

# **U.S. Commission on Civil Rights**

Office of Civil Rights Evaluation

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## **Toward Equal Access: Eliminating Language Barriers from Federal Programs**

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**Draft Report for Commissioners' Review**

**July 2, 2004**

This is a draft document, which was previously disseminated to the public. It failed to pass by a majority of the Commission. Four Commissioners voted in favor of the report. Four Commissioners voted against the report. The report is not recommended for citation.

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## Chapter 1: Introduction

*A language is . . . a culture, a way of thinking, and a perspective on the world. Each language is a precious resource that must be studied, used, and preserved precisely because a language opens the mind to new possibilities. The study of language is the study of life, literature, history, and thought. It is nothing less than the study of our world and ourselves.*<sup>1</sup>

People from all over the world immigrate to the United States. They arrive with different social and economic backgrounds, cultures, and languages. Many find a land of opportunity and equal treatment, while others experience exclusion and discrimination. Alarmed by documentation over many years that unequal access continues at high rates for many immigrants, particularly those who are non-English speaking, the U.S. Commission on Civil Rights undertook this study. Staff reviewed (a) history relevant to federal language access in the United States; (b) language barriers to federal programs and services; and (c) Executive Order 13166, which instructs all federal entities to provide linguistic assistance and access to their programs and services. The purpose of the study is to evaluate agencies' pre- and post-executive order efforts and effectiveness in bringing about meaningful language access.<sup>2</sup> To do so, the Commission assessed the executive order's implementation and effectiveness. The report also offers recommendations for strengthening government efforts and proposes additional federal initiatives to significantly reduce language barriers throughout the federal sector.

### History of Immigration and Language Policy in the United States

From its early days as a nation, America attracted immigrants who arrived for different reasons and spoke many different languages.<sup>3</sup> For example, in the 1700s, many northern and western Europeans arrived hoping to escape faltering economic conditions within their homelands.<sup>4</sup> Very few federal immigration policies, regulations, or standards existed.<sup>5</sup> By the early 1900s, growing numbers of southern and eastern Europeans arrived, and Congress amended laws to add eligibility criteria, including the ability to read English.<sup>6</sup> Although Congress eventually rescinded the literacy requirement, language minorities' access to government and civic participation has been limited.

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<sup>1</sup> U.S. Department of Education, "Remarks of Secretary Roderick R. Paige at the American Council on the Teaching of Foreign Languages," Nov. 21, 2003, p. 1, <<http://www.ed.gov/news/speeches/2003/11/11212003.html>> (last accessed Apr. 27, 2004).

<sup>2</sup> In this report, the term "agencies" refers to all federal government entities in the executive branch. For a list of the entities, see Appendix 3.

<sup>3</sup> The discussion focuses on the history of "voluntary" immigration and not necessarily slavery, involuntary (laborers or indentured servitude), or illegal immigration.

<sup>4</sup> U.S. Commission on Civil Rights, *The Tarnished Golden Door: Civil Rights Issues in Immigration*, September 1980, p. 7.

<sup>5</sup> *Ibid.* In the 1800s, Congress enacted immigration laws that were primarily "exclusionary acts" to reduce the number of immigrants because of a religion or race.

<sup>6</sup> *Ibid.*, pp. 8-9.

The United States government has never planned or adopted a comprehensive national language policy.<sup>7</sup> State and local governments have instituted language policies as populations grew more diverse. Thus, such policies have occurred sporadically, and have been contradictory and discriminatory.<sup>8</sup> For example, during the 18th and 19th centuries, the influx of European immigrants brought about various movements to restrict the use of non-English languages.<sup>9</sup> During that time, many languages were spoken in America, including English, German, Dutch, French, Portuguese, Greek, Arabic, Spanish, and numerous American Indian and African languages.<sup>10</sup> Attitudes and policies toward language groups varied, depending on their numbers, political power, economic status, territorial position, land ownership, and race.<sup>11</sup> Many immigrants formed their own communities. They operated non-English-speaking institutions such as school systems to limit the restrictions that local policies placed on them.<sup>12</sup> The English-

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<sup>7</sup> Language policy is what the government does officially through legislation, court decisions, executive orders, or other means to (a) determine how languages are used in public contexts, (b) cultivate language skills needed to meet national priorities, or (c) establish the rights of individuals, or groups to learn, use and maintain languages. Language policy-making has occurred throughout American history but no federal agency is charged with coordinating decisions, resources, or research in this area. James Crawford, "Language Policy," <<http://ourworld.compuserve.com/homepages/JWCRAWFORD/langpol.htm>> (last accessed Apr. 28, 2004). Crawford is an independent writer and lecturer, and formerly the Washington editor of *Education Week*. He has written numerous books, articles, and papers on language policy and language diversity. See James Crawford's Language Policy Web site and Emporium <<http://ourworld.compuserve.com/homepages/JWCRAWFORD/>> (last accessed Apr. 27, 2004).

<sup>8</sup> Policymakers rely on ideology, rather than on social or economic factors, to explain language policy. The ideologies involve conceptions of race, ethnicity, and language. Language policies have ranged from repression to restriction to tolerance to accommodation, factors that usually have nothing to do with language. James Crawford, "Anatomy of the English-Only Movement," <<http://ourworld.compuserve.com/homepages/JWCRAWFORD/anato...>> (last accessed Apr. 27, 2004) (hereafter cited as Crawford, "Anatomy of the English-Only Movement"). Language minorities have faced policies of exclusion or coercive assimilation or both, usually depending on forces that had nothing to do with language. For example, in the 19th century, authorities decided that the way to end Native Americans' "barbarous practices" was to "force them to attend English-only boarding schools"; and Pennsylvania officials enacted an English proficiency requirement for miners, seeking to bar Italians and Slavs from the coal fields. In the 20th century, some New York politicians pushed through an English literacy test for voting, hoping to disfranchise 1 million Yiddish speakers who voted for members of a different party. See James Crawford, *Hold Your Tongue: Bilingualism and the Politics of 'English Only'* (Addison-Wesley Pub. Co., 1992), pp. x, 31 (hereafter cited as Crawford, *Hold Your Tongue*).

<sup>9</sup> Thomas Ricento, "A Brief History of Language Restrictionism in the United States," 1996, <<http://www.ncela.gwu.edu/miscpubs/tesol/official/restrictionism.htm>>, p. 1 (last accessed Apr. 27, 2004) (hereafter cited as Ricento, "Language Restrictionism in the United States"). Thomas Ricento is an associate professor of applied linguistics at the University of Texas in San Antonio. He has published several books and articles on language politics and policy. He also is one of the editors of *TESOL Quarterly*. Early Americans "saw themselves as exceptional; a people embarked on a noble adventure in self-government, united by a commitment to democratic ideals rather than by involuntary ties of ancestry. The traditional markers of nationality—language, customs, religion, and blood—were seen as inconsistent with the universalism of the American experiment." There was the tendency to view "language issues" through an ideological prism that focused attention only when there was clash with the perceived "democratic" values. Subsequently, ad hoc responses to language diversity occurred, ranging from accommodation to tolerance to exclusion and to repression. Crawford, *Hold Your Tongue*, pp. 28, 31.

<sup>10</sup> Crawford, *Hold Your Tongue*, pp. 34–36.

<sup>11</sup> Crawford, "Anatomy of the English-Only Movement," p. 5.

<sup>12</sup> See Heinz Kloss, *The American Bilingual Tradition*, 2d ed. (Washington, DC: ERIC Clearinghouse on Languages and Linguistics, 1998), as cited in Crawford, "Anatomy of the English-Only Movement," p. 14.

speaking majority often perceived non-English speakers who lived among the general population as outsiders on whom they consequently imposed restrictions, which fomented policies that limited immigrants' voting and educational opportunities.<sup>13</sup>

As attitudes toward particular immigrant groups changed, so did policies toward them. The first restrictive federal language policy, that is, policy aimed at curtailing the rights of a certain group, involved German immigrants.<sup>14</sup> When German immigration began, many policy-makers perceived the people and their language as threats. However, after German immigrants became more assimilated into the majority culture, restrictions based on their cultural and linguistic differences ended.<sup>15</sup> The Continental Congress even translated numerous official documents, including the Articles of Confederation, for their benefit.<sup>16</sup> The experience of Spanish-speaking persons in California was entirely different. After the Mexican-American War, the United States initially accepted them, and the California Constitution recognized Spanish language rights. The Gold Rush brought competition for resources and changed the tolerance level, however. The political status of Spanish-speaking Californians plummeted and the state passed new laws that prohibited Spanish language schooling.<sup>17</sup>

By the 19th century, other immigrant groups faced discriminatory language policies based on differences in religion, race, culture, social values, and beliefs.<sup>18</sup> For example, language policies restricted Chinese immigration and limited the rights of those who entered the country. States passed laws to impose literacy requirements that barred Chinese Americans from employment, disqualified them from owning land, and denied them the right to vote.<sup>19</sup> Even more repressive language policies were directed toward Native Americans.<sup>20</sup> Furthermore, Southern colonies, afraid that linguistic unity would foster slave rebellion, made it unlawful to teach slaves to read or write in English.<sup>21</sup> However, policies toward European immigrants moved toward active accommodation. During the 1850s, some states and municipalities translated documents into as many as five different European languages, including German, Swedish, French, Spanish, and Czech.<sup>22</sup> No national consensus on language access rights existed. Accommodations were based on such factors as the importance of immigrant votes in a jurisdiction.<sup>23</sup>

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<sup>13</sup> Ricento, "Language Restrictionism in the United States," pp. 1-3.

<sup>14</sup> See Crawford, "Anatomy of the English-Only Movement," pp. 6-7.

<sup>15</sup> Ricento, "Language Restrictionism in the United States," p. 3.

<sup>16</sup> Crawford, *Hold Your Tongue*, p. 32.

<sup>17</sup> Ricento, "Language Restrictionism in the United States," p. 9.

<sup>18</sup> See Crawford, *Hold Your Tongue*, p. 43.

<sup>19</sup> Ricento, "Language Restrictionism in the United States," p. 3.

<sup>20</sup> See J.D.C. Atkins, *Annual Report of the Commissioner of Indian Affairs, 1992 [1887]*, pp. 47-51, as cited in Crawford, "Anatomy of the English-Only Movement," pp. 10-11. For example, Native American students were punished when caught speaking native tongues or practicing tribal religions.

<sup>21</sup> Crawford, *Hold Your Tongue*, p. 35.

<sup>22</sup> *Ibid.*, p. 44.

<sup>23</sup> *Ibid.*, p. 45.

During the 20th century, restrictive language policies became even more discriminatory as new immigrant groups arrived.<sup>24</sup> For example, state and local language policies prohibited Japanese, Korean, and Spanish speakers from attending private schools in California and Hawaii.<sup>25</sup> Congress also has passed laws and initiatives that restricted both the number and national origins of certain immigrants.<sup>26</sup>

In 2000, the U.S. Census Bureau reported that 47 million persons spoke a language other than English at home, and 2.6 million adults did not speak English at all.<sup>27</sup> The government classifies such persons as limited English proficient (LEP).<sup>28</sup> Over the past several decades, because of immigration policy that resulted in more immigrants from non-English-speaking countries, the LEP population increased nationwide. The need for language assistance, particularly to provide access to federal programs and services, magnified.

### Language Barriers to Federal Programs

According to the Department of Justice's (DOJ) then assistant attorney general for civil rights, Ralph F. Boyd, Jr., language can pose many barriers for people who do not speak or understand English but live in the United States where English is the primary language.<sup>29</sup> They will encounter problems in (1) accessing important benefits or services, (2) understanding and exercising rights, (3) complying with governmental or other responsibilities, and (4) understanding how to participate fully in American society.<sup>30</sup>

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<sup>24</sup> See Arnold H. Leibowitz, "English Literacy: Legal Sanction for Discrimination," *Notre Dame Lawyer*, vol. 45, no. 7, 1969, pp. 7-67, as cited in Crawford, "Anatomy of the English-Only Movement," pp. 14-16.

<sup>25</sup> Ricento, "Language Restrictionism in the United States," p. 3; Crawford, "Anatomy of the English-Only Movement," pp. 11-14.

<sup>26</sup> Ricento, "Language Restrictionism in the United States," p. 4.

<sup>27</sup> U.S. Census Bureau, "Language Use and English-Speaking Ability 2000," October 2003; U.S. Census Bureau, "Nearly 1 in 5 Speak a Foreign Language at Home: Most Also Speak English Very Well," press release, Oct. 8, 2003, <[http://www.census.gov/Press Release/www/releases/archives/census\\_2000/001406html](http://www.census.gov/Press Release/www/releases/archives/census_2000/001406html)> (last accessed Dec. 4, 2003).

<sup>28</sup> The term "limited English proficiency" as used in federal laws and policies generally refers to individuals whose native language is other than English. The Bilingual Education Act (20 U.S.C. §§ 3221 *et seq.* (2004), defines (a) "native language" as the "language normally used by such individual, or (b) in the case of a child or youth, the language normally used by the parents of the child or youth." 20 U.S.C.S. § 3221, § 7011(11) (2004); U.S. Department of Justice, Office of the Assistant Attorney General, "A Message to Recipients from Ralph F. Boyd, Assistant Attorney General," Dec. 13, 2002, <<http://www.usdoj.gov/crt/cor/Pubs/BoydLEP.htm>> (last accessed July 25, 2003) (hereafter cited as DOJ, "A Message to Recipients").

<sup>29</sup> English emerged as the leading international language because of three developments: (1) British colonization globally from the 17th through the 20th century; (2) the United States' dominance in worldwide technology, economy, and politics in the first part of the 20th century; and (3) the growth of industry, communications and international relations, which demanded a universal, common language. It should be noted, however, that while worldwide more people speak English, they do so as a second or foreign language. To illustrate, the latest estimate is that 341 million persons speak English as the first language. However, 358 million persons speak Spanish, 366 million persons speak Hindi, and 874 million speak Mandarin Chinese as the first languages. See Tore Janson, *Speak: A Short History of Languages* (New York: Oxford University Press, Inc., 2002), pp. 260-61.

<sup>30</sup> DOJ, "A Message to Recipients," p. 2.

Congress staged the government's responsibility to eliminate language barriers when it passed the Civil Rights Act of 1964. Specifically, Title VI banned discrimination based on national origin in programs or activities that receive federal financial assistance.<sup>31</sup> A decade later the Supreme Court's decision in *Lau v. Nichols* clarified that national origin discrimination included disparate program participation resulting from inability to read, write, or speak English.<sup>32</sup> The *Lau* decision arose in the context of education,<sup>33</sup> and Title VI does not specify language barriers as a form of national origin discrimination. These two facts, along with the rapidly changing demographics in the United States, accounted for confusion about the extent of federal agencies' responsibility to reach and serve LEP persons in other areas such as housing, employment, and health care.

In August 2000, President William J. Clinton issued Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency,"<sup>34</sup> which directs all federal agencies to provide meaningful language access to their programs and services. In 2001, President George W. Bush affirmed the government's commitment to the executive order. It requires agencies that provide federally assisted programs<sup>35</sup>—approximately 30 agencies—to develop guidance for recipients to improve language access. The order also requires approximately 100 executive agencies that operate federally conducted programs<sup>36</sup> to prepare language assistance plans to improve direct access to services and benefits.

### Language Access: A Persistent Civil Rights Problem

Over time, the U.S. Commission on Civil Rights has documented the need for language accessible government services and benefits to promote equal access to health care, justice, education, employment, housing, and voting. Some examples follow:

#### *Access to Health Services*

*The Health Care Challenge, Acknowledging Disparity, Confronting Discrimination and Ensuring Equality, Volume I*, found that language barriers impede LEP persons from learning about services and from receiving optimal or even satisfactory care. Lack of English skills causes some individuals to avoid seeking services until problems are acute. Such delays increase

<sup>31</sup> Civil Rights Act of 1964, Pub. L. no. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

<sup>32</sup> *Lau v. Nichols*, 414 U.S. 563 (1974).

<sup>33</sup> U.S. Department of Justice, Civil Rights Division, "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency; Policy Guidance," 65 Fed. Reg. 50,123, 50,124 (Aug. 16, 2000).

<sup>34</sup> Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000) (to be codified in 3 C.F.R.); Exec. Order 13166, 3 C.F.R. 289 (2001).

<sup>35</sup> Federally assisted programs are operated by a recipient. (A recipient is a state or its political subdivision, instrumentally of a state or its subdivision, trust territory, public or private agency, institution, organization, or other entity, or person to which federal assistance is extended). Title VI mandates that recipients of any federal financial assistance operate programs, activities, and facilities in an accessible and nondiscriminatory manner.

<sup>36</sup> A federally conducted program is a self-run federal program. Any government entity must ensure its own programs, activities, and facilities are accessible and operated in a nondiscriminatory manner.



dependence on emergency room care. When available, interpreters may not be able to translate medical terms, or may inaccurately describe the symptoms or degrees of illness, compromising patient care. Many LEP patients designate a family member, often a child, to interpret. But children may lack the medical vocabulary necessary to translate, or the maturity to understand, and convey medical information.<sup>37</sup> Another report, *Civil Rights Issues Facing Asian Americans in the 1990s*, also found that Asian Americans seeking medical services often rely on a family member, rather than a trained health care professional, to interpret. Furthermore, federal policies excluded Asian Americans from minority recruitment programs for health care professionals because they were deemed “overrepresented.” The Asian American community encompasses a diversity of groups differing in languages, culture, and generational depth. But the ethnic backgrounds and languages that Asian American physicians in America spoke did not represent well the immigrant populations needing services. The result is a lack of trained Asian American professionals who have the backgrounds and languages necessary to communicate with those who need services.<sup>38</sup>

The Commission recommended that the Department of Health and Human Services (HHS) promote recipients’ efforts to recruit and hire health care professionals who have linguistic and cultural skills.<sup>39</sup> Second, all hospitals should have access to a 24-hour telephone interpreter service. Third, health care providers and facilities should hire or contract with competent interpreters—those fluent in both English and a non-English language and who can accurately translate medical terms—and train staff to work with interpreters. Finally, health care practitioners should offer written information about preventative medicine in appropriate non-English languages.<sup>40</sup>

### *Administration of Justice*

In the mid- and late 1990s, police-community relations became strained as immigrant populations grew and few police forces represented the diverse populations they served. *Police Practices and Civil Rights in New York City* and other reports documented that in New York, Chicago, Los Angeles, Washington, D.C., and New Jersey, communications between limited English proficient persons and the police were poor because officers were not bilingual. Furthermore, police departments had not sufficiently trained officers on multicultural or diversity issues, or provided cultural orientation on new immigrant groups from China, Korea, Vietnam, India, and Pakistan.<sup>41</sup> Rather than promoting communication between groups, diversity training

<sup>37</sup> U.S. Commission on Civil Rights, *The Health Care Challenge: Acknowledging Disparity, Confronting Discrimination, and Ensuring Equality, Volume I: The Role of Governmental and Private Health Care Programs and Initiatives*, September 1999, pp. 35, 37, 191, 193 (hereafter cited as USCCR, *The Health Care Challenge, Vol. I*).

<sup>38</sup> U.S. Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, February 1992, pp. 167, 202 (hereafter cited as USCCR, *Civil Rights Issues Facing Asian Americans*).

<sup>39</sup> *Ibid.*, p. 203.

<sup>40</sup> USCCR, *The Health Care Challenge, Vol. I*, p. 194.

<sup>41</sup> U.S. Commission on Civil Rights, *Police Practices and Civil Rights in New York City*, August 2000, pp. 9–14, 38–39 (hereafter cited as USCCR, *Police Practices in New York City*); U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Vol. III, The Chicago Report*, September 1995, p. 134 (hereafter cited as USCCR, *Racial and Ethnic Tensions, Chicago*); U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and*

was sometimes superficial and furthered negative stereotypes.<sup>42</sup> The Commission recommended that police departments hold regular public forums to foster more positive interaction between communities and the police.<sup>43</sup>

*Racial and Ethnic Tensions, Los Angeles*, also documented problems. For example, the Los Angeles Sheriff's Department used a list of volunteers to interpret during episodes that required non-English communication.<sup>44</sup> Although moving in an appropriate direction, the Commission found these measures alone inadequate. LEP persons need interpretive services to communicate effectively with police and benefit from their services. Similarly, in *Civil Rights Issues Facing Asian Americans*, the Commission recommended that police departments provide interpreters to LEP individuals for both emergencies and nonemergencies; adopt community-policing methods to build trusting relationships with LEP individuals; conduct police training in intercultural communication; evaluate officers' intercultural awareness as a measure of the access to and the quality of service they provide; and disseminate information about the police department to immigrants in their native languages.<sup>45</sup>

In *Racial and Ethnic Tensions, Mount Pleasant*, the Commission found that Spanish-speaking Salvadoran immigrants in Washington, D.C., were unaware of their rights to secure court services. The jurisdiction offered no basic information or general courtroom orientation and instructions, including signs, in non-English languages. Interpreters were seldom available on Saturdays and holidays to attend arraignments and bridge communication gaps during other steps in a legal process. Components such as the probation officers' diagnostic branch and intrafamily services providing assistance to victims of domestic violence did not employ Spanish-speaking staff or interpreters who could help LEP persons.<sup>46</sup>

### ***Equal Educational Opportunity***

Several Commission reports documented LEP students' access to education, examining programs available to these students, program content and needed improvements, and federal efforts to ensure equal education.<sup>47</sup> In 1997, the *Equal Educational Opportunity Project Series*,

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*Discrimination, Vol. V, The Los Angeles Report*, May 1999, pp. 83–85, 137, 143–58 (hereafter cited as USCCR, *Racial and Ethnic Tensions, Los Angeles*); U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Vol. I, The Mount Pleasant* [Washington, DC] Report, January 1993, pp. 40–42 (hereafter cited as USCCR, *Racial and Ethnic Tensions, Mount Pleasant*); New Jersey Advisory Committee to the U.S. Commission on Civil Rights, *The Use and Abuse Police Powers: Law Enforcement Practices and the Minority Community in New Jersey*, July 1994, pp. 4–5 (hereafter cited as New Jersey Advisory Committee, *The Use and Abuse of Police Powers*).

<sup>42</sup> USCCR, *Police Practices in New York City*, pp. 38–40.

<sup>43</sup> *Ibid.*, p. 49.

<sup>44</sup> USCCR, *Racial and Ethnic Tensions, Los Angeles*, p. 137.

<sup>45</sup> USCCR, *Civil Rights Issues Facing Asian Americans*, p. 193; see also New Jersey Advisory Committee, *The Use and Abuse of Police Powers*, p. 16.

<sup>46</sup> USCCR, *Racial and Ethnic Tensions, Mount Pleasant*, p. 58.

<sup>47</sup> See USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 68–109, 193–97; U.S. Commission on Civil Rights, *Equal Educational Opportunity and Nondiscrimination for Students with Limited English Proficiency: Federal Enforcement of Title VI and Lau v. Nichols, Equal Educational Project Series, Volume III*, November 1997

*Volume III*, urged elimination of language barriers so that all students could develop to their fullest academic potential. It explained the federal obligation to ensure LEP students' access to and effective participation in schools' regular and LEP programs.<sup>48</sup> It asked the Department of Education's Office for Civil Rights to evaluate relevant instructional materials and to help school districts develop strategies to increase affected students' and their parents' program participation.<sup>49</sup> The Commission stressed the need for parental or community involvement, particularly when developing language assistance programs.<sup>50</sup>

### ***Equal Employment***

The Commission found that many Asian American and Pacific Islander workers face unlawful discrimination in the workplace because of limited English proficiency, accent, or the desire to speak their native language on the job.<sup>51</sup> In recent reports, the Commission asked the Equal Employment Opportunity Commission (EEOC) to intervene more with regard to employment practices that adversely affect LEP workers. To increase EEOC's accessibility to LEP individuals, the Commission asked that it create an advisory committee of community representatives to examine and recommend ways to reach LEP individuals; hire more multilingual investigators or other staff who have a cultural understanding of LEP workers; and produce information about employees' rights—fact sheets, brochures, and booklets—in non-English languages.<sup>52</sup> The Commission also urged state and local civil rights enforcement agencies to increase outreach to language-minority workers about their rights and how to protect them, and to monitor the development and use of employment tests to ensure they are professionally validated for LEP workers.<sup>53</sup>

### ***Fair Housing***

In the mid-1990s, Commission reports found that inadequate numbers of bilingual staff and a lack of multilingual signage and information in federally assisted programs limited Latino access to housing in Chicago and the District of Columbia. Whether assistance with rental accommodations, public and assisted housing, or emergency shelters, eligible Hispanics did not receive services. A lack of bilingual housing inspectors resulted in unsafe housing units, landlords' failing to repair conditions to meet regulatory code, and evictions of Latinos because of the code violations. In addition to hiring bilingual staff and providing non-English signage and

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(hereafter cited as USCCR, *Equal Educational Opportunity Project Series, Vol. III*). The Commission also has many language-minority reports from the 1970s discussing the content and quality of bilingual programs.

<sup>48</sup> See USCCR, *Equal Educational Opportunity Project Series, Vol. III*, pp. 185, 228–29, 230–31.

<sup>49</sup> *Ibid.*, pp. 185, 228–29, 230–31.

<sup>50</sup> *Ibid.*, pp. 97–110, 185–86.

<sup>51</sup> USCCR, *Civil Rights Issues Facing Asian Americans*, p. 198.

<sup>52</sup> U.S. Commission on Civil Rights, *Helping Employers Comply with the ADA, An Assessment of How the United States Equal Employment Opportunity Commission Is Enforcing Title I of the Americans with Disabilities Act*, September 1998, pp. 233, 269; U.S. Commission on Civil Rights, *Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Employment Opportunity Commission's Enforcement Efforts*, September 2000, pp. 10, 295–96, 299 (hereafter cited as USCCR, *EEOC's Enforcement Efforts*).

<sup>53</sup> USCCR, *Civil Rights Issues Facing Asian Americans*, pp. 198, 200.

information, the Commission recommended outreach to the Latino community to increase knowledge of available services.<sup>54</sup>

### ***Voting Rights***

For decades, Commission reports have found that many LEP individuals lack language assistance when voting. They are hindered from civic participation because many jurisdictions lack multilingual ballots, voting information, and poll workers. Misunderstandings about voter registration and harassment and intimidation also interfere with voting rights.<sup>55</sup> The Commission recommended that states identify disparities in precinct election systems and collect data on ballot availability in non-English languages. It also induced Congress to develop minimum standards for technology that improves accessibility for language minorities.<sup>56</sup>

### **Methodology**

The Commission conducted intensive fact-finding that included reviewing Commission studies on language barriers; researching and reviewing federal agencies' online multilingual information; and evaluating language assistance guidance and plans, and other agency documents. Staff examined public information available from federal agencies, such as their size, the number and types of programs they conduct or assist financially, and whether they reach a large number of LEP persons. Based on the foregoing, the Commission selected seven agencies and studied their LEP initiatives in more detail. Staff issued interrogatories and requested documents from the subject agencies, and in one instance interviewed agency personnel.

The Commission selected the Departments of Justice (DOJ), Health and Human Services (HHS), Labor (DOL), Education (DOEd), and Housing and Urban Development (HUD), the Social Security Administration (SSA), and the Equal Employment Opportunity Commission (EEOC). Staff selected the agencies based on major civil rights law enforcement responsibilities that cover substantial federal program areas, including housing, education, employment and training, health care, and administration of justice. DOJ, HHS, DOL, DOEd, and HUD are among 30 that administer federally assisted programs, that is, they enforce the laws against discrimination as required by Title VI of the Civil Rights Act. DOJ bears the additional responsibility to coordinate Title VI enforcement and Executive Order 13166's implementation. Two additional agencies—EEOC and SSA—conduct programs that require direct contact with the public, many of whom are limited English proficient.

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<sup>54</sup> USCCR, *Racial and Ethnic Tensions, Mount Pleasant*, pp. 118–19, 149–50; USCCR, *Racial and Ethnic Tensions, Chicago*, pp. 50–51, 143.

<sup>55</sup> See U.S. Commission on Civil Rights, *The Voting Rights Act: Unfulfilled Goals*, 1981; Arizona Advisory Committee to the U.S. Commission on Civil Rights, *Voting Rights Issues in San Luis, Arizona*, 1992; USCCR, *Civil Rights Issues Facing Asian Americans*; U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election*, June 2000.

<sup>56</sup> U.S. Commission on Civil Rights, *Election Reform: An Analysis of Proposals and the Commission's Recommendations for Improving America's Election System*, November 2001, pp. 54–55.

## Summary

This report will demonstrate that while some important programs exist, the government lacks the cohesiveness, enforcement authority, and creativity necessary to provide access to its limited English proficient population. The major reasons: (a) those agencies that administer federally assisted programs are not appropriately applying antidiscrimination laws to language access problems; and (b) Executive Order 13166 is too weak because no agency has authority to enforce it.

Title VI applies to approximately 30 agencies that administer federally assisted programs and not some 70 other federal agencies that only serve the public directly. The written law also does not specify language barriers as a form of national origin discrimination. Thus, until the executive order, some Title VI agencies did not consider language differences as part of their antidiscrimination responsibility. They neither tracked language discrimination and complaints in their databases, nor did they include language access when reviewing recipients for compliance.

Executive Order 13166 covers all federal programs and services, but does not give any agency authority to enforce its requirements. It does not impose penalties for failing to comply. Because no agency has authority to enforce it, set intractable deadlines, and apply penalties for noncompliance, few have cooperated. DOJ reported that as of June 2004, only 57 of 100 executive agencies had prepared language assistance plans and 16 of 30 Title VI agencies had issued guidance. The order does not establish reporting requirements, timetables, output measures, or other assessment tools for measuring and improving language access. This exclusion results in a lack of milestones, goals and objectives, funding, staffing, and accountability necessary for effective implementation.

DOJ has shown commendable leadership with the little power it has to coordinate implementation. It developed model guidance for other agencies to follow, provided technical assistance through the Internet, and established an LEP interagency working group to assist agencies in planning and implementing LEP initiatives. However, without enforcement authority and adequate resources, DOJ cannot reasonably be expected to accomplish much more.

Agencies in this study prepared guidance and plans that meet DOJ's specifications. They provide multilingual documents on Web sites, and interpreter and translation services. Some have exceeded ideas offered in DOJ's model guidance. For example, SSA established procedures for obtaining translations and quality standards. It offers a translation unit with a staff of 12 professionals, who translate 36 non-English languages. It also collects data on language preferences for its service population in at least 26 languages. As a result, SSA knows the preferred languages of the public it serves and where the language demands are, and is able to make more informed staffing and resource allocation decisions.

Community involvement and outreach to limited English proficient persons to ensure that they receive program services and benefits are key for improving language access. Task forces and partnership agreements can help agencies and community organizations inform LEP persons about programs, services, and their rights, as well as provide education and outreach.

The executive order requires that agencies ensure that LEP persons and their representative organizations have adequate opportunity to provide input into the plans and guidance. Some agencies merely contacted advocacy groups, other agencies sought assistance

from them in more meaningful ways that have increased awareness of the rights of LEP populations and improved agencies' language assistance capabilities. For example, DOJ and DOL have involved LEP representatives or members in staff training and contracted with advocacy groups to provide services to LEP individuals. However, more interaction and outreach at the local level are necessary.

Overcoming language barriers and providing LEP individuals equal opportunity will require comprehensive, concerted efforts governmentwide. For in eliminating barriers to federal programs and services and discrimination based on national origin, the government fulfills America's promise of equal opportunity for all.

## Chapter 2: The National Challenge: Communication Gaps Federal Agencies Must Bridge

*Today, the national government is an enormous institution with programs and policies reaching into every corner of American life. It oversees the nation's economy; it is the nation's largest employer; it provides citizens with a host of services; it controls a formidable military establishment; and it regulates a wide range of social and commercial activities in which Americans engage.<sup>1</sup>*

Federal agencies offer many programs, some so vital that a denial or delay of access to services or information could have serious or even life-threatening consequences.<sup>2</sup> Because federal programs are essential to survival and prosperity, everyone who is eligible, including those whose English proficiency is limited, needs equal access.

### Non-English Languages in the United States

The multitude of languages that limited English proficient (LEP) populations speak magnifies the challenge to provide language assistance. A recent Department of Education report concluded that students enrolled in special classes because of limited English proficiency collectively speak more than 460 languages.<sup>3</sup> The number of languages increased from the previous year when a similar report found that LEP students spoke 400 languages.<sup>4</sup> Another report states that the racial category of "Asian Americans and Pacific Islanders" alone includes people speaking more than 100 languages and dialects.<sup>5</sup> Both the large number and the rapid change in languages spoken illustrate the importance of carefully tracking language minorities so that agencies can match assistance to needs.

While there are several schemes for grouping languages globally, the U.S. Census Bureau uses four core classifications other than English: Spanish, other Indo-European languages, Asian and Pacific Islander languages, and all other languages. French, Russian, Greek, Iranian languages (such as Farsi), and Hindi, Punjabi, and Urdu are in the non-Spanish Indo-European

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<sup>1</sup> Theodore J. Lowi and Benjamin Ginsberg, *American Government: Freedom and Power*, 4th ed. (W.W. Norton & Company, Inc., 1995), p. 7.

<sup>2</sup> U.S. Department of Justice, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 67 Fed. Reg. 41,455, 41,460 (June 18, 2002).

<sup>3</sup> See U.S. Department of Education, Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students, *Survey of the States' Limited English Proficient Students and Available Educational Programs and Services 2000-2001 Summary Report*, October 2002, p. 6 (hereafter cited as DOE, *Survey of States' LEP Students, 2000-2001*).

<sup>4</sup> See U.S. Department of Education, Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students, *Survey of the States' Limited English Proficient Students and Available Educational Programs and Services 1999-2000 Summary Report*, May 2002, p. 5.

