

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Consumer Information and Insurance Oversight**

**Technical Guidance for Issuers in the Individual Market to Establish County Level Estimates Pertaining to the Culturally and Linguistically Appropriate Standards Set Forth in the Internal Claims and Appeals and External Review Processes under the Patient Protection and Affordable Care Act**

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**I. Background**

The Patient Protection and Affordable Care Act, Pub. L. 111-148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Pub. L. 111-152, was enacted on March 30, 2010. They are referred to, collectively, as the Affordable Care Act. The Affordable Care Act amended title XXVII of the Public Health Service Act, and added section 2719 to that title, regarding effective appeals processes. Interim Final Regulations (IFR) implementing section 2719 (adding 45 CFR §147.136) were published at 75 Fed. Reg. 43330 (July 23, 2010).

Section 2719(a)(1)(B) requires that a group health plan and health insurance issuer offering group or individual health coverage shall provide notice to enrollees, in a culturally and linguistically appropriate manner, of available internal and external appeals processes. Under the IFR at 45 CFR §147.136(e), plans and issuers meet the culturally and linguistically appropriate requirement if they provide notices, upon request, in the non-English language to populations that meet the following thresholds:

- In the group market, for a plan that covers fewer than 100 participants at the beginning of a plan year, the plan must make culturally and linguistically appropriate notices available

to populations in which 25 percent of all plan participants are literate only in the same non-English language. For a plan that covers 100 or more participants at the beginning of a plan year, the threshold is the lesser of 500 participants, or 10 percent of all plan participants, being literate only in the same non-English language. The thresholds are adapted from the Department of Labor's regulations regarding style and format for a summary plan description, at 29 CFR 2520.102-2(c).

- In the individual market, the determination of whether issuers are considered to be providing relevant notices in a culturally and linguistically appropriate manner is made at the county level. If at least 10 percent of the population residing in a county is literate only in the same non-English language, the issuer must provide the appeals-related notices in that language, upon request by an individual claimant residing in that county.

In addition, the plan or issuer must also include a statement in the English versions of all notices, prominently displayed in the non-English language, offering the provision of such notices in the non-English language. Once a request has been made by a claimant, the plan or issuer must provide all subsequent notices to a claimant in the non-English language. In addition, to the extent the plan or issuer maintains a customer assistance process (such as a telephone hotline) that answers questions or provides assistance with filing claims and appeals, the plan or issuer must provide assistance in the non-English language.

Group health plans, and health insurance issuers offering group or individual health coverage, that receive Federal financial assistance also may have obligations under other laws, such as Title VI of the Civil Rights Act of 1964 and other applicable Federal statutes, which, among other things, prohibit discrimination on the basis of race, color or national origin. For example, under Title VI and its implementing regulation, recipients must take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency.

The preamble to the IFR indicated that the Department of Health and Human Services would publish guidance by September 23, 2010 as to how county level estimates should be established in the individual market. This document is that guidance.

#### Background Information on Data Sources

The Bureau of the Census conducts the American Community Survey (ACS) on an ongoing basis and sends the survey to roughly 250,000 people per month. The Decennial Census attempts to reach every household once each decade. ACS surveys provide more current information than the Decennial Census. In December 2010, the ACS will have data available for all counties on the percentage of the total population that speaks a particular non-English language and does not speak English very well. (See Table B-16001 “Language spoken at home by ability to speak English for the population 5+ Years.”) For the purposes of the IFR, the percentage of the total population considered “literate only in the same non-English language” must meet the following criteria: speaks English less than very well and speaks the same non-English language. HHS will issue additional guidance in December 2010 for using these data. In the meantime, health insurance issuers are permitted to use the less granular data on language spoken at home as detailed in the step-by-step instructions provided below. The more granular data provided by Table B-16001 is currently available for the largest counties in the ACS and health insurance issuers operating in these counties may use these data instead if they so choose.

#### **Step-by Step Instructions**

##### **1 Identifying data source**

Issuers should use data from the applicable U.S. Census dataset listed below.

A. For counties with populations larger than 65,000, use ACS 1-year estimates (as of September 1, 2010, 2008 ACS data);

B. For counties with populations 20,000-65,000, use ACS 3-year estimates (as of September 1, 2010, 2006-2008 ACS data);

C. For counties with populations under 20,000, issuers should use data from the 2000 Decennial Census..

## **2: Downloading data**

*For ACS data*

A. Go to [www.census.gov](http://www.census.gov) (the U.S. Census website).

B. Click on “American Fact Finder,” along the left side of the website.

C. On the left side of the website, click “Download Center.”

D. Under “American Community Survey,” click “2008 American Community Survey 1-Year Estimates.”

E. Select the geography “All Counties.” Under “Select a Download Method,” the option “Selected Detailed Tables” should be pre-selected. If it is not, select it.

