

February, 7, 2023
Financial Access and Education Subcommittee
Task Force on New Americans, Domestic Policy Council
Eisenhower Executive Office Building
1650 Pennsylvania Ave. NW
Washington, DC 20502.
Submitted via email

The following comments are submitted on behalf of the undersigned civil rights and consumer advocacy organizations regarding the request for public input issued by the Financial Access and Education Subcommittee of the White House Task Force on New Americans. We are grateful for the opportunity to discuss policy interventions to protect newly arrived populations against financial scams and high-cost services, to encourage asset building through access to capital and banking services, and to enhance financial education materials.

We appreciate the Task Force's attention to these issues, and we write to urge the Financial Access and Education Subcommittee to incorporate policies that would explicitly expand language access within the financial services sector. The Task Force's separate subcommittee relating to Language Learning and Access in other contexts does not address this need. Importantly, failing to address market access for consumers with limited English proficiency (LEP consumers) will hinder other efforts the Subcommittee chooses to undertake, as language access is a critical aspect of avoiding scams, implementing financial education initiatives, and overall integration in our financial system.

As the demographics of the United States evolve, the number of U.S. residents for whom English is not a first language and who speak English with limited proficiency has increased dramatically. According to the 2021 American Community Survey, approximately 25.9 million individuals, roughly 8.2% of the U.S. population, are considered limited English proficient (LEP).¹ (LEP refers to anyone above the age of five who reported speaking English less than "very well," according to the U.S. Census Bureau.²) Approximately five-sixths (83.4%) of all LEP residents speak one of eight languages: Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole.³ Individuals who are not proficient in English have much greater difficulty navigating the financial marketplace and resolving challenges when they arise. These difficulties may explain, in part, the lower rates of participation in the mainstream financial system among Latino and other immigrant groups.⁴

¹ U.S. Census Bureau, 2021 American Community Survey 5-year Estimates (2021), <https://www.census.gov/acs/www/about/why-we-ask-each-question/language/>

² *Id.*

³ Jeanne Batalova and Jie Zong, "Language Diversity and English Proficiency in the United States," Migration Policy Institute (Nov. 11, 2016), <http://www.migrationpolicy.org/article/language-diversityand-english-proficiency-united-states>

⁴ See National Community Reinvestment Coalition, Hispanic Mortgage Lending: 2019 HMDA Analysis (Nov. 2020), <https://ncrc.org/hispanic-mortgage-lending-2019-analysis/>; Latinos' Access to Credit Remains Low and Stratified, UnidosUS, (Oct. 13, 2022), <https://unidosus.org/publications/latinos-access-to-credit-remains-low-and-stratified/>

Access to the financial marketplace for LEP consumers has increasingly drawn the focus of government agencies, lenders, and consumer advocates. The Federal Housing Finance Agency (FHFA) has undertaken significant efforts to expand access to the mortgage market for LEP borrowers by creating a Mortgage Translations Clearinghouse for common origination and servicing documents, and requiring originators to ask loan applicants about their language preference in the Supplemental Consumer Information Form (SCIF).⁵ FHFA will also require mortgage servicers to maintain fair lending data on their loans, which includes data on consumer language preference.⁶ The CFPB has also taken steps to encourage financial institutions to better serve LEP consumers by offering translations in the eight most commonly spoken languages across the country, and publishing guidance that outlines compliance principles for financial institutions to expand access to products and services for LEP consumers.⁷

State and local governments have also made strides in this space. The New Jersey legislature enacted a law requiring credit reporting agencies to provide a consumer file disclosure in Spanish or any other language identified by the state Division of Consumer Affairs as the first language of a significant number of consumers in the state.⁸ New York City adopted rules requiring licensed debt collectors to ask consumers of their language preference before attempting to collect on a debt,⁹ track the consumer's language preference,¹⁰ inform consumers of any available in-language services,¹¹ and refer consumers to a glossary of commonly used terms in debt collection.¹² California has long required businesses to offer translations of proposed contracts to consumers if the contract negotiations primarily took place in one of top five languages.¹³ The District of Columbia also recently implemented a requirement that debt collectors send initial notices in both English and Spanish to all consumers, unless the contract or oral communication with the consumer were in another language, in which case the debt collectors must send the notice in English and that other language.¹⁴

In spite of this progress, immigrants still face a myriad of barriers when they attempt to engage with the U.S. financial system, many of which stem from, or are exacerbated by, inconsistencies in both the

⁵ Federal Housing Finance Agency, FHFA Announces Mandatory Use of the Supplemental Consumer Information Form, (May 3, 2022), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx>.

