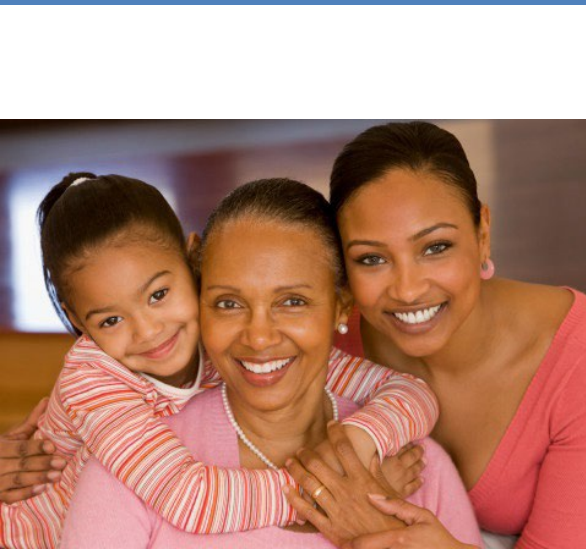




2023

## *HHS Office for Civil Rights*

# *Language Access Annual Progress Report*



### ***HHS Language Access Statement***

*The U.S. Department of Health & Human Services is committed to eliminating barriers that impede access to quality healthcare and essential human services that are provided by HHS or by recipients of Federal financial assistance provided by HHS.*



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## Executive Summary

The Office for Civil Rights submits this first annual report regarding the U.S. Department of Health and Human Services' (HHS or Department) efforts to provide meaningful access to language assistance services (LAS) to persons with limited English proficiency (LEP). This report examines and further builds upon steps taken in 2022 to accomplish the language access goals set by the 2022 [HHS Equity Action Plan](#) (Equity Plan) pursuant to Executive Order (EO) 13985, [Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), issued on January 20, 2021.<sup>1</sup> [EO 13985](#) directs agencies to allocate federal resources “to address the [Federal Government’s] historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities,”<sup>2</sup> and requires the head of each agency to produce a plan that addresses barriers that underserved communities and individuals may face to full and equal participation in benefits and services in federal programs and “agency procurement and contracting opportunities.”<sup>3</sup> Accordingly, the Department issued its Equity Plan in April 2022. With regard to barriers to federal benefits and programs, Section 1 of the Equity Plan, *Nondiscrimination in HHS: Civil Rights Protections and Language Access*, focuses on improving access by persons with LEP to programs and activities funded and administered by HHS.

Among other things, the Equity Plan requires the OCR Director to designate an office or official responsible for developing and maintaining an accurate record of a program that regularly assesses and takes necessary steps to improve and ensure the quality and accuracy of language access services provided to individuals with LEP.<sup>4</sup> HHS had established the Language Access Steering Committee in 2012 for these same reasons, but it was not active during the last Administration. Thus, as a first step, HHS relaunched the Language Access Steering Committee on October 11, 2022. OCR Director Melanie Fontes Rainer chaired the first meeting with Secretary Xavier Becerra and Deputy Secretary Andrea Palm attending the first meeting of the committee, lending their support and underscoring the importance of the committee and its mission. Going forward, the Language Access Steering Committee is now charged with implementing the comprehensive language access goals of the Equity Plan, which are discussed herein.

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<sup>1</sup> 86 Fed. Reg. 7009. In addition to EO 13985 and the Equity Plan, HHS has LAS obligations under several other authorities, such as EO 13166, [Improving Access to Services for Persons With Limited English Proficiency](#), 65 Fed. Reg. 50121 (Aug. 11, 2000) (directing Federal agencies to improve access to federally funded programs and activities by persons with limited English proficiency, and to implement a system by which limited English proficient persons can meaningfully access the agency’s services); EO 14031, [Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders](#), 86 Fed. Reg. 29675 (May 28, 2021); EO 13995, [Ensuring an Equitable Pandemic Response and Recovery](#), 86 Fed. Reg. 7193 (Jan. 21, 2021); and the [HHS Strategic Plan FY 2022-2026](#). These mandates are also included in the current Equity Plan.

<sup>2</sup> EO 13985, 86 Fed. Reg. at 7010, Sec. 6 (“The Federal Government should, consistent with applicable law, allocate resources to address the historic failure to invest sufficiently, justly, and equally in underserved communities, as well as individuals from those communities.”).

<sup>3</sup> *Id.* at 7011, Sec. 7.

<sup>4</sup> Equity Plan at 7. Also, the Department’s Office of Small and Disadvantaged Business Utilization used this approach to launch the acquisition provisions of the Equity Plan. *Id.*

This report summarizes the Department’s progress to date, and charts a course to increase meaningful language access across the Department. It first discusses the need for reducing barriers and increasing language access in the four key areas that the Equity Plan identified: (1) internet and public information access; (2) telephonic access; (3) access to programs and activities; and (4) federal funds to provide needed language services. The report then maps out specific benchmarks and the progress to date, including OCR’s collection and analysis of 25 Operating Divisions’ (OpDivs’) and Staff Divisions’ (StaffDivs’) Language Access Plans, and the formation of the Language Access Steering Committee subcommittees to assess whether improvements are needed and to share best practices.<sup>5</sup> As this effort has only just begun, the report discusses how work will continue in 2023 and beyond, including the strategic creation of the new Language Access Coordinator position, along with the centralized language access center the Coordinator will oversee.

## Why Increasing Language Access is Needed

A lack of meaningful language access can lead to inequitable access to HHS programs and the services the agency funds. The U.S. Census Bureau’s 2021 American Community Survey indicates that 21.5 percent of people in the United States speak a language other than English at home. Of those, 8.2 percent speak English less than very well and therefore meet the definition of limited English proficient.<sup>6</sup> The [HHS Action Plan to Reduce Racial and Ethnic Health Disparities](#) notes that “[r]acial and ethnic minorities are more likely than non-Hispanic Whites to report experiencing poorer quality patient-provider interactions, a disparity particularly pronounced among the 24 million adults with limited English proficiency.”<sup>7</sup> The disparities for persons with LEP prompted the Agency for Healthcare Research and Quality to fund development of [Improving Patient Safety Systems for Patients With Limited English: A Guide For Hospitals](#).<sup>8</sup> The Guide notes that research indicates that “adverse events affect patients with LEP more frequently, are often caused by communication problems, and are more likely to result in serious harm compared to those that affect English-speaking patients.”<sup>9</sup>

Providing language access decreases barriers to equal access to HHS programs and the services the agency funds.<sup>10</sup> Accordingly, the Department is undertaking rulemaking to better align the Section 1557 regulation with the statutory text of the Affordable Care Act, to reflect recent

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<sup>5</sup> For reference, the participating OpDivs and StaffDivs are listed in Appendix A, along with information about key leaders and the subcommittees they serve on. The only component that has not responded to OCR is the Agency for Toxic Substances and Disease Registry, and OCR will continue contacting them to confirm whether or not they have a Language Access Plan.