<sup>5</sup> President's Advisory Commission on Asian Americans and Pacific Islanders, *A People Looking Forward: Action for Access and Partnerships in the 21st Century*, Interim Report to President and the Nation, Executive Summary, January 2001, p. 11 (hereafter cited as President's AAPI Commission, *A People Looking Forward*).

group. Chinese, Japanese, Korean, Vietnamese, Khmer, Hmong, and Tagalog are among the Asian and Pacific Islander languages. The fourth category includes Arabic, Hebrew, African languages, and native North American languages.<sup>6</sup>

### *Sources of Language Data*

Information on the languages LEP persons speak and the magnitude of their numbers and proportions is not easy to obtain. This report examines information from the U.S. census and other government surveys. Each source offers advantages and disadvantages. First, the decennial census, last conducted in 2000, collected information on language from a sample of households. The survey asked whether each person spoke a language other than English at home, and that the respondent identify his or her preferred language and English proficiency level.<sup>7</sup> However, census data also have limitations. Some have claimed that the questions on language invited exaggerated assessments of non-English proficiency and usage.<sup>8</sup> More generally, census data are known to underrepresent minorities and the poor, which could include many LEP persons, although the Census Bureau sought to make the 2000 enumeration the most accurate ever.<sup>9</sup> Furthermore, the census will not be repeated until 2010 and rapid changes in immigrant populations render the 2000 figures already out of date.

Second, the Department of Education (DOEd) annually surveys state education agencies to compile information on LEP students. The 2000–2001 survey includes public elementary and secondary school students from the 50 states, the District of Columbia, and Puerto Rico.<sup>10</sup> Schools identified LEP students using home language surveys, teacher observation, teacher

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<sup>6</sup> Spanish includes those who speak Ladino. Other Indo-European languages include most languages of Europe and the Indic languages of India. These include the Germanic languages, such as German, Yiddish, and Dutch; the Scandinavian languages, such as Swedish and Norwegian; the Romance languages, such as French, Italian, and Portuguese; the Slavic languages, such as Russian, Polish, and Serbo-Croatian; the Indic languages, such as Hindi, Gujarathi, Punjabi, and Urdu; Celtic languages; Greek; Baltic languages; and Iranian languages. Asian and Pacific Islander languages include Chinese; Korean; Japanese; Vietnamese; Hmong; Khmer; Laotian; Thai; Tagalog or Pilipino; the Dravidian languages of India, such as Telegu, Tamil, and Malayalam; and other languages of Asia and the Pacific, including the Philippine, Polynesian, and Micronesian languages. All other languages include Uralic languages, such as Hungarian; the Semitic languages, such as Arabic and Hebrew; languages of Africa; native North American languages, including the American Indian and Alaska native languages; and some indigenous languages of Central and South America. U.S. Census Bureau, "Language Use and English-Speaking Ability: 2000," *Census 2000 Brief*, October 2003, p. 3 (hereafter cited as Census Bureau, "Language Use").

<sup>7</sup> Census Bureau, "Language Use," pp. 1, 10.

<sup>8</sup> James Crawford, "Making Sense of Census 2000," 2002, p. 3, <<http://www.asu.edu/educ/eps/lpru/features/article5.htm>> (last accessed June 8, 2004). The article explains that the census question did not ask whether the respondent could speak another language well enough to carry on a conversation, spoke another language at home more often than English, or first learned another language in childhood and still understands it. The author suggests that many people claimed to speak Spanish at home when they are only doing homework for Spanish class or giving orders to Latino gardeners. *Ibid.*

<sup>9</sup> Haya El Nasser and Paul Overberg, "Report: Cities, Minorities Lose in Census Undercount," *USA Today*, Mar. 28, 2001, p. A1.

<sup>10</sup> The survey results also included the Commonwealth of the Northern Mariana Islands and Guam, but not the Federated States of Micronesia, the Republic of Palau, the Republic of the Marshall Islands, and the Virgin Islands. DOEd, *Survey of States' LEP Students, 2000–2001*, p. 2.



interviews, parent information, student records and grades, informal assessments, and referrals.<sup>11</sup> The education statistics are comprehensive and current. Their main drawbacks are that the data are subject to no quality controls and represent an amalgamation of counts and guesses based on a wide array of sometimes inconsistent assessment methods<sup>12</sup> and they represent children enrolled in school and require inference to relate them to a more general population.

Third, the Social Security Administration (SSA) collects the language preference for its service population. During the claims-taking process, an SSA employee asks the claimant to identify his or her preferred language for spoken and written communication. The response is then entered and stored in the agency's computer database specifying more than 27 languages. SSA's programs benefit aged Americans who have retired from the workforce and persons with disabilities.<sup>13</sup> Thus, like the education statistics, SSA data are current but do not represent the general population. Further, a person having a preferred language other than English is not necessarily limited in English proficiency. But when juxtaposing these three sources of data—census data with its known undercount of minorities, education statistics representing youth, and social security counts of retired people and those with disabilities—one may gain a clearer picture of our nation's language needs.

### *America and the Languages We Speak*

The 2000 census found that among the 262.4 million people aged 5 and older, 47 million (18 percent) spoke a language other than English at home, an increase of 15 million people since 1990.<sup>14</sup> Only 55 percent of these persons spoke English "very well."<sup>15</sup> Among adults who speak a language other than English at home, 2.6 million do not speak English at all. An additional 5.7 million do not speak English well, adding up to 8.3 million adults—nearly 5 percent of the adult population who speak English poorly. Another 7.2 million have some English verbal skills, but still do not speak English very well.<sup>16</sup>

After English, Spanish is the language most commonly spoken at home. Spanish-speaking persons increased from 17.3 million in 1990 to 28.1 million in 2000, a 62 percent increase. Just over half reported speaking English "very well."<sup>17</sup> Another 10 million people

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<sup>11</sup> DOE, *Survey of States' LEP Students, 2000–2001*, p. 8.

<sup>12</sup> Susan Bowers, enforcement director, Office for Civil Rights, U.S. Department of Education, letter to Les Jin, staff Director, U.S. Commission on Civil Rights, June 24, 2004, attachment, p. 1.

<sup>13</sup> Social Security Administration (SSA), Response of Social Security Administration to Interrogatories and Document Requests from the U.S. Commission on Civil Rights, Nov. 25, 2003, pp. 16–18 (hereafter cited as SSA Interrogatory Response).

<sup>14</sup> See Census Bureau, "Language Use"; U.S. Census Bureau, "Nearly 1-in-5 Speak a Foreign Language at Home; Most Also Speak English Very Well," press release, Oct. 8, 2003, <[http://www.census.gov/Press-Release/www/releases/archives/census\\_2000/001406.html](http://www.census.gov/Press-Release/www/releases/archives/census_2000/001406.html)> (last accessed Dec. 4, 2003) (hereafter cited as Census Bureau, "Nearly 1-in-5 Speak a Foreign Language at Home").

<sup>15</sup> Census Bureau, "Nearly 1-in-5 Speak a Foreign Language at Home."

<sup>16</sup> The 2000 census statistics reported in Heide Spruck Wrigley, Elise Richer, Karin Martinson, Hitomi Kubo, and Jule Strawn, Center for Law and Social Policy (CLASP), "The Language of Opportunity: Expanding Employment Prospects for Adults with Limited Skills," August 2003, p. 7.

<sup>17</sup> Census Bureau, "Nearly 1-in-5 Speak a Foreign Language at Home."

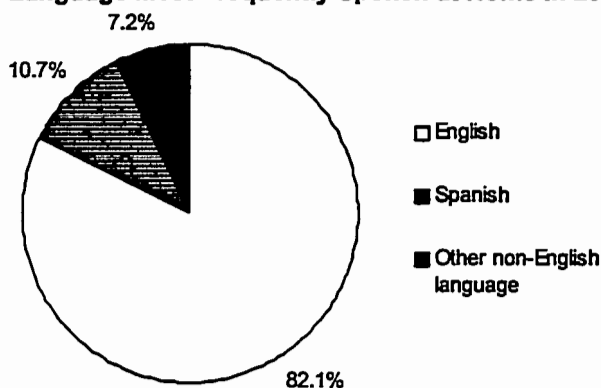
speak other Indo-European languages at home, almost two-thirds of whom speak English “very well.” In addition, almost 7 million individuals speak an Asian or Pacific Islander language at home, a little less than half of whom speak English “very well.” Among these, Chinese, with 2 million speakers, ranks after Spanish as the language most commonly spoken at home.<sup>18</sup> Older census data also suggest that Asian Americans and Pacific Islanders live in linguistically isolated households, where none of the individuals aged 14 years or older speaks English “very well.” Certain Asian groups are more linguistically isolated than others—over half of the households in which Hmong, Cambodian, and Laotian Americans lived in 1990 were linguistically isolated.<sup>19</sup>

According to DOEd’s survey, Spanish is the native language of 80 percent of LEP students. All other language groups each represented less than 2 percent of the LEP population, although many of the groups numbered more than 10,000 speakers. At the same time, national figures mask regional variations in linguistic diversity. Spanish is not the dominant language among LEP students in nine states. For example, after English, Blackfoot is the most spoken language in Montana; French in Maine; Hmong in Minnesota; Ilocano in Hawaii; Lakota in South Dakota; “Native American” in North Dakota; Serbo-Croatian in Vermont; and Yup’ik in Alaska.<sup>20</sup>

Analysis of SSA’s database shows that in FY 2003, approximately 8 percent—more than 1.5 million claimants—preferred to be interviewed in a language other than English. Almost 78 percent of the foreign language demand was for Spanish; 3.5 percent for Chinese (Cantonese and Mandarin dialects); and 2 percent for Haitian Creole.<sup>21</sup>

**FIGURE 2.1**  
Proportions of Population Speaking English, Spanish, and Other Non-English Languages

(a) Bureau of Census—Language Most Frequently Spoken at Home in 2000



Source: U.S. Census Bureau, “Language Use and English-Speaking Ability: 2000,” *Census 2000 Brief*, October 2003, Table 1, p. 4. Note that Puerto Rico is not included.

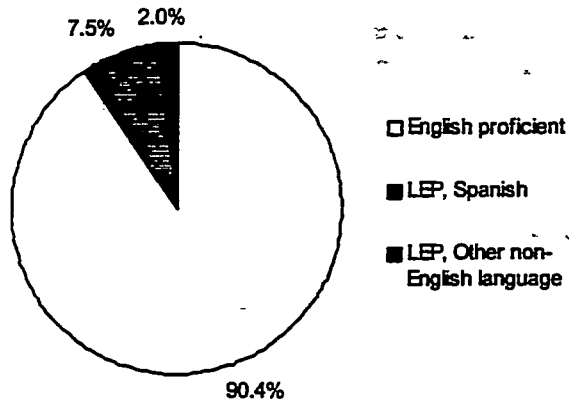
<sup>18</sup> Census Bureau, “Language Use,” p. 16.

<sup>19</sup> President’s AAPI Commission, *A People Looking Forward*, p. 4.

<sup>20</sup> DOEd, *Survey of States’ LEP Students, 2000–2001*, pp. 6–8.

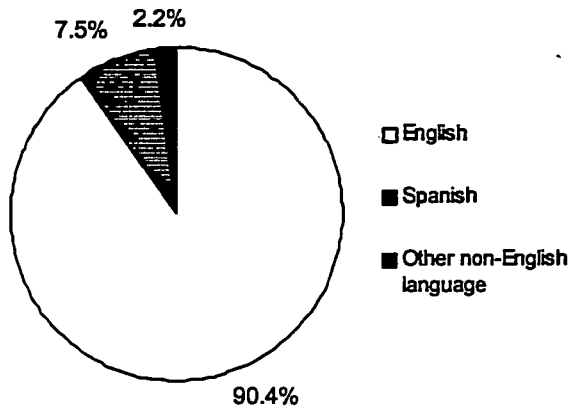
<sup>21</sup> Social Security Administration, “FY 2003 LEP Management Information,” Enumeration FY 2003, Not Including Puerto Rico and the Virgin Islands.

**(b) Department of Education—Proportions of LEP Students and Their Language Backgrounds, 2000–2001**



Source: U.S. Department of Education, Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students, *Survey of the States' Limited English Proficient Students and Available Educational Programs and Services 2000–2001 Summary Report*, October 2002, Appendix A, Table 2, p. 20. Note that Puerto Rico, Guam, and the Commonwealth of the Northern Mariana Islands are included.

**(c) Social Security Administration—Claimants' Preferred Language, 2003**

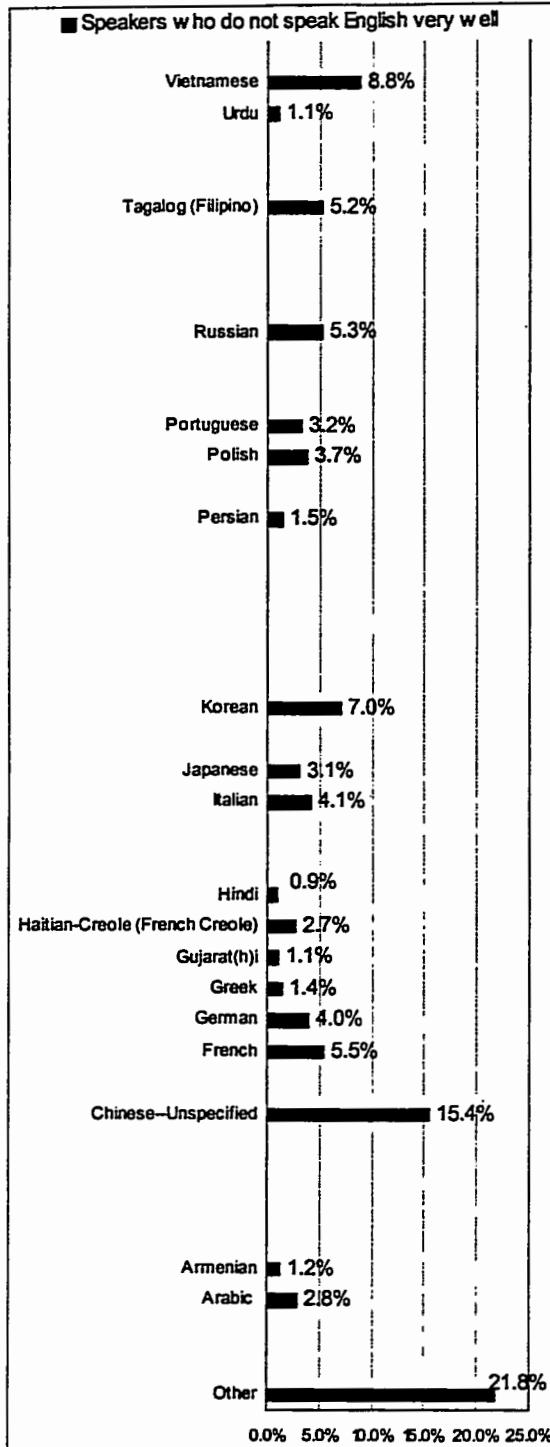


Source: Social Security Administration, "FY 2003 LEP Management Information," Enumeration FY 2003, Not Including Puerto Rico and the Virgin Islands.

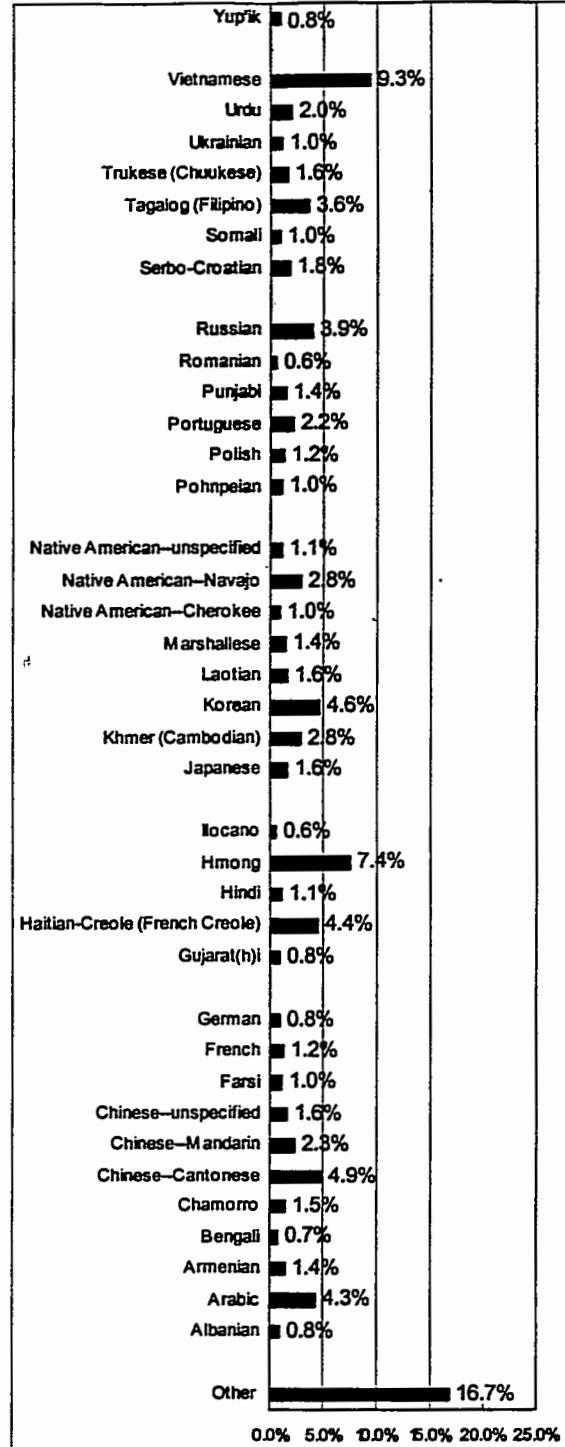
Figure 2.1 illustrates trends in each of the data sources. The figure shows the proportion of the population that speaks English, Spanish, and other non-English languages. The census data show 10.7 percent of the population speaks Spanish at home and another 7.2 percent speaks other non-English languages, totaling to the 18 percent mentioned earlier as speaking non-English languages at home. Despite concern about the census undercount, the proportions who speak non-English languages are larger in census data than in DOE or SSA data. Part (b) of Figure 2.1 shows the language backgrounds of LEP students as a proportion of total student enrollment. Thus, 7.5 percent of students are LEP and speak Spanish; 2 percent of students are LEP and speak a non-English language other than Spanish. (Note that because the figure only shows language background for LEP students, other students may have non-English backgrounds but have achieved proficiency in English.) SSA's data similarly show that 7.5 percent of SSA claimants prefer to speak Spanish and 2.2 percent prefer another non-English language.

**FIGURE 2.2**  
**After Spanish, What Non-English Language?**  
**Comparisons of Census, Department of Education, and Social Security Administration Data**

**(a) Census—Non-Spanish Languages Spoken at Home**

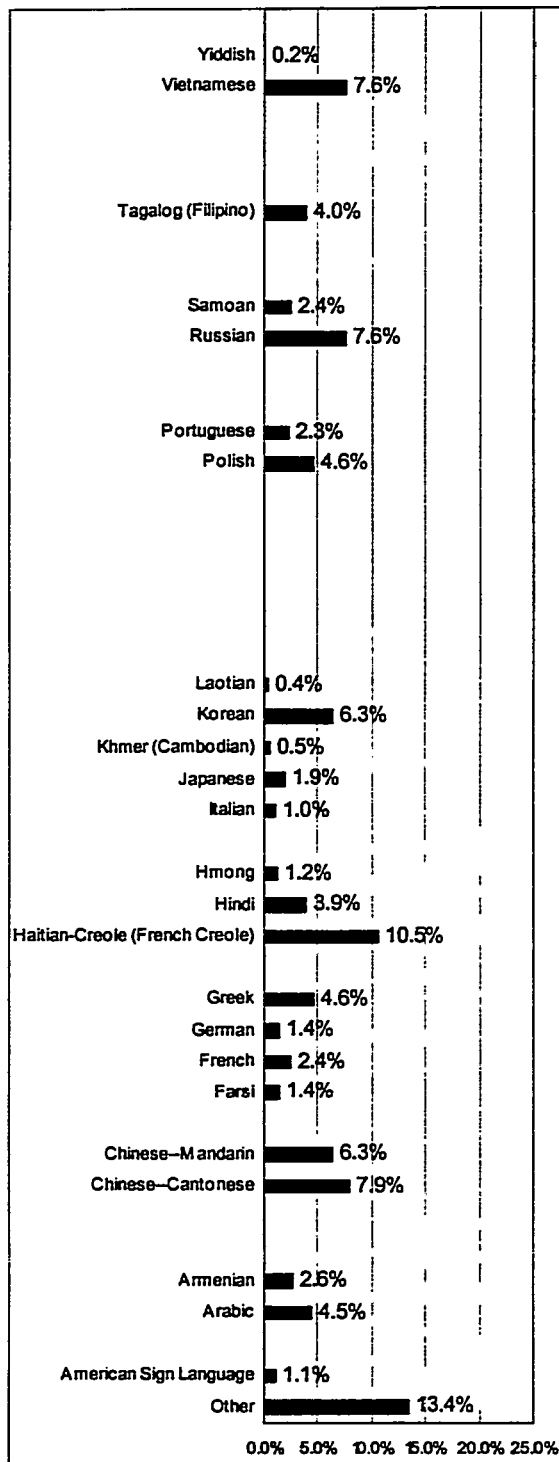


**(b) DOE—Non-Spanish Languages of LEP Students**



**FIGURE 2.2 (continued)**  
**After Spanish, What Non-English Language?**

(c) SSA—Claimants' Preferred Languages Other than Spanish



Source: Compiled by U.S. Commission on Civil Rights using various sources.

Figure 2.2 shows the languages for the population that speaks a non-English language other than Spanish. The figure subdivides the smallest proportions in Figure 2.1, parts (a) (7.2 percent), (b) (2.0 percent), and (c) (2.2 percent), into their composite languages. For example, according to census data, 8.8 percent of the 7.2 percent speaking a non-English language other than Spanish, speak Vietnamese. Thus, the figure shows what languages are most common after Spanish.

DOEd identifies speakers of the most non-English languages other than Spanish—38. SSA tracks 24 languages; the census reports 19 larger ones, combining smaller ones in the “other” category. Notably, after Spanish, the figure’s “other” category includes the largest proportion of persons speaking or preferring non-English languages. The proportion falling in the “other” category is larger for the census data than the other data sets, likely because it includes some of the languages that DOEd and SSA report separately. Figure 2.2 also includes census data for those who speak the language and do not speak English very well, a group clearly in need of language assistance. Some of the key findings concerning individuals who may need assistance in languages other than Spanish (referred to as the “non-Spanish LEP population”) are:

- As mentioned earlier, Chinese is the most common language spoken in U.S. homes after Spanish. The census shows 15.4 percent of the non-Spanish LEP population speaks Chinese at home and does not speak English well. SSA data specify the Chinese languages—10.2 percent speak Cantonese and 6.7 percent speak Mandarin.
- Vietnamese is a fairly common language in all three data sources. Census data show that 8.8 percent of the non-Spanish LEP population that does not speak English very well speaks Vietnamese. Similarly, 9.3 percent of the non-Spanish LEP student population speaks Vietnamese and 7.2 percent of SSA’s non-Spanish LEP claimants prefer to speak in Vietnamese.
- SSA data identify 10.5 percent of the non-Spanish LEP population as preferring to speak Haitian Creole. Further, 7.6 percent prefer to speak Russian. However, neither the census nor student data identified such large proportions as speaking these languages at home.<sup>22</sup>

Perhaps the most important finding from Figure 2.2 is that after English and Spanish, the inhabitants of the United States speak a large number of languages. An agenda for implementing language assistance must address many languages simultaneously. Although a dominant non-English language in some states or local areas will allow government officials to prioritize and focus resources on a few languages, national efforts in non-English languages must be very broad.

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<sup>22</sup> SSA officials explain that program nuances result in differences in their service populations relative to census and education data. Some examples are recent effort to obtain social security numbers for young children and newborns so that parents can claim them as dependents on tax forms; and high percentages of individuals preferring certain languages, such as Haitian Creole and Russian, because of sponsorship programs for particular nationalities of refugees and immigrants. Eileen Houghton, senior advisor, Office of General Counsel, Social Security Administration, e-mail to U.S. Commission on Civil Rights, June 28, 2004, pp. 3–4.

## Federally Assisted and Federally Conducted Programs

Federal programs fall into two broad types: (1) programs by which agencies provide services directly to the public are referred to as “federally conducted”; and (2) agencies sometimes award grants or contracts to other parties, such as states, to execute programs, thus public contact is indirect and such programs are known as “federally assisted.” Whether an agency’s programs are federally conducted or assisted or both determines the language services it must provide. If programs are federally conducted and the agency has direct public contact, its own staff, publications, and other materials must communicate with language minorities. If programs are federally assisted, the agency must guide its recipients in how to bridge language groups and monitor them to make sure that they are complying. Federal agencies must ensure that their funding recipients are aware of responsibilities to provide language access and also offer them feedback for improvement.

Table 2.1 shows the numbers and types of programs that the seven agencies in this study operate. It indicates whether agencies’ programs have direct public contact (through the federally conducted programs) or third parties that provide services for them (through funding assistance) or a mixture. The federally assisted programs shown are grants, although the government provides loans through a few assisted programs, too. The federally conducted programs shown are direct payments to individuals, private firms, and institutions and, listed in the “other” category, direct loans, investigations of complaints such as civil rights allegations of discrimination, and benefits such as the use of property, facilities, and equipment, advisory services and counseling, the dissemination of information, and training.<sup>23</sup>

The table shows that, for example, the Department of Education (DOEd) and the Department of Health and Human Services (HHS) each operate more than 100 programs providing grants. In contrast, the Equal Employment Opportunity Commission (EEOC) operates no programs providing grants. No agency operates more than a dozen federally conducted programs providing direct payments.

Direct public contact is uncommon at the Department of Housing and Urban Development (HUD) because grant recipients, not the agency itself, run most of its programs.<sup>24</sup> In contrast, the Social Security Administration (SSA) seldom uses third parties. The agency expended only 0.4 percent of its appropriation on grants and cooperative agreements.<sup>25</sup> As a result of differences in the types of programs, HHS and DOEd must mostly provide guidance to funding recipients. SSA and EEOC, because of programs with direct public contact, have more need for bilingual staff, interpreters, and interpreter services. Many agencies, including HUD, DOJ, and DOL, must both guide the recipients who provide their programs, as well as provide language services to the public they directly serve.

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<sup>23</sup> General Services Administration, “Types of Assistance,” *Catalog of Federal Domestic Assistance*, <<http://12.46.245.173/cfda/cfda.html>> (last accessed Mar. 30, 2004) (hereafter cited as GSA, CFDA).

<sup>24</sup> U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, [Response to the U.S. Commission on Civil Rights Language Assistance Interrogatory], Nov. 28, 2003, p. 14.

<sup>25</sup> SSA Interrogatory Response, p. 2.

**TABLE 2.1**  
**Types of Programs Federal Agencies Provide**

	HUD	DOJ	DOL	EEOC	DOEd	HHS	SSA
Federally assisted programs							
Grants <sup>1</sup>	42	71	28	0	140	292	3
Federally conducted programs							
Direct payments <sup>2</sup>	11	8	5	2	6	9	7
Other federally conducted programs <sup>2</sup>	54	43	22	9	4	9	0
<b>Total programs*</b>	<b>103</b>	<b>96</b>	<b>49</b>	<b>7</b>	<b>150</b>	<b>308</b>	<b>10</b>

<sup>1</sup> Agencies provide federal assistance mostly through formula or project grants. Formula grants are allocations of money to states or their subdivisions in accordance with distribution formulas that a law or administrative regulation prescribes. The monies are for activities of a continuing nature. Project grants are funding of specific projects for a fixed or known period. They can include, for example, fellowships, scholarships, and grants for research, training, demonstrations and experiments, evaluation, and planning. In addition to grants, a few federally assisted programs provide loans through private carriers.

<sup>2</sup> Federally conducted programs offer direct payments, loans, or federal insurance; training; advisory services; investigation of complaints; and other benefits, some of which cannot be measured monetarily. Direct payments may be either unrestricted or with a specified use. The federal government gives payments with no restrictions on the money's use directly to persons who satisfy eligibility requirements (e.g., for retirement, pension, or compensatory programs). It provides payments for specified uses directly to individuals, private firms, and other private institutions with the condition that the recipient performs certain activities that the government wants to encourage or subsidize.

\* Columns do not sum to total because some programs provide more than one type of assistance.

Source: Compiled by U.S. Commission on Civil Rights from the *Catalog of Federal Domestic Assistance*, <<http://12.46.245.173/cfda/cfda.html>> (last accessed Mar. 10, 2004).

A later chapter will discuss how the size of the LEP service population determines the amount of language assistance that agencies or their recipients must provide. However, knowledge of the relative sizes of programs explains why later chapters show some agencies providing more language assistance than others. For example, large programs targeted to the general population sometimes serve correspondingly large numbers of LEP individuals relative to smaller programs directed more exclusively to language minorities. Among federally *conducted* programs, SSA's retirement insurance is by far the largest program examined in this report, with program obligations, that is the amount of benefit payments to individuals, totaling more than \$319 billion in FY 2002. Three other SSA insurance and income programs have benefit payments of \$30 billion to \$65 billion that year. (Statistics on the proportion of LEP individuals that SSA programs serve were given earlier in this chapter.) Other agencies' programs with direct payments to individuals are smaller. DOL's unemployment service is next largest. It paid \$21 billion in FY 2002 benefits. DOEd's Pell grant program and HUD's Section 8 Housing Choice Voucher program paid about \$11 billion each in FY 2002.<sup>26</sup>

Among federally *assisted* programs, for which agencies must ensure that their recipients comply with regulations prohibiting discrimination, HHS has the largest program. In FY 2002, it obligated almost \$134 billion to a medical assistance program and more than \$16 billion to Temporary Assistance for Needy Families. These are the two largest of HHS' 292 grant programs. Most agencies' grant programs are smaller and fewer. For example, DOEd has 140 grant programs but the largest two obligated only \$7.5 billion to \$8.0 billion in FY 2002.

<sup>26</sup> See each agency's programs with direct payments with specified use and with unrestricted use from GSA, CFDA.



Obligations for the largest grant programs of other agencies examined in this report were less than \$3 billion.<sup>27</sup>

LEP-relevant federally assisted programs include DOEd's English language acquisition grants and state grant program for migrant education with estimated FY 2004 obligations of only \$469 million and \$386 million, respectively. Programs other agencies such as DOL, DOJ, and HUD offer for migrant and seasonal farm workers, immigrant education about discrimination, and fair housing had obligations of less than \$100 million.<sup>28</sup> Programs that are targeted to LEP populations must provide language assistance to larger proportions of their beneficiaries. However, the obligations of the SSA and HHS programs described above are hundreds of times larger. It is in this context that the remaining chapters of this report show that SSA's and HHS' language assistance is far in advance of other agencies.

Finally, federally assisted programs may have a larger effect on the language assistance the public receives than is evident with the amounts of program obligations. Through the Civil Rights Restoration Act of 1987, Congress explained that civil rights provisions that ban discrimination apply to a broad definition of federal programs or activities. Discrimination is prohibited throughout an entire agency or institution, if any part of that agency or institution receives federal financial assistance.<sup>29</sup> Thus, service providers receiving even small amounts of federal assistance are obligated to provide language assistance.

## Summary

Today, almost 500 languages are spoken in the United States, Spanish by far the most common after English. The communication barriers that exist involve many different languages, thus making federal programs accessible to the U.S. population is a massive undertaking.

The federal government administers directly or funds through third parties many programs classified respectively as federally conducted or assisted. The policies that require federal agencies and their grant recipients to make programs accessible to LEP persons differ according to this distinction. Agencies with programs that serve the public directly must have bilingual staff or language services. Agencies using recipients to deliver their program benefits must guide the service providers in giving language assistance. Size of the limited English proficient population dictates the amount of language services agencies must provide. However, differences among agencies in whether their programs serve the public directly or indirectly and in the magnitude of their programs result in some agencies having more language assistance than others, as becomes evident in later chapters.

Effective implementation of federally assisted and federally conducted programs will likely require significant resource commitment and diverse strategies. After all, services are of little value if they do not reach the people that Presidents, Congress, and voters intended them to help.

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<sup>27</sup> See each agency's formula and project grants from GSA, CFDA.

<sup>28</sup> See each agency's formula and project grants from GSA, CFDA.

<sup>29</sup> 42 U.S.C. § 2000d-4a (2003). See also U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, pp. 36-40.

### Chapter 3: Executive Order 13166 Governing Federal Language Assistance

*Due to language barriers, LEP [limited English proficient] persons find it difficult to access critical government programs and services. . . . Under Title VI of the Civil Rights Act of 1964, federal agencies and federally funded entities are prohibited from discriminating on the basis of race, color or national origin. To avoid denial of service based on national origin, federal agencies and federally funded entities have a legal obligation to ensure that LEP persons are provided meaningful access to services.<sup>1</sup>*

On August 11, 2000, President William J. Clinton signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."<sup>2</sup> Its purpose is to improve access and eliminate language as a barrier to federally assisted and federally conducted programs and activities for LEP persons.<sup>3</sup> The order states:

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English.<sup>4</sup>

The executive order draws legal authority from Title VI of the Civil Rights Act of 1964,<sup>5</sup> which prohibits discrimination on the basis of national origin in federally assisted programs.<sup>6</sup> It

<sup>1</sup> National Coalition for Asian Pacific American Community Development, "Access for LEP Persons Needing Community and Economic Development Assistance," *A Policy Brief*, Oct. 14, 2003, p. 1, <[http://www.nationalcapacd.org/pdf/lep\\_policy.pdf](http://www.nationalcapacd.org/pdf/lep_policy.pdf)> (last accessed Dec. 4, 2003).

<sup>2</sup> Exec. Order No. 13,166, "Improving Access to Services for Persons with Limited Proficiency, 3 C.F.R. 289 (2001) (hereafter cited as executive order or order). The executive order is reprinted in Appendix 1 of this report.

<sup>3</sup> See Executive Order 13,166, 3 C.F.R. 289 (2001); U.S. Department of Justice, *Departmental Plan Implementing Executive Order 13,166*, Jan. 10, 2001, <<http://www.usdoj.gov/crt/cor/lep/dojimp.htm>> (last accessed July 25, 2003) (hereafter cited as DOJ Language Assistance Plan, Jan. 10, 2001).

