



January 6, 2015

Consumer Financial Protection Bureau
Attention: Office of Financial Education
1700 G Street, NW
Washington, DC 20552

Re: Proposed Language Access Plan for the Consumer Financial Protection Bureau – Docket No. CFPB-2014-0022

Dear Director Richard Cordray:

The National Coalition for Asian Pacific American Community Development (National CAPACD) and Asian Americans Advancing Justice | AAJC (“Advancing Justice | AAJC”) submit the following comments in response to the Consumer Financial Protection Bureau (CFPB) proposed Language Access Plan.

National CAPACD and Advancing Justice/AAJC applaud the efforts of CFPB in developing a language access plan to ensure meaningful access to consumers in the financial marketplace and for its leadership role in addressing the needs of persons with limited English proficiency. While there are many good aspects in the proposal, we present areas for CFPB to expand the scope of the proposal to include increased application of CFPB’s supervisory, enforcement and rulemaking authority to address the language access needs of persons with limited English proficiency (LEP) and ensure meaningful access to materials and resources developed by CFPB and the financial services and products of the entities that CFPB oversees.

We offer the following recommendations explained in more detail below:

1. Improve data collection of the needs of Limited English Proficient communities
2. Improve language access to CFPB’s consumer complaint services
3. Expand outreach and stakeholder engagement
4. Expand written translations to additional languages
5. Apply enforcement & supervision authorities to monitor language access among financial institutions
6. Lead interagency language access task force

Background

National CAPACD is a national advocacy organization dedicated to addressing the housing, community and economic development needs of diverse and growing Asian American, Native Hawaiian, and Pacific Islander (AAPI) communities. National CAPACD is a HUD-certified housing counseling intermediary and

operates a number of national initiatives to increase financial education and capability among low- and moderate-income AAPI households. Based on this experience, National CAPACD is in a unique position to offer perspectives regarding effective strategies for meeting the needs of households for whom English is not a first language. The comments below were developed based on feedback and guidance from National CAPACD's membership.

Asian Americans Advancing Justice | AAJC ("Advancing Justice | AAJC") is a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. As part of Asian Americans Advancing Justice, we work with our affiliates in California, Illinois and Georgia to extend the reach of our programming and enhance the impact of our collective work.

Language access continues to be a significant hurdle for AAPI households to properly access a wide range of financial services and products. Collectively, AAPIs 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, compared to 20% of the total population. Of these, 32% of Asian Americans and 8% of Native Hawaiians and Pacific Islanders are considered LEP, compared to 9% of the total US population. Households who speak English as a second language, or who cannot read English, are particularly disadvantaged in their ability to review and understand mortgage terms, statements and notices related to the status of their home mortgage as well as any other financial products. As such, many LEP households are more likely to be victims of outright or perceived fraud or misconduct by servicers.

We believe that CFPB is in a unique position to lead on language access in the consumer finance arena. Not only should the CFPB work to develop and enforce language access policy in financial markets, but the Bureau itself should serve as a model when reaching LEP consumers.

Please accept the following recommendations to strengthen CFPB's proposal to more effectively serve the needs of AAPIs and other limited-English proficient immigrant communities.

1. Improve Data Collection of the Needs of Limited-English Proficient Communities

Improved data collection is a key component to better understanding the barriers and possible solutions to language access. For instance, with 40% of Asians and 15% of Native Hawaiians and Pacific Islanders speaking English "less than very well,"¹ limited-English proficient AAPI borrowers are more vulnerable to predatory lending and abusive or deceptive servicing practices. Unfortunately, the Home Mortgage Disclosure Act (HMDA) race and ethnicity data as currently reported has been ineffective in capturing the varied experiences of AAPI borrowers. While the aggregated data has generally shown that Asian borrowers have similar experiences to non-Hispanic white borrowers, it has masked the reality of lending disparities and discrimination practices experienced within Asian subpopulations. We believe that language preference is a key indicator of the extent in which AAPI communities have access to financial services and products and therefore a critical data field that requires collection and monitoring.

