



U. S. Department of Justice

Civil Rights Division

LEP

Office of the Assistant Attorney General

Washington, D.C. 20530

August 11, 2000

TO: Executive Agency Civil Rights Officers

FROM: Bill Lann Lee
Assistant Attorney General
Civil Rights Division

SUBJECT: Policy Guidance Document:
Enforcement of Title VI of the Civil Rights Act of 1964
— National Origin Discrimination Against Persons With
Limited English Proficiency ("LEP Guidance")

This policy directive concerning the enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., as amended, is being issued pursuant to the authority granted by Executive Order No. 12250^{1/} and Department of Justice regulations.^{2/} It addresses the application to recipients of federal financial assistance of Title VI's prohibition on national origin discrimination when information is provided only in English to persons who do not understand English. This policy guidance does not create new obligations but, rather, clarifies existing Title VI responsibilities.

Department of Justice Regulations for the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (Coordination Regulations), 28 C.F.R. 42.401 et seq., direct agencies to "publish title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI." 28 C.F.R. § 42.404(a). The purpose

^{1/} 42 U.S.C. § 2000d-1 note.

^{2/} 28 C.F.R. § 0.51.

of this document is to set forth general principles for agencies to apply in developing such guidelines for services to individuals with limited English proficiency (LEP). It is expected that, in developing this guidance for their federally assisted programs, agencies will apply these general principles, taking into account the unique nature of the programs to which they provide federal financial assistance.

A federal aid recipient's failure to assure that people who are not proficient in English can effectively participate in and benefit from programs and activities may constitute national origin discrimination prohibited by Title VI. In order to assist agencies that grant federal financial assistance in ensuring that recipients of federal financial assistance are complying with their responsibilities, this policy directive addresses the appropriate compliance standards. Agencies should utilize the standards set forth in this Policy Guidance Document to develop specific criteria applicable to review the programs and activities for which they offer financial assistance. The Department of Education^{3/} already has established policies, and the Department of Health and Human Services (HHS)^{4/} has been developing guidance in a manner consistent with Title VI and this

^{3/} Department of Education policies regarding the Title VI responsibilities of public school districts with respect to LEP children and their parents are reflected in three Office for Civil Rights policy documents: (1) the May 1970 memorandum to school districts, "Identification of Discrimination and Denial of Services on the Basis of National Origin," (2) the December 3, 1985, guidance document, "The Office for Civil Rights' Title VI Language Minority Compliance Procedures," and (3) the September 1991 memorandum, "Policy Update on Schools Obligations Toward National Origin Minority Students with Limited English Proficiency." These documents can be found at the Department of Education website at www.ed.gov/office/OCR.

^{4/} The Department of Health and Human Services is issuing policy guidance titled: "Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency." This policy addresses the Title VI responsibilities of HHS recipients to individuals with limited English proficiency.

Document, that applies to their specific programs receiving federal financial assistance.

BACKGROUND

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. § 2000d, provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The term "program or activity" is broadly defined. 42 U.S.C. § 2000d-4a.

Consistent with the model Title VI regulations drafted by a Presidential task force in 1964, virtually every executive agency that grants federal financial assistance has promulgated regulations to implement Title VI. These regulations prohibit recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" and "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

In Lau v. Nichols, 414 U.S. 563 (1974), the Supreme Court interpreted these provisions as requiring that a federal financial recipient take steps to ensure that language barriers did not exclude LEP persons from effective participation in its benefits and services. Lau involved a group of students of Chinese origin who did not speak English to whom the recipient provided the same services -- an education provided solely in English -- that it provided students who did speak English. The Court held that, under these circumstances, the school's practice

violated the Title VI prohibition against discrimination on the basis of national origin. The Court observed that "[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program -- all earmarks of the discrimination banned by" the Title VI regulations.^{5/} Courts have applied the doctrine enunciated in Lau both inside and outside the education context. It has been considered in contexts as varied as what languages drivers' license tests must be given in or whether material relating to unemployment benefits must be given in a language other than English.^{6/}

Link Between National Origin And Language

For the majority of people living in the United States, English is their native language or they have acquired proficiency in English. They are able to participate fully in federally assisted programs and activities even if written and oral communications are exclusively in the English language.

The same cannot be said for the remaining minority who have

^{5/} 414 U.S. at 568. Congress manifested its approval of the Lau decision requirements concerning the provision of meaningful education services by enacting provisions in the Education Amendments of 1974, Pub. L. No. 93-380, §§ 105, 204, 88 Stat. 503-512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401 et seq., which provided federal financial assistance to school districts in providing language services.

^{6/} For cases outside the educational context, see, e.g., Sandoval v. Hagan, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), affirmed, 197 F.3d 484, (11th Cir. 1999), rehearing and suggestion for rehearing en banc denied, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98-6598-II), petition for certiorari filed May 30, 2000 (No. 99-1908) (giving drivers' license tests only in English violates Title VI); and Pabon v. Levine, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

limited English proficiency. This group includes persons born in other countries, some children of immigrants born in the United States, and other non-English or limited English proficient persons born in the United States, including some Native Americans. Despite efforts to learn and master English, their English language proficiency may be limited for some time.^{2/} Unless grant recipients take steps to respond to this difficulty, recipients effectively may deny those who do not speak, read, or understand English access to the benefits and services for which they qualify.

Many recipients of federal financial assistance recognize that the failure to provide language assistance to such persons may deny them vital access to services and benefits. In some instances, a recipient's failure to remove language barriers is attributable to ignorance of the fact that some members of the community are unable to communicate in English, to a general resistance to change, or to a lack of awareness of the obligation to address this obstacle.

In some cases, however, the failure to address language barriers may not be simply an oversight, but rather may be attributable, at least in part, to invidious discrimination on the basis of national origin and race. While there is not always a direct relationship between an individual's language and national origin, often language does serve as an identifier of national origin.^{3/} The same sort of prejudice and xenophobia that may be at the root of discrimination against persons from

^{2/} Certainly it is important to achieve English language proficiency in order to fully participate at every level in American society. As we understand the Supreme Court's interpretation of Title VI's prohibition of national origin discrimination, it does not in any way disparage use of the English language.

^{3/} As the Supreme Court observed, "[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond." Hernandez v. New York, 500 U.S. 352, 370 (1991) (plurality opinion).

other nations may be triggered when a person speaks a language other than English.

Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility. . . . It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.^{9/}

While Title VI itself prohibits only intentional discrimination on the basis of national origin,^{10/} the Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.^{11/} The Department of Justice has consistently adhered to the view that the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations.^{12/} Also,

^{9/} Id. at 371 (plurality opinion).

^{10/} Alexander v. Choate, 469 U.S. 287, 293 (1985).

^{11/} Id. at 293-294; Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642-645 (Stevens, Brennan, Blackmun, JJ.); Lau v. Nichols, 414 U.S. at 568; id. at 571 (Stewart, J., concurring in result). In a July 24, 1994, memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning "Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964," the Attorney General stated that each agency "should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs."

^{12/} The Department's position with regard to written language assistance is articulated in 28 C.F.R. § 42.405(d)(1), which is contained in the Coordination Regulations, 28 C.F.R. Subpt. F, issued in 1976. These Regulations "govern the respective

existing language barriers potentially may be rooted in invidious discrimination. The Supreme Court in Lau concluded that a recipient's failure to take affirmative steps to provide "meaningful opportunity" for LEP individuals to participate in its programs and activities violates the recipient's obligations under Title VI and its regulations.

ALL RECIPIENTS MUST TAKE REASONABLE STEPS TO PROVIDE MEANINGFUL ACCESS

Recipients who fail to provide services to LEP applicants and beneficiaries in their federally assisted programs and activities may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its regulations require recipients to take reasonable steps to ensure "meaningful" access to the information and services they provide. What constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the recipient.

1) Number or Proportion of LEP Individuals

Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. However, a factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day. But even those who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are possible and if so, have a plan of what to

obligations of Federal agencies regarding enforcement of title VI." 28 C.F.R. § 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in Lau.

do if a LEP individual seeks service under the program in question. This plan need not be intricate; it may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

2) Frequency of Contact with the Program

Frequency of contacts between the program or activity and LEP individuals is another factor to be weighed. For example, if LEP individuals must access the recipient's program or activity on a daily basis, e.g., as they must in attending elementary or secondary school, a recipient has greater duties than if such contact is unpredictable or infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

3) Nature and Importance of the Program

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted zoo or theater. In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. A decision by a federal, state, or local entity to make an activity compulsory, such as elementary and secondary school attendance or medical inoculations, serves as strong evidence of the program's importance.