The Department of Justice's (DOJ) definition of federally conducted programs and activities is stated in the regulations implementing Section 504 of the Rehabilitation Act of 1973:

[A] federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by the regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public use of the facilities (cafeteria, library). Activities in the second category include programs that provide federal services or benefits.

28 C.F.R. Part 39.

<sup>4</sup> Exec. Order No. 13,166, 3 C.F.R. 289 (2001).

<sup>5</sup> Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 42 U.S.C. §§ 2000d *et seq.*

<sup>6</sup> The legal basis for Executive Order 13166 is explained in the policy guidance DOJ issued. U.S. Department of Justice, Civil Rights Division, "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin

established two levels of responsibility based on how an agency comes in contact with the public. The order requires (1) all agencies with Title VI responsibilities (or Title VI agencies), of which there are approximately 30, to prepare guidance to assist their entities that receive federal funds in providing language-accessible government services;<sup>7</sup> and (2) all federal agencies (approximately 100) to prepare language assistance plans to ensure language access to federally conducted programs.<sup>8</sup> The executive order gives the Department of Justice (DOJ) responsibility

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Discrimination Against Persons with Limited English Proficiency; Policy Guidance," 65 Fed. Reg. 50,123, 50,124 (Aug. 16, 2000). The guidance states that Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Limited English proficiency is covered under the Title VI regulations that prohibit unjustified disparate impact on the basis of national origin. In addition, the executive order is supported in the Supreme Court ruling in *Lau v. Nichols*, 414 U.S. 563 (1974) which requires foreign language assistance in certain circumstances. In *Lau v. Nichols*, the Supreme Court ruled that the failure of the San Francisco school system to provide special English language instruction to 1,800 students of Chinese descent who did not speak English denied them meaningful access to effective participation in public educational programs. 414 U.S.C. at 566. While *Lau* had significant impact in the education field, the underlying conclusion in the case applied not only to education recipients, but to all recipients of federal funds. See U.S. Department of Justice, Comments of U.S. Department of Justice on U.S. Commission on Civil Rights' Draft Report of June 15, 2004, entitled: Toward Unqualified Access: Eliminating Language Barriers From Federal Programs, June 25, 2004, p. 5 (hereafter cited as DOJ Comments on USCCR Draft Report). The executive order is further supported in a DOJ interpretation of another Supreme Court case, *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001), which concerned the Alabama Department of Public Safety's policy of administering driver's license examinations only in English. The case addressed the scope of Title VI disparate impact regulations. The Court held that there is no private right of action to enforce the Title VI regulations. Some interpreted the ruling as striking down Title VI, but DOJ disagrees with this premise. While the case holds principally that there is no private right of action to enforce Title VI disparate impact regulations, DOJ's position is that the *Sandoval* ruling did not address the validity of the Title VI regulations or Executive Order 13166. Thus, because the ruling did not invalidate the regulations, DOJ's position is that the order remains in force. In its interpretation, DOJ also wrote that even in jurisdictions that have "English-only" ordinances, if an entity within the area receives federal funds, that entity is covered under the provisions of the order. Ralph F. Boyd, Jr., assistant attorney general, Civil Rights Division, U.S. Department of Justice, Memorandum to Heads of Departments and Agencies, General Counsels, and Civil Rights Directors, re: Executive Order 13,166 (Improving Access to Services for Persons with Limited English Proficiency), Oct. 26, 2001, pp. 1-2, <<http://www.usdoj.gov/crt/cor/lep/Oct26Memorandum.htm>> (hereafter cited as DOJ Oct. 26, 2001, LEP Memorandum) (last accessed July 25, 2003). Since DOJ determined that the executive order supercedes any English-only provision where entities receive federal funds, this report does not examine English-only positions with respect to federal programs and services.

<sup>7</sup> Title VI mandates that covered agencies ensure that recipients of any federal financial assistance operate programs, activities and facilities in an accessible and nondiscriminatory manner. A recipient is a state or its political subdivision, instrumentally of a state or its subdivision, trust territory, public or private agency, institution, organization, or other entity, or person to which federal assistance is extended.

<sup>8</sup> Section 1 of the executive order covers all federal agencies that administer federally assisted programs under Title VI of the Civil Rights Act of 1964 (42 U.S.C.S. 2000d *et seq.* (2004)), and their recipients. Section 2 of the executive order covers those federal agencies that have federally conducted programs. For the list of the agencies responsible for plans and those responsible for guidance, see Appendix 3. The executive order requires that Title VI agencies submit guidance to recipients to ensure that the programs they normally provide in English are accessible to LEP persons. See Section 3. Each federal agency must prepare a language assistance plan to improve LEP access to its programs and activities. See Section 2. Each plan shall be consistent with the standards presented in the LEP guidance, and include steps the agency will take to ensure that eligible LEP persons have "meaningful access" to the agency's programs and activities. Executive Order 13166 specifies that agencies should submit their plans and/or guidance to DOJ. Executive Order 13166, Sections 2 and 3. See also U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, "Providing Meaningful Access to Individuals Who Are Limited English Proficient to Federally Assisted and Federally Conducted programs and Activities," <<http://www.usdoj.gov/crt/cor/Pubs/lepqa.htm>> (last accessed July 25, 2003) (hereafter cited as DOJ/COR, "Commonly Asked Questions").

for assisting agencies in this endeavor, but it does not grant any agency power to enforce the requirements.

### The Executive Order's Requirements

The order outlines specific requirements and responsibilities with timelines. It requires that:

- Each federal agency examine the services it provides and develop and implement a system by which LEP persons can meaningfully have access to those services without burdening the fundamental mission of the agency.
- Each agency providing federal financial assistance prepare LEP guidance tailored to its programs and recipients that is consistent with the DOJ general Title VI policy guidance issued contemporaneously with the executive order.<sup>9</sup>
- Each agency submit its guidance to DOJ for review and approval.
- Each federal agency prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. The plans must conform with the standards in DOJ's LEP guidance. Agencies must submit copies of their plans to DOJ, which serves as the central repository for the agencies' plans.
- Agencies develop and implement plans and guidance within 120 days after the date of the executive order.<sup>10</sup>

The executive order also requires that agencies ensure that LEP persons, their representative organizations, as well as recipients and other appropriate entities, have adequate opportunity to provide input into the plans and guidance. The input is to provide meaningful access that is "practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented."<sup>11</sup> It requires that agencies publish the guidance in the *Federal Register* for public comment after DOJ's approval.

In October 2001, through a memorandum from the assistant attorney general for civil rights to federal agencies, the George W. Bush Administration affirmed its commitment to implementing the order.<sup>12</sup> The memorandum did not change the nature or intent, requirements or

<sup>9</sup> DOJ Comments on USCCR Draft Report, p. 6.

<sup>10</sup> See Appendix 1, Sections 1, 2, and 3 of the executive order.

<sup>11</sup> See Appendix 1, Section 4 of the executive order.

<sup>12</sup> See DOJ Oct. 26, 2001, LEP Memorandum. Many of DOJ's directives and guidance concerning federal language assistance from 2001 until June 2003 were published and issued under the supervision of Ralph F. Boyd, Jr., who served as assistant attorney general for civil rights from July 2001 until June 2003. In June 2003, upon Boyd's resignation, the President nominated Rene Alexander Acosta to be the new assistant attorney general. The Senate confirmed Mr. Acosta, who is the first Hispanic to head the Civil Rights Division, in August 2003. Prior to his appointment, Mr. Acosta served as principal deputy attorney general for civil rights and worked on LEP initiatives. See U.S. Department of Justice, "Attorney General John Ashcroft Announces New Leadership For Justice Department's Civil Rights Division," June 20, 2003, <[http://www.usdoj.gov/opa/pr/2003/June/03\\_ag\\_374.htm](http://www.usdoj.gov/opa/pr/2003/June/03_ag_374.htm)> (last accessed Jan. 21, 2004); the White House, "Presidential Nomination: Rene Alexander Acosta,"

coverage, or DOJ's responsibilities.<sup>13</sup> DOJ acknowledged that many agencies were unable to meet the 120-day deadline. Because of this, the memorandum directed agencies to restart their efforts to develop and publish LEP guidance for their federally assisted programs and activities and their LEP plans for federally conducted programs and activities.<sup>14</sup> However, DOJ did not impose a deadline for guidance and plans. Consequently, many agencies have yet to develop or publish the required documents.<sup>15</sup> The memorandum also did not create new obligations, but rather, clarified the administration's interpretation of the order's authority and agencies' Title VI responsibilities.<sup>16</sup>

Although the executive order states specific goals and responsibilities, major weaknesses are evident. No penalties or consequences exist for agencies or grant recipients' noncompliance.<sup>17</sup> It does not give DOJ authority to review and approve language assistance plans. Rather, it directs federal agencies only to prepare and file plans with DOJ.<sup>18</sup> It does not require output measures or other assessment tools to evaluate government progress or problems in eliminating language barriers.

### Department of Justice and Executive Order Coordination

The President tasked DOJ to assist other agencies in implementing the order's requirements. In 2000, DOJ's Civil Rights Division assigned its Coordination and Review Section (COR) principal responsibility to coordinate governmentwide implementation.<sup>19</sup> COR

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<<http://www.whitehouse.gov/news/nominations/6.html>> (last accessed Jan. 21, 2004; U.S. Department of Justice, Civil Rights Division, Department of Justice Response to U.S. Commission on Civil Rights Language Assistance Interrogatories, Dec. 5, 2003, p. 4 (hereafter cited as DOJ Interrogatory Response).

<sup>13</sup> DOJ Oct. 26, 2001, LEP Memorandum, pp. 1–4.

<sup>14</sup> DOJ Comments on USCCR Draft Report, p. 6.

<sup>15</sup> See Chapter 4. As of June 2004, only 57 of 100 executive agencies had prepared language assistance plans and 16 of 30 Title VI agencies had issued guidance.

<sup>16</sup> DOJ Oct. 26, 2001, LEP Memorandum, p. 3.

<sup>17</sup> For federally assisted programs and activities, instances of noncompliance by recipients may be addressed through the enforcement procedures authorized under Title VI and its implementing regulations. For federally conducted programs and activities, the executive order does not provide a comparable mechanism. See DOJ Comments on USCCR Draft Report, p. 6.

<sup>18</sup> DOJ Interrogatory Response, pp. 17, 19.

<sup>19</sup> U.S. Commission on Civil Rights, *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume II: An Evaluation of the Departments of Justice, Labor, and Transportation*, September 2002, pp. 5–6 (hereafter cited as USCCR, *Ten-Year Check-Up, Vol. II*). COR is one of 10 program sections in the Civil Rights Division that are responsible for enforcing numerous civil rights laws, regulations and executive orders, relative to voting rights, education, employment, housing, disability and administration of justice. See U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, Purpose of the Coordination and Review Section, <<http://www.usdoj.gov/crt/cor/purpose.htm>>; DOJ/COR, "Commonly Asked Questions," p. 1; USCCR, *Ten-Year Check-Up, Vol. II*, p. 6. U.S. Department of Justice, Civil Rights Division, *FY 2003 Budget Request to Congress*, pp. G-30–G-31 (hereafter cited as DOJ/CRD, *FY 2003 Budget Request*). Other staff in the Civil Rights Division also assist with LEP initiatives when necessary.

now provides ongoing guidance and technical assistance to its program offices and federal agencies.<sup>20</sup>

### *Funding and Staffing*

Since 2000, COR has prepared numerous guidance documents, memoranda, directives, and correspondence, and developed and funded LEP technical assistance workshops and forums, and training programs for DOJ recipients and other agencies. It prepared the final LEP guidance used as the model for other agencies.<sup>21</sup> However, from FY 2000 to 2003, COR's budget and staff did not significantly increase. COR's 2003 budget was less than \$4 million and its staffing level was 22.<sup>22</sup> Half of its training and technical assistance expenditures relate to the executive order's implementation.<sup>23</sup> The Civil Rights Division, specifically COR, has not received additional appropriations for LEP technical assistance or training.<sup>24</sup> Originally, COR assigned coordination duties to two staff attorneys who had experience in civil rights policy development, enforcement, and LEP issues.<sup>25</sup> The attorneys drew staff support from Title VI coordinators, with most COR staff having some involvement with LEP initiatives.<sup>26</sup> No staff are assigned exclusively to the implementation of the executive order.

According to COR, additional executive order responsibilities affected its ability to perform its existing duties, including Title VI enforcement.<sup>27</sup> COR maintains that additional

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<sup>20</sup> DOJ Interrogatory Response, pp. 14, 19.

<sup>21</sup> For a chronological presentation of DOJ's documents relative to the implementation of Executive Order 13166, see Appendix 2. As principal deputy assistant attorney general for civil rights, Mr. Acosta worked on DOJ's LEP Recipient Guidance which was published under his signature in June 2002. The document reinforces the policies in earlier documents concerning the implementation of the executive order. DOJ Interrogatory Response, p. 4; see U.S. Department of Justice, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,457-58 (June 18, 2002).

<sup>22</sup> See U.S. Department of Justice, Civil Rights Division, *FY 2000-2003 Budget Requests to Congress*. The Civil Rights Division submitted budget information from FY 2000-2004. FY 2004 funding and staffing are estimates. The budget ranged between \$3,085,000 (in FY 2000) to \$3,953,000 (in FY 2003).

<sup>23</sup> Loretta King, deputy assistant attorney general for civil rights, Civil Rights Division, U.S. Department of Justice, letter to Terri Dickerson, assistant staff director for civil rights evaluation, U.S. Commission on Civil Rights, Feb. 19, 2004 (hereafter cited as King, DOJ letter). For example, in 2003, over 50 percent of COR's expenditures were the items such as training and technical assistance that included LEP. See DOJ/CRD, *FY 2003 Budget Request*, pp. G-34-G-35.

<sup>24</sup> DOJ Interrogatory Response, p. 6. For FY 2004, COR requested additional funds to enhance technical assistance and training. Recently, COR obtained training funding through interagency collaboration with the Food and Nutrition Service of the Department of Agriculture and the Department of Health and Human Services. Funded projects included an LEP video and informational brochures in several languages.

<sup>25</sup> DOJ Interrogatory Response, pp. 1, 7.

<sup>26</sup> *Ibid.*, p. 1.

<sup>27</sup> COR implements Executive Order 12250, which gives the U.S. attorney general authority and leadership responsibility for coordinating Title VI enforcement efforts. See Exec. Order No. 12,250, 3 C.F.R. 298 (1981), reprinted in 42 U.S.C. § 2000d-1 (1988); U.S. Commission on Civil Rights, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996, pp. 55-57 (hereafter cited as USCCR, *Federal Title VI Enforcement*).

human and fiscal resources would allow it to expand activities under the executive order while returning to its prior level of attention and efforts on enforcement.<sup>28</sup>

COR's resource problems are no surprise. In 2002, the Commission examined several DOJ components, including COR.<sup>29</sup> The Commission concluded that COR had adequate resources to address its Title VI responsibilities, however, any additional responsibilities would require it to reassess resources so that requirements and responsibilities could be met effectively.<sup>30</sup>

The Civil Rights Division does not track the resources it expends to implement the executive order and has not set up a fiscal tracking system to record how much funding and staffing COR devotes to LEP-related activities. The Civil Rights Division is planning to implement a fiscal tracking system, effective in FY 2004, that will allow staff to identify procurement, travel, and other expenses related to the executive order.<sup>31</sup>

### ***Technical Assistance, Training, and Outreach to Other Agencies***

COR has concentrated on providing ongoing technical assistance and training to its components and other federal agencies to implement language assistance programs.<sup>32</sup> It arranges consultations, meetings, and workshops on LEP, and delivers training to federal agency personnel. It reviews guidance and provides feedback. COR develops LEP policy, procedures, outreach, training, and technical assistance materials.<sup>33</sup> It developed an LEP Web site that presents some federal agencies' final plans and guidance,<sup>34</sup> as well as DOJ directives, guidance and memoranda, fact sheets, brochures, and other relevant documents. In essence, COR has become a federal clearinghouse for LEP information.<sup>35</sup>

In 2001, the Civil Rights Division created the Interagency Working Group on Limited English Proficiency to improve the efficiency and effectiveness of Title VI and executive order

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<sup>28</sup> DOJ Interrogatory Response, p. 7.

<sup>29</sup> See USCCR, *Ten-Year Check-Up, Vol. II*, pp. 5-27. The Commission examined enforcement at COR, the Disability Rights Section, the Office for Justice Programs and the Federal Bureau of Investigation.

<sup>30</sup> USCCR, *Ten-Year Check-Up, Vol. II*, pp. 60-61.

<sup>31</sup> DOJ Interrogatory Response, p. 5. King, DOJ letter.

<sup>32</sup> DOJ Interrogatory Response, pp. 6-7. Between July 2001 and March 2004, COR conducted approximately 50 LEP training presentations nationwide for federal and private organizations. The audience has included staff from different federal agencies, interpreters and translators, immigrant advocacy groups, public officials, and local bar representatives. Events include LEP workshops, consortiums, and meetings involving compliance, and service training. See U.S. Department of Justice, "LEP (Limited English Proficiency) Training Presentations Conducted (FY 2001, FY 2002, FY 2003)," pp. 20-28.

<sup>33</sup> DOJ/CRD, *FY 2003 Budget Request*, pp. G-30-G-31.

<sup>34</sup> DOJ Interrogatory Response, p. 6. Agencies' LEP plans and guidance must be filed with COR. Agencies are urged but not required to place the document(s) on their Web sites or on the DOJ/COR Web site. See Ralph F. Boyd, assistant attorney general, U.S. Department of Justice, Memorandum to Heads of Federal Agencies, General Counsels, and Civil Rights Directors re: Executive Order 13166, July 8, 2002, p. 4.

<sup>35</sup> DOJ Interrogatory Response, pp. 1-4, 6-7, 29.

implementation.<sup>36</sup> The assistant attorney general for civil rights invited federal representatives from civil rights, program implementation, budget and procurement, and other areas to participate so that LEP issues addressed and strategies used would reflect a broad cross section of government. The working group's mission is to build awareness of the need for and provide methods to ensure that LEP persons have meaningful access to federal and federally assisted programs, and to ensure implementation of language access requirements under Title VI, Title VI regulations, and the executive order.<sup>37</sup>

The LEP working group meets bimonthly and offers opportunities for coordination and assistance in agencies' LEP efforts.<sup>38</sup> A steering committee plans the direction of the working group and three subcommittees carry out various initiatives:

- The Clearinghouse/Dissemination Subcommittee (1) tracks and collects tools, including practices, model plans, technological solutions, and other practical mechanisms to ensure meaningful access for LEP persons; (2) implements strategies for disseminating the tools to other federal agencies, recipients, and stakeholders; and (3) works with DOJ to make the LEP Web site a useful language resource. The working group has a Web site called "LEP.gov," which is dedicated solely to LEP issues.<sup>39</sup>
- The Competent, Consistent and Cost Effective Federal Language Services (the three C's) Subcommittee (1) works with the General Services Administration and others to ensure that high-quality, accurate, and cost-effective translation and interpretation services are available;<sup>40</sup> and (2) works to ensure that federal agencies in the regions are aware of and implement LEP initiatives.
- The Outreach, Training and Uniform Standards Subcommittee (targeted to recipients of federal financial assistance and beneficiaries) (1) creates and shares user-friendly

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<sup>36</sup> Ralph F. Boyd, Jr., assistant attorney general, Civil Rights Division, U.S. Department of Justice, Memorandum to Civil Rights and Equal Opportunity Directors, "Invitation to your Agency to Participate in an Interagency Working Group to Address Limited-English Proficiency Issues," Dec. 19, 2001. DOJ Interrogatory Response, pp. 1, 12. The Interagency Working Group on Limited English Proficiency should not be confused with the Civil Rights Division's National Origin Working Group, which helps combat violations of federal civil and criminal rights laws affecting individuals perceived to be of Middle Eastern descent. It is part of and implements initiatives to combat post-terrorism (post-September 11, 2001) discrimination. "Civil Rights Division National Origin Working Group," <<http://www.bintjbeil.com/an/010925-usdj.html>> (last accessed Feb. 24, 2004).

<sup>37</sup> U.S. Department of Justice, Civil Rights Division, "Meaningful Access for People Who Are Limited-English Proficient: About LEP.gov, Description of the Interagency Working Group on Limited English Proficiency," <<http://www.lep.gov/about.html>> (last accessed June 8, 2004) (hereafter cited as DOJ, "Description of the Interagency Working Group").

<sup>38</sup> See U.S. Equal Employment Opportunity Commission, [Response to the] U.S. Commission on Civil Rights Language Assistance Interrogatories, Dec. 4, 2003, p. 8 (hereafter cited as EEOC Interrogatory Response).

<sup>39</sup> See "About LEP.gov," <<http://www.lep.gov/about.html>> (last accessed July 25, 2003).

<sup>40</sup> At this time, there is no subcommittee or subgroup addressing cost-effective translation and interpreter services. According to a COR spokesperson, as originally structured, there was a subcommittee that was to focus on this issue, but over time priorities changed, and so did some of the issues. Sebastian Aloat, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Jan. 29, 2004, interview, transcript, pp. 8-9.



outreach material on LEP for beneficiaries and recipients; and (2) develops training materials and modules on LEP, and uniform assessment tools.<sup>41</sup>

Since its inception, the working group has developed three “tools” (brochures) to assist agencies in their LEP work, which are available on the LEP Web site.<sup>42</sup>

Federal representatives host and attend meetings, and work on the steering committee or on the subcommittees. The selected agencies report that at least one staff member attends most, if not all, of the meetings. They find the LEP working group helpful in (1) exchanging ideas and information; (2) developing their responses to the executive order; (3) identifying appropriate practices and procedures for ensuring consistency across agencies in the language assistance requirements they impose on recipients; (4) generating technical assistance tools for both agencies and recipients; and (5) finding ways to fund translations of program materials.<sup>43</sup>

The interagency LEP working group constitutes a commendable development, however, the authority of an interagency committee should not be overstated. According to one expert, “Interagency committees . . . are useful for communication and for seeking . . . consensus and advice. But as instruments of policy implementation they are inherently weak because they spread responsibility and dilute authority.”<sup>44</sup>

The working group allows participants to exchange ideas but participation is discretionary. Thus, it is unsurprising that, of approximately 100 agencies subject to the executive order, 30 (i.e., less than a third) actively participate.<sup>45</sup>

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<sup>41</sup> DOJ, “Description of the Interagency Working Group.”

<sup>42</sup> DOJ Interrogatory Response, p. 12. The working group has prepared several brochures, including “Affirming LEP Access and Compliance in Federal and Federally Assisted Programs,” which provides, among other items, general information on Executive Order 13166 and a brief overview of an effective LEP policy; “Know Your Rights,” which is targeted toward beneficiaries of federally assisted programs and available to agencies to distribute to recipients in various languages, as appropriate; and “Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance,” which assists organizations that receive federal financial assistance in their strategic planning efforts and efforts to assess their LEP services. U.S. Department of Justice, Ralph F. Boyd, Jr., assistant attorney general, Memorandum to Heads of Federal Agencies, General Counsels, and Civil Rights Directors, “Tools to Ensure Implementation and Understanding of Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency),” Nov. 12, 2002, pp. 1–4.

<sup>43</sup> See Social Security Administration, Response of Social Security Administration to Interrogatories and Document Requests from the U.S. Commission on Civil Rights, Nov. 25, 2003, p. 10; U.S. Department of Health and Human Services, Office for Civil Rights, [Response to the] U.S. Commission on Civil Rights Language Assistance Interrogatory, Oct. 31, 2003, p. 10; U.S. Department of Education, Office for Civil Rights, United States Department of Education’s Response to the United States Commission on Civil Rights Language Assistance Interrogatory, Nov. 24, 2003, p. 8; U.S. Department of Labor, Civil Rights Center, [Response to the] U.S. Commission on Civil Rights Language Assistance Interrogatory, Nov. 4, 2003, p. 15; U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, [Response to the U.S. Commission on Civil Rights Language Assistance Interrogatory], Nov. 28, 2003, p. 13.

<sup>44</sup> See Hugh Davis Graham, *Civil Rights and the Presidency: Race and Gender in American Politics 1960–1972* (New York: Oxford University Press, 1992), p. 45.

<sup>45</sup> DOJ Interrogatory Response, p. 1.

### ***Constrained by Lack of Enforcement Power***

The executive order fails to provide consequences or penalties for noncompliance. Furthermore, it imposes no reporting requirements or other assessment tools to evaluate federal agencies' effectiveness. While it gave implementation responsibility, and DOJ has shown commendable leadership, the executive order assigned coordination responsibility and not enforcement authority.

Title VI enforcement provides 30 agencies the opportunity to review recipients' efforts to improve language access to federally assisted programs and services.<sup>46</sup> For example, agencies that investigate complaints and conduct compliance reviews to assess whether recipients discriminate on other bases can apply the same methods to LEP duties.<sup>47</sup> Title VI does not, however, require recipients to follow language assistance guidance.<sup>48</sup>

In 2004, DOJ plans to issue a letter to the Title VI agencies requesting LEP information in their annual Title VI reports or civil rights implementation plans.<sup>49</sup> In addition to the number of complaints by sex, race, and national origin, it will ask agencies to report data on the number of LEP complaints they process. COR will then establish and maintain governmentwide data on the complaints.<sup>50</sup> In addition, DOJ plans to modify its complaint database to track LEP information. It will consider running analyses using demographic information on race, ethnicity, ancestry, and English ability; complaint histories; recipient requests for technical assistance; and other sources of appropriate information and data tending to identify jurisdictions with

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<sup>46</sup> *Ibid.*, p. 9.

<sup>47</sup> Taken together, Title VI, its implementing regulations and DOJ's coordination regulations require that agencies (1) provide regulations that define discrimination and agencies' procedures for enforcement; (2) establish a complaint processing system to record and investigate complaints of discrimination lodged against federally assisted programs and services; (3) conduct compliance reviews of recipients; and (4) provide education and outreach to beneficiaries and participants to ensure they know their civil rights. *See* Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, 2000d-1, 2000e-5, 2000e-12, 2000e-4(h)(2) (2004), and 42 U.S.C. § 2000e-4(h)(2); DOJ Comments on USCCR Draft Report, p. 11. DOJ states that "Compliance with Title VI and the Title VI regulatory requirement of meaningful linguistic access is determined in the same manner as is compliance with all other statutory and regulatory requirements of Title VI—through the investigation and resolution of complaints, and the conduct of periodic post-award compliance reviews. However, in determining compliance, it is the actual provision of meaningful linguistic access, not compliance with the suggested approaches and mechanisms, that is the governing standard." DOJ Interrogatory Response, p. 9.

<sup>48</sup> DOJ Interrogatory Response, p. 9. Under Title VI, it is the obligation to ensure meaningful linguistic access, not the agency guidance suggesting approaches and methods to recipients on how they might satisfy that obligation, that is enforceable. DOJ Comments on USCCR Draft Report, p. 11.

<sup>49</sup> Merrily Friedlander, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Jan. 29, 2004, interview, transcript, pp. 17–18 (hereafter cited as Friedlander interview). Every fiscal year the Title VI agencies submit a Title VI report, also referred to as the civil rights implementation plan, that includes workload and compliance data and other information on Title VI and other civil rights statutes. For the history and purpose of the civil rights implementation plan, *see* USCCR, *Federal Title VI Enforcement*, pp. 89–92.

<sup>50</sup> Friedlander interview, pp. 17–18.

significant or special needs.<sup>51</sup> However, DOJ acknowledges that under the executive order, it does not have the authority to require other federal agencies to collect similar data.<sup>52</sup>

In March 2003, the Commission held a briefing on civil rights issues affecting the Latino community in Washington, D.C. One of the topics discussed was Title VI enforcement and language access. Some presenters agreed that while Title VI prohibits discrimination, it does not require good service. Even with Title VI enforcement, no procedures or output measures exist to assess whether language access to federal programs and services is improving. At the briefing, panelists stressed the importance of output measures in language access and suggested that agencies establish and use measures to indicate whether various efforts work.<sup>53</sup>

DOJ is evaluating whether additional internal task forces or coordinating committees, increases in staff and funding, or the adoption of new policies would ensure appropriate assistance to LEP persons.<sup>54</sup> However, COR admits that it will likely continue to emphasize monitoring and technical assistance to address language access.<sup>55</sup>

## Summary

Executive Order 13166 requires all federal agencies to provide meaningful access to their programs, benefits, and services. Agencies that have federally assisted programs are required to prepare guidance for recipients; and all agencies with federally conducted programs must prepare language assistance plans to ensure access to their activities. DOJ implements the executive order and coordinates LEP guidance and technical assistance to agencies. However, without adequate resources, DOJ cannot reasonably be expected to accomplish much more.

The executive order draws legal authority from Title VI of the Civil Rights Act. However, Title VI enforcement has limitations in the actual provision of meaningful language access. Although the order outlines specific responsibilities, there are no consequences or penalties for agencies' or recipients' noncompliance, or reporting requirements and assessment tools to evaluate agencies' efforts to improve language access. In addition, the executive order does not give any agency power to enforce it, leading to a lack of accountability necessary for effective implementation.

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<sup>51</sup> DOJ Interrogatory Response, p. 30.

<sup>52</sup> *Ibid.*, pp. 29–30.

<sup>53</sup> U.S. Commission on Civil Rights, Presentation on Civil Rights Issues Affecting the Latino Community in the District of Columbia, Mar. 21, 2003, transcript, pp. 133–34.

<sup>54</sup> DOJ Interrogatory Response, p. 1.

<sup>55</sup> *Ibid.*, p. 14.

## Chapter 4: Federal Agencies' Guidance and Plans for Executive Order Implementation

All agencies that conduct or fund programs and services for the public (approximately 100) are subject to Executive Order 13166.<sup>1</sup> Approximately 30 provide assistance for programs resulting in indirect contact with the public and bear responsibility to guide their funding recipients in providing language assistance (see Appendix 3). First, the Department of Justice (DOJ) developed guidance for its recipients. This initial guidance, issued in January 2001, served as an example for other agencies to follow. Later, as a need for consistency among agencies' guidance became evident,<sup>2</sup> DOJ published revised guidance in June 2002 and exercised its role in reviewing and approving other agencies' guidance to impose its example as a model, although it allowed tailoring to agency-specific programs.

The order instructs all agencies that offer direct public contact, approximately 100, to develop and issue a written language assistance plan. DOJ guidance to recipients includes instructions for developing such plans. Furthermore, to foster consistency, DOJ directed that agencies submit plans following the same general format and standards as recipients.<sup>3</sup> Through this direction, the plan elements DOJ offers serve for DOJ recipients as well as all other federal agencies and the agencies' funding recipients.

Developing guidance and plans for language assistance are agencies' first steps in responding to the executive order. The Commission reviewed the guidance and plans of DOJ's model effort and six other agencies.<sup>4</sup> Further, this stage of agencies' responses to the executive order is the only one in which DOJ has a role that derives from the order. As noted, DOJ reviews and approves agencies' guidance. It also collects agencies language assistance plans.

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<sup>1</sup> The Department of Justice (DOJ) did not report the number of agencies subject to the executive order. The agency tracks the responses to the order of more than 90 federal agencies. See U.S. Department of Justice, "Limited English Proficiency (LEP) Federally Conducted Plans Chart," Feb. 2, 2004 (hereafter cited as DOJ, "LEP Federally Conducted Plans Chart"); and Appendix 3. However, some executive branch agencies are not included in DOJ's list. Moreover, the number of agencies covered by the order changes as new ones are formed and others are dissolved.

<sup>2</sup> DOJ gives three key reasons for agencies to be consistent in the guidance they provide to recipients. First, using the same language as the DOJ model ensures greater legal consistency. Second, using standard language streamlines agencies' time and efforts in developing and implementing their own guidance. Third, standard language avoids inconsistencies among agencies that could affect the same federal recipient. U.S. Department of Justice, Civil Rights Division, Department of Justice Response to U.S. Commission on Civil Rights Language Assistance Interrogatories, Dec. 5, 2003, p. 12 (hereafter cited as DOJ Interrogatory Response); U.S. Department of Justice, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 67 Fed. Reg. 41,455, 41,457-58 (June 18, 2002) (hereafter cited as DOJ LEP Guidance to Recipients).

<sup>3</sup> Ralph F. Boyd, Jr., assistant attorney general, Civil Rights Division, U.S. Department of Justice, Memorandum to Heads of Departments and Agencies, General Counsels, and Civil Rights Directors, re: Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency), Oct. 26, 2001, p. 4.

<sup>4</sup> The other agencies are the Departments of Education, Health and Human Services, Housing and Urban Development, Labor, the Equal Employment Opportunity Commission, and the Social Security Administration.

