

**Comments of**

**National Consumer Law Center (on behalf of its low-income clients)**

**Americans for Financial Reform Education Fund**

**California Reinvestment Coalition**

**Community Legal Services of Philadelphia**

**Consumer Action**

**National CAPACD – National Coalition for Asian Pacific American Community  
Development**

**National Fair Housing Alliance**

**National Housing Law Project**

**National Housing Resource Center**

**Public Counsel and**

**UnidosUS**

**on the Federal Housing Finance Agency's Request for Input on the  
Enterprise Equitable Housing Finance Plans**

**Submitted Electronically**

**October 25, 2021**

# I. Introduction

The National Consumer Law Center,<sup>1</sup> Americans for Financial Reform Education Fund, California Reinvestment Coalition, Community Legal Services of Philadelphia, Consumer Action, National CAPACD, National Fair Housing Alliance, National Housing Law Project, National Housing Resource Center, Public Counsel, and UnidosUS respectfully submit the following comments on behalf of its low-income clients in response to the Federal Housing Finance Agency’s (“FHFA”) Request for Input on the Enterprises’ Equitable Housing Finance Plans.<sup>2</sup> Providing equitable access to mortgage credit is essential to building wealth and homeownership in communities of color long subject to underinvestment and discrimination. The Equitable Housing Finance Plans are a first step to addressing deeply entrenched barriers in the housing finance system that calcify the well-documented racial and ethnic homeownership gap. The plans, when coupled with meaningful and sustained action by Fannie Mae and Freddie Mac (“the Enterprises”), will establish a framework for advancing equity in the housing market and increasing access to affordable housing.

Homeownership is a key way that families build wealth in the United States. Home equity is a particularly important asset for households of color who lack access to other appreciating assets and investment vehicles to build wealth.<sup>3</sup> Home equity represents 57% of the net worth of Black households and 67% of the net worth of Hispanic households, compared to 41% of the net worth of white households.<sup>4</sup> Small business owners and other entrepreneurs have long used home equity to start or invest in their businesses, and further build wealth. Access to wealth is also an important safety net for many households hit hard by the COVID-19 pandemic. In keeping with historical trends, post-pandemic economic recovery may be uneven across demographic groups in part due to diminished wealth in households of color.<sup>5</sup>

Long-standing discriminatory policies and practices in the credit and housing markets have resulted in significant racial and ethnic disparities in the accumulation of wealth and

---

<sup>1</sup> The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics. In addition, NCLC attorneys regularly provide comprehensive comments to federal agencies on the regulations under consumer laws that affect low-income consumers.

<sup>2</sup> Federal Housing Finance Agency, Request for Input for the Enterprises’ Equitable Housing Finance Plans, September 2021, available at <https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Equitable-Housing-Finance-Plans-RFI.pdf>.

<sup>3</sup> See Michael Neal, Alanna McCargo, How Economic Crisis and Sudden Disasters Increase Racial Disparities in Homeownership, Urban Institute, June 2020, at 9.

<sup>4</sup> Id at 8.

<sup>5</sup> See Emily Moss, et al., The Black White Wealth Gap left Black Households more Vulnerable, Brookings, December 2020, available at <https://www.brookings.edu/blog/up-front/2020/12/08/the-black-white-wealth-gap-left-black-households-more-vulnerable/>.

homeownership.<sup>6</sup> The homeownership gap between white and Black households is at its highest level in fifty years, in part due to the foreclosure crisis and Great Recession of a decade ago.<sup>7</sup> Equitable access to mortgage credit is critical for equalizing homeownership across racial and ethnic lines. Moreover, the economic losses for Black, Latinx and other households of color are expected to continue well after the pandemic is under control. Therefore, a plan focused on servicing, loss mitigation and other home preservation measures is necessary to protect existing homeowners and guard against the further depletion of wealth.

We offer these comments on building access to and preserving homeownership, including through equitable and linguistically-competent loan servicing and disposition of properties, and policies that promote equity and expand opportunity for low-income tenants.

## II. Equitable Origination Policies

FHFA should require the Enterprises to take a serious look at their mortgage origination policies with a goal of remedying the racial disparities perpetuated by their current policies. The over-reliance on traditional credit scores has led to significant disparities in access to homeownership.<sup>8</sup> Fannie Mae and Freddie Mac have continued to rely on the Classic FICO score model despite the fact that it penalizes consumers for medical debt, which has a disparate impact on borrowers of color.<sup>9</sup> FHFA should require the Enterprises to validate and approve other less discriminatory credit score models as soon as possible.

We appreciate Fannie Mae's recent move to allow voluntary, positive-only rental history data to expand access to mortgage credit.<sup>10</sup> The GSEs should consider the use of other promising alternative data, such as cash flow, so long as it is voluntary. **However, alternative data is a mixed bag, and the details matter. The Enterprises should be required to dig into these**

---

<sup>6</sup> See Thomas Shapiro, Tatjana Meschede & Sam Osoro, Institute on Assets and Social Policy, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide* (2013), available at <https://drum.lib.umd.edu/bitstream/handle/1903/24590/racialwealthgapbrief.pdf>; Rakesh Kochhar & Anthony Cilluffo, Pew Research Ctr., *How wealth inequality has changed in the U.S. since the Great Recession, by race, ethnicity and income*, Fact Tank (Nov. 1, 2017), <https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/>.

<sup>7</sup> See Jung Hyun Choi, et al., *Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets*, October 2019 (Updated November 2019), available at <https://www.urban.org/research/publication/explaining-black-white-homeownership-gap-closer-look-disparities-across-local-markets>.

<sup>8</sup> Past Imperfect: How Credit Scores and Other Analytics 'Bake In' and Perpetuate Past Discrimination, National Consumer Law Center (May 2016), available at [Past\\_Imperfect050616.pdf \(nclc.org\)](https://www.nclc.org/images/pdf/credit_reports/comment-fhfa-rfi-credit-scores.pdf)

<sup>9</sup> See Comments of the National Consumer Law Center to the Federal Housing Finance Agency, Request for Input on Credit Score (Mar. 30, 2018), available at [https://www.nclc.org/images/pdf/credit\\_reports/comment-fhfa-rfi-credit-scores.pdf](https://www.nclc.org/images/pdf/credit_reports/comment-fhfa-rfi-credit-scores.pdf).

<sup>10</sup> <https://www.fanniemae.com/newsroom/fannie-mae-news/fannie-mae-introduces-new-underwriting-innovation-help-more-renters-become-homeowners>.

