
Navigating Complex Regulatory Issues to Serve Non-English Speaking Customers

This white paper offers a high-level summary of the current limited English proficient (LEP) market and opportunities therein, federal consumer financial laws and regulation as applicable to LEP services, and industry standards and best practices in implementing, maintaining, and expanding LEP services.

The Market and Opportunity

The LEP Market – A Growing Market with Ample Financial Resources

It is estimated that 21% of the US population over the age of five—over 65 million people—speaks a language other than English at home.¹ Of this group, more than 26 million people speak limited English.² Spanish speakers comprise the largest share of the LEP population, with approximately 40 million speakers in the US, followed by Chinese (Mandarin), Vietnamese, Korean, and Filipino (Tagalog) speakers.³ It is estimated that the LEP population will represent nearly 36% of the U.S. population by 2065.⁴

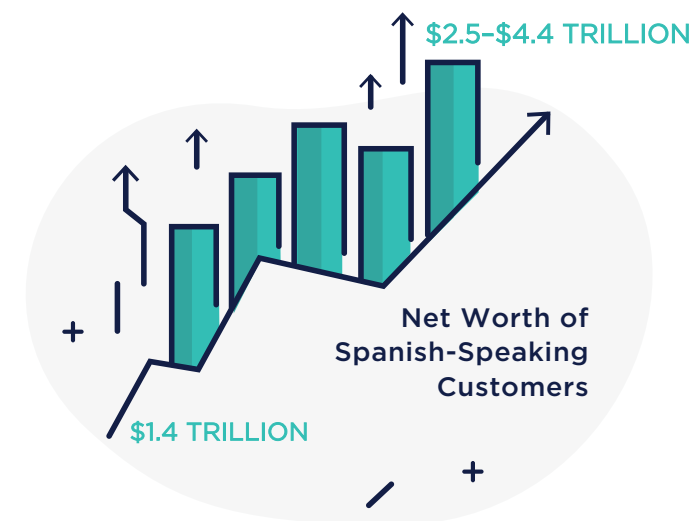
U.S. checking/savings accounts at the largest financial institutions and (ii) on average (per person) maintained two or more credit cards, with monthly credit card expenditures averaging between \$500 and \$600.⁶

For financial institutions, implementing and expanding LEP services is a long-term and forward-thinking endeavor. Though it is clearly enticing for a variety of reasons, the fact that the LEP market is growing and will likely control a larger share of wealth in the future is difficult to ignore.

In a highly competitive industry, grabbing LEP market share is viewed as a prize to be coveted.

The Opportunity – Simply Engage

Unfortunately for the LEP population, each segment faces significant barriers in participating in the consumer financial marketplace due to language limitations. These restrictions place hurdles on understanding and completing key financial documents, managing bank accounts, resolving problems with financial products, and accessing financial education.⁷ As a result, working closely with a financial institution can often be overwhelming to the LEP population. Financial institutions may be surprised to find that LEP consumers wish to engage with them, if only offered the opportunity.



As the LEP population continues to grow, its projected share of U.S. wealth also continues to rise. The Federal Reserve Bank of St. Louis estimates that Spanish-speaking consumers in the U.S. alone have approximately \$1.4 trillion of net worth and that, by 2025, their net worth will increase to between \$2.5 trillion and \$4.4 trillion.⁵ Interestingly, while net worth can be dissected in a variety of ways, LEP customers' use of differing banking products and services also rises. For instance, since 2012, the Spanish-speaking LEP population has (i) comprised 37% of the growth in the total number of



According to a survey from Univision and The Harris Poll, over 80% of Spanish-speaking LEP consumers are interested in learning how financial products and services can help them achieve their life goals.¹

Pursuant to that same survey, Spanish-speaking LEP consumers predominantly source their information from:



Family and friend referrals



Information advertising

This is likely not an earth-shattering revelation for financial institutions. Nor is the fact that Spanish-speaking LEP consumers believe that “trust” is important in how they select their financial products and services, which can be established in a variety of ways. Though what many financial institutions may find interesting is that Spanish-speaking LEP consumers believe that a little trust can be established by simply engaging them in their primary language.⁸ Therein lies the opportunity.

