The CFPB's Servicing Rules Are Generally Well Conceived but Need Improvements

Laurie Goodman, Todd Hill, and Jung Hyun Choi

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On July 10, the Consumer Financial Protection Bureau (CFPB) proposed a servicing rule that would make it easier for borrowers to get help when they are struggling to pay their mortgage.[1] Most of the proposed rule's provisions benefit both borrowers and servicers, but a few of the provisions would be difficult or costly or would invite risk for servicers to comply with. The current regulations went into effect in 2014 and were developed in response to the Great Recession. Between 2006 and 2014, 7.5 million homes were lost to foreclosure. In these initial regulations, the process and timeline for loss mitigation were very regimented and relied on borrowers submitting all their documentation before the servicer began its review of loss mitigation options or paused foreclosure proceedings. But during the COVID-19 pandemic, in order to allow servicers to quickly help the large number of borrowers who needed help, the CFPB temporarily adjusted its rules to allow borrowers to receive assistance without a comprehensive review. The CFPB received positive responses and feedback about its pandemic-related loss mitigation procedures, which aligned with the success of the programs in reducing foreclosures and liquidations. Given the positive reaction to and success of these temporary actions, the CFPB is looking to make some of these changes permanent.

Statistics indicate the success of the pandemic policies. Of the 8.5 million borrowers who elected forbearance, only 2 percent, as of March 2024, have been liquidated or are in active foreclosure, and another 6 percent are delinquent and not in loss mitigation (ICE Mortgage Technology 2024). Given the success of the pandemic-era loss mitigation strategies, many of those policies have since been made permanent. We previously found that the COVID loss mitigation waterfall—which places forbearance at the top and then seeks a permanent solution as the borrower exits forbearance—has cut the serious-delinquency-to-foreclosure rate by 46 percent (Goodman and Zhu 2024a). The government-sponsored enterprises (GSEs) have largely made the COVID loss mitigation waterfall permanent, and the Federal Housing Administration is in the process of doing so (Goodman and Zhu 2024b). The US Department of

Veterans Affairs provides limited help, as it has a more restricted toolkit than either the GSEs or the Federal Housing Administration. The CFPB's notice of proposed rulemaking (NPR) essentially provides consumer protections on the now more streamlined loss mitigation process, which is a positive outcome informed by the pandemic crisis response.

The CFPB's NPR contains four components:

1. Ensure borrowers receive the information they need for loss mitigation in languages they understand.
2. Stop dual tracking and limit fees.
3. Reduce delays by streamlining paperwork requirements.
4. Improve borrower-servicer communications.

We confine our comments to items 1 and 2 and add one additional item the CFPB has highlighted. We are conceptually on board with items 3 and 4 but believe that others who actually service mortgages are in a better position to comment. The views expressed in this letter are those of the authors and do not necessarily reflect the views of the Urban Institute, its trustees, or its funders.

Language Access

Before looking at the CFPB's language access provision, it is worth looking at the number of people who have limited English proficiency. Choi and coauthors (2023) show that there are 4.8 million limited English proficient (LEP) households (3.8 percent of the US population) and 12.9 million LEP people. Our LEP household numbers are smaller than those the CFPB uses in its proposal, which estimated that there are 5.5 million LEP households based on the 2022 American Community Survey (ACS) data. In the report, we used 2021 ACS data, which could result in minor differences. The major difference, however, comes from how we define the LEP population. We include those who speak English well as those having English proficiency, while the CFPB's definition of English proficiency requires the person to speak English *very* well. These differences substantially lower our estimates for the size of the LEP population and the number of LEP households compared with the CFPB's numbers. Additionally, we look only at household heads' English proficiency, while the CFPB's estimate considers all household members older than 14. Looking at only the household head's English proficiency would increase our LEP household numbers compared with the CFPB's estimate. But this difference is not sufficient to offset the decreased number of LEP households in our estimates because of the differences in the LEP definition. There could be further discussions about the level of English proficiency needed for mortgage servicing communications, but the differences in the estimate would not significantly change our comments.

