



## *Issue Brief*

# Executive Order 13166-"Improving Access to Services for Persons with Limited English Proficiency" A Review

*The National Council of Asian Pacific Americans (NCAPA) is a coalition that amplifies the voice of Asian American, Native Hawaiian, and Pacific Islander (AANHPI) communities from across the nation. Representing 35 national AANHPI organizations, NCAPA has continuously advocated for language access for our communities by working with federal agencies and congressional partners to ensure that language access is prioritized across all agencies and work.*

### **Legal Basis for Language Access**

August 11, 2015 marks the anniversary of [Executive Order 13166](#), "Improving Access to Services for Persons with Limited English Proficiency," issued by President Clinton in 2000. This executive order requires federal agencies to develop plans and systems to provide services in a linguistically appropriate manner to those with limited English proficiency (LEP). In 2002, the Department of Justice first issued policy guidance, which set compliance standards that recipients of Federal financial assistance must meet to ensure access and that they are not discriminating on the basis of national origin. In 2011, former Attorney General Eric Holder sent a [memo](#) to all federal agencies reaffirming the Federal Government's orders in EO 13166-- providing services for LEP individuals in a way that is accessible to them.

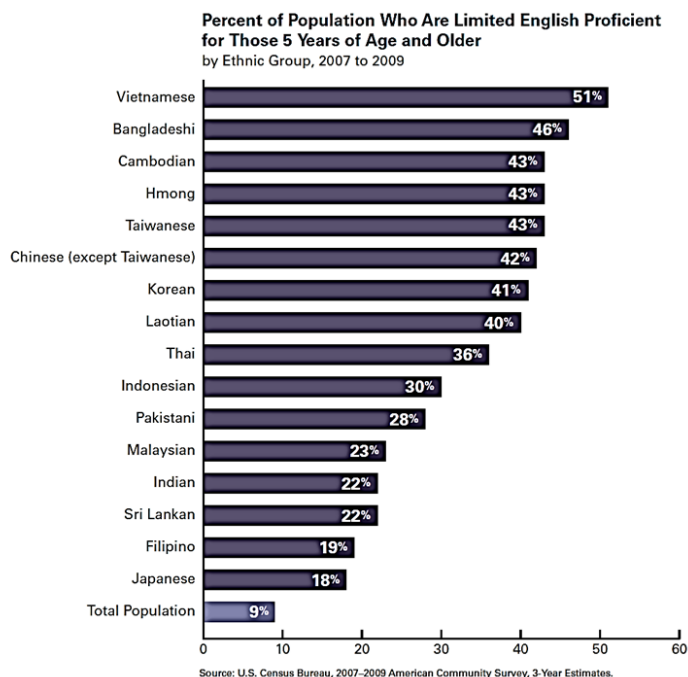
In 1974, the United States Supreme Court ruled in *Lau v. Nichols* that no student shall be discriminated against due to a language barrier. This court case was initiated by non-English speaking Chinese students who were not afforded the option of supplemental English education where others were. This landmark civil rights case established precedent, based on the prohibition of national origin discrimination in Title VI of the Civil Rights Act of 1964, for AANHPI and other communities with limited English proficient (LEP) populations to assert their right to

linguistically and culturally appropriate services from entities receiving federal financial assistance.

Since the passage of the 1965 Immigration Act and the end of race-based immigration quotas, Asian American communities in the United States have grown dramatically. There are now over 17.3 million Asian Americans (AAs) and over 1.2 million Native Hawaiian and Pacific Islanders (NHPIs) living in the United States. Asian Americans now make up 6% of the U.S. population and are the nation's fastest growing racial group. With this growth, Asian America has become increasingly diverse: approximately 10 million Americans speak one of the 33 Asian languages categorized by the U.S. Census.

## The Need for Language Access in Asian American, Native Hawaiian, and Pacific Islander Communities

The Asian American, Native Hawaiian, and Pacific Islander (AANHPI) population in the U.S is comprised of more than 50 ethnic groups who speak 33 census-recognized languages. About 32% of Asian Americans and 9% of NHPIs are LEP,<sup>1</sup> which means that they experience some level of difficulty in English communication. Additionally, 21% of Asian American households are linguistically isolated, meaning that all members 14 years or older speak English less than “very well.” The need for language access is clear; and the need is growing. As a rapidly growing immigrant population, we will continue to need language access.



<sup>1</sup> “A Community of Contrasts: Asian Americans in the United States: 2011,” Asian American Center for Advancing Justice (2011), 24-29.

“A Community of Contrasts: Native Hawaiians & Pacific Islanders in the United States: 2014,” Empowering Pacific Islander Communities and Asian Americans Advancing Justice (2014), 24.

Language access for AANHPI communities requires more than just translating materials; it means an investment to provide culturally competent access. Having bilingual front-line staff who understand the needs of the community is integral to reaching and communicating with AANHPI populations.

Our communities also need increased access to properly trained interpreters. Having adults rely on children to translate sensitive or complicated information, such as health concerns at doctor visits, is unacceptable. These interpreters must be trained and certified to ensure that they are translating information accurately and appropriately. In addition to an overall increase in interpretation services, our communities must be able to access these services in a timely manner.