## Department of Justice's Guidance to Federal Agencies

On June 18, 2002, DOJ issued the final language assistance guidance to its recipients that it intended would also serve as a model for 30 other agencies that were developing guidance to fulfill responsibilities under Title VI of the Civil Rights Act of 1964.<sup>5</sup> The model guidance includes nine sections shown in Table 4.1. DOJ included sections on the legal authority for language assistance; how recipients should determine the extent of their obligations, select language assistance services, and develop an effective plan; and how DOJ will obtain voluntary recipient compliance with the guidance. It also offered examples of how to apply the guidance to specific types of recipients.<sup>6</sup>

**TABLE 4.1**  
**Department of Justice Language Assistance Guidance—Its Sections and Their Contents**

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1. "Introduction" states the purpose of the guidance—to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law.
  2. "Legal Authority" explains Title VI of the Civil Rights Act of 1964, how *Lau v. Nichols* clarified that disproportionate exclusion of LEP persons was a form of national origin discrimination, the requirements of Executive Order 13166, DOJ's interpretation of *Sandoval* leaving the Civil Rights Act's Title VI regulations intact, and pertinent agency-specific laws or regulations.
  3. "Who Is Covered?" identifies the types of assistance—grants, training, donation of surplus equipment—that make recipients responsible for complying with Title VI, refers to the broader application of the Civil Rights Restoration Act that makes a recipient's entire operation subject to Title VI prohibitions even when only a particular program or activity receives assistance, and includes examples of the types of recipients, such as hospitals and welfare agencies.
  4. "Who Is a Limited English Proficient Individual?" defines an LEP individual as one who does not read, speak, write, or understand English and includes lists of the agency's assisted programs that are likely to serve LEP persons.
  5. "How Does a Recipient Determine the Extent of Its Obligation to Provide Services?" explains that recipients must take reasonable steps to ensure LEP persons have meaningful access to their programs and benefits and provides a four-factor analysis to determine the nature and extent of the assistance recipients must provide.
  6. "Selecting Language Assistance Services" discusses oral and written language services. First, the section presents strategies for providing oral language services—hiring bilingual staff or staff interpreters, contracting for interpreters, using telephone interpreter lines, and using community volunteers—and explains concerns about the use of family members, friends, and other clients as interpreters and the competency of interpreters. Regarding written services, it suggests methods for determining what documents should be translated, into how many languages they should be translated, and the competency of translators. It also outlines circumstances constituting a "safe harbor," meaning that if recipients have provided written translations under these circumstances, they will be considered to have complied with their written-translation obligations.
  7. "Elements of Effective Plan on Language Assistance for LEP Persons" explains that recipients should develop and maintain a periodically updated written plan on language assistance and suggests the plan describe the methods or procedures for identifying LEP individuals who need language assistance; providing language assistance; training staff; (providing notice to LEP persons of their right for free interpretation; and monitoring and updating the plan.

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<sup>5</sup> The guidance states, "The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons." The next paragraph asserts, "The Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies." DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,457–58 (June 18, 2002).

<sup>6</sup> See DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,457–58 (June 18, 2002).

8. "Voluntary Compliance Effort" explains Title VI enforcement procedures including the system for victims of discrimination to file a complaint, complaints investigations and compliance reviews of recipients, technical assistance, efforts to secure voluntary compliance, and, when voluntary compliance efforts fail, the administrative hearing and litigation process that ensue.
9. "Application to Specific Types of Recipients" provides examples of how recipients might apply the four-factor analysis to their programs and the local situations they face.

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Source: Compiled by U.S. Commission on Civil Rights from DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,455 (June 18, 2002).

Taken together, the sections demonstrate how to determine an agency's or recipient's obligation to provide language assistance. The guidance establishes three language assistance principles for agencies and recipients:

- Agencies and recipients must provide reasonable oral language assistance free of charge to any limited English proficient program participant.<sup>7</sup>
- Except languages for which the limited English proficient population served is very small or where interaction with a language minority group is infrequent and unpredictable, agencies and recipients should at the very least produce written translated notices of available language assistance in the non-English languages routinely encountered. The notice should inform LEP persons of their right to have competent oral interpretation of vital documents free of charge.<sup>8</sup>
- Agencies and recipients must produce written translations of vital documents in languages for which the limited English proficient population served is a significant size.<sup>9</sup>

#### ***"Safe Harbor" for Recipients' Compliance with Written Translation Obligations***

DOJ clarifies the requirements for written translations when it explains "safe harbor" provisions it regards as complying with the executive order (see section 6 of the guidance). The requirements depend on the size of the language group as depicted in Table 4.2. If the language group is more than 5 percent of the eligible population or more than 1,000 in number, the agency

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<sup>7</sup> DOJ guidance states that "safe harbor" provisions, which exempt recipients from providing written translations when very small numbers of limited English proficient persons are served, "apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable." See DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,464 (June 18, 2002).

<sup>8</sup> See DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,464 (June 18, 2002); U.S. Department of Justice, Comments of U.S. Department of Justice on U.S. Commission on Civil Rights["] Draft Report of June 15, 2004, entitled: Toward Unqualified Access: Eliminating Language Barriers From Federal Programs, June 25, 2004, p. 15 (hereafter cited as DOJ Comments on USCCR Draft Report). Recipients should consider whether written translations of vital documents are warranted. The DOJ guidance suggests that where the eligible LEP language group constitutes 5 percent or 1,000 or less of the population of persons eligible to be served, affected, or encountered by the program, written translations of vital documents may be the most cost-effective approach. Where the program serves a smaller number of the eligible LEP language group, the recipient may find that a notice of an opportunity to obtain oral interpretation is more cost effective. Ibid. See the safe harbor provisions below.

<sup>9</sup> See DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,464 (June 18, 2002). Recipients must provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 or less of the population of persons eligible to be served, or likely to be served, affected, or encountered. Ibid. See the safe harbor provisions below.

or recipient should consider written translations of vital documents. If the language group is less than 5 percent of the eligible population and less than 1,000 in number, oral document interpretation is adequate. Even when the language group numbers less than 50 persons, the service provider should offer a translated notice of the right to receive free oral interpretation of documents if the group is more than 5 percent of the eligible population.<sup>10</sup> Furthermore, DOJ indicates that the level of language assistance it regards as complying with the executive order will increase over time. Agencies and recipients must increase the number of available translated documents each year to remain in compliance with language assistance requirements.<sup>11</sup>

**TABLE 4.2**  
**Safe Harbor Provision for Written Translations—How the**  
**Required Language Assistance Relates to the Size of the**  
**Language Group**

Size of language group		Required language assistance
Greater than 1,000		Translated vital documents
Greater than 5 percent of the eligible population and ...	Between 50 and 1,000 in number	Translated vital documents
	50 or Less	Translated written notice of right to receive free oral interpretation
Less than 5 percent of the eligible population and ...	Less than 1,000	Oral interpretation of documents

Source: Compiled by U.S. Commission on Civil Rights from DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,464 (June 18, 2002).

### ***Determining Language Needs***

The intent of the guidance is to assist agencies and recipients in assessing the language minority communities they serve and in determining the mix of language assistance services they must provide. Section 5 of the guidance (see Table 4.1) instructs recipients how to determine the extent of their obligation to provide services. It presents a four-factor analysis for recipients to use (see Table 4.3):

<sup>10</sup> See Table 4.2; DOJ LEP Guidance to Recipients, 67 Fed Reg. 41,464 (June 18, 2002).

<sup>11</sup> DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,466 (June 18, 2002). The Department of Labor's (DOL's) guidance does not include a safe harbor provision. Agency officials do not read DOJ's guidance as *requiring* adherence to the safe harbor provisions. Rather, adherence to these provisions is strong evidence of compliance. Nor does DOL mandate an increase in the number of available translated documents as a condition of compliance. DOL determines compliance on a case-by-case basis. Annabelle T. Lockhart, director, Civil Rights Center, U.S. Department of Labor, letter to Les Jin, staff director, U.S. Commission on Civil Rights, June 25, 2004, p. 2.

**TABLE 4.3**  
**Four-Factor Analysis for Recipients to Determine the Nature and Extent of Assistance to Provide**

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1. Number or percentage of LEP persons in the population served.
  2. Frequency with which LEP persons come into contact with the program.
  3. Nature and importance of the program.
  4. Recipients' available resources.
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Source: DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,459–60 (June 18, 2002).

1. The recipient should determine the need to provide language assistance based on the number or percentage of LEP persons eligible to participate in or likely to be directly affected or encountered by the recipient's program or activity ("the eligibles"). Estimates of the eligibles should be program specific and based on the geographic service area. The data sources that DOJ suggests recipients consult in assessing the number and percentage of the language groups in the eligible population include the latest census data for the service area and data from school systems, community organizations, and state and local governments.<sup>12</sup> At the same time, DOJ emphasizes that the recipient must assess the population on lack of English proficiency, not the ability to speak more than one language.<sup>13</sup> However, ethnicity is the readily available information in many of the suggested data sources, not ability to speak, read, write, or understand English. Thus, the section leaves agencies and recipients in a quandary about how to assess the language needs of the eligible population. Section 7, explaining recipients' LEP plans, suggests that recipients should provide a process for LEP persons to identify themselves as needing assistance and record the language in a client database.<sup>14</sup>
2. As the Department of Labor (DOL) explains, "the steps that are reasonable for a recipient who serves one LEP person a year will be different than those expected from a recipient who serves several LEP persons each day."<sup>15</sup> DOJ suggests that the recipient that has infrequent contact with LEP persons could use a telephone interpreter service. But recipients must monitor the frequency of contact with a language group, because outreach to LEP populations could increase the frequency of their contact with the program over time.<sup>16</sup>
3. The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely a language services need exists. A recipient must determine whether denial or delay of access to

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<sup>12</sup> DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,459–60 (June 18, 2002).

<sup>13</sup> *Ibid.*, p. 41,460, note 7.

<sup>14</sup> *Ibid.*, pp. 41,464–65.

<sup>15</sup> U.S. Department of Labor, "Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency," 66 Fed. Reg. 4,596, 4,600 (Jan. 17, 2001). *See also* DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,460 (June 18, 2002).

<sup>16</sup> DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,460 (June 18, 2002).



services or information could have serious or life-threatening consequences for the LEP individual.<sup>17</sup>

4. The recipient's level of resources and the costs of language assistance services also determine steps recipients should take. Smaller recipients with more limited budgets are not expected to provide the same language services as recipients that have larger budgets. Furthermore, recipients must balance the costs of language assistance with their other obligations so as not to undermine other programs and services. DOJ recognizes, for example, that otherwise reasonable steps may cease to be reasonable where recipients demonstrate that the imposed costs substantially exceed the benefits.<sup>18</sup>

### *Selecting Language Assistance Services*

In section 6 of the guidance on how to select language assistance services, DOJ advises recipients on the use of interpreters. "Interpretation is the act of listening to something in one language . . . and orally translating it into another language."<sup>19</sup> When LEP persons so desire, the guidance directs that they should be permitted to employ, at their own expense, an interpreter of their own choosing—whether a family member, friend, or other trusted individual—to supplement the language assistance the recipient offers. However, the guidance warns recipients against drawing on family members, friends, other clients, or whoever is at hand as interpreters. Recipients should avoid, whenever possible, exigent circumstances that necessitate the use of informal interpreters. DOJ explains that family members and other informal interpreters may lack language skills or provide inaccurate interpretation because of language nuances or circumstances related to confidentiality, privacy, and conflict of interest. They may, for example, be uncomfortable in revealing or describing sensitive or embarrassing information.<sup>20</sup>

Because communications with LEP persons must be accurate, the guidance discusses the competency of interpreters and translators. DOJ recommends that interpreters be more than self-identified as bilingual. They need to be competent in both English and the other language and demonstrate their ability to convey information accurately in both languages. DOJ finds formal certification helpful, but does not require it. In addition, DOJ explains that interpreters should know technical or specialized terms and concepts used in the program. Finally, they should understand and adhere to their role as interpreter. They should be bound to confidentiality and impartiality and not act as counselor, advisor, or advocate.<sup>21</sup>

Translators replace written text in one language with written text in another language.<sup>22</sup> A competent interpreter may not be a competent translator and the reverse also is true. DOJ suggests the use of certified translators for legal or vital documents, however, not necessarily for other documents. Instead, it recommends a second translator check the work, or translate the

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid. DOJ Interrogatory Response, p. 10.

<sup>19</sup> DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,461 (June 18, 2002).

<sup>20</sup> Ibid., p. 41,462.

<sup>21</sup> Ibid., p. 41,461.

<sup>22</sup> Ibid., p. 41,463.

document back into English (called “back translation”) to verify its accuracy. Translators must also anticipate the reading level, vocabulary, and phraseology of the audience and target language group. DOJ suggests creating glossaries of commonly used technical concepts to aid translators in using program-specific terms consistently and avoid confusing LEP individuals. The permanent nature of written translations, DOJ states, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.<sup>23</sup>

### *Elements of Recipients’ Language Assistance Plans*

Section 7 of the guidance *suggests* that recipients develop a written language assistance plan.<sup>24</sup> A plan documents compliance and provides a framework for timely and reasonable language assistance. Furthermore, DOJ specifies five elements of a plan. It should explain (1) procedures to identify LEP individuals who need language assistance, (2) the ways in which language assistance will be provided, (3) provisions for staff training, (4) the means of providing notice to LEP persons of their right to receive free language assistance, and (5) the process for monitoring and updating the LEP plan.<sup>25</sup>

### **Status of Agencies’ Limited English Proficiency Guidance**

Table 4.4 shows the status of agencies’ for which the Commission found published guidance.<sup>26</sup> It shows agencies that (1) already published guidance before the executive order was issued; (2) published guidance one or more times during the period of instability from August 2000 to June 2002, and (3) issued guidance consistent with DOJ’s final standards published in June 2002. For agencies that published guidance more than once, the number of new, republished, or revised notices is shown in parentheses.

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<sup>23</sup> Ibid., p. 41,464.

<sup>24</sup> Ibid., p. 41,465. DOJ officials note that a guidance document can only suggest, not require, that recipients develop plans, because it lacks the power of a regulation. DOJ Comments on USCCR Draft Report, p. 17.

<sup>25</sup> DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,465 (June 18, 2002).

<sup>26</sup> The Web site [www.lep.gov](http://www.lep.gov) lists federal agencies’ language assistance plans and guidance. The Interagency Working Group, formed of representatives from many agencies, maintains this Web site. However, DOJ officials explain that the site does not list guidance or plans that have yet to be submitted to DOJ, reviewed, or subject to public comment. DOJ Interrogatory Response, pp. 18–19.

**TABLE 4.4**  
**Agencies Issuing Limited English Proficiency Guidance to Recipients**

When LEP Guidance Issued:	Agencies	Number
Before August 2000 executive order	DOEd, HHS	2
After executive order but before DOJ's June 2002 final guidance	DOJ(3), HHS(2), DOL, and 7 other agencies (5 of them twice, and 2 of them once)	10
After DOJ's June 2002 final guidance requiring consistency among agencies	DOJ, HHS, DOL, HUD (proposed) and 6 other agencies (one of them twice)	10
Still pending (no publication)	SSA and 13 other agencies	14
Total with guidance		16
Total with Title VI responsibilities		30

Source: Compiled by U.S. Commission on Civil Rights using information from <<http://www.lep.gov>> (last accessed Apr. 20, 2004) and other documents from the Internet.

The table shows that only half of the agencies required to publish guidance to recipients on LEP have done so. As indicated earlier, two agencies—the Department of Health and Human Services (HHS) and the Department of Education (DOEd)—had guidance addressing limited English proficient persons before the executive order was issued. DOEd had issued guidance on LEP several times from 1970 to 1991, and HHS in 1998.<sup>27</sup> In the period after the executive order and before DOJ's final 2002 guidance, 10 agencies issued guidance to recipients, including DOJ, which was establishing a model for other agencies to follow, and HHS, which was revising its guidance from the earlier period. Most of these agencies republished their guidance during the period to solicit additional comments. Ten agencies have published guidance (or proposed guidance) since DOJ imposed the requirement that it be consistent among agencies. They include some agencies—for example, DOJ, DOL, HHS—that had published guidance in the earlier period(s) (see Table 4.4). Of the seven agencies on which the Commission focused, DOEd, DOJ, DOL, and HHS published final guidance; HUD proposed guidance; SSA's guidance is pending.

<sup>27</sup> J. Stanley Pottinger, director, Office for Civil Rights, U.S. Department of Health, Education, and Welfare, Office of the Secretary, Memorandum to School Districts with More Than Five Percent National Origin-Minority Group Children, re: Identification of Discrimination and Denial of Services on the Basis of National Origin, May 25, 1970; William L. Smith, acting assistant secretary for civil rights, U.S. Department of Education, Memorandum to OCR Senior Staff, re: Office for Civil Rights Policy Regarding the Treatment of National Origin Minority Students Who are Limited English Proficient, Apr. 6, 1990, with attachment—"The Office for Civil Rights' Title VI Language Minority Compliance Procedures"—issued initially on Dec. 3, 1985, and reissued without change Apr. 6, 1990; Michael L. Williams, assistant secretary for civil rights, U.S. Department of Education, Memorandum to OCR Senior Staff, re: Policy Update on Schools' Obligations Toward National Origin Minority Students With Limited-English Proficiency (LEP students), Sept. 27, 1991; Dennis Hayashi, director, Office for Civil Rights, U.S. Department of Health and Human Services, Guidance Memorandum: "Title VI Prohibition Against National Origin Discrimination—Persons with Limited-English Proficiency," Jan. 29, 1998.

EEOC was exempt from the obligation to publish guidance since it does not operate any federally assisted programs.

### Agencies' Limited English Proficiency Plans

The executive order directs agencies with federally conducted programs to prepare a plan to improve access of eligible limited English proficient persons to the programs and activities that they offer directly to the public. The plan should be consistent with the standards DOJ set forth in guidance and should be sent to DOJ to maintain in a repository of plans.<sup>28</sup> DOJ spells out the elements of a language assistance plan in its guidance (see Table 4.1, section 7) and developed its own plan for implementing the executive order. The features of DOJ's plan and the department's interpretation of the requirements of the executive order are reviewed below.

The DOJ model was not a template for other agencies; the agency did not have authority to review or impose consistency on plans as it did for guidance. However, because the elements of the plan were in DOJ's guidance, DOJ's role in ensuring consistency in guidance led to other agencies' requiring similar plans of their recipients and implicitly of themselves.

DOJ's language assistance plan explains the executive order and the required four-point analysis, describes how the department involved its own agency components and LEP stakeholders in developing its plan, lays out the five elements of a plan iterated in the guidance to recipients, and finally includes concrete goals and timelines for accomplishing goals.<sup>29</sup> The elements of the plan are as follows:

***Element 1—Assessment of the Needed Language Assistance.*** Language assistance plans are to be consistent with the standards DOJ presents in its guidance to recipients,<sup>30</sup> including the four-factor analysis (see Table 4.3).<sup>31</sup> In its plan, DOJ stresses that an assessment of LEP populations and language needs is important, but did not survey the individuals DOJ programs encounter or serve who are not proficient in English. Rather, it identified the components most

<sup>28</sup> Exec. Order No. 13,166, 3 C.F.R. 289 (2001).

<sup>29</sup> U.S. Department of Justice, *Departmental Plan Implementing Executive Order 13,166*, Jan. 10, 2001, p. 4, <<http://www.usdoj.gov/crt/cor/lep/dojimp.htm>> (last accessed July 25, 2003) (hereafter cited as DOJ Language Assistance Plan, Jan. 10, 2001). The second element of a language assistance plan, according to DOJ guidance, is "information about the ways in which language assistance will be provided." DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,465 (June 18, 2002). However, in DOJ's model plan, the second element is "publication of a written language assistance plan." In specifying this element, DOJ sets policies and principles for how agency components will provide language assistance and lists initiatives all agency components must undertake to provide language assistance, and some that are specific to certain components. DOJ Language Assistance Plan, Jan. 10, 2001, pp. 5–15.

<sup>30</sup> Exec. Order No. 13,166, 3 C.F.R. 289 (2001).

<sup>31</sup> U.S. Department of Justice, Civil Rights Division, "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance," 65 Fed. Reg. 50,123, 50,124–50,125 (Aug. 16, 2000). Note that the executive order merely states that the guidance shall take into account the types of services recipients provide and the individuals they serve. Exec. Order 13,166, 3 C.F.R. 289 (2001).

likely to directly interact with LEP populations and charged them with LEP responsibilities such as that to assess language needs.<sup>32</sup>

***Element 2—Plan Principles and Strategies.*** DOJ lists four language assistance principles and then itemizes initiatives its components must undertake. The principles are:

- Components will inform LEP persons that they may use an interpreter of their own choosing, at their own expense, or a competent interpreter the agency provides free of charge.
- Components will take steps to ensure that interpretative services are competent.
- Components will expand the range or nature of language assistance measures as necessary to avoid denial of equal services to any significant LEP population.
- To the maximum extent practical, limited English proficiency shall not limit access to information on when, where, or how to access a component's benefits or services.<sup>33</sup>

DOJ established these principles to guide decisions in implementing the plan. The plan identifies initiatives that all components involved in the plan must undertake and others that were unique responsibilities of particular components. The common initiatives required components to have the following at points of public contact: (1) bilingual or multilingual staff; (2) procedures for staff to access telephonic interpretive services; (3) a directory of staff members who have volunteered to provide temporary language assistance services in an emergency; (4) signage available in the service area in the two most common non-English languages spoken for any signage currently provided in English; and (5) translations of commonly requested information in commonly encountered languages.

***Element 3—Staff Training.*** DOJ directs its components to conduct training to ensure that all employees expected to implement the language assistance initiatives are knowledgeable about (1) the nature and scope of their component's language assistance services and resources; and (2) the procedures to access those services to assist in discharging their respective duties.<sup>34</sup> Further, for staff to discharge language assistance duties effectively, agencies and recipients must train them on procedures to contact telephonic interpreter services and to work with in-person and telephone interpreters.<sup>35</sup>

***Element 4—Outreach and Notice of the Availability of Language Assistance.*** The DOJ plan provides that components must alert LEP communities and individuals as to the nature, scope, and availability of the language assistance services they provide. English versions of documents should include a notice of their availability in other languages appearing in those

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<sup>32</sup> DOJ Language Assistance Plan, Jan. 10, 2001, p. 4; DOJ Comments on USCCR Draft Report, p. 18.

<sup>33</sup> DOJ Language Assistance Plan, Jan. 10, 2001, p. 6.

<sup>34</sup> *Ibid.*, p. 15.

<sup>35</sup> DOJ LEP Guidance to Recipients, 67 Fed. Reg. 41,465 (June 18, 2002); U.S. Department of Labor, "Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 68 Fed. Reg. 32,289, 32,300 (May 29, 2003).

languages. Similarly, the plan directs that documents on the component's Web page will have a tag indicating the availability in other languages. Finally, components should use appropriate oral and written means to inform stakeholder organizations of the nature and scope of available language assistance services.<sup>36</sup>

***Element 5—Periodic Reassessment of Needs and Plan Revisions.*** In its model plan, DOJ suggests that components periodically reassess their plans in terms of the LEP populations their programs serve, the language assistance needs of these populations, and the language assistance services they provide, so that their services can be enhanced or modified to continue to meet the requirements of the executive order.<sup>37</sup>

In its plan, DOJ established deadlines for its components to develop a *schedule* for implementation, not for completing the initiatives themselves. The plan requires components to develop and file within DOJ's Civil Rights Division a timetable for implementing the language assistance initiatives. The deadline for doing so was the second quarter of FY 2001—about 80 days after the plan was issued.<sup>38</sup> Thus, DOJ failed to specify the components' time frame for having bilingual or multilingual staff in place at contact points, written procedures for accessing telephonic interpretive services, and written translations of commonly requested documents. Instead, DOJ allowed an assessment of the scope of each component's responsibility to provide language assistance before establishing meaningful and reasonable time frames.<sup>39</sup>

#### **Agencies' Compliance Status in Developing Limited English Proficiency Plans**

Approximately 100 agencies should have initiated or completed development of plans for their federally conducted programs. In June 2004, DOJ officials reported having received language assistance plans from only 57 agencies, although these represent the vast majority of federal programs that directly affect significant LEP populations.<sup>40</sup> Thirty-nine agencies issued plans in 2000 but have not updated them since then. Thirteen agencies revised plans in 2003.<sup>41</sup> All seven of the agencies the Commission examined in depth developed plans. However, DOJ, HHS, and DOL have not updated their plans since 2001.<sup>42</sup>

In its search of the Internet and receipt of documents from selected agencies, the Commission found three agencies, including HHS and EEOC, had obtained plans from agency components or district offices.<sup>43</sup> Four agencies, including two the Commission studied (EEOC

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<sup>36</sup> DOJ Language Assistance Plan, Jan. 10, 2001, p. 16.

<sup>37</sup> Ibid.

<sup>38</sup> See, e.g., DOJ Language Assistance Plan, Jan. 10, 2001, pp. 6–7, 9–14.

<sup>39</sup> DOJ Comments on USCCR Draft Report, p. 19.

<sup>40</sup> Ibid. Agencies are required to submit their language assistance plans to DOJ. DOJ officials report that the plans are available on request. However, they are only available through the [www.lep.gov](http://www.lep.gov) Web site if the agency has placed the plan on its own Web site and provided the link to DOJ. Ibid.

<sup>41</sup> DOJ, "LEP Federally Conducted Plans Chart."

<sup>42</sup> Ibid.

<sup>43</sup> See, e.g., Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry, *Language Access Plan, FY 2001–2003*, Apr. 1, 2001; and U.S. Equal Employment Opportunity Commission, [Response to the] U.S. Commission on Civil Rights Language Assistance Interrogatories, Dec. 4, 2003 (hereafter

and the Social Security Administration), had issued multiple plans by updating them periodically.<sup>44</sup>

### Summary

The Department of Justice's guidance on language assistance, issued in June 2002, establishes that agencies and recipients must (1) provide reasonable oral language assistance free of charge to any limited English proficient program participant or beneficiary, (2) post written translated non-English notices informing LEP persons of their right to free interpretation, and (3) offer written translations of vital program documents. This chapter explained the guidance and the effort of agencies to develop their own guidance consistently modeled on DOJ's version. Slightly more than half of the 30 agencies that conduct federally assisted programs have published guidance to recipients.

DOJ's guidance also urged agencies and their recipients to develop language assistance plans and outlined key elements that should be contained in those plans. Of the approximately 100 agencies that run federally conducted programs, only 57 have deposited language assistance plans with DOJ.

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cited as EEOC Interrogatory Response), attachments—District Office Language Assistance Plans for 2001 and 2003.

<sup>44</sup> EEOC Interrogatory Response, attachments—District Office Language Assistance Plans for 2001 and 2003; William A. Halter, deputy commissioner of social security, Social Security Administration, letter to Bill Lann Lee, assistant attorney general, U.S. Department of Justice, Civil Rights Division, Dec. 19, 2000, and enclosures; Social Security Online, *Social Security Administration's Plan for Providing Access to Benefits and Services for Persons With Limited English Proficiency (LEP)*, January 2003, p. 10, <<http://www.ssa.gov/Multilanguage/LEPPlan2.htm>> (last accessed July 10, 2003).

## Chapter 5: Effect of Executive Order 13166 on Federal Agencies

Guidance and plans alone will not eliminate language barriers. There also must be effective implementation. However, any thoughtful assessment of Executive Order 13166 must take into account the pre-existing enforcement system under Title VI of the Civil Rights Act of 1964.<sup>1</sup> Before the order, there was not a cross-agency effort to focus guidance and Title VI enforcement efforts on language access requirements.<sup>2</sup> Since the order, agencies' obligations to apply Title VI enforcement to language problems are clearer because of more coordinated and consistent approaches. In addition, to ensure successful implementation, agencies need to establish an organizational structure that fosters accountability for language access and includes sufficient staff, documents, and services to communicate with limited English proficient individuals. Thus, the following examines how agencies responded to language barrier problems with Title VI enforcement before the order, and what new activities they undertook afterward.

Of the seven agencies the Commission examines, five—the Departments of Education (DOEd), Health and Human Services (HHS), Housing and Urban Development (HUD), Labor (DOL), and Justice (DOJ)—are subject to major enforcement responsibilities under Title VI. These agencies carried out civil rights activities for years before the executive order, whether or not they addressed language access. The Social Security Administration (SSA) and the Equal Employment Opportunity Commission (EEOC) fund few or small assisted programs, if any. They, therefore, have little responsibility for Title VI enforcement. However, the executive order requires that all seven agencies develop and implement language assistance plans.

### Language Access Efforts Before the Executive Order

Before the executive order was issued, some agencies were already enforcing language access based on their responsibilities under Title VI. They had initiated activities such as investigating public complaints of language discrimination, conducting reviews and audits to make sure that their recipients run programs in a nondiscriminatory way, and staging training and public education events to advise affected parties of their rights and responsibilities.

#### *Responding to Language Discrimination Complaints*

Some selected agencies, including DOEd, DOL, HHS, and very recently SSA, track language problems in their Title VI civil rights complaint databases. DOEd's case management system is the most detailed, offering categories for two general LEP issues—"assignment of

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<sup>1</sup> Civil Rights Act of 1964, Pub. L. No 88-352, 78 Stat. 241 (codified as amended in 42 U.S.C.S. 200d *et seq.* (2004)). These civil rights enforcement activities are discussed in many Commission reports. *See, e.g.*, U.S. Commission on Civil Rights (USCCR), *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs*, June 1996; and *Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume I: A Blueprint for Civil Rights Enforcement*, September 2002.

<sup>2</sup> U.S. Department of Justice, Comments of U.S. Department of Justice on U.S. Commission on Civil Rights['] Draft Report of June 15, 2004, entitled: *Toward Unqualified Access: Eliminating Language Barriers From Federal Programs*, June 25, 2004, p. 20 (hereafter cited as DOJ Comments on USCCR Draft Report).



students whose primary or home language is other than English” and “special education for LEP students”—and either five or seven sub-issues within each. For example, the agency further classifies complaints about the “assignment of students whose primary or home language is other than English” into several sub-issues: (1) the identification of the students, (2) language assessments used to place them in language assistance programs, (3) the language assistance program itself, (4) exit criteria for the program, (5) isolation from mainstream students, (6) qualifications of language assistance teachers, or (7) any other issues. Similarly, complaints about “special education for LEP students” are categorized according to (1) student evaluation, (2) program placement, (3) services provided to special education LEP students, (4) qualifications of special education LEP teachers, and (5) and other sub-issues. The DOEd system is expandable and could accommodate more codes than the agency tracks now.<sup>3</sup>

HHS’ database tracks a variety of complaint issues, including those associated with language barriers: (1) the selection or admission for, or denial of, services; (2) interpreters; and (3) translation services.<sup>4</sup> DOL’s complaint database tracks complaints based on “inability to access programs or services due to LEP.”<sup>5</sup> SSA has recently added a new field, “LEP issue,” to track relevant complaints. The small number of LEP complaints SSA receives—none in recent years—does not warrant identification of sub-issues.<sup>6</sup> Other agencies, such as HUD, do not track LEP-related complaints in their databases. HUD notes future plans to modify its database to designate “national origin.”<sup>7</sup>

Figure 5.1 shows the numbers of LEP-related Title VI complaints that the agencies in this study processed both before and after Executive Order 13166. EEOC does not have Title VI responsibilities, therefore only six of the seven agencies are represented. Parts (a) through (c) represent complaint processing for HHS, DOEd, and the DOJ, reflecting information each agency reports on complaints received, the basis of the complaints, and complaint resolutions. Part (d) shows the number of Title VI LEP complaints received for DOL, HUD, and SSA—agencies that received few complaints before or after 2000.

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<sup>3</sup> U.S. Department of Education, Office for Civil Rights, United States Department of Education’s Response to United States Commission on Civil Rights Language Assistance Interrogatory, Nov. 24, 2003 (hereafter cited as DOEd Interrogatory Response), attachment B—“List of Issues Relating to Limited-English Proficiency—From OCR’s Case Management System.”

<sup>4</sup> U.S. Department of Labor, Civil Rights Center, [Response to the] U.S. Commission on Civil Rights Language Assistance Interrogatory, Nov. 4, 2003, p. 6 (hereafter cited as DOL Interrogatory Response); U.S. Department of Health and Human Services, Office for Civil Rights, [Response to the] U.S. Commission on Civil Rights Language Assistance Interrogatory, Oct. 30, 2003, pp. 5–6, 31, and Attachment 5 (hereafter cited as HHS Interrogatory Response).

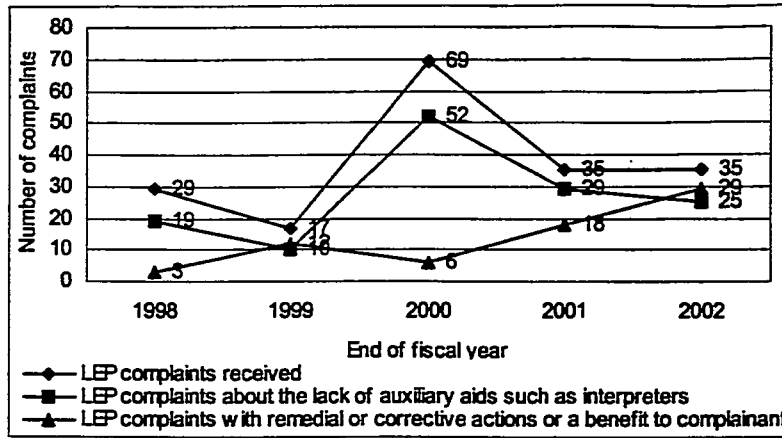
<sup>5</sup> DOL Interrogatory Response, p. 13.

<sup>6</sup> Social Security Administration, Response of Social Security Administration to Interrogatories and Document Requests from the U.S. Commission on Civil Rights, Nov. 25, 2003, p. 8 (hereafter cited as SSA Interrogatory Response).

<sup>7</sup> U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, [Response to the U.S. Commission on Civil Rights Language Assistance Interrogatory], Nov. 28, 2003, p. 10 (hereafter cited as HUD Interrogatory Response).

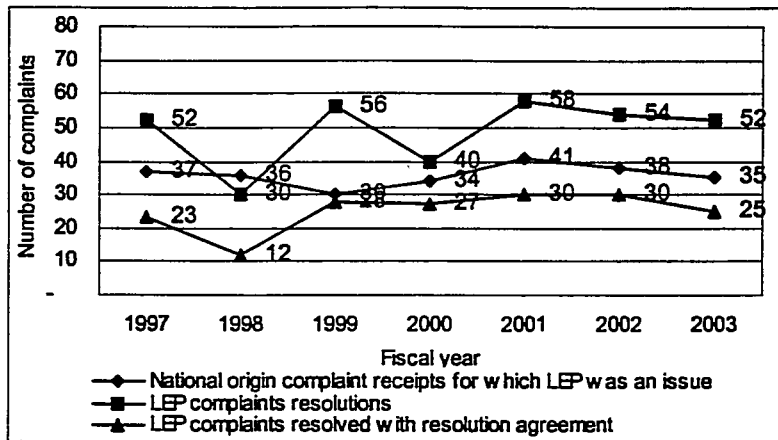
**FIGURE 5.1**  
**Selected Agencies' Title VI Complaint Processing, FY 1997–2003, or as Indicated**

**(a) Department of Health and Human Services**



Source: HHS Interrogatory Response, pp. 5–6.

