DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, California 95814

November 16, 2000

REFUGEE COORDINATOR LETTER NO. 00-33

TO: County Refugee Coordinators

Enclosed is the federal Office of Refugee Resettlement's ORR State Letter No. 00-18, subject: Policy Guidance on the Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency.

Although this policy guidance does not impose new responsibilities on the state or the counties, it is requested that each county prepare an update to their current County Refugee Services Plan. The update is to describe the procedures which are in place or will be adopted to ensure that persons with limited English proficiency are given adequate information, are able to understand the services and benefits available and are able to communicate their circumstances to service providers. It is suggested the outline as presented in the enclosure to the ORR State Letter be used in describing the procedures. Please provide the update as an Appendix to your current plan to your Refugee Programs Branch (RPB) County Analyst by December 22, 2000.

Please note on page 3 of the ORR State Letter that the next narrative reports provided by discretionary grantees must contain their implementation of the Policy Guidance. The reports are to include the same outline as presented in the enclosure to the ORR State Letter describing the procedures that are in place.

Should you have any questions regarding this request, please do not hesitate to contact your RPB County Analyst.

Sincerely,

Original signed by
Robert A. Barton

Robert A. Barton, Chief
Refugee Programs Branch

Enclosure

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMIL
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

ORR ~~State Letter~~

00-18 Date: September 19, 2000

TO: STATE REFUGEE COORDINATORS
NATIONAL VOLUNTARY AGENCIES
MUTUAL ASSISTANCE ASSOCIATIONS
OTHER INTERESTED PARTIES

FROM: Lavinia Limon, Director
Office of Refugee Resettlement

SUBJECT: Policy Guidance on the Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency

The Department of Health and Human Services Office for Civil Rights has released Policy Guidance on the Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency (Policy Guidance). Title VI of the Civil Rights Act of 1964 provides that no person shall be subjected to discrimination on the basis of race, color or national origin under any program that receives Federal financial assistance. The prohibition of discrimination based on national origin includes the prohibition of discrimination against Limited English Proficient (LEP) persons. LEP persons are individuals who cannot speak, read, write or understand English well enough to communicate effectively with health and social service providers. **The Policy Guidance clarifies that it is the responsibility of health and social service providers who receive Federal financial assistance from the Department of Health and Human Services (HHS) to ensure that LEP persons receive language assistance so that they may have meaningful access to benefits and services.**

Since 1980, ORR, in fulfilling its mission to resettle refugees, has funded State agencies, community-based organizations, mutual assistance associations, private voluntary agencies and local health departments, among others. Those entities, in turn, have served refugees and asylees from diverse countries including Vietnam, Laos, Cambodia, the former Soviet Union, Bosnia, Iraq, Somalia, Sudan and others. The majority of these populations are made up of LEP persons. ORR grantees, therefore, have been at the forefront of assessment and the development of language assistance for LEP persons. ORR commends its grantees for their efforts and asks them to re-commit to ensuring that LEP persons receive appropriate, meaningful language assistance so that they can access benefits and services to help them begin

their new lives in the United States. Grantees should take this opportunity, at the release of the Policy Guidance, to re-assess efforts, to devise new strategies, to implement improvements and to offer technical assistance to other agencies in providing effective language assistance to LEP persons.

Who should be in compliance with Title VI?

This Policy Guidance applies to all entities that receive Federal financial assistance from HHS, either directly or indirectly, through a grant, contract or subcontract.[1] Covered entities include (1) any State or local agency, private institution or organization, or any public or private individual that (2) operates, provides or engages in health, or social service programs and activities and that (3) receives Federal financial assistance from HHS directly or through another recipient/covered entity. **For ORR purposes, all state agencies, community-based organizations, national voluntary agencies, mutual assistance associations and any other entities receiving ORR funds, either directly or indirectly, are covered entities and must be in compliance with Title VI, and the obligation to provide language assistance when needed to ensure meaningful access to LEP persons.**

According to the Civil Rights Restoration Act of 1987 (CRRA) all operations of ORR grantees, usually, are covered by Title VI, not just the part of the program that uses Federal assistance. In other words, ORR grantees should be in compliance with Title VI even if ORR funding is used only by one part of the program.