4) Resources Available

The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high,

and/or where the program is not crucial to an individual's day-to-day existence. Claims of limited resources from large entities will need to be well-substantiated.^{13/}

Written vs. Oral Language Services

In balancing the factors discussed above to determine what reasonable steps must be taken by recipients to provide meaningful access to each LEP individual, agencies should particularly address the appropriate mix of written and oral language assistance. Which documents must be translated, when oral translation is necessary, and whether such services must be immediately available will depend upon the factors previously mentioned.^{14/} Recipients often communicate with the public in

^{13/} Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, see Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1975)), or there is another "substantial legitimate justification for the challenged practice." Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1407 (11th Cir. 1993). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are "consistent with business necessity" and there is no "alternative employment practice" that is equally effective. 42 U.S.C. § 2000e-2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. Alexander v. Choate, 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be "reasonable" to take no affirmative steps to provide further access.

^{14/} Under the four-part analysis, for instance, Title VI would not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all state statutes or notices of rulemaking made generally available to the public. The focus of the

writing, either on paper or over the Internet, and written translations are a highly effective way of communicating with large numbers of people who do not speak, read or understand English. While the Department of Justice's Coordination Regulation, 28 C.F.R. § 42.405(d)(1), expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program" in the same manner as persons who speak English.

In some cases, "meaningful opportunity" to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In some circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. It is the responsibility of federal assistance-granting agencies, in conducting their Title VI compliance activities, to make more specific judgments by applying their program expertise to concrete cases.

CONCLUSION

This document provides a general framework by which agencies can determine when LEP assistance is required in their federally assisted programs and activities and what the nature of that assistance should be. We expect agencies to implement this document by issuing guidance documents specific to their own recipients as contemplated by the Department of Justice Coordination Regulations and as HHS and the Department of Education already have done. The Coordination and Review Section

analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of documents.

EXECUTIVE ORDER
Improving Accessibility to Services
For Limited English Proficient Persons

DRAFT TIMELINE
STILL IN REVIEW PROCESS

DEADLINES (Executive Order Deadlines in Bold)

August 9:

Issue HHS guidance
Issue DOJ guidance
Issue Executive Order

August 9,10, or 11

1. Bill Lee sends letter with schedule to agencies
2. Bill Lee sends letter with DOJ schedule to DOJ components

AUGUST

DOJ COMPONENTS:

- Begin developing federally conducted guidance for review by CRT.
- COR meets with components which provide federal financial assistance to begin recipient guidance process. Each component identifies type of

Ensure that stakeholders, such as field offices, management staff, LEP persons, and advocates, recipients and others have an adequate opportunity to provide input.

- COR coordinates sending general LEP guidance and EO to recipients, outreach community, service population, and other stakeholders for input on recipient guidance and federally conducted plans. Meetings with stakeholders as appropriate. COR receives list of stakeholders contacted, is kept apprised of comments from those

OTHER AGENCIES

- Keep COR informed of progress,
- Request COR assistance as needed.

Ensure that stakeholders, such as field offices, management staff, LEP persons, and advocates, recipients and others have an adequate opportunity to provide input.

- stakeholders, and attends some of the stakeholder meetings, as appropriate and available.

August 25

DOJ components which provide federal financial assistance provide COR with a list of federal financial assistance provided by that component, and the programs or activities provided by recipients of that assistance.

September

Components are drafting federally conducted plans, using COR as resource;

COR is drafting Recipient guidance, using components as resource

October 6, 2000

Components provide initial draft component federally conducted plans to COR for review

October 6, 2000

COR circulates a draft of the DOJ Recipient LEP guidance to components (and stakeholders???)

October 23, 2000

Components provide comments to COR on draft Recipient LEP guidance

October 30, 2000

COR provides comments on draft federally conducted plans

November 10, 2000

Components provide 2nd draft of federally conducted plans to COR (and to stakeholders?)

November 17, 2000

COR re-circulates draft of Recipient LEP guidance

NOVEMBER 24, THANKSGIVING

DECEMBER 7, 2000 (120 Days from August 9)

DOJ LEP guidance is approved by COR

DOJ component plans are approved by COR and have begun to be implemented

Each FFA Agency Submits Recipient Guidance to DOJ for review and approval.

Each agency providing Fed. financial assistance drafts Title VI guidance for recipients.

Submits to DOJ for review and approval.

Each Agency has Developed and Begin to Implement Federally Conducted Plans

Each federal agency has developed and begun to implement a plan to improve access to federally conducted programs by eligible LEP persons. Consistent with standards set forth in LEP Guidance. Include steps to take to ensure meaningful access.

December ----

COR begins review and approval process for AGENCY Recipient Guidance.

8-9-00

August 9, 2000

copied
Echaveste
Reed
Nolan
Podesta

MEMORANDUM FOR THE PRESIDENT

FROM: Maria Echaveste
Bruce Reed
Beth Nolan

[Handwritten signature]

RE: Limited English Proficiency Guidance Initiative – UPDATE

Background

This is an update on the Administration's efforts to ensure that individuals who are limited English proficient (LEP) can meaningfully access federal and federally assisted programs. Taking steps to break down language barriers -- e.g., by providing interpreters, telephone language services, and translations of written documents -- would benefit millions of Americans who are eligible for federal and federally assisted services but are not proficient in English. The inability of LEP persons to meaningfully access these services has been a particular problem in the area of health care, where tragic deaths and misdiagnoses have occurred because health care providers could not communicate with their patients.

Working with the Department of Justice and other agencies, we have developed an initiative to improve access to federal and federally assisted services for persons who are LEP. Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of national origin in any program or activity receiving federal financial assistance, has been interpreted to require recipients of federal financial assistance to take reasonable steps to provide meaningful access to their programs by eligible LEP persons. In the past, the Department of Justice (DOJ) has issued Title VI guidance limited to the translation of written materials. The Departments of Health and Human Service (HHS) and Education have issued Title VI guidance on language accessibility for their fund recipients. This guidance is limited, however, and Title VI does not cover federally conducted programs at all. Our initiative would provide more comprehensive guidance clarifying the requirements in this area with respect to all recipients of federal funds, and have federally conducted programs follow the same general standards.

Breaking down language barriers will provide a substantial benefit to many Americans, but must be accomplished in a manner that minimizes the risk of imposing significant burdens on agencies and recipients. Thousands of entities receive federal funds, including health care providers, educational institutions, and state and local governments. Every day, the federal government itself serves thousands of persons who are LEP. The initiative addresses the risk by providing flexibility to agencies and recipients in meeting their obligations. The standard is one of reasonableness -- no agency or recipient is required to do more than is reasonable toward the goal of ensuring meaningful access to its programs by eligible LEP persons. OMB supports this guidance.

This initiative complements the Administration's strong commitment to promoting programs and activities designed to help individuals learn English. For example, the Administration is working

to increase funding for programs that increase the number of English as a Second Language (ESL) programs for LEP individuals. The initiative simply recognizes that LEP persons should not be denied meaningful access to federal and federally funded services to which they are otherwise entitled while they work to achieve proficiency in the English language, and that these services may even help them achieve English proficiency more quickly.

Actions To Be Taken

This initiative to ensure LEP individuals can meaningfully access federal and federally assisted programs would consist of the following:

Executive Order

Federally conducted programs should meet the same standards as recipients of federal financial assistance in allowing LEP individuals meaningful language access to their programs. Since Title VI does not apply to federally conducted programs, we propose an executive order that directs each federal agency to develop and implement a plan to improve language accessibility that is consistent with the standards applied to recipients of federal financial assistance. Federal agencies, like recipients of federal financial assistance, must take reasonable steps to ensure meaningful access to their services by eligible LEP persons. The order would also require agencies to develop Title VI guidance specifically for their recipients of financial assistance. Agencies would be given 120 days to complete both their internal plan and specific guidance for their recipients.

DOJ Guidance

The Department of Justice (DOJ) would issue guidance to federal agencies explaining the legal standard that recipients of federal financial assistance must follow to ensure that their English-language services do not discriminate based on national origin. The draft DOJ guidance document sets out a "rule of reasonableness," which takes into account a variety of considerations and is extremely flexible. The obligations of any entity covered by Title VI would vary depending on the number and proportion of persons served who are limited English proficient, the kinds of services furnished, the need for "on the spot" translation, the resources involved in providing certain language services, and other factors. Certain services, such as education and health care, are likely to trigger more demanding obligations than other less critical services.

HHS Guidance

HHS has already drafted and is prepared to release specific guidance for its recipients consistent with the standard set forth in the DOJ general guidance. The HHS Guidance establishes standards for health care providers that receive federal funds, including public and private hospitals, clinics and in some cases individual providers. The guidance also covers state and local government entities such as welfare offices, Head Start centers and other social service offices.

Timing

We believe this initiative can achieve its greatest impact through a coordinated, simultaneous release of the executive order with the DOJ and HHS guidance. Especially with an executive order, your participation in an announcement would highlight the importance of this issue. However, to give agencies sufficient time to complete their plans before the end of the Administration, the executive order needs to be issued no later than August 15th. Your schedule unfortunately does not permit your active participation in this announcement. Accordingly, we recommend issuance of the executive order and the DOJ guidance by August 15, and have HHS issue its guidance shortly thereafter.