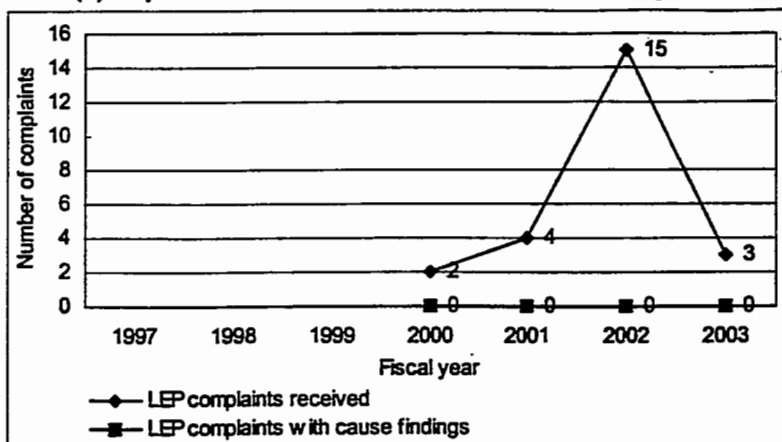
**(b) Department of Education**



Source: DOEd Interrogatory Response, items 10–14, pp. 5–7.

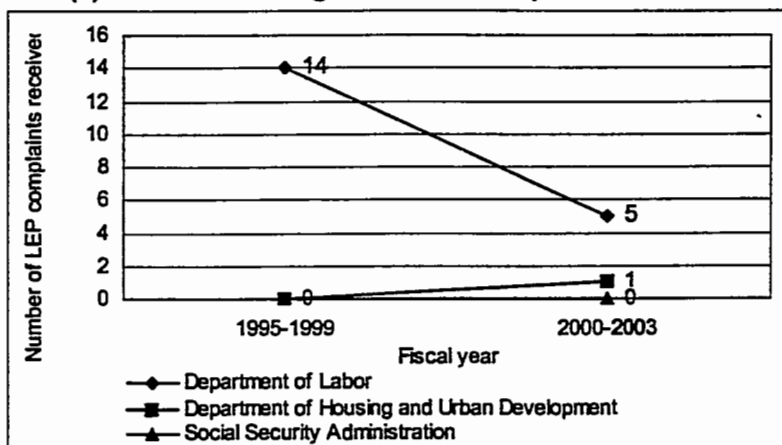
**FIGURE 5.1 (continued)**  
**Selected Agencies' Title VI Complaint Processing**

**(c) Department of Justice's Office of Justice Programs**



Source: DOJ/OJP Interrogatory Response, pp. 5-6.

**(d) Other Selected Agencies' LEP Complaints Received**



Sources: DOL Interrogatory Response, pp. 7, 13-14; HUD Interrogatory Response, p. 10; SSA Interrogatory Response, pp. 7-8.

The figure reveals that agencies have neither received nor processed many LEP complaints. Second, the attention the executive order brought to requirements for providing language assistance has not made a large difference in the number of LEP complaints agencies have received or processed. HHS is the only agency showing a major increase in LEP complaints received in 2000, but the increase had faded by 2002. HHS' FY 2000 to 2002 increase in the number of LEP complaints with reasonable cause findings is encouraging, but the number is still very small. Effective enforcement of equal language access should lead to increases in the numbers of LEP complaints agencies receive and process.

***Language Outreach and Education as a Title VI Duty***

The Commission has often concluded that agencies need to conduct more outreach and education, particularly to limited English populations, to inform potential victims and encourage

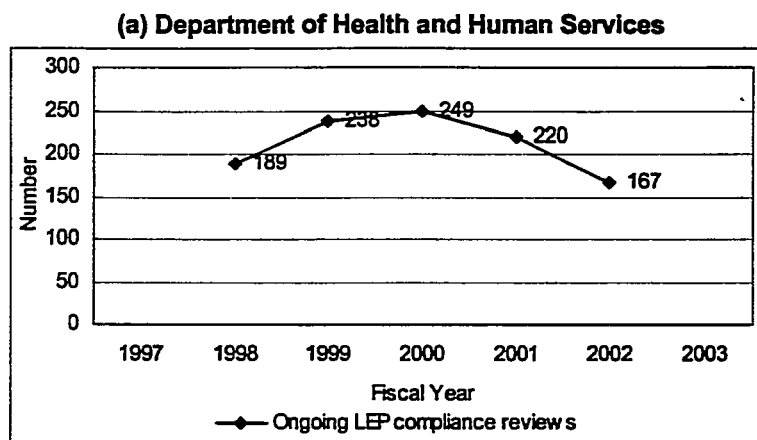
them to secure their civil rights through filing complaints.<sup>8</sup> Low numbers of LEP complaints may suggest to some that language access is not a problem. However, the low number of complaints may indicate that LEP persons do not have access to agencies' civil rights enforcement systems.

Agencies should conduct outreach to ensure that potential victims of discrimination know their civil rights and should establish systems to receive and process civil rights complaints and conduct compliance reviews of the federal recipients providing LEP persons' program services and benefits.<sup>9</sup>

### *Using Compliance Reviews to Prevent Discrimination*

Agencies must review their recipients' programs to ensure that they comply with regulations prohibiting discrimination. Figure 5.2 shows the numbers of compliance reviews three agencies conducted to examine the accessibility of programs and services to LEP populations.

**FIGURE 5.2**  
**Selected Agencies' Title VI Compliance Reviews Examining Accessibility of Programs and Services to LEP Populations, FY 1997–2003, or as Indicated**

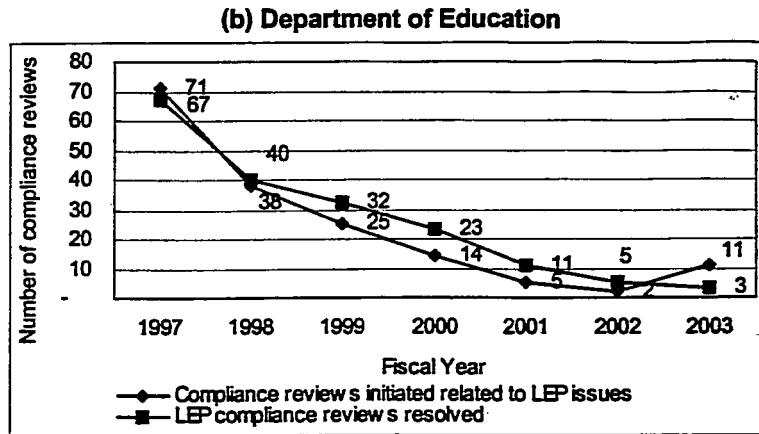


Source: HHS Interrogatory Response, pp. 6–8.

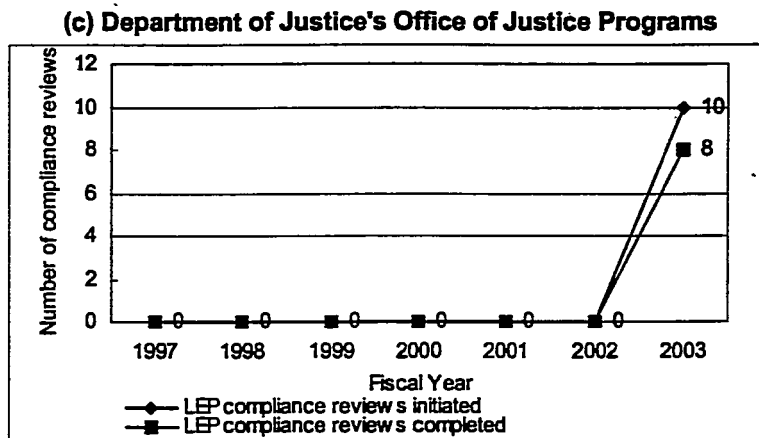
<sup>8</sup> USCCR, *Federal Title VI Enforcement*, pp. 58–60; USCCR, *Ten-Year Check-Up, Volume I*, pp. 33, 50.

<sup>9</sup> See USCCR, *Ten-Year Check-Up, Volume I*.

FIGURE 5.2 (continued)



Note: The number of reviews resolved is sometimes greater than those initiated because incomplete reviews from the previous year were carried over and then completed.  
 Source: DOEd Interrogatory Response, pp. 5-7.



Note: Department of Justice's Office of Justice Programs did not conduct LEP-related compliance reviews prior to FY 2003.  
 Source: DOJ/OJP Interrogatory Response, p. 6.

Except for HHS, the agencies the Commission examined have conducted few compliance reviews on LEP issues since FY 2000. Although DOEd initiated and resolved more reviews in earlier years, by 2000 it initiated only 14 reviews and resolved only 23 and has done fewer since then. DOJ's Office of Justice Programs (OJP) reported 10 LEP compliance reviews in FY 2003, and did not conduct compliance reviews before that year. Of the agencies not shown in the figure, DOL reported initiating only two compliance reviews of LEP issues and HUD initiated only one such review since 2000.<sup>10</sup> Only HHS had more than 100 ongoing reviews each year, and the number of these had declined from 249 in FY 2000 to 167 in FY 2002 (see Figure 5.2).

<sup>10</sup> See DOL Interrogatory Response, p. 14; HUD Interrogatory Response, p. 11. Agencies' civil rights resources significantly influence the number of complaints they investigate and compliance reviews they conduct. Thus, differences among agencies in their enforcement accomplishments are a reflection of civil rights resources.

Agencies do not always review each recipient's compliance every year. The Commission has urged agencies to, at a minimum, conduct desk audits capable of identifying recipients that have questionable practices so that they can receive on-site reviews.<sup>11</sup> In order to eliminate discrimination related to language barriers, agencies must examine the processes for identifying recipients they subject to compliance reviews. DOL, HHS, DOEd, HUD, and DOJ/OJP reported that frequency or patterns of complaints filed against a recipient provide evidence for selecting those they will review.<sup>12</sup> Other criteria agencies use to select which recipients to review include (1) civil rights program priorities, which may focus on a particular program or type of recipient;<sup>13</sup> (2) congressional requests;<sup>14</sup> (3) agency, state, or national data showing an influx of LEP persons to a particular area or a lack of representation of LEP persons in programs;<sup>15</sup> (4) information from state and local program administrators, including, for example, the methods of administration describing how programs and subrecipients have satisfied requirements to prohibit discrimination;<sup>16</sup> and (5) reports from community groups, consumers, and the media<sup>17</sup> or referrals from other agencies.<sup>18</sup> Agencies consider using a wide range of sources such as these to identify recipients that are not complying with language access requirements.<sup>19</sup>

In addition to how agencies select recipients to review, the information they examine for compliance determines the effectiveness of the enforcement program. For example, DOJ/OJP reports reviewing whether the recipient:

- Collects data on the size or proportion of its LEP service populations.
- Keeps records of the frequency of contacts with LEP individuals.
- Identifies the most important services that require language assistance.
- Effectively uses available community and financial resources.

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Annabelle T. Lockhart, director, Civil Rights Center, U.S. Department of Labor, letter to Les Jin, staff director, U.S. Commission on Civil Rights, June 25, 2004, p. 2 (hereafter cited as Lockhart, DOL letter).

<sup>11</sup> USCCR, *Ten-Year Check-Up, Volume I*, pp. 40, 42.

<sup>12</sup> DOL Interrogatory Response, p. 14; HHS Interrogatory Response, p. 7; DOEd Interrogatory Response, p. 7; HUD Interrogatory Response, p. 11; U.S. Department of Justice, Office of Justice Programs, Response of the Office of Justice Programs (OJP) to the United States Commission on Civil Rights' Interrogatories and Document Requests Applicable to Components of the United States Department of Justice, Jan. 22, 2004, p. 6 (hereafter cited as DOJ/OJP Interrogatory Response).

<sup>13</sup> HHS Interrogatory Response, p. 7.

<sup>14</sup> DOL Interrogatory Response, p. 14.

<sup>15</sup> DOEd Interrogatory Response, p. 7; DOJ/OJP Interrogatory Response, p. 6.

<sup>16</sup> DOEd Interrogatory Response, p. 7; DOL Interrogatory Response, p. 14.

<sup>17</sup> HHS Interrogatory Response, p. 7; DOEd Interrogatory Response, p. 7; DOJ/OJP Interrogatory Response, p. 6.

<sup>18</sup> HHS Interrogatory Response, p. 7.

<sup>19</sup> DOEd Interrogatory Response, p. 7. In addition, the Department of Labor (DOL) operates programs with regulations requiring certain recipients to establish and adhere to methods of administration (MOAs), that is, policies, procedures, and systems for satisfying requirements, such as those for equal opportunity. Recipients submit MOAs in writing, review, and update them every two years. DOL's civil rights staff examines language assistance policies contained within the MOAs to ensure that recipients address LEP individuals' needs and finds this an effective enforcement process. Lockhart, DOL letter, p. 6.

- Provides language assistance in the course of conducting its program.
- Has procedures for ensuring the competency of interpreters and the accuracy of written translations.<sup>20</sup>

One agency, HHS, demonstrates the effectiveness of its compliance review system. It tracks the number of corrective actions recipients have taken in the course of compliance reviews, the number of voluntary compliance agreements established, and increases in services to LEP persons after compliance reviews. For example, 53 percent of the compliance reviews HHS completed in FY 1998 to 2002 resulted in corrective actions. HHS measures the services to LEP persons before and after the compliance reviews in terms of (1) the numbers of LEP persons served; (2) the number of interpreter or bilingual contacts; (3) the number of interpreter or bilingual hours of service; (4) the number of services that drew upon interpreters, translated documents, or other LEP resources; and (5) the number of translated documents available. HHS also examines how the measures increased after it conducted compliance reviews. For example, the percentage of all persons served who were LEP increased from 6.8 percent before to 11.5 percent after the compliance reviews.<sup>21</sup> Such measures demonstrate the value of conducting LEP compliance reviews.

#### **Agencies' Language Assistance Accomplishments After the Executive Order**

The effect of the executive order (or lack of it) is evident in how agencies have planned but not necessarily implemented the means for providing language assistance. The Commission examined whether agencies designated resources to develop procedures and fulfill goals, were conducting assessments of language assistance needs, informing limited English proficient populations about the availability of language services, providing non-English documents pertaining to a variety of programs and in many different languages, and paying for any interpreter services and written translations of documents. However, as the following will demonstrate, in many instances agency implementation so far has focused more on developing guidance and plans than activities that would resolve language discrimination problems.

#### ***Structure, Funding, and Staffing to Promote Language Assistance***

The resources agencies need to effectively implement the executive order include a sufficient organizational structure, staff, and budget. Furthermore, they need staff and resources assigned to (1) administer language assistance implementation, i.e., to develop the guidance and plan and oversee applicable programs; (2) carry out LEP-related enforcement under Title VI; and (3) provide language assistance to LEP individuals. Agencies use previously established Title VI procedures, staff, and resources to investigate complaints of national origin discrimination with LEP implications.<sup>22</sup> However, their responses to the executive order require establishing new structures for other functions. As explained below, some established internal workgroups.

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<sup>20</sup> DOJ/OJP Interrogatory Response, pp. 6-7.

<sup>21</sup> HHS Interrogatory Response, p. 7.

<sup>22</sup> DOL Interrogatory Response, p. 1; HUD Interrogatory Response, p. 1.

***Executive Order Implementation Staff.*** Many agencies could not identify the specific funding or staff expended for implementing Executive Order 13166. Agencies cited various reasons for this inability. For example, the time staff spend reaching out to the LEP population could not be quantified because it is interrelated with other agency requirements and initiatives;<sup>23</sup> many employees, particularly those in field offices, already support the order by virtue of other duties;<sup>24</sup> and many departmental programs expend funding to provide meaningful LEP access, and the department does not allocate specific funding or staff, or track allocations for this by fiscal year.<sup>25</sup>

The Department of Labor can account for staff and resources it expends for implementing the executive order. Its Civil Rights Center has primary responsibility for enforcing federal nondiscrimination and equal opportunity statutes, regulations, and executive orders, including this one. Staffing for implementing Executive Order 13166 include:

- A full-time GS-14<sup>26</sup> technical advisor/expert coordinates DOL's effort and devotes approximately 50 percent of her time to LEP responsibilities.
- Three high-level Civil Rights Center staff developed DOL's guidance and plan and represent the agency at the Department of Justice's interagency LEP working group meetings.
- Two staff of the Civil Rights Division of the Solicitor's Office provide legal guidance on LEP-related initiatives. From August 2000 through October 2003, a GS-15 attorney advisor clocked 641.25 hours on LEP projects and another counsel devoted 76.5 hours to LEP projects.
- Agency heads, administrative officers of DOL agencies, and five agency staff members coordinate LEP efforts throughout the department. The agency staff serve as liaisons with the Civil Rights Center and form a workgroup on LEP to facilitate language assistance efforts. They range from GS-11 to GS-15 in grade and spend between 5 and 40 percent of their time on LEP projects.
- One DOL agency, the Employment and Training Administration (ETA), has formed an LEP workgroup tasking staff from program offices with contributing to the development of LEP technical assistance products.
- One DOL agency (ETA) designates an LEP regional liaison to assist grantees with LEP issues in each of its six regional areas.<sup>27</sup>

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<sup>23</sup> U.S. Equal Employment Opportunity Commission, [Response to the] U.S. Commission on Civil Rights Language Assistance Interrogatories, Dec. 4, 2003, p. 3 (hereafter cited as EEOC Interrogatory Response).

<sup>24</sup> DOEd Interrogatory Response, p. 1; HUD Interrogatory Response p. 1.

<sup>25</sup> DOEd Interrogatory Response, p. 1.

<sup>26</sup> The federal Office of Personnel Management classifies jobs on its general schedule (GS) into 15 grades according to qualifications and experience, with 15 being the highest level.

<sup>27</sup> DOL Interrogatory Response, pp. 1-2, 5-6, 15.



DOL's staffing shows that executive order implementation is supported through the civil rights unit, legal counsel, collaborative efforts within the department as a whole, agency components, and regional offices.

Even though many agencies were unable to isolate the funding or staffing expended for carrying out Executive Order 13166, their organizational structure showed designated offices in charge of functions related to the order. For example, the Department of Education charged its Office of Management with responsibility for guidance and oversight regarding language assistance for LEP individuals in federally conducted programs. Its Office for Civil Rights is responsible for issuing guidance to recipients of federal financial assistance, including direction regarding the rights of persons who are limited English proficient.<sup>28</sup> Similarly, the Department of Housing and Urban Development charged the Office of Programs within the Office of Fair Housing and Equal Opportunity (FHEO) with responsibility for implementing the executive order, including developing applicable Title VI procedures within all HUD programs and coordinating Title VI compliance efforts. The director of FHEO's Program Standards Division acts as the overall coordinator for the executive order.<sup>29</sup>

In contrast, the Equal Employment Opportunity Commission designated specific staff responsible for developing and executing a language assistance plan and for training other staff on the agency's responsibilities under the executive order. Agencywide, EEOC has 30 such staff, or "language assistance officers." There are two language assistance officers at headquarters and one or two in each of EEOC's 24 district offices and its Washington, D.C., field office. These EEOC staff persons spend only a portion of their time on tasks related to language barriers and vary widely in the job title and level of their other duties.<sup>30</sup>

Like EEOC, other agencies reported that LEP implementation activities were collateral duties assigned to staff with other responsibilities.<sup>31</sup> For example, the Department of Justice's Office of Justice Programs reports that eight attorneys spent 7 percent of their annual work time on matters related to implementing LEP guidance. Their activities included presenting information at conferences and initiating 10 on-site LEP compliance reviews in FY 2003.<sup>32</sup>

***Internal Agency Workgroups on LEP Issues.*** In addition to participating in the interagency LEP working group that DOJ organized, some agencies have formed their own task forces or workgroups to address LEP issues. DOL, HHS, and SSA have used this method to great effect.<sup>33</sup>

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<sup>28</sup> DOEd Interrogatory Response, p. 2.

<sup>29</sup> HUD Interrogatory Response, p. 1.

<sup>30</sup> EEOC Interrogatory Response, pp. 1-3. The language assistance officers' job titles and grade levels range from GS-15 grades that include a supervisory administrative judge, several office directors, and a deputy director; to GS-12s who are civil rights investigators. The middle grades—GS-13s and 14s—include enforcement managers and supervisors, a customer service supervisor, a senior attorney advisor, and program analysts. *Ibid.*, p. 2.

<sup>31</sup> HUD Interrogatory Response, p. 5.

<sup>32</sup> DOJ/OJP Interrogatory Response, p. 2.

<sup>33</sup> DOL Interrogatory Response, p. 6; HHS Interrogatory Response, pp. 2, 10-12; SSA Interrogatory Response, pp. 10-14.

HHS maintains two committees on language assistance—one for the department's LEP recipient guidance, and one to coordinate and address issues related to its federally conducted activities. The guidance committee, or LEP Council, consists of the director of the Office for Civil Rights and nine other senior staff mostly from the Office of the Secretary. The council published revised LEP recipient guidance in August 2003. Its other accomplishments include developing materials to assist recipients in applying the guidance, collecting information on LEP activities, and preparing reports. The council met regularly when revising the guidance, but only as needed since.<sup>34</sup>

HHS' other committee—the HHS Language Access Steering Committee—was formed to develop an LEP plan and is made up of senior policy and program staff from the Office for Civil Rights and affected HHS divisions. When developing the plan, the steering committee met every two weeks and required its members to identify the needs and resources of their respective components. After the plan was completed, the group met monthly or as needed. To develop the LEP plan, the committee designed a tool to assess the language access needs and resources of HHS programs, conducted the assessments, and developed component and department plans. It also inventoried non-English program documents, established a Web site of internal and external resources to improve language assistance, and provided a venue in which HHS components and programs share information. The resources it developed for its Web site include an annotated list of interpreters and translators, standards for bilingual personnel, Internet sources for language services, and HHS Web pages in non-English languages.<sup>35</sup>

Shortly before SSA separated from HHS in 1995, it chartered an intercomponent LEP workgroup. Today, the workgroup has 26 members from at least 16 agency components. It has met monthly since its conception and is responsible for all agency activities to improve services to LEP individuals.<sup>36</sup> Among its past accomplishments, activities, and future plans are:

- The workgroup created and, in September 1995, obtained agency approval for a set of policy principles, a vision statement to set the framework for improving the LEP public's access to services, and an implementation plan. Today, the workgroup continues to monitor LEP policies and practices to ensure their continued effectiveness, considers the needs of LEP individuals in all SSA policies and long-range business and strategic plans, and tracks LEP workload data to allocate resources according to needs.
- It expanded accessible bilingual staff by hiring more, identifying them and the languages staff speak, and training them in technical terms. The workgroup continues to provide training to upgrade language skills of its bilingual employees and offers training in cultural diversity for all employees, particularly public contact employees.
- The workgroup obtained third-party interpreter services; in October 2002, contracted for a 24-hour, 7-day-a-week national telephone interpreter service to assist SSA public contact employees; and in April 2001, added a Spanish language prompt to the agency's toll-free number providing both automated Spanish recordings for completing

<sup>34</sup> HHS Interrogatory Response, pp. 2, 10–11.

<sup>35</sup> *Ibid.*, pp. 2, 10–12.

<sup>36</sup> SSA Interrogatory Response, pp. 10–11.

transactions and direct access to Spanish-speaking employees. The group is working toward providing all automated notices in Spanish and, as a long-term goal, in languages other than English and Spanish.<sup>37</sup>

- To ensure that bilingual staff are qualified to act as interpreters, the workgroup established and updated policies for special interviewing situations involving LEP individuals and developed interview guides and training in Spanish and at least 12 other languages.<sup>38</sup>
- It collected language preference of SSA clients and identified needs for 27 languages as early as 1996. It continues to collect this information for individuals who prefer a language other than English and plans to expand the database to contain language preferences in 90 languages. The group also periodically re-evaluates the language groups most represented among the LEP public to determine shifts in the non-English-speaking population.<sup>39</sup>
- It has translated, distributed, and displayed “interpreter service policy” posters in 19 languages in more than 1,300 field offices.
- It has maintained SSA’s *En Español* Web site, which contains more than 100 Spanish language public documents, and in June 2001 established an SSA multilanguage gateway (at <http://www.ssa.gov/multilanguage/>) for the public to access documents translated into Spanish and 14 other languages. The workgroup translated 28 publications into Spanish and between one and 14 other languages, and tracks an inventory of documents and the languages into which they have been translated.
- It continues to use national and local media to disseminate information in languages other than English.<sup>40</sup>

To achieve accomplishments such as these, agencies must focus their resources well. SSA’s LEP workgroup and HHS’ LEP committees provide that focus.

***Staff Providing Language Assistance.*** In the course of implementing the executive order, some agencies counted their number of bilingual employees and the languages the employees spoke. At SSA, where more than 80 percent of employees provide direct public service, the agency had identified 6,591 bilingual employees who spoke 87 languages as of December 2000.<sup>41</sup> Other agencies varied in whether or not they counted or used bilingual staff.<sup>42</sup> Variation also exists between agency components. For example:

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<sup>37</sup> Ibid., pp. 11–14.

<sup>38</sup> Ibid., pp. 11–14, 19.

<sup>39</sup> Ibid., pp. 11–14. See also Social Security Administration, *SM 00510.523 Language Preference (LANGUAGE PREFERENCE) Data Line*, Mar. 12, 1999; and Social Security Administration, *SM 01005.545. FV Field – Foreign Language Code*, Feb. 28, 2002.

<sup>40</sup> SSA Interrogatory Response, pp. 11–14.

<sup>41</sup> Ibid., pp. 1, 18.

- DOL identified more than 880 multilingual staff, the proportions of which varied in its components. For example, its Civil Rights Center employs three fluent Spanish speakers in client-contact positions—nearly 10 percent of its headquarters staff of more than 30. Two divisions of the Employment Standards Administration employ 16 and 32 percent multilingual staff representing 20 and 30 languages, respectively. In the Mine Safety and Health Administration, 3.6 percent of the staff is bilingual, speaking primarily Spanish. Some offices and components had not formally assessed the staff's fluency in non-English languages.<sup>43</sup>
- DOEd has compiled a list of more than 90 staff who have identified themselves as having some level of proficiency in more than 30 languages. These staff have volunteered to act as interpreters in informal situations such as answering routine telephone calls from LEP customers. DOEd has not formally assessed their language capabilities or certified them as interpreters or translators. DOEd contracts with certified professionals to provide more formal services.<sup>44</sup>
- HUD has not performed a formal departmentwide assessment of staff, but employs staff who have skills in more than 22 languages. Three HUD Single Family Centers and their headquarters counterparts have a total of 29 bilingual staff. Although bilingual staff most often speak Spanish, one of these centers has staff speaking seven additional non-English languages.<sup>45</sup>

Some agencies are trying to increase multilingual staff using strategies such as recruiting and hiring bilingual staff and outsourcing work to contractors with bilingual employees.<sup>46</sup> Some agencies, including EEOC, HHS, and SSA, use selection criteria to identify and assess bilingual candidates.<sup>47</sup> One agency reported including proficiency in a non-English language among the rating criteria for selecting programmatic staff.<sup>48</sup> Other agencies advertise bilingual position descriptions.<sup>49</sup> For employment at EEOC, qualified job candidates obtain a bilingual certification from the U.S. Office of Personnel Management. During the hiring process, an interviewer engages the bilingual applicant in conversation to determine his or her comfort and skill in the non-English language.<sup>50</sup> At least one component at HHS has a contractor to administer language proficiency

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<sup>42</sup> The staffing level of bilingual employees depends on an agency's need for such services. In some cases, the mission of the agency and the population it serves do not necessitate frequent bilingual contact. Lockhart, DOL letter, p. 4.

<sup>43</sup> DOL Interrogatory Response, pp. 21–22.

<sup>44</sup> DOEd Interrogatory Response, pp. 10–11.

<sup>45</sup> HUD Interrogatory Response, pp. 5–7, 17; U.S. Department of Housing and Urban Development, "Department of Housing and Urban Development's Comment to U.S. Commission on Civil Rights, Office of Civil Rights Evaluation, 'Toward Unqualified Access: Eliminating Language Barriers from Federal Programs', June 29, 2004, p. 3 (hereafter cited as HUD Comments on USCCR Draft Report).

<sup>46</sup> DOL Interrogatory Response, pp. 22–23; HHS Interrogatory Response, p. 16.

<sup>47</sup> EEOC Interrogatory Response, p. 1; HHS Interrogatory Response, p. 16; SSA Interrogatory Response, p. 1.

<sup>48</sup> DOL Interrogatory Response, p. 23.

<sup>49</sup> See, e.g., EEOC Interrogatory Response, p. 15; HHS Interrogatory Response, p. 16.

<sup>50</sup> EEOC Interrogatory Response, p. 15.

exams in Spanish—both written and oral tests—to candidates applying for Spanish-speaking jobs. However, no similar tests are given to applicants who speak other non-English languages.<sup>51</sup>

As a result of using bilingual selection criteria and position descriptions for several years, SSA has hired 6,030 bilingual employees since 1993. Nearly 35 percent of all newly hired employees are bilingual.<sup>52</sup> SSA goal setting may prove effective in increasing bilingual hires. SSA's 2003 plan sets a standard for field office staffing "to achieve at least proportional representation for each language group constituting a significant portion (i.e., 10 percent) of the workloads generated in an office's service area."<sup>53</sup>

### *Ensuring Staff Is Qualified to Act as Interpreters and Translators*

Many agencies do not have policies, procedures, or standards for determining whether staff is qualified to act as interpreters.<sup>54</sup> One HHS component of an operating division assesses volunteer interpreters using a test of knowledge, covering medical terminology and the roles and responsibilities of an interpreter.<sup>55</sup> SSA also has issued agencywide policy to ensure that communications through interpreters and translated materials are accurate. For example, according to SSA standards, to be considered qualified the interpreter must be able to:

- Provide an accurate interpretation of questions and responses by both the non-English-speaking individual and the agency staff member. The interpreter must not initiate follow-up questions or infer facts or dates that the LEP individual or the staff member does not provide.
- Demonstrate familiarity with basic terminology used in the agency's program.
- Agree to comply with the agency's requirements concerning disclosure and confidentiality of information.
- Demonstrate no personal stake that would create a conflict of interest in the outcome of any case. An individual who is a beneficiary on the same record as the individual needing language assistance can act as an interpreter, provided there is no other conflict of interest.<sup>56</sup>

SSA procedures direct that, when a claimant needs an interpreter, staff identify one who is qualified. The agency maintains a list of qualified interpreters. Guidance warns against relying on bilingual employees who are not on the list of qualified interpreters without prior management approval. The guidance also suggests consulting the claimant's file for the name of

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<sup>51</sup> HHS Interrogatory Response, p. 16.

<sup>52</sup> SSA Interrogatory Response, pp. 1, 18.

<sup>53</sup> Social Security Administration, *For Persons With Limited English Proficiency: Social Security Administration's Plan for Providing Access to Benefits and Services for Persons with Limited English Proficiency*, January 2003, p. 3.

<sup>54</sup> DOEd Interrogatory Response, p. 11; HUD Interrogatory Response, pp. 17–18; EEOC Interrogatory Response, p. 15.

<sup>55</sup> HHS Interrogatory Response, p. 17.

<sup>56</sup> See, e.g., Social Security Administration, *DI 23040.001 DDS, Interpreters for Individuals with Limited English Proficiency (LEP) or Individuals Requiring Language Assistance*, Oct. 10, 2003, p. 2 (hereafter cited as SSA, Interpreter Policy, DI 23040.001 DDS). SSA has similar policy and guidance for each of six programs.

an interpreter who was used in a prior contact. If the need for an interpreter is discovered during an interview and a qualified interpreter is not available, the guidance suggests rescheduling the interview for another time.<sup>57</sup>

SSA's policy also explains what to do if an individual insists on having a minor child act as interpreter. Because a minor child rarely meets the qualifications (e.g., familiarity with technical terminology), the agency must also provide a qualified interpreter. The guidance directs staff to explain to the client (1) the complex and sensitive matters to be discussed, (2) that the minor child can identify the language the individual speaks, interpret the general meeting purpose, and, if necessary, assist in rescheduling a future meeting; and (3) that the agency cannot rely on a minor child to provide interpretation, although the agency will allow the child to participate in the meeting along with a qualified interpreter at the individual's request.<sup>58</sup>

Finally, SSA's policy explains how staff must interact with an interpreter. Staff should direct all questions and comments to the LEP person, not the interpreter; ask one question at a time and listen to the translated response before asking the next question; use short sentences; and document the file with the individual's language preference. The policy also explains procedures for using the individual's preferred interpreter and actions to take if the individual's interpreter is not satisfactory.<sup>59</sup>

In addition to ensuring the language skills of interpreters and translators, SSA policy dictates procedures on when to offer Spanish language program documents to LEP beneficiaries and for obtaining translations.<sup>60</sup> SSA has a translation section with a staff of 12 professionals who translate 36 non-English languages.<sup>61</sup>

The SSA procedures for ensuring that interpreters are competent and accurate are meritorious. At least one agency expressed interest in an interagency project to help the government develop policies and procedures for certifying interpreters.<sup>62</sup>

### *Efforts to Assess Language Assistance Needs*

Some agencies have been better able than DOJ to assess their language assistance needs of the LEP populations they serve. For example, SSA began collecting the language preferences

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<sup>57</sup> Social Security Administration, *DI 23040.001 Foreign Language Interpreters*, June 18, 2001.

<sup>58</sup> SSA, *Interpreter Policy*, DI 23040.001 DDS, p. 6.

<sup>59</sup> *Ibid.*, p. 7-9.