<sup>6</sup> U.S. Census Bureau 2021 American Community Survey, Why We Ask Questions About Languages Spoken At Home (Nov. 14, 2022), [www.census.gov/acs/www/about/why-we-ask-each-question/language](http://www.census.gov/acs/www/about/why-we-ask-each-question/language).

<sup>7</sup> U.S. Dep’t Health and Human Servs., HHS Action Plan to Reduce Racial and Ethnic Health Disparities: A Nation Free of Disparities in Health and Health Care, [www.minorityhealth.hhs.gov/assets/pdf/hhs/HHS\\_Plan\\_complete.pdf](http://www.minorityhealth.hhs.gov/assets/pdf/hhs/HHS_Plan_complete.pdf)

<sup>8</sup> The Disparities Solution Center (Sept. 2012), [www.ahrq.gov/sites/default/files/publications/files/lepguide.pdf](http://www.ahrq.gov/sites/default/files/publications/files/lepguide.pdf)

<sup>9</sup> *Id.* at iii. See also EO 14031, 86 Fed. Reg. at 29675, Sec. 1 (noting the high LEP rates among the nation’s growing Asian American (AA) Native Hawaiian and Pacific Islander (NHPI) communities, and that “[l]inguistic isolation and lack of access to language-assistance services continue to lock many AA and NHPI individuals out of opportunity.”).

<sup>10</sup> See, e.g., Equity Plan at 7.

developments in civil rights case law under Title VI and Section 504, and to better address issues of discrimination that contribute to negative health interactions and outcomes.<sup>11</sup> OCR believes that this rule-making process will help provide clarity and guidance for the work of the Language Access Steering Committee and across the Department. Among other things, the proposed rule specifically requires covered entities and the Department itself to develop and implement written language access procedures to support compliance with requirements to take reasonable steps to provide meaningful access to individuals with LEP who are affected by their health programs and activities.<sup>12</sup> Moreover, the Department does not divorce language access considerations from those concerning effective communication with individuals with disabilities, for many eligible individuals simultaneously have LEP and a disability. Thus, the proposed rule requires covered entities to develop and implement written effective communication procedures to support compliance with requirements to take appropriate steps to ensure that communications in their health programs and activities with individuals with disabilities are as effective as communications with individuals without disabilities. Our approach is that the highest bar should apply. For example, the Notice of Proposed Rulemaking (NPRM) proposes that if a person is a companion or parent of a person with a disability, they should have access to in-language information at the same level as any person with LEP, and that the required notices stating that auxiliary aids and services are available should be translated into the top 15 languages spoken in the state.<sup>13</sup>

## Implementing Language Assistance Service Benchmarks Under the Equity Action Plan

The Equity Plan requires HHS to restore, strengthen, and fully implement the HHS Language Access Plan (LAP) to ensure a “Department-wide culture change that prioritizes equity in the delivery of HHS conducted and funded programs, which will ultimately contribute to improved health outcomes and reduced health disparities for underserved communities identified in EO 13985.”<sup>14</sup> To implement these requirements, the Equity Action Plan prioritizes language access as the first of five Department-wide equity strategies, and states that:

Focusing on civil rights protections and laws will help address barriers to health care and human services, such as those individuals with limited English proficiency face in obtaining information, services and/or benefits from HHS federally conducted and federally assisted programs.<sup>15</sup>

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<sup>11</sup> See Nondiscrimination in Health Programs & Activities, 87 Fed. Reg. 47824 (proposed Aug. 4, 2022) (to be codified at 45 C.F.R. pt. 92).

<sup>12</sup> *Id.* at 47914; See also notes 25-29, *infra*.

<sup>13</sup> *Id.* at 47853-56 and 47860-61. OCR notes that the proposed rule prohibits a covered entity from relying on a minor child to interpret or facilitate communication, except in emergencies involving imminent threats to the safety or welfare of an individual or to public health, and only during the time in which no qualified interpreter is available. *Id.* at 47683.

<sup>14</sup> Equity Plan at 7.

<sup>15</sup> *Id.* at 2.

The Equity Plan goes on to state that under this strategy, HHS will address the following items that may pose barriers to access to HHS federally funded or assisted programs for persons with LEP:

1. Access to in-language content through webpages, listserv announcements, and public outreach material;
2. Telephonic interpreter services;
3. Program and benefit information in other languages;
4. Federal funding for recipients of HHS to provide language access services; and
5. Restore and strengthen the HHS Language Access Plan;<sup>16</sup>

To ensure HHS makes progress, the Equity Plan charges the OCR Director with overseeing these efforts, designating the HHS Language Access Steering Committee to perform language access quality assessment functions, tracking progress, and annually reporting to the Secretary. A key component of the Equity Plan is the charge to restore and strengthen the Department's LAP which is a Department priority. Echoing this priority, on May 19, 2023, the Attorney General has also directed each federal agency to update its agency-wide LAP<sup>17</sup> OCR has already begun this work and will complete this process in collaboration with the Language Access Steering Committee.

The Language Access Steering Committee has established subcommittees regarding the first four major items identified in the Equity Plan, and OCR has begun to examine whether current OpDiv and StaffDiv LAPs address them. For example, the Language Access Steering Committee will assess the level and quality of access to in-language content through webpages, listserv announcements, and public outreach material (issue #1 in the Equity Plan) at the component and Department-wide levels, and this work will inform how the Department's LAP will be restored and strengthened to lower barriers and increase access for LEP persons.

