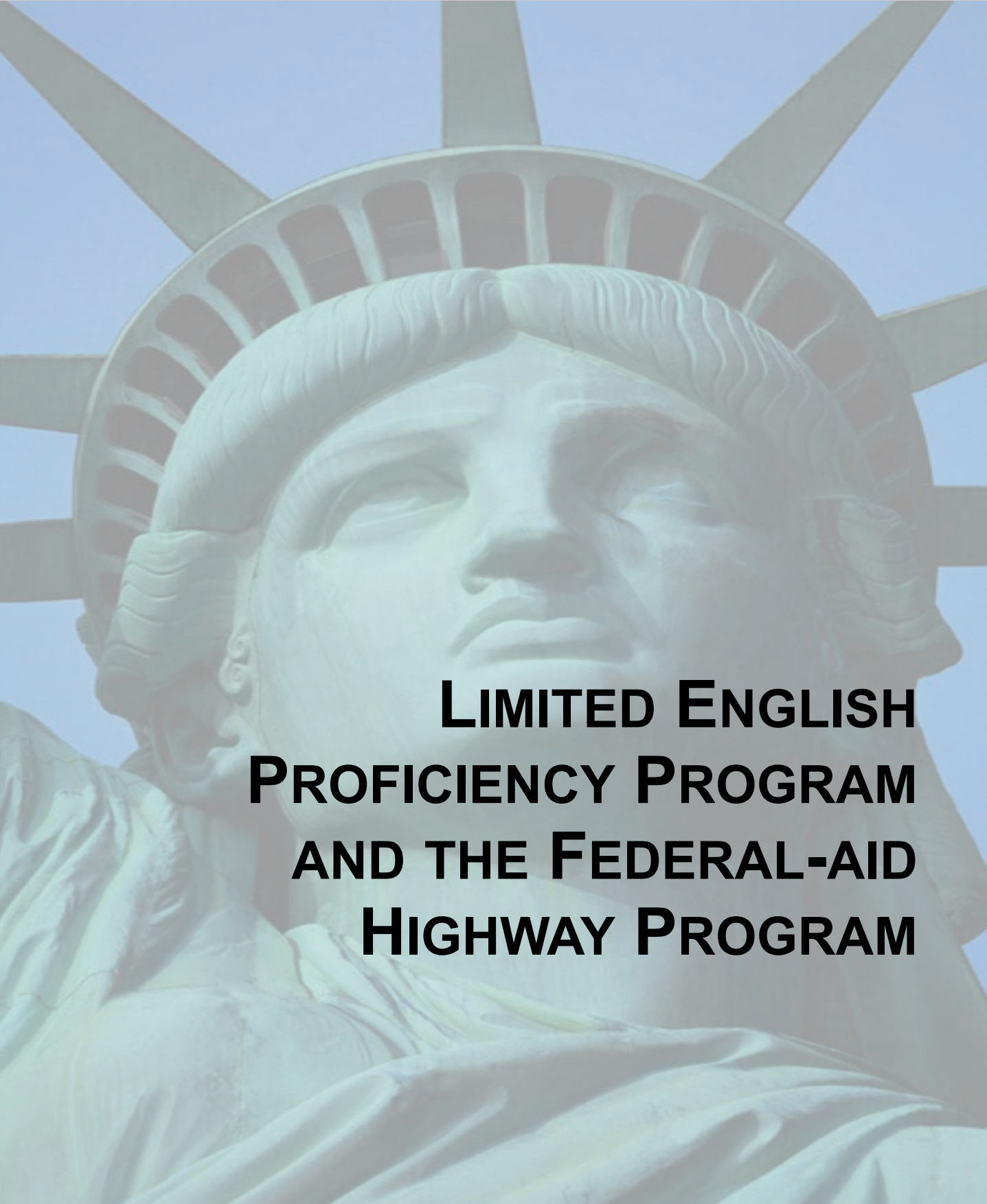


*DESK REFERENCE*



**LIMITED ENGLISH  
PROFICIENCY PROGRAM  
AND THE FEDERAL-AID  
HIGHWAY PROGRAM**

**LIMITED ENGLISH PROFICIENCY**



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### Introduction

On August 11, 2000, the President issued Executive Order 13166, entitled “Improving Access to Services by Persons with Limited English Proficiency,” 65 FR 50121 (August 16, 2000). On the same day, the Assistant Attorney General for Civil Rights at the U.S. Department of Justice (DOJ) issued a Policy Guidance Document, entitled “Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency” (*hereinafter referred to as “DOJ LEP Guidance”*), reprinted at 65 FR 50123 (August 16, 2000). In addition, the U.S. Department of Transportation (USDOT) issued a policy Guidance Document, titled “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” reprinted at 70 FR 74087, dated December 14, 2005.

Executive Order 13166 requires Federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally conducted programs and activities who, due to limited English proficiency, cannot fully and equally participate in or benefit from those programs and activities. The DOJ LEP Guidance, in turn, advises each Federal department or agency to “take reasonable steps to ensure ‘meaningful’ access [to LEP individuals] to the information and services they provide.” [DOJ LEP Guidance, 65 FR at 50124]. The DOJ LEP Guidance goes on to provide that:

*[W]hat constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the [agency].*

Id. The DOJ LEP Guidance explains that the identification of “reasonable steps” to provide oral and written services in languages other than English is to be determined on a case-by-case basis through a balancing of all four factors.

The DOJ LEP and USDOT Guidance focuses principally on the obligation of Federal departments and agencies extending Federal financial assistance to clarify the long-standing legal obligation on the part of recipients of such assistance to address the language needs of their otherwise-eligible LEP beneficiaries. Executive Order 13166 applies this same obligation to programs and activities undertaken directly by a Federal department or agency. Section 2 of the Executive Order directs each Federal department or agency “to prepare a plan to improve access to . . . federally conducted programs and activities by eligible LEP persons . . . consistent with the standards set forth in the LEP Guidance . . . within 120 days (emphasis added).”



<b>Federal Register/Vol. 70, No. 239/ December 14, 2005/Notice 74087</b>				
<b>State Transportation Agency (STA) Responsibilities</b>				
<b>A. General</b>		<b>Yes</b>	<b>No</b>	<b>?</b>
1.	Does the STA receive Federal financial assistance by means of grants, cooperative agreements, training, use of equipment, donations of surplus property, or other assistance? ( <i>Note:</i> Sub-recipients are covered when Federal funds are passed through from one recipient to a sub-recipient.) <b>(Federal Register/Vol. 70, No. 239, Section III, page 74091)</b>			
2.	Does the STA understand its responsibilities and obligations to LEP persons pursuant to Title VI of the Civil Rights Act of 1964 and implementing DOT's Title VI regulations to ensure LEP persons are not subject to discrimination? <b>(Federal Register/Vol. 70, No. 239, Section I, page 74089)</b>			
3.	Does the STA know what part of its programs are covered by Title VI to ensure reasonable steps are taken to provide meaningful access to LEP persons? <b>(Federal Register/Vol. 70, No. 239, Section IX, page 74097)</b>			
4.	Does the STA know or understand who is a Limited English Proficient individual? <b>(Federal Register/Vol. 67, No. 117, Section IV, page 41459) &amp;</b> <b>(Federal Register/Vol. 70, No. 239, Section IV, page 74091)</b>			
<b>B. Four Factor Analysis</b>		<b>Yes</b>	<b>No</b>	<b>?</b>
5.	Has the STA developed an individualized assessment based on the four-factor analysis? <b>(Federal Register/Vol. 70, No. 239, Section V, page 74091)</b>			
5a.	Has the STA assessed the number of LEP persons served or likely to be encountered by its programs, activities, or services? ( <i>Note: Factor 1: The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity or service of the STA or grantee.</i> ) <b>(Federal Register/Vol. 70, No. 239, Section V(1), page 74092)</b>			
5b.	Has the STA assessed the frequency with which it has, or should have contact with LEP individuals from different language groups seeking assistance? ( <i>Note: Factor 2: The frequency with which LEP persons come in contact with the program.</i> ) <b>(Federal Register/Vol. 70, No. 239, Section V (2), page 74092)</b>			
5c.	Has the STA determined whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individuals? ( <i>Note: Factor 3: The nature and importance of the program, activity or service provided by the recipient to people's lives.</i> ) <b>(Federal Register/Vol. 70, No. 239, Section V (3), page 74092)</b>			
5d.	Has the STA explored the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns? ( <i>Note: Factor 4: The resources available to the STA and costs.</i> ) <b>(Federal Register/Vol. 70, No. 239, Section V (4), page 74092)</b>			

<b>B. Four Factor Analysis (cont'd)</b>		<b>Yes</b>	<b>No</b>	<b>?</b>
6.	Has the STA applied the four factors to its various kinds of contacts (different types of programs or activities in which it engages) it has with the public to assess language needs? ( <b>Federal Register/Vol. 70, No. 239, Section V, page 74091</b> )			
<b>C. Language Assistance Services</b>		<b>Yes</b>	<b>No</b>	<b>?</b>
7.	Does the STA have a “mix” of LEP services based on what is both necessary and reasonable in light of the four-factor analysis? (Example: oral and written language services). ( <b>Federal Register/Vol. 70, No. 239, Section V (4), page 74092 and 74093</b> )			
8.	<u>Oral Language Services:</u> Does the STA ensure interpreters demonstrate proficiency in, and ability to communicate information accurately in both English and in the other language, and identify and employ the appropriate mode of interpreting? ( <b>Federal Register/Vol. 70, No. 239, Section VI (A), page 74093</b> )			
8a.	Does the STA ensure that when interpretation services are needed they are provided in a timely manner in order to be effective? ( <b>Federal Register/Vol. 70, No. 239, Section VI (A), page 74093</b> )			
8b.	<u>Written Language Services:</u> Based on the Four Factor Analysis, has the STA identified what documents should be translated? ( <b>Federal Register/Vol. 70, No. 239, Section VI (B), page 74094</b> )			
8c.	Does the STA written translation effort follow the “Safe harbor provisions?”			
8d.	Based on the four-factor analysis, has the STA translated its vital documents into other languages? ( <b>Federal Register/Vol. 70, No. 239, Section VI (B), page 74094</b> )			
9.	Has the STA ensured that the quality and accuracy of the language service avoids potential serious consequences to the LEP person and to the STA? ( <b>Federal Register/Vol. 70, No. 239, Section VII, page 74096</b> )			
10.	Does the STA use family members, friends, other customers/passengers as interpreters? ( <b>Federal Register/Vol. 70, No. 239, Section VI, page 74094</b> )			
<b>D. Elements of an Effective LEP Implementation Plan</b>		<b>Yes</b>	<b>No</b>	<b>?</b>
11.	Does the STA have an LEP implementation Plan? ( <b>Federal Register/Vol. 70, No. 239, Section VII, page 74096</b> )			
11a.	Does the STA LEP Plan contain, at a minimum, the five elements identified in the USDOT LEP guidance? ( <b>Federal Register/Vol. 70, No. 239, Section VII, page 74096</b> )			
11b.	Does the STA’s LEP Plan include information about ways in which language assistance will be provided? ( <i>Example:</i> Procedures on how to respond to LEP callers and how to respond to written communications from LEP persons.) ( <i>Note: Language Assistance Measures.</i> ) ( <b>Federal Register/Vol. 70, No. 239, Section VII (2), page 74096</b> )			

<sup>1</sup>The LEP Technical Assistance Tool (TAT) has been developed in accordance with the final version of DOT’s “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP),” dated December 14, 2005. The Policy Guidance supplants existing guidance on the same subject originally published at 66 FR 6733 (January 22, 2001).



<b>D. Elements of an Effective LEP Implementation Plan (cont'd)</b>		<b>Yes</b>	<b>No</b>	<b>?</b>
11c.	Do the STA employees know their obligation to provide meaningful access to information and services for LEP persons? <i>(Note: Training Staff)</i> <b>(Federal Register/Vol. 70, No. 239, Section VII (3), page 74096)</b>			
11d.	Does the STA ensure management is aware of LEP responsibilities and understands the LEP Plan so they can reinforce its importance and ensure its implementation by staff? <b>(Federal Register/Vol. 70, No. 239, Section VII (3), page 74096)</b>			
11e.	Does the STA notify LEP persons of the services available and that they are free of charge? <i>(Note: Providing Notice to LEP.)</i> <b>(Federal Register/Vol. 70, No. 239, Section VII (4), page 74096)</b>			
11f.	Does the STA provide notices in languages LEP persons would understand? <b>(Federal Register/Vol. 70, No. 239, Section VII (4), page 74096)</b>			
11g.	Does the STA have an ongoing process to monitor its language assistance policies and procedures at least annually to evaluate its effectiveness in serving LEP individuals and modify it accordingly? <i>(Note: Monitoring and Updating the LEP Plan)</i> <b>(Federal Register/Vol. 70, No. 239, Section VII (5), page 74097)</b>			

*The LEP Technical Assistance Tool has been developed in accordance with the final version of DOT's "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP), dated December 14, 2005. The Policy Guidance supplants existing guidance on the same subject originally published at 66 FR 6733 (January 22, 2001).*



**Questions and Answers****STATE TRANSPORTATION AGENCY (STA) RESPONSIBILITIES:****A. GENERAL**

**Question 1:** *Does the STA receive Federal financial assistance by means of grants, cooperative agreements, training, use of equipment, donations of surplus property, or other assistance? (Note: Sub-recipients are covered when Federal funds are passed through from one recipient to a sub-recipient.)*

**Answer:** Federal financial assistance includes, but is not limited to, grants and loans of Federal funds; a grant or donation of Federal property and interests in property; the sale and lease of, and the permission to use Federal property; training; details of Federal personnel; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. Sub-recipients are also covered, when Federal funds are passed from one recipient to a sub-recipient. Recipients of Federal funds range from State and local agencies, to non-profits and other organizations.

Recipients of U.S. Department of Transportation (DOT) assistance include, but are not limited to: State departments of transportation; State motor vehicle administrations; airport operators; State highway safety programs; metropolitan planning organizations; regional transportation agencies; regional, state, and local transit operators; public safety agencies; hazardous materials transporters and other first responders; and State and local agencies with emergency transportation responsibilities. Entities covered by Title VI and the Executive Order are referenced in DOT's Limited English Proficient (LEP) Guidance page 74091.

A list of 30 Federal agencies that provide Federal financial assistance and the types of entities that they fund can be found at: [www.usdoj.gov/crt/cor/federalfundingsources.htm](http://www.usdoj.gov/crt/cor/federalfundingsources.htm).

**Question 2:** *Does the STA understand its responsibilities and obligations to LEP persons pursuant to Title VI of the Civil Rights Act of 1964 and implementing DOT's Title VI regulations to ensure LEP persons are not subject to discrimination?*

**Answer:** Executive Order 13166 (E.O. 13166) is directed at implementing the obligations imposed by Title VI of the Civil Rights Act of 1964 and the Title VI Federal regulations. Title VI and its accompanying regulation prohibit recipients from discriminating on the basis of race, color, or national origin. Discrimination on the basis of national origin may occur if a recipient does not provide appropriate language assistance to LEP individuals, because these individuals, whose language is usually tied to their national origin, will not have access to the same benefits, services, and information or rights that the recipient provided to everyone else. The steps that agencies and federally funded entities must take to ensure compliance with Title VI may vary depending upon the service they offer, the community they serve, and their resources. There are no hard-and-fast rules. What might make sense for a large entity may not make sense for a smaller entity.

Both Federal agencies and recipients of Federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities to LEP individuals.

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\*Questions addressed in this document are the same questions from the Technical Assistance Tool.

**Question 3:** *Does the STA know what part of its programs are covered by Title VI to ensure reasonable steps are taken to provide meaningful access to LEP persons?*

**Answer:** Title VI covers a recipient's entire program or activity. This means all of a recipient's operations are covered. This is true even if only one part of the recipient's operation receives the Federal assistance.

