



## NATIONAL IMMIGRATION LAW CENTER

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Deeana Jang  
Office of Civil Rights  
Department of Health and Human Services  
Room 506F  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**Re: Title VI Prohibition Against National Origin Discrimination As It Affects  
Limited English Proficient Persons**

Dear Ms. Jang:

The National Immigration Law Center (NILC) submits these comments on behalf of NILC and the undersigned organizations in response to the Office of Civil Rights (OCR) of the Department of Health and Human Services (HHS) request for comments on its Policy Guidance: Title VI Prohibition Against National Origin Discrimination As It Affects Limited English Proficient Persons, republished in the Federal Register on February 1, 2002. NILC is a nonprofit legal services organization that works on behalf of low-income immigrants and their families.

We applaud OCR for its efforts to promote the civil rights of limited English proficient (LEP) persons by ensuring their fair and equal access to healthcare and social services. We strongly support the Guidance, and believe that it provides valuable direction to recipients of federal financial assistance. We commend OCR for the thoughtful and extensive effort that went into the development of the Guidance, and have advised other agencies, in our comments, to look to the OCR Guidance as an example. The comments that follow include several suggestions for improvement of the Guidance. These suggestions are presented with a spirit of collaboration.

**Have persons with limited English proficiency seeking health care or social services benefited as a result of the guidance? If so, what have been the benefits? Please be specific about your experiences.**

The principle that language barriers should not be used to deny individuals access to federally funded programs and services is firmly rooted in Title VI of the Civil Rights Act of 1964. OCR's Guidance aids recipients in understanding, and therefore meeting, their Title VI obligations. The Guidance accomplishes this by communicating specific information about the level of language assistance required in various contexts, and by describing varied and creative approaches to providing language assistance. HHS publication of the Guidance has heightened awareness among both recipients and the public about the presence of LEP persons in their communities, the challenges they confront, and the importance of providing language assistance.

OCR has enforced Title VI for over 30 years. It is therefore difficult to isolate language assistance provided pursuant to the Guidance from that motivated by other factors. Whatever its motivation, providing language assistance has real benefits for LEP individuals and the public.

Language assistance helps LEP individuals succeed in transitioning from TANF to self-sufficiency by enabling them to receive supportive services, like child care, and participate in job readiness and vocational education services. Providing translation and interpretation services helps agencies that serve LEP persons to operate efficiently, without the increased administrative costs that result from failed communication.

Interpretation and translation services help health promotion campaigns to succeed by ensuring that LEP individuals are included. In the health care context, language assistance results in better outcomes and has been shown to reduce costs. A study by the Boston Medical Center found that the use of trained medical interpreters actually reduced the cost of providing emergency room services to LEP patients. As compared to LEP patients who did not have translator assistance, LEP individuals assisted by trained medical interpreters at the emergency room (ER) were more likely to keep follow-up appointments at medical clinics and less likely to return to the ER within 30 days after their initial visit, resulting in lower treatment costs over the 30 day period.<sup>i</sup>

One of the most significant benefits is avoiding the cost of failing to provide access for LEP individuals. This cost, like that of other civil rights violations, is difficult to quantify but significant.

In the health care context, communication barriers interfere with providers ability to obtain information about symptoms, treatment and medical history, and make it more difficult for patients to understand treatment instructions. These barriers lead to increased diagnostic testing costs and other burdens on the health care system, as well as poorer outcomes for patients. In cases of communicable disease, such barriers are also public health threats. Community-wide public health efforts ranging from messages about HIV prevention to recalls of contaminated meats are also frustrated when they are not conducted in their audiences languages.

Patients right to provide informed consent before undergoing medical procedures is undermined by a lack of language assistance. In a hearing before the California Personnel Board, a witness testified that a LEP woman from Guatemala had seen a doctor who gave her injections with no explanation. She abandoned her attempt to seek treatment. Another witness at the same hearing testified about a woman who was forced to wait 15 hours to be treated for a fractured leg at a hospital with no interpreter.