⁶ Federal Housing Finance Agency, FHFA Announces Update for Servicers to Maintain Fair Lending Data, (Aug. 10, 2022) <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Update-for-Servicers-to-Maintain-Fair-Lending-Data.aspx>.

⁷ Consumer Financial Protection Bureau, Helping Multilingual Communities and Newcomers, <https://www.consumerfinance.gov/language/>; Consumer Financial Protection 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; Consumer Financial Protection Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, (Jan. 13, 2021), https://files.consumerfinance.gov/f/documents/cfpb_lep-statement_2021-01.pdf

⁸ 7 N.J. Stat. Ann. § 56:11-34 (2019).

⁹ 6 RCNY § 5.77(e)(9)

¹⁰ 6 RCNY § 5.77(d)(19)

¹¹ 6 RCNY § 5.77(f)(2)(vii)

¹² 6 RCNY § 5.77(f)(2)(viii)

¹³ Cal. Civ. Code §1632; Cal. Civ. Code §1632.5.

¹⁴ Code of the District of Columbia § 28-3814(m)(2)(C).

quantity and the quality of language services across the market. For instance, while some financial institutions offer some language services, it is nearly impossible for consumers to shop for providers that offer language services that would meet their needs, as providers rarely publish information regarding which language services they offer. Even when financial institutions offer some services, they are often inferior to the services offered in English. A study commissioned by Fannie Mae and Freddie Mac (“the GSEs”) and performed by the Kleimann Communication Group found that phone calls using third party language lines took three times as long as calls that took place in English.¹⁵ Finally, even if a consumer were to choose a provider based on their ability to negotiate the initial contract in their preferred language, there is no guarantee that they will be able to access key services through the life of the loan because there is no clear federal requirement that lenders, loan servicers, debt buyers, and debt collectors offer any minimum amount of language access at all. This inconsistency generates confusion, frustration, and fear among LEP consumers.

We recommend that the Task Force and the Administration implement policies that would expand language access across the consumer financial services industry. Specifically, we recommend that all financial institutions be required to:

- 1) Ask consumers about their language preference, record that information, and convey it whenever the debt is sold or transferred;
- 2) Use available translated documents from the FHFA Clearinghouse and other federal agency sources where the consumer has expressed a language preference in one of the available languages;
- 3) Broadly provide oral interpretation services to LEP consumers;
- 4) Create, regularly update, and publicly report on language access plans.

We hope our responses to the following questions will demonstrate how language access offered by private market actors is a necessary component of integrating New Americans into our financial system.

What challenges do New Americans face accessing financial services and products that are often crucial for establishing financial stability and building wealth in the United States, i.e., bank accounts, credit cards, remittance transfers, car loans, small business loans, mortgages?

New Americans face several structural barriers to fully participating in our financial system. First, when an individual first moves to the United States, they nearly always arrive with no credit history.¹⁶ This is true regardless of an individual’s immigration status. Thus, all the restrictions and difficulties associated with building credit without an existing credit file are particularly salient for new arrivals.¹⁷ It can also be

¹⁵ Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 24 (April 2017), available at <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-AccessFinalReport-June-2017.pdf>.

¹⁶ Emily Starbuck Gerson, 5 Ways Immigrants Can Build Credit in the United States, Experian, (Oct. 15, 2021), <https://www.experian.com/blogs/ask-experian/how-can-immigrants-build-credit/>; Consumer Fin. Protection Bureau, Building a Bridge to Credit Visibility, (Jul. 2019), https://files.consumerfinance.gov/f/documents/cfpb_building-a-bridge-to-credit-visibility_report.pdf.