The Equity Plan includes mid- and long-term benchmarks for progress that will be incorporated into the Department's overall LAP and agency-specific LAPs. The Equity Plan's specific benchmarks, which address four primary items or factors affecting the provision of meaningful access to persons with LEP, anticipate that HHS and its components will, among other actions: (1) post in-language webpages; (2) have "Help Lines" supported by effective telephonic interpreters; (3) increase in-language access to programs and benefit information; and (4) aim to have funding to help grant recipients provide language access, and also ensure that visitors with LEP to programs conducted by or funded by HHS will receive LAS at no cost and in a timely

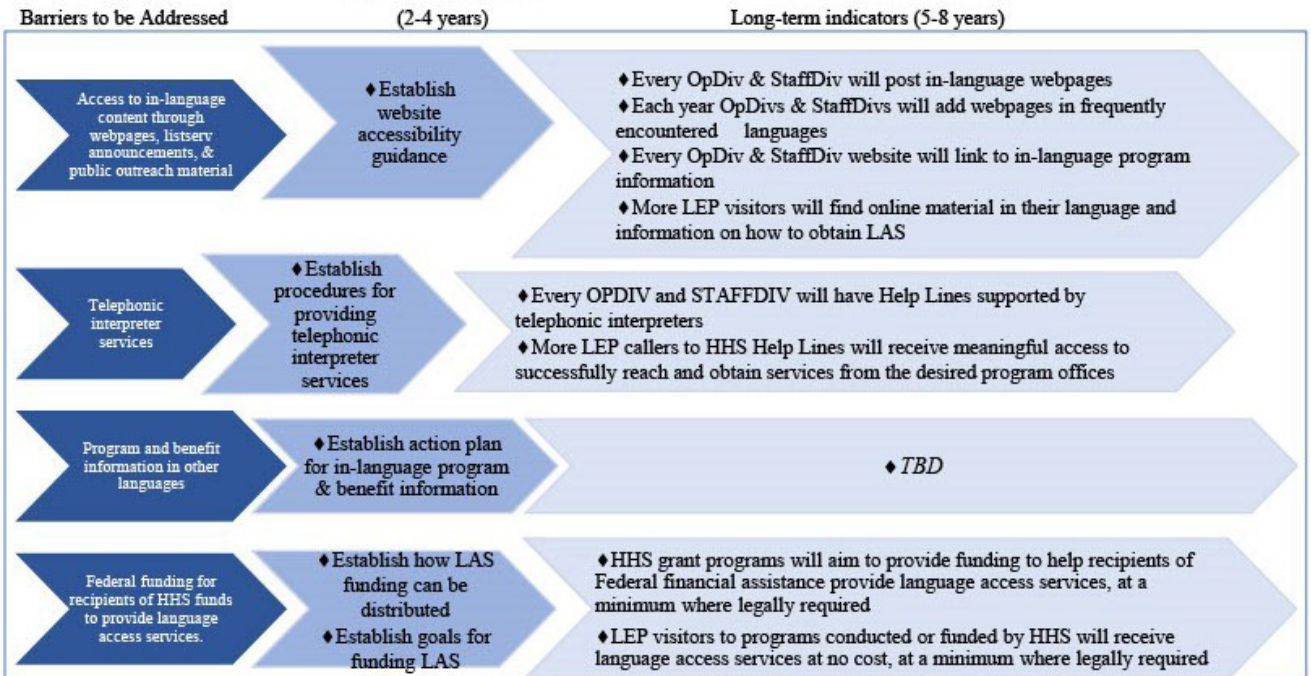
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<sup>16</sup> *Id.* at 3.

<sup>17</sup> See Memo. from the Att'y Gen., *Strengthening the Federal Government's Commitment to Language Access*, at 1 (Nov. 21, 2022) (requesting agencies "provide an updated language access plan within 180 days of this memorandum" (i.e., by May 19, 2023)).

manner where legally required.<sup>18</sup> The Equity Plan timeline for making progress on these items is illustrated below:

Chart 1: Medium- and Long-Term Goals of the Equity Action Plan



The Steering Committee will ensure progress by incorporating each benchmark as an action step in the relevant provision of the updated HHS LAP, and OpDivs and StaffDivs will incorporate the benchmarks in updated agency-specific LAPs. The Steering Committee will produce an annual report on progress made by HHS overall, report progress made by each HHS division, make recommendations to the Secretary, and identify LAS goals for the coming year to ensure progress is made on each benchmark.

## Previous Steps Taken by HHS to Provide Language Assistance Services (LAS) in Its Programs

Progress has been made in the past twenty years, and the Department now has the opportunity to assess that progress and build on it. This section provides brief examples of the work to date in each of the major language access issue areas.

<sup>18</sup> See Equity Plan at 6-7.

Regarding online content, while there have been shortfalls, some OpDivs and StaffDivs have greatly increased the amount of in-language content online, particularly in the wake of national emergencies and the COVID-19 pandemic.<sup>19</sup>

HHS received an inter-agency civil rights complaint alleging that 19 states failed to provide meaningful access to their COVID testing, inoculation, and treatment programs.<sup>20</sup> In response, OCR is collaborating with the Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA) to provide technical assistance in the form of in-depth webinars about language access during emergency situations to these 19 states.

The HHS All Hazards Base Plan currently under development by the agency's Administration for Strategic Preparedness and Response (ASPR) also considers access to services by persons with LEP, as does the 2022-2026 [HHS Strategic Plan](#).<sup>21</sup> In addition to content in many of the top non-English languages spoken in the United States, however, there is still a need to push out content in relevant languages on short notice during emergencies. To this end, CDC established a rapid response language access team to produce COVID-related content in additional languages on an as-needed basis.

HHS also added taglines in multiple languages at the bottom of [HHS.gov](#) homepage, which take visitors to OCR's [Civil Rights for Individuals and Advocates](#). A series of clicks on subsequent links will eventually take the visitor with limited English proficiency to a webpage with instructions on obtaining LAS, but it would be more accessible if the taglines also linked visitors directly to telephonic interpreter services. However, access to vendors who can provide the appropriate level of telephonic access is sometimes lacking due to budgetary reasons. Yet because access to comprehensive interpretation services is essential for ensuring the level of meaningful access envisioned by the Equity Plan, more work is needed in this area.

As for telephonic interpretation, the Centers for Medicare & Medicaid Services (CMS) has made progress in increasing LAS with 1-800-MEDICARE, which answers with a prompt in Spanish

<sup>19</sup> See, e.g., Ctrs. for Medicare & Medicaid Servs., Resources by Language (Nov. 14, 2022), [www.cms.gov/About-CMS/Agency-Information/OMH/resource-center/resources-by-language](http://www.cms.gov/About-CMS/Agency-Information/OMH/resource-center/resources-by-language); Ctrs. for Disease Control & Prevention, CDC Resources in Languages Other than English (Nov. 14, 2022), [www.cdc.gov/pubs/other-languages?Sort=Lang%3A%3Aasc](http://www.cdc.gov/pubs/other-languages?Sort=Lang%3A%3Aasc); HHS Office for Civil Rights, Translated Resources for Covered Entities (Nov. 14, 2022), [www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html](http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html); Health Res. & Servs. Admin., Language Assistance Servs. (Nov. 14, 2022), [www.hrsa.gov/about/language-assistance](http://www.hrsa.gov/about/language-assistance); Admin. for Strategic Preparedness & Resp., Ensuring Language Access & Effective Communication During Response & Recovery – A Checklist for Emergency Responders (SPANISH) (Nov. 14, 2022), [www.hhs.gov/sites/default/files/lang-access-and-effective-comm-checklist-for-emergency-responders-spanish.pdf](http://www.hhs.gov/sites/default/files/lang-access-and-effective-comm-checklist-for-emergency-responders-spanish.pdf); Substance Abuse & Mental Health Servs. Admin. (SAMHSA), Language Assistance Services (Nov. 14, 2022), [www.samhsa.gov/language-assistance-services](http://www.samhsa.gov/language-assistance-services); Food & Drug Admin. Multilingual COVID-19 Resources, (Jan. 20, 2023), [www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/multilingual-covid-19-resources](http://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/multilingual-covid-19-resources).