Applicable Federal Consumer Financial Laws

While the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System (collectively, the “federal banking regulators”) have become more supportive of financial institutions seeking to enhance and expand services to LEP customers, there is no clear set of regulatory standards or guidelines that address how to do so.⁹

Rather, federal consumer financial laws and regulations are simply permissive, which creates confusion in serving the LEP market.

The federal consumer financial laws addressing LEP services can be broken down into two categories:

(i) general-based requirements that are applicable to all products and services—i.e., Unfair, Deceptive, Abusive Acts, or Practices (UDAAP) and fair lending laws—the Equal Credit Opportunity Act (ECOA) and the Community Reinvestment Act of 1977 (CRA); and

(ii) hypertechnical requirements that are product-specific, such as the Truth in Lending Act

(TILA), the Real Estate Settlement Procedures Act (RESPA), and the Electronic Funds Transfer Act (EFTA). Each of these laws and how they relate to serving LEP customers is summarized below.

a. UDAAP

One of the largest risks associated with serving LEP customers is unintentionally engaging in a UDAAP violation. In general, it is unlawful for any financial institution to engage in any unfair, deceptive, or abusive act or practice. Below are the statutory and regulatory definitions concerning each category of UDAAP violation.

/// UNFAIRNESS //////////////////////////////////////

An act or practice that is likely to cause or actually causes substantial injury to consumers, which is not reasonably avoidable by consumers, and the injury is not outweighed by countervailing benefits to consumers or to competition.¹⁰

/// DECEPTION //////////////////////////////////////

A representation or omission that is likely to mislead or actually misleads a consumer and is material to the consumer, where the consumer is acting reasonably under the circumstances.¹¹

/// ABUSIVE //////////////////////////////////////

A representation or omission that: (a) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (b) takes unreasonable advantage of (i) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service, (ii) the inability of the consumer to protect the consumer’s interests in selecting or using a consumer financial product or service, or (iii) the reasonable reliance by the consumer on the financial services provider to act in the interests of the consumer.¹²

Whether a financial institution’s conduct rises to the level of a UDAAP violation is dependent upon the facts and circumstances. However, financial institutions can look to prior enforcement actions brought by the federal banking regulators as cues as to what may constitute a UDAAP.

For instance, the CFPB has previously exercised its UDAAP authority and brought an enforcement action where a financial institution utilized telemarketing sales calls, conducted in Spanish, to enroll consumers in certain credit card add-on products. In that instance, the financial institution did not provide uniform Spanish language scripts for the enrollment calls, and all written materials provided to consumers were in English.¹³

For many in the industry, the inference that was drawn from the enforcement action was that a financial institution's UDAAP risk becomes heightened where products/services are marketed in a foreign language, but the underlying agreements and documentation are provided in English. These inferences were incorrect. The enforcement action centered on a financial institution that failed to make accurate disclosures to the LEP customers. In addition, they failed to provide a standardized process for their call center representatives.

Unfortunately for financial institutions, due to uncertainty in what constitutes a UDAAP violation and lack of consistency in how and when federal banking regulators have brought UDAAP enforcement actions, UDAAP risk may be harder to manage in LEP programs.

b. Fair Lending Laws

i. The ECOA

The ECOA, as implemented by Regulation B, prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, and

Nonetheless, UDAAP risk can be properly managed and mitigated.

age.¹⁴ The stated purpose of the ECOA is to promote the availability of credit by ensuring fair, equitable, and non-discriminatory access to credit. Although the ECOA does not directly prohibit discrimination based on language, an individual's primary language oftentimes cannot be separated from the individual's ethnicity or national origin. It is only natural then that an aggressive federal banking regulator may consider an individual's language a quasi-protected class.

i. The Community Reinvestment Act

Integrally tied to the ECOA is the CRA. The CRA requires the federal banking regulators to encourage financial institutions to help meet the credit needs of the communities in which they do business, including low- and moderate-income ("LMI") neighborhoods.

While the ECOA's requirements can be elusive due to the generalized nature of the ECOA and the changing nature of consumer demographics in the U.S., below are high-level considerations for financial institutions in implementing a fair lending compliant LEP program.