Language barriers often prevent LEP individuals from securing vital government services. A recent study surveyed California parents who requested an application for the states Medicaid and SCHIP programs but did not complete it. LEP parents were more likely to find the application difficult to understand, not to complete the application, or to miss deadlines for submitting required documentation.<sup>ii</sup> As a result, their children were more likely to be uninsured and to experience the higher emergency services costs and poorer outcomes typical for uninsured children.

LEP individuals who receive TANF often experience barriers to effective participation in welfare-to-work programs. In addition to burdening LEP recipients, these barriers frustrate the programs purposes. Almost none of Massachusetts welfare to work programs are able to accommodate persons who do not speak

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<sup>i</sup> Bernstein, J. et al, *The Use of Trained Medical Interpreters Affects Emergency Department Services, Reduces Charges and Improves Follow-Up*, Unpublished Report, Boston University School of Public Health, 2000.

<sup>ii</sup> Institute for Health Policy Studies, University of California, San Francisco, *Barriers to Enrollment in Healthy Families and Medi-Cal: Differences by Language and Ethnicity*, February 2001

English fluently. Structured job search programs and one stop career programs are unable to accommodate non-English speakers, yet LEP persons are required to participate in such programs to obtain time limit extensions, and are penalized when language barriers prevent their full participation. Not surprisingly, the Departments own study found that 17.6 % of persons whose TANF cases were closed because they had exhausted the program time limit were LEP.<sup>iii</sup>

A Florida State University study found that Spanish-speaking participants in WAGES, Floridas TANF program, had more difficulty obtaining subsidized child care prior to starting work than did English speakers. LEP participants also received less support in obtaining care English speakers were twice as likely as LEP persons to have been offered a meeting with a child care counselor.<sup>iv</sup> A Florida International University study found that Haitians in Dade County, Florida were underserved by job training and placement centers, in part because of a lack of caseworkers who spoke their language.<sup>v</sup> Participants in focus groups conducted by San Franciscos Chinese for Affirmative Action cited the need for English skills as a major barrier to participation in vocation education, while participants in focus groups conducted by the Washington, D.C. based Southeast Asian Resource Action Center and Cambodian Association of Greater Philadelphia reported that individuals who have language assistance are able to participate in job training programs and find employment.

Several studies report that LEP persons are less likely to make successful transitions from cash assistance than English speakers. A study of Los Angeles County, California persons leaving AFDC found that LEP welfare leavers have lower earnings and less stable employment.<sup>vi</sup> In Washington state, adults who remained on TANF were more likely than TANF leavers to live in a home where English was not the primary language.<sup>vii</sup>

The failure to provide language assistance can increase agency administrative costs. For example, communication problems can cause LEP individuals to lose public benefits to which they are entitled, requiring agencies to reinstate benefits, to process duplicative applications and to participate in avoidable appeals. Greater Boston Legal Services (GBLS) has represented numerous clients who experienced denials of language access by public benefit programs that were costly for the programs as well as harmful to the clients. One LEP client had her TANF and food stamp benefits terminated because she failed to respond to a notice requesting verification of wages from former employers.

The client had attempted to ask her caseworker about the notice, but could not communicate with the English-speaking worker. The clients benefits were reinstated retroactively with GBLS assistance. Another LEP client had to reapply for TANF and food stamps after she failed to respond to an English notice requesting verification of information, requiring the agency to do a new eligibility determination. In some cases clients need to exercise their appeal rights in order to be reinstated.

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<sup>iii</sup> Massachusetts Department of Transitional Assistance, *After Time Limits: A Study of Households Leaving Welfare Between December 1998 and April 1999* (November 2000).

<sup>iv</sup> Robert E. Crew, Jr. and Joe Eyeran, *The Views of WAGES participants about Child Care in the WAGES Program*, Florida State University (undated report based on surveys conducted during August-September 1998).

