

## ISSUE BRIEF

# *Increasing Access to Services for Limited English Proficient Persons*

August 7, 2003

Over eight percent of the adult respondents to the U.S.'s 2000 census reported that they do not speak English well. These individuals include both immigrants to the United States and U.S. natives. People who do not speak English well have limited employment opportunities and are more likely to be poor. A recent study of immigrants in Los Angeles and New York City found limited English proficiency, as well as low educational attainment, to be closely related to low earnings, poverty, and hardship.<sup>1</sup>

Limited English proficient (LEP) individuals often experience communication barriers in everyday activities such as shopping and using public transportation. In ordinary activities, these barriers can be frustrating and embarrassing. In cases where the ability to receive an essential public service depends on effective communication, communication barriers can threaten individuals' health, safety, and civil rights.

LEP persons confront numerous barriers to learning about and accessing a broad spectrum of public services. In many cases, these barriers exist in violation of federal civil rights law. Title VI of the Civil Rights Act of 1964, which prohibits national origin discrimination by recipients of federal funds, disallows recipients from excluding LEP persons from their programs and services, or imposing delays or denials of services.<sup>2</sup>

Federal policy under Title VI requires recipients of federal funding to take reasonable steps to provide LEP individuals meaningful access to their programs and services, such as providing competent interpreters and translated documents to LEP individuals at no cost. This obligation extends to all of a recipient's programs and services, without regard to whether a specific service is federally funded. Most federal funds-granting agencies and recipients paid little notice to this long-standing requirement until President Clinton issued Executive Order 13166 in 2000.<sup>3</sup> E.O. 13166, which was subsequently affirmed by the George W. Bush administration, requires federal funds-granting agencies to

<sup>1</sup> Michael Fix and Randolph Capps, "Immigrant Well-Being in New York and Los Angeles," Policy Brief No. 1 in series "Immigrant Families and Workers: Facts and Perspectives," Aug. 31, 2002, [www.urban.org/url.cfm?ID=310566](http://www.urban.org/url.cfm?ID=310566).

<sup>2</sup> 42 USC § 2000d, *et seq.* The regulations and important judicial decisions interpreting Title VI are summarized in detail in the Dept. of Health and Human Services Office of Civil Rights Policy Guidance, "Title VI Prohibition against National Origin Discrimination as It Affects Persons with Limited English Proficiency," [www.hhs.gov/ocr/lep/guide.html](http://www.hhs.gov/ocr/lep/guide.html).

<sup>3</sup> Executive Order 13166 of Aug. 11, 2000, 65 Fed. Reg. 50121 (Aug. 16, 2000).



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develop guidance to assist their recipients in determining the language assistance they must provide in any particular circumstance. The U.S. Dept. of Justice (DOJ) has developed and published model guidance to be used by other agencies in developing their own guidance.<sup>4</sup>

## *Who is a recipient of federal funds?*

Federal funds support a broad array of programs and services. Law enforcement agencies, domestic violence shelters, special education programs, and social services agencies all receive federal funds. Almost all hospitals and health care providers receive federal funding through Medicaid, Medicare, or other programs. A recipient need not receive federal funds in cash or directly from the government to be bound by Title VI obligations. Both a child care provider who receives a food program subsidy from a resource and referral organization and a food bank that receives donations of surplus food from the U.S. Dept. of Agriculture are “recipients” required to comply with Title VI.<sup>5</sup>

## *How does an LEP person know that language services are available?*

Recipients of federal funding are required to notify LEP individuals that interpreters and other language assistance services are available to them free of charge. The DOJ Guidance recommends a list of notice techniques, including:

- posting notices in appropriate languages in intake areas and other initial points of contact;
- providing a telephone voicemail menu, in the area’s most common languages, that includes information about how to obtain interpreter services;
- putting information about the availability of language services in outreach materials; and
- doing outreach through non-English media, community organizations and community events.