**details and consider other changes to their underwriting and pricing policies to broaden equitable mortgage access.<sup>11</sup>**

We agree with other commenters which have pointed out that the Enterprises' imposition of Loan Level Price Adjustments have a disparate impact on borrowers of color, driving them to FHA loans as often the sole avenue for homeownership.<sup>12</sup> **As part of their equitable housing finance plans, the Enterprises should be required to abandon the LLPA framework.**

**Finally, we urge FHFA to require the Enterprises to consider significantly expanding their purchasing of, and support for, small dollar mortgage loans in their plans.** It has been well documented that banks are not adequately serving the lower end of the home purchase market. Among homes that sold for under \$100,000 in 2019, only one in four was purchased with a mortgage.<sup>13</sup> The rest were sold to cash buyers, who convert these properties to single-family rental units, reducing the stock of affordable homes available for owner occupants. Liquidity is needed in order for banks to make these loans, and the Enterprises, just like FHA, have a crucial role to play.

### **III. Language Access in Origination and Servicing**

#### **A. FHFA should require the Enterprises to include in their plans concrete steps and measurable goals to increase access to the mortgage market for LEP consumers.**

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 2017 American Community Survey, approximately 25.9 million individuals, roughly 9% of the U.S. population, were considered limited English proficient (LEP). LEP refers to anyone above the age of five who reported speaking English less than “very well,” according to the U.S. Census Bureau. Approximately five-sixths (83.4%) of all LEP residents speak one of eight languages: Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole. About 64% of the LEP population speaks Spanish, followed by Chinese, spoken by 7% of the LEP population.<sup>14</sup> These individuals who are not proficient in English have much greater difficulty navigating the financial marketplace and

---

<sup>11</sup> Chi Chi Wu, Credit Invisibility and Alternative Data: Promises and Perils (July 2019), available at [Issue Brief: Credit Invisibility and Alternative Data - National Consumer Law Center \(nclc.org\)](#).

<sup>12</sup> See Coalition Letter on FHFA's Policy Statement on Fair Lending, Comment Request 2021-N-7, at 6 (Sept. 7, 2021), available at [https://ourfinancialsecurity.org/wp-content/uploads/2021/09/NFHA-et-al-Comment-on-FHFA-Policy-Statement-on-Fair-Lending\\_FINAL\\_2021-09-07.pdf](https://ourfinancialsecurity.org/wp-content/uploads/2021/09/NFHA-et-al-Comment-on-FHFA-Policy-Statement-on-Fair-Lending_FINAL_2021-09-07.pdf).

<sup>13</sup> Linna Zhu and Rita Ballesteros, Making FHA Small-Dollar Mortgages More Accessible Could Make Homeownership More Equitable, Urban Institute (Apr. 22, 2021), <https://www.urban.org/urban-wire/making-fha-small-dollar-mortgages-more-accessible-could-make-homeownership-more-equitable>.

<sup>14</sup> 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-diversity-and-english-proficiency-united-states>.

resolving challenges when they arise. These difficulties may explain, in part, the lower rates of participation in the mortgage market among Latino and other immigrant groups.<sup>15</sup>

Access to the financial marketplace for LEP consumers has increasingly drawn the focus of policymakers, lenders, and consumer advocates. FHFA and the Enterprises have begun a process of making significant efforts to expand access to the mortgage market for LEP communities.<sup>16</sup> The multi-year language access plan involved the convening of a Language Access Working Group, the translation of most origination documents into the top five languages spoken by LEP consumers in the U.S., glossaries of key financial terms in these same languages, and the creation of a Mortgage Translations Online Clearinghouse to house these materials.

Yet the substantial efforts made under the multi-year plan was only a beginning. Anecdotal evidence suggests that the materials in the Clearinghouse are significantly underutilized. If the Enterprises do not continue to engage with lenders and servicers to increase the use of translated documents and provision of high quality oral interpretation, the efforts made to date will never achieve their potential and desired impact on the mortgage market.

Achieving this potential impact on the market is sorely needed. LEP individuals need access to information in their preferred language before, during, and after a financial transaction. While marketing may occur in the person's preferred language, too often the financial transaction documents and any subsequent contact (oral or written) is English-only. A report by the Kleimann Communications Group produced for Fannie Mae and Freddie Mac 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.<sup>17</sup>

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.<sup>18</sup> Even those who speak some English would still prefer to have translated documents in order to double check their understanding.<sup>19</sup> The study found that providing translated documents would eliminate a significant barrier that prevents or delays LEP

---

<sup>15</sup> See National Community Reinvestment Coalition, *Hispanic Mortgage Lending: 2019 HMDA Analysis* (Nov. 2020), <https://ncrc.org/hispanic-mortgage-lending-2019-analysis/>.

<sup>16</sup> See Federal Housing Finance Agency, Mortgage Translations Website, <https://www.fhfa.gov/MortgageTranslations>; FHFA Language Access Multi-Year Plan (May 2018), <https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/LEP-Multi-Year-Plan.pdf>; Americans for Financial Reform's Language Access Task Force, Comments on the Federal Housing Finance Agency's Request for Input on Improving Language Access in Mortgage Origination and Servicing (July 31, 2017), [https://www.nclc.org/images/pdf/foreclosure\\_mortgage/mortgage\\_servicing/comments-afr-task-force-fhfa-rfi-language-access.pdf](https://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/comments-afr-task-force-fhfa-rfi-language-access.pdf) and Supplemental Comments (Sept. 1, 2017), [https://www.nclc.org/images/pdf/foreclosure\\_mortgage\\_servicing/letter-fhfa-lep-2nd-submission.pdf](https://www.nclc.org/images/pdf/foreclosure_mortgage_servicing/letter-fhfa-lep-2nd-submission.pdf); Americans for Financial Reform, Fair Treatment of Homeowners with Limited English Proficiency (May 26, 2016), <http://ourfinancialsecurity.org/2016/05/language-access-press-release/>.

<sup>17</sup> 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-Access-Final-Report-June-2017.pdf>.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> *Id.* at 8-9.

individuals from buying a home.<sup>20</sup> Spanish, Korean, and Chinese-speaking focus group participants all expressed a preference to receive documents in their primary language.<sup>21</sup>

The Kleimann study showed that mortgage servicers generally lack a consistent approach to working with LEP borrowers. Interviews with servicers in Dallas reflected that only a few servicers have set up a system for recording language preference in the loan file.<sup>22</sup> Servicers reported that there were no best practices or formalized processes across servicers. Spanish was the only consistent language spoken by servicer staff; calls in other languages were handled using a third party translation line, resulting in phone calls taking on average three times as long as a regular call.<sup>23</sup>

Importantly, 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.<sup>24</sup> 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>25</sup>

Interviews with industry participants in New York similarly reflected that there was 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.<sup>26</sup> 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>27</sup>

LEP consumers experience significant harms as a result of inability to access information in their preferred language. Spanish speaking borrowers from Long Island, New York who relied on a "friend" to translate between them and an English-speaking loan officer ended up in an interest-only, adjustable rate mortgage without any understanding of those terms of the loan.<sup>28</sup> A New York 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>29</sup> Foreclosure rescue scammers and other financial predators tend to target LEP

---

<sup>20</sup> *Id.* at 10.

<sup>21</sup> *Id.* at 14-15 (Spanish), 28 (Korean), 33 (Chinese).