**Question 4:** *Does the STA know or understand who is an LEP individual?*

**Answer:** Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP", and are, therefore, entitled to language assistance under Title VI of the Civil Rights Act of 1964 with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are served or encountered by the DOT recipients and should be considered when planning language services include, but are not limited to:

- Public transportation passengers
- Persons who apply for a driver's license at a State department of motor vehicles
- Persons subject to the control of State or local transportation enforcement authorities, including, for example, commercial motor vehicle drivers
- Persons served by emergency transportation response programs
- Persons living in areas affected or potentially affected by transportation projects
- Business owners who apply to participate in the DOT's Disadvantaged Business Enterprise program

## **B. FOUR FACTOR ANALYSIS:**

**Question 5:** *Has the STA developed an individualized assessment based on the four-factor analysis?*

**Answer:** While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

- (1) the number or proportion of LEP persons served or likely to be encountered by a program, activity, or service of the recipient or grantee;
- (2) the frequency with which LEP individuals come into contact with the program activity;
- (3) the nature and importance of the program, activity, or service provided by the recipient to people's lives; and
- (4) the resources available to the recipient and costs. These four factors are further explained in the DOT LEP Guidance found in the FHWA LEP Handbook and also on the LEP website [www.lep.gov](http://www.lep.gov).

*For additional information, please refer to DOT LEP Guidance page 74091.*

**Question 5a:** *Has the STA assessed the number of LEP persons served or likely to be encountered by its programs, activities, or services?*

**Answer:** When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) whose English proficient or LEP minor children and dependents encounter the service of DOT recipients.

Recipients should first examine their prior experiences with LEP individuals and determine the breadth and scope of language services that are needed. In conducting this analysis, it is important to: include language minority populations that are eligible beneficiaries of recipients' programs, activities, or services but may be underserved because of existing language barriers; and consult additional data, for example, from the U.S. Census, school systems and community organizations, and data from State and local governments, community agencies, religious organizations, and legal aid entities, etc.

**Question 5b: *Has the STA assessed the frequency with which it has or should have contact with LEP individuals from different language groups seeking assistance?***

**Answer:** The second factor for an STA to consider is the frequency with which LEP individuals come into contact with its programs, activities, or services. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. However, even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question.

This plan need not be intricate. It may be as simple as being prepared to use a commercial telephonic interpretation service to obtain immediate interpreter services. Additionally, in applying this standard, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups. *For additional information, please refer to DOT LEP Guidance page 74092.*

**Question 5c: *Has the STA determined whether denial or delay of access to services or information could have serious or even life-threatening implications for LEP individuals?***

**Answer:** Recipients of DOT assistance include State and local agencies with emergency transportation responsibilities. In determining the extent of your obligation to provide LEP services, the nature and importance of the program, activity, or service provided by the program (factor #3) must be considered. The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual.

There are two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service and written translation. Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons, to access through commercially available telephonic interpretation services. Written translation can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others, the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a motor vehicle department or an emergency hazardous material clean-up team in a largely LEP neighborhood may need oral interpreters immediately and should give serious consideration to hiring bilingual staff (many such departments have already made these arrangements). Additionally, providing public transportation access to LEP persons is crucial. An LEP person's inability to utilize effectively public transportation may adversely affect his or her ability to obtain health care, education, or access to employment.

Regardless of the type of language services provided, the quality and accuracy of those services can be critical in serious or life-threatening situations to avoid potential serious consequences to the LEP person and to the recipient. While quality and accuracy of language services are critical, they are nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services as part of disaster relief programs, or in the provision of emergency supplies and services, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety course need not meet the same exacting standards.

**Question 5d: *Has the STA explored the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns?***

**Answer:** Resources and the costs imposed may have an impact on the nature of the steps recipients should take in providing meaningful access for LEP persons. The Department is mindful that cost considerations could be inappropriately used to avoid providing otherwise reasonable and necessary language assistance. Similarly, cost considerations could be ignored or minimized to justify the provision of a particular level or type of language service even though effective alternatives exist at a minimal cost. There is a possibility that satisfying the need for language services might be quite costly for certain types of recipients, particularly if they have not updated their programs and activities to the changing needs of the populations they serve. Costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures, and the DOT's and the U.S. Department of Justice's (DOJ's) guidance identifies the appropriate framework through which costs are to be considered.

Resource and cost issues, however, can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services among and between recipients, advocacy groups, affected populations, and Federal agencies. Examples of practices that may reduce resource and cost issues, include:

- (1) training bilingual staff to act as interpreters and translators,
- (2) information sharing through industry groups,
- (3) telephonic and video conferencing interpretation services,
- (4) translating vital documents posted on websites,
- (5) pooling resources and standardizing documents to reduce translation needs,
- (6) using qualified translators and interpreters to ensure that documents need not be "fixed" later, and that inaccurate interpretations do not cause delay or other costs,
- (7) centralizing interpreter and translator services to achieve economies of scale, and
- (8) formalized use of qualified community volunteers.

Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using cost and resource issues as a reason to limit language assistance.

*In addition, see question and answer number 8.*

**Question 6:** *Has the STA applied the four factors to its various kinds of contacts (different types of programs or activities it engages) that it has with the public to assess language needs?*

**Answer:** After applying the above four-factor analysis to the various kinds of contacts a recipient has with the public, the recipient may conclude that different language assistance measures are sufficient to ensure meaningful access to the different types of programs or activities in which it engages. For instance, some of a recipient's activities will have a greater impact on or contact with LEP persons than others, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize the obligation that those needs be addressed. The DOT recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

## C. LANGUAGE ASSISTANCE SERVICES:

**Question 7:** *Does the STA have a "mix" of LEP services based on what is both necessary and reasonable in light of the four-factor analysis? (Example: Oral and written language services).*

**Answer:** The four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: **oral interpretation service** and **written translation service**. Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation can range from translation of an entire document to translation of a short description of the document.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a motor vehicle department or an emergency hazardous material clean-up team in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring bilingual staff (many such departments have already made these arrangements). Additionally, providing public transportation access to LEP persons is crucial. An LEP person's inability to utilize effectively public transportation may adversely affect his or her ability to obtain health care, or education, or access to employment.

*Oral Language Services* is also known as Interpretation. Interpretation is the process of listening to something in one language and orally interpreting it in another. The mix of LEP services under the Oral Language Services is as follows: hiring bilingual staff; hiring staff interpreters; contracting for interpreters; using telephone interpreter lines; using community volunteers; use of family members, friends, and other customers/passengers as interpreters.

*Written Language Services* is also known as Translation. Translation is the replacement of a written text from one language into an equivalent written text in another language. The first thing that needs to be decided is "What documents should be Translated?" Examples of documents that might be helpful to be translated are "driver's license, automobile registration, and parking permit formats; parking tickets, citation forms, and violation or deficiency notes or pertinent portions thereof; signs in waiting rooms, reception areas, and other initial points of entry."

*In addition, please see question and answer number 2.*

**Question 8:** *Does the STA ensure interpreters demonstrate proficiency in, and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting?*

**Answer:** A competent interpreter may or may not be competent to translate. Competency requires more than self-identification as bilingual. Interpreters might be able to communicate effectively in a different language when communicating information directly in that language, but not be able to do written translation.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in, and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight interpretation).
- Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person; and understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.
- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Additionally, some recipients may have their own requirements for interpreters, as individual rights may depend on precise, complete, and accurate interpretations or translations. In some cases, interpreters may be required to demonstrate that their involvement in a matter would not create a conflict of interest. *For additional information or examples, please refer to DOT LEP Guidance page 74093.*

**Question 8a:** *Does the STA ensure that when interpretation services are needed it is provided in a timely manner in order to be effective?*

**Answer:** The obligation to provide meaningful opportunity to individuals who are LEP is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program."

When interpretation is needed and is reasonable, it should be provided in a timely manner in order to be effective. Generally, to be "timely, the recipient should provide language assistance at a time and place that avoids the effective denial of the service, benefit, or rights at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example: when the timeliness of services is important, such as when an LEP person needs access to public transportation, a DOT recipient does not provide meaningful LEP access when it has only one bilingual staff member available one day a week to provide the service.

There are a number of steps which can assist recipients and Federal agencies in providing such oral assistance. They range from hiring bilingual staff or staff interpreters competent in the skill of interpreting, to contracting with qualified outside in-person or telephonic interpreter services, to arranging formally for the services of qualified voluntary community interpreters who are bound by confidentiality agreements.



**Question 8b: *Based on the four-factor analysis, has the STA identified what documents should be translated?***

**Answer:** It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, we recognize that it would be impossible, from a practical and cost perspective, to translate every piece of outreach material into every language. Nevertheless, it is important for Federal agencies to continually survey/assess the needs of eligible service populations in order to determine whether certain critical outreach materials should be translated into other languages to effectively prevent the denial of meaningful access to LEP individuals.

**Question 8c: *Does the STA written translation effort follow the "Safe harbor provisions?"***

**Answer:** The DOT LEP guidelines offer "Safe Harbor" that recipients should consider in planning for the translation of written documents. Recipients would like to ensure with greater certainty that they comply with their obligations to provide translation in languages other than English. A "Safe Harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations under Title VI.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is noncompliance. Rather these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis. For example, even if a safe harbor is not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, it is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

- (a) The DOT recipient provides written translation of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; *or*
- (b) If there are fewer than 50 persons in a language group that reaches the 5% trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

**Question 8d: *Based on the four-factor analysis, has the STA translated its vital documents into other languages?***

**Answer:** A document will be considered vital if it contains information that is critical for obtaining the Federal services and/or benefits, or is required by law. Vital documents include, for example: application; consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; and written tests that do not assess English language competency, but rather, competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital, as would be notices of public hearings regarding recipients' proposed transportation plans and/or projects, etc. Non-vital information includes documents that are not critical to access such benefits and services. Advertisements of Federal agency tours and copies of testimony presented to Congress that are available for informational purposes would be considered non-vital information.

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

*In addition, please see question and answer number 8c.*

**Question 9: *Has the STA ensured that the quality and accuracy of the language service avoids potential serious consequences to the LEP person and to the STA?***

**Answer:** When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in the ability to communicate information accurately in both English and the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation).
- Have knowledge in both languages or any specialized terms or concepts peculiar to the recipient's program or vocabulary and phraseology used by the LEP person;
- Understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.
- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.
- Additional considerations include whether the interpreter's involvement in a manner would create a conflict of interest and whether the LEP service is provided in a timely manner so as not to effectively deny access to services.

*In addition, please see question and answer number 5c.*

**Question 10: *Does the STA use family members, friends, other customers/passengers as interpreters?***

**Answer:** Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use an interpreter of their choice at their own expense (whether a professional interpreter, family member, or friend) in place of, or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent

circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family members, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative, mission-related, or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive or confidential information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to obtain an LEP person's personal identification information, for example, in the case of an LEP person attempting to apply for a driver's license. Thus, DOT recipients should generally offer free interpreter services to the LEP person. This is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

**An example of such a case is when no interpreters, or bilingual or symbolic signs are available in a State department of motor vehicles. In an effort to apply for a driver's license, vehicle registration, or parking permit, an LEP person may be forced to enlist the help of a stranger for translation. This practice may raise serious issues of competency or confidentiality and may compromise the personal security of the LEP person, as the stranger could have access to the LEP person's personal identification information, such as his or her name, phone number, address, social security number, driver's license number (if different from the social security number), and medical information. However, there are situations where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary.**

An example of this is a voluntary educational tour of an airport, or a train or bus station. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others to interpret may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

## D. ELEMENTS OF AN EFFECTIVE LEP IMPLEMENTATION PLAN:

### **Question 11: *Does the STA have an LEP implementation Plan?***

**Answer:** DOT's LEP guidance identifies 5 steps and related techniques that are helpful in designing an LEP plan: the use of language assistance cards; a description of the way in which language assistance will be provided; staff training; effective notice to LEP persons using signs and outreach documents; and LEP plan monitoring.

### **Question 11a: *Does the STA LEP Plan contain, at a minimum, the five elements identified in the USDOT LEP guidance?***

**Answer:** After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified need of the LEP population it services. The plan must also include the four (4) factor analysis and its results.

An effective implementation plan on language assistance for LEP persons should include, at a minimum the following elements:

- Identification of LEP individuals who need language assistance
- Language assistance measures
- Training staff
- Providing notices to LEP persons
- Monitoring and updating the LEP plan

FHWA recipients are required to submit their LEP Plan as part of their standard Title VI assurances, Title IV Plan and implementing Title VI regulations. In certain circumstances, such as in complaint investigations or compliance reviews, recipients may be required to provide Federal agencies with a copy of any plan created by the recipient.

### **Question 11b: *Does the STA LEP Plan include information about ways in which language assistance will be provided? (Example: LEP plan to include procedures on how to respond to LEP callers and how to respond to written communications from LEP persons).***

**Answer:** An effective LEP plan should include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on the following:

- Types of language services available;
- How recipient staff can obtain those services;
- How to respond to written communications from LEP persons;
- How to respond to LEP individuals who have in-person contact with recipient staff;
- How to ensure competency of interpreters and translation services.

**Question 11c: *Do the STA employees know their obligations to provide meaningful access to information and services for LEP persons?***

**Answer:** Staff members should know their obligations to provide meaningful access to information and services for LEP persons, and all employees in public contact positions should be properly trained. An effective LEP plan would likely include training to ensure that:

- Staff knows about LEP policies and procedures;
- Staff having contact with the public (or those in a recipient's custody) is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. Recipients have flexibility in deciding the manner in which the training is provided. Obviously, the more frequent the contact with LEP persons, the greater the need will be for in-depth training.

**Question 11d: *Does the STA ensure management is aware of LEP responsibilities and understands the LEP Plan so they can reinforce its importance and ensure its implementation by staff?***

**Answer:** Even if management staff may not interact regularly with LEP persons, they should be fully aware of, and understand the plan so they can reinforce its importance and ensure its implementation by staff.

**Question 11e: *Does the STA notify LEP persons of the services available and that they are free of charge?***

**Answer:** Once the recipient has decided, based on the four-factor analysis, that it will provide language services, it is important that the recipient notify the LEP persons of services that are available free of charge.

**Question 11f: *Does the STA provide notices in languages LEP persons would understand?***

**Answer:** Recipient should provide notices in languages LEP persons would understand. Examples of notification that recipients should consider include: Posting signs in intake areas and other entry points, Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information; working with community based organizations; including notices in local newspapers in languages other than English; providing notice in radio and television stations about the available language services and how to get them, etc.

*Examples of the types of notification to consider are listed in DOT's LEP Guidance pages 74097 and 74097.*

**Question 11g: *Does the STA have an ongoing process to monitor its language assistance policies and procedures at least annually, to evaluate its effectiveness at serving LEP individuals and modify it accordingly?***

**Answer:** Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. A good way a recipient can evaluate the LEP plan is to seek feedback from the community. In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in the service area or populations affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to the five elements of a viable plan, an effective plan needs to be reevaluated on an annual basis and updated accordingly. Clear goals should be established, management should be held accountable, and there should be an opportunity for input and planning throughout the period.

## ***AUTHORITIES***

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## ***STATEMENT BY THE PRESIDENT***

### **STATEMENT BY THE PRESIDENT**

THE WHITE HOUSE

Office of the Press Secretary  
(Los Angeles, California)

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For Immediate Release

August 11, 2000

### STATEMENT BY THE PRESIDENT

Today, I am issuing an Executive Order to help people with limited English proficiency (LEP) access Federal services. Many people who are eligible for Federal services cannot effectively use those services because they are not proficient in English. The Executive Order directs Federal agencies to improve the language-accessibility of their programs by December 11, 2000. This initiative complements our commitment to promoting programs to help individuals learn English.