Providing Meaningful Access to Credit Products.

While there is no explicit requirement that a financial institution serve LEP consumers, failing to consider the demographics and the primary spoken language of the communities it serves invites heightened fair lending risk. At a minimum, senior management should consider implementing an LEP program. To the extent the financial institution determines that such a proposition may be premature or financially prohibitive, the considerations, reasoning, and conclusions should be documented.

Permissive Foreign Language Disclosures.

The ECOA provides no explicit requirement mandating financial institutions to provide marketing/advertising, disclosures, documentation, or agreements in a foreign language. However, Regulation B is permissive in allowing consumer disclosures to be made in languages other than English, provided the disclosures are also available in English upon request.¹⁵

Disclosure of LEP Program Limitations.

Under the ECOA, a financial institution is free to implement a limited LEP program (e.g., offering only certain products or services in a foreign language, marketing solely in a foreign language). In implementing and maintaining a limited LEP program, a financial institution would be wise to clearly disclose to the LEP consumers the extent and limits of any LEP services that are made available throughout each credit product's lifecycle.¹⁶ At a minimum, these disclosures should be included in all foreign language advertisements and made available on the financial institution's website.

Steering and Exclusion Awareness.

Financial institutions should also ensure that LEP consumers are not treated differently based on their language abilities or preferences. For instance, the CFPB has in the past alleged fair lending violations and taken enforcement actions (i) where a financial institution offered LEP consumers only certain credit products, while it marketed several additional credit products to English-speaking consumers and (ii) where a financial institution specifically excluded LEP consumers from product and service offerings due to the belief that the financial institution did not have the LEP services in place to support the consumers.¹⁷

In these instances, the financial institutions revised their marketing materials to (a) notify LEP customers (in their primary language) of the availability of other credit products and (b) include clear and timely disclosures to prospective LEP customers describing the extent and limits of any language services provided throughout the product lifecycle. In each of these enforcement actions, the financial institutions were not required to provide language services beyond what is identified above.

While the ECOA concentrates on prohibiting discrimination in lending products, the CRA incentivizes financial institutions to expand banking products and services into LMI neighborhoods throughout the financial institution's footprint, referred to as its "assessment area."¹⁸ The assessment area selected by the financial institution typically encompasses the geographic area that can reasonably be served by each of the financial institution's physical locations. Once the financial institution's assessment area has been determined, the financial institution can easily identify the LMI neighborhoods to serve. Importantly, LMI neighborhoods oftentimes encompass others where a majority of the population are LEP customers. These neighborhoods are referred to as "majority-minority" areas.

The CRA does not address how a financial institution can serve the LEP population directly; rather, it requires financial institutions to market products and services to successfully serve LMI neighborhoods, which as noted above tend to include a large number of LEP consumers. Under the CRA, a financial institution's failure to adequately serve LMI neighborhoods can result in a variety of negative consequences, including serving as the basis for denial of an application to engage in new banking activities or engage in a merger or acquisition.

c. TILA and RESPA

i. TILA – Regulation Z

At a high level, the TILA provides a uniform method for disclosing credit terms to give consumers the opportunity to compare terms more readily and knowledgeably. The TILA, as

implemented by Regulation Z, applies to a variety of consumer-purpose loans, including mortgages, home equity lines of credit, reverse mortgages, credit cards, installment loans, and certain student loans.¹⁹

Under Regulation Z's permissive provisions, financial institutions are free to provide disclosures and advertisements in a foreign language.²⁰ However, in any advertisement, financial institutions are prohibited from including information about some "trigger terms" in a foreign language and providing information about other trigger terms in English.²¹ For purposes of Regulation Z, "trigger terms" include (i) the amount or percentage of any down payment; (ii) the number of payments or period of repayment; (iii) the amount of any payment; and (iv) the amount of any finance charge.²²

In simple terms, to the extent a foreign language advertisement includes trigger terms, all other required information concerning trigger terms and disclosures must be provided in the same language. Consequently, financial institutions should review foreign language advertisements prior to dissemination to LEP consumers to ensure that disclosures that will be made to the LEP consumers are compliant with Regulation Z's requirements.