<sup>22</sup> *Id.* at 24.

<sup>23</sup> *Id.* at 23-24.

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

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 39-40.

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

<sup>28</sup> Americans for Financial Reform, Barriers to Language Access in the Housing Market: Stories from the Field at 4 (May 2016), available at [https://ourfinancialsecurity.org/wp-content/uploads/2016/05/AFR\\_LEP\\_Narratives\\_05.26.2016.pdf](https://ourfinancialsecurity.org/wp-content/uploads/2016/05/AFR_LEP_Narratives_05.26.2016.pdf) (hereafter "AFR 2016 Stories from the Field").

<sup>29</sup> *Id.* at 5.

consumers precisely because the lack of in-language information from reputable sources leaves these consumers more vulnerable to fraudulent schemes.<sup>30</sup>

In an October 2020 survey of eighty consumer advocates from around the country, 49% of respondents had encountered LEP consumers that had difficulty when obtaining a mortgage loan because documents were provided entirely in English.<sup>31</sup> 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.<sup>32</sup> Twenty-nine respondents said it was very common for loss mitigation to be conducted entirely in English, 21 reported that it was very common for LEP callers requesting language interpretation to experience long hold times, 11 reported it was very common for bilingual servicing staff or interpreters to be unavailable, and 15 reported it was very common for bilingual servicing staff or interpreters to lack key information or training.<sup>33</sup>

The following are selected examples provided by respondents to the October 2020 survey of problems faced by LEP consumers in the loan origination process:

Lender’s inability to provide bilingual staff and/or documents not only is frustrating to the consumer but also makes an already difficult process unbearable and sometimes more expensive if they have to pay someone to translate.

*Housing Counselor, Camden, NJ*

Communications issues where translated conversations were later denied, or Spanish personnel told different things than English personnel, then told misinterpreted.

*Legal Services Paralegal, Hudson Valley, NY*

I’ve heard a client mention they’d appreciate being able to understand all of the important documents and information in their first language. He stated this was a big deal and he felt out of the loop.

*Bilingual Program Support, Lane County, OR*

And the following are selected examples of problems described by respondents related to mortgage servicing:

An elderly Spanish preferred language client has had a Spanish speaking SPOC with Wells Fargo but the SPOC is not ever available. No one has been available to explain complex terms or expectations such as escrow deficiency or trial modification expectations to her in Spanish.

---

<sup>30</sup> 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>.

<sup>31</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 at [https://www.nclc.org/images/pdf/foreclosure\\_mortgage/LEP\\_ECOA\\_Comments\\_CFPB.pdf](https://www.nclc.org/images/pdf/foreclosure_mortgage/LEP_ECOA_Comments_CFPB.pdf). (Hereafter, “Coalition Comments on ECOA RFI”).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

*Housing Counselor, Guilford, NC*

I've had two foreclosure clients whose situations were impeded due to their LEP status. One family spoke Korean, their servicer, CMG Mortgage, did not provide interpretation services at all, and was generally not cooperative. As the counseling agency, we secured an attorney and interpreter for the family. This was the only way for them to receive any kind of fair loss mitigation review. All of their documents were submitted in English, the barrier here was the lender could not communicate in Korean (and barely did in English, for that matter). It took over two years to obtain a resolution. This was particularly frustrating because they had an FHA mortgage and were eligible for assistance. Their hardship had been resolved and they could easily afford modified payments. I do believe the servicer was fully taking advantage of their LEP status here.

*Housing Counselor, Worcester, MD*

I have a client that was recently extended a forbearance on her loan. On the telephone, she was told this forbearance will be the final one and that the servicer would send her confirmation documents that explain her options thereafter. However, the mailed documents are in English only and the client was unable to determine what was contained therein.<sup>34</sup>

*Legal Services Attorney, Orange County, NY*

Despite many reports of a lack of language access, the October 2020 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.<sup>35</sup> 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 servicing documents in their preferred language.<sup>36</sup>

LEP consumers continue to be denied sufficient access to language services in mortgage origination and servicing. This lack of access is a significant barrier to homeownership<sup>37</sup> and creates an elevated risk of foreclosure among immigrant homeowners. FHFA should require the GSEs to address in their Equitable Housing Finance Plans how they will ensure that lenders and servicers ramp up efforts to serve LEP consumers. In the sections that follow, we explain the most important steps that the Enterprises should take to ensure fair and transparent access to the market for all consumers.

---

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Edward Golding, Laurie Goodman, and Sarah Stochak, “Is Limited English Proficiency a Barrier to Homeownership?” Urban Institute (Mar. 2018), <https://www.urban.org/research/publication/limited-english-proficiency-barrier-homeownership>.

## **B. FHFA and the GSEs should require lenders to promote language access at origination.**

### **1. FHFA should require the Enterprises to include in their plans a framework for mandatory collection and reporting of language preference data.**

The first step to serving LEP consumers in a meaningful way is learning their preferred language for communications about their loan. The Enterprises should require lenders to ask borrowers about their preferred language at their first interaction with the customer, by putting the language preference question back onto the Uniform Residential Loan Application (URLA). In 2017, FHFA finalized a language preference question as part of the URLA that was developed after significant research and consumer testing.<sup>38</sup> The question was later removed from the URLA with plans to put it onto a supplemental form, which is now being called the Supplemental Consumer Information Form (SCIF).

**The use of this supplemental form should be mandatory for all loans purchased by the Enterprises until the question can be reintegrated onto the URLA. FHFA should ensure that the Enterprises are collecting the data contained on the SCIF in their electronic portal.** Notably, the form indicates that the company may or may not be able to provide written and oral access for the consumer in the preferred language.

**Once they obtain the borrower's language preference, lenders and servicers should be required to transfer the borrower's preferred language into the borrower's loan file.** This information should travel with the borrower's file for the life of the loan. If the borrower's language preference is not tracked and transferred, the LEP borrower is forced to start over with every servicing change, which has the potential to cause confusion, delay, or unintended harm because crucial information, such as an early intervention notice or a loss mitigation evaluation notice, is not communicated in their preferred language. This process is also inefficient for every subsequent servicer because they have to expend resources to assess the borrower's preferred language. Tracking and transferring language preference information throughout the life of the loan will streamline servicing for both the LEP consumer and all companies servicing the loan. **The GSEs should make this a required data point within FHFA's Uniform Mortgage Data Program to standardize the format of language preference data, which will ease implementation of this requirement for industry.**

### **2. The Enterprises' Equitable Housing Finance Plans should include requiring lenders to provide translated documents to borrowers when they are available on the Mortgage Translations Clearinghouse or from the CFPB.**

**Lenders and servicers should be required to provide the translated mortgage documents that have been translated and made available by government agencies (at the federal level or by state regulators) where the loan is being made.** FHFA has translated many mortgage documents into the top five languages spoken by LEP consumers in the United States, and are all

---

<sup>38</sup> [https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Preferred\\_Language\\_Question.pdf](https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Preferred_Language_Question.pdf)

available and easily accessible on their Mortgage Translations Clearinghouse website.<sup>39</sup> A wide swath of origination and modification documents, including the URLA, note and security instrument, Form 710 and modification agreements, have translations that have already been vetted and approved by a government agency.