I am concerned that language barriers are preventing the Federal government and recipients of Federal financial assistance from effectively serving a large number of people in this country who are eligible to participate in their programs. Failure to systematically confront language barriers can lead to unequal access to Federal benefits based on national origin and can harm the mission of Federal agencies. Breaking down these barriers will allow individuals with limited English proficiency to more fully participate in American society.

This Executive Order directs Federal agencies to break down language barriers by implementing consistent standards of language assistance across agencies and among all recipients of Federal financial assistance. Under this flexible standard, agencies and recipients must take reasonable steps to provide meaningful access to their programs and activities, taking into account a variety of considerations. Among the factors to be considered are the numbers or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the nature and importance of the service provided by the program, and the available resources.



**EXECUTIVE ORDER 13166*****Federal Register***

Vol. 65, No. 159 - Wednesday, August 16, 2000

**Executive Order 13166 of August 11, 2000  
Improving Access to Services for Persons With Limited English Proficiency**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

**Sec. 1. Goals.**

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

**Sec. 2. Federally Conducted Programs and Activities.**

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

**Sec. 3. Federally Assisted Programs and Activities.**

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

**Section 4. Consultations.**

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

**Section 5. Judicial Review.**

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

A handwritten signature in black ink that reads "William Clinton". The signature is written in a cursive style with a large, prominent "W" and "C".

THE WHITE HOUSE,  
August 11, 2000

**USDOT LEP GUIDANCE**

**Federal Register:**

December 14, 2005 (Volume 70, Number 239)

[Notices]

[Page 74087-74100]

From the **Federal Register** Notice posted at: <http://www.usdoj.gov/crt/cor/lep/dotlep.pdf>

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**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**[Docket No. OST-2001-8696]**

**Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons**

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation (DOT).

**ACTION:** Notice of guidance with request for comments.

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**SUMMARY:** The United States Department of Transportation (DOT) is publishing guidance concerning services and policies by recipients of Federal financial assistance from the Department of Transportation related to persons with limited English proficiency. The guidance is based on the prohibition against national origin discrimination in Title VI of the Civil Rights Act of 1964, as it affects limited English proficient persons.

**DATES:** This guidance is effective immediately. Comments must be received on or before January 13, 2006. Late-filed comments will be considered to the extent practicable. DOT will review all comments and will determine what modifications to the guidance, if any, are necessary. This guidance supplants existing guidance on the same subject originally published at 66 FR 6733 (January 22, 2001).

**ADDRESSES:** You may submit comments, identified by the docket number [OST-2001-8696], by any of the following methods:

- Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: (202) 493-2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- Hand Delivery: To the Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**Instructions:** You must include the agency name and docket number [OST-2001-8696] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

*Docket:* You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joseph Austin, Chief, External Policy and Program Development Division, Departmental Office of Civil Rights, Telephone: (202) 366-5992, TTY: (202) 366-9696, E-mail: [joseph.austin@dot.gov](mailto:joseph.austin@dot.gov); or Bonnie Angermann, Attorney-Advisor, Office of General Law, Office of the General Counsel, Telephone: (202) 366-9166, E-mail: [bonnie.angermann@dot.gov](mailto:bonnie.angermann@dot.gov). Arrangements to receive the policy guidance in an alternative format may be made by contacting the named individuals.

**SUPPLEMENTARY INFORMATION:** Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance. The purpose of this limited English proficiency policy guidance is to clarify the responsibilities of recipients of Federal financial assistance from the U.S. Department of Transportation (DOT) ("recipients"), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.

Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency," reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that is subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation.

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Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in the Department of Justice's (DOJ's) Policy Guidance entitled "Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency." See 65 FR 50123 (August 16, 2000) (DOJ's General LEP Guidance).

DOT published its initial guidance regarding its recipients' obligations to take reasonable steps to ensure access by LEP persons on January 22, 2001, and requested public comment on the guidance. See 66 FR 6733. DOT received 21 comments in response to its January 22, 2001, policy guidance. The comments reflected the views of individuals, organizations serving LEP populations, organizations favoring the use of the English language, and recipient agencies. While many comments identified areas for improvement and/or revision, the majority of the comments on the DOT LEP Guidance expressed agreement with its overall goal of ensuring access of LEP individuals to recipients' services. DOT worked closely with DOJ to ensure that recipients' comments were addressed in a consistent fashion.

In the order most often raised, the common areas of comment regarded: cost considerations, especially for smaller recipients serving few LEP persons; increased litigation risk and liability for recipients as a result of the guidance; and use of interpreters and the definition of "qualified interpreter."

A large number of comments focused on cost considerations and suggested that the Department address them as part of its evaluation of the language assistance needs of LEP persons. Particularly, this concern was expressed by State agencies that at the time received Coast Guard grants to administer safe boating courses.<sup>1</sup> But this policy guidance does not require DOT recipients to translate all courses or materials in every circumstance or to take unreasonable or burdensome steps in providing LEP persons access. We have clarified the guidance to better convey its flexibility, based on the four-factor analysis set forth in DOJ's General LEP Guidance.

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<sup>1</sup> This guidance does not address the extent to which Executive Order 13166 requires language access services in the provision of boating safety courses funded by the Coast Guard, because that agency is no longer a component of the Department of Transportation.

Several recipients commented that they serve few if any LEP persons and that the cost of interpreting all of their courses and materials would be excessive and unnecessary. While none urged that costs be excluded from consideration altogether, at least one comment expressed concern that a recipient could use cost as a basis for avoiding otherwise reasonable and necessary language assistance to LEP persons. In contrast, a few comments suggested that the flexible fact-dependent compliance standard set forth in the guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large recipients to incur unnecessary or inappropriate fiscal burdens in the face of already strained program budgets.

The Department is mindful that cost considerations could be inappropriately used to avoid providing otherwise reasonable and necessary language assistance. Similarly, cost considerations could be ignored or minimized to justify the provision of a particular level or type of language service even though effective alternatives exist at a minimal cost. The Department also is aware of the possibility that satisfying the need for language services might be quite costly for certain types of recipients, particularly if they have not updated their programs and activities to the changing needs of the populations they serve.

The potential for some recipients to assert adverse cost impacts in order to avoid Title VI obligations does not, in the Department's view, justify eliminating cost as a factor in all cases when determining the necessary scope of reasonable language assistance services under DOT's guidance. The Department continues to believe that costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures, and the DOJ Recipient LEP Guidance identifies the appropriate framework through which costs are to be considered. See Department of Justice Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41455 (June 18, 2002).

The second most common category of comments DOT received expressed concern over increased litigation risk and liability for recipients as a result of the LEP Guidance. As is addressed below in the Introduction, *Alexander v. Sandoval*, 532 U.S. 275 (2001), holds principally that there is no private right of action to enforce Title VI disparate impact regulations. The LEP Guidance is based on Title VI and DOT's Title VI regulations at 49 CFR part 21 and does not provide any private right of action beyond that which exists in those laws. Thus, the LEP Guidance does not increase the risk of recipients' legal liability to private plaintiffs. However, the Department does not dismiss the possibility that individuals may continue to initiate such legal actions.

The third most numerous category of comments DOT received regarded the definition of "qualified interpreter" and expressed commentators' concern with recipients' responsibility to make interpreters available, especially for recipients who serve populations with extremely diverse language needs. Set forth below in section VI are practices to help recipients ascertain that their interpreters are both competent and effective. This section should enable recipients to assess the qualifications of the interpreters they use and identify any improvements that need to be addressed.

Three of the comments urged withdrawal of the guidance, arguing it is unsupported by law. In response, the Department notes that its commitment to implementing Title VI and its regulations to address language barriers is longstanding and is unaffected by recent judicial action precluding individuals from successfully maintaining suits to enforce agencies' Title VI disparate impact regulations. This guidance clarifies existing statutory and regulatory provisions by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons.

The remaining 18 comments were generally supportive of the guidance and DOT's leadership in this area. One recipient commented that constraining LEP persons' access to services may actually hinder their ability to become more proficient in the English language, therefore justifying increased programs for LEP persons. Several comments received addressed areas unique to the provision of transportation services to LEP persons. One recipient discussed the inconsistency between the Federal Motor Carrier Safety Administration's (FMCSA's) regulations requiring all drivers to speak and understand a certain amount of English, and the guidance's requirement that the FMCSA division offices provide information and services in other languages to accommodate LEP persons. Pursuant to 49 CFR 391.11(b)(2), a person is qualified to drive a motor vehicle if he or she

"[c]an read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records." In 1997, following an

**[Page 74089]**

American Civil Liberties Union (ACLU) legal challenge to this requirement, DOT issued an advance notice of proposed rulemaking (ANPRM) to address this issue. On July 24, 2003, FMCSA withdrew this ANPRM, concluding that the information introduced in response to the notice does not establish that the current regulation requires an unnecessarily high level of English fluency that has resulted in a discriminatory impact or effect based upon national origin, color, or ethnicity." FMCSA determined the regulation "as written and properly enforced effectively balances issues of civil rights and highway safety." 68 FR 43890.

- Coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.
- Example: DOT provides assistance to a State department of transportation to rehabilitate a particular highway on the National Highway System. All of the operations of the entire State department of transportation--not just the particular highway program--are covered by the DOT guidance.
- Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

Another recipient, who works with community-based organizations concerned with transportation practices and policies, suggested mandatory LEP Access Assessments be attached to the standard financial assistance Assurance Forms that recipients must execute, to serve as a basis for disqualifying recipients submitting inaccurate or substantially incomplete assessments from Federal grant funding. While providing LEP persons with meaningful access is the law and should be given high priority, DOT advocates a flexible approach in ensuring such access, as outlined below in section V, in order to suit the varying needs of its recipients, and therefore has not adopted this suggestion. As discussed in section VIII, DOT seeks to promote voluntary compliance to meet Title VI's goal of ensuring that Federal funds are not used in a manner that discriminates on the basis of race, color, or national origin. DOT will work with recipients to meet this goal, and will resort to more intrusive administrative remedies only if voluntary compliance cannot be secured and stronger measures become necessary to ensure LEP persons have meaningful access to services from recipients of DOT financial assistance.

This document has been modified based on careful consideration of public comments received by DOT, and the approach DOJ adopted after analyzing the public comments it received following its initial guidance published at 66 FR 3834 (January 16, 2001). This guidance is consistent with: Title VI, implementing regulations, Executive Order 13166, the DOJ General LEP Guidance, and the model DOJ Recipient Guidance issued on June 18, 2002.

With particular emphasis on the concerns mentioned above, the Department proposes this "Limited English Proficiency Guidance for Department of Transportation Recipients." The text of this guidance document appears below.

Because this guidance must adhere to the Federal-wide compliance standards and framework detailed in the model DOJ Recipient Guidance issued on June 18, 2002, DOT specifically solicits comments on the nature, scope, and appropriateness of the DOT-specific examples set out in this guidance explaining and/or highlighting how those consistent Federal-wide compliance standards are applicable to recipients of Federal financial assistance from DOT. This guidance supplants the existing guidance on the same subject published at 66 FR 6733 (January 22, 2001). This guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Dated: December 7, 2005.

**J. Michael Trujillo,**

Director, Departmental Office of Civil Rights.



## Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

### I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, regarding individuals older than age 5, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP."

In a 2001 Supplementary Survey by the U.S. Census Bureau,<sup>2</sup> 33% of Spanish speakers and 22.4% of all Asian and Pacific Island language speakers aged 18-64 reported that they spoke English either "not well" or "not at all."

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made meaningfully accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.<sup>3</sup>

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This guidance clarifies existing legal requirements for LEP persons by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons.<sup>4</sup> These are the same criteria DOT will use in evaluating whether recipients are complying with Title VI and Title VI regulations.

Executive Order 13166 charges DOJ with the responsibility for providing LEP Guidance to other Federal agencies, such as DOT, and for ensuring consistency among each agency-specific guidance. Consistency among Federal Government agencies is particularly important. Inconsistent or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without facilitating the meaningful access for LEP persons that this policy guidance is designed to address. As with most government initiatives, this requires balancing several principles.

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While this guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs and activities aimed at the American public do not leave individuals behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those who particularly benefit from federally assisted programs and activities.

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<sup>2</sup> PO35. Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over. Cens. Summ. File 3, 2001 Supp. Survey Summ. Tables (SF 3) (based on 12 monthly samples during 2001) Washington: U.S. Dep't of Comm., Bur. of the Census. Viewed 14 September 2004, available at: [http://factfinder.census.gov/servlet/DTTable?\\_bm=y&-geo\\_id=D&-ds\\_name=D&-lang=en&-redoLog=false&-mt\\_name=DSS\\_2001\\_EST\\_G2000\\_P035](http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=D&-ds_name=D&-lang=en&-redoLog=false&-mt_name=DSS_2001_EST_G2000_P035)

<sup>3</sup> DOT recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its programs and activities, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

<sup>4</sup> This policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. Recipients should use the guidance to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are LEP.

Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small nonprofit organizations that receive Federal financial assistance. There are many productive steps that the Federal Government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller recipients may choose not to participate in federally assisted programs or activities, threatening the critical functions that the programs or activities strive to assist. To that end, DOT plans to continue to work with DOJ and other Federal agencies to provide ongoing assistance and guidance in this important area. In addition, DOT plans to work with recipients of Federal financial assistance—for example, with motor vehicle departments, transit authorities, State departments of transportation, and other transportation service providers—and LEP persons, to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOT intends to explore how language assistance measures and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small nonprofit organizations. An interagency working group on LEP has developed a Web site, <http://www.lep.gov>, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

## II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity “to effectuate the provisions of [section 601] \* \* \* by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. 2000d-1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.” 28 CFR 42.104(b)(2). DOT’s Title VI regulations include almost identical language in this regard. See 49 CFR 21.5(b)(vii)(2) (portions of these regulations are provided in Appendix A).

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English-speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. “Improving Access to Services for Persons With Limited English Proficiency,” 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how its recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding recipients from “restrict [ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program” or from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. "Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency," 65 FR 50123 (August 16, 2000) (DOJ's General LEP Guidance).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, the Assistant Attorney General for Civil Rights issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*. The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups--the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities--the Executive Order remains in force.<sup>5</sup>

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Pursuant to Executive Order 13166, DOT developed its own guidance document for recipients and initially issued it on January 22, 2001. "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries." However, in light of the public comments received and the Assistant Attorney General's October 26, 2001, clarifying memorandum, DOT has revised its LEP guidance to ensure greater consistency with DOJ's revised LEP guidance, published June 18, 2002, and other agencies' revised LEP guidance. 67 FR 117 (June 18, 2002).

### **III. Who Is Covered?**

Pursuant to Executive Order 13166, the meaningful access requirement of Title VI, the Title VI regulations, and the four-factor analysis set forth in the DOJ's revised LEP Guidance, 67 FR 117 (June 18, 2002), apply to the programs and activities of Federal agencies, including DOT. Federal financial assistance includes grants, cooperative agreements, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOT assistance include, for example:

- State departments of transportation.
- State motor vehicle administrations.
- Airport operators.
- State highway safety programs.
- Metropolitan planning organizations.
- Regional transportation agencies.
- Regional, state, and local transit operators.
- Public safety agencies.<sup>6</sup>

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<sup>5</sup> The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. See, e.g., *Sandoval*, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; \* \* \* We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 \* \* \* when Sec. 601 permits the very behavior that the regulations forbid"). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal agencies to enforce their own Title VI regulations.

<sup>6</sup> Recipients should review DOJ's LEP Guidance for specific examples of how the four-factor analysis applies to interactions between funded law enforcement authorities and first responders.

- Hazardous materials transporters and other first responders.
- State and local agencies with emergency transportation responsibilities, for example, the transportation of supplies for natural disasters, planning for evacuations, quarantines, and other similar action.
- Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipient.

Coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.