¹⁷ Consumer Financial Protection Bureau, CFPB Data Point: Becoming Credit Visible, 4, (Jun. 2017), https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf

difficult, if not impossible, to build credit without a social security number or Individual Tax Identification Number (ITIN), which can take months for an immigrant or asylum seeker to secure after arrival. Consumer reports are critical components of engaging in the full scope of American life. Credit checks have become necessary to secure long term rental housing, already complicating the process of moving to the United States for refugees and asylum seekers.¹⁸

New arrivals also face numerous obstacles to opening bank accounts. The FDIC's National Survey of Unbanked and Underbanked households continually finds that minimum balance requirements, a general lack of trust in the banking system, fees, and inability to secure required personal identification are all prominent reasons a consumer may not have a bank account.¹⁹ All of these factors are particularly likely to be barriers to the system for newcomers.

Newcomers who manage to overcome these structural barriers to participating in our consumer financial markets still must navigate a system that is ill equipped to serve their most basic language needs. Many providers often do not know their consumers' language preference, which makes it difficult for consumers to access any language services their provider might offer.²⁰ This inconsistency and lack of transparency forces consumers to rely on others, such as children and other family members or friends, to translate highly technical documents involving personal and sensitive information.²¹ This game of telephone often leads to greater confusion and misunderstanding among LEP consumers, to say nothing of breached privacy, which can have dire consequences for families when they encounter financial hardship.

We see the harshest of these consequences in the mortgage servicing and debt collection industries. Both industries are subject to perverse market incentives, as consumers have no latitude to choose either their loan servicers or the entities that will ultimately attempt to collect on delinquent debt obligations. This market structure can allow for consumer confusion to be particularly profitable, and it likely leads to worse outcomes for LEP borrowers. For example, in a study of the sixteen largest mortgage servicers across the country, the CFPB's Office of Supervision Policy found that the number of delinquent non-LEP borrowers without a loss mitigation option in place after exiting forbearance decreased over the study period, while the same figure remained constant for LEP borrowers and borrowers whose language

¹⁸ American Poverty Is No One's Salvation.' Afghan Evacuees in the U.S. Struggle to Find Housing, Time, (Sept. 2021), <https://time.com/6180724/afghan-refugees-housing-crisis/>.

¹⁹ FDIC National Survey of Unbanked and Underbanked Households, (Oct. 2022), <https://www.fdic.gov/analysis/household-survey/2021report.pdf>.

²⁰ 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 (finding that mortgage servicers often do not know borrower language preference); New York Department of Consumer and Worker Protection, Lost in Translation, Findings from Examination of Language Access by Debt Collectors, 16 (Sept. 2019), https://www1.nyc.gov/assets/dca/downloads/pdf/partners/LEPDebtCollection_Report.pdf (finding that consumers often had difficulty accessing language services, even when debt collectors claimed to offer services in their preferred language)

²¹ Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), available at <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-AccessFinalReport-June-2017.pdf>.

preference was unknown.²² These figures suggest that a lack of language access directly impacts LEP homeowners' ability to stay in their homes, undermining their ability to build wealth.

What are the most prevalent financial scams or high-cost services you see marketed to New Americans and what strategies are most effective in supporting New Americans to avoid these scams?

Newcomers with temporary immigration status, as well as immigrants without status, are at the greatest risk for predatory financial products because they are often categorically excluded, or perceive themselves to be excluded, from our mainstream financial system. Some of the most common predatory products directly marketed to these populations stem from, and feed on, this exclusion. These products include high-cost ITIN mortgages and small dollar loans,²³ payday loans, and immigration bonds.²⁴ These products are a direct result of an opaque market with unclear guidelines for how to serve newcomers. Addressing these predatory actors will necessitate an in-depth review of the government and industry-wide policies that operate to exclude newcomers from the mainstream system, such as restrictions on which forms of identification are sufficient to open bank accounts and build credit.

Even without these additional vulnerabilities, immigrants are often unable to meaningfully participate, and protect themselves, in the financial system because of a lack of language access. Many LEP consumers are painfully aware of the fact that they are at a disadvantage in navigating these systems. This awareness, and the relative lack of language services across the marketplace, creates space for predatory scams to fill the void. For example, foreclosure rescue scammers tend to target LEP consumers precisely because mortgage servicers do not regularly attempt to communicate with consumers in their preferred language.²⁵ This practice is not unique to borrowers facing foreclosure. Debt relief and credit repair scams are allowed to flourish in this environment, as credit reporting agencies and debt collectors themselves do not have a uniform practice of offering language services.²⁶

²² 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

²³ ProPublica, A Lender Sued Thousands of Lower-Income Latinos During the Pandemic, Now It Wants to Be a National Bank (Jan. 8, 2021), <https://www.propublica.org/article/a-lender-sued-thousands-of-lower-income-latinos-during-the-pandemic-now-it-wants-to-be-a-national-bank>.

