

SECTION 1557: OFFICE OF CIVIL RIGHTS ISSUES FAQs AND LIST OF TOP 15 LANGUAGES SPOKEN IN EACH STATE

On September 14, 2016, the Office for Civil Rights ("OCR") of the Department of Health and Human Services ("HHS") issued a list of Frequently Asked Questions ("FAQs") addressing the language tagline requirements imposed by Section 1557 of the Affordable Care Act ("ACA"). Along with the FAQs, OCR also released a list of the top 15 languages spoken by individuals with limited English proficiency ("LEP") in each of the 50 states, the District of Columbia and the United States territories.

BACKGROUND

On May 13, 2016, OCR issued a final rule ("Final Rule") implementing Section 1557 of the ACA. Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability by any health program or activity receiving federal financial assistance ("Covered Entities"). Under Section 1557's prohibition on national origin discrimination, Covered Entities are required to take reasonable steps to provide meaningful access to individuals with LEP who are eligible to be served or likely to be encountered within a Covered Entity's health programs or activities. As part of the meaningful access requirement, Covered Entities are required to post taglines that alert individuals with LEP to the availability of language assistance services. A tagline is a short statement written in a non-English language that indicates the availability of language assistance services free of charge. The Final Rule requires taglines to be posted in at least the top 15 non-English languages spoken in the state in which the Covered Entity is located or does business. The taglines must be posted in: (i) significant publications and communications; (ii) physical locations where the Covered Entity interacts with the public; and (iii) on the Covered Entity's website accessible from the homepage.

LIST OF TOP 15 LANGUAGES

In the commentary to the Final Rule, OCR declined to provide an official resource or data source for Covered Entities to use to identify the top languages spoken by LEP individuals. Rather, OCR identified data sources it believed would be helpful to a Covered Entity in determining the top 15 languages spoken in the Covered Entity's service area. These data sources included "data from the United States Census Bureau, particularly the American Community Survey; utilization data from the Covered Entity's files for individuals with limited English proficiency; data from State and local governments; school system data; data from community agencies and organizations; and data from refugee or immigrant serving agencies."¹ OCR noted that the Covered Entities themselves are in the "best position to determine what local or regional data sources are best suited to their needs."²

However, despite declining to provide an official resource in the Final Rule, OCR has released a list of the top 15 languages spoken in each of the 50 states, the District of Columbia and the United States territories (the "List"). The List, available [here](#), may be used by a Covered Entity when determining the 15 languages required for the taglines. In creating the List, OCR used the U.S. Census Bureau's American Community Survey 2014 data set entitled "Language Spoken at Home by Ability to Speak English for the Population 5 Years and Older." For the United States territories, OCR used data available from the U.S. Census Bureau's 2010 Census of Population and Housing. Finally, OCR made some technical adjustments to the data sources prior to creating the List. OCR omitted languages that represented a language group as opposed to a single language and also omitted any spoken languages without a written equivalent.

FREQUENTLY ASKED QUESTIONS

In addition to the list of languages, OCR also released a document answering some of the most frequently asked questions about determining the top 15 languages spoken by individuals with LEP. In the FAQs, available [here](#), OCR addressed the following issues.

Selecting the Top 15 Languages. OCR notes in the FAQs that nothing in the Section 1557 regulations mandate Covered Entities use the List. Rather, Covered Entities may refer to sources other than the List if the Covered Entity has a reasonable basis for relying on such source when considering characteristics such as the currency, reliability and stability of the data. Additionally, OCR emphasizes that Covered Entities may use other sources even if the list of languages that results from those sources is different from the List or if the number of LEP individuals speaking a particular language in a given state varies from the number provided in the List.

States with Greater or Fewer Than 15 Languages. Some of the states on the List (Colorado, Maryland, Rhode Island, Virginia and the District of Columbia) have more than 15 languages listed. This is a result of OCR's data sources grouping certain languages together. In developing the List, OCR counted the grouped languages separately, resulting in 17 languages for each of the above states. The FAQs recommend that Covered Entities that rely on the List for these states post taglines in the 17 listed languages.

In contrast, the United States territories on the List contain fewer than 15 languages. The data used by OCR in compiling the languages for these territories only identified a handful of languages or language groups. For these territories, OCR notes that the Covered Entity may be in a better position to identify the specific languages spoken by individuals in these areas.

Languages with Multiple Dialects. Many of the languages on the List have more than one dialect. For these languages, OCR has provided a comprehensive list of which dialect each language was translated to for purposes of the taglines.

Future Changes in the Population of Individuals with LEP. In both the FAQs and the Final Rule, OCR acknowledged that the top 15 languages spoken in a state or territory may change over time. As new data becomes available, OCR will determine if and when OCR's list of languages, and the corresponding translated resources, will need to be updated. As additional languages are warranted, OCR will provide Covered Entities with the translated sample tagline, nondiscrimination notice and nondiscrimination statement.

PRACTICAL TAKEAWAYS

OCR's unexpected release of the List will provide Covered Entities with the ability to use a single comprehensive resource when determining the 15 languages for Section 1557's required taglines. The List will also reduce the burden that Covered Entities would have faced in independently determining these languages.

Covered Entities must post Section 1557 notices of nondiscrimination and taglines beginning on October 16, 2016. Translated versions of all required nondiscrimination notices and taglines in 64 languages are available [here](#).

Hall Render has developed a toolkit to assist Covered Entities in achieving compliance with Section 1557 and the Final Rule. For more information about the toolkit, please contact [Anne Ruff](#) at (317) 977-1450 or aruff@hallrender.com.

If you have questions about this topic or would like assistance in compliance with the new requirements under Section 1557, please contact:

- [Anne Ruff](#) at (317) 977-1450 or aruff@hallrender.com; or
- [Maryn Johnson](#) at (317) 429-3651 or mjohnson@hallrender.com; or
- Your regular Hall Render attorney.

¹81 Fed. Reg. 31419 (May 18, 2016). ²*Id.*

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