ii. RESPA – Regulation X

The RESPA, as implemented by Regulation X, applies to financial institutions, lenders, mortgage brokers, and servicers of home loans. It requires, among other things, that creditors provide borrowers with pertinent and timely

disclosures regarding the nature and costs of the real estate settlement process. Regulation X definitively provides that “[d]isclosures required ... may be made in a language other than English, provided that the disclosures are made available in English upon a recipient’s request.”²³

d. The EFTA

The EFTA, as implemented by Regulation E, applies to transactions involving the “electronic transfer of funds.”²⁴ An electronic transfer of funds is defined as including, among other things, point-of-sale transfers, automated teller machine (ATM) transactions, direct deposits or withdrawals of funds, automated clearinghouse (ACH) systems, telephone bill payment plans with periodic or recurring transfers, remote banking programs, remittance transfers, payroll card transactions, and prepaid card transactions.²⁵

One of the EFTA’s central components is that it requires financial institutions to provide consumers with a set of disclosures during an electronic transfer of funds process. These disclosures must be made in a clear and readily understandable written form and must be provided to consumers during certain stages of the electronic funds transfer process.²⁶ Similarly to the ECOA and the TILA, the EFTA is permissive in allowing disclosures to be made in a language other than English, provided that the disclosures are made available in English upon a consumer’s request.²⁷

i. Remittance Transfer

As applicable to LEP customers, one of the most hypertechnical requirements of the EFTA can be found in the context of remittance transfers (also commonly referred to as international wires or international money transfers). In general, if a financial institution chooses to advertise or market its products or services in a foreign language, the financial institution must provide the LEP customer with disclosures in both English and the foreign language used by the financial institution to advertise its services.²⁸ In determining whether a financial institution is required to provide disclosures in a language other than English, federal banking regulators examine all of the relevant facts and circumstances, including the frequency with which the foreign language is used in advertising or marketing of remittance transfer services, the prominence of the advertising or marketing of remittance transfer services in the foreign language, and the specific

foreign language terms used in the advertising, soliciting, or marketing of remittance transfer services.²⁹

ii. Prepaid Products

Financial institutions that offer, or seek to offer, prepaid products to LEP customers, and that either principally use or will use a language other than English (a) on the prepaid account packaging material or (b) to advertise, solicit, or market the prepaid account, must provide the required short- and long-form disclosures in that same foreign language prior to account opening.³⁰ In addition, the financial institution must also provide (i) the long-form disclosure in English upon a customer’s request and (ii) the long-form disclosure in the applicable foreign language on any part of a website where the financial institution discloses the required information.³¹

In determining that foreign language disclosures must be provided to an LEP customer, the federal banking regulators have clarified that such a determination is solely based on the prepaid products, packaging material and not across the prepaid account program or across the financial institution’s activities as a whole. In addition, for purposes of the prepaid product requirements, advertising and marketing in a foreign language includes any commercial message (appearing in any medium) that directly or indirectly promotes the availability of prepaid accounts, including electronic messages, telephone and email solicitations, television and radio commercials, and printed advertisements in leaflets, promotional flyers, newspapers, and magazines.³²

e. State Consumer Financial Laws

For any financial institution contemplating whether to implement or expand existing LEP services, it is important to remember that federal consumer financial laws do not necessarily preempt state-based consumer laws.³³ Consequently, there are states (e.g., California, Texas, and New York) that have adopted specific protections for LEP consumers. Prior to implementing or expanding LEP services, a financial institution must endeavor to identify and comply with any state-specific requirements. These state-based requirements tend to be product-specific and concentrate on limitations surrounding advertising, disclosures, and documentation. Careful consideration must be given to these state laws prior to rolling out a LEP consumer product in a given state.