Local government entities should ensure that adequate notice is provided at all points of public contact. Advocates and community organizations should work with social service agencies and other federal funds recipients to ensure that their notice and outreach efforts are adequate and appropriate for the community being served. For example, the Oregon Legal Center (OLC) has been innovative in its outreach to indigenous farmworkers from Mexico and Central America. Oregon’s indigenous farmworker community speaks a number of indigenous languages, including Mixteco, Triqui, and Kanjobal, most of which are not written languages. The OLC created specialized outreach materials, which

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<sup>4</sup> Dept. of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002), [www.lep.gov/recip.html](http://www.lep.gov/recip.html). The DOJ published its uniform model guidance in response to concerns, raised primarily by the Office of Management and Budget in its assessment of the costs and benefits of implementing Executive Order 13166, about the potential for various agencies to apply inconsistent standards in evaluating recipients’ language access efforts. The agencies that had published guidance prior to the release of the DOJ final guidance were required to revise their guidance to conform it to that issued by the DOJ.

<sup>5</sup> Resources for determining whether programs are federally assisted can be accessed through the community resources section of the federal interagency LEP Web site, [www.LEP.gov](http://www.LEP.gov).

include audio tapes in Mixteco and Spanish and illustrated handouts, for effective communications in a context where written materials would not have been useful.<sup>6</sup>

Community organizations can also help LEP individuals to assert their own right to language assistance services by providing outreach and “I speak” cards. “I speak” cards, printed in two languages, inform people of their right to an interpreter in their own language and can be used by them to identify to an English-speaker which language they speak and to request an interpreter. One of the first “I speak” cards was developed by Pacific Asian Language Services for Health (PALS), in Los Angeles, California. PALS is a nonprofit organization that provides interpretation and translation services in health care settings. PALS developed its “I speak” cards, as well as a workshop on language laws and LEP individuals’ right to receive interpreter services, in collaboration with several community-based organizations that had expertise and relationships with the targeted language communities.<sup>7</sup>

### *Competent interpreter services*

An agency that receives federal funding must provide competent interpreters to achieve effective communication with LEP individuals served by the agency. Not all bilingual persons have the vocabulary required in any particular recipient’s context or the ability to interpret in and out of English. In many cases, family members and others, including strangers, are called upon to interpret for LEP individuals without regard to whether they have the necessary skills or whether it is appropriate to ask them to interpret in a given context. This practice can seriously compromise the accuracy and confidentiality of the translation. Clients may feel uncomfortable revealing sensitive information, such as physical symptoms or the details of a violent assault, to a friend or family member. And such “informal interpreters” are not bound by professional obligation to keep confidential information learned while interpreting.

Federal funding recipients should develop, document, and apply a protocol to assess the competency of persons they use to interpret. These include any bilingual staff and community volunteers who may provide services, as well as hired interpreters. A current professional certification is helpful, but there is no universal interpreter certification standard. The U.S. Dept. of Health and Human Services Office of Minority Health has recommended the development of national standards for medical and community interpreter certification as well as training, skills assessment and codes of ethics in its National Standards for Culturally and Linguistically Appropriate Services in Health Care.<sup>8</sup> The DOJ model guidance advises recipients to evaluate potential interpreters for the following minimum proficiencies:

- Ability to communicate information accurately in both English and the other language
- Capacity to employ the appropriate mode of interpreting

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<sup>6</sup> *Oregon Law Center Indigenous Farmworker Project*, LSC Resource Library Abstract No. 030098 (May 2003), [www.lri.lsc.gov/abstracts/030098/div\\_030098.htm](http://www.lri.lsc.gov/abstracts/030098/div_030098.htm).

<sup>7</sup> “I speak” cards in 13 languages are available on the PALS Web site, [www.palsforhealth.org](http://www.palsforhealth.org).

<sup>8</sup> Executive Summary, *National Standards for Culturally and Linguistically Appropriate Services in Health Care*, U.S. Dept. of Health and Human Services, Office of Minority Health (Washington, DC, March 2001), Part I, p. xix.

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- Knowledge in both languages of specialized terms and concepts used in the recipient's context (and an ability to communicate them when there is no exact translation)
- Understanding of the regional or other differences in usage sufficient for knowledge of the vocabulary and phrasing used by the LEP person
- Ability to understand and follow applicable confidentiality and impartiality rules
- Ability to understand and adhere to their role as interpreters

The last point requires the interpreter to let the LEP individual speak for him or herself by interpreting what is being said accurately and impartially.