<sup>v</sup> *Relationship Between the Haitian-American Community and the Miami-Dade Welfare System*, Florida International University (Sep. 2001), available at [www.fla-spp.com/frresearch.htm](http://www.fla-spp.com/frresearch.htm).

<sup>vi</sup> Mark Drayse, Daniel Fleming, and Peter Force, *The Economic Roundtable, The Cage of Poverty*, September 2000.

<sup>vii</sup> Jean Du, Debra Fogarty, Devin Hopps, and James Hu, Washington Department of Social and Health Services, *A Study of Washington State TANF Leavers and TANF Recipients: Final Report*, March 2000.

**Have persons with limited English proficiency faced challenges or problems in accessing health care or social services following issuance of the guidance? If so, what have been the challenges or problems? Please be specific about your experiences.**

Barriers continue to inhibit LEP persons access to HHS-funded programs and services. Many recipients remain unaware of their language access obligations. Advocates report that many recipients have been slow to develop or train staff on their language policies. Many recipients have not posted notices about the availability of interpreter services. As recently as late February 2002, community organizations in New York City filed suit against two hospitals that failed to provide adequate Spanish translation services. An article in the January 9, 2002 Arizona Republic described Phoenix-area hospitals failure to provide interpreters in their emergency rooms, a lapse that led to a 13 year old girls death from a ruptured appendix.

Greater Boston Legal Services has complained to OCR Region 1 that the Massachusetts Office of Transitional Assistance fails to provide equal access for LEP persons. These lapses include the failure to provide interpreters, sending English notices to LEP persons whose language is noted in their records, and a failure to create a system by which LEP persons can contact their caseworkers by telephone. The complaint cites many specific instances of LEP individuals being denied language assistance after the Guidance was published. For example, GBLS alleges that in January 2001, LEP clients of the Dorchester office who had formerly had bilingual caseworkers were reassigned to English-speaking caseworkers and were not provided interpreter assistance. During the same month, LEP individuals were told that they needed to bring their own interpreters to the Malden office. The complaint cites multiple examples of LEP individuals having their benefits terminated or being denied opportunities to apply for extended TANF or domestic violence exemptions because of their inability to read the English notices they received or communicate with their case workers.

OCR should respond to these continuing lapses by bolstering its technical assistance and enforcement efforts. The staffing of Regional Offices is a positive step in increasing OCRs enforcement and technical assistance capacity. We hope that regional offices are provided the necessary staff and resources to respond vigorously to Title VI complaints and to provide the public education necessary to inform recipients of their obligations and beneficiaries of their rights.

**Have health care or social services providers faced challenges or problems in providing these services to persons with limited English proficiency as a result of this guidance? If so, what have been the challenges or problems? Please be specific about your experiences. The Secretary is particularly interested in the experiences of small providers.**

Some providers may encounter a learning curve in identifying language assistance resources in their communities, developing their language access plans, and beginning to work with interpreters. However, such delays cannot be characterized as resulting from the Guidance. In considering provider challenges, it is important to keep in mind that the Guidance assists recipients in meeting their pre-existing Title VI obligations, rather than imposing new obligations on them. The Guidance assists recipients who have not been complying with Title VI in understanding their obligations and the strategies available to meet them.

Providers often raise objections about the cost of providing language assistance. The Department of Justices (DOJ) four-factor balancing test, as incorporated in the Guidance, responds to this concern by defining cost as one of the factors to be considered in determining whether a provider has taken reasonable steps to ensure meaningful access for LEP individuals. Thus, the application of the balancing test ensures that recipients are not unduly burdened in providing assistance to LEP persons. HHS could respond to providers cost concerns directly by more actively encouraging states to take advantage of Medicaid and

SCHIP funding to provide linguistic access in the health care context. HHS could also assist by providing recipients with consolidated information about other sources of funding for language assistance.