There is minimal burden and risk for lenders and servicers to incorporate the use of these existing documents, and using them will greatly improve LEP consumers' comprehension of their loan terms. Whenever possible, lenders and servicers should populate the translated forms with specific information about the borrower's loan, including the loan amount, interest rate, and lender, but at minimum, the blank translated form documents should be provided to the LEP borrower to be read along with the English version to enable the borrower to understand the terms of the transaction as it is happening. Both the English and translated documents should be provided to LEP borrowers so they can refer to them later as well. The documents can indicate that the English language document is the official form.

Advocates have urged the CFPB to translate essential documents under its authority, including the Loan Estimate, Closing Disclosure, and Notice of the Right to Rescind, as well as key RESPA loss mitigation notices. Some of these documents have already been translated into Spanish by the Bureau. **Servicers should be required to use translated documents as they become available in other languages from the Bureau, FHFA, HUD or other governmental agencies.**

### **C. FHFA and the GSEs should require servicers to provide reasonable language access for the mortgages they service.**

**The Enterprises' language access efforts to date have been primarily focused on origination, without sufficient emphasis on multi-lingual servicing. Like originators, servicers should be required to ask consumers for their preferred language in their initial communications with the borrower, and to track and transfer this information in the servicing file.** The CFPB has begun to emphasize the importance of servicers collecting language preference information. A recent CFPB report regarding pandemic servicing metrics showed that about half of the 16 servicers surveyed collect information about language preference.<sup>40</sup>

**In their plans, the Enterprises should address how they will require servicers to use the translated resources that FHFA and the Enterprises have made available, including brochures and informational materials. At a minimum, servicers should be required to link to translated materials on their websites and to provide translations of any servicing documents that have been translated into the borrower's preferred language, so that LEP consumers have access to the information available about their transaction in their preferred language.** The CFPB recently published a Spanish version of the Early Intervention

---

<sup>39</sup> See <https://www.fhfa.gov/MortgageTranslations>.

<sup>40</sup> Cons. Fin. Prot. Bureau, Mortgage Servicing, COVID-19 Pandemic Response Metrics: Observations from Data Reported by Sixteen Servicers (Aug. 2021) at 26, available at [https://files.consumerfinance.gov/f/documents/cfpb\\_mortgage-servicing-covid-19-pandemic-response-metrics\\_report\\_2021-08.pdf](https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2021-08.pdf).

notice required under RESPA.<sup>41</sup> All servicers of GSE loans should be required to send this notice in both English and Spanish.

The COVID-19 pandemic's impacts have been most severely felt in immigrant communities and communities of color. The same communities which have been disproportionately excluded from homeownership and wealth-building opportunities are seeing their housing and economic stability disproportionately threatened by the COVID-19 pandemic today. The Enterprises must work to ensure that servicers' policies do not have harmful and discriminatory effects on LEP consumers, by implementing servicing and loss mitigation practices that incorporate strong language access.

FHFA and the CFPB have worked together to create a joint agency coronavirus housing portal with a wealth of information, translated into the top eight LEP languages. Yet struggling borrowers are unlikely to find the housing portal unless they know to look for it. Most borrowers looking for help online will visit only their own servicer's website. A review of the websites of the top fifty mortgage servicers shows that very few contained any information about COVID-19 mortgage relief in languages other than English, and none of them linked to the joint agency coronavirus housing portal in any of the available languages or to any of the translated consumer-facing COVID resources made available by Fannie Mae or Freddie Mac.<sup>42</sup>

If the Enterprises wish to increase language access in the mortgage market, one thing is clear: simply making translated materials available to servicers is not enough. The Enterprises have posted many helpful translated documents in the top five LEP languages in the Clearinghouse, and these documents are severely underutilized. FHFA should require the Enterprises to include in their plans a comprehensive review of the barriers to utilization of the translated materials now available, and to implement steps to increase their use, including mandates.

If servicers fail to take the necessary steps to push information out to LEP borrowers in their preferred languages, there is no question that opportunistic companies peddling "guaranteed loan modifications" and "foreclosure rescue" will do so.<sup>43</sup> These scammers are already purchasing ads on Spanish language radio and other ethnic media, exploiting the information void that has been created by the absence of in-language outreach from legitimate sources.

The urgency of the pandemic and the severe lack of information currently available to LEP consumers regarding the servicing of their mortgage loans and available relief create a need for swift action. This issue must be addressed in the Enterprises's plans – both in the context of the pandemic, and for ongoing mortgage servicing equity.

---

<sup>41</sup> Cons. Fin. Prot. Bureau, Model Early Intervention Notice Clauses, [https://files.consumerfinance.gov/f/documents/cfpb\\_mortgage\\_servicing\\_early\\_intervention\\_model\\_clauses\\_translations\\_2021-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_mortgage_servicing_early_intervention_model_clauses_translations_2021-07.pdf).

<sup>42</sup> See Coalition Comments on ECOA RFI, supra note 31, Appendix B, Summary of Language Accessibility of Servicer Websites, National Consumer Law Center (Nov. 2020).

<sup>43</sup> See, e.g., 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>.

## **D. The Enterprises plans should promote strong fair lending compliance programs, including the use of Language Access Plans.**

FHFA has also asked in the RFI about ways the Enterprises could promote strong standard for fair lending compliance. **Implementing a Language Access Plan should be one element of a strong compliance management system.**

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 anti-discrimination laws.<sup>44</sup> 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>45</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>46</sup>

HUD has explained the close relationship between LEP status and national origin in a memorandum regarding compliance with the Fair Housing Act. HUD stated, in no uncertain terms, that entities covered by the Fair Housing Act would violate the statute by implementing a policy or practice that has an unjustified discriminatory effect on LEP consumers, because LEP status is closely tied to national origin.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup> 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.<sup>51</sup> If a lender can show a substantial justification for a certain practice creating 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

---

<sup>44</sup> See 42 U.S.C. §§ 3601-19; 15 U.S.C. § 1691, *et seq.*; and, *e.g.*, O.C.G.A. § 8-3-200 *et seq.*

<sup>45</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)); *accord*, Dep’t Housing and Urban Development, “Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency” (Sept. 15, 2016) (hereafter, “HUD LEP Guidance”), available at <https://www.hud.gov/sites/documents/LEPMEMO091516.PDF>; Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50123 (Aug. 16, 2000).

<sup>46</sup> HUD LEP Guidance (citing U.S. census data).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

obtaining written or oral translation services or making use of bilingual staff members.<sup>52</sup> 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.