²⁴ Stephen Gandel, Bail Bond Firm Duped Immigrants Into Wearing "Shackles" and Paying to Have Them Removed, Feds Say (Feb. 22, 2021), <https://www.cbsnews.com/news/libre-by-nexus-sued-immigrant-tracking-bracelets-consumer-financial-protection-bureau/>.

²⁵ 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>

²⁶ Of the three major credit bureaus, only Equifax allows consumers to request their credit reports in Spanish. Equifax, Can I Get My Free Equifax Credit Report in Spanish? (Sept. 2021), <https://www.equifax.com/personal/education/credit/report/free-equifax-credit-report-spanish/>.

Phantom debt collection scams, telemarketing scams that harass consumers into paying debts they do not owe, also frequently target LEP consumers.²⁷ In fact, according to an FTC Fraud Survey, Hispanic consumers were 2.5 times more likely to be a victim of a debt-related scam than non-Hispanic white counterparts, with several of these scams taking advantage of LEP consumers by advertising to them in Spanish.²⁸ In addition to these scams, LEP consumers are vulnerable to misleading and deceptive practices stemming from incomplete or inaccurate information in non-English loan materials.²⁹

What best practices from local government, NGOs, and/or the private sector would you highlight for helping New Americans access financial opportunity and build their wealth and assets? How might these be replicated and/or scaled?

We recommend that financial institutions be required to implement four best practices, many of which have been either applied in other industries or imposed on consumer financial institutions at the state and local levels.

All consumer financial institutions should be required to ask consumers about their language preference, record that information, and convey it whenever the debt is sold or transferred.

First, we recommend that all consumer financial companies be required to ask consumers about their language preference, record their language preference in their account file, and track and transfer this information whenever the account is sold or transferred to another entity. It is impossible to serve a client population without first understanding their needs. A uniform practice of asking consumers about their language preference, and maintaining that information through the life of the account, is crucial not only for directing current service offerings to consumers, but also for evaluating how to expand on language access offerings in the future.

Several government agencies at the Federal, state, and local levels have recognized the importance of asking consumers about their language preference in this context. For example, beginning in March 2023, all mortgage lenders who sell to Fannie Mae or Freddie Mac will be required to ask consumers about their

²⁷ 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-center>; 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).

²⁸ 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>

²⁹ 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. Ameriquet 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).

language preference at the origination stage.³⁰ This information will enable originators to be more thoughtful about how they serve LEP consumers, and will assist servicers once the information is transferred to the consumer’s servicing file. Similarly, in debt collection, New York City’s Department of Consumer and Worker Protection requires debt collectors to ask consumers about their language preference before they attempt to collect on a debt.³¹ New York State’s Department of Financial Services also recently followed New York City’s example, and has proposed a rule that will require debt collectors to ask consumers about their language preference.³²

We strongly encourage the Task Force to implement policies that would require financial institutions, including mortgage servicers, to ask about consumer language preference for existing loans and accounts, not simply new ones. Without such a requirement, financial institutions may choose to be deliberately ignorant as to their LEP consumers’ needs, fail to provide them with language-accessible information that may exist, and in the worst cases, continue to capitalize on the confusion resulting from the language barriers they face.

Consumer financial institutions should be required to use available translated documents from the FHFA Mortgage Translations Clearinghouse and other federal agency sources where the consumer has expressed a language preference in one of the available languages.

Second, we recommend that financial institutions be required to use available translated notices from federal agency sources where a consumer has expressed a language preference in one of the available languages. Providing documents that have been translated by a government agency obviates the risk of offering incomplete or inaccurate translations, offers meaningful assistance to LEP consumers, and requires minimal resources from providers.

