

September 9, 2024

The Honorable Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2024-0024

Submitted electronically via regulations.gov

Dear Director Chopra:

The undersigned civil rights and consumer advocacy organizations, in partnership with the Americans for Financial Reform Education Fund (AFR) Language Access Task Force, respectfully submit this letter in response to the Consumer Financial Protection Bureau's Notice of Proposed Rulemaking under the Real Estate Settlement Procedures Act (RESPA), Regulation X. We applaud the years-long effort that the CFPB has undertaken to expand language accessibility in our consumer financial markets, and are pleased that the CFPB is proposing to mandate that servicers provide language assistance to borrowers seeking loss mitigation assistance as part of its proposal. We are writing to support this effort and to offer some suggestions to provide for smoother implementation, without sacrificing the goal of broad language access.

As discussed below, we support many of the Bureau's proposals and make several recommendations for modifications to the proposed rule. Specifically, we support:

- The Bureau's proposal to require servicers to provide specified written communications in both English and Spanish to all borrowers;
- The Bureau's proposal to require servicers to provide specified written communications in five servicer-selected languages upon borrower request; and
- The Bureau's proposal to require that servicers provide language assistance for specified oral communications.

We suggest that the Bureau:

- Expand the mandate for oral interpretation to cover more than five languages;
- Specifically require that the five servicer-selected languages for written translations be based on a regular assessment of the language needs of the servicer's borrower population; and
- Remove the provisions that require servicers to provide translated written materials when the borrower received marketing in that language.

Language access helps consumers avoid preventable foreclosures.

Mortgage borrowers in financial distress need to be able to communicate with their servicer about the status of their mortgage, their options, and the state of any foreclosure. This is true whether they speak and understand the English language or not. Yet, for far too long, borrowers with limited English proficiency (“LEP”) have faced long phone wait times, incompetent bilingual servicing staff, and confusing processes to connect to oral interpretation services while attempting to communicate with servicer personnel. They have also needed to navigate a sea of English-only documents at a time when their home was on the line.

These barriers make the process of seeking permanent loss mitigation solutions difficult for consumers who are often already dealing with tragedy and hardship. What’s more, systemic miscommunication between borrowers and servicers lengthens the time that a borrower is delinquent (and the attendant costs), causes unnecessary emotional distress, and leads to preventable foreclosure. We strongly support the Bureau’s effort to require servicers to take steps to assist these vulnerable borrowers.

Translations of essential written communications allow borrowers in need to take action quickly

Consumer financial laws often require that consumers know that they have rights in order to exercise them, and mortgage servicing is no exception. Regulation X, and the Bureau’s proposed changes to the loss mitigation process, recognize that a borrower facing financial hardship who either missed a payment or entered a forbearance needs certain information about the status of their loan in order to apply for a long-term loss mitigation solution. Borrowers receive this information through written notices. Without a written notice they can understand, LEP borrowers must take additional steps to find someone they trust to help them understand what the notice says and to contact their servicer. This added step of seeking out a third party to review essential information often puts borrowers in a [vulnerable position](#), causes unnecessary delay, and opens the door for additional misunderstanding. *We thus appreciate and strongly support the CFPB’s targeted proposal to require that the most essential written notices be sent bilingually to all borrowers in English and Spanish, and that servicers make use of brief “tagline,” or “babel,” notices in five other languages alerting LEP borrowers that a translation of the notice is available.*

Bilingual essential documents in English and Spanish will provide immediate access to the majority of LEP mortgage borrowers.

While FHA, Fannie Mae, and Freddie Mac all require loan originators to collect information on borrower language preference as part of a mortgage application, these requirements only apply for loans made in the last two years (and going forward). For the vast majority of current mortgage loans, servicers have inconsistent practices on collecting and maintaining borrower language preference. Data from the American Community Survey, however, shows us that the majority of LEP individuals in the United States speak Spanish – nearly two-thirds. Given the

likelihood that an LEP borrower will require Spanish language services, providing Spanish translations of key notices will immediately improve access to the mortgage market for LEP borrowers, and help prevent foreclosures. *Default dual-language documents are already used in many aspects of our society; documents alerting homeowners about how they can access potentially home-saving loss mitigation solutions should employ this approach as well.*

We support requiring servicers to choose the remaining languages that will receive translated written notices, so long as the languages are chosen according to the language needs of their borrower population