To its credit, the Consumer Financial Protection Bureau has recently taken steps to encourage financial institutions to better serve LEP communities.<sup>53</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 servicers 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.<sup>54</sup>

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.<sup>55</sup>

The Enterprises should recommend that mortgage lenders and servicers use this same four-factor analysis. They should require lenders and servicers to create a language access plan analyzing these factors and update it annually. LAPs will allow lenders and servicers to start somewhere, understanding that they cannot provide complete end-to-end services in every language 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. 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 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)

---

<sup>52</sup> *Id.*

<sup>53</sup> Consumer Fin. Prot. Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency (Jan. 13, 2021), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_lep-statement\\_2021-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_lep-statement_2021-01.pdf); Consumer Fin. Prot. Bureau, Spotlight on Serving Limited English Proficient Consumers (Nov. 2017), [https://files.consumerfinance.gov/f/documents/cfpb\\_spotlight-serving-lep-consumers\\_112017.pdf](https://files.consumerfinance.gov/f/documents/cfpb_spotlight-serving-lep-consumers_112017.pdf); Consumer Fin. Prot. Bureau, Supervisory Highlights (Oct. 2016) at 20-25, [https://files.consumerfinance.gov/f/documents/Supervisory\\_Highlights\\_Issue\\_13\\_Final\\_10.31.16.pdf](https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf). It is important to note, however, that the Bureau’s recent FDCPA rule announcement does not meaningfully serve the needs of LEP consumers, as discussed in our coalition’s [recent letter](#).

<sup>54</sup> *Id.* at 13.

<sup>55</sup> Executive Order 13166; DOJ Guidance on LEP Persons.

[s]eeking feedback from the community the plan serves (advocacy groups serve a vital role).”<sup>56</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 annually. Informed by data and the willingness to adapt to meet evolving community needs, lenders and servicers will be able to use an LAP to expand the language access that is so sorely needed in the mortgage market.<sup>57</sup>

## IV. Equitable Mortgage Servicing

### **A. FHFA should require the Enterprises to include in their plans effective loss mitigation policies and robust oversight of servicers to promote more equitable mortgage performance outcomes.**

Strong mortgage servicing and loss mitigation policies have the ability to slow the growth of existing racial inequities; weak policies will have the opposite effect. Communities of color, especially Black and Latinx communities, have been hit the hardest by both COVID-19 and the economic consequences of COVID-19, on top of deep and pre-existing disparities. Aside from the staggering disparities in infection, hospitalization, and death from COVID-19,<sup>58</sup> African Americans and Latinx communities have borne the brunt of the economic fallout.

As a country, we have still not recovered from the trillions of dollars in lost equity from the Great Recession.<sup>59</sup> FHFA must seek to ensure that COVID-19 does not result in another devastating round of unnecessary foreclosures, concentrated in communities of color.

In May 2021, the National Consumer Law Center conducted a nationwide survey of attorneys, housing counselors, and other homeowner advocates. The 185 individuals responding to the survey assist homeowners in 31 states and include 94 housing counselors, 57 legal services attorneys, 14 private consumer attorneys, and 20 other advocates. The survey responses reflect significant problems in servicers’ communications with homeowners regarding loss mitigation. Borrowers and advocates have been struggling to reach the designated point of contact by phone. Servicers have refused to discuss post-forbearance options with borrowers until after the forbearance ends. And in too many instances, servicers seem to be unaware of the investor rules that apply to a given borrower’s loan.<sup>60</sup> The individual examples collected by Americans for

---

<sup>56</sup> See Dep’t of Housing and Urban Dev’t, “Limited English Proficiency: Policy, Plan, Practice,” at [https://www.hud.gov/sites/documents/OHC\\_LEP062515.PDF](https://www.hud.gov/sites/documents/OHC_LEP062515.PDF)

<sup>57</sup> Coalition Comments on ECOA RFI, *supra* note 31, at 18-20.

<sup>58</sup> See, e.g., Ctrs. For Disease Control and Prevention, [COVID-19 in Racial and Ethnic Minority Groups \(2020\)](#), (last updated June 25, 2020) (hospitalizations per capita are five times as high for African Americans and Native Americans as for whites, and four times as high for Latinx as for whites); Tiffany Ford, et al., [Race Gaps in COVID-19 Deaths Are Even Bigger Than They Appear](#), Brookings Institution (June 16, 2020).

<sup>59</sup> Ingrid Gould Ellen & Samuel Dastrup, [Housing and the Great Recession](#), (Oct. 2012), (\$7 trillion in home equity lost between 2006 and 2011, with losses concentrated in communities of color).

<sup>60</sup> Comments by the National Consumer Law Center, Americans for Financial Reform Education Fund, and National Housing Law Project to the Consumer Financial Protection Bureau regarding Protections for Borrowers Affected by the COVID-19 Pandemic under the Real Estate Settlement Procedures Act, Appendix A, Nationwide Survey of Homeowner Advocates, National Consumer Law Center (May 2021), available at

Financial Reform Education Fund reflect similar and pervasive problems.<sup>61</sup> These reports from around the country illuminate problems with mortgage servicers' communications with borrowers regarding loss mitigation options.

In NCLC's nationwide survey of homeowner advocates, almost half of the advocates had interactions with a servicer "point of contact" in at least one case in which the servicer representative did not seem to know which specific investor rules applied to the loan or did not convey accurate information about the options available from the investor. Seventeen percent had experienced this several times, and 8 percent had experienced it many times. Over half of respondents had advised homeowners who reported having exited forbearance without being informed that under applicable investor rules, they could have extended their forbearance further. Borrower advocates have provided detailed examples of this problem from borrowers in Connecticut, Puerto Rico, Washington, DC, and Pennsylvania.<sup>62</sup>

A significant number of borrowers were told by their servicers that they cannot apply for post-forbearance options until their forbearance has ended. In NCLC's nationwide survey of homeowner advocates, 59% of respondents had spoken to homeowners who had been told by their servicers they could not be evaluated for post-forbearance options while the forbearance was in effect. Twenty-eight percent of those advocates had heard this problem from borrowers either "several times" or "many times." In light of this significant problem, FHA recently announced that post-forbearance reviews could occur at any point, and borrowers need not exit forbearance to be eligible for review.<sup>63</sup> The Enterprises should issue a similar policy.

One risk of the Flex Modification framework is that servicers conduct a unilateral review and never notify the borrower in writing if they were determined to be ineligible. The review conducted by servicers is shrouded in mystery. Borrowers are harmed by the lack of information about which options they have been reviewed for and even determined to be ineligible for. Examples abound of borrowers who have been wrongfully found ineligible for a streamlined modification or have been offered a modification with the wrong terms. In NCLC's nationwide survey of homeowner advocates, one-third of advocates responded that they had seen homeowners wrongfully denied for a Flex Modification at least once. Seventeen percent had managed to get a wrongful denial reversed through their advocacy.<sup>64</sup>

The opaqueness of most Flex Modification reviews means that these problems do not come to light in most instances. Yet experienced legal services attorneys and housing counselors who know the rules of the Flex Modification program have reported many instances in which borrowers were offered a Flex Modification with incorrect, disadvantageous, and unaffordable terms because the servicer used an inaccurate property valuation. The biggest factor that determines modification terms in the Flex Modification is the loan to value ratio. Borrowers with

---

[https://www.nclc.org/images/pdf/foreclosure\\_mortgage/mortgage\\_servicing/RESPA\\_NPRM\\_Comments.pdf](https://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/RESPA_NPRM_Comments.pdf) (hereafter, "Pandemic RESPA Comments").

