



National Senior Citizens Law Center

PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

May 1, 2012

Kenneth Baisden, Chief, Policy Division
Office of the Assistant Secretary for Civil Rights
United States Department of Agriculture
300 7th St. SW., Washington, DC
Washington, DC 20250

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The National Senior Citizens Law Center (NSCLC) appreciates the opportunity to comment on the draft guidance of the United States Department of Agriculture (USDA) to recipients of federal financial assistance regarding their obligations to persons with limited English proficiency.

The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults and people with disabilities. NSCLC has been active in advocating for improvement in language access in federal programs and entities receiving federal funds. We have worked with the Social Security Administration and the Department of Health and Human Services, including especially the Centers for Medicare and Medicaid Services, to improve services to limited-English proficient (LEP) individuals using those programs. Because language access is critical to obtaining and effectively using government-financed services that help low income people live with health and dignity in their communities, obtaining improvements in this area is one of our organization’s highest priority.

In 2010, 25.2 million individuals over the age of five, or 9 percent of the U.S. population, spoke English less than very well and are considered limited English proficient (LEP).¹ The number of LEP individuals in the U.S. has grown over the years—with an increase of 80 percent between 1990 and 2010—as has the linguistic diversity of the LEP population in the United States. For example, Asian Americans, Native Hawaiians and Pacific Islanders trace their heritage to more than 50 countries and speak more than 100 different languages. 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).

Language barriers affect the integration and participation of vulnerable populations in federal programs. For limited English proficient individuals in particular, 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, and language barriers are widely known to reduce rates in enrollment and lower the quality and effectiveness of health programs.ⁱⁱ Similarly, such barriers may prevent LEP populations from meaningful access to USDA programs. In short, 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.ⁱⁱⁱ 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 is rich with 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. 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.

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 Georgia Burke, gburke@nsclc.org with any additional questions or comments.

We appreciate the opportunity to comment and welcome future opportunities to work together.

Respectfully,



Directing Attorney

ⁱ 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.

ⁱⁱ Id.

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