



NATIONAL IMMIGRATION LAW CENTER

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March 1, 2002

Ms. Wilsie Y. Minor
Office of General Counsel
Corporation for National and Community Service
1201 New York Ave., NW
Washington, DC 20525

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

Dear Ms. Minor:

The National Immigration Law Center (NILC) submits these comments on behalf of NILC and the undersigned organizations in response to the Corporation for National and Community Service'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 February 5, 2002. NILC is a nonprofit legal services organization that works on behalf of low- income immigrants and their families.

We applaud the Corporation for developing this thoughtful 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. We strongly support the Corporation's guidance, and make several suggestions for further improvement. Our comments are organized by the section of the guidance to which they pertain.

Legal Underpinnings of the Guidance

We strongly support the Corporation's explanation of the legal background for its guidance, and in particular its statement that the Executive Order clarifies recipients' longstanding obligations under Title VI, rather than imposing new requirements on them.

We agree with the Corporation's description of the range of services that constitute federal financial assistance. However, the definition of recipients needs clarification. The opening sentence, which states "a grantee is any entity receiving federal financial assistance *from us*," could lead a reader to conclude that the guidance does not apply to sub-recipients. Since sub-recipients' obligations are not addressed explicitly until later in the guidance, it would be helpful to insert the clause "directly or indirectly through another recipient" after the words "from us."

Similarly, the discussion of the definition of a program or activity receiving federal financial assistance should be bolstered with an explicit statement that all of the recipient's activities, whether or not supported by federal funds, must be conducted in compliance with Title VI.

We support the Corporation's broad list of beneficiaries, and in particular, the reminder that beneficiaries may file discrimination complaints with the Corporation.

We applaud the Corporation for its statement that service members and volunteers need not be proficient in English, and for affirming that recipients' Title VI obligations preempt any restrictions imposed by state and local English-only laws.

LEP Requirements

We support the Corporation's statement that the key to access is effective communication, as well as the definition of effective communication provided in the guidance.

Balancing Test

The Corporation appears to incorporate in its guidance on the language services recipients must provide the four-part test outlined by the Department of Justice (DOJ) in its October 26, 2001 memorandum.¹ The DOJ's four-part balancing test ensures that recipients are not unduly burdened in providing assistance to LEP persons. However, the Corporation needs to make clear that the balancing test may not be applied to deny LEP individuals access to important services. Rather, the balancing test should be understood as authorizing recipients to provide a reduced level of language assistance (such as telephonic instead of in-person interpreters and oral rather than written translation of documents) in cases where the agency has limited resources, the agency serves a small number of LEP individuals, or where the LEP individual's language is rarely encountered.

Similarly, recipients should be urged to explore the most cost-effective means of delivering language access services before limiting services due to resource concerns. Resource concerns can often be minimized through the use of technology, as described in the guidance, and the sharing of resources and translations. The costs of language access can also 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.

In considering costs, 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 achieve the goals of the Corporation's programs. The excellent examples provided in the guidance illustrate this principle.

¹ Available on-line at <http://www.usdoj.gov/crt/cor/lep/Oct26memorandum.pdf>

Language Assistance Programs

We support the Corporation's statement that an effective language assistance program usually contains the four elements of assessment, a comprehensive written policy, staff training and monitoring.

However, the guidance regarding assessment fails to advise recipients on the definition of their service areas. The Corporation needs to assist recipients in determining the population within which to assess the number of eligible LEP persons. The guidance also advises recipients to use census data or other sources in estimating their eligible LEP populations. Recipients should be discouraged from using census data alone, unless the data is adjusted to correct for the undercounting of LEP persons.

The guidance on staff training is well thought out. However, it should be revised to include a requirement that staff receive refresher training on a periodic basis.

We strongly support the guidance that advises recipients to develop a written policy for language access, as well as the policy elements listed. However, the guidance should be mandatory, rather than advisory, on this point. In addition, the guidance is not sufficiently detailed to assist recipients in understanding how to develop their policies. For example, the guidance on notice to LEP persons should direct recipients to post notices of the availability of free interpreter services in all commonly encountered languages, and to provide a telephone voicemail menu, with access to information about interpreter services, in all languages commonly encountered.

We agree that recipients should monitor the implementation of their language access policies. The requirement, however, should be strengthened. An effective language policy should include clear goals, management accountability and opportunities for community input. The Corporation of 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).

Specific LEP Implementation Methods

We support the guidance's discussion of the various forms of interpreter services and their appropriate uses. We applaud the Corporation for requiring recipients to use trained and competent interpreters, and for providing guidance on interpreter competency determinations. We particularly commend the Corporation for making a clear statement about the liability and other risks inherent in using family members, especially children, as interpreters. We also strongly support the guidance's restriction on the use of community volunteers to situations where formal arrangements are present.

We support the requirement that important documents be translated into frequently encountered languages. As discussed under assessment above, recipients should determine the most frequently encountered languages within their specific service areas in making decisions about document translation. We urge the Corporation to provide a 'safe harbor' standard or other guidance to help recipients determine the scope of their obligation to translate their written materials.

We applaud the Corporation for providing guidance on translator competency. However, recipients should be advised to use bi-lingual staff or additional translators, in addition to community organizations, to check translated documents.

We strongly support the guidance's consideration of literacy as an element of effective communication. However, literacy should be considered on an individual basis as well as within the community as a whole. In addition to providing access for LEP persons with limited literacy, oral translation of documents can be a cost-effective means for recipients to convey information to persons whose languages they encounter rarely.

We support the guidance on notifying recipients about the availability of interpreter services. However, the methods described do not provide access for persons who contact recipients by telephone. Recipients should be required to provide a telephone voicemail menu, with access to information about interpreter services, in all languages commonly encountered.

Compliance Monitoring

We applaud the Corporation for stating clearly and forcefully that it will monitor and enforce recipients' compliance with their Title VI obligations. However, the discussion of recipients' monitoring of their sub-recipients needs to be expanded. The guidance should provide more direction to recipients on the steps they should take to promote sub-recipients' voluntary compliance. In addition, the guidance should advise recipients that they may be liable for failing to take adequate steps to ensure their sub recipients' Title VI compliance.

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

Yours truly,

Susan Drake
Executive Director
National Immigration Law Center

AFSC Immigrant Rights Project, Des Moines, IA
Asian Pacific American Labor Alliance, Los Angeles, CA
Asian Pacific American Legal Center, Los Angeles, CA
Community Legal Services, Inc, Philadelphia, PA
Florida Legal Services, Inc., Miami, FL
Haitian-American Grassroots Coalition, Miami, Fl.
Hebrew Immigrant Aid Society, NY NY
Immigrant Legal Resource Center, San Francisco CA
Latino Legal Assistance Project * Public Justice Center, Inc., Baltimore MD
Massachusetts Law Reform Institute, Boston, MA

National Association for Bilingual Education, Washington, DC
New York Immigration Coalition, New York, NY
Unitarian Universalist Service Committee, Cambridge MA
United Jewish Communities Washington Action Office, Washington, DC
Urban Alternative, Arlington, VA
William E. Morris Institute for Justice, Tucson, AZ