In table 1, we show the results of our Urban Institute analysis of this topic (Choi et al. 2023), but in a slightly different form than in the published report, to magnify key data to provide context on this topic. We rely on ACS data.

A few items to note:

- The total US population is about 310 million, and the LEP population is 12.4 million. Thus, just under 4 percent of the population is LEP.
- It is important to differentiate language spoken at home from limited English proficiency. Households may report speaking a language other than English at home, but only households that speak a language other than English at home and report lacking the ability to speak, read, and write in English are considered LEP. For example, 41 million people speak Spanish at home, but only 9 million have limited English proficiency.
- Spanish is by far the most spoken language for those who have limited English proficiency. It is spoken by about 70 percent of those with limited English proficiency. Spanish is followed by Chinese (6.9 percent) (the ACS does not differentiate between Mandarin and Cantonese), Vietnamese (3.6 percent), and Hindi and related languages (2.1 percent). All other languages are spoken by less than 2 percent of the LEP population.

TABLE 1

20 Languages Most Commonly Spoken at Home

All Population			LEP Population		
Language	**Estimate**	**Share of all population**	**Language**	**Estimate**	**Share of LEP population**
English	245,739,202	78.4%	Spanish	9,045,418	70.1%
Spanish	41,255,295	13.2%	Chinese	892,576	6.9%
Chinese	3,412,439	1.1%	Vietnamese	470,553	3.6%
Hindi and related	2,869,113	0.9%	Hindi and related	273,496	2.1%
French	2,052,363	0.7%	Korean	247,951	1.9%
Filipino, Tagalog	1,890,386	0.6%	French	205,177	1.6%
Vietnamese	1,504,320	0.5%	Russian	184,882	1.4%
Arabic	1,378,154	0.4%	Arabic	165,958	1.3%
Dravidian	1,218,911	0.4%	Portuguese	161,825	1.3%
Korean	1,073,716	0.3%	Filipino, Tagalog	136,618	1.1%
German	1,050,615	0.3%	Dravidian	77,767	0.6%
Russian	1,047,448	0.3%	Polish	67,884	0.5%
Portuguese	938,807	0.3%	Burmese, Lisu, Lolo	67,243	0.5%
Sub-Saharan African	935,912	0.3%	Japanese	66,088	0.5%
Polish	522,408	0.2%	Thai, Siamese, Lao	61,609	0.5%
Italian	514,468	0.2%	Sub-Saharan African	61,552	0.5%
Persian, Iranian, Farsi	467,626	0.1%	Persian, Iranian, Farsi	59,486	0.5%
Japanese	455,469	0.1%	Other East/Southeast Asian	53,842	0.4%
Thai, Siamese, Lao	291,825	0.1%	Ukrainian, Ruthenian, Little Russian	46,329	0.4%
Tibetan	278,451	0.1%	Armenian	46,047	0.4%

Source: 2021 American Community Survey.

According to 2022 ACS data, about 49.3 million households have a mortgage. Among those households, 1.9 percent (about 941,000) had heads of household who did not speak English proficiently. Table 2 shows the number of LEP households with mortgages by the language spoken at home. Note that LEP people are less apt to be homeowners than the rest of the population; they are more heavily low income and less well educated (Choi et al. 2023).

TABLE 2

Number of Limited English Proficient Households with a Mortgage

Language spoken at home	Number	Share
Spanish	637,891	67.76%
Chinese	80,960	8.60%
Vietnamese	42,833	4.55%
Korean	26,941	2.86%
Hindi	19,721	2.09%
French	15,626	1.66%
Tagalog	9,914	1.05%
Arabic	9,197	0.98%
Russian	8,576	0.91%
Portuguese	7,736	0.82%
Other	81,979	8.71%
Total	**941,374**	**100.00%**

Source: 2022 American Community Survey.