<sup>61</sup> See *id.*, Appendix B, Consumer Experiences: Examples from Homeowner Advocates and the CFPB Complaint Portal, Americans for Financial Reform Education Fund (May 2021).

<sup>62</sup> See *id.*

<sup>63</sup> See FHA Info 21-28 (May 7, 2021), available at [https://www.hud.gov/sites/dfiles/SFH/documents/SFH\\_FHA\\_INFO\\_21-28.pdf](https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_21-28.pdf).

<sup>64</sup> See Pandemic RESPA Comments, *supra* note 60, Appendix A at 2. See also Appendix B at 4 (example of Ms. B, from Rachel Scott, Atlanta Legal Aid Society).

an LTV below 80% are offered no principal forbearance and (outside of the COVID-19 context) no adjustment of the interest rate down to the current market rate. Therefore, reliance on an inaccurate automated valuation can result in a dramatically worse loan modification offer than the borrower should have been given, or even in an outright denial.

**To address this problem, the Enterprises should build in specific safeguards:**

- **They should require written offer and denial letters to be sent whenever a servicer reviews a borrower for a Flex Modification.**
- **They should provide for a clear escalations pathway through which borrowers can seek review from Fannie Mae or Freddie Mac if the borrower disagrees with a decision made by the servicer.**
- **Finally, the Enterprises should review the loss mitigation protocols and outcomes of servicers periodically, through a sampling of files and recorded phone calls with borrowers, to ensure that policies are being implemented fairly and correctly.**

Overseeing servicers effectively during the pandemic should involve the Enterprises reviewing how many borrowers are getting deferrals versus the COVID-19 Flex Modification and whether deferrals are leading to significant redefault rates. NCLC has been informed by legal services attorneys about instances in which servicers aggressively push borrowers to take a deferral rather than a Flex Modification. This can involve exaggerating the risks of asking to be reviewed for the Flex Modification and making it appear likely that the borrower might lose a sure option by asking to be reviewed for something else. Sometimes servicers do not even explain that there is any other option aside from the deferral. Borrowers lack complete information and will be susceptible to pressure if they are not informed (by phone and in writing) that deeper payment reduction may be available if needed. Fannie Mae provided a template of a deferral offer letter that specifically informs the borrower that other options may be available; yet NCLC has seen examples of deferral offer letters sent to Fannie Mae borrowers that do not convey that information clearly.<sup>65</sup>

Moreover, as we have noted, we urge the Enterprises to amend the COVID-19 payment deferral and Flex Modification for COVID-19 impacted borrowers to allow deferral and capitalization of escrow shortages. We appreciate that the GSEs have provided comprehensive forbearance and post-forbearance options for borrowers who have suffered a COVID-19 hardship. It is essential, however, that the GSEs take further steps to ensure that these important programs provide consistent, affordable payments that borrowers can sustain and not increase borrowers' monthly payments to a level they can no longer afford due to an escrow shortage.

**Specifically, the GSEs should:**

- **Require servicers to perform an escrow analysis before placing a borrower in a COVID-19 payment deferral plan, as is required under the Flex Modification program, and**

---

<sup>65</sup> See Fannie Mae Lender Letter 2020-07 at 6 and Appendix (Updated Nov. 18, 2020); Exhibit A, Example of Deferral Offer Letter sent to a Fannie Mae borrower on Feb. 3, 2021 (letter mentions loan modification on the cover page, but in the specific deferral offer letter, gives the impression that if the borrower does not accept the deferral, they should prepare to pay the lump sum of \$13,027.67).

- **Require any resulting shortage to be placed in the deferred balance at the end of the loan or capitalized with a Flex Modification.**<sup>66</sup>

FHFA should require the Enterprises to address equitable loss mitigation policies and strong oversight of mortgage servicers in their plans. This is an essential piece of promoting equitable access to homeownership.

**B. FHFA should require the Enterprises to analyze loss mitigation outcomes by race, ethnicity, language preference, and geography, and should make the underlying data and analysis publicly available.**

**The Enterprises' equitable housing finance plans should include thorough, periodic review of loss mitigation and servicing outcomes by servicer, broken out by race, ethnicity, language preference, and geography.** The Enterprises cannot ensure equitable mortgage servicing without closely reviewing this kind of data. **Public reports and the underlying data, with appropriate privacy protections, should also be made available.**

In the recent pandemic mortgage servicing metrics report released by the CFPB, it was clear that not all servicers are reviewing the racial demographics of borrowers with respect to loss mitigation and servicing outcomes.<sup>67</sup> The Bureau rightly urged servicers to implement such practices. The Enterprises already collect and share an enormous amount of servicing data, for example through the FHFA Foreclosure Prevention and Refinance Report, and should be doing extensive analysis of data points related to racial equity as well. The Enterprises also have access to data collected by the Bureau through the data sharing arrangement established with the CFPB during the pandemic.<sup>68</sup>

Data regarding mortgage servicing and loss mitigation outcomes, including data disaggregated by race, ethnicity, language preference, and geography, must be made available to the public. Without publicly available data (that would also account for adequate privacy protections) advocates and policymakers are limited in their ability to hold the Enterprises accountable for the goals of advancing racial equity. Also, the Enterprises' public release of data can serve an important purpose in helping to implement better policies for racial equity throughout the whole mortgage market.

---

<sup>66</sup> Letter from the National Consumer Law Center and other nonprofit organizations to Sandra Thompson (Aug. 27, 2021), [https://www.nclc.org/images/pdf/special\\_projects/covid-19/Escrow\\_Shortages\\_ltr.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/Escrow_Shortages_ltr.pdf).

<sup>67</sup> CFPB, Mortgage Metrics Report, supra note 40, at 27.

<sup>68</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fhfa-announce-borrower-protection-program/>.

## C. Equitable disposition policies

1. **FHFA should require the Enterprises to revisit their note sale practices, to evaluate whether the program is promoting racial equity, and to provide clearer rules around required loss mitigation, including pandemic options.**

The Enterprises created a program to auction off non-performing loans (NPLs) and re-performing loans (RPLs) during the last foreclosure crisis. The program was primarily aimed at improving the Enterprises' balance sheets by getting these loans off their books. The secondary goal was purportedly to enable better loss mitigation outcomes through greater flexibility.<sup>69</sup> The Enterprises are continuing to carry out their note sale program, **however post-sale loss mitigation waterfall requirements must be strengthened.**

The Enterprise NPL and RPL programs require note buyers' servicers to commit to a certain kind of loss mitigation waterfall, but it is not at all clear that these rules are resulting in loan modification options as affordable as the current Flex Modification.<sup>70</sup> The guidance requires the loan purchaser's servicer to offer a modification that "provides a benefit to the borrower," but this is not specific enough. In one recent example that NCLC learned of, an NPL servicer offered a borrower a loan modification that increased his monthly payment, and claimed this was still a "benefit" because it avoided a foreclosure.