<sup>60</sup> See, e.g., Social Security Administration, *GN 00205.600 Spanish Language Applications*, May 8, 2002; *GN 99002.201 Identifying Individuals Who May Want Spanish Language Applications*, Jan. 27, 1999; *GN 99002.202 When to Offer Spanish Language Application*, Jan. 8 1997; *Translation Standards*, GN 00301.330 *Overview of Translation Process*, Oct. 10, 6, 1994; *GN 00301.335 Responsibilities and Duties of Translators*, Nov. 23, 1993; *GN 00301.340 Authorized Translators Defined*, Mar. 7, 1991; *GN 00301.345 Authorization of SSA Translators*, May 19, 2003; *GN 00301.350 Non-SSA Translator Services*, May 16, 2003; *Preparation of Translations*, GN 00301.390 *Procedures to be Followed by SSA Translators*, Jan. 13, 2000.

<sup>61</sup> Social Security Administration, *GN 00301.355 Translation Services in the Central Translation Section (CTS)*, Apr. 10, 2000, pp. 1-2.

<sup>62</sup> HUD Interrogatory Response, p. 18.

for its service population in at least 26 languages in 1996. Statistics from this source were presented in Chapter 2. SSA began collecting preference data for 89 languages in June 2004.<sup>63</sup> In addition to overall statistics on language preferences of SSA claimants, information is available according to program (e.g., for retirement claims or disability insurance claims) and geographic area. As a result of this information collection, SSA knows the preferred languages of the public it serves and where the language demands are located, and is able to make more informed staffing and resource allocation decisions.<sup>64</sup>

SSA contracts with a telephone service to provide interpretation for its field offices. The contractor provides monthly reports showing the number and duration of calls, costs, a list of languages requested, and other detailed information by region. From this second source of information, SSA can determine the number and percentage of language groups represented in the workload of each of its field offices and local service centers. Local managers and directors use this information to fill any available vacancies with appropriate bilingual employees.<sup>65</sup> Thus, SSA has a sophisticated system for assessing the language assistance needs and providing bilingual staff with expertise in the appropriate languages to address those needs.

The Department of Labor uses census data to estimate concentrations of groups that need language assistance in many programs. Using census estimates, DOL components have estimated the proportion of their service population that is LEP. For example, for three components of the Employment Standards Administration these estimates were 16, 25, and 0.5 percent.<sup>66</sup> For groups that are hard to find and undercounted in the census, such as seasonal farm workers, the department has an ongoing survey with information on English proficiency and native languages. Its National Agricultural Workers Survey (NAWS), last updated in 2001, shows that 84 percent of farm workers spoke Spanish, but 90 percent of foreign-born farm workers do not speak or read English fluently.<sup>67</sup>

SSA, DOEd, and DOL are examples of agencies that have compiled information on the LEP populations they serve. SSA asked its clients about their language preference. DOEd and DOL conduct surveys authorized by legislation. For example, Title III of the Elementary and Secondary Education Act authorizes the annual survey of state education agencies. Further, the Immigration Reform and Control Act of 1986 established NAWS.<sup>68</sup> Agencies are better able to

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<sup>63</sup> Eileen Houghton, senior advisor, Office of General Counsel, Social Security Administration, e-mail to U.S. Commission on Civil Rights, June 28, 2004, p. 4 (hereafter cited as Houghton e-mail).

<sup>64</sup> SSA Interrogatory Response, pp. 16–18.

<sup>65</sup> *Ibid.*, pp. 18–19.

<sup>66</sup> Annabelle Lockhart, director, Civil Rights Center, U.S. Department of Labor, Dec. 19, 2001, memorandum to Brenda Aguilar, re: OMB Data Request, pp. 1–5.

<sup>67</sup> U.S. Department of Labor, Office of the Assistant Secretary for Policy, “The National Agricultural Workers Survey,” Mar. 28, 2001, <<http://www2.dol.gov/asp/programs/agworker/naws.htm>> (last accessed Sept. 29, 2003).

<sup>68</sup> See U.S. Department of Education, Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students, *Survey of the States’ Limited English Proficient Students and Available Educational Programs and Services 2000–2001 Summary Report*, October 2002, p. 1. The Immigration Reform and Control Act of 1986 supports a contractor for the DOL survey. DOL Interrogatory Response, p. 16.

plan the language assistance they must provide with information about the LEP populations they serve.

### ***Outreach to Limited English Proficient Populations***

Reaching out to limited English proficient populations to ensure that they receive program services and benefits is key to complying with the executive order. Having programs and services explained in the languages LEP individuals understand is the best way for agencies to reach these populations. Each of the seven agencies reports using translated documents, telephone interpreter services, and non-English news, print, and broadcast media to reach LEP populations. Six of the seven agencies also report providing language assistance training to staff to ensure better communications with LEP individuals. Two agencies—DOJ and HHS—report having full-time interpreters; other agencies rely on bilingual staff instead of hiring full-time interpreters.<sup>69</sup>

Although all federal programs must be accessible to LEP persons, civil rights components have a special responsibility to reach out to LEP populations. The civil rights enforcement these components provide is the channel through which LEP persons can notify agencies of the language barriers they encounter. At least some federal agencies reported that their civil rights offices had access to telephone language lines that could translate calls, including complaints.<sup>70</sup>

Because LEP persons have encountered language barriers in the past, or are unaware of the assistance now available, agencies must actively seek to inform LEP persons of the availability of and their right to have language assistance. Agencies' primary means of reaching LEP populations is through grassroots linkages with advocacy groups and community organizations and presentations at conferences and informal meetings with stakeholders.<sup>71</sup> Some agencies carefully track the number and types of outreach activities their staff conduct. For example, HHS' officials reported conducting 378 outreach activities or projects on LEP issues—informal meetings and conference presentations—since August 2000.<sup>72</sup> Another agency, EEOC, conducted several town meetings for LEP persons because of its concern they were being underserved. One of the town meetings was conducted entirely in Spanish. In addition to providing educational presentations and translated materials, the town meetings offered procedures so that discrimination complaints could be filed on site.<sup>73</sup>

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<sup>69</sup> DOEd Interrogatory Response, p. 11; EEOC Interrogatory Response, pp. 10–11; HUD Interrogatory Response, p. 18; HHS Interrogatory Response, pp. 13–14, 17; U.S. Department of Justice, Civil Rights Division, Department of Justice Response to U.S. Commission on Civil Rights Language Assistance Interrogatories, Dec. 5, 2003, p. 26 (hereafter cited as DOJ Interrogatory Response); DOL Interrogatory Response, p. 24; SSA Interrogatory Response, p. 21.

<sup>70</sup> HHS Interrogatory Response, p. 4; HUD Interrogatory Response, p. 3.

<sup>71</sup> For example, staff of the Department of Education's Office for Civil Rights participates in community meetings and workshops for limited English proficient parents in schools and in district- and state-level conferences. DOEd Interrogatory Response, p. 4.

<sup>72</sup> HHS Interrogatory Response, p. 3.

<sup>73</sup> EEOC Interrogatory Response, p. 16.



Some agencies involved advocacy groups in developing LEP guidance and plans.<sup>74</sup> For example, DOJ's Civil Rights Division invited recipients, beneficiaries, and others to participate in the development of, and comment on, initial drafts of guidance. The interagency LEP working group and its subcommittees sought insight from advocacy groups in developing useful tools and information for DOJ's LEP Web site, and in assessing the progress of agencies and recipients in providing language assistance.<sup>75</sup>

Finally, some agencies have sought assistance from community groups in many ways that increase awareness of the rights of LEP populations and improve agencies' language assistance. Examples are:

- Asking representatives or members of LEP groups to role play situations requiring assistance during staff training.<sup>76</sup>
- Contracting with groups such as the National Council of La Raza and the National Puerto Rican Forum to provide the agency's services to LEP individuals.<sup>77</sup>
- Asking community groups to assist in writing or translating documents, identifying communication and dissemination strategies, developing public service announcements, providing language assistance, and assessing language needs.<sup>78</sup>
- Inviting LEP individuals and advocacy groups to participate in research activities such as customer surveys and focus groups, to determine what services are needed.<sup>79</sup>

All these activities aid two-way communication between advocacy groups and federal agencies that promote LEP populations' increased understanding of their rights and access to program services and benefits.

### *Providing Non-English Documents*

The availability of non-English documents is another area the Commission studied to assess agencies' efforts to overcome language barriers. In particular, the Commission examined whether agencies were providing non-English documents on the Internet. Placing translated documents on the Internet is an important means of overcoming language barriers because of the direct availability to computer literate LEP persons and also because of cost-effective dissemination to government officials, funding recipients, and advocacy groups who serve LEP persons.<sup>80</sup> Whether LEP persons receive the information directly from the Internet or indirectly through their representatives, agencies' provision of documents on the Internet promotes widely

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<sup>74</sup> DOJ Interrogatory Response, p. 24; DOL Interrogatory Response, p. 39; HHS Interrogatory Response, p. 23; EEOC Interrogatory Response, p. 16.

<sup>75</sup> DOJ Interrogatory Response, p. 24.

<sup>76</sup> Ibid. DOL Interrogatory Response, p. 40.

<sup>77</sup> DOL Interrogatory Response, p. 40.

<sup>78</sup> Ibid. HHS Interrogatory Response, pp. 23–24; HUD Interrogatory Response, p. 28.

<sup>79</sup> SSA Interrogatory Response, p. 24.

<sup>80</sup> DOJ Interrogatory Response, p. 11.

available, accurate translations of information LEP populations need to access federal programs and benefits.

This study is not the first to examine federal agencies' provision of multilingual documents on the Internet. In annual surveys of federal agencies' Web pages, Brown University researchers found that the use of foreign language features has increased. The study counted as foreign language features any accommodation to the non-English speaker, from a text translation to the free availability on the site of translating software to convert pages into a language other than English. In 2001, 25 percent of federal agencies' Web sites had foreign language features, but in 2003, the proportion had grown to 40 percent.<sup>81</sup> The study described two outstanding federal Web pages with foreign language features: (1) the Firstgov.gov portal for the federal government with a banner at the top of the screen by which one can translate the page into any of 25 other languages; and (2) the Social Security Administration's Web page with a menu bar through which the user may select translation into 15 languages.<sup>82</sup> The Commission's examination of a sample of executive branch agencies' Web sites looks at the availability of translated materials in more detail.

The Commission solicited information from the seven federal agencies on whether they offer English and non-English language (1) notices of the right to free language assistance services; (2) civil rights fact sheets, particularly for national origin discrimination; (3) information on how to file a discrimination complaint; and (4) information on the agency's programs, benefits, and eligibility criteria. It also asked the agencies in which languages the four items were available and whether the items were available on the Internet. The results of this solicitation are shown in Table 5.1 below.<sup>83</sup>

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<sup>81</sup> Darrell M. West, Brown University, "State and Federal E-Government in the United States, 2003," p. 16, <<http://www.insidepolitics.org/egovt03us.html>> (last accessed Oct. 15, 2003). Conducted in June and July 2003, the study examined Web sites of the executive and legislative branches of the federal government—approximately 35 of the former agencies and 20 of the latter. It also studied states' Web sites. Because the states' are recipients for many of the federally conducted programs discussed in this, the Commission's report, their progress in adopting foreign language features may indicate the status of recipient's use of such features. The report found that 5 percent of states had foreign language features in 2001 and 12 percent had them in 2003. Having foreign language features was only one of many design aspects of Web pages that the study examined. *Ibid.*, pp. 2, 16, 19–20.

<sup>82</sup> *Ibid.*

<sup>83</sup> Although the Department of Justice (DOJ) has nine components charged with language assistance responsibilities, only the Office of Justice Programs is represented in the figure. DOJ submitted information on other components too late for inclusion in the Commission's report. DOJ notes that some of its components, such as the Immigration and Nationalization Service, previously part of DOJ although now contained within the Department of Homeland Security, would increase the number and languages of translated documents exponentially. DOJ Comments on USCCR Draft Report, p. 21.

**TABLE 5.1**  
**Availability of English and Written Translated Documents Among the Seven Selected Agencies**

	(A) Notices of Free Language Assistance		(B) Civil Rights Fact Sheets		(C) Complaint Filing Information		(D) Program Information	
	Available	On Internet	Available	On Internet	Available	On Internet	Available	On Internet
Pamphlets or brochures are available in English	DOEd, HHS, SSA, EEOC, and HUD	DOEd, HHS, SSA	All 7 agencies	All 7 agencies	All 7 agencies	All 7 agencies	6 agencies (na for EEOC)	6 agencies (na for EEOC)
<b>Number of non-English languages in which agencies have one or more documents</b>								
SSA	21	15	na	na	na	na	15	9
HHS	9	9	7	7	7	7	19	18
DOEd	1	1	10	0	11	0	10	4
EEOC	1	0	12	6	12	6	na	na
DOJ <sup>1</sup>	0	0	16	16	2	0	7	7
DOL	0	0	2	10	6	2	11	12
HUD	0	0	2	1	3	1	8	2
<b>Number of selected agencies with one or more documents in the specified non-English languages</b>								
Spanish	4	3	6	5	6	4	6	6
Vietnamese	2	2	5	4	5	2	6	6
Chinese <sup>2</sup>	2	2	4	3	4	1	6	4
Korean	2	2	5	4	3	2	6	3
Laotian	2	1	1	1	1		2	2
Hmong	2	1	2	1	1		3	1
Thai							2	2
Khmer (Cambodian)	2	1	1	1	1		1	1
Japanese	2	1					3	3
Russian	2	2	3	4	2	2	2	2
Croatian				1				
Polish	1	1	1	1	1	1	1	2
German							2	2
French	1	1	2	2	1		5	3
Italian	1	1					3	2
Greek	1	1					1	1
Armenian	1	1					1	1
Portuguese	1	1					4	3
Hindi			3	1	2		1	
Urdu			3	1	2		1	
Punjabi			3	1	2		1	
Farsi	1	1	3	1	2		2	
Arabic	1	1	3	2	2	1	3	2
Ethiopian/Amharic				1			1	
Somali				1				
Marshallese							1	
Tagalog	1	1	2	2	1	1	2	2
Samoan							1	1
Tongan							1	
Haitian [Creole]	1	1	2	3	5	2	1	1
Navajo								1

<sup>1</sup>Nine Department of Justice components have language responsibilities, but only the Office of Justice Programs is shown.

<sup>2</sup>Although Cantonese and Mandarin are Chinese languages, there is only one written Chinese language.

"na"—not applicable.

Sources: Compiled from DOEd Interrogatory Response, pp. 12–14; EEOC Interrogatory Response, pp. 12–14; HHS Interrogatory Response, pp. 18–19; HUD Interrogatory Response, pp. 19–21; DOJ Interrogatory Response, pp. 26–28; DOJ/OJP Interrogatory Response, pp. 9–10; DOL Interrogatory Response, pp. 25–29; SSA Interrogatory Response, pp. 21–23; and other sources.

In July 2003, the Commission examined 17 other federal agencies' Web sites for the presence of non-English documents, including notices of, or other information about, the right to receive free language assistance, civil rights fact sheets, and complaint filing information. This Internet survey also recorded the number of languages in which the non-English documents were available. The results of the Internet search are shown below in Table 5.2.

**TABLE 5.2**  
**Availability of English and Written Translated Documents Among 17**  
**Additional Agencies Searched on the Internet**

	(A) Notice or Information about Free Language Assistance	(B) Civil Rights Fact Sheets	(C) Complaint Filing Information
<b>Pamphlets or brochures are available in ...</b>			
... English	12	10	11
... Spanish	2	2	1
non-English ... languages other than Spanish	0	1	1

Source: Compiled by U.S. Commission on Civil Rights from search of Internet documents.

For the four types of documents (i.e., notices, fact sheets, complaint filing information, and program information), Table 5.1 has three parts. The first shows whether English pamphlets exist and are available on the Internet. The second part of the table shows the number of languages for which each agency has the documents either available or on the Internet. For example, SSA offers notices of the right to free language assistance in 21 languages. The third part shows the number of agencies that offer documents in each of the 34 languages agencies named in this study. Table 5.2 shows whether an Internet search of 17 additional agencies' Web sites revealed three types of documents—notice, fact sheets, and complaint filing information—in English, Spanish, or other non-English languages.

The information in these tables must be interpreted carefully. First, the Commission used a lenient criterion for designating an agency as offering documents in a non-English language. An agency is shown as having such documents if any component of the agency has even a single document in the specified language. For example, the Department of Labor has several other components administering numerous programs providing assistance to recipients.<sup>84</sup> The Employment Training Administration has commendable program information in Japanese, Portuguese, Hmong, Italian, French, and German. Yet, DOL did not report the languages of translated documents for its other components and programs.<sup>85</sup> Another example is HHS, shown

<sup>84</sup> General Services Administration, *Catalog of Federal Domestic Assistance*, <<http://www.cfda.gov>> (last accessed Mar. 10, 2004).

<sup>85</sup> See DOL Interrogatory Response, pp. 25–29. In June 2004, DOL officials stated that other components translated a plethora of information into Spanish, Vietnamese, Chinese, Cambodian, Laotian, Haitian, and Korean. Lockhart, DOL letter, p. 5. They did not indicate whether each of the other components had translations in every one of these

in Table 5.1 as having program information in 19 languages. HHS lists 10 agency components with LEP activities for federally conducted programs. All have either a Spanish Web site or documents translated into Spanish on a Web site. However, only four components offer documents in seven or more non-English languages. Two components post documents in only an Asian language in addition to Spanish.<sup>86</sup> Thus, Table 5.1 shows agencies that have begun to provide assistance in various languages. This lenient criterion is far from the goal of having non-English materials for every program an agency operates.

Second, in conducting this research, Commission staff found that agencies' available non-English materials were growing rapidly and will quickly exceed the level documented.

Tables 5.1 and 5.2 show that:

- Most of the selected agencies (as appropriate) and a majority of the additional agencies present civil rights fact sheets and information on where and how to file a complaint in English.
- As appropriate, all selected agencies also post civil rights fact sheets and complaint filing information in Spanish. However, if the 17 additional agencies offered civil rights information in Spanish, it was rarely evident in a search of the Internet.
- Although most agencies offer notices of the right to receive free language assistance in English, they do not present them in non-English languages, except possibly Spanish. Of the seven selected agencies and the 17 additional ones, only SSA and HHS posted notices in languages other than English and Spanish.
- All selected agencies offered some program information translated into Spanish, Vietnamese, Chinese, Korean, and at least a few other non-English languages. As noted earlier, however, Table 5.1 does not indicate whether information is translated for all, or even most, of an agency's programs.
- Not all translated materials are available on the Internet. In particular, DOEd presented civil rights fact sheets and complaint filing information in 10 non-English languages, but none of these was accessible on the Internet. Only half of EEOC's translated fact sheets and complaint filing instructions are on its Web site.<sup>87</sup>

As one example of an agency providing language assistance through the Internet, HHS' Office for Civil Rights offers a Spanish language discrimination complaint form that can be downloaded from the Web site and filed electronically, mailed, or faxed to the appropriate regional office. A step-by-step primer, also available in Spanish, explains the complaint filing

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languages. Similarly, one should not construe from the information in table 5.1 that because one component has non-English documents, all of an agency's components have translated documents in each of the same languages.

<sup>86</sup> U.S. Department of Health and Human Services, "HHS Federal Conducted Activities: Activities to Assist Non-English Speakers to Gain Meaningful Access to HHS Services and Programs," Oct. 20, 2003.

<sup>87</sup> Lisa Fisher, acting director of communications and legislative affairs, Equal Employment Opportunity Commission, letter to Les Jin, staff director, U.S. Commission on Civil Rights, June 25, 2004, p. 1 (hereafter cited as Fisher, EEOC letter).

process.<sup>88</sup> In addition, HUD's fair housing discrimination complaint form is available in Spanish on its Web site. Chinese and Vietnamese versions are contained in the pamphlet, "Are You a Victim of Discrimination," also on the site.<sup>89</sup>

The Commission also studied where and how agencies' translated materials were available on the Internet. Most agencies reported that their non-English civil rights notices, fact sheets, and information were not available directly from the agency's home page or, in some cases, from the agency's civil rights page.<sup>90</sup> For example, EEOC's home page provides a link to a publications site from which non-English fact sheets and complaint filing information are obtainable, although EEOC plans to launch a Spanish Web site in 2004.<sup>91</sup> The Commission's Internet search showed that a few agencies provide LEP persons language assistance through Spanish language versions of their Web sites. Often, however, the Spanish language Web sites provide less information than their English counterparts.<sup>92</sup> An even more elaborate solution for providing LEP persons Internet access to documents in other languages is SSA's multilanguage gateway. It links to documents, for example, the notice of the right to receive free interpretation, in 15 languages, not just Spanish.<sup>93</sup> Finally, the Bureau of Citizenship and Immigration Service, a component of the newly formed Department of Homeland Security, has a home page link to free electronic translation software.<sup>94</sup> The accuracy of the electronic translation is not guaranteed.<sup>95</sup>

### *Costs of Providing Language Assistance*

Information on agencies' costs for providing language assistance in their federally assisted and conducted programs was often not available. Some of the reasons are:

- Efforts to reach LEP persons and ensure their meaningful access to services are an integral part of the agency's goals and activities.<sup>96</sup>
- Expenditures related to the executive order for language assistance are simply not tracked separately.<sup>97</sup>
- Costs of providing language assistance are expended in field offices that do not report expenditures to headquarters.<sup>98</sup>

<sup>88</sup> HHS Interrogatory Response, p. 4.

<sup>89</sup> HUD Comments on USCCR Draft Report, p. 3.

<sup>90</sup> EEOC Interrogatory Response, pp. 12-14; HUD Interrogatory Response, pp. 19-21; DOJ Interrogatory Response, pp. 26-28; DOJ/OJP Interrogatory Response, pp. 9-10; DOL Interrogatory Response, pp. 25-29; HHS Interrogatory Response, pp. 18-19; DOEd Interrogatory Response, pp. 12-14; SSA Interrogatory Response, pp. 21-23.

<sup>91</sup> EEOC Interrogatory Response, pp. 13-14.

<sup>92</sup> U.S. Commission on Civil Rights' Internet research, July 2003.

<sup>93</sup> See <<http://www.ssa.gov/Multilanguage/index.htm>> (last accessed Feb. 5, 2004).

<sup>94</sup> See <<http://www.immigration.gov/graphics/aboutus/index.htm>> (last accessed July 29, 2003).

<sup>95</sup> The Department of Justice questions the propriety of agency reliance on translation software even as an interim substitute for more appropriate language services. DOJ Comments on USCCR Draft Report, p. 22.

<sup>96</sup> EEOC Interrogatory Response, item 2, pp. 1-2.

<sup>97</sup> DOL Interrogatory Response, p. 3; EEOC Interrogatory Response, p. 11.

- Expenses were paid through a multiyear contract with the result that annual costs are unavailable.<sup>99</sup>
- With regard to translation and interpreter services, the tasks were performed in-house using bilingual staff who have other assigned duties.<sup>100</sup>

Nonetheless, both the Office of Management and Budget and Congress have studied the cost of implementing the executive order. In responding to these efforts, some agencies, such as HHS, have compiled detailed information.<sup>101</sup>

The Commission asked each of the seven agencies to provide the costs of document translations, telephone interpreter services, full-time staff interpreters, non-English news or print media, non-English broadcast media (i.e., radio and television), billboard and poster ads, and language assistance training for staff. The agencies were able to provide at least part, if not all, of their expenditures for written translations and telephone interpreter services (see below). However, few agencies were either spending or knew their expenses for these other categories. In addition, some of the costs were one-time expenses rather than ongoing. Thus, agencies had a large expenditure one year, but no costs associated with prior or later years.<sup>102</sup>

Only two agencies—DOJ and HHS—reported using full-time staff interpreters. Neither agency was able to give the costs associated with their use.<sup>103</sup>

All seven agencies reported using news, print, and broadcast media, and billboards and poster ads. However, only two—HUD and SSA—were able to provide the costs associated with them. In FY 2003, HUD spent \$904,450 on media, which included a \$900,000 media grant, and another \$23,400 for printing logos and posters. In FY 2002, SSA spent \$50,000 on billboards or poster ads and had additional unknown expenditures.<sup>104</sup>

Only SSA could state the costs associated with providing staff with language assistance training. It spent \$300,000 in FY 2002.<sup>105</sup> Other agencies spent zero or an unknown amount on this type of training.<sup>106</sup>

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<sup>98</sup> DOL Interrogatory Response, p. 3; EEOC Interrogatory Response, p. 11.

<sup>99</sup> DOL Interrogatory Response, p. 3.

<sup>100</sup> Ibid. EEOC Interrogatory Response, p. 11.

<sup>101</sup> U.S. Department of Health and Human Services, *Response to Office of Management and Budget Request for Information on the Costs of Implementation of Executive Order 13,166 (Improving Access to Services for Persons with Limited English Proficiency)* House Report 107-575, Sept. 12, 2003 (hereafter cited as HHS, Response to OMB Request for Costs); U.S. Department of Health and Human Services, Office for Civil Rights, *Report to Congress: Limited English Proficiency*, Oct. 8, 2003.

<sup>102</sup> DOL Interrogatory Response, pp. 23–24; SSA Interrogatory Response, p. 21; HHS Interrogatory Response, p. 17; DOEd Interrogatory Response, p. 11; EEOC Interrogatory Response, pp. 10–11; DOJ Interrogatory Response, p. 26; DOJ/OJP Interrogatory Response, pp. 2, 9; U.S. Department of Justice, Community Relations Service, *Interrogatories and Document Requests Applicable to Components of the United States Department of Justice*, Jan. 22, 2004, p. 6 (hereafter cited as DOJ/CRS Interrogatory Response).

<sup>103</sup> DOJ Interrogatory Response, p. 26; HHS Interrogatory Response, p. 17.

<sup>104</sup> HUD Interrogatory Response, p. 18; SSA Interrogatory Response, p. 21.

<sup>105</sup> SSA Interrogatory Response, p. 21.

**Costs of Written Translations.** The amounts agencies spent on written translations are vastly different and are shown in Figure 5.3. These costs include translating brochures and other documents that are provided to program participants and beneficiaries. They may also include translating electronic documents, such as Web site services and news releases. For example:

- DOL's Office of Public Affairs spent \$3,079 in FY 2002 for 61 one-page news releases in non-English languages.<sup>107</sup>
- DOL's Employment and Training Administration (ETA) has an electronic system that over the Internet provides a job bank, career information, the location of services, and current labor market information to the public in an estimated 1,962 "One-Stop Career" centers nationwide. It provided \$875,000 in FY 2003 and 2004 for translating this system into nine languages. The finished product has software to dynamically translate bi-directionally in seven languages and uni-directionally from English into two other languages.<sup>108</sup>
- Another DOL/ETA database, O\*NET, offers human resources information, for example, to explore careers, obtain vocational counseling, develop job orders and position descriptions, and align training with current workplace needs. Its information on 950 occupations showing worker characteristics, worker requirements, experience requirements, occupational requirements, and occupational characteristics was translated into Spanish and is now available on the Internet. The conversion and verification of the database accuracy cost approximately \$158,000.<sup>109</sup>

Translation costs may also include printing costs for non-English documents. For example, in FY 2000, one DOL component expended \$14,335 on written translations and \$13,310 on printing the translated documents.<sup>110</sup>

Taking note of the range of costs that are represented in the estimates, Figure 5.3 shows that HHS spent more than \$2.9 million on the translation of documents in FY 2002 and 2003,<sup>111</sup> an average of \$1.45 million per year. In contrast, EEOC spent only \$5,044 in FY 2003, although the amount is only headquarters expenditures and reflects a much smaller agency and budget than HHS'.<sup>112</sup>

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<sup>106</sup> DOL Interrogatory Response, pp. 23–24; HHS Interrogatory Response, p. 17; DOEd Interrogatory Response, p. 11; EEOC Interrogatory Response, pp. 10–11; DOJ Interrogatory Response, p. 26; DOJ/OJP Interrogatory Response, pp. 2, 9; DOJ/CRS Interrogatory Response, p. 6. The Equal Employment Opportunity Commission provides staff training, but could not specify costs for any devoted to language assistance. Fisher, EEOC letter, p. 1.

<sup>107</sup> DOL Interrogatory Response, p. 2.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid., p. 3.

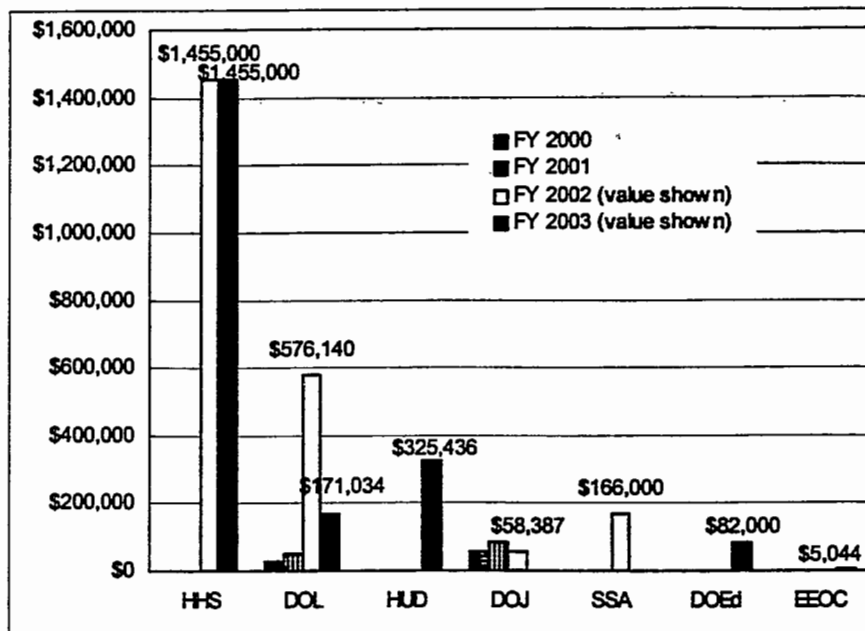
<sup>110</sup> Ibid., p. 23.

<sup>111</sup> HHS, Response to OMB Request for Costs, p. 1.

<sup>112</sup> EEOC Interrogatory Response, pp. 10–11; Fisher, EEOC letter, p. 1.



**FIGURE 5.3**  
**Agencies' Expenditures for Translations**



Source: HHS, Response to OMB Request for Costs, p. 1; DOL Interrogatory Response, pp. 23–24; HUD Interrogatory Response, p. 18; DOJ/OJP Interrogatory Response, pp. 2, 9; SSA Interrogatory Response, p. 1; DOEd Interrogatory Response, p. 11; EEOC Interrogatory Response, pp. 10–11.

Translation costs vary by language. Estimates are:

- Spanish: \$0.20 per word; \$185 per 1,000 words; \$20–\$40 per page.
- Russian: \$260 per 1,000 words.
- Chinese: \$340 per 1,000 characters; \$20 per page.
- Portuguese: \$20 per page.
- French: \$40 per page.
- Languages other than Spanish: \$0.32 per word.<sup>113</sup>

In another example, DOL's Women's Bureau paid \$878 to have a reference guide translated into Korean. It paid another \$2,319 to have the publication printed.<sup>114</sup>

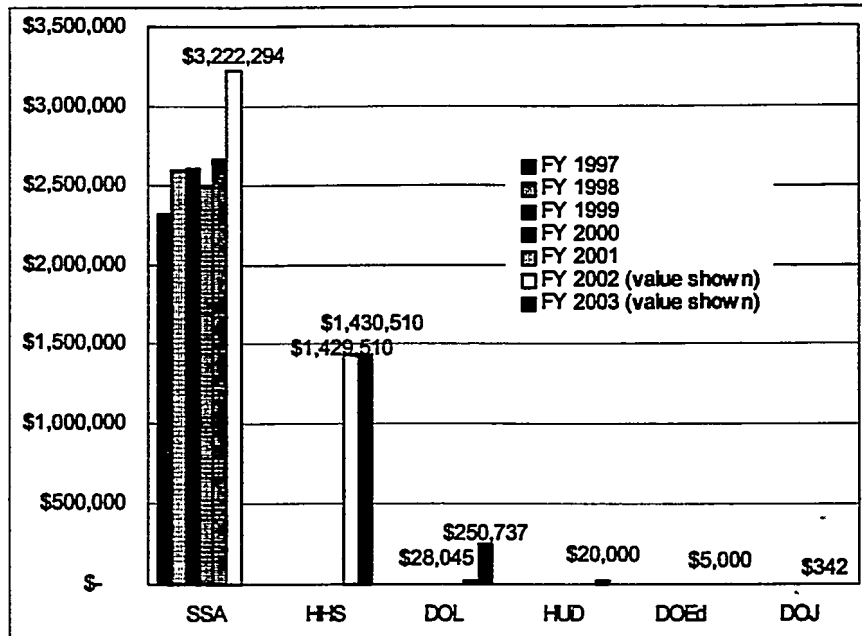
**Costs of Interpreter Services.** The costs of telephone interpreter services are shown for the seven agencies in Figure 5.4. SSA has spent between \$2.3 million and \$2.7 million each year from FY 1997 to 2001 and \$3.2 million in FY 2002 on interpreter services. These services are

<sup>113</sup> HHS, Response to OMB Request for Costs, p. 3.

<sup>114</sup> DOL Interrogatory Response, p. 3.

for its field offices and Office of Hearings and Appeals.<sup>115</sup> Recall, nearly all of SSA's programs are federally conducted—80 percent of its employees are in public contact positions.<sup>116</sup>

**FIGURE 5.4**  
**Agencies' Expenditures for Interpreter Services**



Source: SSA Interrogatory Response, pp. 1, 21; HHS, Response to OMB Request for Costs, p. 1, and chart 4; DOL Interrogatory Response, pp. 23–24; HUD Interrogatory Response, p. 18; DOEd Interrogatory Response, p. 11; DOJ/OJP Interrogatory Response, pp. 2, 9.

HHS reported expenditures on telephone interpreter services of \$1.4 million in FY 2002 and 2003;<sup>117</sup> other agencies spent far less. For example, the table shows that agencies such as DOEd and HUD/FHEO spent only \$5,000 and \$20,000 in FY 2003.<sup>118</sup> DOEd reports that its contract for a telephonic interpreter service costs \$1.60 per minute.<sup>119</sup> The costs of EEOC's telephone interpreter services were not known.<sup>120</sup>

<sup>115</sup> SSA Interrogatory Response, pp. 1–2. In FY 2003, the Social Security Administration began contracting for telephone language interpretations and tracks the services separately from the expenditures for field offices and the Office of Hearings and Appeals. The services cost \$724,723 in FY 2003. Houghton e-mail, p. 2.