Further, it is our understanding that CFPB does not provide the option to indicate language preference in its complaint portal or other forms. CFPB must not take for granted that English is the preferred

¹ U.S. Census Bureau 2010 5 Year ACS

language on an English-language form. Tracking language preference in the complaint portal and elsewhere can help us better understand the universe of community usage and preferences.

We recommend that CFPB:

- Update data fields for HMDA to include:
 - The preferred language spoken by the loan or loan modification applicant.
 - The language in which the loan or loan modification was negotiated.
 - The language of the loan documents.
- Establish and lead a federal interagency working group that includes representatives from the White House Initiative on Asian Americans and Pacific Islanders, the Office of Management and Budget, the Census Bureau, the Department of Housing and Urban Development, and the Federal Housing Finance Agency to examine strategies for improving data collection on the language preferences of borrowers through the mortgage lending process. For example, the working group can explore opportunities to include language preference in the Uniform Borrower's Assistance Form (UBAF) or the mortgage application.
- Revise CFPB's complaint portal to include the option to indicate language preference for the consumer.
- Update the published Consumer Complaint Database to include reporting on the preferred language of the consumer and whether the complaint is related to a language access issue.
- Expand CFPB's Semi-Annual Report to Congress to include a section that reports and highlights the Bureau's language access activities, priorities, and accomplishments. Relatedly, we recommend that CFPB provide an annual language access report and briefing to the Congressional Tri-Caucus, which consists of the Congressional Asian Pacific American Caucus, Congressional Hispanic Caucus, and Congressional Black Caucus.

2. Improve Language Access to CFPB's Consumer Complaint Services

We are encouraged that the CFPB's contact centers are able to assist consumers with complaints in over 180 languages. However, from our experiences with current interpretation services available through mortgage servicers, we are concerned that interpretation services provided by CFPB's contact centers are insufficient. In test cases conducted by housing counselors within National CAPACD's network, counselors reported a number of challenges in accessing appropriate interpretation services through mortgage services. First, counselors found that conversations with the servicer and a Language Line interpreter were inadequate in fully explaining the borrower's circumstances and options available. Counselors often needed to provide borrowers with additional assistance to better explain information conveyed through the Language Line interpreter. Additionally, borrowers found the process of connecting to a Language Line interpreter very frustrating, with operators often incapable of properly transferring calls to the correct languages, some calls taking more than 10 minutes to connect, and some borrowers disconnected all together. As such, we caution CFPB in relying solely on similar Language Line services to provide adequate access for LEP borrowers and urge the Bureau to raise the standards of interpretation.

Further, CFPB has reported that it is not receiving complaints in other languages at a rate comparable to those received in English. We believe there is a direct correlation between CFPB's outreach in English and the number of complaints received. We ask that CFPB increase its outreach in other languages. While CFPB is well ahead of the curve compared to other federal agencies, it cannot properly assess discrepancies and rights violations based on languages when CFPB is not reaching these communities.

We recommend that CFPB:

- Develop glossaries of key financial terminology and processes to accurately accept complaints about credit cards, mortgages, bank accounts and services, private student loans, vehicle and other consumer loans, credit reporting, money transfers, debt collection, payday loans, prepaid cards, credit repair and debt settlement services, title and pawn loans, and virtual currencies that can serve as guides for interpreters.
- Hire bilingual staff for CFPB's contact centers and ensure that they receive proper training on technical terminology on financial products.
- Require CFPB vendors to ensure standards of certification or training for its contracted telephone language interpreters to ensure that interpreters are competent to interpret technical terminology on financial products.
- Develop translated materials that provide consumers with updates regarding steps taken and resolutions to their submitted complaints.

3. Expand Outreach and Stakeholder Engagement

When addressing issues of reaching individuals who do not speak English fluently, it is crucial to understand that language cannot be separated from culture. There are more variables between the LEP population and the general population than just language. Therefore, just translating information into other languages, and expecting LEP populations to access, understand and trust that information the way the general population does will not be effective. Many in our immigrant and refugee communities come from cultures that value oral communication over written communication. So they are unlikely to seek information in a written form, and also unlikely to trust written sources of information unless they have a proven relationship with the author. These populations must be reached by other strategies such as community meetings and community outreach specialists who can communicate with individuals in their own language and with sensitivity to their cultural biases. Community radio and public access TV can also be powerful resources in reaching these communities.