Moreover, although NPL servicers are required to implement the CARES Act-required forbearance options, they are not required to offer, and are not offering, the GSE post-forbearance COVID-19 waterfall of options.<sup>71</sup> The fact that borrowers are offered a CARES Act forbearance leads them to believe they will have access to reasonable post-forbearance options, and they do not learn until the forbearance has ended how limited their options truly are.

Often the servicers are not offering any affordable modification option to these NPL and RPL borrowers. NCLC has heard from a number of homeowner advocates from various states who are representing homeowners in a forbearance who learned only at the conclusion of the forbearance that their loan is no longer owned by Fannie Mae or Freddie Mac and therefore they do not have the Fannie or Freddie post-forbearance options. The outcomes for these borrowers are still uncertain, but the lack of COVID-specific options raises significant concerns. This is a significant policy failure on the part of the Enterprises and FHFA—both the lack of notice to these homeowners and the failure to ensure affordable options will be available post-forbearance.

**FHFA should require the Enterprises to closely examine their NPL and RPL policies and outcomes through a lens of racial equity as part of their equitable housing finance plans and revise program requirements.**

---

<sup>69</sup> Julia Gordon et al., Protecting Homeownership from the Impact of COVID-19 at 30 (May 10, 2021), available at <https://nationalfairhousing.org/wp-content/uploads/2021/05/2021.05.04-Protecting-Homeownership-from-the-Impact-of-COVID-19-NCST-NFHA-edits-accepted-and-formatted.pdf>.

<sup>70</sup> FHFA Fact Sheet: Non-Performing and Reperforming Loan Sale Requirements (May 2021), available at [https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/NPL-RPL\\_FACT-SHEET-May2021.pdf](https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/NPL-RPL_FACT-SHEET-May2021.pdf).

<sup>71</sup> *Id.*

**2. FHFA should require the GSEs to adopt equitable REO policies, including maintenance of REO properties and policies regarding who can purchase Fannie and Freddie REO properties.**

Similar to their note sale policies, the Enterprises' policies around Real Estate Owned (REO) disposition have too often prioritized Enterprise financial outcomes over promoting sustainable homeownership. Specifically, Fannie Mae and Freddie Mac's decisions to sell REO properties in bulk to entities like Harbour Portfolio and Vision Property Management during the last foreclosure crisis led to these entities milking significant short-term profits from low-income people, disproportionately people of color, through a false promise of homeownership.<sup>72</sup>

Only after significant public pressure did the Enterprises modify their rules regarding sale of REO properties, and the safeguards in place still need to be strengthened.<sup>73</sup> **FHFA should require the GSEs to include in their plans a robust process for evaluating REO maintenance and sale practices, oriented towards racial equity and fair housing.**<sup>74</sup>

## **V. Equitable Multi-Family Loan Policies**

The GSEs should take two basic steps to further racial equity and expand opportunity for low-income tenants. **First, the GSEs should prevent multi-family mortgage borrowers from discriminating against Housing Choice Voucher (HCV) holders in tenant admission decisions.** The GSEs should insert a provision barring discrimination against HCV holders into the form multi-family mortgage and make it enforceable by tenants and applicants.

Unless an enforceable state or local source of income anti-discrimination law applies, HCV holders face significant challenges in finding safe and affordable rental housing because landlords routinely reject applicants who rely on vouchers.<sup>75</sup> Discrimination against HCV

---

<sup>72</sup> See, e.g., Jeremiah Battle et al., *Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color*, National Consumer Law Center (2016), available at <https://www.nclc.org/issues/toxic-transactions-threaten-communities-of-color.html>; Alexandra Stevenson, Matthew Goldstein, "Market for Fixer-Uppers Traps Low-Income Buyers," *The New York Times*, Feb. 21, 2016, A1.; <http://www.nytimes.com/2016/02/21/business/dealbook/market-for-fixer-uppers-traps-low-income-buyers.html>; Alexandra Stevenson and Matthew Goldstein, "Rent-to-Own Homes: A Win-Win for Landlords, a Risk for Struggling Tenants," *The New York Times*, Aug. 21, 2016, [http://www.nytimes.com/2016/08/22/business/dealbook/rent-to-own-homes-a-win-win-for-landlords-a-risk-for-struggling-tenants.html?\\_r=0](http://www.nytimes.com/2016/08/22/business/dealbook/rent-to-own-homes-a-win-win-for-landlords-a-risk-for-struggling-tenants.html?_r=0).

<sup>73</sup> Matthew Goldstein and Alexandra Stevenson, *After Complaints, Fannie Mae Will Stop Selling Homes to Vision Property*, *The New York Times* (May 23, 2017), available at <https://www.nytimes.com/2017/05/23/business/dealbook/after-complaints-fannie-mae-will-stop-selling-homes-to-vision-property.html>.

<sup>74</sup> Julia Gordon et al., *Protecting Homeownership from the Impact of COVID-19 at 26-30* (May 10, 2021), available at <https://nationalfairhousing.org/wp-content/uploads/2021/05/2021.05.04-Protecting-Homeownership-from-the-Impact-of-COVID-19-NCST-NFHA-edits-accepted-and-formatted.pdf>.

<sup>75</sup> Martha Galvez, Solomon Greene, Alyse D. Oneto, and Patrick Spauster, Urban Institute, *Protecting Housing Choice Voucher Holders from Discrimination at 2* (Oct. 2020),

holders limits the ability of the HCV program to achieve the goal of providing housing choice and opportunity to low-income tenants, especially tenants of color.<sup>76</sup>

Efforts to limit discrimination against HCV holders have been effective in increasing their opportunity.<sup>77</sup> A term in the form multi-family mortgage prohibiting discrimination against HCV holders would work similarly to the HCV anti-discrimination term that is required for Low Income Housing Tax Credit (LIHTC) funded developments.<sup>78</sup> Developers who receive LIHTC to finance their rental units cannot deny an applicant based on their HCV status. The GSEs should follow the lead of the LIHTC program.

Second, to ensure that multi-family mortgages are made to organizations with a track record of limiting evictions and working with tenants, **mortgage applicants should be required to submit data regarding the number of tenants who fall behind on their leases, the number of payment plans they reach with tenants, and the number of evictions they file.** The applications should include available demographic information to see whether policies are applied differently in communities of color.

Property manager performance in avoiding eviction should be considered a factor in approving a loan application for a multi-family mortgage. We know that eviction causes poverty and disproportionately impacts communities of color.<sup>79</sup> The GSEs should insist that applicants *not* manage their properties in a manner that perpetuates inequality.