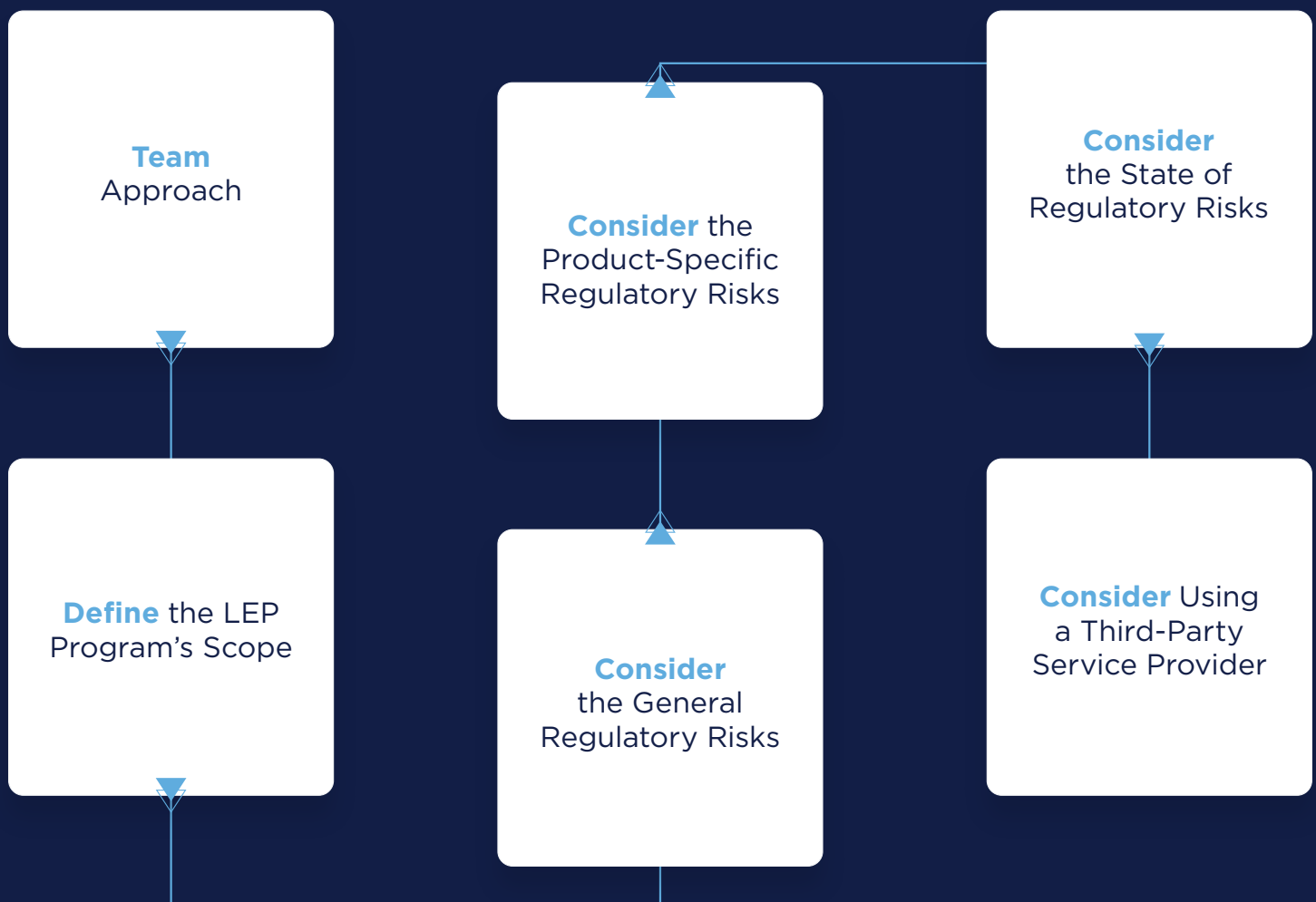
Implementing and Maintaining a Compliant LEP Program

Industry Standards and Best Practices

With both changing demographics in the United States and increasing regulatory interest in how financial institutions are assisting LEP customers, financial institutions should look at offering LEP services as an opportunity. If a financial institution has determined to expand its LEP services, it must then work to create an **effective and compliant** LEP program.

Despite the lack of clear regulatory standards, financial institutions can and should provide expanded LEP services to customers.

How a financial institution implements a LEP program is specific to their circumstances. There is no one-size-fits-all approach. The risks associated with a LEP program can vary significantly depending on the product/service, market area, reliance on third-party service providers, and other fact-specific considerations. Despite the uniqueness of each financial institution's LEP program, below are some industry standards and best practices (using a step-by-step process) in implementing and managing an effective LEP program.





