

COMMENTS
to the
Consumer Financial Protection Bureau
regarding the

Proposed Language Access Plan for the Consumer Financial Protection Bureau

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National Council of La Raza

and

Alliance for a Just Society
Center for Responsible Lending
Community Legal Services, Philadelphia
Consumer Action
Consumer Federation of America
Consumers Union
Empire Justice Center
NAACP

National Coalition for Asian Pacific American Community Development (CAPACD)
National Consumer Law Center (on behalf of its low-income clients)
National Fair Housing Alliance
National Housing Resource Center
The Leadership Conference on Civil and Human Rights
U.S. PIRG
Woodstock Institute

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The National Council of La Raza (NCLR), Alliance for a Just Society, Center for Responsible Lending, Community Legal Services/Philadelphia, Consumer Action, Consumer Federation of America, Consumers Union, Empire Justice Center, NAACP, National Coalition for Asian Pacific American Community Development (CAPACD), National Consumer Law Center (on behalf of its low-income clients), National Fair Housing Alliance, National Housing Resource Center, The Leadership Conference on Civil and Human Rights, U.S. PIRG, and Woodstock Institute submit the following comments in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) Proposed Language Access Plan.

We applaud the CFPB for committing to provide persons with limited English proficiency (LEP) meaningful access to its programs and services. The CFPB has put into place essential language-access tools and we look forward to furthering this mission.

Background

A study from the Pew Hispanic Center indicates that 82% of Latino adults in the United States speak Spanish. Nearly 95% believe that it is important for future generations to continue to speak Spanish.ⁱ Collectively, Asian Americans and Pacific Islanders (AAPI) speak more than 100 different dialects and represent more than 50 different ethnic groups. Many low-income AAPI communities also include a high proportion of LEP families. According to the U.S. Census, approximately 71% of Asian Americans speak a language other than English at home. Of these, 32% of Asian Americans and 8% of Native Hawaiians and Pacific Islanders are considered limited English proficient, compared to 9% of the total U.S. population.ⁱⁱ

Language access remains a formidable challenge for the LEP consumer. Many industry players conduct market research to tailor their sales pitch to members of the LEP community. But what happens after a sale is completed? Where are the language services when a family needs help refinancing, for example, or when they need recourse? How do families know when their consumer rights are violated? Through reports from the networks of our community-based organizations, we have learned that LEP families are targeted for business but abandoned when they run into trouble. In a 2014 survey designed to understand servicer compliance with the CFPB servicing standards rule, 48% of housing counselors reported that servicers rarely or never provided written communications to LEP borrowers in their preferred language. A counselor in Oregon City, Oregon stated: "I have clients whose primary language is Spanish, Chinese, Russian, etc. I have never seen documents provided in any language other than English." In addition, 44% of counselors said assigned points of contact were rarely or never fluent in the borrower's preferred non-English language. A housing counselor from Chicago stated: "My clients...never received any translation service from their servicers."ⁱⁱⁱ

Whether or not consumers speak the English language should not strip them of their consumer rights. As articulated in its mandate, the purpose of the Bureau is to "implement, and where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." The CFPB must apply its maxim to all communities throughout the United States. Without more robust efforts in serving LEP consumers, the Bureau will not fulfill its mission to ensure that all consumers have access to its services.

Despite LEP consumers representing a rapidly growing portion of the market, multilingual financial services are grossly deficient in the U.S. Latinos currently represent 16.7% of the U.S. population with a purchasing power estimated to reach \$1.5 trillion by 2015.^{iv} According to the 2010 U.S. Census, by 2015, one in three newborns will be Latino. Asian Americans and Pacific Islanders now represent the fastest growing ethnic minority in the U.S. Between 2000 and 2010, the Asian American population grew 46% and the Native Hawaiian/Pacific Islander population by 40%.^v Industry members must improve business methods to meet current and diverse needs.

