

May 7, 2012

Office of the Assistant Secretary for Civil Rights
United States Department of Agriculture
Kenneth Baisden, Chief, Policy Division
300 7th St. SW., Washington, DC
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*National Advocates for
Asian American,
Native Hawaiian &
Pacific Islander Health*

Re: Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency

Dear Mr. Baisden:

The Asian & Pacific Islander American Health Forum (APIAHF) thanks the United States Department of Agriculture (USDA) for the opportunity to comment on improving access to services for persons with limited English proficiency. We strongly support the efforts of the USDA in seeking to ensure that USDA services and programs are accessible for limited English proficient (LEP) populations, such as Asian Americans, Native Hawaiians, and Pacific Islanders, and we encourage the department to follow up with specific plan of action to operationalize the guidance.

For 25 years, APIAHF has dedicated itself to improving the health and well-being of Asian American, Native Hawaiian and Pacific Islander (AA and NHPI) communities. Asian American and Pacific Islander communities are overwhelmingly immigrant; over 60 percent of Asian Americans and 30 percent of Pacific Islanders living in the U.S. are foreign-born, representing the full spectrum of immigration status categories. Asian Americans, Native Hawaiians and Pacific Islanders trace their heritage to more than 50 countries and speak more than 100 different languages. Data from the Census Bureau's American Community Survey reveal that more than 9 million people in the United States speak Asian and Pacific Island languages at home and more than 4 million of them are considered "limited English proficient," meaning they speak English less than "very well" or not at all.ⁱ Many of these individuals are LEP and rely on federally funded public programs such as the Supplemental Nutrition Assistance Program (SNAP), and Women, Infants and Children (WIC). According to the U.S. Census Bureau, approximately 12 percent of the total Asian American population lived in poverty in 2010 compared to 10 percent of the non-Hispanic white population.ⁱⁱ This represents an increase of 46 percent between 2002 and 2010.ⁱⁱⁱ

Language barriers affect the integration and participation of Asian Americans, Native Hawaiians, and Pacific Islanders in federal programs. For limited LEP individuals, the inability to communicate can directly impact their access to and quality of federal services. In the health care context, for example, high LEP populations are less likely to receive preventive care and physician counseling.^{iv} Language barriers are widely known to reduce rates in enrollment and lower the quality and effectiveness of health programs; similarly, such barriers may prevent LEP populations from meaningful access to and benefit from USDA programs. In turn, lack of access impacts the programs' abilities to carry out their mission.

We commend the USDA for issuing guidance that clarifies the obligations of entities receiving federal financial assistance, and applaud the Department for taking steps to ensure that USDA services and programs are accessible to limited English proficient populations. We support your efforts, and offer the following comments concerning next steps to strengthen the impact of the guidance.

We appreciate that the guidance provides a useful framework for federally funded programs receiving support from USDA and also recognize the desire for uniform guidance across agencies. Once the guidance is adopted, we urge USDA to work aggressively to operationalize the guidance through a number of steps.

USDA Agency Implementation: Federally Conducted Programs

We urge USDA to undertake efforts to better serve LEP beneficiaries in its own Federally-conducted programs and communications. We suggest that the Department develop a specific plan of action addressing its own Federally-conducted activities, such as the three-year strategic plan developed by the Centers for Medicare & Medicaid Services.^v Developing a plan would also comply with the second requirement enumerated under Executive Order 13166 to “[d]evelop a plan for improving LEP individual access to and participation in Federally-conducted programs and activities.”

As part of that plan, we strongly suggest that the Department consider producing consumer materials in non-English languages in addition to Spanish and making those materials available on the usda.gov website. Although the website contains information in Spanish, a review of the website found no information or documents in any other languages. We urge USDA to expand its communications in other languages, particularly for the programs that have the largest impact on consumers. The multilingual gateway on the Social Security website, www.ssa.gov/multilanguage/, is an example of an agency site that more fully addresses the needs of many limited English speakers.

We also specifically urge USDA to expand its language assistance services through its national SNAP helpline. We appreciate that the national number provides information in English and Spanish; however, we believe the helpline should be more readily accessible to additional groups of non-Spanish speaking LEP beneficiaries, particularly those who communicate in Asian or Pacific Islander languages. Currently there are no prompts for these individuals. Further, the on-line SNAP pre-screening eligibility tool has no directions for speakers of languages other than English and Spanish and no guidance on how to receive oral interpretation assistance to use the tool or to access any other information on the website.

The Department should also require that, once an LEP consumer has requested materials translated into their spoken language or requested other language services, recipients track and record the request to prevent the consumer from having to make repeated requests for assistance.