Team Approach

A LEP program requires input from various departments within a financial institution. At a minimum, and as applicable, legal, compliance, and business line experts must lend their knowledge, expertise, and experience to the program.



Define the LEP Program's Scope

Before the risks associated with offering LEP services can be addressed and policies and procedures written, financial institutions must take inventory of their current LEP assets and identify the market and geography to be served. What is the target LEP customer? Is the product offering to be limited to certain states? Are only specific products/services to be offered under the LEP program?



Consider the General Regulatory Risks

It is clear that the most significant risks posed in any LEP program are UDAAP and fair lending risks. Mitigation techniques should be utilized to the extent relevant. For example, any limitations of LEP services should be disclosed in a clear and conspicuous manner to LEP customers. This disclosure should be inserted into any advertisements and also placed on the financial institution's website.



Consider the Product-Specific Regulatory Risks

What type of product are you offering? Residential mortgage products, prepaid products, and payment systems have differing technical requirements in how foreign language disclosures are made.



Consider the State Regulatory Risks

As federal law does not necessarily preempt state consumer protection laws, financial institutions must review each state's consumer law requirements to ensure compliance. Various states have specific state requirements governing LEP consumer products.



Consider Using a Third-Party Service Provider

Most financial institutions do not have the internal resources to adequately provide a full range of LEP services. Consideration should be given to whether use of third-party service providers is necessary or convenient. There are a variety of reputable service providers available to assist financial institutions in providing translation and interpretation systems. If a financial institution determines to use a third-party service provider, below are some best practices.

- Financial institutions must comply with the regulatory requirements in managing third-party service providers, including ensuring contractual protections are in place to (i) prevent the dissemination and unauthorized access to customer information, (ii) provide the financial institution and its applicable federal banking regulator(s) with the ability to audit and test the third-party service provider's systems, and (iii) require the third-party service provider to comply with all federal and state laws and regulations applicable to the financial institution.
- Use industry-known and reputable third-party language services providers.
- Validate and document the third-party service provider's linguistic ability and experience with financial institutions. This is important for the financial institution's records and will also be available should regulators wish to review.

- Use technology to manage the process to ensure operational efficiencies and data security. This streamlines workflows, takes advantage of preestablished workflows the financial institution may already have in place, and cuts down on hard and soft costs. This is also more secure than relying on email.



Translation and Interpretation Systems

- Translate telephonic disclosures ahead of time for any call center agent speaking in languages other than English. This allows the financial institution to control exactly what is being said in a given language.
- Use translation memory tools to ensure consistency from one line of business to another. This ensures consistency in content, accelerates turnaround time, and provides cost savings to the financial institution.
- Establish a firm-wide governance team to be responsible for language assets and ownership. This allows for someone at the financial institution to make a final decision on potentially subjective topics. For example, does the financial institution communicate in formal or informal Spanish? It needs to be the same across all lines of business
- Establish technical blockers to prevent employees from using free translational services (e.g., Google Translate), which are inefficient and lacking in quality and technical protections to safeguard sensitive customer information. Financial institutions should also be aware that any form of translations obtained using free translational services may lack basic intellectual property protections.



Draft and Implement the LEP Program (Policies & Procedures)

Any LEP Program, regardless of how expansive, should address: (i) identification of customers who may require LEP services; (ii) identification of the products and/or services to be offered under the LEP program; (iii) services available to the LEP customers (e.g., advertisements, disclosures, documents/agreements, call centers and digital platforms); (iv) availability of customer service personnel able to assist LEP customers in a language other than English; (v) training of personnel to ensure cultural and language proficiency; (vi) defined translation and interpretation systems; and (vii) testing and periodic review of the LEP program. If a third-party service provider is to be utilized, the LEP program should also address the items noted above.

Conclusion

In sum, financial institutions are interested in implementing or expanding LEP services. To these financial institutions, in a highly competitive industry, the upside of reaching new and growing customer segments outweighs the regulatory uncertainty associated with serving LEP customers. To be sure, financial institutions can mitigate the regulatory uncertainty, provided they take a formalized approach and dedicate the resources necessary to implement an effective and compliant LEP program.