Recipients may apply more comprehensive standards than these minimums. The California Healthcare Interpreters Association has produced a detailed set of standards that begins with ethical principles; it includes detailed protocols specifying interpreter actions as well as a discussion of the multiple roles healthcare interpreters may play.<sup>9</sup> The California Endowment, a major healthcare foundation, has published a detailed guide to selecting and working with language agencies.<sup>10</sup>

Some communities, especially those in states whose immigrant populations have recently grown, lack an adequate supply of interpreters or do not have interpretation resources for less common languages. While not as effective as in-person interpretation, commercial telephone interpreter services can provide interpretation services where other alternatives are not available or as a supplement to staff or other face-to-face interpretation resources. Philadelphia's Community Legal Services (CLS) provides interpretation through a combination of bilingual staff, a professional language service that provides interpretation and translation in over 30 languages, and a telephone interpreting service that serves over 140 languages. CLS has partnered with other legal services organizations to negotiate a statewide rate for the telephone interpreting service and reports that its costs of using contracted language services for interpretation and translation is less than 0.25 percent of its budget.<sup>11</sup>

Some agencies call on community organizations or volunteers to interpret. This practice should be limited to situations where the recipient of federal funding and the community volunteer or organization have entered into a formal agreement. The lack of a formal agreement hinders the recipient's ability to assess the competency of the interpreters it uses and burdens community organizations. It is not unusual for community organizations to be contacted, without prior arrangement, and asked to provide interpretation without compensation. Such requests pressure community organizations to

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<sup>9</sup> Executive Summary, *California Standards for Healthcare Interpreters: Ethical Principles, Protocols, and Guidance on Roles and Intervention*, California Healthcare Interpreters Association, retrieved Mar. 17, 2002, from [www.chia.ws/standards](http://www.chia.ws/standards).

<sup>10</sup> Cynthia E. Roat, *How to Choose and Use a Language Agency: A Guide for Health and Social Services Providers Who Wish to Contract with Language Agencies*, The California Endowment, [www.calendow.org/pubs](http://www.calendow.org/pubs).

<sup>11</sup> *Community Legal Services Language Access Project (LAP)*, LSC Resource Library Abstract No. 030065 (April 2003), [www.lri.lsc.gov/sitepages/diversity/div\\_lep.htm](http://www.lri.lsc.gov/sitepages/diversity/div_lep.htm).

stretch their scarce resources to help important agencies or fellow immigrants, to the detriment of the charitable missions for which they are funded.

Organizations serving immigrant communities can operate programs that provide economic opportunity for community members while contributing to the supply of competent interpreters. For example, Asian Health Services, a community health clinic in Oakland, California, has a Language and Cultural Access Program that provides medical interpreter training for bilingual community members and maintains a language cooperative that provides competent interpreters and translators to community clients.<sup>12</sup>

Hiring skilled bilingual employees can be among the most effective and economical ways of providing interpretation services. However, recipients must keep in mind that being bilingual is not the same as having the capacity to interpret. Before being engaged as interpreters, bilingual employees should be assessed for their competency in English and the targeted language, and trained in the skills of interpretation. Recipients should also develop protocols to ensure that bilingual employees are fully and effectively utilized, and incorporate interpreting responsibilities into the employee's job description and compensation structure. Requiring bilingual employees to interpret in addition to performing the same tasks as their counterparts is inequitable and interferes with the employees' ability to provide interpretation on a timely basis.

### *Translation of written materials*

In order to communicate effectively with LEP persons, recipients of federal funding must also provide translations of important written materials. Recipients should translate documents that are vital to meaningful program access, such as applications, consent forms, notices of rights (including the right to language assistance), and notices about an individual's benefits or program participation, as well as outreach or other informational materials that advise the public about the existence of the program.

It is not always feasible for a recipient to translate materials into every language spoken in its service area. However, materials should be translated where a significant number or percentage of the population eligible to be served or likely to be directly affected by the recipient's program needs information in a language other than English to be able to communicate effectively. The DOJ Guidance sets out 'safe harbor' guidelines to provide recipients with a level of assurance that they are meeting the minimum standards for translation. These guidelines specify translation of vital documents for each eligible language group that constitutes the lesser of five percent or 1,000 members of the population eligible or likely to be served by the recipient's programs. Translation of other documents can be provided orally. Where there are fewer than 50 persons in a group that meets the five percent trigger, the recipient can meet the safe harbor by providing written notice, in the relevant languages, of the right to receive oral interpretation of written materials.