In addition, we suggest USDA include in-language “taglines” in at least 15 languages on its vital documents to direct LEP individuals to language assistance services. . Taglines should be provided regardless of whether the threshold for translation is met in a given program or area. Notably, the Social Security Administration regularly translates its materials in 15 languages and can serve as a model. Using taglines is also a cost-effective method of informing LEP enrollees of the availability of language services. Recipients can further streamline costs by collaborating with USDA to develop standardized tagline language and translations to be used across all informational materials. Having a standardized tagline in all required applications, forms, and notices will help LEP individuals begin to recognize the standardized language.

As a suggestion, the tagline could read:

“IMPORTANT: You can get an interpreter at no cost to obtain information about this document. To get an interpreter or to ask about written information in (your language), call xxx-xxx-xxxx. Someone who speaks (your language) can help you.”

It should be noted, however, that taglines alone are insufficient to meet the requirement of providing consumers with meaningful access to services. Taglines must be accompanied by an English language notice to help beneficiaries obtain information from advocates or others about its content.

Implementation: Federally Funded Programs

We hope that the Department will use the issuance of this guidance as a springboard for robust engagement with the programs it funds to improve services to their LEP consumers. Of highest priority are USDA programs such as food security, nutrition, hunger reduction, and poverty elimination, where many qualified LEP individuals need language assistance or they will not be able to access these services in a language they can understand.

Education and Enforcement: The guidance calls on USDA funded entities to develop language access plans based on the four-factor analysis. We ask that USDA and its sub-agencies provide education and technical assistance to its recipients of Federal funds to help them better understand their obligations and to provide them with the tools they need to develop and implement genuinely functional language assistance plans. We also urge the Department to closely monitor the performance of recipients of its funds and, where appropriate, take enforcement action against those entities that fail to meet their language assistance obligations to the people they serve.

Regulation: We urge the Department to consider using regulations or sub-regulatory guidance to set specific minimum thresholds for translation and interpretation in particular program areas and to establish other requirements, such as data collection. The Centers for Medicare and Medicaid Services recently enacted such regulations for marketing materials for Medicare managed care and prescription drug plans. On the Medicare side, for example, CMS required plans to

provide oral interpretation in all languages, to translate certain materials where populations of the service area meet certain levels, and to include inserts in mailings that, in 15 languages, announce the availability of free telephone interpretation. Specific guidance such as this has the advantage of providing clarity and increasing enforceability and is particularly reasonable and appropriate given the vital nature and primary importance of USDA's programs such as SNAP, WIC, Child Nutrition and Disaster Assistance.

Data Collection: Finally, as the Department moves forward to improve language access, we want to stress the vital importance of data collection and tracking. We urge USDA to require recipients to collect language preference data on their LEP beneficiaries and report this data to USDA on at least an annual basis. Collecting data on the language needs of the populations they serve helps ensure good customer service and allows recipients to maximize and tailor their language assistance services. This type of tracking will also help recipients meet Element 5 (Monitoring and Updating the LEP Plan) of their LEP Plan. Reporting language preference data to USDA will inform the Department's language access procedures and allow USDA to monitor and identify LEP service gaps.

Conclusion

We recognize the significance of USDA's efforts to improve language access in its Federally funded programs and services, and applaud the Department for issuing LEP guidance to its recipients. We strongly urge USDA to develop further, more specific recommendations for recipients to help improve the delivery of its programs and services to the millions of LEP individuals across the country. We would be pleased to work with USDA in these efforts. Please contact Priscilla Huang, Policy Director, at phuang@apiahf.org with any additional questions or comments. We appreciate the opportunity to comment and welcome future opportunities to work together.

Respectfully,



Kathy Lim Ko
President & CEO
Asian & Pacific Islander American Health Forum

ⁱ U.S. Census Bureau, 2010 American Community Survey 1-Year Estimates.

ⁱⁱ Poverty data derived from the Current Population Survey. National CAPACD, Data Points: Asian American and Pacific Islander Poverty, April 2, 2012.

ⁱⁱⁱ Id.

^{iv} Migration Policy Institute, “LEP Data Brief” (December 2011). Available at <http://www.migrationinformation.org/integration/LEPdatabrief.pdf>. The brief uses 1990 and 2000 Decennial Census data, as well as pooled 2008-10 and 2010 American Community Survey data from the US Census Bureau.

^v See CMS’ LEP Strategic Plan, available at <http://www.cms.hhs.gov/About-CMS/Agency-Information/EOInfo/Downloads/StrategicLanguageAccessPlan.pdf>.