FAQ

The following are frequently asked questions that financial institutions may have concerning limited English proficiency (LEP) programs and our answers to those questions. The information contained in this section is not complete, and specific product and service considerations are not addressed.

We do not have the capacity to implement an expansive LEP program. May we simply translate our website?

Yes. To the extent a financial institution does not have the resources to implement an expansive LEP program, it may dedicate its resources solely to translating its website. However, in so doing, a financial institution should (i) ensure its translation of the website is accurate and (ii) include disclosures that otherwise describe the limitations of its LEP services. For instance, the financial institution should disclose that the website translation is provided solely for convenience and that it does not provide LEP services (e.g., Spanish-translated documents or agreements are not provided, and communications, both oral and written, are in English). In addition, the financial institution should ensure that any consumer credit offer contained on the website does not include “trigger terms,” as defined by Regulation Z (12 CFR § 1026.24).

What if there is an error in the translation of a document, agreement or website? Does the underlying English version prevail?

It depends. It is best practice to include disclosures in any translated document or agreement that clearly and conspicuously identify the document as a translated copy of the underlying English version. Further, just as with any website translation, it should be disclosed to the LEP customer that the translated document or agreement is provided merely as a convenience and does not govern the relationship between the parties. Remember, what is important is that the financial

institution is fully disclosing its LEP services and how translated documents impact the relationship between the parties.

Who or what departments in our institution need to review and approve translated content (e.g., advertisements, disclosures, agreements, call center scripts)?

As a best practice, a financial institution should have a dedicated team composed of all relevant departments and/or managers, including legal, compliance, and members of the applicable lines of business. The diversity of the team provides the financial institution an opportunity to comprehensively review foreign language content for compliance with applicable law and how the line of business actually operates.

Can we have bilingual call center representatives speak to our customers in a foreign language?

Yes. There is no prohibition on having call center representatives speak to customers in a foreign language. However, there is heightened compliance risk in permitting bilingual call center representatives to speak with LEP customers in an informal manner. As a best practice, financial institutions should have a procedure for testing and assessing call center representatives’ language fluency prior to permitting customer-facing interaction in a language other than English. Third-party service providers can assist financial institutions in establishing these language assessments. In addition, financial institutions should provide pre-drafted foreign language scripts for call center representatives to follow in communicating with LEP customers. The Consumer Financial Protection Bureau has in the past taken an enforcement action against a financial institution for failing to provide a standardized process and script to call center representatives.

If we outsource translation and interpretation services to a third-party provider, can they use resources outside of the US?

Yes. There is no restriction on a third-party service provider’s use of international resources

in providing a financial institution with translation and interpretation services. That said, the financial institution should comply with the applicable authorities governing third-party service providers and ensure that the third-party service provider (i) agrees to comply with all federal and state laws and regulations applicable to the financial institution and (ii) has adequate systems and processes in place to protect the confidential information of the financial institution's customers in accordance with all federal and state laws and regulations applicable to the financial institution. As part of a financial institution's due diligence in selecting a translation and interpretation services partner, they should review the vendors utilized by the third-party service provider.

Do we need to audit a third-party that provides us with translation and interpretation services?

Yes. It is important to remember that financial institutions cannot delegate their legal and compliance responsibilities to a third-party service provider. Pursuant to its regulatory obligations, financial institutions are encouraged to have, and to exercise, an audit right in any contractual agreement with a third-party. Each of the federal banking regulators have issued their own guidance and requirements applicable to managing third-party service provider relationships. Financial institutions should review the applicable regulatory guidance and regulations prior to entering into any third-party service provider relationship.

Can we pass on any LEP program costs/expenses, including costs related to using third-party service providers?

Yes. There is no express restriction on passing actually incurred costs and expenses to customers as fees. As LEP services are typically offered as a convenience to the customer, there should not be any restriction on the imposition of such fees. However, financial institutions should keep in mind fair lending risks when charging fees to LEP customers that are not also charged to English-speaking customers. The imposition of

fees on LEP customers could be considered a fee based on language abilities or preferences by an aggressive regulator. As an individual's primary language oftentimes cannot be separated from the individual's ethnicity or national origin, the charging of such a fee could arguably trigger enhanced fair lending risk.