A helpful model for providing improved language access can be found under Title VI of the Civil Rights Act, which forbids all recipients of federal financial assistance from discriminating on the basis of national origin.³³ This mandate has long been interpreted to affirmatively require federal agencies and other recipients of federal funds to provide language assistance to recipients of public benefits and services.³⁴ In response, many state and local governments, as well as private entities and subcontractors, have made strides in offering language assistance to their LEP constituents, including regularly offering translated brochures and disclosures, among other measures.³⁵ New York, for example, has a state Office

³⁰ Fannie Mae, Servicing Guide Announcement, SVC-2022-06, (Aug. 10, 2022), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx>.

³¹ 6 RCNY § 5.77(e)(9)

³² Proposed 23 NYCRR 1.2(a)(5).

³³ 42 U.S.C. 2000d

³⁴ 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, 67 Fed.Reg. 41455 (Jun. 6, 2002) (“Under DOJ regulations implementing Title VI ... recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP).”)

³⁵ A Framework for Language Access, Key Features of U.S. State and Local Language Access Laws and Policies, (Oct. 2021), https://www.migrationpolicy.org/sites/default/files/publications/language-access-2021_final.pdf

of Language Access dedicated to offering language services to LEP New Yorkers in accessing government programs and services.³⁶

In the context of consumer credit, several federal agencies have provided translated forms and disclosures in a range of languages to enable and encourage financial institutions to offer language services to their consumers. For instance, FHFA created its Mortgage Translations Clearinghouse with over two hundred documents translated into the top five most commonly used languages across the country, a glossary of commonly used financial terms, and translated borrower education materials.³⁷ Yet, in spite of these abundant resources, mortgage lenders and servicers continue to use English-only materials. Similarly, the CFPB took several steps to encourage debt collectors to offer language access in its recent rulemaking for Regulation F. The Bureau offered a translated version of the Model Validation Notice in Spanish,³⁸ explicitly provided that debt collectors may use translated notices,³⁹ and provided optional Spanish language disclosures to include in the English validation notice.⁴⁰ And yet, our preliminary findings still suggest that many debt collectors are not offering language services despite these efforts.⁴¹

Using translated documents can go a long way toward providing meaningful language access. While marketing may occur in a person's preferred language, too often 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 mortgage borrowers must resort to relying on friends and family members – and sometimes children – to convey crucial financial information.⁴² Placing the burden of interpreting technical, legal, or financial information on individuals who lack financial expertise compromises the consumer's ability to make a well-informed decision. It also means that sensitive financial information will be revealed to the third party who is helping with the translation. The Kleimann study found that consumers feel vulnerable when they cannot review documents in their language.⁴³ Even those who speak some English would still prefer to have translated documents in order to double check their understanding.⁴⁴ The study found that providing translated documents would eliminate a significant barrier that prevents or delays LEP individuals from buying a home.⁴⁵

As described above, encouragement of voluntary steps has not been effective at increasing language access. Requiring financial institutions to provide translated notices, forms, and disclosures is the only

³⁶ New York State, Office of Language Access, Overview, <https://ogs.ny.gov/office-language-access>.

³⁷ Federal Housing Finance Agency, Mortgage Translations Homepage, <https://www.fhfa.gov/MortgageTranslations>.

³⁸ Consumer Financial Protection Bureau, Debt Collection Model Forms, (Oct. 2021), https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_model-validation-notice_spanish.pdf.

³⁹ 12 C.F.R. §1006.34(e)

⁴⁰ 12 C.F.R. §1006.34(d)(3)(vi)

⁴¹ National Consumer Law Center, Evaluating Regulation F, A Six-Month Check-Up on New Federal Debt Collection Regulations 33-34 (Nov. 2022), <https://www.nclc.org/wp-content/uploads/2022/10/report-evaluating-regulation-f.pdf>.

⁴² Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 14 (April 2017), <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-LanguageAccess-Final-Report-June-2017.pdf>.

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 8-9.

⁴⁵ *Id.* at 10.

way for regular use of translations to become the industry standard. The Task Force, through the participating agencies, should determine which documents are essential for financial institutions to offer in-language, and require relevant financial institutions to make those documents available to LEP consumers when they express a preference for an available non-English language. In making this determination, we suggest that the Task Force leverage guidance the CFPB has already issued on this topic, and 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.”⁴⁶

Consumer financial institutions should be required to broadly provide oral interpretation services to LEP consumers.