As a 21st-century agency, the Bureau is poised to use technology to create a cultural sea change among federal agencies and financial institutions to respond to the nation's linguistic and cultural diversity. It must capitalize on this unique opportunity to serve as the gold standard and ensure

that LEP persons have access to meaningful information, a better understanding of their consumer rights, and fair financial products. As the Bureau achieves higher standards of cultural competency for the American public—a body of consumers that is growing ever more diverse—it can speak from a seasoned point of authority when making language-access demands of the financial industry.

In many ways, the financial industry is an “English-only” industry, which has caused problems for consumers in geographies with diverse populations. In New York, for example, 5.2 million people speak a language other than English at home. Of the 2.4 million who speak Spanish, 1.1 million speak English less than “very well.” On Long Island, where 250,000 residents are LEP, homeowners are encountering problems in accessing loan modifications.^{vi} Local service providers have shared their thoughts on the current environment. One stated that a Spanish-speaking homeowner moved out of his home upon receiving an initial foreclosure notice because he did not realize that he may be eligible for a loan modification. Another Spanish-speaking homeowner was solicited by a scammer about foreclosure prevention “help.” The homeowner paid \$14,000 to the scammer but did not receive any assistance in saving his home before finding free legal assistance. Many LEP homeowners encounter enormous difficulties accessing loan modifications as the servicers do not have staff who are able to communicate in other languages.

We commend the CFPB for attempting to help families respond to English-only markets. The Bureau published five different Spanish-language action letters regarding debt collection, providing instructions on how to send an English-language version of a letter to communicate with a debt collector. Many times it is the very process of lay consumers translating or interpreting for themselves that puts them at further risk of their rights being violated. If a family gets past these English-only form letters or other documents, they are still hindered by potential next steps with providers who only speak English. The CFPB must do more and demand more. It should take such opportunities to demand improved multilingual services of industry members, such as collecting consumer language preferences in home purchases or in credit originations. The language preference should be indicated in subsequent oral and written communications and should follow the consumer throughout the life of a loan, for example. With all its plain-language efforts, the CFPB well understands that the burden to interpret financial services jargon should not rest solely on consumers and certainly not when it is in an entirely different language from one’s own tongue.

The Bureau must commit to a more integrated approach to meeting American consumers’ linguistic and cultural needs. With its multilingual, online communications to LEP consumers, the CFPB has shown substantial investment in responding to the changing dynamics of today’s consumer market. The Bureau should go further to integrate LEP households. When developing online and printed materials, outreach strategies, and policy recommendations in English, the Bureau should design comparable initiatives in the languages it offers. It is essential that the CFPB forge ahead with the perspective that the most vulnerable consumers targeted by fraud and predatory practices, the very families we had in mind when fighting for the creation of the Bureau, do not speak English fluently. These families should not be an afterthought when enhancing consumer protections but held at the forefront of the CFPB’s initiatives.

Language Access Task Force

Best practices models should inform the CFPB Language Access Task Force and related initiatives. The Office of Personnel Management has assessed and made recommendations of exemplary programs among federal agencies. These, taken with best practices from community-based organizations and the private sector as well as focused research on the matter can provide the CFPB with strong models and prevent the Bureau from repeating the mistakes of others. For example, in determining when to provide written translations to different language groups, the Department of Health and Human Services (HHS) and the Department of Housing and Urban Development (HUD) have set safe harbors in accordance with Title VI of the 1964 Civil Rights Act for when written materials should be translated to ensure meaningful access. HUD provides written translations of vital documents for each eligible LEP language group that constitutes at least 1,000 individuals. HHS provides written translations of vital documents for eligible LEP language groups that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected. HHS also identifies steps for the translation of “taglines” to provide LEP clients with information on how to access appropriate language services, in-person interpreter services, and over-the-phone interpreting as well as bilingual providers and staff members when written translation is not possible. These can serve as models for the times when CFPB should consider translation of written materials beyond the target languages identified in the plan.

