation requirements, also would not be considered a justifiable basis for refusing to take certain reasonable steps. If a lender can show a substantial justification for a certain practice that creates a disparate impact, it would still be liable for violating the Act if a plaintiff shows that the interest could be served by another practice that has a less discriminatory effect. Examples of less discriminatory alternatives cited by HUD in its LEP Guidance include obtaining written or oral translation services or making use of bilingual staff members. Based on HUD’s assessment of the Fair Housing Act’s application in this area, mortgage lenders face significant risk by not providing translated documents and in-language oral communication where reasonably available. Moreover, the Fair Housing Act requires HUD to administer its programs in a manner that affirmatively further fair housing. Requiring FHA counterparties to better serve LEP FHA borrowers would help HUD fulfill that obligation.<sup>28</sup>

The Consumer Financial Protection Bureau has recently taken steps to encourage financial institutions to better serve LEP communities.<sup>29</sup> In its January 2021 LEP bulletin, the Bureau acknowledges that companies might feel hesitant to provide any language access because they cannot provide perfect access for all languages immediately. But the Bureau explains that it is possible for lenders and servicers to begin to provide language access services in a logical and impact-oriented way, through the use of data and well-documented compliance management systems. The Bureau alluded to the concept of language access plans, which have been successfully implemented by entities required to comply with Title VI. The Department of Justice has adopted a helpful four-factor process to be used in creating language access plans under Title VI. These factors for evaluation are: (1) the number or proportion of LEP persons served or encountered in the eligible service population, (2) the frequency with which LEP persons come into contact with the program (3) the nature and importance of the program,

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<sup>28</sup> 42 U.S.C. §3608(e)(5).

<sup>29</sup> Consumer Fin. Prot. Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency (Jan. 13, 2021), available [here](#); Consumer Fin. Prot. Bureau, Spotlight on Serving Limited English Proficient Consumers, (Nov. 2017), available [here](#); Consumer Fin. Prot. Bureau, Supervisory Highlights 20-25, (Oct. 2016), available [here](#).

activity, or service provided by the program, and (4) resources available and costs to the recipient.<sup>30</sup>

FHA should recommend that mortgage lenders and servicers use this same four-factor analysis to create a language access plan for their FHA borrowers and to update it at regular intervals. As part of its LAP, a lender or servicer should identify the vital documents that should be provided in translation, which may exceed the minimum documents HUD requires all lenders to provide once translated by a government agency. LAPs will allow lenders and servicers to start somewhere, understanding that they cannot provide comprehensive language access on day one. The LAP structure will allow lenders and servicers to begin to provide language services, in a way that is informed by data analysis, and with a goal of monitoring community needs and expanding available services over time taking into account company resources. Any compliance management system or LAP must involve asking about language preference, tracking that information in the loan file, and periodically reviewing the data regarding the language needs of its customers and geographic footprint.

Entities also should be required to mirror HUD’s recommended process for monitoring and updating plans. The process includes: (1) “determining whether new documents, changes in programs, services and activities need to be made accessible to LEP persons;” (2) “[d]etermining whether changes in demographics, services or needs require annual reevaluation of LAP; and (3) [s]eeking feedback from the community the plan serves (advocacy groups serve a vital role).”<sup>31</sup> This analysis is important to ensure that language access plans are based on accurate data about the community as well as the current services of the bank. Plans should be re-evaluated and updated at regular intervals. Informed by data and the willingness to adapt to meet evolving community needs, lenders and servicers will be able to use a LAP to better provide the language access that is so sorely needed in the mortgage market.

##### **5. Begin FHA collection, analysis and public reporting of language access data disaggregated by language preference and through the life of the loan.**

As lenders and servicers collect language preference data, this information should not only be collected, recorded, and transferred to successive servicers but also shared by lenders and servicers with FHA at the loan level, which should in turn share it in a meaningful way, as at granular a level as possible while protecting privacy, with the public. The data should allow FHA and the public to understand the relationship between LEP status, language access, and borrower outcomes and loan performance. While we recognize FHA continues to work to update its IT systems, progress in this area would support enhancing the success of FHA’s loss mitigation program.

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<sup>30</sup> Executive Order 13166, 3 C.F.R. §13166 (2001); Dep’t of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Jun. 6, 2002), available [here](#).

<sup>31</sup> *Language Access Plan, 2021-2026*, Dep’t of Hous. & Urb. Dev., 8– 11, available [here](#).

Data reporting by FHA lenders and servicers on a loan level basis would be in line with FHFA policy. As noted above, FHFA has directed lenders to report language preference information to the GSEs. Recently, the GSEs announced that, to align with the timing of mandated use of the SCIF language preference form, servicers must maintain and transfer a variety of fair lending data elements, including preferred language of the borrower(s).<sup>32</sup>

We also encourage FHA to publish any already available data on borrowers with Limited English Proficiency and to continue reporting on the language services provided by counterparties. For instance, HUD annually updates a “language access matrix” as an addendum to its LAP to capture any changes in demographic data on program usage.<sup>33</sup> As a first step towards publishing data in this area, FHA could create, publish, and regularly update a similar matrix projecting the number of FHA borrowers with limited English proficiency, and their preferred languages. As the quantity and quality of data improves over time, we suggest using these regular publications as a way to assess originator and servicer performance on key metrics, such as call wait times for borrowers who require oral interpretation services. In addition, elevating examples of industry participants who are successfully providing language services can help encourage others to do so. We encourage FHA to publish reports about lender and servicer language access practices, perhaps in coordination with the CFPB and FHFA. For instance, the CFPB has recently announced that it intends to add language preference as an additional field in its Complaint Intake Form.<sup>34</sup> FHA could coordinate with the CFPB to report on this data annually.

We appreciate your consideration of these recommendations and would like to meet with you to discuss beginning to build on FHA’s existing language access framework. For further discussion, please contact Alys Cohen at [acohen@nclc.org](mailto:acohen@nclc.org).

Sincerely,

**National Organizations**

Americans for Financial Reform Education Fund

Center for Community Progress

Consumer Action

National Association for Latino Community Asset Builders (NALCAB)

National Coalition for Asian Pacific American Community Development (National CAPACD)

National Consumer Law Center, on behalf of its low-income clients

National Community Stabilization Trust

National Fair Housing Alliance

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<sup>32</sup> Fannie Mae, Servicing Guide Announcement, SVC-2022-06, (Aug. 10, 2022), available [here](#).

<sup>33</sup> *Language Access Plan, 2021-2026*, Dep’t of Hous. & Urb. Dev., at 9, available [here](#).

<sup>34</sup> Request to Extend the Office of Management and Budget’s Approval of The Existing Information Collection Titled “Consumer Response Intake Form,” 87 Fed. Reg. 60385 (proposed Oct. 5, 2022), available [here](#).

National Housing Law Project  
National Housing Resource Center  
Revolving Door Project  
UnidosUS

**State and Local Organizations**

AK PIRG  
California Reinvestment Coalition  
Community Legal Services of Philadelphia  
Connecticut Fair Housing Center  
Empire Justice Center  
Foreclosure Prevention Legal Aid Clinic, University of Puerto Rico  
Greater Boston Legal Services, on behalf of its low-income clients  
Jacksonville Area Legal Aid  
Public Counsel  
SeniorLAW Center  
Vermont Legal Aid