F. Click “Go.”

G. This will take you to the list of variables on the “Select Tables” screen. In the “Show all tables” tab, scroll down and select **C16001: Language Spoken at Home for the Population 5+ Years**, and click “Add”; then click “Next.”

H. This will take you to a page called “Download Center.” Click “Start Download.”

I. Save the file and unzip it. The files are pipe-delimited .txt files. The pipe is this character: | Convert the file to a usable form with your chosen program (Excel, etc.). There are 3 files: one called Readme, one called `dc_acs_2008_1yr_g00__data1` and one called `dc_acs_2008_1yr_g00__geo`. The Readme lists the variables in the set. The one called **`dc_acs_2008_1yr_g00__data1`** is the one that contains the data you will use. The last one contains a list of the geographies in the set.

1. Note for Excel users: After opening the file in Excel, highlight column “A”, convert text to columns under the “Data” header, click on “Delimited” and then click on “Other” and enter the |.

J. Below are the names of the columns you will need (Note: Every language variable has a Margin of Error (MOE) estimate after it. You can ignore these.)

- C16001\_1: Total Population 5 Years and Over (Total Estimate)
- C16001\_2: Total Population 5 Years and Over That Speaks Only English (Estimate)
- C16001\_3: Total Population 5 Years and Over That Speaks Spanish or Spanish Creole (Estimate)
- C16001\_4: Total Population 5 Years and Over That Speaks French or French Creole (Estimate)
- C16001\_5: Total Population 5 Years and Over That Speaks German or Other West Germanic Languages (Estimate)
- C16001\_6: Total Population 5 Years and Over That Speaks Slavic Languages (Estimate)
- C16001\_7: Total Population 5 Years and Over That Speaks Other Indo-European Languages (Estimate)
- C16001\_8: Total Population 5 Years and Over That Speaks Korean (Estimate)
- C16001\_9: Total Population 5 Years and Over That Speaks Chinese (Estimate)
- C16001\_10: Total Population 5 Years and Over That Speaks Vietnamese (Estimate)
- C16001\_11: Total Population 5 Years and Over That Speaks Tagalog (Estimate)
- C16001\_12: Total Population 5 Years and Over That Speaks Other Asian or Pacific Island Languages (Estimate)

*For 2000 Decennial Census Data:*

1. Go to [www.census.gov](http://www.census.gov) (the U.S. Census website).
2. Click on “American Fact Finder,” along the left side of the website.
3. On the left side of the website, click “Download Center.”

4. Select “Census 2000 Summary File 3.”
5. Select “All Counties.” Under “Select a Download Method,” the option “Selected Detailed Tables” should be pre-selected. If it is not, select it.
6. Click “Go.”
7. This will take you to the list of variables. In the “Show all tables” tab, scroll down and select **PCT10: Age by Language Spoken at Home for the Population 5+Years**, and click “Add”; then click “Next”
8. This will take you to a page called “Download Center.” Click “Start Download.”
9. Save the zip file, and unzip it. The files are pipe-delimited .txt files (the pipe is this character: | ). Convert the file to a usable form with your chosen program (Excel, etc.)
10. Note: The data in the 2000 Census file is structured differently than the ACS data. The language data are broken into groups based on age: 5 to 17 years, and 18 and Older. For each language, you must combine the two sets into a single category in order to match the ACS. “Total Population 5 Years and Older” category.

### **3: Calculating whether the 10% threshold is met for a particular non-English language**

To determine whether the threshold is met for a particular non-English language in a particular county in which the issuer is operating, the “Total Population 5 Years and Over” is the denominator and the numerator is the “Total Population 5 Years and Over” that speaks a particular language.

For every language for which this number is greater than 10%, the issuer must meet the requirements established above.

For example: in Los Angeles County, California, the estimated total population is 9,148,578 (ACS 2008 data). The estimated Spanish speaking population is 3,607,091. This represents 39% of the population, meaning that issuer must provide claimants residing in Los Angeles county with notices in Spanish (upon request), and include a prominently displayed disclosure statement in the English versions of all notices offering to provide such notices in Spanish. In addition, to the extent the issuer maintains a customer assistance process (such as a telephone hotline) that answers questions or provides

assistance with filing claims and appeals, the issuer must provide assistance in Spanish in those counties that exceed the applicable threshold.