<sup>20</sup> Letter from Jane Perkins, Legal Dir., Nat'l Health Law Prog., to Office for Civil Rights, HHS, Office for Equal Rights, FEMA, and Office for Civil Rights & Civil Liberties, DHS (April 30, 2021) (on file with OCR).

<sup>21</sup> As indicated previously, the 2022—2026 HHS Strategic Plan includes provisions addressing equitable access to culturally-competent healthcare services, culturally and linguistically appropriate services, culturally-tailored communications, and culturally-appropriate training, education, and technical assistance in various circumstances. References to services that are culturally competent, culturally tailored, or culturally appropriate includes language access services.



for callers needing assistance in Spanish.<sup>22</sup> The CMS Health Insurance Marketplace Helpline also includes a Spanish language prompt,<sup>23</sup> and the [CMS Latino Partners](#) webpage also contains phone numbers with Spanish language prompts.<sup>24</sup> Moreover, the Substance Abuse and Mental Health Services Administration's 988 Suicide and Crisis Lifeline has a network of centers dedicated to responding to callers in Spanish, and the network as a whole provides access through a language line to over 200 additional languages.<sup>25</sup> While commendable, HHS must be capable of providing access to callers who speak languages other than English and Spanish. For example, the pandemic made clear the need for services in Asian American, Native Hawaiian, and Pacific Islander languages.<sup>26</sup> Given the growing number of languages encountered by programs funded and administered by HHS, however, full implementation of the LAS goals of the Equity Plan are essential to provide meaningful access to LEP callers and customers. Here again, more work is needed to provide the level of meaningful access envisioned by the HHS Equity Plan.

Concerning access to program and benefits information, in-language enrollment material is now available on most agency websites, thereby increasing access to program and benefit information. In late June 2022, OCR engaged in an ASPE-hosted language access stakeholder call for the HHS Equity Action Plan and heard from stakeholders about opportunities for HHS to consider in advancing equity for those who are LEP.<sup>27</sup> HHS has addressed language access in its Strategic Plan and All-Hazards Base Plan, as well as public-facing guidance, information bulletins, and outreach materials on an ongoing basis.<sup>28</sup>

Regarding grantee accountability, since 2014, all HHS components Language Access Plans have included an element requiring each HHS granting agency to ensure its grant recipients understand and comply with obligations to ensure meaningful access to their programs by persons with LEP.<sup>29</sup> Under Title VI of the Civil Rights Act of 1964 and implementing

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<sup>22</sup> See Medicare.gov (Nov. 14, 2022), <https://es.medicare.gov/talk-to-someone>.

<sup>23</sup> Upon dialing 1-800-318-2596, the Spanish prompt begins immediately following an English greeting.

<sup>24</sup> See CMS.gov (Nov. 14, 2022), [www.cms.gov/Outreach-and-Education/Outreach/Partnerships/Latino#:~:text=Visit%20https%3A%2F%2Fespanol.insurekidsnow.day%2C%207%20days%20a%20week](http://www.cms.gov/Outreach-and-Education/Outreach/Partnerships/Latino#:~:text=Visit%20https%3A%2F%2Fespanol.insurekidsnow.day%2C%207%20days%20a%20week).

<sup>25</sup> See SAMHSA, 988 Suicide & Crisis Lifeline (Jan. 20, 2023), [www.samhsa.gov/find-help/988](http://www.samhsa.gov/find-help/988). SAMHSA also has a National Helpline ([www.samhsa.gov/find-help/national-helpline](http://www.samhsa.gov/find-help/national-helpline)) and other Spanish language resources ([www.samhsa.gov/behavioral-health-equity/hispanic-latino](http://www.samhsa.gov/behavioral-health-equity/hispanic-latino)).

<sup>26</sup> See, e.g., President's Advisory Commission on Asian Americans, Native Hawaiians and Pacific Islanders Inaugural Report with Recommendations, May 2022, at 31, [www.hhs.gov/sites/default/files/pacaanhpi-inaugural-report-2022.pdf](http://www.hhs.gov/sites/default/files/pacaanhpi-inaugural-report-2022.pdf) (“Studies have shown that communities with high numbers of limited English proficient residents and racial minorities were hit hardest by the pandemic with higher rates of incidence and mortality among these populations. Yet, many limited English-speaking individuals could not access information, testing, and vaccinations in their languages.”).

<sup>27</sup> See Listening Sessions on the HHS Equity Plan of Action: Summary of Findings (June 2022) (on file with OCR).

<sup>28</sup> See *supra* n. 19 for examples.

<sup>29</sup> Both Title VI and Section 1557 require covered entities to take reasonable steps to ensure meaningful access to their programs by persons with LEP. The 2020 Section 1557 Rule also incorporated the 4-factor analysis in HHS' Title VI LEP Guidance: 1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the Recipient; 2) The frequency with which LEP individuals come in contact with the Recipient's programs or services; 3) The nature and importance of the Recipient's program, activity, or service to people's lives; and 4) The resources available to the Recipient and costs. 45 C.F.R. § 92.101(b). Therefore, the Title VI LEP guidance helps entities

regulations, failure of a recipient of federal financial assistance to take reasonable steps to provide meaningful access by persons with LEP to covered programs and activities could violate Title VI.<sup>30</sup> OCR enforces these Title VI obligations through actions such as investigations, periodic compliance reviews, technical assistance, and guidance.<sup>31</sup> On December 22, 2021, OCR issued guidance to ensure that health care providers offer fair and equitable access to vaccines and boosters.<sup>32</sup> More recently, OCR worked with ASFR and all components to include civil rights compliance language in all HHS funding opportunity announcements.