It is critical for AANHPI communities that documents are not only translated but are done so in both a linguistically and culturally appropriate manner. During the roll out of the Affordable Care Act, while many informational documents were translated into different languages, our communities encountered poor or inaccurate translations, leading to further confusion. For example, the phrase “compare apples and oranges” was used in the Federal Health Insurance Exchange. However, this phrase was translated literally into other languages, thus losing the meaning of the idiom, and confusing consumers. Despite the fact that the law requires federal agencies to provide translations, many AANHPI community-based organizations had to use their own limited resources to translate materials in a more appropriate and accessible manner. While organizations could partner with agencies to review translations to ensure accuracy, the inclusion of appropriate vocabulary, and monitor tone, it should not be the burden of the community to do the job of federal agencies. If community is considered the most valuable partner for this type of work, then there needs to be a formal contract for services rendered.

Even if quality translated materials are available, AANHPI communities will not necessarily seek out these resources on their own. To ensure that AANHPIs utilize and access translated and in-language materials, federal agencies need to provide outreach and publicize these materials to our communities. CBOs and community leaders are trusted resources in AANHPI communities for resources and news. Federal agencies should utilize these relationships to outreach and share information about federal resources. Ethnic media outlets also play a significant role in providing in-language outreach. Widely read newspapers such as Sing Tao Daily, Rafu Shimpo, and Korea Daily, provide both domestic and international news and information in-language and in English. These and other outlets should be used to reach the larger AANHPI communities in-language.

While we applaud those federal agencies who do provide resources and language access to our communities, we also need accountability. Agencies should ensure that LEP individuals have access to the formal complaint process and complaints should be monitored and the resolutions reported to allow the community to hold the government accountable.

## Recommendations for specific agencies

Fifteen years after the issuance of Executive Order 13166, the AANHPI community is still seeing a gap in services from many different federal agencies. NCAPA member organizations have been working with agencies to advocate for linguistically appropriate solutions to the issues that AANHPI communities are facing nationwide. NCAPA members continue to advocate for improved language access and cultural competency in our five key policy areas: civil rights, health, education, immigration, and housing and economic justice. Below are key recommendations for several agencies with significant public contact:

### Consumer Financial Protection Bureau

1. Update the reporting requirements of the Home Mortgage Disclosure Act to include disaggregated AANHPI data, the preferred language spoken by the loan or loan modification applicant, the language in which the loan or loan modification was negotiated, and the language of the loan documents.
2. Provide financial institutions and the banks it supervises guidance on addressing language access in its institutions around outreach/marketing, origination and servicing.
3. Develop glossaries of key financial terminology and processes that can serve as guides for interpreters.

### United States Census Bureau

1. Translation protocols should ensure that the translations are accurate, culturally appropriate and at the proper reading comprehension level for the intended audiences; we recommend including processes that utilize and compensate community organizations in reviewing and advising on translations.
2. The Commerce Department must also take into account the diversity of languages in the community – the largest group of languages spoken by Asian Americans is composed of languages from China and there is significant linguistic diversity among South Asian immigrants. Any efforts around language assistance and access must address a wide range of language needs, and we encourage continued work to reach not only the largest LEP populations but also the smaller populations with high rates of limited English proficiency to ensure that the Census yields an accurate count of all of our communities.

### Department of Education

1. Expand the Office of English Language Acquisition's English Learner Network to include an advocacy organization that represents AANHPI students and families.
2. Translate vital documents that would promote accessibility for higher education and federal financial aid assistance, including but not limited to the Free Application for Financial Student Aid (FAFSA) and supporting documents.

### Department of Health and Human Services

1. Designate Language Access Coordinators within the HHS Office of the Secretary and at the 10 HHS Regional Offices to serve as agency leads to ensure that persons who have limited or no English language proficiency are able to access information, programs and services provided by HHS.
2. Develop a fair and clear contract process for community-based organizations to assist HHS with the development and community review of translated materials.

#### Department of Homeland Security

1. Translate vital documents into print and online materials. Also make forms available in more languages, and accept these in-language forms as the official application. Create a mechanism for language assistance to be accessible via telephone.
2. When in-language materials are created they must be readily available for use by agents, officers, staff, and members of the public nationally.
3. Staff and contractors of DHS and component agencies who work with LEP communities in the field should undergo cultural awareness training so they may recognize the common scenarios which they may encounter, particularly when engaging individuals with sensitive cultural or religious practices.

#### Department of Housing and Urban Development

1. Account for the challenges faced by linguistically and culturally isolated communities in HUD Notice of Funding Availability (NOFA) allocations for housing counseling by expanding the definition of "geographically isolated" counseling agencies to include organizations that are serving linguistically isolated households.
2. Ensure the methodology for the American Housing Survey better reflects the needs of low-income and LEP AANHPIs through the collection and reporting of disaggregated data, targeting specific AANHPI neighborhoods for additional research, and adding additional questions to the survey that will better represent the challenges faced by these communities.

#### Department of Justice

1. Engage stakeholders, including community-based organizations, in efforts to improve translation and interpretation services for federal agencies, as well as efforts to improve outreach activities and evaluate their effectiveness.
2. Since Asian Americans and Pacific Islanders still face barriers to participating in the democratic process, and we are particularly concerned about the loss of voter protections as a result of the *Shelby County v. Holder* decision, we recommend that the Justice Department address the needs of LEP voters by proactively enforcing compliance with Sections 203 and 208 of the Voting Rights Act.

## **Conclusion**

As we mark this anniversary of Executive Order 13166, NCAPA, our member organizations, and the AANHPI community will continue to be strong advocates for linguistically and culturally appropriate services and documents across all federal agencies. We hope that our partners within the federal government will work towards updating their language access plans, expand their lists of translated vital documents not only to include more documents, but to also add more languages, and to appoint high-level language access coordinators in each agency to ensure that the needs of all Americans, including LEP communities are being met.