Agree:  _____

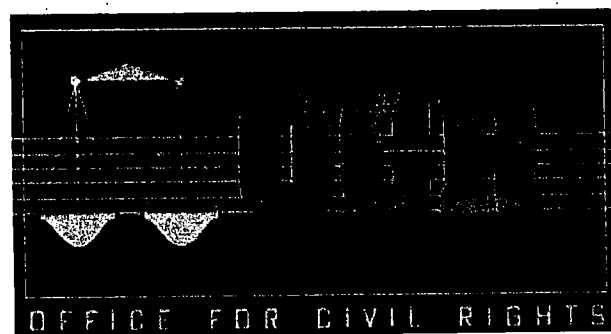
Disagree: _____

Discuss: _____



OCR Policy Guidance On Language Assistance

The staff of the Office for Civil Rights would like to thank all of our colleagues within the Department of Health and Human Services and in other Federal agencies for helping to make the issuance of this LEP Policy Guidance possible.



August 30, 2000
2:00 P.M.
HHS Great Hall

Program

Welcome and Introductions.....Kathryn A. Ellis,
Deputy Director
Office for Civil Rights

Remarks.....Kevin Thurm,
Deputy Secretary, HHS

Remarks.....Bill Lann Lee,
Acting Attorney General
US Department of Justice

Remarks.....Irene Bueno,
Special Assistant to the
President for Policy
Development

Beneficiary Community
Experience.....Berhane Chiche and
Roxana Trejos
Washington Free Clinic,
Washington, DC

Overview of OCR's
Policy Guidance.....Thomas E. Perez,
Director
Office for Civil Rights

Panel of Health and Human Service Providers

- Linda Okahara, Community Services Director
Asian Health Services, Oakland, CA
 - Jack Powers, Director of Community Programs
City of Alexandria, Virginia Department of Human
Services
 - Vincent Pasquariello, M.D., Physician Health Director
Kaiser Permanente Diversity Council -
Northern California, Oakland, California
 - Tom Kam, Regional Manager, Human Services,
Ibrahim Mohamed, Coordinated Services Planner
Fairfax County Department of Systems Management
for Human Services Falls Church, VA
 - William Bateman, M.D., Director of Business
Development, South Manhattan Healthcare Network
Gouverneur Hospital, New York, NY
- Remarks.....Elena Rios, M.D.
President
National Hispanic Medical Assn.
- Remarks.....Shamina Singh, Executive Director
White House Initiative on Asian
American and Pacific Islanders
- Questions and Answers
- Closing Remarks.....Thomas E. Perez

THE WHITE HOUSE

**Office of the Press Secretary
(Cartagena, Colombia)**

For Immediate Release

August 30, 2000

STATEMENT BY THE PRESIDENT

Today, I commend the U.S. Department of Health and Human Services (HHS) for being the first federal agency to respond to Executive Order 13166 which will help people with limited English proficiency (LEP) access federal and federally funded services. The HHS policy guidance issued today will assist health and social service providers to ensure that LEP individuals can access critical health and social services and will assist our efforts to eliminate health disparities between LEP and English-speaking individuals. The guidance outlines the legal responsibilities of providers who assist people with limited English proficiency and receive federal financial assistance from HHS, and provides a flexible roadmap to assist those providers in their efforts to meet the language needs of the nation's increasingly diverse population.

On August 11, 2000, I issued Executive Order 13166, which directed federal agencies, by December 11, 2000, to establish written policies on the language-accessibility of their programs and the programs of those who receive federal funds. Federal agencies and recipients of federal financial assistance must take reasonable steps to ensure that persons with limited English proficiency can meaningfully access their programs.

Language barriers are preventing the federal government and recipients of federal financial assistance from effectively serving a large number of people in this country who are eligible to participate in their programs. Failure to systematically confront language barriers can lead to unequal access to federal benefits based on national origin and can harm the mission of federal agencies. Breaking down these barriers will allow individuals with limited English proficiency to fully participate in American society.

30-30-30



Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Ms. Gail W. Laster
General Counsel
U.S. Department of Housing and
Urban Development
451 7th Street, S.W.
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Washington, D.C. 20410

✓ Ms. Eva Plaza
Assistant Secretary for Fair
Housing & Equal Opportunity
U.S. Department of Housing & Urban
Development
451 7th Street, S.W.
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Washington, D.C. 20410

JAN 10 5 50 PM '00
ASSISTANT SECRETARY
FAIR HOUSING & EQUAL
OPPORTUNITY
U.S. DEPARTMENT OF
HOUSING & URBAN
DEVELOPMENT
WASHINGTON, D.C.

Dear Ms. Laster and Ms. Plaza:

Enclosed, as promised, is a revised version of our proposed draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 - Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance)." We have made changes to address many of the comments, concerns, and suggestions that were offered by various agencies in our last circulation of the document, including issues raised at the December 1st meeting at the White House.

As you will see, we have reorganized the document to better explain the balancing approach we believe should be taken to these questions, and we removed references that were confusing. The guidance now is shorter and has fewer specific examples. The intent is to set out the general principles and leave to each agency the task of giving additional detailed guidance, tailored to the nature of their recipients' programs, on how to comply with Title VI's prohibition on national origin discrimination. It is important to remember that this policy guidance does not create new obligations, but rather clarifies existing Title VI responsibilities.

You will remember that each agency at the last meeting was requested to make a careful assessment as to how this policy guidance can be applied in both its federally conducted and

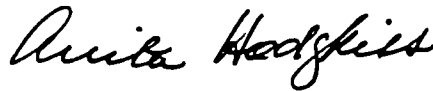
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federally assisted programs. Although Title VI does not apply to the Federal government, there is a concern that the standards for recipients contained in the Document should be applied to and followed by the Federal government in its activities. Originally the request was made that this assessment be completed by January 15, 2000. However, due to the delay in getting this new draft to you, that deadline is now extended to January 21, 2000.

Your memorandum should set forth how the standards outlined in the Draft Policy Guidance Document can be implemented both for your recipients and within your agency's own programs. In addition, the memorandum should include available information about steps that currently are taken to make federally conducted programs available to LEP persons, as well as set forth your agencies' comments, problems, and concerns with implementing the Document. You should send your memorandum to Eddie Correia of the White House Counsel's Office and to Irene Bueno of the Domestic Policy Council on or before January 21st, with a copy to me. Please do not hesitate to give me a call if you have any questions about the guidance document or the written response you are being asked to prepare.

Thank you very much for your patience, for sharing your concerns and comments with us to help produce a useful guidance document, and for your hard work on this important issue.

Sincerely,



Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
Ms. Irene Bueno
Ms. Diana Ortiz
Mr. Harry L. Carey



NATIONAL ENDOWMENT FOR THE ARTS

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Washington DC 20506-0001
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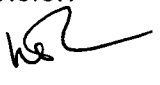
By Telecopy and First Class Mail

DATE: January 21, 2000

TO: Eddie Correia
White House Counsel's Office

Irene Bueno
Domestic Policy Council

Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

FROM: Hope O'Keeffe 
Acting General Counsel

RE: **Comments on Draft Policy Guidance Document
Concerning Title VI and Limited English Proficiency**

Thank you for the opportunity to comment on the draft Policy Guidance Document concerning Title VI and limited English proficiency.

A. Implementation For Grant Recipients

Currently, language accessibility in programs funded by the Endowment varies enormously, not only by size, nature, and location of organization but also by the field. Some arts disciplines, like theater and literature, are quite language-dependent. Except when a program is specifically designed to be multilingual, these programs probably have minimal accessibility. Other arts disciplines, such as visual arts, dance, and music, transcend language and are likely extremely accessible. Yet other disciplines have long experience with translation issues: for example, traditional opera has developed surtitling, and larger museums often have exhibit labels and tours in multiple languages.

As drafted, the policy statement provides sufficient flexibility to allow the National Endowment for the Arts to resolve any complaints appropriately. (We note that in thirty-five years of operations, the Endowment never received a complaint of language discrimination under Title VI.)

As we interpret the draft, language discrimination complaints should continue to be handled on a case by case basis, by fact-intensive inquiry into the actual effects of the recipient's actions and inactions on persons with limited English proficiency.

Balancing the factors in the policy statement -- the number or proportions of people with limited English skills served, the frequency of their contact with the program, the importance and nature of the program, and the resources available -- the Endowment's grantees are typically in a very different situation than public education or health care. In most instances, Endowment grantees' Title VI obligations will be satisfied by making available oral assistance or commissioning translations under appropriate circumstances.

There will also be circumstances where Title VI would not require such translation. We interpret the policy document as providing sufficient flexibility to allow the Endowment to continue to fund language-dependent programs in both English and other languages without requiring translation that would be inconsistent with the nature of the program.