Finally, as for access to funding for language access, in the past, smaller grantees and physician practices have stated that they did not have the resources to provide language access and it was difficult to gauge whether providing such was required under the circumstances.<sup>33</sup> At this time, preliminary steps have been taken across HHS to ensure recipients of federal financial assistance can use federal grant monies to provide LAS. For example, under some circumstances, Health Resources & Services Administration (HRSA) allows grant funds to be used by recipients to provide LAS to their customers. As this is an important new element of the Department’s Language Access Plan that has not been included in the past, more work is needed to ensure that grantees have the funds needed to ensure language access.

## Notice of Proposed Rulemaking Regarding Nondiscrimination in Health Programs & Activities

Other progress to date includes OCR’s Notice of Proposed Rulemaking (NPRM) published in the Federal Register on August 4, 2022, proposing comprehensive updates to Section 1557, the nondiscrimination provision of the Affordable Care Act.<sup>34</sup> The NPRM includes provisions to

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covered by Title VI and Section 1557 comply with language access requirements under both regulations. SAMHSA, for instance, requires the Certified Community Behavioral Health Clinics it supports to ensure language access. *See* SAMHSA, *Culturally Competent LEP and Low-literacy Services* (Jan. 20, 2023),

[www.samhsa.gov/certified-community-behavioral-health-clinics/section-223/cultural-competency/lep-services](http://www.samhsa.gov/certified-community-behavioral-health-clinics/section-223/cultural-competency/lep-services).

<sup>30</sup> *See, e.g.*, HHS, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (2003), [www.hhs.gov/guidance/federal-financial-assistance-recipients-title-vi](http://www.hhs.gov/guidance/federal-financial-assistance-recipients-title-vi) | [HHS.gov](http://HHS.gov), *citing* 42 U.S.C. § 2000d-1 and *Lau v. Nichols*, 414 U.S. 563 (1974).

<sup>31</sup> *See, e.g.*, 25 C.F.R. Part 80 and related delegation of authority by the Secretary; *See also* U.S. Commission on Civil Rights, *Are Rights a Reality? Evaluating Federal Civil Rights Enforcement* (Nov. 2019), at 195-225 (discussing and analyzing the authorities of HHS OCR and its use of various tools for enforcement).

<sup>32</sup> *See* HHS, *Civil Rights for Providers, COVID-19, Guidance on Federal Legal Standards Prohibiting Race, Color and National Origin Discrimination in COVID-19 Vaccination Programs* (Dec. 13, 2022) (guidance provided to ensure covered entities understand their obligations under laws prohibiting “discrimination on the basis of race, color and national origin (*including language spoken*)”) (emphasis added), [www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-federal-legal-standards-covid-19-vaccination-programs/index.html](http://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-federal-legal-standards-covid-19-vaccination-programs/index.html).

<sup>33</sup> Executive Order 13166 requires that meaningful access be provided, but it also allows that the resources available should be taken into account. *See 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. 50123, 50125 (Aug. 16, 2000) (“The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual’s day-to-day existence.”).

<sup>34</sup> *See* *Nondiscrimination in Health Programs & Activities*, 87 Fed. Reg. 47824 (proposed Aug. 4, 2022) (to be codified at 45 C.F.R. pt. 92).

clarify duties of covered entities and lower barriers to language access. Importantly, the statutes and regulation apply to more than just ACA-related programs and services. For example, it not only applies to all health programs and activities that received federal financial assistance, but also those administered by the Department. OCR issued a Fact Sheet as well as a Question and Answer document about the NPRM and opportunity to comment in 15 languages.<sup>35</sup>

The proposed rule codifies the long-standing requirement under Title VI requiring covered entities to “take reasonable steps to provide meaningful access to each limited English proficient individual eligible to be served or likely to be directly affected by its health programs and activities.”<sup>36</sup> The NPRM notes that “as the availability of telephonic interpreters increases, the evaluation of the reasonableness of providing language services shifts,” and would allow for greatly increasing language access through the use of services that provide access in multiple languages.<sup>37</sup>

The NPRM also proposes to require covered entities to provide a Notice of Nondiscrimination to participants, beneficiaries, enrollees, and applicants to health programs and activities, detailing the availability of free and timely LAS sufficient to provide meaningful access to individuals with LEP.<sup>38</sup> The comment period for the NPRM closed on October 3, 2022, and OCR is now reviewing over 75,000 public comments and hopes to issue the final rule later this Spring. Full implementation depends on when the NPRM is finalized and whether litigation occurs. In 2016, OCR issued translations of the prior 1557 rule’s provisions for language access in 64 non-English languages.<sup>39</sup> Upon promulgation, OCR may issue translations of the final 1557 rule notice in a similar number of non-English languages, whenever resources are available.

## Status of HHS Agency Language Access Plans

Having a well-written and well-distributed Language Access Plan can be fundamental to supporting HHS grantees’ language access compliance requirement of helping ensure equal access to direct programs and services provided by HHS. In October 2021, OCR issued a data call to all OpDivs and StaffDivs regarding their Language Access Plans. We are pleased to report that 25 components participated.

HHS issued our agency-wide LAP in 2013; it has not been updated since. The great majority of components adopted their Language Access Plan in 2013-2014. Further information listing the dates and elements of the LAPs is set forth in Appendix B.

The HHS Language Access Steering Committee and OCR have begun analyzing how the Department’s LAP should be updated and will then consider how the OpDiv and StaffDiv plans

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<sup>35</sup> See HHS OCR, Background on the Section 1557 Notice of Proposed Rulemaking (July 15, 2019), [Background on the Section 1557 Notice of Proposal Rulemaking | HHS.gov](#) (including links to the Summary and Questions and Answers documents in 15 non-English languages).

<sup>36</sup> See 87 Fed. Reg. at 47912 (proposed Sec. 92.4) (“Covered entity means . . . The Department;”).

<sup>37</sup> *Id.* at 47861.

<sup>38</sup> *Id.* at 47915 (proposed Sec. 92.10-11).