Housing counseling, legal aid, and other community networks are important resources and consistently sought after to do the lion's share of consumer outreach when new federal programs are put into operation. This is especially true in low-income immigrant communities where many local residents are LEP and require culturally and linguistically sensitive services. While these organizations are very effective in helping LEP communities, they operate on extremely lean budgets and should not bear the burden and cost of outreach.

In addition to working with community-based organizations, ethnic media is another avenue to reach LEP consumers. For many LEP communities, local ethnic media is the main source of information and connection to needed resources.

We recommend that CFPB:

- Ensure marketing to non-English speakers are an inherent aspect of CFPB programs, the complaint portal, and other services. This includes contracting with community-based organizations to do outreach.
- Include information in CFPB notices on how to contact a local HUD-certified housing counseling agency or legal aid agency when appropriate. Furthermore, notices should include resources to assist LEP borrowers find language-capable counseling services in their communities.
- Partner with ethnic media, as well as with national and local community-based organizations to effectively publicize the release of in-language materials and ensure LEP communities are aware of available resources. Further, ethnic-specific media such as Chinese social media like Ozone, Wechat (Weixin), Weibo and Pengpeng should be used to complement other digital media tools like “AskCFPB”, Facebook, and Twitter.

4. Expand Written Translations to Additional Languages

We commend CFPB’s efforts to translate key written documents and resources in multiple different languages as well as providing taglines on its website for top-used languages. As CFPB finalizes materials for consumers, we recommend that the Bureau annually consider additional targeted languages when translating written documents. 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 Civil Rights Act of 1964 for when written materials should be translated to ensure meaningful access. These can serve as good models for CFPB in determining when to translate documents into additional languages beyond those identified in the plan. For example, 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 group 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 supplemental activities such as 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.

We also commend CFPB on its commitment to developing materials that are understandable by a wide audience, using simple language to explain complex financial concepts that are more accessible for consumers. We believe that this same principle should be applied to translated materials. Oftentimes, literal translations fail to accurately convey the intended meaning. Housing counseling agencies, financial counselors and coaches that work with multi-lingual populations are excellent resources to review translated materials to ensure accuracy and readability.

We recommend that CFPB:

- Annually consider additional languages to translate their materials beyond those currently identified in their plan. CFPB should consider additional languages based on census data that reflects that over 1,000 individuals speak that language, similar to thresholds set by HHS and HUD.

- Engage community organizations to review translated materials to ensure readability and accessibility of materials by community members

5. Apply Enforcement & Supervision Authorities to Monitor Language Access Among Financial Institutions

Throughout the housing crisis, housing counselors have repeatedly identified borrowers who received worse loan outcomes or loan modification outcomes because of barriers associated with language access. For example, many LEP borrowers negotiated loan terms in one language and received final loan documents in another language, resulting in miscommunication of terms and oftentimes outright “bait-and-switch” tactics. In working with servicers, notices and request for information have been primarily provided only in English, resulting in delayed responses for borrowers that may have required additional translation assistance. For example, in an attempt to provide additional language access, a common scenario is a Filipino borrower receiving notices in Spanish because Filipino surnames sound similar to Hispanic surnames. Borrowers seeking oral interpretation through bank-provided interpretation lines often received poor and inaccurate interpretation because most interpreters lacked the issue expertise in financial services. As a result, many LEP borrowers were less likely to receive favorable terms on their mortgages or mortgage modifications, more likely to pay higher fees or otherwise experience greater financial harm. These examples underscore the vast differences that many LEP borrowers experience in accessing credit compared to other consumers.

CFPB has the responsibility through its supervision of financial institutions and enforcement of key statutes such as the Equal Credit Opportunity Act (ECOA) to ensure that the financial institutions it supervises makes meaningful effort to ensure that equal access exists for consumers. ECOA prohibits credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age or whether you receive public assistance. Federal laws prohibiting national origin discrimination makes it illegal to discriminate based on a person’s birthplace, ancestry, culture, or *language*. As such, it is critical that CFPB review the extent in which the entities that it supervises provide meaningful access for households that speak a language other than English.

