

UPDATES

CFPB Continues to Focus on Treatment of Consumers with Limited English Proficiency

July 11, 2022

Since the outset of U.S. Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra's leadership, fair lending issues have been at the forefront of his policy priorities. In November 2021, the CFPB identified that supporting consumers with limited English proficiency (LEP) was one of its fair lending initiatives. Since Director Chopra's confirmation, the CFPB has reiterated the importance of adequately serving LEP consumers and highlighted key ways to do so. Recent CFPB guidance in this area has introduced several new questions for financial service providers to consider when serving LEP consumers.

Shortly before the leadership transition to the Biden administration, the CFPB released its *Statement Regarding the Provision of Financial Products and Services with Limited English Proficiency*.¹ More recently, under Director Chopra's leadership, additional news releases, reports, and guidance documents have been published focusing on services to LEP consumers.² Two areas emerging of particular interest are collecting and analyzing consumer language preferences and providing pertinent non-English disclosures when appropriate.

The CFPB has broadly encouraged financial institutions to collect consumer language preference information since 2016.³ In May 2022, the CFPB stated that for mortgage servicers:

Better data collection about a borrower's language preference is an important step to providing improved service to LEP consumers and connecting them to the appropriate translation and interpretation services so that they are able to understand and to access all the financial products and services for which they qualify. Failure to serve LEP consumers could give rise to violations of the Equal Credit Opportunity Act, regardless of servicers' data collection practices.⁴

In the associated news release, the CFPB specified that it "consistently has recommended that servicers collect and maintain information on borrowers' preferred language."⁵

Most recently, the CFPB engaged with stakeholders to gather information about issues facing immigrant consumers.⁶ On June 27, 2022, it released a compilation of submitted concerns, and one of the key issues was providing adequate language access to LEP consumers.⁷ The CFPB is continuing to seek input from stakeholders about barriers facing immigrant consumers.

Moreover, the Federal Housing Finance Agency (FHFA) announced on May 3, 2022, that mortgage lenders that sell loans to Fannie Mae and Freddie Mac will be required to collect and report language preferences for loans with application dates on or after March 1, 2023.⁸ Collectively, the preceding actions may be signaling a shift within the Biden administration toward increased focus on financial service providers regarding their language preference collection processes.

Finally, the CFPB has released recent guidance encouraging financial institutions to provide pertinent translated disclosures to Spanish-speaking consumers.⁹ Specifically, on May 11, 2022, the CFPB published a blog post encouraging financial institutions to use Spanish translations alongside English-language disclosures when working with Spanish speakers.¹⁰ Alongside the post, the CFPB included Spanish translations of several of its model disclosures for lender use.¹¹

The recent increased emphasis on establishing consumer language collection processes and providing accurate translated disclosures presents many new questions for financial service providers to consider. Questions that remain unanswered include these:

- Should financial service providers collect language preferences for all products?
- At what stage(s) in the product lifecycle should financial service providers solicit consumer language preferences?
- What should financial service providers do if they are unable to determine a consumer's language preferences?
- Does collecting language preference imply a duty to offer support in that language?
- How should financial service providers determine what languages to offer services and translated disclosures in?

Financial service providers, specifically those serving LEP consumers, would be well served to consider the CFPB guidance, these questions, and how they can address this area that is sure to be part of regulatory examinations and investigations.

To that end, Sidley has experience in advising clients on all facets of consumer financial products and services — including in the fair lending space — and can help you identify solutions to these and other issues. Please contact the Sidley lawyers with whom you work for more information.

Thank you to Sidley Summer Associate, Jordyn R. Singer for her significant contribution to this Update.

¹ *Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency*, CONSUMER FIN. PROT. BUREAU (Jan. 13, 2021), https://files.consumerfinance.gov/f/documents/cfpb_lep-statement_2021-01.pdf.

² See *Mortgage Servicing Covid-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021*, CONSUMER FIN. PROT. BUREAU, 26 (May 2022), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf; Press Release, CONSUMER FIN. PROT. BUREAU, CFPB Releases Report on Mortgage Servicing Metrics (May 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-on-mortgage->

[servicing-metrics/](https://www.consumerfinance.gov/about-us/blog/support-spanish-speaking-customers-with-spanish-language-disclosures/); Blog Post, CONSUMER FIN. PROT. BUREAU, Support Spanish-speaking customers with Spanish-language disclosures (May 11, 2022), <https://www.consumerfinance.gov/about-us/blog/support-spanish-speaking-customers-with-spanish-language-disclosures/>; Blog Post, CONSUMER FIN. PROT. BUREAU, Identifying and addressing the financial needs of immigrants (June 27, 2022), <https://www.consumerfinance.gov/about-us/blog/identifying-and-addressing-the-financial-needs-of-immigrants/>.

³ Supervisory Highlights Issue 13, Fall 2016, CONSUMER FIN. PROT. BUREAU 2021 (Oct. 31, 2016), https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf; Blog Post, CONSUMER FIN. PROT. BUREAU, New rule ensures mortgage servicers provide options to potentially vulnerable borrowers exiting forbearance (Sept. 30, 2021), <https://www.consumerfinance.gov/about-us/blog/new-rule-ensures-mortgage-servicers-provide-options-potentially-vulnerable-borrowers-exiting-forbearance/>.

⁴ *Mortgage Servicing Covid-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021*, CONSUMER FIN. PROT. BUREAU, 26 (May 2022), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.

⁵ Press Release, CONSUMER FIN. PROT. BUREAU, CFPB Releases Report on Mortgage Servicing Metrics, (May 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-report-on-mortgage-servicing-metrics/>.

⁶ Blog Post, CONSUMER FIN. PROT. BUREAU, Identifying and addressing the financial needs of immigrants (June 27, 2022), <https://www.consumerfinance.gov/about-us/blog/identifying-and-addressing-the-financial-needs-of-immigrants/>.

⁷ *Id.*

⁸ Press Release, FED, HOUS. FIN. AGENCY, FHFA Announces Mandatory Use of the Supplemental Consumer Information Form, (May 3, 2022), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Mandatory-Use-of-the-Supplemental-Consumer-Information-Form.aspx>.

⁹ Blog Post, CONSUMER FIN. PROT. BUREAU, Support Spanish-speaking customers with Spanish-language disclosures (May 11, 2022), <https://www.consumerfinance.gov/about-us/blog/support-spanish-speaking-customers-with-spanish-language-disclosures/>.

¹⁰ *Id.*

¹¹ *Id.*

CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

Thomas G. Ward, Partner

+1 202 736 8710, tgward@sidley.com

Attorney Advertising—Sidley Austin LLP is a global law firm. Our addresses and contact information can be found at www.sidley.com/en/locations/offices.

Sidley provides this information as a service to clients and other friends for educational purposes only. It should not be construed or relied on as legal advice or to create a lawyer-client relationship. Readers should not act upon this information without seeking advice from professional advisers. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships as explained at www.sidley.com/disclaimer.

© Sidley Austin LLP