Not all LEP households will seek loss mitigation help. We conservatively assume that 10 percent seek loss mitigation help at some point during the life of the mortgage.[2] This gives us about 64,000 Spanish-speaking LEP households, 8,100 Chinese-speaking households, 4,200 Vietnamese-speaking households, and so on, who might need language help for loss mitigation. If a servicer has a 1 percent market share (and only 17 servicers have more than a 1 percent market share), each servicer has a few borrowers who each need documents in languages other than Spanish.[3] That is, the servicer would have fewer than 50 borrowers who might need the translation services in any third language.

With this framing, let us look at the language access section of the CFPB's NPR. There are four components, the first of which applies to all borrowers.

1. The NPR proposes that servicers accurately translate each of the specified written communications into Spanish and provide those Spanish versions along with the English versions to all borrowers who receive early intervention or loss mitigation notices.

The next components apply to languages other than Spanish, while the final component applies to all mortgages.

2. The CFPB proposes that servicers provide accurate translations of the specified written communications to borrowers upon request, in certain servicer-selected languages. The proposed rule would also require servicers, upon borrower request, to make available and establish a connection with interpretation services before or within a reasonable period of

establishing oral communication with the borrower. The proposed rule would allow the servicer to select their languages for compliance, so long as, collectively, the languages address the needs of at least a significant majority of their non-Spanish-speaking and non-English-speaking borrowers.

3. The CFPB would require servicers to include in the English version of the specified written communication five brief in-language statements identifying the availability of translated versions of those written communications and the availability of interpretation services for oral communications. The brief statement would explain how the borrower can request the translations or interpretation services. The five languages the servicer would select would be the most frequently used languages of those spoken by a significant majority of their borrowers with limited English proficiency, other than English or Spanish.
4. If a borrower received marketing for their mortgage loans before origination in a language other than English, and the servicer knows or should have known about that marketing, the proposed rule would require that the servicer make available translations or interpretations for that language, even if it is not a language the servicers selected as one of their five languages.

Our Thoughts

We fully support giving LEP borrowers the translation help they need and in commonly used languages both for oral and written communications. But we believe the CFPB has required more costly and burdensome measures than is necessary to achieve that result.

Returning to the requirements for Spanish translation, less than 4 percent of total households are LEP (5.2 million LEP households among 131 million US households), and although Spanish speakers are the largest single group, this means less than 3 percent of total borrowers are Spanish-speaking LEP households. We question whether it makes sense to send all the early intervention and loss mitigation documents to all borrowers in Spanish. We are in favor of sending the initial loss mitigation notice (the early intervention notice), which includes information on how to contact their servicer, to all borrowers in English and Spanish. We recommend that the borrower then have the option to receive all further communications in Spanish. Borrower opt-in should be (1) prominently displayed in the translated document with alternative font for emphasis and (2) sent as a separate document in the same mailing. It should be clear how a borrower should opt in, whether the borrower wants to opt in for both written and oral communications, and who should receive subsequent notices. If the borrower elects loss mitigation without going delinquent and does not receive one of the early intervention notices, they should receive the end-of-forbearance notice in English and Spanish with the opt-in as outlined above. Our rationale for requiring opt-in rather than requiring all borrowers to receive all notices in Spanish is that with the CFPB now allowing for sequential consideration of loss mitigation options, the notices are going to get increasingly customized, and the servicer must be sure they are sending the right translation. More importantly, the amount of material a borrower will receive from the servicer will increase, making it more likely the borrower will set the entire package aside.

We believe the CFPB needs to provide model or sample notices for servicers in Spanish and in other languages that are accessible through a database system the bureau manages. Servicers do not have to use the CFPB's model forms, but they would have a safe harbor on any liability for mistranslation if they did. These model notices need to cover both the initial loss mitigation document and the subsequent documents in Spanish (and in other languages) in case the borrower opts in. Although it would be impossible to cover all eventualities, these documents should anticipate the needs of most notices.

As for the other languages, the number of affected borrowers is much smaller than in English. Chinese is the second-most-used language, with an LEP population that is less than one-tenth of the Spanish-speaking LEP population (and Chinese consists of at least two languages, making the numbers even smaller). We believe it makes little economic or operational sense to have each servicer do its own translations, thus increasing the importance of model translations from the bureau to ensure some level of consistency and uniformity by servicers.

