

July 31, 2020 (Revised)

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Headquarters

One Kaiser Plaza Suite 850
Oakland, CA 94612
Main 415-954-9988
Fax 510-419-0263
www.apiahf.org

Washington D.C. Office

1629 K Street N.W. Suite 400
Washington, D.C. 20006
Main 202-466-7772
Fax 202-466-6444

National Advocates for Asian
American, Native Hawaiian &
Pacific Islander Health

Mr. Roger Severino
Director
Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: July 20, 2020 Bulletin: Civil Rights Protections Prohibiting Race, Color and National Origin Discrimination During COVID-19

Dear Director Severino:

On behalf of the Asian and Pacific Islander American Health Forum (APIAHF), I write to express deep concern about the egregious omission of Asian American, Native Hawaiian and Pacific Islander (AA and NHPI) communities in the July 2020 Bulletin regarding civil rights protections and discrimination during COVID-19.¹

APIAHF is the nation's oldest and leading health policy organization working to advance the health and well-being of over 20 million AAs and NHPIs across the U.S. and territories. APIAHF works to improve access to and the quality of care for communities who are predominantly immigrant, many of whom are limited English proficient, and may be new to the U.S. healthcare system or unfamiliar with private or public coverage. We have longstanding relationships with over 150 community-based organizations across 35 states and the Pacific, to whom we provide capacity building, advocacy and technical assistance.

For 35 years, we have focused our policy efforts on: 1) improving access to health insurance and care for AA and NHPI and immigrant communities; 2) ensuring the collection, analysis and reporting of detailed demographic health data; and 3) protecting and advancing the language rights of the 1 in 3 AAs and NHPIs who are limited English proficient.

As such, we have a strong understanding of the needs and barriers AA and NHPI communities face² in accessing quality access to public health information, testing and treatment for COVID-19, including discrimination prohibited by Title VI of the Civil Rights Act of 1964.

¹ "Bulletin: Civil Rights Protections Prohibiting Race, Color and National Origin Discrimination During COVID-19, Application of Title VI of the Civil Rights Act of 1964," *U.S. Department of Health and Human Services, Office for Civil Rights* (July 20, 2020). Available at: <https://www.hhs.gov/sites/default/files/title-vi-bulletin.pdf>.

² See "COVID-19 Resources" developed by the Asian & Pacific Islander American Health Forum. Available at: <https://www.apiahf.org/public-health-alerts/covid-19-resources/>.

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) plays a critical role in the federal government's response to the COVID-19 pandemic, including educating covered entities about their obligations, educating the public about their rights, and ensuring compliance of federal civil rights laws, including Title VI. To that end, OCR has taken several actions consistent with its mission and role in supporting HHS' response to the COVID-19 public health emergency, including convening three teleconferences with the Department of Homeland Security, Federal Emergency Management Agency (FEMA) Office of Civil Rights for civil rights stakeholders.

In addition, OCR has recently issued several important and timely guidance documents related to civil rights and COVID-19, including a May 15 Bulletin on Limited English Proficiency³ and the referenced July 20 Bulletin on Race, Color and National Origin discrimination. The May 15 language access bulletin served as an important and affirmative public reminder to recipients of federal financial assistance of their longstanding obligations to provide meaningful access to individuals with limited English proficiency, along with concrete steps entities can take to ensure access in the COVID-19 context.

As a national health justice and civil rights organization that has been working to respond to COVID-19, we further welcomed OCR's July 2020 guidance reminding entities of their existing obligations under federal law prohibiting discrimination on the basis of race, color and national origin. The bulletin included critical language reminding entities of the forms of discrimination that are prohibited, concrete steps entities can take to ensure compliance, and provided examples of how offices and divisions within HHS are taking affirmative steps to ensure the federal COVID-19 response does not discriminate on these bases, as requested previously by advocates including APIAHF.⁴

While we deeply appreciate OCR's continued actions to ensure federal civil rights laws are enforced, we express deep concern, however, that while the bulletin properly discusses data documenting that racial and ethnic minorities are disproportionately impacted by COVID-19, it **fails to include even a single reference to the impact on AA and NHPI communities.**

Specially, Director Severino properly notes the significant burden on African American, Native American and Hispanic communities, but fails to include AA and NHPIs. OCR's omission is particularly concerning given the historic erasure of AA and NHPI communities from data and policy narratives that stands in stark contrast to the significant portion of the population these communities represent and the distinct challenges they are experiencing with COVID-19.

