

Consumer Finance Monitor (Season 4, Episode 10): A Close Look at the CFPB's Statement on Providing Financial Products and Services to Limited English Proficiency Consumers

Speakers: Chris Willis, Frank Vespa-Papaleo, Ena Koukourinis

Chris Willis:

Welcome to the Consumer Finance Monitor podcast where we explore important new developments in the world of consumer financial services and what they mean for your business, your customers, and the industry.

Chris Willis:

I'm your host, Chris Willis, the co-practice group leader of Ballard Spahr's Consumer Financial Services Group, and I'll be moderating today's program.

Chris Willis:

For those of you who want even more information, don't forget about our blog, consumerfinancemonitor.com. We've hosted the blog since 2011, so there's a lot of relevant industry content there. We also regularly host webinars on subjects of interest to those of us in the industry. So to subscribe to our blog or to get on the list for our webinars, please visit us at ballardspahr.com. And if you like our podcast, let us know. Leave us a review on Apple Podcasts, Google, or wherever you get your podcasts.

Chris Willis:

Now in January of 2021, the Consumer Financial Protection Bureau published guidance to industry called Statement Regarding the Provision of Financial Products and Services to consumers with limited English proficiency. Today on our podcast, we have two Bureau officials who were involved in the creation of that policy, Frank Vespa-Papaleo and Ena Koukourinis. Welcome to both of you.

Chris Willis:

Would you mind introducing yourselves and then tell us a little bit more about this recent Bureau statement? I mean, what's the Bureau's goal with respect to LEP consumers?

Frank Vespa-Papaleo:

Well, Chris, first of all, thank you for inviting us to join you on this podcast. I am Frank Vespa-Papaleo. I serve as the Deputy Director of the Bureau's Office of Fair Lending and Equal Opportunity.

Ena Koukourinis:

And I am Ena Koukourinis, a senior counsel in the Office of Fair Lending. At the outset, we do want to make the following disclaimer: This presentation is being made by Consumer Financial Protection Bureau representatives on behalf of the Bureau. It does not constitute legal interpretation, guidance, or advice of the CFPB. Any opinions or views stated by either one of us are our own and may not represent the Bureau's views.

Frank Vespa-Papaleo:

So Chris, as you said in your introduction, the Bureau did recently issued guidance which we called a statement meant to address issues related to serving consumers with limited English proficiency or those that we call LEP, and it's available on our website at www.consumerfinance.gov.

Frank Vespa-Papaleo:

One of the Bureau's goals is to promote access to financial products and services for all consumers which includes LEP consumers. And we know that despite having considerable credit needs and representing a large segment of the US population, LEP consumers often face significant barriers to participating in the financial marketplace, including understanding and completing key financial documents, managing bank accounts, and resolving problems with financial products and institutions. And we think financial institutions play a very role in building a more inclusive financial system and presenting opportunities for LEP consumers to build their financial capabilities.

Frank Vespa-Papaleo:

So to encourage financial institutions to better serve our LEP consumers in non-English languages and recognizing that there are compliance risks and uncertainty that many financial institutions raised as challenges to doing so, we issued this statement, and the issuance of the statement also aligns with our acting director's goals to focus the Bureau's work on racial and economic equity issues as well as those affecting vulnerable populations.

Chris Willis:

Thanks, Frank. So Ena, turning to you, can you provide some background as to why the Bureau decided to issue the LEP statement that Frank just mentioned?

Ena Koukourinis:

Sure. So over the past several years, essentially, to gain insights to inform policy decisions, the Bureau engaged with stakeholders on numerous fair lending compliance topics and access to credit issues, including those related to LEP consumers. And those engagements consisted of mainly information gathering activities, including meetings with consumer advocacy organizations, financial institutions of various sizes, trade associations, and other federal agencies. And the goal of those engagements was to understand and obtain feedback on the challenges that LEP consumers faced in accessing financial products and services, as well as the challenges faced by industry in serving LEP consumers.

Ena Koukourinis:

So in developing and issuing the LEP statement, the Bureau considered and really attempted to address concerns that were shared during those engagements and from a variety of sources, including input received through comments to rule-makings, various requests for information or RFIs related to serving LEP consumers, particularly the most recent which was the ECOA RFI that was issued in the summer of 2020. Many of the responsive comments to that RFI specifically urged the Bureau to provide additional guidance to institutions seeking to serve LEP consumers while maintaining compliance with applicable laws.

Ena Koukourinis:

And that feedback was one of the main drivers behind the Bureau's issuance of the LEP statement. And for those that might be interested in learning more about the ECOA RFI submissions, the RFI itself and the comments are available on our website at consumerfinance.gov.

Chris Willis:

So Frank, Ena mentioned industry comments or concerns related to LEP, and I know I've heard them, and you've heard them too. What were some of those specific industry comments or concerns that the Bureau was aiming to address in the recently published guidance?

Frank Vespa-Papaleo:

Well, there were several concerns that we sought to address in the guidance. I'll mention three of them that are very specific to industry.