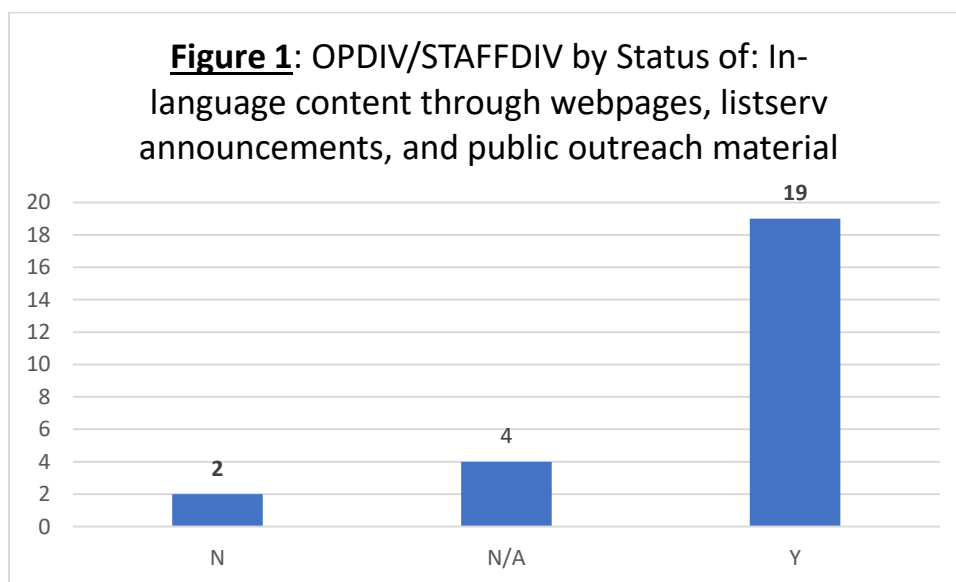
<sup>39</sup> See *id.* at 47853.

The HHS Language Access Steering Committee and OCR have begun analyzing how the Department’s LAP should be updated and will then consider how the OpDiv and StaffDiv plans should be updated for consistency. This will be the work of the Language Access Steering Committee subcommittees.

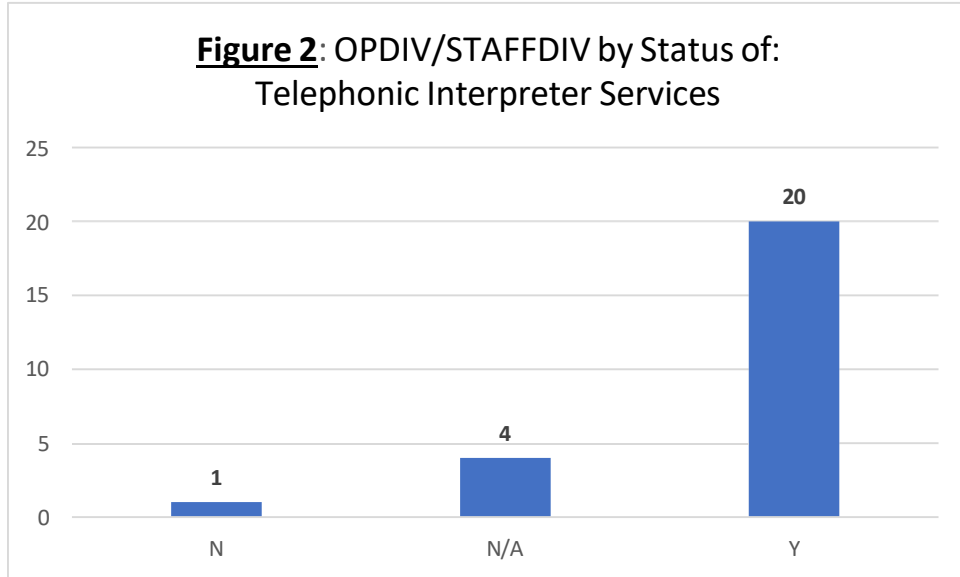
## Analysis of Current Language Access Plans: Figures 1-4

Regarding the elements of the Equity Action Plan issued in April 2022, as illustrated by Figures 1 through 4 below, most of the 25 plans submitted by the OpDivs and StaffDivs included provisions covering the basic elements identified therein. The underlying data about each of the 25 participating OpDivs and StaffDivs’ LAPs can be found in Appendix B.

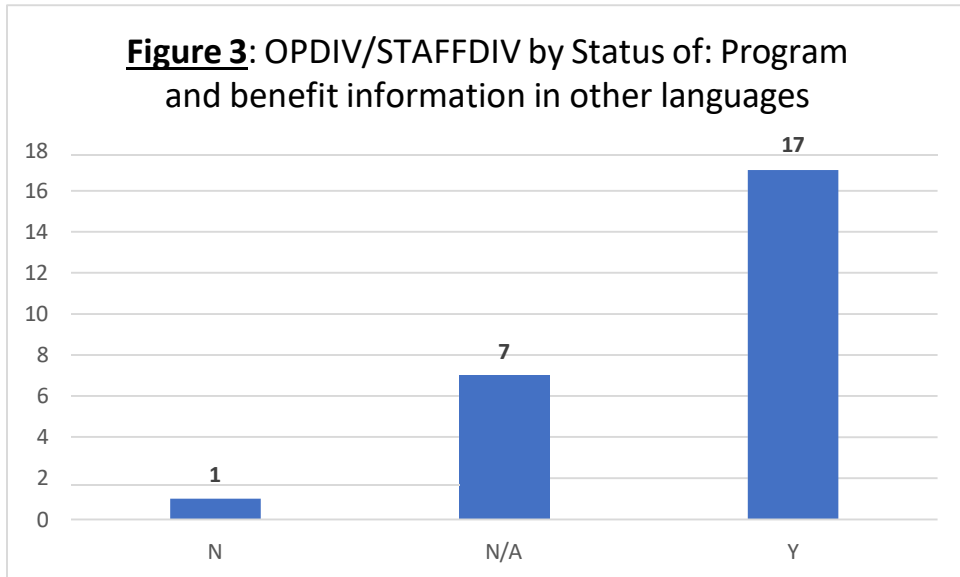
As Figure 1 illustrates, the great majority of OpDivs and StaffDivs (19 out of 25), include provisions for in-language website, listserv, and public outreach content. Four components—the Agency for Healthcare Research and Quality, Assistant Secretary for Legislation, Assistant Secretary for Planning and Evaluation, and Office of General Counsel—do not include this element in their Language Access Plans because it is not applicable (N/A) to the work they do and the services they provide. Only two components did not address this issue at all in the plans they submitted.



As Figure 2 illustrates, 20 out of 25 OpDivs and StaffDivs include provisions for telephonic interpreter services in their LAPs. Four do not provide telephonic access, rendering this element inapplicable.