<sup>116</sup> SSA Interrogatory Response, p. 18.

<sup>117</sup> HHS, Response to OMB Request for Costs, chart 4.

<sup>118</sup> DOEd Interrogatory Response, p. 11; HUD Interrogatory Response, p. 18.

<sup>119</sup> DOEd Interrogatory Response, p. 2.

<sup>120</sup> EEOC Interrogatory Response, p. 10.

## **Longstanding Programs That Could Enhance Executive Order Implementation**

Some existing federal programs unrelated to Title VI or the executive order, even when conceived for different purposes, may or could assist in overcoming language barriers. For example, certain federal agencies bear responsibilities for conducting educational programs, ensuring the quality of data collections, contracting with small or disadvantaged businesses, and maintaining occupational information. The Commission questions whether these or other such resources can better increase English proficiency of, and improve professionals' communication with, LEP populations; augment information about language needs; expand the availability of interpreters, translators, and non-English media through which to reach LEP persons; and aid agencies in ensuring the accuracy of interpretation and translations.

### ***Education, Professional Schools, and Training Programs***

Programs that help overcome language barriers include (1) English-as-a second language (ESL) instruction or other appropriate educational methodologies for increasing students' English proficiency; (2) adult education for limited English proficient persons; (3) instruction for teachers who provide ESL classes and other curriculum to LEP students; and (4) lessons on translating technical terms for professionals in fields such as health care, law enforcement, and the judicial system. For example, Title III of the No Child Left Behind Act provides English language acquisition and language enhancement.<sup>121</sup> DOEd's Office of Language Acquisition identified six programs providing education for ESL students, of which each also contains components for teachers' professional development and parental involvement, and some of which train bilingual school psychologists and counselors.<sup>122</sup> In addition, elementary and secondary school legislation authorizes two programs that support LEP students along with English proficient students. From 16 to 18 percent of the students in these programs were LEP.<sup>123</sup> Finally, the Adult Education and Family Literacy Act authorizes a state grants program providing adult education in literacy and English for second language learners.<sup>124</sup> The education programs improve elementary and secondary students' and adults' English skills and reduce the need for agencies to provide language assistance to LEP individuals who are eligible for federal programs and benefits.

DOEd also identified five programs it funds to increase the number of bilingual professionals, which are described in Table 5.3. In justifying the need for these programs, an FY 2000 DOEd budget request explained that fewer than half of LEP students have regular teachers

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<sup>121</sup> Department of Education programs were previously funded under the Elementary and Secondary of 1965, Pub. L. No. 89-10, 79 Stat. 7 (codified as amended in scattered sections of 20 U.S.C.). The reauthorization of this act, passed in January 2002, was designated the No Child Left Behind Act, Pub. L. No. 107-110, § 1, 115 Stat. 1425 (2002) (codified in scattered sections of 20 U.S.C.).

<sup>122</sup> Corresponding to the change in law, the Office of English Language Acquisition, now administering programs under Title III of the No Child Left Behind Act, was previously known as the Office of Bilingual Education and Minority Languages Affairs and administered programs under Title VII of the Elementary and Secondary and Education Act. DOEd Interrogatory Response, attachment "Title III—Office of English Language Acquisition (OELA) Program, Expenditures Since 1997–2003 and Description of the Programs."

<sup>123</sup> DOEd Interrogatory Response, pp. 28–29.

<sup>124</sup> *Ibid.*, p. 29.

certified in either bilingual education or ESL. Many teachers who previously taught only English proficient students had LEP students in their classes and needed training to educate LEP students effectively.<sup>125</sup>

**TABLE 5.3**  
**Department of Education**  
**Programs to Increase the Number of Bilingual Professionals**

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1.	Teachers and Personnel Grants provide in-service and pre-service professional development activities for educational professionals participating, or planning to participate, in instructional programs for LEP students.
2.	Training for All Teachers provides for incorporating effective instructional and assessment methodologies and courses for LEP students into professional development programs (even when the programs are not specifically designed to serve LEP students).
3.	The Career Ladder Program aims to upgrade the qualifications and skills of teacher aides and other educational personnel who are not certified, or not specifically certified in bilingual education. It also provides help in recruiting and training secondary school students as bilingual education teachers.
4.	The Graduate Fellowship program provides assistance at the masters, doctoral, and post-doctoral levels in fields related to bilingual education. It requires participants to subsequently work in the field of bilingual education for a period equal to the length of the fellowship or repay the fellowship amount.
5.	The National Professional Development Program supports activities to improve classroom instruction for LEP children and assist educators working with such children in meeting high professional standards such as certification and licensure for teachers who work in language instruction programs or serve LEP children.

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Source: DOEd Interrogatory Response, p. 27, and attachment "Title III—Office of English Language Acquisition (OELA) Program Expenditures Since 1997–2003 and Description of the Programs"; FedGrants, "National Professional Development Program" <<http://www.fedgrants.gov/Applicants/ED/HRO/DCMGC/ED-GRANTS-020404-003>> (last accessed Mar. 12, 2004).

HHS listed a few programs, shown in Table 5.4, designed to increase the number of multilingual health care professionals.

**TABLE 5.4**  
**Department of Health and Human Services**  
**Programs to Increase the Number of Bilingual Health Care Professionals**

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1.	A Primary Care Medicine and Dentistry training program, now operable for more than 25 years, trains individuals from disadvantaged backgrounds, including racial and ethnic minorities underrepresented among primary care practice or dentistry. Training grants are intended to increase the diversity of the health care workforce and prepare health care professionals to serve diverse populations and to practice in medically underserved communities. The program has trained pre-doctoral students, residents, physician faculty, dental residents, and physician assistants.
2.	Several projects provide diabetes and heart health training for <i>promotoras de salud</i> (lay health workers) and teams of nurse/nurse practitioner and <i>promotoras</i> from many United States border communities. Training sessions are three or four days and use a carefully developed and tested Spanish language curriculum.

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Source: HHS Interrogatory, pp. 25–27.

Finally, with respect to law enforcement and the administration of justice, Department of Justice officials reported that the agency does not administer any programs targeted to increasing

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<sup>125</sup> DOEd Interrogatory Request, attachment "Title III—Office of English Language Acquisition (OELA) Program Expenditures Since 1997–2003 and Description of the Programs."

the number of bilingual professionals.<sup>126</sup> Department of Justice components fund programs for general purposes that their recipients can use for increasing the number of bilingual professionals in law enforcement and the administration of justice.<sup>127</sup> For example, the Office of Justice Programs administers the Byrne Formula and Discretionary Grant Programs, directed toward reducing illegal drug activity, crime, and violence, and improving the functioning of the criminal justice system. These programs provide funds for additional personnel, equipment, facilities, and staff training.<sup>128</sup> DOJ officials reported that their recipients may use these grants, for example, to hire bilingual police officers. However, DOJ does not track how recipients use the grants and cannot determine the amount of funding used for improving language access.<sup>129</sup>

### *Data Collection on Limited English Proficiency*

Data collection is an important resource to assess LEP populations and their language needs. To collect any additional information, such as on preferred language or English proficiency, federal agencies must first seek the approval of the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act of 1995. This act is intended to improve the quality of agency information collections and minimize the federal paperwork burden on the public. Agencies must estimate the potential burdens on respondents of any new collections of information or extensions of ongoing ones and solicit public comment through a 60-day notice in the *Federal Register*. OMB's approval process for an agency to use a data collection instrument can last 60 days for an initial review and another 60 for an evaluation of revisions.<sup>130</sup>

Through its role in implementing the Paperwork Reduction Act, OMB has set the standards for collecting information on race and ethnicity for the past quarter century and recognizes the usefulness of data on race for civil rights monitoring and enforcement.<sup>131</sup> In recent

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<sup>126</sup> Loretta King, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Jan. 29, 2004, interview, transcript, pp. 40–41.

<sup>127</sup> Sebastian Aloit and Merrily Friedlander, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Jan. 29, 2004, interview, transcript, pp. 42–43.

<sup>128</sup> General Services Administration, "16.579 Byrne Formula Grant Program" and "16.580 Edward Byrne Memorial State and Local Law Enforcement Assistance Discretionary Grants Program," *Catalog of Federal Domestic Assistance*, <<http://www.cfda.gov>> (last accessed Mar. 10, 2004). Funding for Byrne Formula Grants was \$524 million in FY 2002, an estimated \$506 million in FY 2003, and is an estimate \$483 million in FY 2004. For Discretionary Byrne Grants, funding in FY 2002 was \$75 million, an estimated \$366 million in FY 2003, and is \$0 in FY 2004.

<sup>129</sup> John Norquist, Office of Community Oriented Policing Services Office, U.S. Department of Justice, Jan. 29, 2004, interview, transcript, pp. 43–44.

<sup>130</sup> John D. Graham, administrator, Office of Information and Regulatory Affairs, Jay P. Lefkowitz, general counsel, Office of Management and Budget, Executive Office of the President, Memorandum for Chief Information Officers, General Counsels, and Solicitors, re: Ensuring Full Compliance with the Information Collection Provisions of the Paperwork Reduction Act, Nov. 14, 2001, p. 3; 44 U.S.C. § 3507 (2003).

<sup>131</sup> See U.S. Department of Commerce, Office of Federal Statistical Policy and Standards, "Directive No. 15: Race and Ethnic Standards for Federal Statistics and Administrative Reporting," *Statistical Policy Handbook*, May 1978, pp. 37–38; Office of Management and Budget (OMB), "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," 62 Fed. Reg. 58,782 (Oct. 30, 1995) (to be codified at 7 C.F.R. pt. 300); Office of Management and Budget, OMB Bulletin No. 00-02 to the Heads of Executive Departments and Establishments, re:

years, OMB began imposing new racial groupings that separate “Asian Americans” and “Native Hawaiians and Other Pacific Islanders.”<sup>132</sup> However, those two classifications in fact represent nearly 50 distinct national origin and ethnic subgroups that speak more than 100 languages.<sup>133</sup> Thus, agencies seeking to provide access to programs would need to identify distinct language needs in these and other diverse groups. OMB can assist federal agencies in developing measures of limited English proficiency and language needs and ease implementation of new data collection procedures, thereby increasing both the quality and quantity of information agencies collect about the LEP populations their programs serve and benefit.

### *Non-English Media*

The media, particularly non-English media, are valuable resources in disseminating and communicating information about federal programs and civil rights to the LEP population. Non-English media also are important avenues for federal agencies to conduct such outreach to LEP populations that are eligible to participate in or benefit from programs. The ability of agencies and community organizations to mount campaigns to reach LEP populations depend to some extent on non-English newspapers, radio, and television in addition to resources to develop and purchase space and air time.<sup>134</sup>

Although agencies may place announcements or feature articles in non-English media in many ways, the government lacks central, comprehensive guidance for accomplishing this effectively. Thus, federal agencies rely on their own local program offices and staff to disseminate non-English information about their programs, which may account for varying degrees of success. Government services, such as those of the General Services Administration, can aid agencies, for example, in compiling directories of media contacts or coordinating the use of news organizations.<sup>135</sup> Such services would help agencies fulfill language assistance responsibilities within the constraints of available resources. In addition, to support, or potentially increase, the number of non-English media through which government agencies can publish information about federal programs, the Small Business Administration and the Department of Commerce’s Minority Business Development Agency could develop programs that promote small and minority-owned media development, especially those that offer access to non-English audiences that the government cannot readily access.

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Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement, Mar. 9, 2000.

<sup>132</sup> OMB, “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity.”

<sup>133</sup> President’s Advisory Commission on Asian Americans and Pacific Islanders, *A People Looking Forward: Action for Access and Partnerships in the 21st Century*, Interim Report to President and the Nation, Executive Summary, January 2001, p. 11.

<sup>134</sup> Ibid.

<sup>135</sup> The General Services Administration (GSA) could link other government agencies to sources that would enable them to compile media directories. Currently, GSA provides access to more than 100,000 federal documents in Spanish through a Web site called *FirstGov en Espanol*. See also Stephen A. Perry, administrator, General Services Administration, letter to Les Jin, staff director, U.S. Commission on Civil Rights, June 25, 2004; Michael Hardy, “FirstGov en Espanol esta aqui!” Oct. 16, 2003, <<http://www.fcw.com/fcwarticles/2003/1013/web-primero-10-16-03.asp>> (last accessed July 1, 2004). GSA also offers frequently used government documents in 20 languages available from the Federal Citizen Information Center, accessible at <<http://www.pueblo.gsa.gov>>.

### ***Interpreter and Translator Certification and Availability***

As federal agencies try to bridge the communication gap with LEP program participants and beneficiaries, they must ensure the competence of the interpreters and translators they use, particularly with technical or professional terms related to their programs. Professional and occupational licensing or certification is a means by which agencies or their recipients might ensure the competency of interpreters. According to the Department of Labor's Employment and Training Administration, seven states license interpreters or translators, but usually only interpreters for the deaf or hard of hearing. Only two states license interpreters for LEP persons—Oregon licenses court interpreters and Idaho licenses interpreters generally. Idaho's interpreters and translators are licensed through the American Translators Association, a nationally recognized accreditation association.<sup>136</sup>

Neither the Department of Labor (DOL) nor any other federal agency has a role in monitoring states or organizations that license or certify interpreters or translators. The information DOL provides on licensing or certification is intended only to aid persons in choosing careers and acquiring the appropriate training for those careers. DOL lists contacts for aspiring licensees to learn the requirements of their chosen profession, but does not provide information on credentials that would help other agencies identify standards of competency for interpreters or translators.<sup>137</sup>

In developing language assistance guidance for their recipients, some agencies have established lists of skills interpreters should possess. First, formal certification, although helpful, is not necessary. However, self-identification is insufficient to ensure competency. Interpreters and translators must have demonstrated language skills. Second, interpreters and translators must be competent, that is, able to convey information accurately, in both English and the other language. They must be able to translate both English into the other language and the other language into English. Third, they must know technical or specialized terms and concepts peculiar to the subject matter. Fourth, interpreters must be able to provide interpretation in different modes—consecutive, simultaneous, summarizations, or sight translation. Fifth, interpreters and translators must demonstrate cultural sensitivity. Sixth, interpreters must be bound to confidentiality and impartiality, and adhere to the role of interpreter, not counselor or adviser.<sup>138</sup>

At least one agency has supported programs to train or certify interpreters, despite the general lack of federal attention in this area. The Department of Health and Human Services (HHS) provided funding for two such programs, one to professionally train and certify bilingual

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<sup>136</sup> DOL Interrogatory Response, p. 41. *See also* <<http://www.acinet.org>>. This Web site, known as America's Career InfoNet, is an Internet-based employment service with career information that the Department of Labor's Employment and Training Administration provides. DOL Interrogatory Response, p. 41. Department of Justice officials note that a growing number of states are certifying court interpreters in Spanish and other languages. Furthermore, over 30 states are members of a consortium on interpreter certification and a national association administers a testing program for court interpreters in limited languages. DOJ Comments on USCCR Draft Report, pp. 22–23.

<sup>137</sup> *See* <<http://www.acinet.org>>.

<sup>138</sup> *See* Chapter 4 section "Selecting Language Assistance Services," and section "Ensuring Staff Is Qualified to Act as Interpreters and Translators" in this chapter.

staff as medical and legal interpreters for nonprofit organizations serving refugees, the other to sponsor a training program for medical interpreters and offer health care interpreter services, cultural education, and consultation on implementing language access services.<sup>139</sup> The latter of these programs trained 110 medical interpreters in 2001. It placed interpreters with local hospitals and clinics to smooth physician interactions with LEP patients. Reportedly, the interpreters improved more than 20,000 patient-provider encounters that same year.<sup>140</sup>

When federal agencies seek interpreter or translator services they relieve themselves of the need to credential or fully employ interpreters or translators, but bear responsibility to ensure that the service meets appropriate quality levels. The General Services Administration (GSA) has a Web site offering assistance to federal agencies in contracting for translation, interpretation, and foreign language training.<sup>141</sup> The Government Printing Office (GPO) can produce publications in languages other than English using text agencies submit or procuring language translation services through the publishing agency's requisition. Furthermore, if a publishing agency so requests, GPO can procure an independent third party's certification of the accuracy of a translation.<sup>142</sup> Other federal agencies, such as the Small Business Administration and the Department of Commerce's Minority Business Development Agency, could assist in promoting an industry of interpreter and translator services to help meet the needs of LEP populations.

## Summary

Too little has changed with the issuance of Executive Order 13166. Before the President issued the executive order, some agencies used the traditional enforcement mechanisms of Title VI of the Civil Rights Act of 1964 to ensure that their service providers offer language assistance to limited English proficient individuals. The Departments of Education and Health and Human Services were processing discrimination complaints on issues related to language, offering LEP individuals information about their civil rights, and conducting compliance reviews of service providers. But some agencies studied here, including the Departments of Justice, Labor, and Housing and Urban Development, could not demonstrate many enforcement activities related to

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<sup>139</sup> In the first of these programs, the Office of Refugee Resettlement, within HHS' Administration for Children and Families, funded states in FY 1999 and 2000 to increase the professional bilingual and bicultural capacity of nonprofit refugee providers. In the second program, HHS supports 170 area health education centers (AHECs) throughout the nation through its Health Resources and Services Administration. The centers promote health careers and access to health care for medically underserved individuals. One of them, the Northern Virginia AHEC, sponsors medical interpreter training. HHS Interrogatory Response, p. 27; U.S. Department of Health and Human Services, Health Resources and Services Administration, "HRSA News Brief: AHEC-Trained Interpreters Help Immigrants Access Health Care in Virginia," Feb. 4, 2002, <<http://newsroom.hrsa.gov>>.

<sup>140</sup> Ibid.

<sup>141</sup> See General Services Administration, "Language: GSA Language Services Overview," Oct. 14, 2003, <<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8211&channelPage=/ep/channel/gsaOverview.jsp&channelId=13004>> (last accessed Dec. 15, 2003).

<sup>142</sup> Bruce R. James, public printer, U.S. Government Printing Office, letter to Les Jin, staff director, U.S. Commission on Civil Rights, June 24, 2004. Created to satisfy the printing needs of Congress, the Government Printing Office today is the focal point for printing and disseminating information for the entire federal community. It reports serving approximately 130 federal agencies in addition to Congress and the White House. U.S. Government Printing Office, "Fact Sheet," Sept. 10, 2003, <<http://www.access.gpo.gov/public-affairs/gpofacts.html>> (last accessed Dec. 16, 2003).



LEP under Title VI either before or after the executive order. Lack of enforcement activity is evident in the small number of LEP complaints that federal agencies processed. In fact, database systems for complaint processing typically were not designed to capture LEP as a basis for complaints. Finally, since the order, only HHS has conducted more than a couple of dozen compliance reviews annually that examine language issues. At the same time, the Commission finds DOJ and HHS with good examples of the content of LEP compliance reviews and methods for demonstrating their effectiveness. Efforts to ensure equal language access should involve much more Title VI enforcement activity, including complaint processing, reviews of recipients' compliance with obligations to provide language assistance, and outreach to LEP populations to ensure they know their rights and where and how to file discrimination complaints.

In their programs with direct public contact, some federal agencies have found more effective means than others of responding to the executive order. Some have established organizational structures or designated specific funding or staff to implement the order. Establishing internal agency workgroups to address language access has proved particularly effective for DOL, HHS, and SSA. EEOC, HHS, and SSA have developed bilingual selection criteria and position descriptions to hire employees for public contact positions. SSA has detailed policies, procedures, and standards for staff to determine when and how to use interpreters and determine whether individuals are qualified to act as interpreters. A few agencies, particularly DOEd and DOL with legislative authority to conduct surveys, have compiled information on the LEP populations their programs serve to help determine where and what types of language assistance to provide.

To achieve language access, outreach to limited English populations and their advocacy groups is critical. Agencies' civil rights components can contribute significantly to helping LEP individuals secure language assistance. Some agencies have sought novel ways to reach language minorities and involved communities and advocacy groups in developing LEP guidance and plans.

Although all agencies have provided some non-English documents on the Internet, many could improve by providing notices of free language assistance, civil rights fact sheets, and complaint filing information in languages other than English and Spanish. All the studied agencies offer some non-English program information on the Internet. However, this accomplishment is only a first step in offering non-English materials for every program serving LEP populations. Translations of some languages are more costly than others. Further, agencies expend very different amounts for translations and interpreter services, partly because their programs vary in the amount of direct public contact.

Numerous federal programs exist that can improve English proficiency and, in turn, improve language access. For example, DOEd, HHS, and DOJ support programs that, while not exclusively for LEP persons, provide services and opportunities to enhance LEP participation. In addition, agencies and their recipients' could more easily provide language access if the federal government had a better infrastructure for multilingual resources. Agencies such as the Office of Management and Budget, the General Services Administration, the Small Business Administration, the Department of Commerce, and the Department of Labor can assist in helping other agencies collect data on the LEP populations they serve, in identifying or facilitating contracts with non-English media through which agencies can offer outreach to LEP populations, and in establishing credentials and recruitment channels for competent interpreters and translators.

## Chapter 6: Findings and Recommendations

Research documents that many government programs whose purpose is to assist the public in securing housing, education, employment, health care, and justice are nonetheless not accessible to limited English proficient (LEP) persons. Although the spirit of Title VI of the 1964 Civil Rights Act and Executive Order 13166 intended that LEP persons could participate without discrimination and that agencies would provide equal access to all, barriers persist. The Commission concludes that the government should accelerate and improve actions directed to this outcome so that all Americans, including those whose English skills are limited, have equal access to federal programs, services, and benefits. To that end, the Commission offers the following.

### The Overall Need for a Language Policy

**Finding 1.1:** Agencies' and their recipients' abilities to provide language access to LEP populations may be constrained by the lack of multilingual resources within the United States. Federal agencies may have special roles in providing infrastructure that promotes equal access to federal programs and services in a multilingual society. Executive Order 13166 affirms the application of civil rights enforcement to language problems, but makes no provision for agency resources to overcome barriers, for example, multilingual media, bilingual staff, interpreters, translators, or information about language needs. A federal policy could recognize the need for increased multilingual resources, define the government role in developing them, and guide and coordinate agency efforts toward achieving governmentwide accessibility in addition to success in individual enforcement programs.

**Recommendation 1.1:** The President should augment the executive order with policy that acknowledges the nation's rapidly growing language minorities, further articulates the federal responsibility to develop multilingual resources, and delegates appropriate enforcement authority to the Department of Justice. The President should direct every federal agency to, in consideration of its mission and functions, take action to promote better communication to increase LEP individuals' program access. Agencies should identify appropriate means, establish a timeline, seek resources, and implement policy, changes, and programs that increase the multilingual capacity of federal programs.

## Chapter 2: The National Challenge: Communication Gaps Federal Programs Must Bridge

**Finding 2.1:** Federal agencies cannot provide non-English access without first identifying and prioritizing the American public's language needs. Spanish is by far the most common non-English language overall. However, after Spanish, U.S. residents speak a plethora of languages—Chinese, Vietnamese, and Haitian Creole, to name a few. In fact, people speak more than 460 languages in the United States. A single racial category—Asian Americans and Pacific Islanders—represents more than 100 language groups. Indeed, both the number of language minorities and the languages Americans speak are rapidly growing. Spanish is not the most common non-English language in every state; in nine states, French, Hmong, Ilocano,

Serbo-Croatian, Blackfoot, Lakota, "Native American," or Yup'ik are the languages frequently found after English. Thus, after Spanish, no clearly ordered national list of languages emerges by which agencies can plan or progressively implement assistance.

**Recommendation 2.1:** Any agenda for implementing language assistance should inventory and account for many languages in addition to Spanish. Federal officials should implement programs that account for different priorities that state and local governments face due to variations in the languages that their eligible populations speak. Furthermore, federal officials should direct resources to a broad range of languages, not constrained to the most common ones in national trends, because wide regional variation occurs.

**Finding 2.2:** Federal programs generally operate in two ways. *Federally conducted* programs are those that an agency provides directly to beneficiaries, whether individuals or institutions and organizations. *Federally assisted* programs are those to which the government awards grants or contracts to other parties, such as states, to execute the services or convey benefits. Whether programs are federally conducted or assisted, or both, determines the language services an agency must provide. For federally conducted programs, agencies facilitate communication using interpreters, bilingual staff, telephone interpreter services, and translated documents. For federally assisted programs, agencies publish guidance for their representatives to follow for providing language assistance. Agencies also conduct compliance audits, review complaints, provide training, and undertake other monitoring activities to make sure the recipients of their grants or contracts follow the guidance.

**Recommendation 2.2:** Based on which type of program it operates, each agency should ensure that the requisite means to language access are in place. Thus, in each program through which it contacts the public directly, the agency should offer interpreters, bilingual staff, telephone language services, and translated documents and signage. Each federally assisted program should provide language assistance guidance to recipients and conduct activities to ensure their compliance, such as audits, complaint review procedures, training, and monitoring.

**Finding 2.3:** Agencies' efforts to ensure language access is particularly important in federally assisted programs. In addition to federal funding, such programs usually involve additional state and local funding. Furthermore, the Civil Rights Restoration Act of 1987 requires that civil rights obligations that ban discrimination apply throughout a recipient's institution even if only a part of it receives federal assistance.

**Recommendation 2.3:** Agencies should meet their obligations to ensure language access even when the amount of federal assistance is small. They should direct enforcement of language assistance toward recipients who combine federal monies with other funding sources. Agencies should apply the Civil Rights Restoration Act's broad definition of programs and activities and conduct enforcement with regard to all recipient and subrecipient operations to achieve language access.

### Chapter 3: Executive Order 13166 Governing Federal Language Assistance

**Finding 3.1:** On August 11, 2000, President William J. Clinton signed Executive Order 13166 and in October 2001, President George W. Bush affirmed the government's commitment to it. The order requires all federal agencies to examine the services they provide and develop and implement a system by which LEP persons can meaningfully access them. The order gave the Department of Justice (DOJ) responsibility to coordinate governmentwide implementation and assistance. One of the major weaknesses is the order's lack of enforcement authority, for it does not delegate any agency power to enforce it. Although agencies bear specific responsibilities, the order does not hold them accountable for performance. DOJ specifies no deadlines to meet the executive order's requirements. Other weaknesses are its absence of penalties for noncompliance, and output measures and assessment tools by which agencies would assess whether federal language access is improving. Without measures, agencies cannot determine the effects of their efforts.

**Recommendation 3.1:** The President should issue a policy memorandum to all federal agencies delegating enforcement power to DOJ for executive order implementation. The policy should require that (1) all agencies submit final plans and guidance to DOJ within a definite time period; (2) DOJ review all documents and report deficiencies; (3) DOJ establish output measures and assessment tools to evaluate federal LEP efforts; and (4) DOJ prepare annual progress reports directed to the President and Congress and distributed to the public.

**Finding 3.2:** The executive order delegates to DOJ responsibility for federalwide language assistance coordination. To carry out its responsibilities, DOJ has concentrated on providing ongoing technical assistance and training to its components and other federal agencies. In 2001, the Civil Rights Division created the Interagency Working Group on Limited English Proficiency to improve language access. Federal representatives throughout the government participate in the group whose purpose is to build awareness of the need and provide methods to ensure access to government programs irrespective of English language ability. Agencies find the interagency LEP working group helpful; however, less than one-third participate. The Civil Rights Division also established an informational Web site. It has prepared relevant guidance, memoranda, fact sheets, brochures, directives, and correspondence to assist federal agencies, and conducted consultations, meetings, and workshops for federal personnel. In 2004, DOJ plans to issue a letter to agencies that bear Title VI responsibilities requesting them to include certain language information in their annual civil rights implementation plans. However, because of its limited authority, DOJ will likely continue to review plans based on agencies' technical assistance and monitoring and not enforcement using Title VI power. DOJ also is evaluating whether additional interagency workgroups or coordinating committees, governmentwide increases in staff and funding, or the adoption of new or clarified policies represent the best use of resources to assist LEP persons.

**Recommendation 3.2:** Even without enforcement power, DOJ could implement concrete strategies and policies that improve language assistance. For examples, it should:

- Establish a task force that includes agencies and language advocacy groups to plan initiatives and communicate information to the LEP community.

- Expand the LEP Web site to include all plans and guidance, update multilingual information on federal programs and initiatives, and provide a list of community organizations available to network with federal agencies and communities. DOJ also should provide all materials in print.
- Enforce Title VI requirements with respect to LEP and issue a directive requiring agencies to collect and report LEP information. For example, agencies could use compliance reviews, investigations, and outreach activities to report LEP information in the annual Title VI reports or civil rights implementation plans.
- Develop inducements such as recognition programs that would encourage more federal agencies to join the interagency LEP working group, and request that members develop measures to assess the effectiveness of their strategies.

**Finding 3.3:** DOJ's Civil Rights Division assigned its Coordination and Review Section (COR) principal responsibility for the executive order's implementation. In addition to the executive order, COR enforces numerous civil rights laws, including Title VI. However, from FY 2000 to 2003, COR's budget did not significantly increase and its staffing level remained the same. It did not receive additional appropriations or staff to implement the executive order or carry out its other civil rights responsibilities. Additional executive order responsibilities affected its ability to perform its pre-existing duties. Adequate resources would allow it to expand activities under the executive order while returning to its prior level of attention and efforts on enforcement. The Civil Rights Division plans to implement a fiscal tracking system in 2004 that will permit staff to identify procurement, travel, and other expenses related to the executive order.

**Recommendation 3.3:** Congress should provide additional resources to DOJ so that its Civil Rights Division can (1) continue LEP technical assistance and monitoring, (2) review and evaluate agencies' efforts to improve language access, and (3) enforce other civil rights laws and responsibilities effectively. The Civil Rights Division should track LEP expenditures, at least quarterly, and assess COR's resources to make sure that appropriate attention is paid to all civil rights responsibilities, and separately track executive order resource expenses and projected needs.

## **Chapter 4: Federal Agencies' Guidance and Plans for Executive Order Implementation**

### ***Department of Justice's Guidance to Federal Agencies***

**Finding 4.1:** Executive Order 13166 directs approximately 30 agencies that administer federally assisted programs to provide guidance to their funding recipients. DOJ issued its final language assistance guidance to recipients on June 18, 2002, and urged other agencies to do the same consistent with its example. Only about half of the agencies have published guidance, 10 of which did so after DOJ issued its most recent example. DOJ's guidance is a worthy model. Therefore, agencies can ease the burden of developing and implementing guidance by following it.

**Recommendation 4.1:** All agencies that have Title VI responsibilities and have not published guidance for offering language assistance should do so immediately. Those Title VI

agencies that published guidance before 2002, but not since, should update it using the model as appropriate.

**Finding 4.2:** DOJ guidance directs Title VI agencies and their recipients to provide reasonable oral language assistance free of charge to eligible LEP program participants or beneficiaries. Except languages for which the LEP population is very small, the guidance requires agencies and recipients at least to produce written translated notices. Such notices should inform LEP individuals of their right to have competent oral interpretation of written materials free of charge.

**Recommendation 4.2:** To implement language assistance according to DOJ guidance, all federal agencies with Title VI responsibilities and their recipients should provide written translated notices in the primary languages of their eligible LEP program participants informing them of their right to competent oral interpretation of written materials free of charge. Federal agencies should produce non-English translations of this statement and provide printed copies to recipients.

All LEP individuals have the right to free oral interpretation of any federal agency's program materials. DOJ and the interagency LEP working group should assist by translating and disseminating to agencies in non-English languages information and standardized posters about this right. This might be accomplished with the help of the Government Printing Office (GPO) and the General Services Administration (GSA). DOJ and the interagency LEP working group should set goals for increasing, and track, the number of languages in which information about the basic right to free oral interpretation is translated and disseminated each year.

**Finding 4.3:** DOJ guidance specifies that Title VI agencies and recipients should produce written translations of vital documents in languages for which the LEP population served is a significant size. DOJ officials establish parameters for "significant" in the conditions under which they regard recipients as complying with the order, but state the expectation that the amount and quality of language assistance should continuously increase.

**Recommendation 4.3:** All agencies with Title VI responsibilities and their recipients should provide interpretation for all LEP persons eligible for program services. Furthermore, agencies should prioritize the translation of documents and establish a plan with concrete goals to complete the most vital first, and others subsequently. The plan should also provide for increasing translations in less common languages, and build in evaluation factors by which agencies may gauge progress toward the goals they set.

DOJ should monitor the Title VI agencies to ensure that they are increasing language assistance services. To accomplish this, DOJ should collect and review information through existing tools, such as the civil rights implementation plans agencies submit each year. Because there have been few LEP-related complaints, DOJ should recommend that agencies provide more civil rights outreach to language minorities to ensure that they know their rights. DOJ should use the civil rights implementation plans to analyze the number of language assistance complaints agencies receive and process each year and examine whether the number of translated documents on their Web sites increases appropriately.

**Finding 4.4:** DOJ's guidance gives Title VI agencies and their recipients advice for how to assess the language groups they serve and determine the types of assistance they should provide. Agencies determine the eligible population's needs using a four-factor analysis: (1) the number or percentage of LEP persons in the population served, (2) the frequency with which LEP persons come into contact with the program, (3) the nature and importance of the program services, and (4) the recipient's available resources.

DOJ instructs recipients to assess the LEP population's English proficiency, not ethnicity or ability to speak more than one language, and to use census or other program-specific data tailored to the geographic service area. DOJ advises that outreach to LEP populations may increase the frequency of contact with them and consequently the need for language assistance. Furthermore, DOJ directs recipients to assess whether denial or delay of access to services information has serious or life-threatening consequences. If so, DOJ directs recipients to design systems that provide prompt language assistance. However, DOJ advises that the cost of language assistance is not reasonable if agencies must reduce program benefits to pay for it.

