



NATIONAL IMMIGRATION LAW CENTER

3435 Wilshire Blvd. Suite 2850
Los Angeles, California 90010-1938
213-639-3900 • fax 213 -639-3911

James M. Taylor
K. Evelyn Britton
Office of Civil Rights (AK)
Room 5127
General Services Administration
1800 F Street, NW.
Washington, DC 20405

***Re: Policy Guidance on Title VI's prohibition against National Origin
Discrimination as It Affects Limited English Proficient Persons***

Dear Ms. Britton and Mr. Taylor:

The National Immigration Law Center (NILC) submits these comments on behalf of NILC and the undersigned organizations in response to the General Services Administration's request for public comment on its policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons, published in the Federal Register on January 16, 2002. NILC is a nonprofit legal services organization that works on behalf of low-income immigrants and their families.

We commend the GSA for developing this guidance, as well as for reminding its recipients that Executive Order 13166 clarified well-established legal principles under Title VI of the Civil Rights Act of 1964. Recipients of GSA assistance provide many important public services from which LEP persons should not be excluded. We support the GSA's guidance. However, we believe that recipients and the public would benefit if the guidance incorporated more examples and explanations of how recipients can comply in its discussion of the applicable laws and regulations. We highlight several areas of suggested improvement below. Our comments are organized by the section of the guidance to which they pertain.

Action Required

We support the mandatory language that requires all recipients to develop a written LEP assistance plan. However, as stated below, such plans should include accountability mechanisms. In addition, recipients should be required to update their plans at least annually.

Background

We support the requirement for stakeholder input into the development of the recipient's LEP assistance plan. However, many of the organizations listed as representing LEP persons are national organizations that may not have local chapters or persons familiar with the local

community. These organizations may be helpful in identifying local organizations, but community resources, such as schools, ethnic media and local grant makers, should be used in identifying a community's LEP stakeholders. Representatives of the LEP community should also be involved in assessing recipients' progress in providing access for LEP persons, as well as in the development of the LEP plan.

Federal Financial Assistance Programs

The introductory paragraphs of the guidance should make clear that GSA's transfers of real and personal property, including the grant of the right to use space, constitute federal 'financial' assistance under Title VI. Recipients of property donations may conclude they are not bound by the guidance before reaching that information. Examples (such as, a school receives furniture, a community clinic receives telephones) should be provided to help recipients identify themselves. The guidance should also make clear that recipients must provide language assistance in all of their programs, not just those receiving federal assistance.

Written LEP Assistance Plans

Number or proportion of LEP population: Many LEP persons are effectively barred from participation in a recipient's programs where the recipient does not provide language assistance and culturally and linguistically appropriate outreach. Using a census of the recipient's contacts with LEP persons to measure the size of the eligible LEP population simply perpetuates this exclusion. The guidance should assist recipients in defining their service areas, and direct recipients to use reliable data (census data should not be used unless corrected for undercounting of LEP persons), supplemented by input from schools, community organizations or other local institutions serving the LEP population to determine the number of LEP persons within their service area.

Implement the LEP plan: The guidance would be more helpful to recipients if it provided examples of innovative and cost effective approaches recipients can use to provide language assistance. We encourage GSA to refer to the Department of Health and Human Services (HHS) guidance, available at www.hhs.gov/ocr/lep/guide.html. The HHS guidance provides both a discussion of promising practices and numerous examples of language assistance services in recipient contexts.

It is important, but not sufficient, that staff be informed of the recipient's LEP responsibilities. Staff should receive training on the recipient's LEP plan, on protocol for culturally appropriate contact with LEP persons, and on working with interpreters. Refresher training should be required on a periodic basis.

Notice to LEP persons: Recipients are required to notify LEP persons that interpreters are available to them free of charge. The sample notice language provided in the guidance should be revised to communicate this point clearly, and to advise persons who need interpreter services to request them.