The CFPB's notion to distribute a notice informing borrowers of the availability of translations, both of the written documents and of interpretation services for oral translation, in a given number of languages makes sense. Again, the borrower would opt in.

The idea of model documents in languages other than English is hardly original. Representative Sylvia Garcia and Senator Laphonza Butler introduced the Improving Language Access in Mortgage Servicing Act[4] in May 2024. This bill would require the CFPB to immediately translate mortgage documents from English into the 8 most common languages spoken and add another 4 within three years, for a total of 12 languages. The act would also require relevant federal agencies to establish and maintain a language resources website for mortgage originators and servicers and to improve existing website information for consumers about language services by housing counseling agencies. (The bill also required that translation services also be available for borrowers who speak one of the 8 most common languages and the 12 most common after three years).

On the mortgage origination side of the business, the Federal Housing Finance Agency and the GSEs have established a Mortgage Translations clearinghouse, a centralized collection of language resources available on the FHFA website to help lenders, servicers, and housing counselors better serve LEP borrowers. Initially, the clearinghouse website provided translations only in Spanish, but Chinese, Vietnamese, Korean, and Tagalog translations were added in 2019 and 2020. The clearinghouse also offers glossaries in each of the translated languages that establish common terminology and serve as standardized translations for all the documents on the clearinghouse. In addition, the Uniform Residential Loan Application was translated into various languages and is available on the clearinghouse (Choi et al. 2023).

A few additional thoughts on this topic. Five languages may be too many for most servicers, particularly smaller ones. In fact, some servicers with a narrow geographic footprint may need only one language to cover their LEP population, as LEP populations tend to be concentrated. And some servicers who have acquired servicing rights may not know the languages borrowers speak, as that information may not have been captured at the front end of mortgage origination. We would suggest that the number of languages be dictated by the size of a servicer's book of business. The appropriate number of languages for a servicer's size would be determined after the CFPB collects appropriate data to inform this decision. That is, the CFPB should survey the servicers about how many borrowers in their portfolio are LEP.[5] Moreover, most servicers already offer their borrowers oral translation services if requested, and the CFPB should inquire about how many are using the translation services, and the languages selected, relative to the size of the servicing portfolio. The CFPB should also consider different requirements for written and oral translation services, with the threshold for the latter much lower.

Who would bear the costs of these translation services? The CFPB is implicitly suggesting the servicers do so. We do not see that as a foregone conclusion. The government insurers, Ginnie Mae, the GSEs, and the servicers should quantify the translation costs and then discuss who should bear these costs or how they should otherwise be split.

The final item requires the servicer to make available translation services in languages other than those the servicer has selected if they were aware or should have been aware that the borrower had received marketing material in that language. First, it is not clear what "should have been aware" means. The bureau should more clearly define this so servicers have some guidance. Second, the servicer would be aware of the marketing only if the servicer was also the originator and if the originating institution retained the loan. That is, the servicers would be aware only if the loan was originated through the retail channel and the servicing is retained in a portfolio. The servicer is likely to be unaware of languages used in marketing if the loan was originated through a broker or through the correspondent channel, which is close to half of all current mortgage originations.[6] The servicer is also not likely to know the languages used in marketing if the servicing rights were sold. For servicers to have a definitive understanding of languages used in marketing, this information would need to be uniformly captured on the front end at origination across the board and the data made available to whomever may service the loan. The language that may be used to solicit a loan is the not the same as the borrower's preferred language; the latter is collected at the application stage by Fannie Mae, Freddie Mac, and the FHA.

Moreover, an institution could circumvent this rule by selling delinquent loans where the borrower is LEP and when the borrower speaks a language the servicer does not have translations for. This is the worst-case outcome for the borrower, as they would not receive the translation services they need in a timely manner, they would be forced to get accustomed to a new servicer, and there is always a potential risk of data fragmentation and other delays that may occur as a result of a servicing transfer that may negatively affect the borrower. We would recommend dropping this item entirely.