There may be other circumstances, such as larger arts organizations or grants involving arts education, where more aggressive enforcement may be appropriate.

In conjunction with enforcement, the Endowment believes that federal and federally funded programs should not only provide appropriate services to the populations that they reach, but also should try to reach underserved populations, including persons with limited English proficiency. (Indeed, we believe that the policy statement should emphasize this.) Preserving America's varied, living cultural heritages is core to the Endowment's mission, and we strongly support grantees' efforts to reach people from many different cultures and language backgrounds. Part of the way we accomplish this is by funding programs in other languages, and increasing access by non-English speakers to art. (A sampling of a few currently funded bilingual and multilingual projects is attached.) We will continue to give high priority to these outreach activities.

In addition to outreach and complaint-based enforcement, the Endowment will investigate education of grantees on language inclusiveness. For example, we could include translation services as an example of a permissible cost in sample budgets. We could also specifically reference bilingual or multilingual programming and outreach as an example of appropriate projects in our Access category. Because arts education projects may implicate particular concerns, we could produce materials specifically addressing these issues. Finally, we could develop materials specifically targeted to enhance language inclusiveness, including a description of language issues in the civil rights portion of our website.

B. Implementation for National Endowment for the Arts Programs

The Endowment conducts relatively few programs directly; by far the bulk of its efforts

are devoted to federally assisted programs. However, additional sensitivity to language issues would benefit both the Endowment's direct programs and its administration of federally assisted programs.

In addition to the above, we will consider the following actions:

- Ensuring that leadership initiatives and outreach programs are extended -- and targeted, where appropriate -- to populations with limited English proficiency;
- Ensuring that all grant programs encourage such outreach;
- Establishing a mechanism for translations of guidelines and other Endowment documents. At present, guidelines are provided only in English. Many years ago, guidelines were also translated into Spanish; this was discontinued due to lack of interest. There have been no subsequent requests for translation;
- Establishing a mechanism for oral translations, such as the AT&T language service;
- Establishing a mechanism to provide customer assistance, such as grantee workshops and other technical assistance, in languages other than English;
- Establishing a database of Endowment employees who are fluent in languages other than English.

At this point, the Endowment has not experienced any requests for translation. However, if we implement appropriate outreach programs, we can anticipate such requests, and have procedures in place to accommodate them.

C. Difficulties With Implementation

Because the Endowment has substantial experience with translation issues, we do not underestimate the potential burdens on our small agency, including both cost and administration. The Endowment's Canada-Mexico-US fellowship program, which involved producing trilingual guidelines (French, English, and Spanish), processing applications in all three languages, and conducting a trilingual panel, posed enormous logistical challenges. Similarly, administration of the Endowment's ongoing program of literature translation fellowships is both costly and time-consuming. For example, in the current round of poetry applications, the Endowment has received approximately 35 applications in 22 languages, which has required us to find translators in languages including Khmer, Lokundo (spoken in the Congo), and Ahtna-Athabaskan (a native Alaskan language, reportedly with three living speakers).

For a grantmaking agency such as the Endowment, language accessibility can involve

three layers: translation of guidelines, translation of applications, and translation of the panel process. When multiple languages are involved, the complications are exponential. If translation requests increase, we will need to address serious issues of resource allocation.

We anticipate that our grantees may experience similar difficulties with resource allocation. Both the organizations and the grants involved are quite small: in FY 1999, 57% of grantees had total organizational budgets under \$500,000, and 83% of the Endowment's grants were under \$50,000 — nearly 23% under \$10,000. However, the flexibility inherent in the policy guidance should accommodate any concerns.

Please contact me at 682-5762 if you require further information. If it would be helpful to further discuss these issues, we would be glad to meet with you.



NATIONAL ENDOWMENT FOR THE ARTS

The Nancy Hanks Center
1100 Pennsylvania Avenue NW
Washington DC 20506-0001
202/682-5400

Sampling of Currently Funded Non-English and Multilingual Programs

This is an illustrative sampling of non-English and bilingual projects that the National Endowment for the Arts is currently funding.

Folk & Traditional Arts

- Centro Binacional Para el Desarrollo Indigena Oaxaqueno
 - to support an annual festival celebrating Oaxacan music, dance, crafts, food, and language
- Radio Bilingue
 - to support two festivals which promote a prominent working class Mexican American folk music tradition
- Tung Ching Chinese Center for the Arts
 - to support a celebration of traditional Chinese Theater
- Tung Ching Chinese Center for the Arts, Inc.
 - to support presentations of a program of mixed Chinese opera works

Literature

- A`A Arts
 - to support publication expenses for a special issue of *Chain* featuring works by women and minorities, including autobiographies written in pidgin, creole, and other dialects
- Bamboo Ridge Press
 - to support the publication of a collection of short stories focusing on Hawaiian multicultural community written in Pidgin English
- Gemini Ink
 - to support the production/expenses for Poesia Tejana publishing project which focuses on works by young Hispanic women living in Texas
- University of Hawaii at Manoa
 - to support publication of a journal of International Writing, which highlights the literature of China, Korea, Vietnam, Philippines, Mexico
- University of Houston (Arte Publico Press)
 - to support the reprinting of foundational Hispanic literary works that have become unavailable to American readers
- Translation Projects in Prose*
 - to support translations of various foreign-language literary works into English

Media Arts

Chicago Latino Cinema

- to support an annual film festival that exhibits works from Mexico, Brazil and Spain, as well as films directed by individuals of Ibero or Latin American descent

New Community Cinema Club, Inc.

- to support mini film festivals devoted to different themes, including African and African-American films, international films, and films From Mediterranean countries

Multidisciplinary

Asia Society

- to support a consortium project to produce a theatrical piece based on a classic Chinese opera

Chinese-American Arts Council, Inc.

- to support a summer cultural festival that will include three fully staged Chinese operas

Circuit Network (fiscal agent for La Pocha Nostra)

- to support the development of interdisciplinary opera with a bilingual libretto

Northwest Asian American Theatre

- to support the creation of an interdisciplinary work involving dance, text, film, music, and movement focusing on Asian culture/arts

Museums

Fondo del Sol

- to support a bilingual arts education program for D.C. public schools

Theater

Bilingual Foundation of the Arts

- to support the production of a theatrical adaptation of *Don Quixote*; the play will be produced in both Spanish and English languages

Friends of Lied

- to support the commission of a bilingual play with music

Ma-Yi Filipino Theatre Ensemble, Inc.

- to support the production of a play; target audiences will be the Filipino American and Asian American communities in the area and outreach activities will supplement the production

New Theatre/Teatro Nuevo, Inc.

- to support the production of two plays; the bilingual cast will explore the possibilities of additional performances in Spanish in an effort to reach a large, monolingual Hispanic audience

San Diego Repertory Theatre

-to support the presentation of a cross-disciplinary, binational ensemble creation celebrating the culture of the San Diego/Tijuana border region

Teatro Avante, Inc.

-to support an annual international Hispanic theatre festival, featuring classical and contemporary productions by Hispanic playwrights throughout the world

Puerto Rican Traveling Theatre Company, Inc.

-to support expenses associated with theater education programs including a bilingual stage manager/technical director internship program

Spanish Theatre Repertory Co., Ltd.

-to support the presentation of 120 Spanish language performances to a wide range of students—linking dramatic theatre to classroom curricula



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

February 17, 2000



OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

Ms. Irene Bueno
Special Assistant to the President
for Domestic Policy
The White House
Washington, DC 20502

Mr. Eddie Correia
Special Counsel to the President
The White House
Washington, DC 20502

Re: Policy Guidance Document: Enforcement of Title VI on Behalf of
Persons With Limited English Proficiency

Dear Ms. Bueno
and Mr. Correia:

This is in response to the January 7, 2000 revised version of the Department of Justice (DOJ) draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 – Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance) (enclosed)." Ms. Hodgkiss, Deputy Assistant Attorney General, Civil Rights Division, requested that we respond directly to you with our comments regarding the proposed guidance.

The Department of Housing and Urban Development (HUD) appreciates the efforts DOJ has made in providing guidance on Title VI enforcement and in revising its original draft to take into account issues raised at the December 1, 1999 meeting at the White House.

The Office of Fair Housing and Equal Opportunity (FHEO) has reviewed the second draft and shared it with HUD's Offices of Housing-Federal Housing Commissioner (Housing), Public and Indian Housing (PIH), Community Planning and Development (CPD), as well as with the Office of Federal Housing Enterprise Oversight (OFHEO) and the Government National Mortgage Insurance Association (Ginnie Mae). This letter incorporates each program office's comments and informs you about the activities that HUD has conducted to ensure that populations with limited English proficiency have access to its programs. It is our understanding that HUD's Office of General Counsel is providing you with comments by separate cover.