**Recommendation 4.4:** Agencies with Title VI responsibilities and their recipients should follow DOJ's sound guidance regarding how to assess language needs. They should develop systems to track and biannually update the assessment of needs. Agencies and recipients should identify circumstances under which language assistance is vital, so that recipients can develop strategies to overcome communication barriers. Agencies should perform cost-benefit analyses of language assistance services to make sure that actions produce appropriate outcomes for reasonable costs.

**Finding 4.5:** DOJ guidance discusses the use of interpreters and methods of ensuring accurate written translations. It describes the rights of LEP persons to employ, at their own expense, interpreters of their own choosing, but discourages the use of family members, friends, and other clients as interpreters. To enhance accuracy, the guidance advises how to ensure the competency of interpreters and translators. DOJ recommends that interpreters demonstrate the ability to convey information accurately in both English and another language rather than just self-identify themselves as bilingual. Interpreters should also know technical or specialized terms and concepts the program uses, understand and adhere to their role as interpreter, and abide by professional standards for confidentiality and impartiality. DOJ considers formal interpreter certification helpful, but does not require it. DOJ explains that the permanent nature of written documents imposes additional responsibility to ensure quality, accuracy, and usefulness.

**Recommendation 4.5:** In selecting and implementing language assistance services, all agencies and recipients should establish, distribute to staff, and adhere to policies on (1) choosing appropriate types of services, (2) properly using informal interpreters, (3) allowing LEP persons to use interpreters of their own choosing, (4) determining the competency and professionalism of interpreters, and (5) achieving accuracy in written translations. Policies should designate situations in which informal interpreters suffice and those in which interpreters should demonstrate special skills. Agencies and recipients should establish appropriate skill levels for formal interpreters and develop systems for evaluating and deploying them.

### *Agencies' Limited English Proficiency Plans*

**Finding 4.6:** Executive Order 13166 directs all 100 agencies that run federally conducted programs to develop written language assistance plans. DOJ developed and disseminated to agencies suggested elements for recipients to include in plans. DOJ also published its own agency plan and offered it to others as a model in January 2001. After three years, approximately 100 agencies should have completed and filed plans with DOJ; only 57 agencies have done so.

**Recommendation 4.6:** All 100 agencies should develop written language assistance plans and submit them to DOJ. Further, following DOJ's example, agencies that run programs through funding recipients should direct their representatives to develop, submit, and annually update plans. Agencies should review their recipients' plans to ensure that language assistance is adequate and provide written comments on any areas in need of improvement.

**Finding 4.7:** DOJ guidance to its recipients suggests that language assistance plans should include five elements: (1) procedures to identify LEP individuals who need language assistance; (2) the ways the organization will provide assistance; (3) provisions for staff training; (4) outreach, or the means of giving notice to LEP persons of their right to receive free language assistance; and (5) a process for monitoring and updating plans.

To follow the example plan elements, DOJ suggested that its components should, first, assess the language assistance needs of the LEP populations using the four-factor analysis in DOJ guidance. Second, they should establish language assistance principles to ensure LEP persons free, competent interpretation, equal services, and accessible information on program benefits. DOJ asked its components to provide the following at points of public contact: bilingual or multilingual staff, procedures for staff to access telephonic interpretive services, a directory of staff who can assist with non-English languages in emergencies, non-English signage, and translated documents. Third, DOJ directs that its components conduct training on the available language assistance services and resources and how to access them. Fourth, DOJ urges components to alert LEP communities and individuals about the language assistance the agencies provide and include notices of availability in other languages of any English documents. Finally, DOJ asked components to periodically reassess plans and the language needs of the LEP populations they serve, and implement enhanced or modified services to meet the requirements of the executive order.

Although DOJ provides a useful example for other agencies' language assistance plans, its model and efforts need some improvement. DOJ did not survey the English proficiency of its program participants in assessing language needs. It did not specify the need for staff training on procedures for contractor, in-person, and telephone interpreter services. Finally, DOJ did not establish deadlines for finalizing language assistance initiatives.

**Recommendation 4.7:** All federal agencies should develop plans that describe language assistance needs, the means of providing language assistance, provisions for staff training, outreach about the right to receive free language assistance, and a process for monitoring and updating the plan. Agencies and recipients should also consult DOJ guidance for other action items relating to plan content, including different types of training they should provide, and methods for ensuring effective implementation. Furthermore, all agencies should develop and annually update language assistance plans. Thus, agencies that have not established plans, should



do so in the next six months and update them annually thereafter. Those that do have plans, should revise them in the next year to include any missing items.

DOJ should update its language assistance plan such that it requires components to develop independent plans. The agency should assess eligible LEP participants and their language needs using program or survey data. Furthermore, DOJ's plan should require more extensive staff training on the agency's obligation to provide language assistance, the language assistance principles, how staff should work with interpreters, and how to translate technical program terminology. Finally, DOJ's plan should establish deadlines for its components to implement language assistance.

## **Chapter 5: Effect of Executive Order 13166 on Federal Agencies**

### ***Language Access Efforts Before the Executive Order***

**Finding 5.1:** Eliminating language barriers requires more than developing policy and planning documents. However, for federally assisted programs, Executive Order 13166 does not create new responsibilities beyond what agencies can achieve with enhanced Title VI enforcement, for example, conducting outreach to ensure that potential victims of discrimination know their civil rights, resolving complaints of discrimination, and reviewing efforts of federally funded entities to provide equitable program services and benefits. For the most part, federal agencies have not extended Title VI enforcement duties to language assistance. As one example, some agencies do not track the language complaints they receive separately from other instances of discrimination on the basis of national origin. Furthermore, national origin, as a complaint basis, does not adequately represent English-speaking ability, nor provide information that helps identify or resolve language barriers.

Most agencies with Title VI responsibilities have neither received nor processed many language assistance complaints. Furthermore, the numbers of such complaints did not change much after the executive order. The Commission warns against interpreting low numbers of LEP complaints as evidence that language access is not a problem. Instead, LEP persons could be unaware of their right to free language assistance and thus do not complain when they do not receive it. More education and outreach programs could help. Low numbers of complaints could also indicate that civil rights units do not estimate their language populations well, offer too little or ineffective outreach, or provide inadequate language assistance to LEP complainants.

**Recommendation 5.1:** Federal agencies that have Title VI responsibilities should extend civil rights enforcement activities to language discrimination. They should develop complaint tracking systems that identify language assistance problems. The Commission urges civil rights units to lead other agency components in compiling information on the language assistance needs of federal beneficiaries, both those in direct contact with agency staff and those whom their recipients serve.

**Finding 5.2:** Civil rights law requires agencies to review their recipients' performance to ensure compliance with regulations that prohibit discrimination. Except for the Department of Health and Human Services (HHS), agencies the Commission examined were conducting few reviews of the accessibility of recipients' programs to LEP populations.

Agencies do not always review each recipient every year. Instead, most identify the recipients they subject to compliance reviews based on a wide range of information, such as the frequency or pattern of complaints and other program priorities. How agencies select the recipients they review, how often they examine them, and the factors they examine determine the effectiveness of the compliance system. For example, after selecting the recipients, DOJ examines six factors that arise from its guidance, such as the size or proportion of the LEP service population, the frequency of contact with LEP individuals, and the procedures for ensuring competency of interpreters and accuracy of translations. HHS measures the effectiveness of its compliance activities, for example, using the number of corrective actions recipients have taken in the course of compliance reviews, and demonstrates whether or not service to LEP persons (e.g., the number of LEP persons served, the number of interpreter or bilingual contacts, and the number of available translated documents) has increased as a result.

**Recommendation 5.2:** All agencies with Title VI responsibilities should conduct more language assistance compliance reviews. They also should implement tracking systems to easily identify when recipients were last subject to compliance reviews, whether the reviews examined LEP issues, the results, and monitoring of any compliance agreements.

To ensure that compliance systems are effective, agencies should carefully examine their methods of selecting recipients for review. For example, the Commission urges agencies, at a minimum, to conduct desk audits of each recipient every year. The desk audits should be of sufficient depth to identify recipients with questionable practices so that the agency can examine them on site, if necessary. The audits should examine agency, state, or national data showing any influxes of LEP persons to a particular area or a lack of representation of LEP persons in the recipient's program(s); the recipient's policies and procedures for providing language assistance; the frequency or patterns of complaints filed against a recipient; and reports from community groups, consumers, the media, or other agencies concerning the recipient's language accessibility. For conducting site visits, agencies should review language access factors similar to those DOJ uses, for example, whether the recipient collects data on the size or proportion of its LEP service population(s), keeps records of the frequency of contacts with LEP individuals, provides language assistance when conducting its program; and has procedures for ensuring the competency of interpreters and the accuracy of written translations. Agencies should also develop evaluation factors to measure the effectiveness of compliance activities (such as any increases in the number of LEP persons recipients serve) to justify resources for reviews, determine next steps, and identify best practices.

Finally, to increase recipients' knowledge of their obligations to provide language assistance, agencies should carry out widespread campaigns to inform service providers, such as hospital administrators and police officials, of their obligations to provide language assistance. The efforts should use many formats such as teleconferences and educational forums. Campaigns should explain guidance and offer best practices and tools that aid recipients in providing language assistance.

#### *Agencies' Language Assistance Accomplishments After the Executive Order 13166*

**Finding 5.3:** The Commission examined whether or how agencies (1) established appropriate organizational structure, staffing, funding, and other resources to implement Executive Order 13166; (2) assigned staff to develop guidance, plan language assistance, and

oversee applicable programs, to carry out LEP-related enforcement, and to translate documents and provide language assistance for federally conducted programs; and (3) designated specific resources for language access duties. Many agencies could not identify the specific funding or staffing expended for implementing or enforcing Executive Order 13166. Some agencies could not quantify the resources for LEP-related activities. Others could not identify resources because duties are dispersed among many programs. Still others do not allocate specific monies or staff for enforcing the executive order, nor track allocations by fiscal year.

Although some Title VI agencies were unable to easily isolate the funding or staffing expended for carrying out the order, their organizational structure supported language assistance by virtue of designated offices in charge of related functions. Some agencies formed internal task forces and have found them effective in focusing resources and implementing strategies.

**Recommendation 5.3:** All federal agencies should identify an effective structure, whether a designated office, staff and resources, or an internal task force or workgroup, to implement Executive Order 13166. Agencies should separately track the staff and resources for implementing the order to show whether or not resources are effectively used and coordinated throughout the agency.

**Finding 5.4:** To implement language assistance, some federal agencies took inventory of bilingual employees and the languages they spoke. Based on this information, some are trying to recruit and hire multilingual staff and outsource work to contractors with bilingual employees. Agencies advertise positions for bilingual staff, establish proficiency in non-English languages as rating or selection criteria, and conduct interviews in non-English languages. Such methods are proving effective for increasing bilingual hires.

**Recommendation 5.4:** All federal agencies should evaluate their resource requests with a goal of implementing their language assistance initiatives. Subsequently, federal agencies should prepare and submit budget requests at levels that would allow them to carry out these responsibilities well. Congress should consider and fulfill well-articulated demonstrations of such needs.

Agencies that have direct public contact with LEP persons should assess bilingual staff resources and develop methods and criteria to hire sufficient multilingual employees to meet language needs. The agencies should apply methods other agencies have found successful, such as posting positions for bilingual staff, rating or selecting candidates based on proficiency in non-English languages, interviewing applicants in non-English languages, and applying methods of certifying language competency.

**Finding 5.5:** Many Title VI agencies do not establish procedures or set standards for determining whether staff is qualified to interpret or translate. The Social Security Administration (SSA) administers competency-testing procedures to volunteer interpreters. Its agencywide policy ensures that communications through interpreters and translated materials are accurate. SSA's policy on the use of interpreters clearly resolves many of the problems DOJ's guidance identifies concerning the use of children or informal interpreters and furthermore explains how staff should interact with an interpreter. Other agencies have expressed interest in an interagency project aimed at helping each other develop policies and procedures to certify interpreters or ensure accurate interpretation and translation.

**Recommendation 5.5:** All Title VI agencies should establish policies, procedures, or standards to determine whether staff is qualified to interpret or translate. SSA's efforts in this area are commendable. Policy on the use of interpreters should address points noted in DOJ's guidance concerning the quality and accuracy of translation, particularly of technical program terminology, the use of children or informal interpreters; how staff interact with an interpreter; and professional standards, ethics, and confidentiality.

DOJ's interagency LEP working group should launch a formal effort to assist federal agencies in developing certification policies and procedures to promote accurate interpretation and translation. SSA's written policies on the use of interpreters could serve as a model.

**Finding 5.6:** Some agencies' assessments of language assistance needs are better than the example DOJ suggests in its plan. For example, the Departments of Education (DOEd) and Labor (DOL) have applied their statutory authority to conduct surveys that determine language assistance needs. SSA collects data on its service population's preferences in at least 26 languages. This information reveals the location of language demands and informs decisions about agency staffing and resource allocations. Furthermore, using a telephone call log, SSA's contract interpreter service collects information on the language workloads of field offices and local service centers. Managers use this information in decisions to hire bilingual staff.

**Recommendation 5.6:** The DOJ model plan, while commendable, is not sacrosanct, thus agencies should develop progressively sophisticated systems for assessing language assistance needs and exceed the DOJ example as appropriate. For example, agencies may need information on special populations not easily available through standard databases such as the census. Congress should provide funding for agencies to conduct assessments tailored to their eligible populations.

#### ***Outreach to Limited English Proficient Populations***

**Finding 5.7:** Agencies with Title VI responsibilities are required to integrate outreach to LEP individuals with other requirements. Reaching out to ensure that limited English proficient populations know about benefits and services is a key means for all agencies to comply with the order. Many LEP persons lack contact with federal agencies and may find it difficult to receive and understand programs and services through the government. Community organizations and advocacy groups have a special role in reaching out to LEP populations. They often are the only means through which LEP persons can notify the government of language needs.

**Recommendation 5.7:** All federal agencies should conduct more outreach and education targeted to limited English proficient groups to inform them of their civil rights, and the availability of programs and services and the assistance to participate in the programs. The Commission urges agencies to review outreach and education activities to limited English proficient groups to ensure that civil rights information is broadly available and accessible to them. For example, agencies should review the languages of their outreach efforts and examine whether the delivery methods, such as through printed documents or Web sites, are effective for conveying translated information to LEP persons. Agencies should involve community organizations and people from affected populations in developing outreach programs for LEP persons to ensure their effectiveness.

Embracing the central role that community organizations can play, agencies should seek their involvement and expertise as appropriate when employing interpreters or translators. In addition, agencies should seek involvement from community groups and others that have expertise, as they design procedures, translate documents, initiate information delivery programs, disseminate resource information, and train agency and recipient staff. Agencies should actively seek such involvement to help efforts bridge communication gaps between LEP persons and the government. Furthermore, agencies should consult organizations representing affected communities to obtain feedback on strategies, assess programs and services, and establish future plans.

**Finding 5.8:** The Commission reviewed agencies' non-English documents on the Internet. Such documents indicate efforts to overcome language barriers whether directly through contact with computer literate LEP persons or indirectly through advocacy groups and representative organizations. Most key civil rights agencies present fact sheets and information on where and how to file complaints in English and Spanish. Agencies other than the primary seven studied in this report seldom offer civil rights information in Spanish.

Only two agencies—HHS and SSA—offer notices of the right to receive free language assistance in languages other than English and Spanish. Many agencies did not even offer the notices in Spanish. SSA, HHS, DOEd, DOJ, DOL, and HUD offer some program information in Spanish, Vietnamese, Chinese, Korean, and a few other languages. However, non-English program information may not be available for all, or even most, federal programs.

**Recommendation 5.8:** Posting non-English documents on the Internet is a key means to expand accessibility. Agencies should develop non-English notices of the right to free language assistance and explanations of civil rights and where and how to file complaints. Such information should be readily available on the agencies' home and civil rights pages. Agencies should increase the amount and languages of civil rights information available on the Internet as needed. Although they should provide more translated program information on the Internet, additional civil rights information must be higher priority as it will help identify program areas where translated materials are most needed.

Agencies should, however, also recognize that translated information on Web sites often only indirectly reaches LEP persons, since many do not have access to the Internet. Agencies should apply creativity in reaching the LEP community and involving community organizations. For example, some agencies could collaboratively or independently establish kiosks or help desks in convenient public locations such as shopping malls and schools. Along with community groups, agencies could use such means to offer Web access, pamphlets, printed material, posters, and other information in appropriate languages. Such activities would go a long way to dispel views that federal information on the Internet is only for policy development and planning or that the government does not take its responsibility seriously. Finally, agencies could involve community organizations in the development of documents at a reading level appropriate for general audiences and in a printable format that agencies and advocacy groups can disseminate.

#### *Costs and Resources for Language Assistance*

**Finding 5.9:** Several agencies could not provide information on the costs of language assistance. Others gave costs for one-time or multiyear projects. The costs of written translations

were vastly different. Agencies' expenditures ranged between \$5,000 and \$1.5 million for translations in a fiscal year. Furthermore, translations are more expensive for some languages than others and ranged between \$0.20 and \$0.40 per word or character; \$20 and \$40 per page; and \$185 and \$340 per 1,000 words. In addition, agencies expended between \$300 and more than \$3 million in a fiscal year on interpreter services. Differences in whether agencies' programs are federally assisted or federally conducted contributed to the cost variability.

**Recommendation 5.9:** Agencies should annually evaluate their need for resources to overcome language barriers. They should (1) implement budget processes that reflect their language responsibilities; and (2) track expenditures for implementing Executive Order 13166, particularly for expanding coverage to additional languages and broader numbers of programs. Agencies should establish evaluation criteria on whether or not language assistance results in increases in service to LEP individuals. For example, agencies should compare the numbers of LEP individuals served with historical service and cost figures to determine future expenditures for language assistance. Agencies should provide Congress with well-documented demonstrations of resource needs.

#### ***Longstanding Programs That Could Enhance Executive Order Implementation***

**Finding 5.10:** The nation's educational system implements some long-term strategies to overcome language barriers. The No Child Left Behind Act of 2001 and the Adult Education and Family Literacy Act established some DOEd programs for elementary and secondary schools and adult education. The programs for elementary and secondary schools provide education for English-as-a-second-language students.

**Recommendation 5.10:** The President, Congress, and DOEd should develop and implement a comprehensive domestic policy and accompanying programs for the United States to expand its multilingual resources. The policy and programs should provide for elementary and secondary education to improve proficiency among students whose native language is not English. They should provide adult education for second language learners. DOEd should implement program changes to better track expenditures that lead to increased multilingual capacity.

**Finding 5.11:** The communication barriers that LEP individuals face are never more evident than with technical terminology concerning vital services such as health care, law enforcement, and the judiciary system. Both DOEd and HHS offer programs geared toward increasing bilingual persons in professional occupations or professionals' abilities to translate technical terms. DOEd recognized that less than half of LEP students' regular teachers are certified in either bilingual education or English as a second language. Many teachers who previously taught only English proficient students have LEP students in their classes and need training to educate them. Five DOEd programs try to increase the number of bilingual professionals.

Two HHS programs aim to increase the number of multilingual health care professionals. The programs seek to attract bilingual persons to the profession or increase the language skills of professionals. HHS also provides glossaries of translated technical terms to assist professionals, such as to aid pharmacists with non-English prescription instructions.

DOJ officials report that the agency does not administer any programs targeted to increasing the number of bilingual professionals, although its recipients may use general funds for that purpose.

**Recommendation 5.11:** All agencies should develop programs to increase the number of professionals who can provide language assistance, whether through attracting bilingual individuals to the field, training the workforce to speak non-English languages, or using communication aids. Agencies should consider all possible means of increasing language assistance, whether by creating new paraprofessional occupations to deliver language services or exploring new technologies to communicate non-English languages or provide language training. Because communication is vital to people's well-being in the health care and justice systems, HHS and DOJ should direct considerable efforts and resources toward improving professionals' ability to provide language assistance to LEP populations.

**Finding 5.12:** Although Executive Order 13166 directed federal agencies to identify the proportion of LEP persons their programs serve and access their language needs, few agencies collect such information. The Paperwork Reduction Act restrains federal agencies from collecting information such as program participants' English proficiency without first seeking Office of Management and Budget (OMB) approval. Through offering assistance, OMB can increase both the quality and quantity of information agencies collect on language proficiency and fulfill the Paperwork Reduction Act's purpose of minimizing the burdening on the public.

**Recommendation 5.12:** The interagency LEP working group should help agencies design questions to measure language needs. In addition, OMB should allow agencies to survey information on limited English proficiency and language needs.

**Finding 5.13:** To ensure LEP persons' equal access to services and benefits, federal agencies are responsible for informing them about programs. Non-English media are important avenues for federal agencies to conduct outreach to eligible LEP program participants and beneficiaries. An agency's ability to mount a campaign to reach LEP populations depends to some extent on the existence of non-English newspapers, and radio and television stations. The government lacks central comprehensive guidance for placing announcements and feature articles in non-English media. Federal agencies such as the General Services Administration (GSA) could establish guidance or procurement programs to help. Further, the government could encourage programs that support non-English media to ensure this means of communication with LEP populations remains viable.

**Recommendation 5.13:** The interagency LEP working group and the GSA should work together to examine cost-effective and workable methods of disseminating program information through non-English language newspapers and broadcast media. The initiative should determine the effectiveness of various media types for disseminating information, consider the breadth and cost of commercial news services, and examine the feasibility of compiling a comprehensive directory of non-English print and broadcast media for this purpose. Furthermore, GSA should publish any resulting directory along with government rules pertaining to its usage. GSA should provide procurement schedules and programs to assist federal agencies in purchasing non-English media services.

To support and potentially expand the number of non-English media through which government agencies can publish information about federal programs, the Small Business Administration and the Department of Commerce's Minority Business Development Agency should implement initiatives (such as grants, loans, mentoring, or education programs) to nurture the growth and development of media—especially small businesses or those with social and economically disadvantaged owners—that reach non-English audiences. In addition to developing new programs to support these media, the agencies should increase outreach through existing programs to ensure that owners of non-English media companies can avail themselves of government services to increase the viability of their businesses.

**Finding 5.14:** To bridge the communication gap with limited English proficient beneficiaries, agencies should ensure competency of the interpreters and translators they use to communicate, particularly technical or professional terms. Each federal agency and, in some cases, recipients, independently determine what credentials interpreters or translators need. Few states require interpreters to possess licenses. Neither DOL nor any other federal agency has a role in monitoring states or organizations that license or certify interpreters and translators.

**Recommendation 5.14:** DOL should compile information on occupational licensing and certification of interpreters and translators to assist federal agencies. It should report state or local statutes requiring licensed or certified interpreters and translators, the fields and circumstances with licensing or certification requirements, the licensing boards or bodies that establish the requirements, and the qualifications. It should also examine certification and accreditation requirements and procedures of accreditation associations such as the American Translators Association. DOL should distribute any resulting report to all federal agencies and publish it on the Internet. Congress should provide funding for DOL to conduct such a study.

DOJ and the interagency LEP working group should develop and offer federal agencies technical assistance to identify appropriate skill levels for the interpreters and translators they and their recipients use in program capacities. The training should address what skills the agency will require interpreters or translators to demonstrate; the circumstances in which formal certification is or is not necessary; the insufficiency of self-identification as bilingual to ensure competency; and other necessary skills of interpreters such as cultural sensitivity and adhering to standards of confidentiality, impartiality, and the role of interpreter rather than counselor or adviser.

**Finding 5.15:** Some agencies have established a list of required skills for interpreters and have supported programs to train or certify interpreters in technical terminology. Efforts to train interpreters have been small relative to the need for interpreters.

**Recommendation 5.15:** Agencies should develop and provide training programs for interpreters and translators to ensure their competency in providing accurate translations, conveying technical program-related information, and adhering to ethical standards. Agencies should work with colleges, universities, and professional schools and organizations to develop curricula for teaching professional candidates non-English language translations of technical terminology and how to work with interpreters or translation tools. They should consider developing special foreign language courses and curricula with dialogue common to particular professions.



**Finding 5.16:** Some agencies seek interpreter or translator services as an alternative to certifying their own personnel. On its Web site, GSA offers assistance to federal agencies in contracting for translation, interpretation, and foreign language training.

**Recommendation 5.16:** Every federal agency should examine its programs and services to identify and implement ways to promote an industry of interpreter and translator services that aid federal agencies and their recipients in meeting the needs of LEP individuals. For example, the Government Printing Office should offer services for translating federal publications. The Small Business Administration or the Department of Commerce's Minority Business Development Agency should assist small or minority business owners in establishing translation or interpretation businesses. Agencies should develop and implement outreach and support programs that expand interpreter and translator services. The interagency LEP working group should assist agencies in justifying the need for, developing, and implementing initiatives to expand the interpreter and translator industry to meet federal needs.

Agencies should tailor language assistance to constituent needs. However, to achieve cost-effective implementation of Executive Order 13166, the federal government should centralize and standardize some services such as procedures for collecting information on language needs, acquiring non-English media and advertising, certifying interpreters and translators, and providing education programs. The interagency LEP working group should develop an agenda and enlist Congress' help in drafting and passing legislation toward this end.

**Appendix 1: Executive Order 13166**

WHITE HOUSE

Office of the Press Secretary  
(Aboard Air Force One)

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For Immediate Release August 11, 2000

EXECUTIVE ORDER

13166

**IMPROVING ACCESS TO SERVICES FOR  
PERSONS WITH LIMITED ENGLISH PROFICIENCY**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

**Section 1. Goals.**

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

**Sec. 2. Federally Conducted Programs and Activities.**

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

### Sec. 3. Federally Assisted Programs and Activities.

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department Of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

### Sec. 4. Consultations.

In carrying out this order, 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. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

### Sec. 5. Judicial Review.

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
August 11, 2000

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## Appendix 2: Timeline for Events Related to the Issuance and Implementation of Executive Order 13166

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| 1964          | The Civil Rights Act of 1964 was passed containing Title VI stating that "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, . . . denied the benefits of, or . . . subjected to discrimination under any program or activity receiving federal financial assistance." 42 U.S.C. § 2000d   |
| 1974          | In <i>Lau v. Nichols</i> the United States Supreme Court stated that discrimination based on a person's inability to speak, read, write, or understand English is a form of national origin discrimination.   |
| Aug. 11, 2000 | President Clinton signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," requiring that all agencies prepare plans to ensure that limited English proficient persons have meaningful access to the services federally conducted programs provide and that agencies with federally assisted programs ensure access by issuing guidance for their recipients.   |
| Aug. 16, 2000 | Department of Justice (DOJ) published guidance to agencies setting forth a four-factor analysis for their federal funding recipients to follow to ensure that programs and activities are accessible to persons who are limited English proficient. The four factors were the number or proportion of LEP individuals the program serves, the frequency of contact LEP individuals have with the program, the nature and importance of the program, particularly whether the denial or delay of access has life or death implications, and the recipient's available resources.   |
| Dec. 9, 2000  | Date by which Executive Order 13166 required agencies to submit limited English proficiency guidance for their recipients to the Department of Justice for review and approval prior to publication. Language assistance plans, which DOJ was to place in a central repository, were also due by this date.   |
| Jan. 5, 2001  | DOJ issued LEP guidance for its recipients and solicited comments in Jan. 16, 2001, and Jan. 18, 2002, notices. Expanding on the earlier guidance to agencies, this document discussed oral strategies of providing language access and identified five elements language assistance policies should have—an assessment of LEP populations and their language needs, a written plan on how to provide assistance, staff training, public notice of the availability of language assistance, and provisions for periodic self-assessment and updating. The guidance included a model for DOJ recipients (and other agencies) to develop similar guidance. The 2002 publication sought additional comments after a period of uncertainty arising from the Supreme Court decision on <i>Alexander v. Sandoval</i> (see below). |
| Jan. 10, 2001 | DOJ published a language assistance plan for its federally conducted programs.  |
| Apr. 24, 2001 | The Supreme Court issued a decision in <i>Alexander v. Sandoval</i> . Sandoval had brought a class action suit against the Alabama Department of Public Safety for administering state driver's license examinations only in English. She argued that the federal recipient's English-only policy violated a Department of Justice Title VI regulation on the basis of national origin. The Court decided that Title VI does not provide a private right of action to enforce disparate-impact regulations. The decision created confusion about whether the Court had rejected federal funding recipients' obligations to provide language access to services and benefits for LEP populations.  |
| Oct. 26, 2001 | DOJ's assistant attorney general for civil rights confirmed that Executive Order 13166 remained in force despite the Supreme Court's decision in <i>Alexander v. Sandoval</i> and clarified the processes of clearance and public comment for agencies' guidance. It also extended the deadline to submit guidance and plans to DOJ to Feb. 25, 2002.   |
| Dec. 19, 2001 | DOJ invited federal agencies to participate in an interagency working group to address limited English proficiency issues. The working group holds bimonthly meetings, the first of which was scheduled for Jan. 31, 2002. It has established a Web site ( <a href="http://www.lep.gov">www.lep.gov</a> ) listing federal agencies LEP guidance.  |

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- Jan. 11, 2002 DOJ's assistant attorney general for civil rights encouraged agencies to expedite their work on LEP guidance to recipients to meet the established deadlines. He asked agencies to notify DOJ of their progress by Jan. 22, 2002.
- Mar. 14, 2002 The Office of Management and Budget (OMB) issued a cost-benefit analysis of Executive Order 13166 to Congress ("Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency") which recommended the adoption of uniform guidance across all federal agencies, with flexibility to permit tailoring to each agency's specific recipients.
- Apr. 18, 2002 DOJ published revised guidance to its recipients spelling out its role in imposing uniformity on all federal agencies and establishing its guidance as a model for other federal agencies to follow. It also reported DOJ's commitment to assisting both small federal agencies and its own recipients in complying with the executive order using cost saving approaches.
- June 18, 2002 DOJ published final LEP guidance for DOJ recipients, which serves as the model for other federal agencies to use in issuing similar guidance documents.
- July 8, 2002 DOJ's assistant attorney general for civil rights urged federal agencies to develop or revise plans to ensure the access of LEP individuals to benefits and services, publish guidance for their funding recipients on meaningful access, and participate in DOJ's Interagency Working Group on Limited English Proficiency and contribute appropriate agency links to the group's Web site ([www.lep.gov](http://www.lep.gov)). His memorandum suggested that agencies that had already published recipient guidance should develop and republish new guidance consistent with DOJ's latest model. He asked funding agencies to send DOJ drafts of proposed guidance (or revised guidance) by July 29, 2002. Further, agencies' plans for their federally conducted programs and activities should be developed or updated to follow the general standards set forth in the final DOJ LEP guidance for DOJ recipients.
- Nov. 12, 2002 DOJ's assistant attorney general for civil rights informed agencies about tools the interagency LEP working group produced to assist them in meeting their responsibilities under Executive Order 13166. He reported that brochures for federal agencies, recipients, and program beneficiaries and a self-assessment form for recipients were available on the group's Web site.
- Dec. 13, 2002 DOJ's assistant attorney general for civil rights issues a letter to DOJ recipients to reiterate the department's commitment to provide meaningful access to LEP individuals. The letter urged the recipients to get the message out to members, agencies and any other entities about the law, and soliciting their input in developing "model language access plans and practices."
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Source: Compiled by U.S. Commission on Civil Rights from various sources.

### Appendix 3: Agencies Covered by Executive Order 13166

#### A. Agencies with Title VI Responsibilities

Department of Education (DOEd)	Social Security Administration (SSA)	National Credit Union Association
Department of Housing and Urban Development (HUD)	National Aeronautics and Space Administration	Corporation for National and Community Service
Department of Commerce	Federal Trade Commission	General Services Administration
Department of Justice (DOJ)	Department of State	Small Business Administration
Department of Interior	Department of Treasury	National Endowment for the Arts
Department of Health and Human Services (HHS)	Department of Veterans Affairs	National Endowment for the Humanities
Department of Labor (DOL)	Federal Emergency Management Agency (FEMA, now part of DHS)	Institute of Museum and Library Sciences
Department of Agriculture	National Archives and Records Administration	Nuclear Regulatory Commission
Department of Energy	Department of Transportation	National Science Foundation
Department of Defense	Environmental Protection Agency	Tennessee Valley Authority
Department of Homeland Security (DHS)		

#### B. Additional Agencies with Responsibilities for Federally Conducted Programs

Equal Employment Opportunity Commission (EEOC)	Commodity Futures Trading Commission	Architecture and Transportation Barriers Compliance Board
National Labor Relations Board	Central Intelligence Agency	National Council on Disability
Federal Election Commission	Farm Credit Administration	Office of Special Counsel
Securities Exchange Commission	Export-Import Bank of the U.S.	Merit Systems Protection Board
Federal Communications Commission (FCC)	Consumer Product Safety Commission	Chemical Safety and Hazard Investigation Board
Federal Deposit Insurance Corporation	Federal Labor Relations Authority	International Trade Commission
Pension Benefit Guaranty Corporation	Occupational Safety and Health Review Commission	Office of Navajo and Hopi Indian Relocation
Agency for International Development	Overseas Private Investment Corporation	Office of Government Ethics
Railroad Retirement Board	Peace Corps	Selective Service System
White House	U.S. Postal Service	U.S. Trade Development Agency
Office of Personnel Management	Administrative Conference of the United States	Defense Nuclear Facilities Safety Board
Commission on Civil Rights	National Transportation Safety Board	Federal Mediation and Conciliation Service
Smithsonian Institution	International Broadcasting Bureau	Federal Reserve System
Advisory Commission on Intergovernmental Relations	Federal Mine Safety and Health Review Commission	Federal Retirement Thrift Investment Board
Legal Services Corporation	Federal Housing Finance Board	Institute of Peace
State Justice Institute	National Railroad Passenger Corporation (AMTRAK)	National Capital Planning Commission
American Battle Monuments Commission	Federal Maritime Commission	Other small councils, boards, commissions, and foundations

Source: Compiled by U.S. Commission on Civil Rights from U.S. Department of Justice, *Limited English Proficiency (LEP) Federally Conducted Plans Chart*, Feb. 2, 2004.