Frank Vespa-Papaleo:

First, industry and trade association stakeholders expressed concerns about potential fair lending risks under ECOA or the Equal Credit Opportunity Act related to making and implementing the decisions about which language to select. The language selection was a concern, and unfair, deceptive, and abusive practices make great risks in that area in determining how and in which languages to offer certain products and certain services, especially where not all products and services are provided in languages other than in English.

Frank Vespa-Papaleo:

And in response, the statement, the LEP statement that we produced provides some principles and guidelines to assist financial institutions in their decision-making related to serving LEP consumers. For example, it's specifically in the guidelines that develop compliance solutions is one recommendation on language, the product and service selection decisions that an institution should evaluate.

Frank Vespa-Papaleo:

The second area of concern in response to requests received from industry groups as well as consumer groups in the ECO RFI that Ena mentioned earlier, the statement confirms that institutions collecting the language preference of an applicant or a borrower in a credit transaction does not violate ECOA or Regulation B's prohibition on the request for information about national origin.

Frank Vespa-Papaleo:

And finally, industry commenters advocated for a level of flexibility in serving LEP consumers. In encouraging institutions to better serve LEP consumers, the statement's guiding principles for serving LEP consumers highlights that financial institutions may consider things such as implementing pilot programs or other phased approaches for rolling out LEP consumer-focused products and services or developing a variety of compliance approaches or providing LEP consumers with clear and timely disclosures in non-English languages that describe the extent and limits of any language services provided throughout the product life cycle. And finally, extending credit pursuant to a legally compliant special purpose credit program which is meant to increase access to credit for certain underserved LEP consumers.

Frank Vespa-Papaleo:

We hope that these guiding principles, combined with compliance solutions outlined in the statement, encourage institutions to better serve LEP consumers while assisting them in ensuring their actions are compliant with the law.

Chris Willis:

Thanks, Frank. And so Ena, I know the Bureau has a lot of resources that are available to help support non-English documents, and then there are some more that the Bureau is planning on rolling out. So I know there is, for example, a Spanish language glossary and in the recent debt collection rule-making, the Bureau stated that it was planning to make a Spanish language validation notice available before the effective date of the debt collection rule which is in November of 2021.

Chris Willis:

Can you just tell our audience some more about the resources like this that the Bureau both has available now and the ones that are in the works?

Ena Koukourinis:

Sure, Chris. As you mentioned, currently, the Bureau has glossaries of financial terms available in Spanish and Chinese. The Bureau also provides certain TILA-RESPA integrated disclosure model forms in Spanish, including sample loan estimates and closing disclosures for a variety of products. We also publish a consumer education brochure on credit discrimination in multiple languages. And the LEP statement does note that the Bureau is committed to continuing to provide more translated documents in the future. In fact, our acting director has made it a priority for the Bureau to collaborate with coalitions of stakeholders, including consumer advocates, civil rights groups, and community-based organizations to get these messages to homeowners in languages and terminology that they understand.

Ena Koukourinis:

So we encourage folks to visit our website for these resources as well as the upcoming resources as they're made available.

Chris Willis:

Thanks. And so, Ena, staying with you, are there any bottom line messages that you'd like the industry to hear with respect to non-English language support and services that may be provided by lenders and other financial services companies?

Ena Koukourinis:

Definitely. We hope institutions will use the guidance provided in the LEP statement to increase access to products and services in non-English languages in a manner that's beneficial to consumers while taking steps to ensure compliance with ECOA, Reg B, and the Dodd-Frank Act prohibitions against UDAAPs. We believe that financial institutions play an important role in building a more inclusive financial system and presenting opportunities for LEP consumers to build their financial capabilities.

Chris Willis:

And Frank, how about you? Any parting comments from you?

Frank Vespa-Papaleo:

Well, first of all, I do want to share that we sued recently a firm that allegedly preyed on immigrants, predominantly Hispanic immigrants who speak little or no English who are being held in federal detention centers. This just happened recently and that this action should serve as notice that the entire market should ensure that financial scams targeting communities of color will not be tolerated.

Frank Vespa-Papaleo:

And to that end and regarding the LEP statement, we do want everyone to understand that the effective and responsible integration of LEP consumers into the financial marketplace has the potential to create very positive benefits for consumers and for the financial service industry alike. And we all know that the industry can do a better job of serving the many millions of LEP consumers in the country and are confident that this guidance is one step in expanding access to credit, financial services for consumers.

Frank Vespa-Papaleo:

And thank you for your time and the opportunity to share this information today, Chris.

Chris Willis:

Well, it's our pleasure to have you guys on, and we'll certainly be watching that Libre case, the enforcement matter that you just mentioned, very carefully to see how it comes out as it winds its way through litigation or a consent order or whatever happens.

Chris Willis:

But for now, Ena and Frank, I'd really like to thank both of you for being on our podcast and sharing your insights with our listeners. And to our listeners, thank you for joining us, and be sure to visit us at our website ballardspahr.com where you can subscribe to our show in either Apple Podcasts, Google, Spotify, or your favorite podcast platform.

Chris Willis:

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Chris Willis:

Thank you all for listening.