I. **FHEO**

We have reviewed the second draft and remain concerned that agencies need more specific guidance in applying the LEP standards in a more consistent and reasonably uniform manner. We are aware that some agencies, such as the Department of Education, must comply with special statutory and regulatory

requirements regarding servicing students with LEP, which may be more stringent than Title VI requires. Nevertheless, we believe that the DOJ guidance should ensure agencies administering similar programs through similar or identical recipients provide standards that are not confusing or inconsistent with each other.

Additionally, it would be helpful if DOJ categorized the different types of programs servicing LEP populations and provided guidance per type of program. We understand that HUD's General Counsel, Gail Laster, is submitting a legal analysis of the need for more specific and more uniform guidance, and we defer to Ms. Laster on this issue.

FHEO has been deeply committed to ensuring that the LEP populations have access to HUD's programs and has introduced a number of initiatives that address these issues:

The FY 1998 and 1999 Fair Housing Initiatives Program (FHIP) Notice of Funding Availability (NOFA's) included language that ensures that grant recipients provide appropriate outreach and enforcement services to language minority populations. For example, HUD awarded a grant of approximately \$2 million in 1999 to Consumer Action, Inc., to conduct a national Public Service Announcement education and outreach campaign. As part of the defined mission, the FHIP NOFA required this grantee to produce materials targeting immigrant communities. This educational campaign will be in five languages (English, Spanish, Chinese, Korean, and Vietnamese) on television, radio, and print ads in Spring 2000. Edward James Olmos will be our national pitch person. In FY 2000, the emphasis will remain on providing educational outreach services for the non-English-speaking population.

In order to adequately serve immigrant communities in their filing of fair housing complaints, the Office of FHEO contracted in 1999 with the AT&T Language Line and Berlitz Interpretation Services to provide immediate access to foreign language interpreters for complainants who wish to file complaints over the phone or in person. These two services allow FHEO investigators to conduct complaint intake and investigations, as well as respond to informal inquiries in more than 150 languages. HUD began that contract in the last quarter of 1999. The system has been integrated into the HUD Fair Housing Hotline, which is already English/Spanish bilingual. If someone calls the Hotline, they are told to "please hold on" in English and are then connected to the AT&T Response Line, which identifies the language and brings an interpreter on the line via a conference call. HUD pays the per-month charges.

FHEO is also working with a contractor who is translating into Spanish, Korean, Chinese and Vietnamese the claim form "Are You A Victim of Housing Discrimination?" and our booklet "Fair Housing - It's Your Right" into Spanish. In addition, there is a children's coloring book and a refrigerator magnet with the Hotline telephone number in Korean.

In 1999, a small business contract was issued to create a model project to specifically reach out to immigrants through the English-as-a-Second-Language courses and through community-based organizations serving immigrant populations.

We require that appropriate provisions are incorporated into HUD Voluntary Compliance Agreements (VCA) to ensure equal access to the benefits of the VCA for language minority residents where the language minority population is statistically significant (i.e., all notices of VCA and claim forms for monetary compensation must be translated into the foreign language, where a significant number of residents speak that foreign language. Interpreters must be made available at public hearings to discuss changes to public housing units).

II. CPD

The draft policy guidance does not appear to affect program activities since existing policy requires outreach to all citizens, including minorities and non-English-speaking persons. Recipients of CPD formula grant programs must prepare and follow a citizen participation plan that encourages participation by all citizens. Consolidated Plan rule for local jurisdictions states at 24 CFR 91.105(a)(2)(ii):

“Jurisdiction also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English-speaking persons, as well as persons with disabilities.”

Similarly, the Consolidated Plan rule for States indicates at 24 CFR 91.115(a)(2):

“A State also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English-speaking persons, as well as persons with disabilities.”

Program activities address LEP concerns in communities with significant concentrations of non-English-speaking individuals by providing translators at public hearings and other meetings, providing written materials in various languages, and by providing funding for training programs such as English as a second language (ESL). These activities are funded primarily through the Community Development Block Grant program. Also, recently, homeless program and technical assistance documents have been translated into Spanish. Homeless Supportive Housing program funds may also be used for ESL programs.

III. PIH

The draft policy guidance prepared by DOJ outlines a framework for when LEP assistance is required in federally assisted programs and activities in order to avoid discrimination. The guidance is intended to clarify existing Title VI responsibilities. The guidance outlines standards to assure that people who are not proficient in the English language can effectively participate in and benefit from programs and activities receiving federal aid.

Public Housing Agencies (PHAs) are charged with prohibition against discrimination. Program activities affected include all aspects of the PHA and the delivery of housing services, including application intake, orientation material, forms, letters, notices to applicants and residents, leases, house rules, guidance and instructions about care of housing units, all information relative to applicant/tenant rights, signs about how to get around, etc.

Currently, PHAs that have a significant number of non-English-speaking applicants/tenants already translate documents into languages other than English. PHAs exercise their judgment with respect to translating documents into languages of a population group of which they serve a substantial number, and which speak a language other than English. Some PHAs employ individuals who can assist applicants/residents who are not proficient in the English language in understanding documents. Others allow individuals the opportunity and time to find a family member or friend who can assist them with understanding and completing documents or be present at meetings and hearings.

The DOJ policy guidance document may require HUD to make PHAs more aware of the link between nondiscrimination based on national origin to individuals who are not proficient in the English language.

IV. Housing

A. Multifamily Housing

It is not clear if Section 8,202/811 or mortgage insurance recipients would be covered by the grant discussion, that is, considered as recipients of federal financial assistance. If they are, the policy would have far-ranging impact on the administration of these programs. We anticipate that the policy could not be implemented without a program regulation.

Current program policy is to provide limited translations of leases and to rely on local sources to bridge any language or literacy gaps. The DOJ policy guidance appears to go beyond our current policy affecting current owners and sponsors by increasing costs that would not be compensated in grant or subsidy amounts.

B. Single Family Housing

For the purpose of providing comments, we have limited the interpretation of "recipients" to include HUD-approved Housing Counseling Agencies, State Housing Finance Agencies, and non-profit organizations that receive grants through the Housing Counseling Program. The Housing Counseling Program provides counseling and advice to tenants and homeowners to improve their housing conditions and to meet the responsibility of tenancy or homeownership. Agencies receiving funds are expected to meet the needs of their communities to include bridging language gaps. However, the Single Family program area assists the grant recipients by translating and distributing a limited number of consumer documents.

The proposed draft policy would have far-reaching effects on Single family's administration of the Housing Counseling Program. Additionally, the proposed policy may jeopardize housing counseling programs at the local level, as many recipients are small, community-based organizations receiving minimal financial assistance from HUD. While the average grant is about \$15,000 annually, many agencies receive as little as \$5,000 in grant funds.

We do not consider our insurance functions being covered by this draft policy, since no grant funds are involved.

V. Ginnie Mae

Ginnie Mae's business partners use English as the common business language, and investors in its guaranteed securities deal with intermediaries who provide ample translations as needed. Ginnie Mae is not aware of any instance where LEP has posed a problem in dealing with its programs.

VI. OFHEO

This Office has reviewed the draft guidance and determined that it would not affect OFHEO's activities.

Again, thank you for the opportunity to review and comment on this important document. I hope the information provided is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Eva M. Plaza". The signature is fluid and cursive, with the first name "Eva" and last name "Plaza" being the most prominent parts.

Eva M. Plaza
Assistant Secretary for
Fair Housing and Equal Opportunity

Enclosure

cc: Anita Hodgkiss



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 7 2000
MAIL ROOM

OFFICE OF
CIVIL RIGHTS

Eddie Correia
White House Counsel's Office
486 Old Executive Office Building
Washington, D.C. 20502

Irene Bueno
Domestic Policy Council
217 Old Executive Office Building
Washington, D.C. 20502

Dear Mr. Correia and Ms. Bueno,

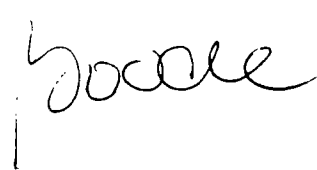
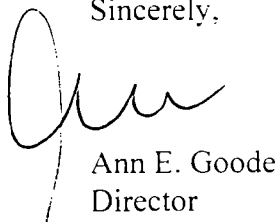
This letter is in response to the January 7, 2000, letter from Deputy Assistant Attorney General Anita Hodgkiss. In her letter, Ms. Hodgkiss requested information on how the Department of Justice's Draft Policy Guidance Document entitled "Civil Rights Enforcement of Title VI of the Civil Rights Act of 1964 – Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance) can be implemented for EPA recipients. As you know, EPA's Office of Civil Rights (OCR) is currently preparing two draft Title VI guidance documents for public comment. One of the documents is *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance)*.