We appreciate the CFPB's interest in providing assistance to LEP borrowers who speak languages other than English and Spanish. These borrowers are often linguistically isolated, and are thus often even more vulnerable to misunderstandings and abuse. Given that language needs are likely to differ across regions, we agree with the CFPB's approach in having servicers select the other languages that they will serve, especially when it comes to essential written communications. However, the Bureau should refine how a servicer should choose those languages. *In particular, the Bureau should specify that servicers should periodically assess the language needs of their borrower population experiencing default or requesting loss mitigation. The CFPB should specify the frequency with which servicers should be conducting this assessment to ensure that available translations meet the needs of the servicer's borrower population.*

Oral interpretation is a tool that can provide access in a broader range of languages than translated forms

Borrowers who are behind on their mortgage and who may be facing foreclosure need to be able to call their servicers to ask questions and check on the status of their request for assistance. This need is the underlying basis for the general continuity of contact and live contact requirements in Regulation X. Yet, language barriers often get in the way of LEP borrowers receiving answers to even the simplest questions.

We support the Bureau's goal of requiring servicers to provide some oral language assistance to LEP borrowers, and placing the onus of connecting the borrowers to oral interpretation services on servicers. This will be more efficient and will remove a common barrier that LEP borrowers face in trying to communicate with their servicers.

However, we suggest that the CFPB broaden the number of languages for which servicers will be required to provide assistance. Conference calling has enabled third-party interpretation services to provide assistance to LEP individuals in a range of languages, at a reasonable cost. These providers enable hospitals, schools, housing counselors, and legal services providers to assist LEP individuals in a broad array of languages. If these, often resource-constrained, providers can offer assistance in virtually any language, mortgage servicers should be able to do the same. In addition, while providing written assistance to borrowers may require changes in servicer software and systems, and present some difficulties in implementation, providing oral

assistance using a reputable interpretation service in more languages does not present the same difficulties. *We recommend that the Bureau implement a general requirement that servicers engage in reasonable steps to ensure that LEP borrowers who request oral interpretation assistance get connected with a qualified interpreter. Such broad use of oral interpretation services should allow for accessibility to expand beyond the five servicer-selected languages that will receive written materials, and enable servicers to serve virtually any LEP homeowner.*

Language access servicing requirements triggered by lender marketing behavior present significant implementation challenges

We appreciate the CFPB's attention to the issue of in-language marketing being used as a tool to lure LEP consumers into transactions, only for servicers to later decline to provide language access when they need assistance. However, we have several concerns about the components of the rule regarding in-language marketing and believe they will provide limited benefits to LEP consumers.

First, the requirements are only triggered by a borrower's request for assistance (for borrowers who received marketing in-language). As we discuss earlier in this letter, consumers must know they are entitled to something in order to ask for it. The proposal does not contemplate how an LEP consumer would find out that in-language marketing for their mortgage triggered additional rights often years after taking out the mortgage.

The proposal also does not address what behavior or information may trigger the threshold for the servicer's knowledge, or imputed knowledge, of this in-language marketing behavior (generally conducted by another party). Information on lender/originator marketing conduct is not transferred with the servicing of the loan and is not regularly maintained by servicers. Thus, it is unclear whether any servicer that did not also originate the loan would, or, under current rules, should, have this information. This requirement is also easily evaded by selling the loan's servicing rights whenever the servicer learns, from the borrower or otherwise, that the borrower received in-language marketing materials or solicitations from the lender before origination.

Finally, and perhaps most importantly, if the CFPB were to implement a requirement for oral interpretation services in a broad array of languages, as we suggest above, the need for this additional requirement would become a moot point. *LEP homeowners who need assistance from their mortgage servicers should be able to get it, regardless of their lender's conduct years before.*

Thank you for the opportunity to comment on the Bureau's language access provisions in the proposed rule under Regulation X. We look forward to working with you to bring language access to borrowers through their mortgage servicers. For further discussion, please contact Alys Cohen, NCLC Senior Attorney, at acohen@nclc.org.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
National Housing Law Project
Americans for Financial Reform Education Fund
Community Legal Services of Philadelphia (PA)
Connecticut Fair Housing Center
Consumer Action
Consumer Federation of America
Consumer Reports
Economic Empowerment Center DBA Lending Link
The Greenlining Institute (CA)
Housing and Economic Rights Advocates (CA)
Impact Fund
Jacksonville Area Legal Aid, Inc.
Legal Aid Center of Southern Nevada
Legal Aid Society of Southwest Ohio, LLC
Legal Services NYC
Maine People's Alliance
National Consumers League
National Fair Housing Alliance
National Women's Law Center
North Carolina Justice Center
Public Citizen
Public Counsel (CA)
Public Justice Center (MD)
South Carolina Appleseed Legal Justice Center
UnidosUS
Woodstock Institute