Stop Dual Tracking and Limit Fees

The NPR would eliminate dual tracking by prohibiting foreclosure initiation or advancement if the borrower requests loss mitigation assistance. This is a good idea in general, but the NPR as proposed opens the potential for consumer abuse. Before the servicer can move the borrower to foreclosure, they must not have communicated with the borrower for 90 days. What happens if a borrower waits until day 89 after receiving the first notice, contacts the servicer, and then waits until day 89 on notices two and three and four? This could allow for long delays, which makes it less likely the borrower would be successful in loss mitigation and more likely to stress servicer liquidity—as the CFPB would not allow fees to be charged to compensate for maintenance of the loan—and increase loss severity. Additionally, there needs to be more clarity as to what qualifies as a loss mitigation request by a borrower. Should servicers be required to have policies in place? Does the CFPB intend to set these policies?

We recommend the CFPB consider either allowing the servicer to move the borrower toward foreclosure after a shorter period (e.g., 45 days) or limiting the total evaluation time to a fixed number of total days (e.g., 120 days).

As noted, the CFPB also prohibits the servicer from charging any fees to the borrower as a result of borrower delinquency. The NPR states that the servicer can charge "no fees beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract." The intent of this prohibition is to induce the servicer to conclude loss mitigation as quickly as possible and to protect the borrower when they are vulnerable, but the scope of fees that is covered is all-encompassing: not only late fees but property preservation fees and attorneys' fees. We recommend that the CFPB consider making a distinction between fees the servicer must pay out of pocket (property preservation fees) and those where there is no cost to the servicer (late fees) and allow for only the former. This does not make the servicer whole, as the costs of servicing delinquent loans are far higher than the costs of servicing performing loans. The Mortgage Bankers Association's Servicing Operations Study and Forum indicates that the cost of servicing a performing loan in 2023 was $176, and the cost of servicing a nonperforming loan was $1,857. If the CFPB's provisions stand as written, the likely unintended consequence is an increase in servicing fees on all borrowers to compensate for what the bureau is currently proposing.

Other Servicing Issues

With forbearance and then deferral becoming an increasingly used loss mitigation tool, the CFPB has requested comment on whether there are actions it could take, including amending existing rules, to help ensure borrowers are regularly reminded of deferred amounts that may be due at the end of their loan waterfall. We believe that providing this disclosure on at least one statement per year would be helpful and informative to the borrower to remind them of the amount that will be due when the borrower sells, refinances, or otherwise terminates their mortgage, so that the borrower is not taken by surprise.

Conclusion

We appreciate the opportunity to comment on the CFPB's servicing NPR. Although the NPR is well intentioned and generally provides valuable consumer protections, there are several proposed rules where the NPR creates substantial costs or unreasonable expectations for servicers, while potentially making it less likely that borrowers who may be facing an economic hardship and need the loss mitigation efforts to take them up. We have highlighted those in this comment letter and offered some recommendations for the bureau's consideration.

Notes

[1] Streamlining Mortgage Servicing for Borrowers Experiencing Payment Difficulties: Regulation X, 89 Fed. Reg. 60204 (Jul. 24, 2024).

[2] The Mortgage Bankers Association delinquency index indicates a peak serious delinquency rate plus foreclosure rate of 10 percent in the aftermath of the Great Recession. According to Liu (2023), LEP borrowers, on average, have about 40 percent higher delinquency rates compared with non-LEP borrowers. The 10 percent serious delinquency rate assumption already is a high number in the context of historical mortgage performance, but we could further assume that 15 percent of LEP households seek loss mitigation. Under this assumption, less than 96,000 Spanish-speaking LEP households, about 12,000 Chinese-speaking households, and 6,500 Vietnamese-speaking households will need language services.

[3] See the August 2, 2024, issue of *Inside Mortgage Finance*.