Expanding Employment Pool to Include Language Fluency

The CFPB should hire staff with both consumer finance expertise and foreign language fluency. The Bureau should avoid following the example of mortgage servicers who offer interpreters to help clients but who do not have issue expertise in financial services. For example, 55% of housing counselors said that when mortgage servicers provided translators, the translators rarely or never had both a technical understanding of relevant mortgage servicing issues and fluency in the target language.^{vii} Deploying generalist interpreters who do not have product expertise amounts to lost resources. Instead, the Bureau should itself proactively recruit and perhaps even groom staff with foreign-language proficiency *and* consumer product expertise, even for matters of enforcement and supervision. Similar to court interpreters, CFPB foreign-language staff should be certified, registered, and offered continued education to meet the needs of LEP consumers. The Department of Justice itself maintains in its language access plan that interpreters must be fluent in the spoken language as well as the technical content. It deems this “effective communication.” That is: *Communication sufficient to provide the LEP individual with substantially the same level of access to services received by individuals who are not LEP. For example, staff must take reasonable steps to ensure communication with an LEP individual is as effective as communications with others when providing similar programs and services.*^{viii} Such staff should not only have linguistic fluency but should be able to serve as a liaison to the community that he or she represents.

The Plan should discourage the practice of using staff members as interpreters if their job position does not include interpretation training. Interpretation and translation are professional skills separate from simple language proficiency and should be formally acquired before interpreting directly for clients. The Plan should also absolutely prohibit the use of family members, neighbors, bystanders, or adverse parties as interpreters.

Handling LEP Complaints

The CFPB has reported that it is not receiving complaints in other languages at a rate that reflects the multilingual communities it is intent on serving. We believe there is a direct correlation between the CFPB's outreach in English and the number of complaints received. Outreach must be aggressively increased to inform consumers of the Bureau as a whole and in particular the complaint portal. While the Bureau is well ahead of the curve compared to other federal agencies, it cannot properly assess discrepancies and rights violations based on languages when the Bureau is not reaching these communities in their respective languages. The Bureau needs to earn the trust of LEP consumers and through its outreach make clear that it is linguistically available to them. We recommend the Bureau pursue a sophisticated and thorough marketing strategy to reach consumers. For example, its Language Access Plan must entail increasing outreach in other languages both via in-language media and through contact with local immigrant and community groups who directly serve this population (also see section below on educating the consumer). The CFPB should hire community liaisons for dedicated languages as well.

The CFPB should itself deliberately track linguistic needs, preferences, and challenges through its complaint portal. It is our understanding that the Bureau does not provide the option to indicate language preference in its complaint portal or other forms. One must not take for granted that English is the preferred language on an English-only form. Tracking language preference in the portal and elsewhere can help us better understand the universe of language needs. We recommend that the CFPB include a field of language preference on the complaint form and beyond. For complaints that indicate a language preference other than English, the CFPB should ensure that there is a process in place to communicate with the consumer throughout the investigation of a complaint, not just with the initial intake.

Incorporating Translation and Interpretation in Bureau Supervision and Enforcement

When it comes to the supervision and enforcement processes, the Bureau can learn from agencies that focus on enforcement, such as the Equal Employment Opportunity Commission (EEOC). The enforcement and supervision process works best if LEP individuals are a strong part of the process. If there were an enforcement action involving a large number of LEP individuals, the Bureau would be encouraged to publish press releases in the dominant language of that particular LEP community. Doing so would inform current members of the community involved in the enforcement action, but could serve as a means of providing helpful information to other LEP individuals who may be affected by similar consumer issues. Moreover, the Bureau itself does not have to translate everything itself; it can require respondents of accusations to post notices in languages other than English informing consumers of their rights and distribute consumer protection policies in languages other than English.