Because translated documents are more permanent than oral communication, special attention must be placed on ensuring the accuracy of the translation. In addition to

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<sup>12</sup> Information is available online at [www.ahschc.org](http://www.ahschc.org).

ensuring that translation is performed by a qualified individual, the accuracy of the translation should be verified by “back-translating” the document into English or by having the translated document reviewed by another translator or one or more members of the intended audience. It is especially important, when translating documents, to remember that word usage and idioms vary across communities, even when they speak the same language, and that different translations may be required to communicate effectively with people from different countries of origin.

The relatively permanent nature of documents also makes the translation of documents a more lasting investment. This creates opportunities for recipients to maximize their resources by developing central banks of translated materials for use throughout their organizations and by developing translated glossaries of frequently used and technical terms. Recipients can also increase cost effectiveness by standardizing documents to facilitate translation and by pooling translation and interpreter resources.

### *Community organizations*

In addition to monitoring recipients’ compliance with their language access requirements, community organizations can work with recipients to help them improve their language assistance services. Organizations can ask to review a recipient’s language access policies, offer to participate in a recipient’s assessment of community language needs, or play an advisory role in the development and implementation of the recipient’s language access policies. Specific opportunities are available in the healthcare arena. The Department of Health and Human Services’ Office of Minority Health has published detailed cultural and linguistic accessibility standards for health care providers.<sup>13</sup> The standards encourage providers to actively consult and involve community members in the implementation of their cultural and language access programs. Community organizations can initiate meetings with recipients to discuss the standards and the recipients’ commitment to community involvement. In addition, the private nonprofit Joint Commission on Accreditation of Healthcare Organizations (JACHO) includes standards for culturally and linguistically appropriate care in its certification standards for health care networks, ambulatory care, hospitals, long term care, and behavioral health care accreditation programs. JACHO accepts consumer complaints on its Web site.<sup>14</sup> Community organizations can use the importance of maintaining JACHO certification as leverage in securing meetings with health facility management.

Community organizations can also advocate for state statutes and local ordinances that require language access. These are needed to supplement federal law because precedent limits individuals’ ability to bring law suits under Title VI challenging discriminatory policies, as opposed to individual acts of discrimination.<sup>15</sup> For example, California has a state law called the Dymally-Alatorre Bilingual Services Act, which requires bilingual staffing and services at all state agencies when 5 percent or more of their customers speak

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<sup>13</sup> Available online at [www.OMHRC.gov/CLAS](http://www.OMHRC.gov/CLAS).

<sup>14</sup> [www.jacho.org](http://www.jacho.org).

<sup>15</sup> *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001).

a language other than English.<sup>16</sup> San Francisco and Oakland city ordinances supplement the Dymally act's weak enforcement provisions.<sup>17</sup>

Community advocates were instrumental to the passage of language access ordinances in both San Francisco and nearby Oakland. San Francisco-based Chinese for Affirmative Action organized a coalition of immigrant groups, policy advocates, and legal services organizations to promote the ordinance. Coalition members used stories, testimony, and data to educate city supervisors, targeting an immigrant member of the board as an ally. Advocates report that testimony from children who were called upon to interpret for their parents was particularly effective.

Oakland's ordinance, which is based on San Francisco's, was actually implemented first. Two immigrant members of the Oakland City Council, Ignacio de la Fuente and Danny Wan, heard about the San Francisco effort and took a personal interest in providing language access protections for their constituents. In both cities, advocates found it helpful to educate local authorities about the existing federal and California state law, to demonstrate that an ordinance would supplement efforts by other levels of government.

Community organizations can also assist individuals in reporting violations of their right to receive needed language assistance to the appropriate federal enforcement agency and to understand and assert their own rights to receive language assistance. Community education materials are available on the federal interagency Web site.<sup>18</sup> Unfortunately, not all of these materials have been translated.

## *Conclusion*

As a matter of federal civil rights law, no one should be denied important public services because their limited English ability prevents them from learning about or using programs. Many recipients of federal funds are unaware of their obligations or have not felt it necessary to comply. Community organizations can play a key role in helping recipients to understand their obligations to LEP persons and implement effective language assistance policies, as well as helping LEP individuals to understand and assert their rights. Local government entities should work with their communities to develop protocols to ensure access for LEP persons, particularly if they are recipients of federal funding.

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<sup>16</sup> Cal. Government Code § 7291.

<sup>17</sup> Chapter 89, San Francisco Administrative Code; Chapter 2.30, Oakland Municipal Code.

<sup>18</sup> [www.LEP.gov](http://www.LEP.gov).