Example: DOT provides assistance to a State department of transportation to rehabilitate a particular highway on the National Highway System. All of the operations of the entire State department of transportation--not just the particular highway program--are covered by the DOT guidance.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

#### **IV. Who Is a Limited English Proficient Individual?**

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP," and, therefore, are entitled to language assistance under Title VI of the Civil Rights Act of 1964 with respect to a particular type of service, benefit, or encounter. However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d-1.

Examples of populations likely to include LEP persons who are served or encountered by DOT recipients and should be considered when planning language services include, but are not limited to:

- Public transportation passengers.
- Persons who apply for a driver's license at a State department of motor vehicles.
- Persons subject to the control of State or local transportation enforcement authorities, including, for example, commercial motor vehicle drivers.
- Persons served by emergency transportation response programs.
- Persons living in areas affected or potentially affected by transportation projects.
- Business owners who apply to participate in DOT's
- Disadvantaged Business Enterprise program.

#### **V. How Does a Recipient Determine the Extent of Its Obligation to Provide LEP Services?**

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the recipient to people's lives; and (4) the resources available to the recipient and costs. As indicated above, the intent of this policy guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofit organizations.

After applying the above four-factor analysis to the various kinds of contacts a recipient has with the public, the recipient may conclude that different language assistance measures are sufficient to ensure meaningful access to the different types of programs or activities in which it engages. For instance, some of a recipient's activities will have a greater impact on or contact with LEP persons than others, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed.

DOT recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

### **(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population**

The greater the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population, the more likely language services are needed. Ordinarily, persons “eligible to be served, or likely to be directly affected, by” a recipient’s programs or activities are those who are in fact, served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that is part of the recipient’s service area. However, where, for instance, a motor vehicle office serves a large LEP population, the appropriate service area is that served by the office, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by State or local authorities or designated by the recipient itself,

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provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) whose English proficient or LEP minor children and dependents encounter the services of DOT recipients.

Recipients should first examine their prior experiences with LEP individuals and determine the breadth and scope of language services that are needed. In conducting this analysis, it is important to: Include language minority populations that are eligible beneficiaries of recipients’ programs, activities, or services but may be underserved because of existing language barriers; and consult additional data, for example, from the census, school systems and community organizations, and data from State and local governments, community agencies, school systems, religious organizations, and legal aid entities.<sup>7</sup>

### **(2) The Frequency With Which LEP Individuals Come in Contact With the Program, Activity, or Service**

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance, as the more frequent the contact, the more likely enhanced language services will be needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. Recipients should also consider the frequency of different types of language contacts, as frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish, while less frequent contact with different language groups may suggest a different and/or less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual’s program or activity contact is unpredictable or infrequent. However, even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use a commercial telephonic interpretation service to obtain immediate interpreter services. Additionally, in applying this standard, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

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<sup>7</sup> The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language but speak or understand English less than well. People who are also proficient in English may speak some of the most commonly spoken languages other than English.

### **(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program**

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate rights to an LEP person who needs public transportation differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as requiring a driver to have a license, can serve as strong evidence of the importance of the program or activity.

### **(4) The Resources Available to the Recipient and Costs**

A recipient's level of resources and the costs imposed may have an impact on the nature of the steps it should take in providing meaningful access for LEP persons. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns.

Resource and cost issues, however, can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services among and between recipients, advocacy groups, affected populations, and Federal agencies. For example, the following practices may reduce resource and cost issues where appropriate:

- Training bilingual staff to act as interpreters and translators.
- Information sharing through industry groups.
- Telephonic and video conferencing interpretation services.
- Translating vital documents posted on Web sites.
- Pooling resources and standardizing documents to reduce translation needs.
- Using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs.
- Centralizing interpreter and translator services to achieve economies of scale.<sup>8</sup>
- Formalized use of qualified community volunteers.

Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a motor vehicle department or an emergency hazardous material clean-up team in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring bilingual staff (of course, many such departments have already made these arrangements). Additionally, providing public

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<sup>8</sup> Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

transportation access to LEP persons is crucial. An LEP person's inability to utilize effectively public transportation may adversely affect his or her ability to obtain health care, or education, or access to employment. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high--such as in the case of a voluntary general public tour of an airport or train station--in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language services provided, quality and accuracy of those services can be critical. Recipients have substantial flexibility in determining the appropriate mix.

## **VI. Selecting Language Assistance Services**

Recipients may provide language services in either oral or written form. Quality and accuracy of the language service is critical in order to avoid potential serious consequences to the LEP person and to the recipient.

### **A. Oral Language Services (Interpretation)**

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the options below for providing competent interpreters in a timely manner.

**Competence of Interpreters.** When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret into and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation).

Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person;<sup>9</sup> and understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Additionally, some recipients may have their own requirements for interpreters, as individual rights may depend on precise, complete, and accurate interpretations or translations. In some cases, interpreters may be required to demonstrate that their involvement in a matter would not create a conflict of interest.

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<sup>9</sup> Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of certain legal terms, the interpreter should be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

While quality and accuracy of language services are critical, they are nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services as part of disaster relief programs, or in the provision of emergency supplies and services, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety course need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner in order to be effective. Generally, to be "timely," the recipient should provide language assistance at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as when an LEP person needs access to public transportation, a DOT recipient does not provide meaningful LEP access when it has only one bilingual staff member available one day a week to provide the service.

**Hiring Bilingual Staff.** When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as transit station managers, department of motor vehicle service representatives, security guards, or program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff members are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting, as discussed above. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff members are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

**Hiring Staff Interpreters.** Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to facilitate accurate and meaningful communication with an LEP person.

**Contracting for Interpreters.** Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with interpreters and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

**Using Telephone Interpreter Lines.** Telephone interpreter service lines often offer prompt interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist

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an interpreter and cannot be recognized over the phone. The issues discussed above regarding interpreter competency are also relevant to telephonic interpreters. Video conferencing and allowing interpreters to review relevant documents in advance may also be helpful.

**Using Community Volunteers.** In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with



LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and help ensure that services are available more regularly.

**Use of Family Members, Friends, Other Customers/Passengers as Interpreters.** Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use an interpreter of their choice at their own expense (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family members, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative, mission-related, or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive or confidential information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to obtain an LEP person's personal identification information, for example, in the case of an LEP person attempting to apply for a driver's license. Thus, DOT recipients should generally offer free interpreter services to the LEP person. This is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when no interpreters, or bilingual or symbolic signs are available in a State department of motor vehicles. In an effort to apply for a driver's license, vehicle registration, or parking permit, an LEP person may be forced to enlist the help of a stranger for translation. This practice may raise serious issues of competency or confidentiality and may compromise the personal security of the LEP person, as the stranger could have access to the LEP person's personal identification information, such as his or her name, phone number, address, social security number, driver's license number (if different from the social security number), and medical information. However, there are situations where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of an airport, or a train or bus station. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others to interpret may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

## B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. Such written materials could include, for example:

- Driver's license, automobile registration, and parking permit forms.
- Parking tickets, citation forms, and violation or deficiency notices, or pertinent portions thereof.
- Emergency transportation information.
- Markings, signs, and packaging for hazardous materials and substances.
- Signs in bus and train stations, and in airports.
- Notices of public hearings regarding recipients' proposed transportation plans, projects, or changes, and reduction, denial, or termination of services or benefits.
- Signs in waiting rooms, reception areas, and other initial points of entry.
- Notices advising LEP persons of free language assistance and language identification cards for staff (i.e., "I speak" cards).

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- Statements about the services available and the right to free language assistance services in appropriate non-English languages, in brochures, booklets, outreach and recruitment information, and other materials routinely disseminated to the public.
- Written tests that do not assess English-language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
- Applications, or instructions on how to participate in a recipient's program or activity or to receive recipient benefits or services.
- Consent forms.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not accurate or timely. For instance, applications for bicycle safety courses should not generally be considered vital, whereas access to safe driving handbooks could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access," as lack of awareness may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach efforts in furtherance of its programs and activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate, and some such translations may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious and community organizations to spread a message.

Sometimes a very large document may include both vital and non-vital information. This may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and

cannot reasonably be translated into many languages. Thus, vital information may include, for instance, providing information in appropriate languages regarding where an LEP person might obtain an interpretation or translation of the document.

**Into What Languages Should Documents be Translated?** The extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

The languages spoken by the LEP individuals with whom the recipient has frequent contact determine the languages into which vital documents should be translated. However, because many DOT recipients serve communities in large cities or across an entire State and regularly serve areas with LEP populations that speak dozens and sometimes more than 100 languages, it would be unrealistic to translate all written materials into each language. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. However, well-substantiated claims of lack of resources to translate all such documents into dozens or more than 100 languages do not necessarily relieve the recipient of the obligation to translate vital documents into at least several of the more frequently encountered languages. The recipient should then set benchmarks for continued translations into the remaining languages over time.

**Safe Harbor.** Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations under Title VI.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is noncompliance. Rather these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis. For example, even if a safe harbor is not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, it is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

**Safe Harbor.** The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

- (a) The DOT recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- (b) If there are fewer than 50 persons in a language group that reaches the 5% trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

**Competence of Translators.** As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate, and vice versa.

Particularly where vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.<sup>10</sup> Competence can often be ensured by having a second, independent translator check the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent

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translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English-language version or has no relevant equivalent meaning.<sup>11</sup> Community organizations may be able to help consider whether a document is written at an appropriate level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical or programmatic terms helps avoid confusion by LEP individuals and may reduce costs. Creating or using already created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by other recipients or Federal agencies may also be helpful. While quality and accuracy of translation services are critical, they are nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no important consequences for LEP persons who rely on them may be translated by translators who are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., driver's license written exams and documents regarding important benefits or services, or health, safety, or legal information). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

## **VII. Elements of an Effective Implementation Plan on Language Assistance for LEP Persons**

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations it serves. Although recipients have considerable flexibility in developing such a plan, maintaining a periodically updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public would be an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans may also provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. Thus, recipients may choose to document the language assistance services in their plan, and how staff and LEP persons can access those services. Certain DOT recipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. In that event, a recipient should consider alternative ways to reasonably articulate a plan for providing meaningful access. Early input from entities such as schools, religious organizations, community groups, and groups working with new immigrants can be helpful in forming this planning process. The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

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<sup>10</sup> For those languages in which no formal accreditation exists, a particular level of membership in a professional translation association can provide some indicator of professional competence.

<sup>11</sup> For instance, although there may be languages that do not have a direct translation of some legal, technical, or program-related terms, the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of those terms in that language that can be used again, when appropriate.

### *(1) Identifying LEP Individuals Who Need Language Assistance*

There should be an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters pursuant to the first two factors in the four-factor analysis.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say, "I speak Spanish" in both Spanish and English, or "I speak Vietnamese" in both English and Vietnamese. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau's "I speak card" can be found and downloaded at [www.usdoj.gov/crt/cor/13166.htm](http://www.usdoj.gov/crt/cor/13166.htm).

When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

### *(2) Language Assistance Measures*

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How recipient staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

### *(3) Training Staff*

Staff members should know their obligations to provide meaningful access to information and services for LEP persons, and all employees in public contact positions should be properly trained. An effective LEP plan would likely include training to ensure that:

- Staff knows about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. Recipients have flexibility in deciding the manner in which the training is provided, and the more frequent the contact with LEP persons, the greater the need will be for in-depth training. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

### *(4) Providing Notice to LEP Persons*

Once an agency has decided, based on the four factors, that it will provide language services, it is important that the recipient notify LEP persons of services available free of charge. Recipients should provide this notice in languages LEP persons would understand. Examples of notification that recipients should consider include:

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- Posting signs in intake areas and other entry points. This is important so that LEP persons can learn how to access those language services at initial points of contact. This is particularly true in areas with high volumes of LEP persons seeking access to certain transportation safety information, or other services and activities run by DOT recipients.<sup>12</sup>
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be “tagged” onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using an automated telephone voice mail attendant or menu system. The system could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Providing presentations and/or notices at schools and religious organizations.

#### *(5) Monitoring and Updating the LEP Plan*

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in the service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

### **VIII. Voluntary Compliance Effort**

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. DOT enforces Title VI as it applies to recipients' responsibilities to LEP persons through the procedures provided for in DOT's Title VI regulations (49 CFR part 21, portions of which are provided in Appendix A).

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<sup>12</sup> For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the necessary language assistance. The Social Security Administration has made such signs available at [www.ssa.gov/multilanguage/langlist1.htm](http://www.ssa.gov/multilanguage/langlist1.htm). DOT recipients could, for example, modify these signs for use in programs, activities, and services.

The Title VI regulations provide that DOT will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOT will inform the recipient in writing of this determination, including the basis for the determination. DOT uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOT must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOT must secure compliance through the termination of Federal assistance after the DOT recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ with a recommendation that appropriate proceedings be brought to enforce the laws of the United States. In engaging in voluntary compliance efforts, DOT proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOT's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs, activities, and services.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOT acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, DOT will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOT recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

## **IX. Promising Practices**

The following examples are provided as illustrations of the responses of some recipients to the need to provide services to LEP persons, and are meant to be interesting and useful examples of ways in which LEP recipients can provide language services. Recipients are responsible for ensuring meaningful access to all portions of their program or activity, not just the portions to which DOT assistance is targeted. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in moving toward

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meeting the meaningful access requirements of Title VI and the Title VI regulations. These examples do not, however, constitute an endorsement by DOT, which will evaluate recipients' situations on a case-by-case basis using the factors described elsewhere in this guidance.

**Language Banks.** In several parts of the country, both urban and rural, community organizations and providers have created language banks that dispatch competent interpreters, at reasonable rates, to participating organizations, reducing the need to have on-staff interpreters for low-demand languages. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs but limited demand for any particular language. **Language Support Offices.** A State social services agency has established an "Office for Language Interpreter Services and Translation." This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications, and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

Some recipients have established working liaisons with local community colleges to educate the LEP community in transportation matters. One city formed a multilingual/multi-agency task force to address language barriers and the concerns of the affected communities. The task force completed a survey of city staff with multilingual skills in order to identify employees willing to serve as interpreters and is preparing lists of community and cultural organizations.

**Use of Technology.** Some recipients use their Internet and/or intranet capabilities to store translated documents online, which can be retrieved as needed and easily shared with other offices. For example, a multi-language gateway on a Web page could be developed for LEP persons and the public to access documents translated into other languages.

**Telephone Information Lines and Hotlines.** Recipients have subscribed to telephone-based interpretation services and established telephone information lines in common languages to instruct callers on how to leave a recorded message that will be answered by someone who speaks the caller's language. For example, a recipient may choose to adopt a program similar to the National Highway Traffic Safety Administration's (NHTSA's) Auto Safety Hotline, which has four representatives who speak Spanish and are available during normal hotline business hours (Mon.-Fri., 8 a.m.-10 p.m. eastern time).<sup>13</sup>

**Signage and Other Outreach.** Recipients have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by (a) posting signs and placards with this information in public places such as grocery stores, bus shelters, and subway stations; (b) putting notices in print media and on radio and television stations that serve LEP groups or broadcasting in languages other than English;<sup>14</sup> (c) airing videos and public service announcements for non-English-speaking residents; (d) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; (e) distributing information at places of worship, ethnic shopping areas, and other gathering places for LEP groups; (f) using posters with appropriate languages designed to reach potential beneficiaries; and (g) developing pictures, images, figures, or icons that could be understandable alternatives to written words.

DOT agencies and recipients have implemented numerous language access services:

DOT's Pipeline and Hazardous Materials Safety Administration (formerly known as the Research and Special Programs Administration), at 49 CFR Sec. Sec. 192.616 and 195.440, requires pipeline officers to establish a program for effective reporting by the public of gas pipeline emergencies to the operator or public officials, also providing that the program must be conducted in English and other common languages.<sup>15</sup> We recommend that recipients consider the appropriateness of such an approach to meet their individual service provision needs.