Informing and Educating Consumers in the Financial Marketplace

The Bureau must devote substantial resources to a robust marketing campaign that ensures consumers know about the complaint portal, and ensures that the Bureau's informational and educational materials reach audiences that need them. Frontloading a campaign with high-visibility marketing tactics will pay off in dividends in the future. Tactics could include any of the following in multiple languages: a memorable tagline, high-profile events, social promotions with an influential partner group, celebrity endorsements featured in PSAs (radio and video), billboards, twitter chats and other social media actions, deliberate action network campaigns with partners, ethnic media radio and television spots, and other creative approaches.

This marketing campaign should include the funding of related efforts among community-based organizations. Success in the LEP communities requires the CFPB work closely with community-based organizations and providers, such as social services, housing counselors, legal services providers, faith-based organizations, job training programs, adult education programs, and schools. These are proven to be the most effective way for providers to reach LEP populations. A note of caution, however, housing counseling, legal aid, and other community networks are consistently sought after to do the lion's share of consumer outreach when new federal programs are put into operation. While these organizations are very effective in helping LEP communities, they operate on lean budgets and should not bear the burden and cost of outreach.

Most industry members dedicate a vast marketing budget to a new product. The CFPB should make marketing to non-English speakers an inherent aspect of its programs, the complaint portal, and other services. When holding a field hearing or meeting with outside groups, the Bureau can provide links and hard copy materials that are available in multiple languages for related topics. It can also more frequently promote the opportunity to file complaints in more than 180 languages. We recommend that the Bureau include multilingual staff to participate in field meetings with immigrant communities to promote the CFPB's commitment to language access and afford these staff members a chance to communicate with consumers in other languages where appropriate.

Strong graphic materials, videos, and illustration should be a substantial component of consumer education materials. Many of the consumers we serve have varied degrees of literacy in English as well as their native language. We recommend that the Bureau create products with strong graphics and video to illustrate critical content.

Digital Offerings in Other Languages

We commend the Bureau for capitalizing on technological tools. We recommend that it goes further in making the CFPB more consumer friendly. In the spirit of today's customizability of technological products, the Bureau could deploy a MyCFPB portal of sorts. For example, the Bureau could create a user-friendly mobile app that is offered in several languages and with settings that can be personalized or saved. Perhaps with different content but in a similar fashion, the CFPB can apply characteristics from the Better Business Bureau's app and offer updated information specific to the user's need. Many modest-income families who do not have computers at home use their smart phones as their main device for accessing the internet. While some LEP consumers do not have Smartphones, many do and mobile capability could help the Bureau reach that many more families. It would also help fill the data gap on consumer needs and interests.

Outreach and Stakeholder Engagement

The National Hispanic Consumer Study found that advertising in Spanish can boost both advertising effectiveness and customer loyalty. It lauds the approach McDonald's takes to customize domains and websites created specifically for the Latino community. Such insight into usage and preferences can improve CFPB brand recognition among LEP communities and help families become aware of their consumer rights.

As mentioned, the Bureau should deploy a much more robust, creative, and deliberate marketing campaign to reach consumers and community stakeholders alike. This should be a data-driven approach through polled language research and focus groups and should include ethnic television and radio spots as well as all social media channels. Again, collaborating with ethnic and immigrant community organizations, case workers, and faith leaders is essential to communicating with LEP families.

Gathering Data

Throughout the Language Access Plan, the Bureau should prioritize data collection in every step possible. Linguistic needs are notoriously underreported. The CFPB could make great strides as a national entity in gathering and analyzing linguistic needs of diverse consumer markets. Through the suggested marketing and outreach, a language-preference field in the complaint portal and perhaps elsewhere, and research to monitor the success or failure of the financial industry to meet the needs of LEP families, the CFPB can make immense strides in enhancing consumer rights for all.