Third, we recommend requiring financial institutions to widely offer oral interpretation services. The ability to have questions answered in real time by financial providers is invaluable for LEP consumers, and can be obtained through various methods. These methods include hiring bilingual staff, partnering with community organizations with language capacity, and using third party oral interpretation platforms, such as language lines. Many organizations, including hospitals and local and state governments, have incorporated oral interpretation into their operations as an aspect of their compliance with Title VI. In a comprehensive study of the key features of U.S. State and local language access laws and policies, oral interpretation was a common feature among all language access laws included in the study.⁴⁷

Consumer financial institutions should be required to create, regularly update, and publicly report on language access plans.

Finally, we recommend that all financial institutions be required to create and regularly update language access plans (“LAPs”) to encourage long-term, LEP-accessible policies. LAPs can be used to comply with their obligations to avoid disparately impacting members of a protected class under the Fair Housing Act and Equal Credit Opportunity Act, to avoid unfair and deceptive practices, and to provide disclosures required under various consumer protection laws. LAPs would assist in establishing language access beyond the baseline requirements recommended here, as well as providing guidance on how to implement those universal standards. 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, activity, or service provided by the program, and (4) resources available and costs to the recipient.⁴⁸

Requiring financial institutions to create and update LAPs will be helpful for several reasons. First, LAPs will enable financial institutions to set goals and priorities that are realistic given the organization’s size

⁴⁶ Consumer Financial Protection Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, 14 (Jan. 13, 2021), https://files.consumerfinance.gov/f/documents/cfpb_lep-statement_2021-01.pdf.

⁴⁷ A Framework for Language Access, Key Features of U.S. State and Local Language Access Laws and Policies, 14 (Oct. 2021), https://www.migrationpolicy.org/sites/default/files/publications/language-access-2021_final.pdf.

⁴⁸ 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), <https://www.justice.gov/crt/doj-final-lep-guidance-signed-6-12-02>

and sophistication. It is not reasonable to expect small institutions to offer the same degree of language services, and expand these services at the same pace, as large institutions. Likewise, LAPs offer structure to the process of creating and expanding the language accessibility across an organization's different lines of business, enabling organizations to consider their customers' unique needs. LAPs also help businesses manage compliance risks.

This approach may be particularly helpful for institutions that wish to expand language services to significant regional concentrations of LEP consumers that may speak a language that is not one of the top national LEP languages, or resource-constrained smaller actors that may need additional time to implement expansions to their current language offerings. For example, a smaller institution may only be able to offer translations for the essential documents designated by the CFPB, but may eventually consider implementing additional policies to benefit LEP consumers, such as referring consumers to translated glossaries, translated financial education materials offered by government sources, or community organizations with language capacity. Finally, the LAP structure, and the requirement that they be regularly updated, requires financial institutions to weigh these factors on a regular basis. While perfect language access for all languages is not realistic for many institutions, that should not be an excuse to neglect to serve such a large customer base.

What are the best methods for New Americans to access and receive information related to financial access or education? Who or what are the most trusted sources of information?

While financial education materials are certainly valuable to newcomers, in our experience there is no substitute for translated materials offered by the consumer's financial institutions themselves. In the current digital age, consumers have a wealth of information available to them. While this information is certainly helpful with familiarizing newcomers with the aspects of our system that might be unique, an overwhelming abundance of financial educational material is likely to be less useful when a consumer is faced with navigating financial hardship. In fact, this high volume of information may make it difficult for consumers to decide which course of action is best for their circumstance.

It is unrealistic to expect a consumer facing financial, and often personal or family, hardships to recall information they learned months, or even years, before. On the other hand, consumers in default on a debt obligation will generally expect to hear from their providers, and their providers are in the unique position to direct the consumer to resources that are relevant to their situation. It is for this reason that many consumer financial laws and regulations require providers to offer disclosures. However, disclosures are only effective if the consumer is able to understand what the disclosure is telling them, and able to act on the information they receive in the disclosures.