The *Draft Recipient Guidance* contains a brief discussion about public participation in environmental permitting decisions and limited English speaking populations. Specifically, it encourages recipients to take reasonable steps to communicate, in written documents as well as orally, in languages other than English, when appropriate for the community. It also states that a recipient's failure to take reasonable steps to provide a "meaningful opportunity" to limited English speaking individuals to effectively participate in its programs and activities can constitute discrimination prohibited by Title VI. The language in EPA's *Draft Recipient Guidance* was based upon the previous draft of DOJ's LEP guidance and has been circulated within DOJ for review.

Ms. Hodgkiss' letter also requested information about steps currently being taken by EPA to make Federally-conducted programs available to LEP persons, as well as any comments or concerns the Agency may have with implementing the standards outlined in the LEP Guidance

for Federally-conducted programs. While OCR does not have information regarding individuals who have limited English proficiency and EPA-conducted programs, we have forwarded your request. The Agency is working on a response to the broader request regarding EPA's efforts in this area and any concerns the Agency may have regarding EPA-conducted programs.

Sincerely,



Ann E. Goode
Director

cc: Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division
Department of Justice

Barry E. Hill
Director
Office of Environmental Justice
Office of Enforcement and Compliance Assurance
U.S. EPA

Gary Guzy
General Counsel
U.S. EPA

Rafael DeLeon
Acting Associate General Counsel
Civil Rights Law Office
U.S. EPA



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Ms. Harriet S. Rabb
General Counsel
U.S. Department of Health and
Human Services
200 Independence Avenue, S.W.
Room 722A
Washington, D.C. 20201

Mr. Thomas E. Perez
Director
Office for Civil Rights
U.S. Department of Health &
Human Services
200 Independence Avenue, S.W.
Room 515F Hubert H. Humphrey Building
Washington, D.C. 20201

Dear Ms. Rabb and Mr. Perez:

Enclosed, as promised, is a revised version of our proposed draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 — Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance)." We have made changes to address many of the comments, concerns, and suggestions that were offered by various agencies in our last circulation of the document, including issues raised at the December 1st meeting at the White House.

As you will see, we have reorganized the document to better explain the balancing approach we believe should be taken to these questions, and we removed references that were confusing. The guidance now is shorter and has fewer specific examples. The intent is to set out the general principles and leave to each agency the task of giving additional detailed guidance, tailored to the nature of their recipients' programs, on how to comply with Title VI's prohibition on national origin discrimination. It is important to remember that this policy guidance does not create new obligations, but rather clarifies existing Title VI responsibilities.

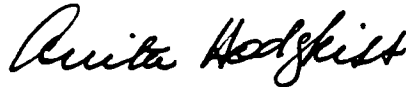
You will remember that each agency at the last meeting was requested to make a careful assessment as to how this policy guidance can be applied in both its federally conducted and

federally assisted programs. Although Title VI does not apply to the Federal government, there is a concern that the standards for recipients contained in the Document should be applied to and followed by the Federal government in its activities. Originally the request was made that this assessment be completed by January 15, 2000. However, due to the delay in getting this new draft to you, that deadline is now extended to January 21, 2000.

Your memorandum should set forth how the standards outlined in the Draft Policy Guidance Document can be implemented both for your recipients and within your agency's own programs. In addition, the memorandum should include available information about steps that currently are taken to make federally conducted programs available to LEP persons, as well as set forth your agencies' comments, problems, and concerns with implementing the Document. You should send your memorandum to Eddie Correia of the White House Counsel's Office and to Irene Bueno of the Domestic Policy Council on or before January 21st, with a copy to me. Please do not hesitate to give me a call if you have any questions about the guidance document or the written response you are being asked to prepare.

Thank you very much for your patience, for sharing your concerns and comments with us to help produce a useful guidance document, and for your hard work on this important issue.

Sincerely,



Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
✓ Ms. Irene Bueno
Mr. George Lyon



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Ms. Gail W. Laster
General Counsel
U.S. Department of Housing and
Urban Development
451 7th Street, S.W.
Room 10214
Washington, D.C. 20410

Ms. Eva Plaza
Assistant Secretary for Fair
Housing & Equal Opportunity
U.S. Department of Housing & Urban
Development
451 7th Street, S.W.
Room 5100
Washington, D.C. 20410

Dear Ms. Laster and Ms. Plaza:

Enclosed, as promised, is a revised version of our proposed draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 — Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance)." We have made changes to address many of the comments, concerns, and suggestions that were offered by various agencies in our last circulation of the document, including issues raised at the December 1st meeting at the White House.

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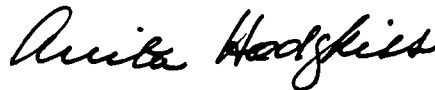
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Sincerely,



Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
Ms. Irene Bueno
Ms. Diana Ortiz
Mr. Harry L. Carey



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Mr. Paul F. Kendall
General Counsel
Office of Justice Programs
U.S. Department of Justice
810 7th Street, N.W.
Room 5400
Washington, D.C. 20531

Dear Mr. Kendall:

Enclosed, as promised, is a revised version of our proposed draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 — Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance)." We have made changes to address many of the comments, concerns, and suggestions that were offered by various agencies in our last circulation of the document, including issues raised at the December 1st meeting at the White House.

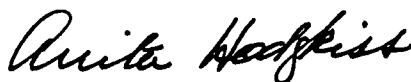
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Thank you very much for your patience, for sharing your concerns and comments with us to help produce a useful guidance document, and for your hard work on this important issue.

Sincerely,



Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
✓ Ms. Irene Bueno



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Ms. Nancy E. McFadden
General Counsel
U.S. Department of Transportation
400 7th Street, S.W.
Room 10428
Washington, D.C. 20590

Mr. Ronald A. Stroman
Director
Office of the Secretary
Departmental Office of
Civil Rights
U.S. Department of Transportation
400 7th Street, S.W.
Room 10215
Washington, D.C. 20590

Dear Ms. McFadden and Mr. Stroman:

Enclosed, as promised, is a revised version of our proposed draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 — Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance)." We have made changes to address many of the comments, concerns, and suggestions that were offered by various agencies in our last circulation of the document, including issues raised at the December 1st meeting at the White House.

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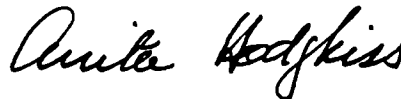
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Sincerely,



Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
✓ Ms. Irene Bueno
Mr. David Tochen



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Ms. Hope O'Keefe
Acting General Counsel
National Endowment for the
Arts
1100 Pennsylvania Avenue, N.W.
Room 518
Washington, D.C. 20506

Ms. Angelia Richardson
Director
Division of Civil Rights
National Endowment for the Arts
1100 Pennsylvania Avenue, N.W.
Room 812
Washington, D.C. 20506

Dear Ms. O'Keefe and Ms. Richardson:

Enclosed, as promised, is a revised version of our proposed draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 — Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance)." We have made changes to address many of the comments, concerns, and suggestions that were offered by various agencies in our last circulation of the document, including issues raised at the December 1st meeting at the White House.

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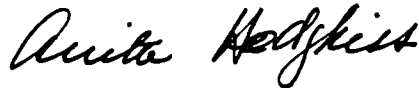
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Sincerely,



Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
✓ Ms. Irene Bueno
Ms. Denise Pearson



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Ms. Judith A. Winston
General Counsel
U.S. Department of Education
Federal Building 6
400 Maryland Avenue, S.W.
Suite 6E300
Washington, D.C. 20202

Ms. Norma Cantu
Assistant Secretary for Civil
Rights
U.S. Department of Education
330 C Street, S.W.
Room 5000
Washington, D.C. 20202

Dear Ms. Winston and Ms. Cantu:

Enclosed, as promised, is a revised version of our proposed draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 — Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance)." We have made changes to address many of the comments, concerns, and suggestions that were offered by various agencies in our last circulation of the document, including issues raised at the December 1st meeting at the White House.

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Sincerely,

Anita Hodgkiss by *mef*
Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
✓ Ms. Irene Bueno
Mr. Karl Lahring



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

The Honorable Henry L. Solano
Solicitor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S2002
Washington, D.C. 20210

Ms. Annabelle T. Lockhart
Director
Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N413
Washington, D.C. 20210

Dear Mr. Solano and Ms. Lockhart:

Enclosed, as promised, is a revised version of our proposed draft Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 — Discrimination Against National Origin Minority Group Individuals Who Have Limited English Proficiency (LEP Guidance)." We have made changes to address many of the comments, concerns, and suggestions that were offered by various agencies in our last circulation of the document, including issues raised at the December 1st meeting at the White House.