In discussing the costs of providing language assistance, it is important to keep in mind that meaningful access is a civil right. It is also important to consider the benefits of providing such assistance. As noted above, language assistance services can lead to reduced agency administrative costs and better outcomes for TANF and other programs serving LEP individuals. Health promotion campaigns can succeed only if they incorporate effective communication. In medical settings fewer tests are required, and patients are less likely to need follow up visits. Outcomes are better when doctors and patients can discuss symptoms, and patients can understand treatment instructions. LEP patients report more satisfaction with encounters where interpreters are provided, reducing the risk of malpractice actions. And patients who know that they can communicate with their providers are less likely to defer medical care until conditions become more serious and more expensive to treat.

**Are there areas of the guidance that you believe need to be clarified or modified? If so, please explain what areas, why the area(s) need clarification or modification, and provide any suggestions for clarification or modification.**

We strongly support the OCR Guidance, and in particular endorse the Guidances through restatement of current law. We make the following suggestions for improvement in the spirit of working with OCR to refine an already excellent product.

*Basic Requirements:* We support the statement that effective communication is the key to providing meaningful access, as well as the description of effective communication provided. However, ensuring that LEP individuals are provided with the same range of programs and activities as English speaking persons is also central to meaningful access. For example, a TANF program that provides vocational assessment and counseling for English speaking persons must provide the same range of activities or services to LEP persons. The Guidance should be amended to reflect this important requirement.

### **Ensuring Meaningful Access**

*Assessment: The Guidance lists census data and client utilization data among the sources that recipients can use to conduct language needs assessments. Caveats are required about both of these data. The U.S. Census asks whether respondents speak a language other than English at home, which language is spoken, and how well the respondent speaks English. This data is available by state and region, and provides a uniform data source on LEP individuals available throughout the country. The Census Bureaus Supplementary Survey and American Community Survey provide additional information. However, legitimate concerns about the Census recognized undercount of LEP households should be taken into consideration, and this data adjusted by demographers or other experts to correct for undercounting.*

Client utilization data is limited because it excludes people who are not currently accessing the recipients programs. Many LEP persons are effectively barred from participation in a recipients programs where the recipient does not provide language assistance and culturally and linguistically appropriate outreach.

The Guidance should direct recipients to use reliable data (such as census data corrected for undercounting of LEP persons), supplemented by input from schools, community organizations or other local institutions serving the LEP population. The federal food stamp regulations provide a model for this approach. The regulations require state Food Stamp agencies to develop local estimates of the number of low-income LEP households by using census data (including the Census Bureaus Current Population Report: Population

Estimates and Projections, Series P-25, No. 627) and their knowledge of the local communities. The regulations specify that Local Bureau of Census offices, Community Services Administration offices, community action agencies, planning agencies, migrant service organizations, and school officials may be important sources of information in developing these estimates. The regulations direct state eligibility offices to use client contact information to estimate their LEP populations only if the recommended information sources do not provide sufficient information for the State agency to determine whether there is a need for bilingual staff or interpreters. 42 C.F.R. §242.4(b)(6).

*Development of Comprehensive Written Policy on Language Access:* Recipients should be required to develop written language access policies and to make those policies available to OCR for compliance reviews.

The discussion of oral language interpretation should make clear that the options for oral interpretation are listed in descending order of preference, and that recipients should provide the most preferred form of interpretation available. The Guidance should make clear that recipients are required to provide oral interpretation even where written translation of documents is not required.

We support the requirement that community volunteers be used to interpret only where formal agreements are present. This section of the Guidance should also refer recipients to the discussion of informal interpreters and interpreter competency.

The discussion of the safe harbor for written translation of documents should state clearly that the safe harbor is a minimum standard for measuring compliance and that recipients are encouraged to provide a higher level of translation services.