³ "Bulletin: Ensuring the Rights of Persons with Limited English Proficiency in Health Care During COVID-19," *U.S. Department of Health and Human Services, Office for Civil Rights* (May 15, 2020). Available at: <https://www.hhs.gov/sites/default/files/lep-bulletin-5-15-2020-english.pdf>.

⁴ See "APIAHF Questions Submitted for DHS HHS Teleconference (June 8, 2020)."

Furthermore, the omission of AA, and particularly NHPI disparities, raises concerns that AA and NHPI communities may not be priorities for engagement and enforcement for OCR and therefore may be deprioritized by entities covered by Title VI.

AA and NHPI communities are the fastest growing racial and ethnic groups in the country and represent more than 20 million individuals. Despite this, AAs and NHPIs are disproportionately experiencing COVID-19 and related barriers as a result of long-standing structural, economic, social and environmental inequities and discrimination.⁵

While there is a dearth of data overall related to AA and NHPI communities at the federal, state and local levels, including COVID-19 data⁶, publicly reported data in several states have found alarming disparities that demonstrate the unequal burden the virus is having on AAs and NHPIs:

- In at least 10 states, AAs have a case fatality rate that is disproportionately higher than the general population, while the same is true for NHPIs in 8 states.⁷ For example, in South Dakota, AAs case rate is 6 times higher as a proportion of their population in the state.⁸ These numbers may be larger but many states are not reporting out data in sufficient enough detail to evaluate the disparities, while the CDC has not reported out any data about AA or NHPI subpopulations, many of whom often face health disparities.⁹
- In some localities, like King County, Washington, and San Francisco County, California, NHPIs have rates 3 times or more their proportion in the population.¹⁰ In Spokane County, Washington, Marshall Islanders

⁵ “Written Statement for the Record for the Hearing Entitled ‘The Disproportionate Impact of COVID-19 on Communities of Color’ Committee on Ways and Means,” *Asian & Pacific Islander American Health Forum* (May 27, 2020). Available at: <https://www.apiahf.org/wp-content/uploads/2020/05/5.26.2020-Asian-Pacific-Islander-American-Health-Forum-Written-Testimony-to-Ways-and-Means-Committee-1.pdf>.

⁶ “COVID-19 Demographic Data Sign-on Letter to HHS,” (May 4, 2020). Available at: <https://www.apiahf.org/resource/covid-19-demographic-data-sign-on-letter-to-hhs/>.

⁷ Testimony from the National Council of Asian Pacific Islander Physicians to the Committee on Ways and Means (June 9, 2020). Available at: https://mcusercontent.com/d7f02dd24377959c916d14de6/files/5ebe9b24-21f8-4d67-93d2-4f218db2e323/NCAPIP_Statement_to_House_Ways_and_Means_Committee_on_COVID_19_Disparities.pdf.

⁸ We, Leana and Nakisa Sadeghi, "Addressing Racial Health Disparities In The COVID-19 Pandemic: Immediate And Long-Term Policy Solutions," *Health Affairs* (July 20, 2020). Available at: <https://www.healthaffairs.org/doi/10.1377/hblog20200716.620294/full/>.

⁹ For example, APIAHF analysis of 2018 American Community Survey data shows that while the overall uninsured rate for Asian Americans is 6.2%, the uninsured rate for Nepalese is 13.4% and 9.4% for Pakistanis.