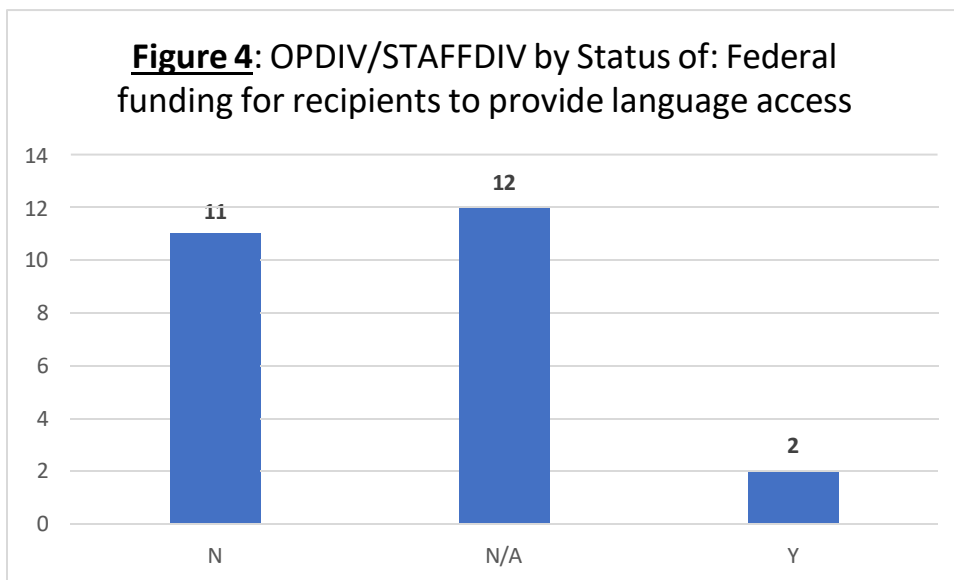


As Figure 3 illustrates, 17 OpDivs and StaffDivs’ LAPs included provisions for program and benefit information in other languages, while this element was not applicable for seven components:



As Figure 4 illustrates, unlike the elements above, the majority of OpDivs and StaffDivs did not include the element of providing federal funds designated for grantees to provide language access services. This is because this element has only recently been developed; it is a key part of the 2021 Equity Action Plan. Nonetheless, the Administration for Children and Families and the Administration for Community Living laudably included provisions for funding to provide language access in their LAPs.

Thus, the data below indicates a key area for updating OpDivs’ and StaffDivs’ Language Access Plans, as well as with the Department-wide plan, which followed a similar pattern by including all the above elements, but not the one pertaining to funding.



The Language Access Steering Committee has formed subcommittees covering the above issues that will review the details of the current LAP provisions, sharing best practices and how they should be improved.

OCR notes again that only two of the LAPs include funding for grantees to provide language access as part of the specific language of their plan:

Status of: Federal Funding for recipients of HHS funding to provide language services	OpDivs & StaffDivs
Yes	Administration for Children & Families (ACF)
Yes	Administration for Community Living

The Language Access Steering Committee has formed a subcommittee around this issue and will analyze whether and how access to funds for the provision of language access is needed.

## 2023 Goals and Objectives

The Steering Committee held its inaugural meeting on October 11, 2022, and will convene quarterly meetings throughout 2023, with the subcommittees meeting at least once every two months. The Language Access Steering Committee will collect data from components to plan for executing the Accountability provisions of the Equity Action Plan:

- Develop and maintain an accurate record of a program that regularly assesses and takes necessary steps to improve and ensure the quality and accuracy of language access services provided to individuals with LEP;
- Track implementation methods for measuring improvements in language access in individual programs and take steps to ensure that such information is collected in a manner that increases comparability, accuracy, and consistency across programs. Agencies can determine whether it is appropriate for this element to be implemented by the same office or official responsible for implementing another element;
- Take steps to address problems identified in OCR investigations of LEP complaints filed against HHS;
- Identify best practices for continuous quality improvement regarding agency language access services. Share such practices with the Steering Committee, which may offer them as guidance to HHS components, grantees, contractors, and recipients as appropriate; and
- Identify and disseminate data to the Steering Committee to help other HHS components facilitate organization-wide learning and coordination, collaboration on high impact outreach, or developing cross-cutting audience-appropriate messaging to mutual customer communities.<sup>40</sup>

In addition, OCR will institute a centralized language access assistance center to provide for translation of materials and oral and telephonic interpretation through centralized contracts. The center will operate under the purview of the Department's new Language Access Coordinator, who will report to the OCR Director and will be responsible for overseeing the implementation of the Department's Language Access Plan, goals, and directives. OCR believes that this assistance, along with the other work of the Language Access Coordinator, will enable OpDivs and StaffDivs to meet the above goals in an efficient and sustainable manner.

Moreover, OCR will lead the effort to assess and update the Department's LAP in order to meet the Attorney General's May 19, 2023, deadline. Additionally, the data gathered from the Language Access Steering Committee will center on each component's progress with updating its LAP to incorporate the Equity Plan LAS benchmarks, and the status of such plans will be reported in the 2023 Annual Report.

The Language Access Steering Committee will also continue its efforts to help ensure the Department administers its programs and activities to eligible individuals with LEP in a manner that ensures meaningful access.

Furthermore, the Language Access Steering Committee will monitor progress of the Section 1557 NPRM so that LAS provisions in the final rule are shared with all HHS health programs

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<sup>40</sup> Equity Plan, at 7.

and activities for the purpose of ensuring compliance (e.g., requirements to provide notices of availability of language assistance services in the top 15 local languages).

Additionally, the Language Access Steering Committee will compile information reported by each StaffDiv and OpDiv regarding their progress on implementing the Equity Action Plan benchmarks and metrics related to increasing language access, and will endeavor to provide a comparative analysis of the results.

Community outreach will also continue, as the Language Access Steering Committee will rely on stakeholders for feedback about HHS's accessibility to persons with LEP.

Finally, the Language Access Steering Committee will endeavor to generate comprehensive and holistic best practices and recommendations for specific improvements to language access services, including identifying needs for and ensuring provision of guidance and technical assistance.

## Conclusion

The Department made great strides in 2022 and during the pandemic toward addressing language barriers faced by eligible individuals with limited English proficiency. Going forward, the annual progress reports will set forth concrete recommendations for the Secretary to consider for improving the language access services provided by HHS and full implementation of the Equity Action Plan's language access goals. Emphasis will be on ensuring adequate budgeting for the provision of language assistance services (i.e., interpretation and translation costs), data collection and reporting strategies, and whether additional rulemaking, guidance, executive action, or federal legislation is needed to fill any gaps in language access services by the Department and its grantees.