We encourage OCR to lower the threshold numbers or percentages of persons that trigger the requirement for translation of documents under the safe harbor requirement. The safe harbor provision on recipients determination of their service areas should be revised to address situations where recipient service areas span multiple communities. Recipients, whose service area contains pockets, or varied concentrations of LEP persons, should be required to view such sub areas separately for purposes of the safe harbor calculations.

The Guidance should also make clear that recipients are required to provide an alternate method, such as oral translation of documents, to communicate information contained in documents they are not required to translate.

Any discussion of written translations should note that translated documents do not provide effective communication with persons who are not literate in their primary language. Recipients should assess beneficiaries ability to read written materials in assessing whether they are providing effective communication.

*Methods for Providing Notice to LEP Persons:* The Guidance should explicitly require recipients to post notices, in all commonly encountered languages, of the availability of free interpreter services. The posters should encourage individuals to identify themselves as needing interpreter assistance. The Guidance should also make clear that posters do not provide adequate notice to persons who speak languages other than those on the posters, cannot read or are not present in the office. Voice mail systems or other mechanisms must be provided to enable LEP persons to contact recipients by telephone. Recipients should perform community education or outreach to ensure that LEP persons who do not currently use the recipients services are aware that they can receive language assistance at no cost.

*Training of Staff:* The Guidance should require recipients to provide their staff with periodic update or refresher training. Staff training should incorporate information on culturally sensitive interaction with LEP persons.

*Monitoring:* Recipients should be required to incorporate input from the LEP community into their assessments of progress in implementing their plans. Larger recipients should be required to review their language access plans at least annually, to maintain records of their reviews, and to make such records available to OCR for compliance assessments.

*Interpreters:* We strongly support the language discouraging the use of friends, family members and other untrained interpreters. We also support the Guidance encouraging recipients to ensure the competency of interpreters. OCR could greatly facilitate recipients assessment of interpreter competency by providing more detailed standards for competency assessments.

*Compliance and Enforcement:* We applaud OCRs clear and forceful statement that it will investigate all complaints, reports and other information indicating recipients non-compliance with Title VI. However, the compliance and enforcement policies discussed in the Guidance suggest that OCRs enforcement activities will be complaint-driven. OCR should proactively monitor recipients compliance with their Title VI obligations, and incorporate consideration of disparate impact into these compliance efforts. Random reviews could promote the efficient use of resources in this process.

Technical assistance efforts should not be limited to the enforcement context. OCR should promote to all recipients the availability of training and technical assistance on the Guidances implementation.

OCRs statement that smaller providers have more flexibility should be modified to make clear that such flexibility does not relieve them of the requirement to ensure meaningful access for the individuals they serve. OCR should clearly state that such flexibility means that each provider must take whatever steps are necessary to comply with the law, taking into consideration the recipients resources and the language assistance resources available in the local community. In compliance reviews, recipients should have the burden of demonstrating any resource constraints that compromised their ability to provide language assistance.

**Has the guidance been effective in identifying reasonable ways of providing services to individuals with limited English proficiency? What are some of the cost-effective ways that are used successfully to provide services for persons with limited English proficiency that are not included in the guidance? Again, the Secretary is particularly interested in the experiences of small providers.**

The cost of providing language access varies according to the method used, the resources available in the recipients area, and the complexity of the interpretation or translation. OCRs Guidance incorporates excellent examples of creative and cost-effective approaches for providing language assistance. Generally, the cost of language assistance can be reduced by training bilingual staff to act as interpreters and translators, standardizing documents to reduce translation needs, and centralizing interpreter/translation services to achieve economies of scale. Recipients can work collectively to develop document banks, glossaries of standardized translations for technical or frequently used terms, and interpreter pools.