We recommend that CFPB:

- Include guidance in CFPB’s Supervision and Examination Manual related to the application of ECOA a review of whether fair lending violations based on national origin may have occurred based on failure to provide meaningful language access. This can include a review of financial institutions’ policies for meeting language needs of its consumers and an assessment of the number and types of loans that were provided to borrowers for whom English is not a first language.
- Conduct a fair lending review of financial institutions on the basis of national origin discrimination to determine if there has been disparate impact on LEP borrowers.
- Revisit CFPB’s mortgage servicing rules to ensure additional guidance to servicers for ensuring that LEP borrowers have meaningful access to servicing activities, including requiring servicers to track and report on the language needs of LEP borrowers, provide correspondences and provide documents in the borrower’s preferred language, and refer the borrower to a HUD-certified housing counseling agency that has the language capacity to properly interpret.

- Explore opportunities for CFPB to apply its authority to monitor “Unfair, Abusive Acts, and Deceptive Practices (UDAP)” as it relates to lending and mortgage servicing and the provision of other financial services and products to Limited English Proficient communities.

6. Lead Interagency Language Access Task Force

CFPB should see its Language Access Plan and Language Access Task Force as a model that other agencies and the financial industry can follow. As currently proposed, CFPB’s Language Access Plan is directed towards agency policies and procedures, and does not explicitly address how financial institutions should interact with LEP borrowers. The Language Access Plan provides an opportunity for CFPB to include guidance for servicers. In order to better address challenges and issues facing LEP consumers, CFPB should expand the scope and role of the Task Force beyond Bureau-only strategies. We recommend that CFPB’s Language Access Task Force expand its internal agency focus to an external role where they can coordinate efforts with other relevant agencies to address issues and priorities identified by the Task Force.

We recommend the following agenda and priorities for the Task Force to address barriers to language access, coordinate with internal and external stakeholders, ensure consistency within CFPB in its communications with LEP individuals, and inform CFPB’s work to engage LEP consumers.

- Determine and clarify CFPB’s ability to regulate financial institutions and provide guidance for recipients of federal funds as to their obligations under Title VI of the Civil Rights Act, Equal Credit Opportunity Act, Fair Housing Act, and Executive Order 13166. Further, the Task Force should determine how these same laws and policies apply to the disbursements of the Civil Penalty Funds.
- Determine opportunities to engage with the White House on Asian Americans and Pacific Islanders and the President’s Advisory Commission on Asian Americans and Pacific Islanders by participating in the Federal Interagency Working Group and submitting an annual Asian American and Pacific Islander federal agency plan, especially as it relates to language access and LEP issues.
- Establish and lead a federal interagency working group that includes representatives from the White House Initiative on Asian Americans and Pacific Islanders, the Office of Management and Budget, the Census Bureau, the Department of Health and Human Services, the Department of Labor and other relevant federal agencies with data disaggregation efforts and initiatives. The working group would be tasked with examining current federal data collection standards and best practices related to data disaggregation and language reported, recommending new data disaggregation and language reported standards for CFPB to implement and enforce, ensuring that data disaggregation and language reported policies and analysis activities are incorporated in CFPB’s Limited-English Proficiency agency plan, and engaging with AAPI community-based organizations to provide feedback.
- Include a section in CFPB’s Semi-Annual Report to Congress that reports and highlights the Bureau’s language access activities, priorities, and accomplishments. Relatedly, we recommend that CFPB provide an annual language access report and briefing to the Congressional Tri-Caucus, which consists of the Congressional Asian Pacific American Caucus, Congressional Hispanic Caucus, and Congressional Black Caucus.

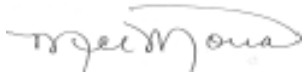
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National CAPACD and Advancing Justice/AAJC believe that a strong language access plan is necessary for CFPB to ensure meaningful access to materials and resources developed by CFPB and the financial services and products of the entities that CFPB oversees are serving the needs of AAPIs and other low-income immigrant communities. We look forward to working with CFPB on this very important matter.

Sincerely,



Lisa Hasegawa
Executive Director
National CAPACD



Mee Moua
President and Executive Director
Advancing Justice/AAJC