¹⁰ “Devastating COVID-19 Rate Disparities Ripping Through Pacific Islander Communities in the U.S.,” *Pacific Islander Center on Primary Care Excellence* (April 27, 2020). Available at: https://mk0picopce2kx432grq5.kinstacdn.com/wp-content/uploads/2020_0424-PICOPCE-COVID19-Press-Release.pdf.

make up less than 1% of the county's population, but make up 30% of confirmed COVID-19 cases.¹¹

- Across the country, Pacific Islanders are being hospitalized with COVID-19 at up to 10 times the rate of other racial groups. In Washington, the rate of confirmed cases for NHPs are 9 times higher than those of whites. In Oregon, Pacific Islanders make up .4% of the population, but represent nearly 3% of all COVID-19 infections. Summarily, in Arkansas, Pacific Islanders make up .3% of the population, but account for 8% of COVID-19 cases. In Hawaii, Pacific Islanders make up 4% of the population, but 25% of COVID-19 cases.¹²
- Initial research from San Francisco suggests that AAs had the highest proportion of deaths due to COVID-19 across all other racial groups.¹³ While AAs make up one-third of the city's population, they make up half of its COVID-19 deaths.¹⁴
- In California, AAs represent 16% of COVID-19 deaths and 15% of the state population, while NHPs make up 1.6% of cases but 0.3% of the state's population.¹⁵
- Using what limited information is available, researchers have found that Filipino-Americans are dying of the virus at very high rates.¹⁶

These inequities are compounded by the dual challenges that AA and NHPI communities are facing amidst a public health emergency and the ugly backdrop of xenophobic hate and violence. AA and NHPI organizations have documented at least 1,900 hate incidents in 46 states.¹⁷

At the same time AA and NHPI communities are experiencing the dual blow of COVID-19 and COVID-19 hate, an estimated 2,000,000 AA and Pacific Islander essential workers are on the front lines and contributing to vital public safety

¹¹ Jackson, Lagipoiva, "Pacific Islanders in US Hospitalized with COVID-19 at up to 10 Times the Rate of Other Groups," *The Guardian* (July 26, 2020). Available at: https://www.theguardian.com/world/2020/jul/27/system-is-so-broken-covid-19-devastates-pacific-islander-communities-in-us?CMP=share_btn_link.

¹² *Id.*

¹³ Constance, Agnes, "Asian American Death Rate in San Francisco Concerning, Researchers Say," *NBC News* (May 20, 2020). Available at: <https://www.nbcnews.com/news/asian-america/asian-american-covid-19-death-rate-san-francisco-concerning-researchers-n1211491>.

¹⁴ Palomino, Joaquin, "Why has coronavirus taken such a toll on SF's Asian American community? Experts perplexed over high death rate," *San Francisco Chronicle* (May 2020, 2020). Available at: <https://www.sfchronicle.com/health/article/Why-has-coronavirus-taken-such-a-toll-on-SF-s-15282096.php>.

¹⁵ "COVID-19 Updates," *California Department of Public Health COVID-19 Cases and Deaths by Race/Ethnicity* (last accessed May 25, 2020). Available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>.

¹⁶ Wong, Tiffany, "Little noticed, Filipino Americans are dying of COVID-19 at an alarming rate," *Los Angeles Times* (July 21, 2020). Available at: <https://www.latimes.com/california/story/2020-07-21/filipino-americans-dying-covid>

¹⁷ "Hate Incidents," *AAP I Emergency Response Network* (last accessed May 25, 2020). Available at: <https://www.aapiern.org/hate-incidents>.

sectors. These include the 21% of physicians¹⁸ who are AA and the nearly 10% of registered nurses¹⁹ who are Filipino, as well as 21% of critical care fellows²⁰ and 22% of pharmacists.²¹ Dr. Chen Fu, a Chinese-American doctor working in a New York City hospital recently told NBC's *The Today Show* how, despite his front line work, faced animosity and harassment in public.²²

Our concerns are further confirmed by a survey commissioned by APIAHF with 45 community-based partners working with AA and NHPI communities which found that 9 in 10 respondents reported that existing language resources related to COVID-19 are inadequate.²³ Our partners have shared incidents with us of limited English proficient individuals being placed on a ventilator without an interpreter explaining the procedure or children being asked to translate for their parents when visiting providers to check on potential symptoms of COVID-19, raising serious civil rights concerns. At the same time, advocates, including APIAHF, understand that these examples are part of a larger systemic challenge in ensuring meaningful access to limited English proficient persons in a health system that was already challenged to do so and has been made more dire due to COVID-19.²⁴ APIAHF has worked closely with Congressional leaders, including the Congressional Asian Pacific American Caucus, to highlight these concerns and ensure that all Congressional responses meet the needs of all Americans, including AAs and NHPIs.