DOT's National Highway Traffic Safety Administration (NHTSA) has translated the National Standardized Child Passenger Safety Training Program curriculum into Spanish. The course, designed to help communities work with parents and caregivers on the proper installation of child safety seats, has been pilot tested and is scheduled to be available to the public by early 2006 through many national Latino organizations and State Highway Safety Offices.

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<sup>13</sup> The evening hours permit people from the West Coast (where a significant number of LEP persons reside) to call after work, providing an option for instructions in Spanish, a separate queue, and Spanish-speaking operators.

<sup>14</sup> Notifications should be delivered in advance of scheduled meetings or events to allow time for persons to request accommodation and participate.

<sup>15</sup> "Each [pipeline] operator shall establish a continuing educational program to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The program and the media used should be as comprehensive as necessary to reach all areas in which the operator transports gas. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area." 49 CFR Sec. 192.616. Section 195.440 of title 49, Code of Federal Regulations, imposes similar requirements in the case of hazardous liquid or carbon dioxide pipeline emergencies.



DOT's Federal Motor Carrier Safety Administration (FMCSA) division offices in California, Arizona, New Mexico, Texas, and Puerto Rico employ personnel conversant in Spanish to communicate the agency's critical safety regulations.

The Del Rio, Texas, Police Department implemented the El Protector program in Del Rio and developed public service broadcasts in Spanish about traffic safety issues such as loading and unloading school buses, drinking and driving, and pedestrian safety.

Emergency Medical Services (EMS) staff in Los Angeles reported that their system is equipped to receive calls in more than 150 languages, although Spanish is the most frequent language used by 911 callers who do not speak English.

District of Columbia DMV information, forms, and support material are available in German, Spanish, French, Russian, Dutch, and Portuguese and can be downloaded from the division's Web site. The DC DMV also provides a "City Services Guide" in Chinese, Korean, Spanish, and Vietnamese. DC's "Click It or Ticket" program material and information on child safety seat loaner programs and fitting station locations are available in Spanish.

The New Jersey Department of Motor Vehicles administers driver's license tests in more than 15 languages, including Arabic, French, Greek, Korean, Portuguese, and Turkish.<sup>16</sup>

In North Dakota, while the Traffic Safety Office acknowledges a limited minority population requiring assistance with translation, the Driver Licensing Unit offers the option of an oral test in Spanish.

The Iowa Department of Transportation (IDOT) provides a Spanish version of the Commercial

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Driver's License knowledge test using a touch screen computer, and study guides of the Iowa Driver's Manual in Albanian, Bosnian, Russian, Vietnamese, and Korean. IDOT established a liaison with a local community college to provide education for Bosnian refugees concerning the Commercial Motor Vehicle driving course.<sup>17</sup>

The Wisconsin DOT created a 3rd grade level study guide, the Motorist Study Manual Easy Reader, which was translated by the Janesville Literacy Council into Spanish. Wisconsin DOT also provides the regular 6th grade level version of the Reader in English, Spanish, and Hmong; a Motorcycle Study Manual in English and Spanish; and a CDL (Commercial Driver's License) Study Manual in English and Spanish. In addition, Knowledge and Highway Sign Tests are written in 13 languages other than English, recorded on audiocassette tapes in English and Spanish, or orally interpreted by bilingual staffers obtained from a roster of Wisconsin DOT employees who speak, read, or write foreign languages.

The Idaho Office of Traffic and Highway Safety implemented a Spanish-language safety belt media campaign to educate its Hispanic community on the statewide "Click It, Don't Risk It!" program to boost seat belt use. Information appears in *Unido*, Idaho's largest Spanish-language newspaper, and warns all motorists to buckle up or risk receiving a safety belt citation.

The New Mexico State Highway and Transportation Department, with Federal Highway Administration (FHWA) support, provides Spanish-language translations of its Right-of-Way Acquisition and Relocation brochures and also employs bilingual right-of-way agents to discuss project impacts in Spanish.

The State of Oregon developed a report on multilingual services provided by State agencies. State agencies will use the final document to enhance their existing programs, including expanding communication efforts to serve and protect all Oregonians.

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<sup>16</sup> DOT recommends that State agencies share such information, to avoid the necessity of each agency performing every translation.

<sup>17</sup> DOT especially recommends the idea of working with local community colleges to educate the LEP community in transportation matters.

The Texas DOT utilizes bilingual employees in its permit office to provide instruction and assistance to LEP Spanish-speaking truck drivers when providing permits to route overweight trucks through Texas. In its "On the Job Training Supportive Services Program" Texas DOT has used Spanish-language television to inform people who have difficulty reading English of opportunities in the construction industry.

When the Virginia DOT (VDOT) became aware that several Disadvantaged Business Enterprise (DBE) firms were about to be removed from construction projects in Northern Virginia because they required certified concrete inspectors, and that they could not comply because the concrete inspection test was only offered in English, it used supportive services funding from the Federal Highway Administration to translate the training manual and test material into Spanish. VDOT also provides tutoring for the DBE firms.

The Virginia State Police maintains a written list of interpreters available statewide to troopers through the Red Cross Language Bank, as well as universities and local police departments.

The Colorado State Patrol produced safety brochures in Spanish for farmers and ranchers. It has also printed brochures in Spanish pertaining to regulatory requirements for trucking firms.

In preparation of its 20-year planning document, the Transportation Concept Report, the California DOT (Caltrans) held a public meeting titled "Planning the Future of Highway 1" in the largely Hispanic city of Guadalupe, through which Highway 1 runs. The meeting was broadcast on the local public access channel since many of the Spanish-speaking residents potentially affected by Highway 1 projects rely on the channel to receive public affairs information. Caltrans provided a Spanish-language interpreter during the meeting and also made its Spanish-speaking public affairs officer available to meet with participants individually.

During project planning for interstate improvements along Interstate 710 in California, engineers presented "good" alternatives to the affected communities; however, the proposed highway expansion would have removed low-income homes in communities that are 98% Spanish speaking. To ensure that their concerns were heard, California identified the affected communities and facilitated the establishment of Community Advisory Committees that held bilingual workshops between engineers and the public.

The Minnesota DOT authored a manual detailing its requirements to provide access to all residents of Minnesota under environmental justice standards, which included ideas such as publishing notices in non-English newspapers, printing notices in appropriate languages, and providing interpreters at public meetings.

In New Mexico, the Zuni Entrepreneurial Enterprises, Inc. (ZEE) Public Transportation Program designed the Zuni JOBLINKS program to develop, implement, and maintain a transportation system to link Native Americans and other traditionally unserved/underserved persons in the service area to needed vocational training and employment opportunities. Outreach for the program included radio announcements and posting of signs in English and Zuni that described ZEE's services and provided ZEE's phone number.

Washington, DC's Metropolitan Area Transit Authority (WMATA) publishes pocket guides regarding its system in French, Spanish, German, and Japanese, and has a multilanguage website link.

In North Dakota, Souris Basin Transportation (SBT) started using visual logos on the sides of the vehicles to help illiterate passengers identify the bus on which they were riding. Although the illiteracy rate has dropped among seniors, SBT kept the logos on its vehicles for use by the growing LEP population and also added volunteers who speak languages other than English (such as Spanish, German, Norwegian, Swedish, and French) available by phone to drivers and staff.

New York City Transit MetroCard vending machines are located in every station and contain software that allows them to be programmed in three languages in addition to English, based upon area demographics. Currently, these machines are capable of providing information in Spanish, French, French Creole, Russian, Chinese, Japanese, Italian, Korean, Greek, and Polish.

The Metropolitan Atlanta Rapid Transit Authority (MARTA) advertises upcoming service and fare changes in Spanish, Korean, Vietnamese, and Chinese language newspapers. MARTA also produces a bilingual (Spanish/English) service modifications booklet.

The Fort-Worth Transportation Authority communicates information about service and fare changes in Spanish and English. It recruits Spanish-speaking customer service representatives and bus operators and has a community outreach liaison who is bilingual. The transit provider also provides a Spanish-language interpreter at all public meetings.

The Salt Lake City International Airport maintains a list of 35 bilingual and multilingual employees who speak one of 19 languages (including three dialects of Chinese) and their contact information. The list is published in the

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Airport Information Handbook and provided to all airport employees. The airport also contracts with a telephonic interpretation service to provide on-demand telephone interpretation services to beneficiaries.

The Port of Seattle has 16 "Pathfinders" on staff who act as guides and information sources throughout the Seattle Tacoma International Airport. A key selection criterion for Pathfinders is multilingual ability. The Pathfinders collectively speak 15 languages and are often called on to act as interpreters for travelers who do not speak English. Pathfinders greet all international flights and are assigned to do so based on language skills.

Seattle Tacoma International Airport's trains carry announcements in English, Japanese, and Korean. The Port of Seattle contributed \$5,000 to the creation of the City of Tukwila's "Newcomers Guide," which is published in six languages and includes information about the airport and Airport Jobs, a referral service for employment at the airport.

The following is a sample notice that would be useful for recipients to add to the publications or signs for their programs, services, or activities, in order to notify LEP individuals of the availability of materials and services in other languages.

Sample Notice of Availability of Materials and Services

FOR FURTHER INFORMATION CONTACT: For hearing-impaired individuals or non-English-speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax [name] of [organization] at Phone: xxx-yyy-zzzz, TTY: xxx-yyy-zzzz, or Fax: xxx-yyy-zzzz."<sup>18</sup>

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<sup>18</sup> If there is a known and substantial LEP population that may be served by the program discussed in the notice, the notice should be in the appropriate non-English language.

## Appendix A to DOT Guidance

DOT's Title VI regulation (49 CFR part 21) states the following, in relevant part:

### Sec. 21.5 Discrimination prohibited.

- (a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.
- (b) Specific discriminatory actions prohibited:
  - (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.
    - (i) Deny a person any service, financial aid, or other benefit provided under the program;
    - (ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;
    - (iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
    - (iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
    - (v) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or
    - (vi) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.
  - (2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

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  - (5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

\* \* \* \*
  - (7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.

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## **USDOJ LEP POLICY GUIDANCE**

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### **DEPARTMENT OF JUSTICE**

#### **Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**

**AGENCY:** Department of Justice.

**ACTION:** Policy guidance document.

**SUMMARY:** The Department of Justice (DOJ) adopts final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (DOJ Recipient LEP Guidance). The DOJ Recipient LEP Guidance is issued pursuant to Executive Order 13166, and supplants existing guidance on the same subject originally published at 66 FR 3834 (January 16, 2001).

**DATES:** Effective June 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, 950 Pennsylvania Avenue, NW—NYA, Washington, DC 20530. Telephone 202–307–2222; TDD: 202–307–2678.

**SUPPLEMENTARY INFORMATION:** Under DOJ regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. (Title VI), recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). See 28 CFR 42.104(b)(2). Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in DOJ Policy Guidance entitled “Enforcement of Title VI of the Civil Rights Act of 1964— National Origin Discrimination Against Persons with Limited English Proficiency.” See 65 FR 50123 (August 16, 2000).

Initial guidance on DOJ recipients’ obligations to take reasonable steps to ensure access by LEP persons was published on January 16, 2001. See 66 FR 3834. That guidance document was republished for additional public comment on January 18, 2002. See 67 FR 2671. Based on public comments **filed** in response to the January 18, 2002 republication, DOJ published revised draft guidance for public comment on April 18, 2002. See 67 FR 19237.

DOJ received 24 comments in response to its April 18, 2002 publication of revised draft guidance on DOJ recipients' obligations to take reasonable steps to ensure access to programs and activities by LEP persons. The comments reflected the views of individuals, organizations serving LEP populations, organizations favoring the use of the English language, language assistance service providers, and State agencies. While many comments identified areas for improvement and/or revision, the overall response to the draft DOJ Recipient LEP Guidance was favorable. Taken together, a majority of the comments described the draft guidance as incorporating "reasonable standards" or "helpful provisions" providing "useful suggestions instead of mandatory requirements" reflecting "common sense" and a "more measured tone" over prior LEP guidance documents.

Two of the comments urged withdrawal of the draft guidance as unsupported by law. In response, the Department notes here as it did in the draft Recipient LEP Guidance published on April 18, 2002 that the Department's commitment to implement Title VI through regulations reaching language barriers is long-standing and is unaffected by recent judicial action precluding individuals from bringing judicial actions seeking to enforce those agency regulations. See 67 FR at 19238– 19239

This particular policy guidance clarifies existing statutory and regulatory requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.

Of the remaining 22 comments, three supported adoption of the draft guidance as published, and 19, while supportive of the guidance and the Department's leadership in this area, suggested modifications which would, in their view, either (1) clarify the application of the flexible compliance standard incorporated by the draft guidance to particular areas or situations, or (2) provide a more definitive statement of the minimal compliance standards in this area. Several areas were raised in more than one comment. In the order most often raised, those common areas of comment were (1) recipient language assistance plans, (2) use of informal interpreters, written translation safe harbors, and cost considerations. The comments in each of these area are summarized and discussed below.

**Recipient Language Assistance Plans.** A large number of comments recommended that written language assistance plans (LEP Plans) be required of all recipients. The Department is cognizant of the value of written LEP plans in documenting a recipient's compliance with its obligation to ensure meaningful access by LEP persons, and in providing a framework for the provision of reasonable and necessary language assistance to LEP persons. The Department is also aware of the related training, operational, and planning benefits most recipients would derive from the generation and maintenance of an updated written language assistance plan for use by its employees. In the large majority of cases, the benefits flowing from a written language assistance plan has caused or will likely cause recipients to develop, with varying degrees of detail, such written plans. Even small recipients with limited contact with LEP persons would likely benefit from having a plan in place to assure that, when the need arises, staff have a written plan to turn to—even if it is only how to access a telephonic or community-based interpretation service—when determining what language services to provide and how to provide them.

However, the fact that the vast majority of the Department's recipients already have or will likely develop a written LEP plan to reap its many benefits does not necessarily mean that every recipient, however small its staff, limited its resources, or focused its services, will realize the same benefits and thus must follow an identical path. Without clear evidence suggesting that the absence of written plans for every single recipient is impeding accomplishment of the goal of meaningful access, the Department elects at this juncture to strongly recommend but not require written language assistance plans. The

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Department stresses in this regard that neither the absence of a requirement of written LEP plans in all cases nor the election by an individual recipient against drafting a plan obviates the underlying obligation on the part of each recipient to provide, consistent with Title VI, the Title VI regulations, and the DOJ Recipient LEP Guidance, reasonable, timely, and appropriate language assistance to the LEP populations each serves.

While the Department continues to believe that the Recipient LEP Guidance strikes the correct balance between recommendations and requirements in this area, the Department has revised the introductory paragraph of Section VII of the Recipient LEP Guidance to acknowledge a recipient's discretion in drafting a written LEP plan yet to emphasize the many benefits that weigh in favor of such a written plan in the vast majority of cases.

**Informal Interpreters.** As in the case of written LEP plans, a large number of the comments urged the incorporation of more definitive language strongly discouraging or severely limiting the use of informal interpreters such as family members, guardians, caretakers, friends, or fellow inmates or detainees. Some recommended that the draft guidance be revised to prohibit the use of informal interpreters except in limited or emergency situations. A common sub-theme running through many of these comments was a concern regarding the technical and ethical competency of such interpreters to ensure meaningful and appropriate access at the level and of the type contemplated under the DOJ Recipient LEP Guidance.<sup>1</sup>

As in the case of written LEP plans, the Department believes that the DOJ Recipient LEP Guidance provides sufficient guidance to allow recipients to strike the proper balance between the many situations where the use of informal interpreters is inappropriate, and the few situations where the transitory and/or limited use of informal interpreters is necessary and appropriate in light of the nature of a service or benefit being provided and the factual context in which that service or benefit is being provided. Nonetheless, the Department concludes that the potential for the inappropriate use of informal interpreters or, conversely, its unnecessary avoidance, can be minimized through additional clarifications in the DOJ Recipient LEP Guidance. Towards that end, the subsection titled "Use of Family Members, Friends, Other Inmates, or Other Detainees as Interpreters" of Section VI.A. of the DOJ Recipient LEP Guidance has been revised to include guardians and caretakers among the potential class of informal interpreters, to note that beneficiaries who elect to provide their own informal interpreter do so at their own expense, to clarify that reliance on informal interpreters should not be part of any recipient LEP plan, and to expand the discussion of the special considerations that should guide a recipient's limited reliance on informal interpreters.