*/s/ Melanie Fontes Rainer*  
Director  
Office for Civil Rights



## Appendix A: Chart of Roster of LASC Members

HHS Operating & Staff Divisions	Member	Subcommittee	Chair
<b>OpDivs</b>			
Administration for Children and Families (ACF)	Laura Irizarry	Resources for HHS Recipients	
	Larry Sandigo	Resources for HHS Recipients	
	Keith Lussier	Written Translation; Oral Interpretation	
	Maria Nawabi	Written Translation; Oral Interpretation	
Admin. for Community Living (ACL)/ Admin. on Aging (AoA/ AIDD)	Rebecca Kinney	Resources for HHS Recipients	
Agency for Healthcare Research & Quality (AHRQ)	Bruce Seeman		
Agency for Toxic Substances & Disease Registry (ATSDR)			
Administration for Strategic Preparedness & Response (ASPR)	Cheryl Levine		
	Nikki Bratcher-Bowman		
Centers for Disease Control & Prevention (CDC)	Jennifer Meunier		
	Julio Dicient Taillepierre	Accountability	X
Centers for Medicare & Medicaid Services (CMS)	Darci Graves	Resources for HHS Recipients	
	Anita Pinder		
	Arlene Austin	Written Translation	X
	Ashleigh Ervin		
	LaShawn McIver		
	Ronza Othman		
Food & Drug Administration (FDA)	Cariny Nunez	Written Translation	X
	Gloria Sanchez-Contreras	Information Technology	X
	Tony Welch		
Health Resources & Services Administration (HRSA)	Beth Perrine	Resources for HHS Recipients	X
	Gemirald Daus	Resources for HHS Recipients	
	Neelam Salman	Resources for HHS Recipients	X
	Jennifer Riggle	Resources for HHS Recipients	
Indian Health Service (IHS)	Robin Green	Resources for HHS Recipients	
National Institutes of Health (NIH)	David A. Kosub	Accountability	
	Victoria Wales	Information Technology	
	Donna Peterkin		
	Glenda Laventure		
Substance Abuse & Mental Health Services Admin. (SAMHSA)	Victoria Chau	Resources for HHS Recipients	
	Perry Chan	Information Technology	
	Yosselin Turcios	Accountability	
	Larke Huang		
	Abena Afari	Oral Interpretation; Written Translation	
<b>StaffDivs</b>			
Assistant Secretary for Administration (ASA)			
Assistant Secretary for Financial Resources (ASFR)	Arun Natarajan		
Assistant Secretary for Legislation (ASL)			
Assistant Secretary for Planning & Evaluation (ASPE)	Rose Chu	Resources for HHS Recipients	
Assistant Secretary for Public Affairs (ASPA)			
Departmental Appeals Board (DAB)	Meredith Montgomery	Information Technology	
HHS Chief Information Officer (CIO)			
Intergovernmental External Affairs (IEA)			
Office for Civil Rights (OCR)	Melanie Fontes Rainer		
	David Hyams		
	Janet Santos		
	Kathy Culliton-Gonzalez		
	Krystal Ka'ai		
	Rebecca Lee		
Office of the Assist. Secretary for Health [including OMH] (OASH)	Roslyn Moore		
	Leandra Olson	Accountability; Resources for HHS Recipients	
	Samuel Wu	Information Tech.; Resources for HHS Recipients	
	Alexis Leal	Written Translation	
	Alana Sutherland	Accountability	X
	Caleb Colón	Oral Interpretation	X
Office of the General Counsel (OGC)	Karen Bermudez	Accountability	
	Ryan Fitzpatrick		
Office of Global Affairs (OGA)	Deborah Morgan	Written Translation	
	Carmen-Rosa Torres	Accountability	
Office of Inspector General (OIG)	Denise C. Thompson	Accountability	
Office of Medicare Hearings and Appeals (OMHA)	Emma Grewal		
	Ashley Harms		
	Erin Nugent		
Office of the Nat'l Coord. for Health Information Tech. (ONC)	Lana Moriarty	Information Technology	

## Appendix B: Chart of Data on OpDivs' and StaffDivs' LAPs

<b>HHS Administrative Divisions</b>	<b>LAP? Y / N</b>	<b>Date of most recent LAP</b>	<b>Status of: In-language content through webpages, listserv announcements, and public outreach material.</b>	<b>Status of: Telephonic Interpreter Services?</b>	<b>Status of: Program and benefits information in other languages?</b>	<b>Status of: Federal Funding for recipients of HHS funding to provide language services?</b>
<b>Operating Divisions (OpDivs)</b>						
Administration for Children and Families (ACF)	Y	2013	Y	Y	Y	Y
Administration for Community Living (ACL)	Y	2014	Y	N/A*	Y	Y
Agency for Healthcare Research and Quality - HQ (AHRQ)	Y	2013	N/A	N/A	N/A	N/A
Agency for Toxic Substances and Disease Registry (ATSDR) **						
Administration for Strategic Preparedness and Response (ASPR)	Y	2014	Y	Y	Y	N
Centers for Disease Control and Prevention (CDC)	Y	2014	Y	Y	Y	N
Centers for Medicare and Medicaid Services (CMS)	Y	2014	Y	Y	Y	N
Food and Drug Administration (FDA)	Y	2014	Y	Y	N/A	N/A
Health Resources and Services Administration (HRSA)	Y	2018	Y	Y	Y	N
Indian Health Service (IHS)	Y	2014	Y	N	Y	N
National Institutes of Health (NIH)	Y	2014	Y	Y	Y	N
Substance Abuse and Mental Health Services Administration (SAMHSA)	Y	2013	Y	Y	Y	N
<b>Staff Divisions (StaffDivs)</b>						
Assistant Secretary for Administration (ASA)	Y	2014	N	Y	Y	N/A
Assistant Secretary for Financial Resources (ASFR)	Y	2014	N	Y	N	N/A
Assistant Secretary for Legislation (ASL)	Y	2014	N/A	N/A	N/A	N/A
Assistant Secretary for Planning and Evaluation (ASPE)	Y	2014	N/A	Y	N/A	N/A
Assistant Secretary for Public Affairs (ASPA)	Y	2014	Y	Y	Y	N/A
Departmental Appeals Board (DAB)	Y	2013	Y	Y	Y	N/A
Intergovernmental External Affairs (IEA)	Y	2014	Y	Y	N/A	N/A
Office for Civil Rights (OCR)	Y	2013	Y	Y	N/A	N/A
Office of the Assistant Secretary for Health [including OMH] (OASH)	Y	2013	Y	Y	Y	N
Office of the General Counsel (OGC)	N	N/A	N/A	N/A	N/A	N/A
Office of Global Affairs (OGA)	Y	2014	Y	Y	Y	N/A
Office of Inspector General (OIG)	Y	2014	Y	Y	Y	N/A
Office of Medicare Hearings & Appeals	Y	2014	Y	Y	Y	N
Office of the Nat'l Coord. for Health Information Technology (ONC)	Y	2014	Y	Y	Y	N
<b>HHS Department-wide Language Access Plan</b>	<b>Y</b>	<b>2013</b>	<b>Y</b>	<b>Y</b>	<b>Y</b>	<b>N</b>

\* N/A is coded for agencies for which the factor is not applicable in their LAPs. \*\* No information was provided.