[4] Office of Representative Sylvia Garcia, "Congresswoman Sylvia Garcia and Senator Laphonza Butler Introduce the Bicameral Improving Language Access in Mortgage Servicing Act," press release, May 7, 2024, https://sylviagarcia.house.gov/media/press-releases/congresswoman-sylvia-garcia-and-senator-laphonza-butler-introduce-the-bicameral-improving-language-access-in-mortgage-servicing-act.

[5] We considered having the CFPB size by adding additional information to either the National Survey of Mortgage Originations or the American Survey of Mortgage Borrowers, but this does not size the individual servicers' obligations.

[6] See the June 7, 2024, issue of *Inside Mortgage Finance*.

References

Choi, Jung Hyun, Amalie Zinn, Laurie Goodman, and Noerena Limón. 2023. *Language Proficiency and Homeownership Access*. Washington, DC: Urban Institute.

Goodman, Laurie, and Jun Zhu. 2024a. *Improvements in the Loss Mitigation Toolkit Can Allow for Enhanced Access to Credit*. Washington, DC: Urban Institute.

Goodman, Laurie, and Jun Zhu. 2024b. *Preventing Foreclosures: What Has Been Done? What Is to Come?* Washington, DC: Urban Institute.

ICE Mortgage Technology. 2024. *Mortgage Monitor Report: March 2024*. Pleasanton, CA: ICE Mortgage Technology.

Liu, Chao. 2023. *Language Frictions in Consumer Credit*. New York: SSRN.

About the Authors

Laurie Goodman is an Institute fellow and the founder of the Housing Finance Policy Center at the Urban Institute. The center provides policymakers data-driven analyses of housing finance policy issues they can depend on for relevance, accuracy, and independence. Before joining Urban, Goodman spent 30 years as an analyst and research department manager at several Wall Street firms. From 2008 to 2013, she was a senior managing director at Amherst Securities Group LP, a boutique broker-dealer specializing in securitized products, where her strategy effort became known for its analysis of housing policy issues. From 1993 to 2008, Goodman was head of global fixed income research and manager of

US securitized products research at UBS and predecessor firms, which were ranked first by *Institutional Investor* for 11 straight years. Before that, she held research and portfolio management positions at several Wall Street firms. She began her career as a senior economist at the Federal Reserve Bank of New York. Goodman was inducted into the Fixed Income Analysts Hall of Fame in 2009. Goodman serves on the board of directors of MFA Financial and Arch Capital Group Ltd. and is a consultant to the Amherst Group. Goodman has published more than 200 journal articles and has coauthored and coedited five books. She has a BA in mathematics from the University of Pennsylvania and an AM and PhD in economics from Stanford University.

Todd Hill is a senior policy program manager in the Housing Finance Policy Center. He rejoined Urban after serving three years at Noodle, a higher education technology firm, as interim general manager and director of operations. Before that, Hill served three years as policy program manager with the Housing Finance Policy Center. Additionally, Hill spent six years as senior director of government affairs with the Housing Policy Council, where he advocated on key mortgage and housing finance marketplace interests in legislative, regulatory, and judicial forums in our nation's capital. For his distinguished work in government in Washington, Hill is an honorary admiral of the Texas Navy and an honorary colonel from the Commonwealth of Kentucky. In 2010, Hill graduated from the University of Texas at Arlington with a BA in political science and was competitively selected to serve as a Bill Archer Fellow, where he lived, learned, and performed an internship for a full academic semester in Washington. In 2020, he earned an MA in public affairs in completing the Executive Master in Public Leadership program from the LBJ School of Public Affairs at the University of Texas at Austin.

Jung Hyun Choi is a principal research associate in the Housing Finance Policy Center. She studies urban inequality, focusing on housing, urban economics, real estate finance, and disadvantaged populations in the housing market. Before joining Urban, Choi was a postdoctoral scholar at the University of Southern California Price Center for Social Innovation, where her research examined innovative housing and social policies to enhance quality of life for low-income households. Choi holds a PhD in public policy and management from the Price School of Public Policy at the University of Southern California.

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500 L'Enfant Plaza SW
Washington, DC 20024
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