**Safe Harbors.** Several comments focused on safe harbor and vital documents provisions of the written translations section of the DOJ Recipient LEP Guidance.<sup>2</sup> A few comments observed that the safe harbor standard set out in the Recipient LEP Guidance was too high, potentially permitting recipients to avoid translating several critical types of vital documents (e.g., notices of denials of benefits or rights, leases, rules of conduct, etc.). In contrast, another comment pointed to this same standard as support for the position that the safe harbor provision was too low, potentially requiring a large recipient to incur extraordinary fiscal burdens to translate all documents associated with the program or activity.

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<sup>1</sup> A few comments urged the Department to incorporate language detailing particular interpretation standards or approaches. The Department declines to set, as part of the DOJ Recipient LEP Guidance, professional or technical standards for interpretation applicable to all recipients in every community and in all situations. General guidelines for translator and interpreter competency are already set forth in the guidance. Technical and professional standards and necessary vocabulary and skills for court interpreters and interpreters in custodial interrogations, for instance, would be different from those for emergency service interpreters, or, in turn, those for interpreters in educational programs for correctional facilities. Thus, recipients, beneficiaries, and associations of professional interpreters and translators should collaborate in identifying the applicable professional and technical interpretation standards that are appropriate for particular situations.

<sup>2</sup> One comment pointed out that current demographic information based on the 2000 Census or other data was not readily available to assist recipients in identifying the number or proportion of LEP persons and the significant language groups among their otherwise eligible beneficiaries. The Department is aware of this potential difficulty and is, among other things, working with the Census Bureau, among other entities, to increase the availability of such demographic data.

<sup>2</sup> One comment pointed out that current demographic information based on the 2000 Census or other data was not readily available to assist recipients in identifying the number or proportion of LEP persons and the significant language groups among their otherwise eligible beneficiaries. The Department is aware of this potential difficulty and is, among other things, working with the Census Bureau, among other entities, to increase the availability of such demographic data.

The decision as to what program-related documents should be translated into languages other than English is a difficult one. While documents generated by a recipient may be helpful in understanding a program or activity, not all are critical or vital to ensuring meaningful access by beneficiaries generally and LEP persons specifically. Some documents may create or define legally enforceable rights or responsibilities on the part of individual beneficiaries (e.g., leases, rules of conduct, notices of benefit denials, etc.). Others, such as application or certification forms, solicit important information required to establish or maintain eligibility to participate in a federally assisted program or activity. And for some programs or activities, written documents may be the core benefit or service provided by the program or activity. Moreover, some programs or activities may be specifically focused on providing benefits or services to significant LEP populations. Finally, a recipient may elect to solicit vital information orally as a substitute for written documents. For example, many State unemployment insurance programs are transitioning away from paper-based application and certification forms in favor of telephone-based systems. Also, certain languages (e.g., Hmong) are oral rather than written, and thus a high percentage of such LEP speakers will likely be unable to read translated documents or written instructions since it is only recently that such languages have been converted to a written form. Each of these factors should play a role in deciding what documents should be translated, what target languages other than English are appropriate, or even whether more effective alternatives to a continued reliance on written documents to obtain or process vital information exist.

As has been emphasized elsewhere, the Recipient LEP Guidance is not intended to provide a definitive answer governing the translation of written documents for all recipients applicable in all cases. Rather, in drafting the safe harbor and vital documents provisions of the Recipient LEP Guidance, the Department sought to provide one, but not necessarily the only, point of reference for when a recipient should consider translations of documents (or the implementation of alternatives to such documents) in light of its particular program or activity, the document or information in question, and the potential LEP populations served. In furtherance of this purpose, the safe harbor and vital document provisions of the Recipient LEP Guidance have been revised to clarify the elements of the flexible translation standard, and to acknowledge that distinctions can and should be made between frequently-encountered and less commonly-encountered languages when identifying languages for translation.

Costs Considerations. A number of comments focused on cost considerations as an element of the Department's flexible four-factor analysis for identifying and addressing the language assistance needs of LEP

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persons. While none urged that costs be excluded, some comments expressed concern that a recipient could use cost as a basis for avoiding otherwise reasonable and necessary language assistance to LEP persons. In contrast, a few comments suggested that the flexible fact-dependent compliance standard incorporated by the DOJ Recipient LEP Guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large, state-wide recipients to incur unnecessary or inappropriate fiscal burdens in the face of already strained program budgets. The Department is mindful that cost considerations could be inappropriately used to avoid providing otherwise reasonable and necessary language assistance. Similarly, cost considerations could be inappropriately ignored or minimized to justify the provision of a particular level or type of language service where less costly equally effective alternatives exist. The Department also does not dismiss the possibility that the identified need for language services might be quite costly for certain types of recipients in certain communities, particularly if they have not been keeping up with the changing needs of the populations they serve over time.

The potential for possible abuse of cost considerations by some does not, in the Department's view, justify its elimination as a factor in all cases when determining the appropriate "mix" of reasonable language assistance services determined necessary under the DOJ Recipient LEP Guidance to ensure meaningful access by LEP persons to federally assisted programs and activities. The Department continues to believe that costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures, and that the DOJ Recipient LEP Guidance identifies the appropriate framework through which costs are to be considered.



In addition to the four larger concerns noted above, the Department has substituted, where appropriate, technical or stylistic changes that more clearly articulate, in the Department's view, the underlying principle, guideline, or recommendation detailed in the Guidance. In addition, the Guidance has been modified to expand the definition of "courts" to include administrative adjudications conducted by a recipient; to acknowledge that English language instruction is an important adjunct to (but not substitute for) the obligation to ensure access to federally assisted programs and activities by all eligible persons; and to clarify the Guidance's application to activities undertaken by a recipient either voluntarily or under contract in support of a Federal agency's functions.

After appropriate revision based on a careful consideration of the comments, with particular focus on the common concerns summarized above, the Department adopts final "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The text of this final guidance document appears below.

It has been determined that this Guidance, which supplants existing Guidance on the same subject previously published at 66 FR 3834 (January 16, 2001), does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Dated: June 12, 2002.

R. Alexander Acosta,

Principal Deputy Assistant Attorney General, Civil Rights Division.

## **I. Introduction**

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English.

Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.<sup>1</sup>

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy

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<sup>1</sup> DOJ recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.<sup>2</sup> These are the same criteria DOJ will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

The Department of Justice's role under Executive Order 13166 is unique. The Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this

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Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal Government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to continue to provide assistance and guidance in this important area. In addition, DOJ plans to work with representatives of law enforcement, corrections, courts, administrative agencies, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOJ intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, [www.lep.gov](http://www.lep.gov), to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

## **II. Legal Authority**

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity “to effectuate the provisions of [section 601] \* \* \* by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. 2000d-1.

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<sup>2</sup> The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.” 28 CFR 42.104(b)(2).

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. “Improving Access to Services for Persons with Limited English Proficiency,” 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from “restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program” or from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”

On that same day, DOJ issued a general guidance document addressed to “Executive Agency Civil Rights Officers” setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. “Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,” 65 FR 50123 (August 16, 2000) (“DOJ LEP Guidance”).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court’s decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for “Heads of Departments and Agencies, General Counsels and Civil Rights Directors.” This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*.<sup>3</sup> The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

Pursuant to Executive Order 13166, DOJ developed its own guidance document for recipients and initially

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issued it on January 16, 2001.

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<sup>3</sup> The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. See, e.g., *Sandoval*, 532 U.S. at 286, 286 n.6 (“[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; \* \* \* We cannot help observing, however, how strange it is to say that disparate-impact regulations are ‘inspired by, at the service of, and inseparably intertwined with’ Sec. 601 \* \* \* when Sec. 601 permits the very behavior that the regulations forbid.”). The memorandum, however, made clear that DOJ disagreed with the commentators’ interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

“Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 66 FR 3834 (January 16, 2001) (“LEP Guidance for DOJ Recipients”). Because DOJ did not receive significant public comment on its January 16, 2001 publication, the Department republished on January 18, 2002 its existing guidance document for additional public comment. “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 67 FR 2671 (January 18, 2002). The Department has since received substantial public comment.

This guidance document is thus published pursuant to Executive Order 13166 and supplants the January 16, 2001 publication in light of the public comment received and Assistant Attorney General Boyd’s October 26, 2001 clarifying memorandum.

### III. Who Is Covered?

Department of Justice regulations, 28 CFR 42.104(b)(2), require all recipients of Federal financial assistance from DOJ to provide meaningful access to LEP persons.<sup>4</sup> Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOJ assistance include, for example:

- Police and sheriffs’ departments
- Departments of corrections, jails, and detention facilities, including those recipients that house detainees of the Immigration and Naturalization Service
- Courts<sup>5</sup>
- Certain non profit agencies with law enforcement, public safety, and victim assistance missions;
- Other entities with public safety and emergency service missions.
- Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipient.

Coverage extends to a recipient’s entire program or activity, i.e., to all parts of a recipient’s operations. This is true even if only one part of the recipient receives the Federal assistance.<sup>6</sup>

*Example:* DOJ provides assistance to a State department of corrections to improve a particular prison facility. All of the operations of the entire State department of corrections—not just the particular prison—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

### IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or “LEP,” entitled to language assistance with respect to a particular type of service, benefit, or encounter.

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<sup>4</sup> Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including the Department of Justice.

<sup>5</sup> As used in this guidance, the word “court” or “courts” includes administrative adjudicatory systems or administrative hearings administered or conducted by a recipient.

<sup>6</sup> However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d– 1.

Examples of populations likely to include LEP persons who are encountered and/or served by DOJ recipients and should be considered when planning language services include, but are not limited to:

- Persons who are in the custody of the recipient, including juveniles, detainees, wards, and inmates.
- Persons subject to or serviced by law enforcement activities, including, for example, suspects, violators, witnesses, victims, those subject to immigration-related investigations by recipient law enforcement agencies, and community members seeking to participate in crime prevention or awareness activities.
- Persons who encounter the court system.
- Parents and family members of the above.

#### **V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?**

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/ recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient’s activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOJ recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

##### *(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population*

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons “eligible to be served, or likely to be directly affected, by” a recipient’s program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient’s service area. However, where, for instance, a precinct serves a large LEP population, the appropriate service area is most likely the precinct, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by State or local authorities or designated by the

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recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples to assist in determining the relevant service area. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from State and local governments.<sup>7</sup> Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

*(2) The Frequency With Which LEP Individuals Come in Contact With the Program*

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

*(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program*

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ, for example, from those to provide bicycle safety courses or recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as particular educational programs in a correctional facility or the communication of Miranda rights, can serve as strong evidence of the program's importance.

*(4) The Resources Available to the Recipient and Costs*

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation

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<sup>7</sup> The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be “fixed” later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.<sup>8</sup> Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the “mix” of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter “interpretation”) and written translation (hereinafter “translation”). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For

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instance, a police department in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many police departments have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a courthouse—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

## **VI. Selecting Language Assistance Services**

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

### *A. Oral Language Services (Interpretation)*

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

- **Competence of Interpreters.** When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

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<sup>8</sup> Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;<sup>9</sup> and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.
- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

Some recipients, such as courts, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms and custodial or other police interrogations, the use of certified interpreters is strongly encouraged.<sup>10</sup> Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a prison hospital emergency room, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DOJ recipients providing law enforcement, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

**Hiring Bilingual Staff.** When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as 911 operators, police officers, guards, or program directors, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the

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<sup>9</sup> Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

<sup>10</sup> For those languages in which no formal accreditation or certification currently exists, courts and law enforcement agencies should consider a formal process for establishing the credentials of the interpreter.



role of a courtroom or administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

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**Hiring Staff Interpreters.** Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

**Contracting for Interpreters.** Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

**Using Telephone Interpreter Lines.** Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

**Using Community Volunteers.** In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

**Use of Family Members, Friends, Other Inmates, or Other Detainees as Interpreters.** Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, other inmate, other detainee) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other inmate acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, other inmates or other

detainees are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community.<sup>11</sup> In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For DOJ recipient programs and activities, this is particularly true in a courtroom, administrative hearing, pre- and post-trial proceedings, situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when police officers respond to a domestic violence call. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, other inmates or other detainees often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a courthouse offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete,

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and accurate interpretations or translations of information and/or testimony are critical for law enforcement, adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

***B. Written Language Services (Translation)***

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

*What Documents Should be Translated?* After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

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<sup>11</sup> For example, special circumstances of confinement may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of inmates and detainees as interpreters, particularly where an important right, benefit, service, disciplinary concern, or access to personal or law enforcement information is at stake. In some situations, inmates could potentially misuse information they obtained in interpreting for other inmates. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether an inmate or detainee makes a knowing and voluntary choice to use another inmate or detainee as an interpreter.

Such written materials could include, for example:

- Consent and complaint forms
- Intake forms with the potential for important consequences
- Written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings
- Notices of disciplinary action
- Notices advising LEP persons of free language assistance
- Prison rule books
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for bicycle safety courses should not generally be considered vital, whereas applications for drug and alcohol counseling in prison could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

*Into What Languages Should Documents be Translated?* The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time.

As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

**Safe Harbor.** Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be

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provided by a fact-intensive, four-factor analysis.

*Example:* Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

**Safe Harbor.** The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

- (a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- (b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, correctional facilities should, where appropriate, ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

**Competence of Translators.** As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.<sup>12</sup> Competence can often be ensured by having a second, independent translator “check” the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called “back translation.”

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group’s vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.<sup>13</sup> Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.

Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have the permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

## **VII. Elements of Effective Plan on Language Assistance for LEP Persons**

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (“LEP plan”) for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient’s managers in the areas of training, administration, planning, and budgeting.

These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DOJ recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient’s program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

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<sup>12</sup> For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

<sup>13</sup> For instance, there may be languages which do not have an appropriate direct translation of some courtroom or legal terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

### *(1) Identifying LEP Individuals Who Need Language Assistance*

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or

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encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or “I speak cards”), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say “I speak Spanish” in both Spanish and English, “I speak Vietnamese” in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. The Census Bureau “I speak card” can be found and downloaded at <http://www.usdoj.gov/crt/cor/13166.htm>. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

### *(2) Language Assistance Measures*

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

### *(3) Training Staff*

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient’s custody) are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient’s custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

#### *(4) Providing Notice to LEP Persons*

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, safety, or law enforcement services or activities run by DOJ recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.<sup>14</sup>
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be “tagged” onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients’ services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

#### *(5) Monitoring and Updating the LEP Plan*

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community. In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable. In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

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<sup>14</sup> The Social Security Administration has made such signs available at [www.ssa.gov/multilanguage/langlist1.htm](http://www.ssa.gov/multilanguage/langlist1.htm). These signs could, for example, be modified for recipient use.

## **VIII. Voluntary Compliance Effort**

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DOJ through the procedures identified in the Title VI regulations. These procedures include complaint

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investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DOJ will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOJ will inform the recipient in writing of this determination, including the basis for the determination. DOJ uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOJ must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOJ must secure compliance through the termination of Federal assistance after the DOJ recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. DOJ engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOJ proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOJ's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOJ acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, DOJ will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOJ recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

## **IX. Application to Specific Types of Recipients**

Appendix A of this Guidance provides examples of how the meaningful access requirement of the Title VI regulations applies to law enforcement, corrections, courts, and other recipients of DOJ assistance.

### *A. State and Local Law Enforcement*

Appendix A further explains how law enforcement recipients can apply the four factors to a range of encounters with the public. The responsibility for providing language services differs with different types of encounters.