What are the keys to compliance?

The key component to ensuring meaningful access for LEP persons is language assistance. The necessary language assistance will vary depending on the size of the grantee, the size of the eligible LEP population it serves, the nature of the program, the objectives of the program, the resources available to the grantee and the frequency with which particular languages are encountered. The Policy Guidance provides a discussion of the four keys to compliance: assessment of the language needs, the development of a written policy, staff training and monitoring. ORR is including with this State Letter an outline of the "Keys to Compliance" to assist grantees in assessing and formulating their language assistance provisions.

What are ORR grantees' responsibilities?

The Policy Guidance does not impose new responsibilities on ORR grantees. Since its enactment, Title VI of the Civil Rights Act of 1964 has prohibited discrimination against LEP persons in any program that receives Federal financial assistance. Although ORR regulations only detail the obligations of grantees to ensure that LEP persons receive language assistance so that they have meaningful access to refugee cash assistance[2], the legal requirement in Title VI extends to all assistance and services provided with ORR funds. ORR recommends that the release of the Policy Guidance be seen as an opportunity to evaluate policies and to improve services to LEP persons. Therefore, ORR asks grantees to take the following steps.

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[1] For more information about what constitutes Federal financial assistance, see 45 C.F.R. § 80.13(f).
[2] 45 C.F.R. § 400.55 (2000).

(1) Modification of State Plans. ORR asks States to revisit their policies concerning LEP persons and to modify their State Plans by specifically including a framework outlining their policy on assistance to LEP persons. **ORR grantees should submit their revised State Plans to ORR by Wednesday, November 8, 2000.** ORR asks States to carefully review the Policy Guidance and the attached "Keys to Compliance" in formulating their policy. States that need assistance in assessing or formulating their policy may contact the HHS Office for Civil Rights for consultation about their programs.

(2) Narrative Reports by Discretionary Grantees and Sub-grantees. ORR asks all discretionary grantees and sub-grantees to report on their implementation of the Policy Guidance in their next narrative reports. Reports should include an outline of the grantee's LEP policy, as well as its implementation. Like the States, ORR grantees that administer refugee cash assistance programs under the Wilson-Fish authority must comply with ORR regulations requiring agencies to make their policy and program materials available in written form in appropriate languages where a significant proportion of the recipient population needs information in a particular language. (See information to States above.)

(3) Monitoring. ORR will include a review of LEP practices in monitoring sessions. All grantees should be prepared to share their written LEP policies and to discuss implementation.

(4) Future Proposals. In future Requests for Proposals (RFPs), ORR will require submitting entities to outline their policies concerning language assistance for LEP persons. Policies should address the four keys to compliance described in the Policy Guidance. Submitting entities will be encouraged to contact the HHS Office for Civil Rights for advice on the development of appropriate policies.

(5) Costs of LEP Program Implementation. States and grantees should not divert ORR funding from the Refugee Resettlement Program (RRP) to the implementation of LEP policies in other programs.[3] Each individual assistance or services program that serves LEP persons should be ensuring meaningful access to language assistance without placing the financial responsibility solely on ORR funds.

As noted above, ORR commends its grantees for their efforts in assisting LEP persons. ORR hopes that its grantees, with years of experience effectively serving refugees and asylees with varying degrees of language skills, will take a leadership role in the assistance to LEP persons within their communities. ORR also wants to encourage grantees to work together and to assist other agencies in ensuring that their programs are in compliance with Title VI as outlined in the Policy Guidance.

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[3] *See* 45 C.F.R. § 400.13(a)(2000) ("A State must allocate costs, both direct and indirect, appropriately between the Refugee Resettlement Program (RRP) and other programs which it administers."). *See also* 45 C.F.R. § 400.207 (2000) ("Federal funding is available for reasonable and necessary identifiable administrative costs of providing assistance and services under this part only for those assistance and service programs set forth in §§ 400.203 through 400.205 for which Federal funding is currently made available under the refugee program. A State may claim only those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families.") and 45 CFR § 400.206.

The Policy Guidance was published in the Federal Register on August 30, 2000.[4]

Please call Anna Marie Bena at (202) 260-5186 if you have questions about any of the information in this State Letter.