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Sincerely,

Anita Hodgkiss by my
Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
✓ Ms. Irene Bueno
Mr. Gary Buff



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Ms. Judith A. Miller
General Counsel
U.S. Department of Defense
1600 Defense Pentagon
Room 3E980
Washington, D.C. 20301-1600

Mr. Claiborne D. Haughton
Director, Equal Opportunity Policy
OUSD (P & R)
U.S. Department of Defense
Room 3A272, Pentagon
Washington, D.C. 20301-4000

Dear Ms. Miller and Mr. Haughton:

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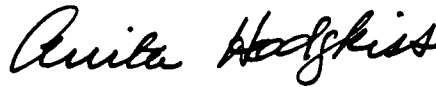
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Anita Hodgkiss
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Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
✓ Ms. Irene Bueno
Mr. Jerry Anderson
Ms. Marsha Mouyal



U.S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Mr. Charles R. Rawls
General Counsel
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Room 107W Jamie Whitten Building
Washington, D.C. 20250

Ms. Rosalind D. Gray
Director
Office of Civil Rights
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Room 326W Jamie Whitten Bulding
Washington, D.C. 20250

Dear Mr. Rawls and Ms. Gray:

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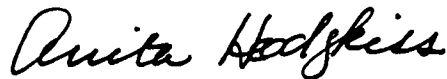
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Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: ✓ Mr. Edward W. Correia
Ms. Irene Bueno
Ms. Tami Trost
Mr. Ronald Walkow
Mr. Frederick Isler
Mr. David Chambers



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 7 2000

Mr. Gary S. Guzy
General Counsel
Environmental Protection Agency (2310)
1200 Pennsylvania Avenue, N.W.
Suite 4010, Ariel Rios, North
Washington, D.C. 20460

Ms. Ann Goode
Director
Office of Civil Rights (1201)
Environmental Protection Agency
401 M Street, S.W.
Room W206
Washington, D.C. 20460

Dear Mr. Guzy and Ms. Goode:

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Anita Hodgkiss by *mf*
Anita Hodgkiss
Deputy Assistant Attorney General
Civil Rights Division

Enclosure

cc: Mr. Edward W. Correia
✓ Ms. Irene Bueno
Mr. Rafael DeLeon
Ms. Mary O'Lone



U.S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

FAX TRANSMITTAL SHEET

To:	Date:	12/6/99
	Name:	Irene Bueno
	Organization:	
	FAX No:	202-456-5581
	Off. Phone:	
From:	Name:	Anita Hodgkiss
	Organization:	DOJ/CRT
	FAX No:	202/514-9962
	Off. Phone:	202/616-2732
Subject:	Title VI LEP Guidance	
The attached report indicates that in 1995-97, the Social Security Administration was the largest publisher of documents in languages other than English. Over ½ of the documents they distributed were in other languages, primarily Spanish. Note also, on page 6, their criteria for determining when it is appropriate to produce non-English language materials. I thought you might find this helpful.		
Number of pages transmitted (including this sheet): (30 Pages maximum)		
10		



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-266194

June 5, 1998

The Honorable Richard C. Shelby
United States Senate

Dear Senator Shelby:

Subject: Federal Documents in Languages Other Than English Published and Distributed in Calendar Years 1995-1997

This letter responds to your request that we update our September 1995 correspondence identifying the number of federal government documents (excluding documents of the Departments of Defense and State) that were published in languages other than English from 1990 through 1994.¹ As agreed with your office, we (1) updated the number of non-English-language documents published during the 3-year period from January 1, 1995, through December 31, 1997, and determined how many of these published documents were distributed; (2) identified which languages federal agencies published these documents in; and (3) identified two examples of agencies' written policies and procedures for determining when to publish agency documents in a language other than English.

To update information on the number of non-English-language documents published, we reviewed the same databases used to develop the information presented in our 1995 correspondence. We counted the number of non-English-language documents listed in two databases that contain information about publicly available documents and publications: the Government Printing Office's (GPO) monthly catalog of publications and the National Technical Information Service's (NTIS) bibliographic database. We did not verify the information contained in the databases. Also, a GPO official told us that not all non-English-language publications and documents may be included in the GPO monthly catalog database because some federal agencies print and distribute documents themselves without going through GPO. Therefore, the 200 non-English-language documents we identified are not a federal governmentwide

¹Federal Foreign Language Documents (GAO/GGD-95-243R, Sept. 20, 1995).

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figure for agencies (excluding the Departments of State and Defense). To determine how many of the documents that we identified had been distributed, we asked GPO and NTIS officials to review their sales and distribution records and provide us this information for the years 1995 through 1997. We also reviewed database entries that identified the languages that these documents were published in.

Finally, to identify examples of agencies' written policies for determining when to publish agency documents in a language other than English, we contacted officials from two of the three agencies that had published comparatively more non-English-language documents than other agencies during our review period and obtained copies of the relevant written policies. Additional information on our scope and methodology is provided at the end of this letter.

RESULTS IN BRIEF

For the years 1995 through 1997, we identified a total of 200 non-English-language documents from the GPO and NTIS databases. This is less than one-half of 1 percent of the approximately 69,000 federal agency documents that were published during this period and listed in these databases. Two of the three agencies that published the most non-English-language documents during this 3-year period were the Social Security Administration (SSA), which published 49 non-English-language documents; and the Department of Education, which published 17. Some of the SSA documents offered explanations of the supplemental security income program and disability insurance. The Department of Education documents addressed topics such as reading improvement, student financial assistance, and child development.

Data GPO and NTIS officials provided on the number of copies of these 200 documents distributed showed that about 11 million copies of these non-English-language documents were distributed during the years 1995 through 1997. This is less than one-half of 1 percent of the approximately 2.9 billion copies of documents printed and distributed by GPO alone during the 3-year period.² SSA's non-English-language documents were the most widely distributed. Of the 11 million non-English-language documents that GPO distributed during this 3-year period, 6.6 million, or 60 percent, were SSA documents.

By far, the most prevalent language used was Spanish, with 143 of the 200 documents we identified being published in Spanish. We also found that 36 of the non-English-language documents were published in multiple languages, and most of these included Spanish as 1 of the languages. Other than Spanish, no other language was used in more than five of the documents.

²Total federal document distribution figures were not available from NTIS because its aggregate sales data were for both public and private sector documents included in its bibliographic database.

B-266194

We found that both of the agencies we contacted—SSA and the Department of Education—had written policies about publishing documents in a language other than English. SSA's policy established five factors for determining when to produce written communications in a language other than English, including the number of non-English-speaking customers and the cost-effectiveness of issuing the communication. Senior officers at the Department of Education have the authority to determine which of their offices' publications will be issued in a foreign language.

NUMBER OF NON-ENGLISH-LANGUAGE DOCUMENTS PUBLISHED AND DISTRIBUTED

The GPO and NTIS databases contained approximately 69,000 federal agency documents that were published during the years 1995 through 1997. Of these 69,000 documents, only 200 (or less than one-half of 1 percent) were published in languages other than English. GPO and NTIS data showed that about 11 million copies of these 200 non-English-language documents were distributed during this 3-year period. This is less than one-half of 1 percent of the approximately 2.9 billion copies of federal documents printed and distributed by GPO alone during the 3-year period.

Table 1 presents (by federal department or agency) the number and percentage of federal non-English-language documents published and distributed during calendar years 1995 through 1997. As shown in table 1, of the 200 federal agency documents published in a language other than English, SSA published 49 non-English-language documents (about 25 percent of the total).

B-266194

Table 1: Non-English-Language Documents Published and Distributed During Calendar Years 1995 Through 1997

Federal department/agency	Number of documents published	Percent of documents published	Number of documents distributed	Percent of documents distributed
Social Security Administration	49	24.5%	6,615,072	59.6%
Department of Education	17	8.5	128,967	1.2
Department of Health and Human Services ^a	17	8.5	541,349	4.9
National Institutes of Health	14	7.0	436,997	3.9
Food and Drug Administration	13	6.5	117,686	1.1
Department of Labor	13	6.5	300,669	2.7
U.S. Trade and Development Agency	9	4.5	16	^b
Department of Commerce	8	4.0	29,972	0.3
Environmental Protection Agency	7	3.5	120,065	1.1
Department of Transportation	7	3.5	115,914	1.0
Department of Agriculture	6	3.0	233,270	2.1
Department of Housing and Urban Development	6	3.0	276,051	2.5
Inter-American Foundation	4	2.0	21,764	0.2
Internal Revenue Service	4	2.0	801,950	7.2
Department of the Interior	4	2.0	50,402	0.5
Department of Justice	4	2.0	367,551	3.3
Other ^c	18	9.0	947,446	8.5
Total	200	100.0%	11,105,041	100.0% ^d

Note: Documents were distributed by GPO and NTIS.

^aIncludes Department of Health and Human Services components except the Food and Drug Administration and the National Institutes of Health, which are listed separately.

^bPercent of documents distributed was less than one-tenth of 1 percent.

^cEleven federal departments and agencies are included in this category, each of which published 3 or fewer non-English-language documents.

^dColumn does not add to 100 percent due to rounding.

Source: GAO analysis of GPO and NTIS data.