Is Google Translate an acceptable form of translation, or will we be penalized for lack of accuracy and potentially disclosing consumers, private information?

No. In any LEP program, Google Translate should not form the basis of a financial institution's translation or interpretation systems. While the use of Google Translate is not prohibited, it is certainly not an industry standard or best practice. First, Google Translate has substantial issues in providing accurate translations. As inaccurate or misleading translations may serve as a federal banking regulator's basis for bringing an enforcement action, the use of Google Translate should be avoided. Second, Google collects information submitted to or through its products. Inputting sensitive customer information into Google Translate may constitute a violation of the financial institution's obligations to protect its customers' information.

References

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- ² *Id.*
- ³ *Id.*
- ⁴ Pew Research Center, Immigration's Impact on Past and Future U.S. Population Change (Sep. 28, 2015); Pew Research Center, U.S. Population Projections: 2005-2050 (Feb. 11, 2008).
- ⁵ *Id.*
- ⁶ The Harris Poll and Univision Communications Inc., Banking on Hispanics Poll (Oct. 27, 2017).
- ⁷ U.S. Government Accountability Office, GAO-10-518, Consumer Finance: Factors Affecting the Financial Literacy of Individuals with Limited English Proficiency (May 2010).
- ⁸ *Id.*
- ⁹ U.S. Government Accountability Office, GAO-10-518, Consumer Finance: Factors Affecting the Financial Literacy of Individuals with Limited English Proficiency (May 2010).
- ¹⁰ 12 U.S.C. § 5531; CFPB Supervision and Examination Manual - UDAAP, at page 5 (Oct. 2012) (defining the three-part test for "unfairness" as the same used by the Federal Trade Commission (the "FTC")).
- ¹¹ CFPB Supervision and Examination Manual - UDAAP, at page 5 (Oct. 2012) (stating that "Examiners should be informed by the FTC's standard for deception.>").
- ¹² CFPB Supervision and Examination Manual - UDAAP, at page 5 (Oct. 2012).
- ¹³ Consent Order, American Express Centurion Bank, CFPB No. 2013-CFPB-0011 (Dec. 24, 2013).
- ¹⁴ 15 U.S.C. §§ 1691 et seq.; 12 C.F.R. Part 1002 et seq.
- ¹⁵ 12 C.F.R. § 1002.4(e).
- ¹⁶ CFPB, Spotlight on serving limited English proficient consumers, p. 17 (Nov. 2017).
- ¹⁷ Consent Order, American Express Centurion Bank, CFPB No. 2013-CFPB-0011 (Dec. 24, 2013); and Consent Order, Synchrony Bank, f/k/a GE Capital Retail Bank, CFPB No. 2014-CFPB-0007 (June 19, 2014).
- ¹⁸ 12 C.F.R. § 345.41 (FDIC); 12 C.F.R. § 25.41 (OCC); and 12 C.F.R. § 228.41 (FRB).
- ¹⁹ 12 C.F.R. §§ 1026 et seq.
- ²⁰ 12 C.F.R. § 1026.24(i)(7).
- ²¹ *Id.*
- ²² 12 C.F.R. § 1026.24(d).
- ²³ 12 C.F.R. § 1024.32(a)(2).
- ²⁴ 15 U.S.C. § 1693(a)(7) (the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account).
- ²⁵ *Id.*
- ²⁶ 12 C.F.R. § 1005.4(a)(1).
- ²⁷ *Id.*; Statement of Policy Regarding Prohibition on Abusive Acts or Practices, CFPB (Jan. 24, 2020).
- ²⁸ 12 C.F.R. § 1005.31(g).
- ²⁹ 12 C.F.R. § 1005.31(g)-1 (staff commentary).
- ³⁰ 12 C.F.R. § 1005.18(b)(9)(i)(A)-(B).
- ³¹ 12 C.F.R. § 1005.18(b)(9)(ii).
- ³² 12 C.F.R. 1005.18(b)(9)-3 (staff commentary).
- ³³ 12 U.S.C. §§ 5551 et seq.