## VI. Conclusion

The racial and ethnic homeownership gap has expanded in the last decade. In keeping with their public mission, the Enterprises should remove barriers and advance equity in housing markets to better serve the needs of all consumers. Advancing equity in the housing markets will increase access to homeownership and expand housing opportunity for low-income tenants and other underserved populations. We look forward to working with the Enterprises to achieve these goals.

If you have any questions, please contact Odette Williamson ([owilliamson@nclc.org](mailto:owilliamson@nclc.org)), Sarah Mancini ([smancini@nclc.org](mailto:smancini@nclc.org)) or Steve Sharpe ([ssharpe@nclc.org](mailto:ssharpe@nclc.org)) of the National Consumer Law Center.

---

<https://www.urban.org/sites/default/files/publication/103088/protecting-housing-choice-voucher-holders-from-discrimination.pdf>.

<sup>76</sup> *Id.*

<sup>77</sup> Alison Bell, Barbara Sard, and Becky Koepnik, Center for Budget and Policy Priorities, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results* (Dec. 20, 2018), <https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results>.

<sup>78</sup> 26 U.S.C. §42(h)(6)(B)(iv); National Housing Law Project, *An Advocate's Guide to Tenants' Rights in the Low-Income Housing Tax Credit Program* (August 2021), <https://www.nhlp.org/wp-content/uploads/LIHTC-2021.pdf>.

<sup>79</sup> Matt Desmond, <https://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>.

# EXHIBIT A

Chase (Mail Code LA4-9000)  
700 Kansas Lane  
Monroe, LA 71203



February 03, 2021

002692 - 1 of 1 NSP0IF1A-Z1 000000000000



**Action Required: Your COVID-19 payment assistance is ending**

Dear \_\_\_\_\_:

We're following up as you near the end of your payment assistance period on February 28, 2021, for the mortgage ending in \*\*\*\*\*. We hope this assistance has helped you during the COVID-19 crisis.

At this time the COVID-19 payment assistance program is limited to 12 months. If you are not able to resume monthly payments or make up any missed payments, you have options. These may include deferring any missed payments until the end of the mortgage term or payoff, extending the loan term, or standard mortgage assistance options such as a repayment plan or a loan modification. Please call us at 1-800-811-9123 to review your options by February 28, 2021. You can also let us know if you want to complete an application for mortgage assistance.

If you already contacted us, this letter is just a reminder. Please stay engaged with us until a solution is achieved.

If the account isn't current when your assistance period ends and you haven't selected a repayment option, the account will be considered delinquent, and other protections will end.

Sincerely,

Michelle Silwonuk  
Managing Director  
Home Lending Customer Service



**GOOD NEWS**

**YOU CAN MOVE UNPAID PAYMENTS TO THE END OF THE LOAN TERM**

Call 1-800-848-9380  
by February 20, 2021.  
We accept operator relay calls.

Account:  
Property Address:

Dear :

We hope we have been able to help you during a difficult time with the special relief assistance program we provided.

We're offering to defer any missed payment(s) to the end of the loan to bring the account up to date. We won't charge any additional interest on those amounts.

If you're still in a special relief assistance program when you accept this offer, the special relief assistance program benefits will end and the account will be brought up to date. If you do not accept this offer, your special relief assistance will continue through February 28, 2021. At that time the amount to bring the account up to date will be \$13,027.67. This amount may change if your assistance is extended.

**Here's how this offer works**

- We'll defer unpaid principal and interest amounts as well as escrow advances, which are payments such as taxes and insurance we made because there wasn't enough in your escrow account, to the end of the mortgage. We will also defer corporate advances, which may include expenses for inspections, home valuations, legal fees, property maintenance and other costs that we paid.
- When the deferment process is complete, the next payment to be made will be the one for March 1, 2021.
- The deferred amount will be payable at the end of the loan term in one lump sum called a balloon payment. We won't charge interest on the balloon amount. If the account is paid off early, the deferred amount will be payable at the time of the payoff.
- The deferred amount will be shown as a Deferred Principal Balance in future statements and correspondence.
- If escrow payments weren't made, there will likely be a shortage in the escrow account. This means that there won't be enough funds in the escrow account to meet the amounts that we require for future tax and insurance payments. We cannot defer the escrow shortage. If there is a shortage on your next escrow analysis and you can't make up the shortage all at once, we will spread the shortage over 60 months and add it to the monthly mortgage payments.
- Any unpaid late charges and insufficient funds (NSF) fees will be waived.

If you accept this offer and we are currently reviewing you for mortgage assistance, we'll stop that review once this offer is complete.

If you don't accept this offer and you have a pending application for assistance, we'll continue to review you for all options when your application is complete.

Please read the enclosed Frequently Asked Questions for more information.

Here's what you need to do to accept this offer by February 20, 2021

- Accept this offer by calling us. You can also mail the completed acceptance form to the address below.

Chase  
720 S. Colorado Blvd., Suite 210  
Glendale, CO 80246-1904

Please allow up to five days for mail delivery.

- If your special relief assistance program has not ended once we process your acceptance, the program will end.

If the account status changes between now and when the process is complete, it may change our ability to complete this offer for you.

If you have difficulty resuming payments by February 20, 2021, or you don't want to accept this offer, please call us to discuss other options.

Please keep a copy of this letter for your records.

If you haven't requested assistance before and want information on how to apply, or you have other questions, please call us; we accept operator relay calls. We're here to help Monday through Friday from 8 a.m. to 10 p.m., and Saturday from 8 a.m. to 5 p.m. Eastern Time.

We appreciate your business.

Sincerely,



Jeff Broeker  
Executive Director  
Chase  
1-800-848-9380  
1-866-282-5682 Fax; it's free from any Chase branch

Enclosures

Esta comunicación contiene información importante acerca de la cuenta. Si tiene alguna pregunta o necesita ayuda para traducirla, comuníquese con nosotros llamando al 1-800-848-9380, de lunes a viernes de 8 a.m. a 10 p.m. y sábados de 8 a.m. a 5 p.m., hora del Este.

#### Important Legal Information

#### We are a debt collector

This is an attempt to collect a debt and any information obtained will be used for that purpose. However, to the extent your original obligation is subject to the automatic stay of bankruptcy or was discharged under the United States Bankruptcy Code, this notice is for compliance with non-bankruptcy law and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. Nothing in this notice means that you're required to repay a debt that's subject to the automatic stay or has been discharged. Any



0224015039000285800200000000



## Acceptance Form

Account:  
Customer(s):  
Property Address:

**I have read and accept the terms of this offer to defer unpaid amounts.**

Signed:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

We must receive this signed form or your call accepting the offer by February 20, 2021. Please mail the completed form to:

Chase  
720 S. Colorado Blvd., Suite 210  
Glendale, CO 80246-1904

If you have questions, please call us at 1-800-848-9380; we accept operator relay calls.

ID VmoFquw3pe