Language Selection Procedures

Many language access plans of other public entities offer top languages identified by the U.S. Census. In some cases, this is insufficient. Other agencies go further and ensure that frequently used languages in certain concentrated geographies are also represented beyond a “top five or six.” For example, the New York City Department of Education (NYC DOE) established procedures that ensure LEP parents are provided with a meaningful opportunity to participate in programs and services essential for their children. Thus, it requires that language services be provided in the nine most common languages other than English spoken by parents of New York City school children. Based on the NYC DOE’s Home Language Identification Survey these languages are Arabic, Bengali, Chinese, French, Haitian Creole, Korean, Russian, Spanish and Urdu. These languages, including English, account for more than 95% of student households. Support in additional languages is available through contracted vendors. These are the consumers the Bureau should strive to reach. The CFPB should continue to provide services in its current languages and do further research to identify concentrations of additional languages in geographies throughout the U.S.

Many social program providers, educators, and other local experts can provide insight into the language needs of consumers in the area. The California judicial system maintains in its language access plan that court systems should move beyond the Census and American Community Survey (ACS), as previously mentioned, ethnic and linguistic minorities and emerging LEP communities are underreported in these studies. Its plan states: *Organizations working with specific populations have collected their own data to identify areas where the census data may not accurately reflect our state’s linguistic diversity. For example, California Rural Legal Assistance conducted a comprehensive study of migrant farm workers that provides useful information on indigenous languages spoken in different areas of our state. Other reliable sources of data that courts might contact to determine the unique needs of their communities are the California Department of Education, the Migration Policy Institute, and local welfare agencies that track the language needs of government assistance recipients at the local level.* It is critical that the Bureau contact community-based agencies such as legal services agencies,

refugee organizations, and community social services providers to help the Bureau better understand the language needs of the communities it serves.

Annual Plan Enhancements

The Language Access Business Plan should be reviewed annually. The Proposed Plan states that “the Bureau will review this plan every three years and revise it as necessary.” If this refers to an internal assessment, we recommend that the CFPB review its successes and make enhancements annually. If it refers to initiating a public comment period every three years, that is sufficient.

Thank you for your consideration in this critical work of ensuring LEP consumer rights are protected. With any inquiries, please contact Nancy Wilberg Ricks of the National Council of La Raza at (202) 776-1754 or nwilberg@nclr.org.

ⁱ Paul Taylor et al., *When Labels Don't Fit: Hispanics and Their Views of Identity* (Washington, DC: Pew Hispanic Center, 2012) <http://www.pewhispanic.org/files/2012/04/PHC-Hispanic-Identity.pdf> (accessed January 6, 2015).

ⁱⁱ U.S. Census Bureau, “2006–2010 American Community Survey 5-Year Estimates,” American Community Survey (Washington, DC: U.S. Census Bureau, 2010) Table B16004, http://www.census.gov/acs/www/data_documentation/special_data_release/ (accessed January 6, 2015).

ⁱⁱⁱ *Are Mortgage Servicers Following the New Rules* (Washington, DC and Philadelphia, PA: National Council of La Raza and National Housing Resource Center, forthcoming January 2015).

^{iv} *Selig Center's Annual Multicultural Economy Report* (Athens, GA: Selig Center, 2012)

https://estore.uga.edu/C21653_ustores/web/store_main.jsp?STOREID=70 (accessed January 6, 2015).

^v U.S. Census Bureau, “2006–2010 American Community Survey 5-Year Estimates,” American Community Survey, (Washington, DC: U.S. Census Bureau, 2010) Table B16004, http://www.census.gov/acs/www/data_documentation/special_data_release/ (accessed January 6, 2015).

^{vi} <http://www.empirejustice.org/>

^{vii} *Are Mortgage Servicers Following the New Rules*, NCLR and NHRC, forthcoming January 2015.

^{viii} *Department of Justice Language Access Plan* (United States Department of Justice: Washington, DC, 2012)

<http://www.justice.gov/sites/default/files/open/legacy/2012/05/07/language-access-plan.pdf> (accessed January 6, 2015).