Enclosure

[4] 65 Fed. Reg. 52,762 (2000).

OVERVIEW FOR OFFICE OF REFUGEE RESETTLEMENT (ORR) GRANTEES
"Keys to Compliance"

The key to providing meaningful language access is to ensure that LEP persons and ORR grantees can communicate effectively. ORR grantees must ensure that LEP persons are given adequate information, are able to understand the services and benefits available and are able to communicate their circumstances to grantees. The HHS Office for Civil Rights has found that effective language assistance programs usually contain four elements: (1) assessment (2) written policy (3) staff training and (4) monitoring. The following outline provides a brief overview of the four elements and is meant to act as a guide for ORR grantees in developing their language assistance policies. This outline should not be used as a substitute for a complete review of the Policy Guidance and consultation with the HHS Office for Civil Rights.

KEYS TO COMPLIANCE
Assessment
Written Policy on Language Access
Training of Staff
Monitoring

(1) **ASSESSMENT: ORR grantees should conduct an assessment of the language needs of the population to be served. ORR grantees should:**

- (a) Identify languages likely to be encountered
- (b) Estimate number of people eligible for services/likely to be affected by program
- (c) Record languages in case files
- (d) Establish points of contact in program where language assistance will be needed
- (e) Identify resources to implement language access programs
- (f) Make arrangements to access resources

(2) **WRITTEN POLICY ON LANGUAGE ACCESS: ORR grantees should develop and implement a comprehensive written policy on language access. The policy should include components concerning assessment, notice of right to assistance, oral assistance, translation of written materials, staff training and monitoring.**

(a) **Oral Interpretation**: ORR grantees should develop procedures for obtaining and providing trained and competent interpreters to provide services to eligible participants served through ORR grant(s). Steps may include:

- (i) Hiring bilingual staff
- (ii) Arranging for interpreters (staff/contract)
- (iii) Organizing volunteers to provide interpretation

Contracting with phone interpreter services

(b) **Written Translations**: An effective program ensures that routine written materials (especially "vital" documents: applications, consent forms, letters, notices of reductions and terminations of benefits, notice of free language assistance, outreach) are available in the regularly encountered languages. There must be a plan for written materials when there is a significant number or percentage of the population that is eligible for services and that needs language assistance. The HHS Office for Civil Rights will consider an ORR grantee to be in compliance with its Title VI obligations to provide written materials in non-English languages if (i.e., "safe harbors"):

(i) The LEP group is 10% or 3000 (whichever is less) of population eligible to be served and the ORR grantee provides translated written documents including vital documents for the group.

(ii) The LEP group is 5% or 1000 (whichever is less) and the ORR grantee, at a minimum, translates vital documents; other document translations can be oral.

The LEP group is less than 100 persons; The ORR grantee does not translate written materials but provides written notice in the primary language of the LEP group of the right to receive oral translation of written materials.

The HHS Office for Civil Rights will review practices on a case-by-case basis and will look at the totality of the circumstances. If requiring written translation of certain documents is so financially burdensome that it defeats the objectives of a program or if there are alternative means of ensuring that LEP persons have meaningful access, the HHS Office for Civil Rights may find exceptions to the above standards and may not find that written translation is necessary for Title VI compliance.

(c) **Notice to LEP persons**: ORR grantees may use, but are not limited to, the following methods to notify LEP persons of their right to language assistance.

(i) Signs in waiting rooms (right to free translation/interpretation)
(ii) Translation forms/information documents
(iii) Language identification cards
(iv) Procedures for handling inquiries by phone
(v) Brochures/outreach

(3) TRAINING STAFF: Effective training ensures that employees are knowledgeable about LEP policies and procedures. Training should:

(a) Be part of orientation for new employees
(b) Occur twice annually for those with client contact
(c) Be recorded in a training registry

(4) **MONITORING: The HHS Office for Civil Rights has found that Title VI compliance is most likely when organizations continuously monitor their programs. Monitoring should:**

(a) Occur annually
(b) Include feedback from clients/advocates

Please see the Policy Guidance for case scenarios, a Model Plan, promising practices and details about compliance.