Studies suggest that a lack of financial literacy is not usually the cause for poor outcomes among LEP consumers. The Kleimann study is a prime example, as most mortgage servicers believed that the language barrier, rather than financial literacy, was the primary obstacle to communicating with LEP borrowers.⁴⁹ These servicers found financial literacy among LEP borrowers to be comparable to that of

⁴⁹ Kleimann Communication Group, Language Access for Limited English Proficiency Borrowers: Final Report 24 (April 2017), available at

non-LEP borrowers. LEP consumer outcomes in the wake of the pandemic also suggest that gaps in information among consumers are not always a product of poor financial literacy, but rather the result of poor communication between providers and consumers.⁵⁰

HUD-approved housing counseling agencies, many of which have significant multilingual staff, are trusted advisors that are well positioned to provide financial education. Yet the goals advanced by improved consumer financial education resources will only be achieved if financial providers also do their part to offer required disclosures in a consumer's preferred language. Even if the financial institution has limited capacity to offer in-depth assistance in-language, financial providers may still be able to affirmatively refer LEP consumers to services that may be able to help them in their own language. For example, a mortgage servicer could refer LEP consumers to consumer financial education resources prepared by the federal government, or a HUD-approved housing counseling agency, or other community organizations that serve LEP consumers with similar needs. In an age ripe with "information overload," financial institutions must be required to do their part in referring consumers to information that could improve their prospects, especially in contexts where consumers are expected to enforce their own rights to avoid negative consequences, such as in debt collection and mortgage servicing.

Based on your experiences working with newly arrived populations, how would you and/or your organization define successful economic integration?

Successful economic integration at the individual level includes various factors, such as an ability to obtain legal status to remain in the country permanently, affordable housing, and stable employment. Successful economic integration within the overall financial system is a separate inquiry. Instead of asking at which point an individual immigrant, or community, is considered "integrated" into the fabric of American life, the question should instead be at what point is our financial system *positioned to accept* newcomers into the system.

Our current system requires that an adult achieve complete native English proficiency before they can navigate the financial system without the assistance of an English-speaking family member. This standard is unrealistic and unfair. It can take up to thirty years for an individual to achieve native-level proficiency in a foreign language,⁵¹ and financial disclosures often require a very high degree of language proficiency, even for native English speakers.

Predatory actors that target LEP consumers with non-English advertisements should not be able to stand out to consumers as outliers, as they currently do. To the extent that translated materials and oral

<https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-AccessFinalReport-June-2017.pdf>.

⁵⁰ In a recent survey of housing counselors from around the country, over half of respondents had heard from homeowners stating that they did not know they could request a forbearance. Seventy percent of counselors responding had interacted with homeowners who did not enter into a forbearance due to a fear of a lump sum payment that would be due at the end of the forbearance period. 6 National Housing Resource Center, Forbearance and Delinquency Summary of Housing Counselor Survey (July 20, 2020),

<https://www.hsgcenter.org/wp-content/uploads/2020/08/Survey-resultsForbearance-and-Delinquency2.pdf>.

⁵¹ Why It's So Hard to Learn Another Language After Childhood, Time, (May 2, 2018),

<https://time.com/5261446/language-critical-period-age/>

interpretation are available, it should be the norm that an LEP consumer can prepare to enter into a transaction (receive their credit report), enter the transaction (be able to read their contract in-language), and manage the transaction (including engaging in loss mitigation and crisis management) through the transaction's entire life cycle.

What methods should be prioritized to support newly arrived populations as they advance beyond financial literacy to financial proficiency?

Language access across our financial system should be a priority, but the areas with the greatest and most immediate need are mortgage servicing and debt collection. These two areas are critical to supporting LEP populations as they face financial hardship, both generally and stemming from the lasting impacts of the COVID-19 pandemic. Offering language services in these areas as soon as possible will enable LEP consumers to pursue their best interests as they navigate these hardships, and will very likely improve outcomes for the most vulnerable consumers. The Task Force should recommend requiring, at the bare minimum, that debt collectors and mortgage servicers take reasonable steps to obtain language preference information, and identify which disclosures are most critical to offer in-language. Mortgage servicers and debt collectors should be immediately required to offer those government-translated documents whenever a consumer expresses a preference for a language with an available translation, and they should be required to refer LEP consumers to language resources, such as government-provided glossaries and financial education materials, to fill any remaining gaps. The CFPB and other participating agencies should then expand both the number of essential documents available in languages other than English, and the number of languages represented in the pool of available translations.