The California Department of Social Services (DSS) has implemented several strategies for delivering cost-effective language services. Over 30% of the persons served by DSS are LEP. DSS translates documents into four languages (Spanish, Chinese, Vietnamese and Russian) using in-house translation staff, and into 25 additional languages using contract translators on an as-needed basis. Translated documents include forms, regulations, hearing requests, hearing decisions and letters, and are used by a range of programs,

including child abuse prevention, TANF, child support, foster care and legal proceedings. DSS currently provides approximately 29,700 pages of translated documents. New documents are created and existing documents are revised by staff on an on-going basis. Using in-house staff makes translation significantly more efficient by reducing the time required to complete a translation and provides consistency through the use of standardized terminology and forms.

The use of in-house staff is also cost effective. SEIU representatives report that their members frequently act as interpreters at minimal cost to their agencies. The California civil service system has a Translator classification with a base salary range of \$32,568 to \$39,800. Some agencies classify translators as Staff Services Analysts, with a higher base salary of \$30,000 to \$46,800. In-house translators also perform additional duties. DSS translators spend 10 % of their time performing duties such as certifying bilingual employees and interpreting on telephone calls.

Smaller providers can benefit from supporting community based organizations in their development of language service programs. Making interpreters available at the community level can create economies of scale that help in providing more languages at a lower cost than placing interpreters with individual providers. Such efforts also create employment and professional development opportunities for community members. Oakland, California's Asian Health Services provides interpretation and translation services in seven languages through an exemplary language cooperative. Services are provided on a competitive fee for service basis by bilingual community members who have received interpreter training. Latino Memphis Conexion in Tennessee collaborated with two county health departments and other CBOs to train Spanish translators and place them in health care settings throughout the city.

Providers should never rely on friends and family members to interpret for beneficiaries as a means of reducing costs. In fact, this practice can have the opposite effect. A Minneapolis medical clinic serving the Hmong community found that patients were returning multiple times with conditions that should have been cured after previous visits, because their children were interpreting medical instructions incorrectly.<sup>viii</sup>

### **What technical assistance from the Office for Civil Rights (OCR) and other components of HHS would be most helpful to recipients/covered entities?**

Many recipients remain unaware of the Guidance and their Title VI obligations. Less than 24% of physicians surveyed by the L.A. Care Health Plan reported that they were familiar with the legal language access requirements applicable to their practice.<sup>ix</sup> OCR and HHS should undertake a broad communication campaign to ensure recipients awareness of their obligations and beneficiaries awareness of their rights. OCR could establish a public information website similar to HRSAs *insurekidsnow.gov* web site, and use it to distribute posters, flyers, power point presentations and Public Service Announcements in multiple languages. The web site should also be used to distribute I Speak- cards to beneficiaries and community-based organizations.

Many recipients have failed to post notices of the availability of interpreter services. OCR should develop multi-language posters describing beneficiaries rights to free interpreter services and require beneficiaries to post them in public places.

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<sup>viii</sup> *Immigrant Parents Depend on Children's Words*, Minneapolis Star Tribune (Sept. 29, 2000).

<sup>ix</sup> Cho, J. and Solis, B.M., *Healthy Families Culture & Linguistic Resources Survey: A Physician Perspective on their Diverse Member Population*, (L.A. Care Health Plan, January, 2001.)

Staff training is a critical element of a successful language assistance policy. OCR can assist recipients in developing their staff training by providing sample curricula on cultural competency, working with interpreters and other recurring issues.

Lack of standardization makes interpreter competency standards difficult to understand and apply. HHS could assist recipients by developing materials explaining how recipients can determine whether interpreters and translations are competent.

Some recipients will find it beneficial to contract with community organizations for interpreter or translation services. OCR could provide model contract language that protects the interests of both the recipient and the organization.

Many communities have shortages of qualified interpreters. OCR could assist by funding or providing interpreter training programs. Nearly half of the respondents to the L.A. Cares physician survey indicated that they were interested in having their bilingual staff trained to act as professional interpreters. OCR could also assist community organizations in developing interpreter services programs.