Appendix A helps recipients identify the population they should consider when considering the types of services to provide. It then provides guidance and examples of applying the four factors. For instance, it gives examples on how to apply this guidance to:

- Receiving and responding to requests for help
- Enforcement stops short of arrest and field investigations
- Custodial interrogations
- Intake/detention Community outreach

#### *B. Departments of Corrections*

Appendix A also helps departments of corrections understand how to apply the four factors. For instance, it gives examples of LEP access in:

- Intake
- Disciplinary action
- Health and safety
- Participation in classes or other programs affecting length of sentence
- English as a Second Language (ESL) Classes
- Community corrections programs

#### *C. Other Types of Recipients*

Appendix A also applies the four factors and gives examples for other types of recipients. Those include, for example:

- Courts
- Juvenile Justice Programs
- Domestic Violence Prevention/ Treatment Programs

## Appendix A—Application of LEP Guidance for DOJ Recipients to Specific Types of Recipients

While a wide range of entities receive Federal financial assistance through DOJ, most of DOJ’s assistance goes to law enforcement agencies, including State and local police and sheriffs’ departments, and to State departments of corrections. Sections A and B below provide examples of how these two major types of DOJ recipients might apply the four-factor analysis. Section C provides examples for other types of recipients. The examples in this Appendix are not meant to be exhaustive and may not apply in many situations.

The requirements of the Title VI regulations, as clarified by this Guidance, supplement, but do not supplant, constitutional and other statutory or regulatory provisions that may require LEP services. Thus, a proper application of the four-factor analysis and compliance with the Title VI regulations does not replace constitutional or other statutory protections mandating warnings and notices in languages other than English in the criminal justice context. Rather, this Guidance clarifies the Title VI regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals beyond those required by the Constitution or statutes and regulations other than the Title VI regulations.

### A. State and Local Law Enforcement

For the vast majority of the public, exposure to law enforcement begins and ends with interactions with law enforcement personnel discharging their duties while on patrol, responding to a request for services, talking to witnesses or conducting community outreach activities. For a much smaller number, that exposure includes a visit to a station house. And for an important but even smaller number, that visit to the station house results in one’s exposure to the criminal justice, judicial, or juvenile justice system.

The common thread running through these and other interactions between the public and law enforcement is the exchange of information. Where police and sheriffs’ departments receive Federal financial assistance, these departments have an obligation to provide LEP services to LEP individuals to ensure that they have meaningful access to the system, including, for example, understanding rights and accessing police assistance. Language barriers can, for instance, prevent victims from effectively reporting crimes to the police and hinder police investigations of reported crimes. For example, failure to communicate effectively with a victim of domestic violence can result in reliance on the batterer or a minor child and failure to identify and protect against harm.

Many police and sheriffs’ departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and

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relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments already have available printed Miranda rights in languages other than English as well as interpreters available to inform LEP persons of their rights and to interpret police interviews.<sup>1</sup> In areas where significant LEP populations reside, law enforcement officials already may have forms and notices in languages other than English or they may employ bilingual law enforcement officers, intake personnel, counselors, and support staff. These experiences can form a strong basis for applying the four-factor analysis and complying with the Title VI regulations.

#### 1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the law enforcement service under review and an appreciation of the nature and particularized needs of the LEP population served. Accordingly, the analysis cannot provide a single uniform answer on how

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<sup>1</sup> The Department’s Federal Bureau of Investigation makes written versions of those rights available in several different languages. Of course, where literacy is of concern, these are most useful in assisting an interpreter in using consistent terms when providing Miranda warnings orally.

service to LEP persons must be provided in all programs or activities in all situations or whether such service need be provided at all. Knowledge of local conditions and community needs becomes critical in determining the type and level of language services needed.

Before giving specific examples, several general points should assist law enforcement in correctly applying the analysis to the wide range of services employed in their particular jurisdictions.

*a. Permanent Versus Seasonal Populations*

In many communities, resident populations change over time or season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents of the jurisdiction. In other communities, primarily agricultural areas, transient populations of workers will require increased law enforcement services during the relevant harvest season. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community likely to come into contact with law enforcement personnel. Thus, law enforcement officials may not want to limit their analysis to numbers and percentages of permanent residents. In assessing factor one—the number or proportion of LEP individuals—police departments should consider any significant but temporary changes in a jurisdiction’s demographics.

*Example:* A rural jurisdiction has a permanent population of 30,000, 7% of which is Hispanic. Based on demographic data and on information from the contiguous school district, of that number, only 15% are estimated to be LEP individuals. Thus, the total estimated permanent LEP population is 315 or approximately 1% of the total permanent population. Under the four-factor analysis, a sheriff’s department could reasonably conclude that the small number of LEP persons makes the affirmative translation of documents and/or employment of bilingual staff unnecessary. However, during the spring and summer planting and harvest seasons, the local population swells to 40,000 due to the influx of seasonal agricultural workers. Of this transitional number, about 75% are Hispanic and about 50% of that number are LEP individuals. This information comes from the schools and a local migrant worker community group. Thus, during the harvest season, the jurisdiction’s LEP population increases to over 10% of all residents. In this case, the department may want to consider whether it is required to translate vital written documents into Spanish. In addition, this increase in LEP population during those seasons makes it important for the jurisdiction to review its interpretation services to ensure meaningful access for LEP individuals.

*b. Target Audiences*

For most law enforcement services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (e.g., elementary school children, elderly, residents of high crime areas, minority communities, small business owners/operators). Also, within the larger geographic area covered by a police department, certain precincts or portions of precincts may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the district is low, the frequency of contact may be foreseeably higher for certain areas or programs. Thus, the second factor—frequency of contact—should be considered in light of the specific program or the geographic area being served.

*Example:* A police department that receives funds from the DOJ Office of Justice Programs initiates a program to increase awareness and understanding of police services among elementary school age children in high crime areas of the jurisdiction. This program involves “Officer in the Classroom” presentations at elementary schools located in areas of high poverty. The population of the jurisdiction is estimated to include only 3% LEP individuals. However, the LEP population at the target schools is 35%, the vast majority of whom are Vietnamese speakers. In applying the four-factor analysis, the higher LEP language group populations of the target schools and the frequency of contact within the program with LEP students in those schools, not the LEP population generally, should be used in determining the nature of the LEP needs of that particular program. Further, because the Vietnamese LEP population is concentrated in one or two main areas of town, the police department should consider whether to apply the four-factor analysis to other services provided by the police department.

### *c. Importance of Service/Information*

Given the critical role law enforcement plays in maintaining quality of life and property, traditional law enforcement and protective services rank high on the critical/ non-critical continuum. However, this does not mean that information about, or provided by, each of the myriad services and activities performed by law enforcement officials must be equally available in languages other than English. While clearly important to the ultimate success of law enforcement, certain community outreach activities do not have the same direct impact on the provision of core law enforcement services as the activities of 911 lines or law enforcement officials' ability to respond to requests for assistance while on patrol, to communicate basic information to suspects, etc. Nevertheless, with the rising importance of community partnerships and community-based programming as a law enforcement technique, the need for language services with respect to these programs should be considered in applying the four-factor analysis.

### *d. Interpreters*

Just as with other recipients, law enforcement recipients have a variety of options for providing language services. Under certain circumstances, when interpreters are required and recipients should provide competent interpreter services free of cost to the LEP person, LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.

If the LEP person decides to provide his or her own interpreter, the provision of this choice to the LEP person and the LEP person's election should be documented in any written record generated with respect to the LEP person. While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to interpret program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter.

For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Reliance on children is especially discouraged unless

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there is an extreme emergency and no preferable interpreters are available.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters in custodial interrogations be highly competent to translate legal and other law enforcement concepts, as well as be extremely accurate in their interpretation. It may be sufficient, however, for a desk clerk who is bilingual but not skilled at interpreting to help an LEP person figure out to whom he or she needs to talk about setting up a neighborhood watch.

### *2. Applying the Four-Factor Analysis Along the Law Enforcement Continuum*

While all police activities are important, the four-factor analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular law enforcement activity involved. In addition, because of the "reasonableness" standard, and frequency of contact and resources/costs factors, the obligation to provide language services increases where the importance of the activity is greater.

Under this framework, then, critical areas for language assistance could include 911 calls, custodial interrogation, and health and safety issues for persons within the control of the police. These activities should be considered the most important under the four-factor analysis. Systems for receiving and investigating complaints from the public are important. Often very important are routine patrol activities, receiving non-emergency information regarding potential crimes, and ticketing. Community outreach activities are hard to categorize, but generally they do not rise to the same level of importance as the other activities listed. However, with the importance of community partnerships and community-based programming as a law enforcement technique, the need for language services with respect to these programs should be considered in applying the four-factor analysis. Police departments have a great deal of flexibility in determining how to best address their outreach to LEP populations.

*a. Receiving and Responding to Requests for Assistance*

LEP persons must have meaningful access to police services when they are victims of or witnesses to alleged criminal activity. Effective reporting systems transform victims, witnesses, or bystanders into assistants in law enforcement and investigation processes. Given the critical role the public plays in reporting crimes or directing limited law enforcement resources to time-sensitive emergency or public safety situations, efforts to address the language assistance needs of LEP individuals could have a significant impact on improving responsiveness, effectiveness, and safety.

Emergency service lines for the public, or 911 lines, operated by agencies that receive Federal financial assistance must be accessible to persons who are LEP. This will mean different things to different jurisdictions. For instance, in large cities with significant LEP communities, the 911 line may have operators who are bilingual and capable of accurately interpreting in high stress situations. Smaller cities or areas with small LEP populations should still have a plan for serving callers who are LEP, but the LEP plan and implementation may involve a telephonic interpretation service that is fast enough and reliable enough to attend to the emergency situation, or include some other accommodation short of hiring bilingual operators.

*Example:* A large city provides bilingual operators for the most frequently encountered languages, and uses a commercial telephone interpretation service when it receives calls from LEP persons who speak other languages. Ten percent of the city's population is LEP, and sixty percent of the LEP population speaks Spanish. In addition to 911 service, the city has a 311 line for non-emergency police services. The 311 Center has Spanish speaking operators available, and uses a language bank, staffed by the city's bilingual city employees who are competent translators, for other non-English-speaking callers. The city also has a campaign to educate non-English speakers when to use 311 instead of 911. These actions constitute strong evidence of compliance.

*b. Enforcement Stops Short of Arrest and Field Investigations*

Field enforcement includes, for example, traffic stops, pedestrian stops, serving warrants and restraining orders, Terry stops, activities in aid of other jurisdictions or Federal agencies (e.g., fugitive arrests or INS detentions), and crowd/traffic control. Because of the diffuse nature of these activities, the reasonableness standard allows for great flexibility in providing meaningful access. Nevertheless, the ability of law enforcement agencies to discharge fully and effectively their enforcement and crime interdiction mission requires the ability to communicate instructions, commands, and notices. For example, a routine traffic stop can become a difficult situation if an officer is unable to communicate effectively the reason for the stop, the need for identification or other information, and the meaning of any written citation. Requests for consent to search are meaningless if the request is not understood. Similarly, crowd control commands will be wholly ineffective where significant numbers of people in a crowd cannot understand the meaning of law enforcement commands.

Given the wide range of possible situations in which law enforcement in the field can take place, it is impossible to equip every officer with the tools necessary to respond to every possible LEP scenario. Rather, in applying the four factors to field enforcement, the goal should be to implement measures addressing the language needs of significant LEP populations in the most likely, common, and important situations, as consistent with the recipients' resources and costs.

*Example:* A police department serves a jurisdiction with a significant number of LEP individuals residing in one or more precincts, and it is routinely asked to provide crowd control services at community events or demonstrations in those precincts. If it is otherwise consistent with the requirements of the four-factor analysis, the police

department should assess how it will discharge its crowd control duties in a language-appropriate manner. Among the possible approaches are plans to assign bilingual officers, basic language training of all officers in common law enforcement commands, the use of devices that provide audio commands in the predictable languages, or the distribution of translated written materials for use by officers.

Field investigations include neighborhood canvassing, witness identification and interviewing, investigative or Terry stops, and similar activities designed to solicit and obtain information from the community or particular persons. Encounters with LEP individuals will often be less predictable in field investigations. However, the jurisdiction should still assess the potential for contact with LEP individuals in the course of field investigations and investigative stops, identify the LEP language group(s) most likely to be encountered, and provide, if it is consistent with the four-factor analysis, its officers with sufficient interpretation and/or translation resources to ensure that lack of English proficiency does not impede otherwise proper investigations or unduly burden LEP individuals.

*Example:* A police department in a moderately large city includes a precinct that serves an area which includes significant LEP populations whose native languages are Spanish, Korean, and Tagalog. Law enforcement officials could reasonably consider the adoption of a plan assigning bilingual investigative officers to the precinct and/or creating a resource list of department employees competent to interpret and ready to assist officers by phone or radio. This could be combined with developing language-appropriate written materials, such as consents to searches or statements of rights, for use by its officers where LEP individuals are literate in their languages. In certain circumstances, it may also be helpful to have telephonic interpretation service access where other options are not successful and safety and availability of phone access permit.

*Example:* A police department receives Federal financial assistance and serves a predominantly Hispanic neighborhood. It routinely sends officers on domestic violence calls. The police department is in a State in which English has been declared the official language. The police therefore determine that they cannot provide language services to LEP persons. Thus, when the victim of domestic violence speaks only Spanish and the perpetrator speaks English, the officers have no way to speak with the victim so they only get the perpetrator's side of the story. The failure to communicate effectively with the victim results in further abuse and failure to charge the batterer. The police department should be aware that despite the state's official English law, the Title VI regulations apply to it. Thus, the police department should provide meaningful access for LEP persons.

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### *c. Custodial Interrogations*

Custodial interrogations of unrepresented LEP individuals trigger constitutional rights that this Guidance is not designed to address. Given the importance of being able to communicate effectively under such circumstances, law enforcement recipients should ensure competent and free language services for LEP individuals in such situations. Law enforcement agencies are strongly encouraged to create a written plan on language assistance for LEP persons in this area. In addition, in formulating a plan for effectively communicating with LEP individuals, agencies should strongly consider whether qualified independent interpreters would be more appropriate during custodial interrogations than law enforcement personnel themselves.<sup>2</sup>

*Example:* A large city police department institutes an LEP plan that requires arresting officers to procure a qualified interpreter for any custodial interrogation, notification of rights, or taking of a formal statement where the suspect's legal rights could be adversely impacted. When considering whether an interpreter is qualified, the LEP plan discourages use of police officers as interpreters in interrogations except under circumstances in which the LEP individual is informed of the officer's dual role and the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview. In determining whether an interpreter is qualified, the jurisdiction uses the analysis noted above. These actions would constitute strong evidence of compliance.

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<sup>2</sup> Some State laws prohibit police officers from serving as interpreters during custodial interrogation of suspects.

#### *d. Intake/Detention*

State or local law enforcement agencies that arrest LEP persons should consider the inherent communication impediments to gathering information from the LEP arrestee through an intake or booking process. Aside from the basic information, such as the LEP arrestee's name and address, law enforcement agencies should evaluate their ability to communicate with the LEP arrestee about his or her medical condition. Because medical screening questions are commonly used to elicit information on the arrestee's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, it is important for law enforcement agencies to consider how to communicate effectively with an LEP arrestee at this stage. In jurisdictions with few bilingual officers or in situations where the LEP person speaks a language not encountered very frequently, telephonic interpretation services may provide the most cost effective and efficient method of communication.

#### *e. Community Outreach*

Community outreach activities increasingly are recognized as important to the ultimate success of more traditional duties. Thus, an application of the four-factor analysis to community outreach activities can play an important role in ensuring that the purpose of these activities (to improve police/community relations and advance law enforcement objectives) is not thwarted due to the failure to address the language needs of LEP persons.