B-266194

As expected, the federal departments and agencies published non-English-language documents that addressed topics pertaining to their missions and related activities. For example, SSA's non-English-language documents were on topics such as Medicare, the supplemental security income program, disability insurance, workers' compensation, and various tax-related issues. The Department of Education's documents addressed topics such as reading improvement, educational financial assistance, and child development.

MOST NON-ENGLISH-LANGUAGE DOCUMENTS WERE IN SPANISH

As shown in table 2, our database search indicated that almost three-fourths (about 72 percent) of the 200 non-English-language documents we identified were published in Spanish. Although the next most commonly used language was Chinese, only five of the documents were written in Chinese. Also, we identified 36 documents (18 percent of the 200 documents) that were published in more than 1 language. Thirty of these 36 documents included Spanish as 1 of the multiple languages.

Table 2: Foreign Languages Used in Federal Documents Published During 1995-1997

Foreign language	Number of documents	Percent of non-English-language documents
Spanish	143	71.5%
Chinese	5	2.5
French	4	2.0
Russian	4	2.0
German	2	1.0
Portuguese	2	1.0
Italian	1	0.5
Korean	1	0.5
Tagalog	1	0.5
Vietnamese	1	0.5
Multiple languages ^a	36	18.0
Total	200	100.0 %

^aDocuments in this category included text printed in more than one language—e.g., Spanish and English.

Source: GAO's analysis of the GPO and NTIS document databases.

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According to data from the 1990 decennial census, 31.8 million persons aged 5 years or older spoke a language other than English at home (14 percent of the total U.S. population aged 5 years or older). Of these 31.8 million persons, over half (17.3 million) spoke Spanish. The comparatively large number of documents that federal agencies published in Spanish may reflect the size of the Spanish-speaking population who required services or information from these agencies during the 3-year period we reviewed.

SSA AND THE DEPARTMENT OF EDUCATION HAVE POLICIES ON WHEN TO PUBLISH NON-ENGLISH-LANGUAGE DOCUMENTS

We found that both SSA and the Department of Education had written policies about publishing agency documents in a language other than English.

SSA established its policy in September 1995, wherein it states that it recognizes the value of public information to educate, improve access to its services, address customer concerns, promote program integrity, and build public confidence in the programs it administers. SSA's policy is to produce public information materials, notices, posters, and form letters in languages other than English to provide this information to the non-English-speaking public. To assist agency decisionmakers in determining when it is appropriate to produce such non-English-language materials, SSA's policy identifies the following five factors for their consideration:

- (1) number of non-English-speaking customers,
- (2) number of SSA field offices affected by the communication,
- (3) literacy level in the non-English language,
- (4) anticipated demographic growth, and
- (5) cost-effectiveness associated with issuing the communication nationally versus locally.

The Department of Education established its policy in November 1995 to cover the translation of the Department's publications and correspondence into languages other than English. This policy is decentralized in that it is addressed to all of the Department's senior officials. It calls for the officials to ensure that publications developed in carrying out the duties of their principal offices are available, as appropriate, in the languages of the customers who will use them and that correspondence is translated, as needed.

SCOPE AND METHODOLOGY

We searched GPO's and NTIS' databases to determine the number of non-English-language documents published by federal agencies and to identify which languages these documents were written in. The GPO database search identified 170 federal non-English-language documents. GPO's monthly catalog of publications database contains regulatory materials, business reports, studies, fact sheets, maps, handbooks,

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and conference proceedings. The NTIS database search identified another 30 non-English-language documents. NTIS' database includes research and business reports, engineering studies, and technical publications.

Once we had identified the documents published in a language other than English, we asked officials from GPO and NTIS to provide information on the number of these documents that their organizations distributed. A GPO official indicated that GPO distributes federal publications to federal agencies, through retail sales, and through its network of nearly 1,400 depository libraries throughout the country. For the list of 170 non-English-language documents we identified from GPO's database, GPO reported to us that 11,104,922 copies were distributed over the 3-year period. According to an NTIS official, distribution of documents contained in its bibliographic database could be identified only by researching sales records. From the listing of 30 non-English-language documents we identified from searching NTIS' bibliographic database, NTIS determined that 119 copies were distributed through its sales program for the period May 1995 through March 1998. We did not verify any of the distribution data provided us by the GPO and NTIS officials.

Lastly, as agreed with your office, we contacted officials from SSA and the Department of Education and identified and summarized their written policies for determining when to publish agency documents in a language other than English.

We conducted our review during February and March 1998 in accordance with generally accepted government auditing standards. We provided draft copies of this letter to officials from GPO, SSA, NTIS, and the Department of Education for their review and comment. Other than some technical observations from GPO and the Department of Education, which we have incorporated into the text, the agencies agreed with the information presented in this report and had no comments.

The major contributors to this letter were William Trancucci, Evaluator-in-Charge, and Susan Ragland, Assistant Director. Please contact me or Ms. Ragland on (202) 512-8676 if you have any questions on the material in this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Christopher Mihm". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

J. Christopher Mihm
Associate Director
Federal Management and Workforce Issues

(410258)

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12/14/99

Re: Punjabi Speakers at INS**For: Irene Bueno, Domestic Policy Council, White House****Prepared by: Joanna Ruppel, HQRIC****Victor Cerda, HQCOS****Reviewed by: Joseph Langlois, HQIAO****Jesus Ramos, HQOPS****Ann Palmer, HQISD**

The White House had a meeting with a group of Sikhs who inquired whether or not the Immigration and Naturalization Service (INS) had Punjabi speakers. There are three areas within the Immigration and Naturalization Service where interpreters play a role: Enforcement/Benefits and Asylum.

Enforcement/Benefits

The INS has a contract with AT&T translating services, a service that can be reached via phone, 24-7. Any time an INS field officer is processing a person who appears to be removable, they use this service if required. If there is an INS officer who speaks the requisite language on site, they will use that person instead of the AT&T services.

Note: This does not apply in the context of immigration benefits interviews (for example, naturalization interviews) where the applicant for the benefit is required to provide their own translator for their interview.

Translators are also used during immigration hearings. The Executive Office for Immigration Review, which has jurisdiction over these hearings and the process arranges to provide translating services if required.

Affirmative Asylum Program

An applicant applying for asylum with the INS is required by regulation to provide his or her own interpreter if the applicant cannot proceed with the interview in English. This must be at no expense to the government. The interpreter must be at least 18 years old and the following individuals cannot serve as interpreter:

- 1) the applicant's attorney or representative of record;
- 2) a witness testifying on the applicant's behalf; or
- 3) a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence.

There are no other special provisions for interpreters, including Punjabi-speaking interpreters. Punjabi speaking applicants who do not speak English fluently must bring their own interpreters to their asylum interviews. (The regulatory provision governing interpreters in the affirmative asylum process is attached for reference.)

Credible Fear Screening and Reasonable Fear Screening

In contrast to the affirmative process, regulations require the INS to arrange for interpretation during the credible fear screening* and reasonable fear screening** processes, if an alien is unable to proceed effectively in English and the asylum officer is unable to proceed competently in a language chosen by the alien. The interpreter may not be a representative or employee of the applicant's country of nationality or, if the applicant is stateless, the applicant's country of last habitual residence.

In conducting credible fear and reasonable fear screenings, the INS uses telephonic interpretation services provided by non-government, commercial companies. These services are paid for by the INS. An interpreter is used in every case where translation is needed, regardless of language. This includes Punjabi. INS policy is to contact Language Service Associates (LSA) for interpretation first, because the INS has a contract with LSA for their services. If LSA cannot provide an interpreter for a particular case, the INS uses other commercial interpretation services through companies such as AT&T, LLE and Berlitz. The INS does not have a contract for live on-site interpretation services, but negotiates for commercial services when an interpreter's physical presence is required. In exceptional cases, the INS has used government interpreters when there has been a need for heightened confidentiality.

*Credible fear screenings are conducted when an alien subject to expedited removal proceedings expresses a fear of return. If an alien is found to have a credible fear of persecution or torture, he or she is placed in proceedings before the Immigration Court, where the alien may seek asylum and withholding of removal.

**Reasonable fear screenings are conducted when an alien subject to reinstatement of a prior order under 241(a)(5) of the INA or administrative removal under 238(a) of the INA (based on an aggravated felony conviction) seeks withholding of removal. If the asylum officer finds the alien has a reasonable fear of persecution or torture, the alien is referred to an Immigration Judge to determine whether the alien is eligible for withholding or deferral of removal under section 241(b)(3) of the INA or under the Convention against Torture.

Relevant regulatory provisions

Affirmative Program. 8 CFR 208.9 (g).

An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 208.10.

Credible Fear Screening. 8 CFR 208.30(b).

If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter may not be a representative or employee of the applicant's country of nationality or, if the applicant is stateless, the applicant's country of last habitual residence.

Reasonable Fear Screening. 8 CFR 208.31(c).

If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter may not be a representative or employee of the applicant's country or nationality, or if the applicant is stateless, the applicant's country of last habitual residence.