**In providing services to persons with limited English proficiency, what costs have health care or social services providers incurred in providing translation, interpreter or other language services? Please be specific about your experiences. The Secretary is particularly interested in the experiences of small providers. In health care or social services providers have not yet provided translation, interpreter or other language services for persons with limited English proficiency, what costs are anticipated? Please provide the basis for your estimate.**

The principle that language barriers should not be used to deny individuals access to federally funded programs and services is firmly rooted in Title VI of the Civil Rights Act of 1964. Like Executive Order 13166, the Guidance does not create new obligations, but rather clarifies existing responsibilities. Costs incurred by recipients in providing LEP persons access to programs and services funded by HHS should therefore not be viewed as costs of implementing the Guidance.

**Some may assert that the guidance has materially assisted in achieving the goal of access to health or social services by limited English proficient individuals. Others may assert that the guidance has unintentionally had the opposite effect. Is there actual experience to support either view? Please describe.**

The Guidance has materially assisted in achieving the goal of access. The Guidance has raised awareness of the barriers faced by LEP persons, and motivated both providers and advocates to develop and implement effective and cost-efficient methods of providing language assistance. We refer OCR to NHeLPs recent survey, described in its comments, which found over 60 programs, newly formed or recently reinvigorated, working to remove barriers for LEP individuals. This increased interest in providing language assistance services will increase the availability of services within communities, resulting in improved access for beneficiaries and lower costs for providers.

**Based on your experience, does the guidance and/or OCRs application of the guidance in practice, strike the right balance with respect to the factors enunciated in the Department of Justices October 26, 2001 memorandum: (1) the number or proportion of limited English proficient persons, (2) the frequency of contact with the program, (3) the nature and importance of the program, and (4) the resources available? Please note that these factors are discussed in greater detail in the Department of Justice memorandum. In particular, in considering the resources available, does the guidance and/or OCRs application of the guidance adequately factor in the costs of providing translation,**

**interpreter or other language services to limited English proficient individuals, as well as the resources available to the recipient/covered entity?**

The Guidance should communicate more clearly that the flexibility recipients have in meeting their obligations does not compromise their obligation to provide meaningful access for LEP persons. Recipients who claim that resource constraints limit their ability to provide language assistance should have the burden of proving their constraints, and their inability to access cost effective forms of language assistance, in compliance reviews and enforcement efforts.

OCR should make clear that the four key elements necessary to ensure meaningful access are mandatory minimum standards. Recipients should be required to have a written language access plan, and to review it annually. The annual review should address the recipients progress in implementing the plan, the LEP population likely to be served by the recipient, and the availability of interpretation and translation resources in the recipients community.

Community representatives should be included in the design and review of recipients plans, as well as in a periodic community needs assessment. Executive Order 13166-s mandates that the federal agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. We recommend that OCR add language to the Guidance encouraging ongoing public input into the design of the plan, its annual review, and an ongoing assessment of community needs and resources related to language access.

Recipients should also be required to collect data on the primary spoken and written languages of individuals utilizing their services. If collected, this data would provide concrete evidence of the types of services LEP individuals typically access, whether some services are used more or less frequently and what types of linguistic and cultural competency services should be implemented to assist in this access. For example, as suggested in the Office of Minority Healths *National Standards on Culturally and Linguistically Appropriate Services (CLAS) in Health Care*<sup>x</sup>, health care organizations should include a patients race, ethnicity and spoken and written language in health records and the organizations management information systems. The routine collection of this data would provide accurate information for review of recipients progress in providing language access.

However, any review of such data must incorporate an awareness that language barriers prevent LEP individuals from accessing services. Utilization data will not capture information on LEP individuals who should benefit from a given program but never try to access it because of an agencies or recipients perceived or actual inability to communicate with them.

We appreciate the opportunity to submit these comments. Please feel free to contact our staff if we can provide any additional information. We look forward to working with OCR to implement the Guidance throughout all of HHS programs.

Yours truly,

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Executive Director  
National Immigration Law Center

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<sup>x</sup> 65 Fed. Reg. 80865, Standard 10.