Brochures and notices that inform LEP persons, in their language, of the availability of interpreter services are important, but not sufficient, in providing notice to LEP persons. These written

materials do not provide effective communication with persons who are not literate, whose language does not have a written form, and most commonly, who are not present at the recipient's facilities. Telephone voicemail systems should include messages in the most common languages advising callers about interpreter services, and recipients should develop procedures for timely and effective telephone communication between staff and LEP persons. Such procedures must include instructions for English-speaking employees to obtain assistance from interpreters or bilingual staff when receiving calls from LEP persons. Messages about free interpreter services should be incorporated in outreach materials and other program information.

Monitor the effectiveness of the LEP plan: There are two elements to effective monitoring – ensuring that the plan is current and ensuring that it is implemented. The guidance only addresses the first element, and should require recipients to update their plans annually rather than every three years.

The second element requires that the plan's implementation is monitored, and that staff are responsible for its success. An effective language policy should include clear goals, management accountability and opportunities for community input. All of these factors should be examined, and enforced, on an annual basis. The Health and Human Services Office of Minority Health Standards on Culturally and Linguistically Appropriate Health Services provide a good example of guidance on the implementation of policies that promote access to services. 65 Fed. Reg. 80865 (Dec. 22, 2000).

Translation Requirements

The guidance should more clearly direct recipients to use the four-factor analysis in determining the level of language assistance that must be provided. For example, the guidance states that a range of oral interpretation options is available 'depending on the need.' This section of the guidance should refer back to the four factor analysis and incorporate examples of situations where various levels of interpreter services should be provided. We encourage GSA to refer to the above-mentioned HHS guidance as a model for discussion of this issue.

We strongly support the statement that simply providing written translations of materials may not achieve effective communication, and agree that information provided using internet, video and audio may also need to be translated to provide effective communication. However, this section of the guidance should be revised to clarify that providing translated written materials may not accomplish effective communication, even where such information is provided to English speakers in writing, if the LEP individual cannot read in his or her language.

Similarly, recipients should be directed to provide oral translation of documents for persons who cannot read their language, as well as for persons whose language does not have a written form.

We support the GSA's discussion of interpreter and translator competency, as well as its acknowledgement that recipients should not rely on friends and family members to interpret. The guidance should also provide that community organizations and volunteers be used to interpret only where the recipient has a formal arrangement with the organization.

Enforcement

We commend the GSA for stating clearly that it will enforce recipients' compliance with their Title VI obligations. However, GSA should more fully describe its compliance reviews and procedures for monitoring recipient compliance. Recipients should be reminded that reasonable access for LEP persons is a civil rights issue. The failure to provide needed interpreter and translation services imposes real costs on LEP individuals and the general public. Language assistance is necessary to protect individual civil rights and to ensure that federal resources are not used in a discriminatory manner.

Thank you for the opportunity to submit these comments. We look forward to a continued and cooperative relationship with the GSA, and encourage you to contact us if we can provide any additional information.

Yours truly,

Susan Drake
Executive Director
National Immigration Law Center

Center for Civil Justice, Saginaw, MI
Center for Public Policy Priorities, Austin, TX
Immigrant Legal Resource Center, San Francisco CA
Iowa Coalition Against Domestic Violence, Des Moines, IA
Labor Council for Latin American Advancement, Washington, DC
Legal Aid Services of Oregon, Woodburn, OR
Illinois Coalition for Immigrant and Refugee Rights, Chicago, IL
Massachusetts Immigrant and Refugee Advocacy Coalition, Boston, MA, Boston, MA
Migrant and Refugee Cultural Support, Inc, Silver Spring, MD
National Council of La Raza (NCLR), Washington, DC
Roman Catholic Diocese of Knoxville, Office of Hispanic Ministry, Knoxville, TN
The Center for Battered Women's Legal Services at Sanctuary for Families, New York, NY
Unitarian Universalist Association of Congregations Washington Office for Faith in Action, Washington, DC