Another high priority area for language access is consumer reporting. While the credit bureaus may maintain credit files for consumers without social security numbers, the process to request a consumer report without a social security number can be cumbersome, and often unclear.⁵² Two of the three major credit bureaus, Experian and TransUnion, do not offer credit reports in any language besides English, despite being directly called on to offer translated credit reports in additional languages.⁵³ Equifax, the

⁵²It can be difficult to find reputable information on how to request a credit report without a social security number. The website maintained by the three major credit bureaus, [annualcreditreport.com](https://www.annualcreditreport.com), does not specify that a consumer may request their annual free credit report with non-SSN forms of ID. *See* Request Your Free Credit Reports, <https://www.annualcreditreport.com/requestReport/requestForm.action>. The credit bureaus also appear to have different policies when it comes to requesting a credit report without an SSN. *See e.g.*, Building Credit as an Immigrant, (Jan. 5, 2022), <https://www.transunion.com/blog/credit-advice/building-credit-as-an-immigrant>, (requires consumers to contact customer service in order to request a credit report without an SSN); Experian, Can You Check Your Credit Score Without a Social Security Number?, (May 14, 2021), <https://www.experian.com/blogs/ask-experian/can-you-check-your-credit-score-without-a-social-security-number/> (requiring consumers without Social Security Numbers to send requests for credit reports via postal mail, but confusingly requiring those consumers to include their social security number with this request); Equifax, consumer registration form, <https://my.equifax.com/consumer-registration/UCSC/#/personal-info>, (allowing consumers to enter ITIN number instead of Social Security Number in the same field).

⁵³ Eric J. Ellman, Letter to Chi Chi Wu from the Consumer Data Industry Association (CDIA), Consumer Data Industry Association (Oct. 29, 2020), https://www.nclc.org/wp-content/uploads/2022/08/Consumer_Groups_Letter_to_CRAs_LEP_Consumers_Response-1.pdf, (explaining the credit bureaus' refusal to offer translated consumer reports).

only credit bureau that offers translated reports, offers consumer reports in English and Spanish.⁵⁴ Given the importance of consumer reports for access to employment, rental housing, banking, and all kinds of consumer loans, it is crucial that immigrants be able to build credit history and enforce their rights to accuracy and fairness in consumer reporting.

Considering your organization’s experience with newly arrived populations, what are the most critical components of financial literacy curricula? How does your organization ensure financial literacy curricula are relevant to the needs of newly arrived populations?

Ex ante consumer financial education is important for those immigrants that need baseline education on the American financial system when they first arrive. However, detailed financial education on a consumer’s legal rights in the event of hardship is likely to be less effective. Consumers should be educated on their legal rights not only before they experience hardship as part of financial literacy courses, but also when they are in the midst of financial hardship and in the position to exercise their rights under consumer financial law.

Notices that alert consumers of these rights, and how to exercise them, are most crucial. Every single time a consumer financial regulator imposes a disclosure requirement meant to encourage a consumer to vindicate their rights, the regulator should consider how the disclosures would operate for an LEP person. Efforts should also be made to allow consumers to submit documents, such as affidavits, complaints, and applications in their preferred language, whenever possible. For example, an application for a loan or hardship assistance should be constructed to be bilingual in English and Spanish, converting as many fields as possible to multiple choice to enable efficient processing.

Thank you for your consideration of our comments and recommendations. We look forward to working with the White House Task Force on New Americans and are happy to further discuss our suggestions. Please contact Alys Cohen at acohen@nclc.org and Nicole Cabañez at ncabanez@nclc.org should you wish to clarify our position on these important issues.

Respectfully submitted:

National Consumer Law Center, on behalf of its low income clients
Americans for Financial Reform Education Fund
Consumer Action
National CAPACD– National Coalition for Asian Pacific American Community Development
National Fair Housing Alliance

⁵⁴ Equifax, Can I Get My Free Equifax Credit Report in Spanish?, <https://www.equifax.com/personal/education/credit/report/free-equifax-credit-report-spanish/#:~:text=Equifax%20of%20a%20free%20translated,seven%20days%20if%20you%20wish.&text=To%20receive%20your%20credit%20report,equifax.com%2Fmicredito>.