¹⁸ "COVID-19 in Numbers, Physicians & Surgeons," *Data USA* (last accessed May 25, 2020). Available at: <https://datausa.io/profile/soc/physicians-surgeons>.

¹⁹ "COVID-19 in Numbers, Registered Nurses," *Data USA* (last accessed May 25, 2020). Available at: <https://datausa.io/profile/soc/registered-nurses>.

²⁰ Lane-Fall MB, Miano TA, Aysola J, Augoustides JGT. "Diversity in the Emerging Critical Care Workforce: Analysis of Demographic Trends in Critical Care Fellows From 2004 to 2014," *Crit Care Med*. 2017;45(5):822-827. doi:10.1097/CCM.0000000000002322.

²¹ "COVID-19 in Numbers, Pharmacists," *Data USA* (last accessed May 25, 2020). Available at: <https://datausa.io/profile/soc/pharmacists>.

²² Nguyen, Vicky, "Threats against Asian Americans are on the Rise Amid Coronavirus Crisis," *The Today Show* (April 24, 2020). Available at <https://www.today.com/video/threats-against-asian-americans-are-on-the-rise-amid-coronavirus-crisis-82510405969>.

²³ "What Asian American, Native Hawaiian and Pacific Islander Organizations Need in the Face of the COVID-19 Pandemic, *Asian & Pacific Islander American Health Forum* (July 20, 2020). Available at: <https://www.apiahf.org/resource/covid-19-need-to-know/>.

²⁴ "COVID-19 Language and Communications Access Letter to Congress," (May 29, 2020). Available at: <https://www.apiahf.org/resource/covid-19-language-and-communications-access-letter-to-congress/>. See also "COVID-19 Language Access Legislation Letter to Congressional Leadership, (July 23, 2020). Available at: <https://www.apiahf.org/resource/covid19-lep-letter/>.

Given the unequal toll COVID-19 is taking on AA and NHPI communities, we ask that OCR:

1. Going forward, explicitly reference AA and NHPI COVID-19 disparities when discussing the disproportionate impact COVID-19 is having on racial and ethnic minorities.
2. Provide a written response answering the following questions, some of which APIAHF has submitted in previous DHS HHS civil rights stakeholder meetings:
 - a. Can OCR detail what affirmative steps it is taking to ensure compliance with the May 15 and July 20 bulletins related to compliance with civil rights laws?
 - b. Can OCR commit to providing technical assistance to federal agencies and state and local governments in line with their obligations to ensure meaningful access to LEP persons, consistent with the May 15 bulletin?
 - c. How many complaints has OCR received from February 1, 2020 to date related to language access concerns and COVID-19? Is OCR currently undertaking any investigations related to language access concerns and COVID-19?
 - d. Can OCR confirm if the agencies are utilizing the Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964, collectively issued by DOJ, DHS, HUD, HHS and DOT as the document is referenced in the OCR May 15, 2020 language access bulletin?
 - e. Can OCR detail affirmative steps it is taking or plans to take to ensure that AA and NHPs are included in federal enforcement efforts related to COVID-19, including in its communications to covered entities?
 - f. We understand that OCR is coordinating with CDC with regard to translated COVID-19 materials. Consistent with the FEMA language access plan and existing federal civil rights laws and guidance, can OCR provide details on the timeline for when CDC expects to provide additional materials in the top 10 or 20 languages?

As a national nonprofit working with over 150 community-based organizations across 35 states and the Pacific, we remain committed to working with HHS OCR to ensure that all communities are served in the federal government's response to COVID-19. We respectfully request that OCR host an AA and NHPI community stakeholder listening session to hear from community representatives about the needs and challenges being experienced. APIAHF would be happy to co-host this meeting.

We look forward to receiving a courtesy reply to this letter on or before August 19. For questions, please contact me at jchoi@apiahf.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JK Choi', with a stylized flourish at the end.

Juliet K Choi
Executive Vice President