*Example:* A police department initiates a program of domestic counseling in an effort to reduce the number or intensity of domestic violence interactions. A review of domestic violence records in the city reveals that 25% of all domestic violence responses are to minority areas and 30% of those responses involve interactions with one or more LEP persons, most of whom speak the same language. After completing the four-factor analysis, the department should take reasonable steps to make the counseling accessible to LEP individuals. For instance, the department could seek bilingual counselors (for whom they provided training in translation) for some of the counseling positions. In addition, the department could have an agreement with a local university in which bilingual social work majors who are competent in interpreting, as well as language majors who are trained by the department in basic domestic violence sensitivity and counseling, are used as interpreters when the in-house bilingual staff cannot cover the need. Interpreters under such circumstances should sign a confidentiality agreement with the department. These actions constitute strong evidence of compliance.

*Example:* A large city has initiated an outreach program designed to address a problem of robberies of Vietnamese homes by Vietnamese gangs. One strategy is to work with community groups and banks and others to help allay traditional fears in the community of putting money and other valuables in banks. Because a large portion of the target audience is Vietnamese speaking and LEP, the department contracts with a bilingual community liaison competent in the skill of translating to help with outreach activities. This action constitutes strong evidence of compliance.

## **B. Departments of Corrections/Jails/ Detention Centers**

Departments of corrections that receive Federal financial assistance from DOJ must provide LEP prisoners<sup>3</sup> with meaningful access to benefits and services within the program. In order to do so, corrections departments, like other recipients, must apply the four-factor analysis.

### *1. General Principles*

Departments of corrections also have a wide variety of options in providing translation services appropriate to the particular situation. Bilingual staff competent in interpreting, in person or by phone, pose one option. Additionally, particular prisons may have agreements with local colleges and universities, interpreter services,

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<sup>3</sup> In this Guidance, the terms "prisoners" or "inmates" include all of those individuals, including Immigration and Naturalization Service (INS) detainees and juveniles, who are held in a facility operated by a recipient. Certain statutory, regulatory, or constitutional mandates/rights may apply only to juveniles, such as educational rights, including those for students with disabilities or limited English proficiency. Because a decision by a recipient or a Federal, state, or local entity to make an activity compulsory serves as strong evidence of the program's importance, the obligation to provide language services may differ depending upon whether the LEP person is a juvenile or an adult inmate.

and/or community organizations to provide paid or volunteer competent translators under agreements of confidentiality and impartiality. Telephonic interpretation services may offer a prudent oral interpreting option for prisons with very few and/or infrequent prisoners in a particular language group. Reliance on fellow prisoners is generally not appropriate. Reliance on fellow prisoners should only be an option in unforeseeable emergency circumstances; when the LEP inmate signs a waiver that is in his/her language and in a form designed for him/her to understand; or where the topic of communication is not sensitive, confidential, important, or technical in nature and the prisoner is competent in the skill of interpreting.

In addition, a department of corrections that receives Federal financial assistance would be ultimately responsible for ensuring that LEP inmates have meaningful access within a prison run by a private or other entity with which the department has entered into a contract. The department may provide the staff and materials necessary to provide required language services, or it may choose to require the entity with which it contracted to provide the services itself.

## *2. Applying the Four Factors Along the Corrections Continuum*

As with law enforcement activities, critical and predictable contact with LEP individuals poses the greatest obligation for language services. Corrections facilities have somewhat greater abilities to assess the language needs of those they encounter, although inmate populations may change rapidly in some areas. Contact affecting health and safety, length of stay, and discipline likely present the most critical situations under the four-factor analysis.

### *a. Assessment*

Each department of corrections that receives Federal financial assistance should assess the number of LEP prisoners who are in the system, in which prisons they are located, and the languages he or she speaks. Each prisoner's LEP status, and the language he or she speaks, should be placed in his or her file. Although this Guidance and Title VI are not meant to address literacy levels, agencies should be aware of literacy problems so that LEP services are provided in a way that is meaningful and useful (e.g., translated written materials are of little use to a non-literate inmate). After the initial assessment, new LEP prisoners should be identified at intake or orientation, and the data should be updated accordingly.

### *b. Intake/Orientation*

Intake/Orientation plays a critical role not merely in the system's identification of LEP prisoners, but in providing those prisoners with fundamental information about their

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obligations to comply with system regulations, participate in education and training, receive appropriate medical treatment, and enjoy recreation. Even if only one prisoner doesn't understand English, that prisoner should likely be given the opportunity to be informed of the rules, obligations, and opportunities in a manner designed effectively to communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf prisoners, which is most frequently accomplished through sign language interpreters or written materials. Not every prison will use the same method for providing language assistance. Prisons with large numbers of Spanish-speaking LEP prisoners, for example, may choose to translate written rules, notices, and other important orientation material into Spanish with oral instructions, whereas prisons with very few such inmates may choose to rely upon a telephonic interpretation service or qualified community volunteers to assist.

*Example:* The department of corrections in a State with a 5% Haitian Creole-speaking LEP corrections population and an 8% Spanish-speaking LEP population receives Federal financial assistance to expand one of its prisons. The department of corrections has developed an intake video in Haitian Creole and another in Spanish for all of the prisons within the department to use when orienting new prisoners who are LEP and speak one of those languages. In addition, the department provides inmates with an opportunity to ask questions and discuss intake information through either bilingual staff who are competent in interpreting and who are present at the orientation or who are patched in by phone to act as interpreters. The department also has an agreement whereby some of its prisons house a small number of INS detainees. For those detainees or



other inmates who are LEP and do not speak Haitian Creole or Spanish, the department has created a list of sources for interpretation, including department staff, contract interpreters, university resources, and a telephonic interpretation service. Each person receives at least an oral explanation of the rights, rules, and opportunities. These actions constitute strong evidence of compliance.

*Example:* A department of corrections that receives Federal financial assistance determines that, even though the State in which it resides has a law declaring English the official language, it should still ensure that LEP prisoners understand the rules, rights, and opportunities and have meaningful access to important information and services at the State prisons. Despite the state's official English law, the Title VI regulations apply to the department of corrections.

#### *c. Disciplinary Action*

When a prisoner who is LEP is the subject of disciplinary action, the prison, where appropriate, should provide language assistance. That assistance should ensure that the LEP prisoner had adequate notice of the rule in question and is meaningfully able to understand and participate in the process afforded prisoners under those circumstances. As noted previously, fellow inmates should generally not serve as interpreters in disciplinary hearings.

#### *d. Health and Safety*

Prisons providing health services should refer to the Department of Health and Human Services' guidance<sup>4</sup> regarding health care providers' Title VI and Title VI regulatory obligations, as well as with this Guidance.

Health care services are obviously extremely important. How access to those services is provided depends upon the four-factor analysis. If, for instance, a prison serves a high proportion of LEP individuals who speak Spanish, then the prison health care provider should likely have available qualified bilingual medical staff or interpreters versed in medical terms. If the population of LEP individuals is low, then the prison may choose instead, for example, to rely on a local community volunteer program that provides qualified interpreters through a university. Due to the private nature of medical situations, only in unpredictable emergency situations or in non-emergency cases where the inmate has waived rights to a non-inmate interpreter would the use of other bilingual inmates be appropriate.

#### *e. Participation Affecting Length of Sentence*

If a prisoner's LEP status makes him/her unable to participate in a particular program, such a failure to participate should not be used to adversely impact the length of stay or significantly affect the conditions of imprisonment. Prisons have options in how to apply this standard. For instance, prisons could: (1) Make the program accessible to the LEP inmate; (2) identify or develop substitute or alternative, language-accessible programs, or (3) waive the requirement.

*Example:* State law provides that otherwise eligible prisoners may receive early release if they take and pass an alcohol counseling program. Given the importance of early release, LEP prisoners should, where appropriate, be provided access to this prerequisite in some fashion. How that access is provided depends on the three factors other than importance. If, for example, there are many LEP prisoners speaking a particular language in the prison system, the class could be provided in that language for those inmates. If there were far fewer LEP prisoners speaking a particular language, the prison might still need to ensure access to this prerequisite because of the importance of early release opportunities. Options include, for example, use of bilingual teachers, contract interpreters, or community volunteers to interpret during the class, reliance on videos or written explanations in a language the inmate understands, and/or modification of the requirements of the class to meet the LEP individual's ability to understand and communicate.

#### *f. ESL Classes*

States often mandate English-as-a-Second language (ESL) classes for LEP inmates. Nothing in this Guidance indicates how recipients should address such mandates. But recipients should not overlook the long term positive impacts of incorporating or offering ESL programs in parallel with language assistance services as

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<sup>4</sup> A copy of that guidance can be found on the HHS Web site at <http://www.hhs.gov/ocr/lep> and at <http://www.usdoj.gov/crt/cor>.

one possible strategy for ensuring meaningful access. ESL courses can serve as an important adjunct to a proper LEP plan in prisons because, as prisoners gain proficiency in English, fewer language services are needed. However, the fact that ESL classes are made available does not obviate the need to provide meaningful access for prisoners who are not yet English proficient.

*g. Community Corrections*

This guidance also applies to community corrections programs that receive, directly or indirectly, Federal financial assistance. For them, the most frequent contact with LEP individuals will be with an offender, a victim, or the family members of either, but may also include witnesses and community members in the area in which a crime was committed.

As with other recipient activities, community corrections programs should apply the four factors and determine areas where language services are most needed and reasonable. Important oral communications include, for example: interviews; explaining conditions of probations/release; developing case plans; setting up referrals for services; regular supervision contacts; outlining violations of probations/parole and recommendations; and making adjustments to the case plan. Competent oral language services for LEP persons are important for each of these types of communication. Recipients have great flexibility in determining how to provide those services.

Just as with all language services, it is important that language services be competent. Some knowledge of the legal system may be necessary in certain circumstances. For example, special attention should be given to the technical interpretation skills of interpreters used when obtaining information from an offender during pre-sentence and violation of probation/parole investigations or in other circumstances in which legal terms and the results of inaccuracies could impose an enormous burden on the LEP person.

In addition, just as with other recipients, corrections programs should identify vital written materials for probation and parole that should be translated when a significant number or proportion of LEP individuals that speak a particular language is encountered. Vital documents in this context could include, for instance: probation/parole department descriptions and grievance procedures, offender rights information, the pre-sentence/release investigation report, notices of alleged violations, sentencing/ release orders, including conditions of parole, and victim impact statement questionnaires.

**C. Other Types of Recipients**

DOJ provides Federal financial assistance to many other types of entities and programs, including, for example, courts, juvenile justice programs, shelters for victims of domestic violence, and domestic violence prevention programs. The Title VI regulations and this Guidance apply to those

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entities. Examples involving some of those recipients follow:<sup>5</sup>

*1. Courts*

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services, consistent with the four-factor analysis. At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person.

Many states have created or adopted certification procedures for court interpreters. This is one way for recipients to ensure competency of interpreters. Where certification is available, courts should consider carefully the qualifications of interpreters who are not certified. Courts will not, however, always be able to find a certified

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<sup>5</sup> As used in this appendix, the word "court" or "courts" includes administrative adjudicatory systems or administrative hearings administered or conducted by a recipient.

interpreter, particularly for less frequently encountered languages. In a courtroom or administrative hearing setting, the use of informal interpreters, such as family members, friends, and caretakers, would not be appropriate.

*Example:* A State court receiving DOJ Federal financial assistance has frequent contact with LEP individuals as parties and witnesses, but has experienced a shortage in certified interpreters in the range of languages encountered. State court officials work with training and testing consultants to broaden the number of certified interpreters available in the top several languages spoken by LEP individuals in the state. Because resources are scarce and the development of tests expensive, State court officials decide to partner with other states that have already established agreements to share proficiency tests and to develop new ones together. The State court officials also look to other existing State plans for examples of: codes of professional conduct for interpreters; mandatory orientation and basic training for interpreters; interpreter proficiency tests in Spanish and Vietnamese language interpretation; a written test in English for interpreters in all languages covering professional responsibility, basic legal term definitions, court procedures, etc. They are considering working with other states to expand testing certification programs in coming years to include several other most frequently encountered languages. These actions constitute strong evidence of compliance.

Many individuals, while able to communicate in English to some extent, are still LEP insofar as ability to understand the terms and precise language of the courtroom. Courts should consider carefully whether a person will be able to understand and communicate effectively in the stressful role of a witness or party and in situations where knowledge of language subtleties and/or technical terms and concepts are involved or where key determinations are made based on credibility.

*Example:* Judges in a county court receiving Federal financial assistance have adopted a voir dire for determining a witness' need for an interpreter. The voir dire avoids questions that could be answered with "yes" or "no." It includes questions about comfort level in English, and questions that require active responses, such as: "How did you come to court today?" etc. The judges also ask the witness more complicated conceptual questions to determine the extent of the person's proficiency in English. These actions constitute strong evidence of compliance.

*Example:* A court encounters a domestic violence victim who is LEP. Even though the court is located in a State where English has been declared the official language, it employs a competent interpreter to ensure meaningful access. Despite the state's official English law, the Title VI regulations apply to the court.

When courts experience low numbers or proportions of LEP individuals from a particular language group and infrequent contact with that language group, creation of a new certification test for interpreters may be overly burdensome. In such cases, other methods should be used to determine the competency of interpreters for the court's purposes.

*Example:* A witness in a county court in a large city speaks Urdu and not English. The jurisdiction has no court interpreter certification testing for Urdu language interpreters because very few LEP individuals encountered speak Urdu and there is no such test available through other states or organizations. However, a non-certified interpreter is available and has been given the standard English-language test on court processes and interpreter ethics. The judge brings in a second, independent, bilingual Urdu-speaking person from a local university, and asks the prospective interpreter to interpret the judge's conversation with the second individual. The judge then asks the second Urdu speaker a series of questions designed to determine whether the interpreter accurately interpreted their conversation. Given the infrequent contact, the low number and proportion of Urdu LEP individuals in the area, and the high cost of providing certification tests for Urdu interpreters, this "second check" solution may be one appropriate way of ensuring meaningful access to the LEP individual.

*Example:* In order to minimize the necessity of the type of intense judicial intervention on the issue of quality noted in the previous example, the court administrators in a jurisdiction, working closely with interpreter and translator associations, the bar, judges, and community groups, have developed and disseminated a stringent set of qualifications for court interpreters. The State has adopted a certification test in several languages. A questionnaire and qualifications process helps identify qualified interpreters even when certified interpreters are

not available to meet a particular language need. Thus, the court administrators create a pool from which judges and attorneys can choose. A team of court personnel, judges, interpreters, and others have developed a recommended interpreter oath and a set of frequently asked questions and answers regarding court interpreting that have been provided to judges and clerks. The frequently asked questions include information regarding the use of team interpreters, breaks, the types of interpreting (consecutive, simultaneous, summary, and sight translations) and the professional standards for use of each one, and suggested questions for determining whether an LEP witness is effectively able to communicate through the interpreter. Information sessions on the use of interpreters are provided for judges and clerks. These actions constitute strong evidence of compliance.

Another key to successful use of interpreters in the courtroom is to ensure that everyone in the process understands the role of the interpreter.

*Example:* Judges in a recipient court administer a standard oath to each interpreter and make a statement to the jury that the role of the interpreter is to interpret, verbatim, the questions posed to the witness and the witness' response. The jury should focus on the words, not the non-verbals, of the interpreter. The judges also clarify the role of the interpreter to the witness and the attorneys. These actions constitute strong evidence of compliance.

Just as corrections recipients should take care to ensure that eligible LEP individuals have the opportunity to reduce the term of their sentence to the same extent that non-LEP individuals do, courts should ensure that LEP persons have access to programs that would give them the equal opportunity to avoid serving a sentence at all.

*Example:* An LEP defendant should be given the same access to alternatives to sentencing, such as anger management, batterers' treatment and intervention, and alcohol abuse counseling, as is given to non-LEP persons in the same circumstances.

Courts have significant contact with the public outside of the courtroom. Providing meaningful access to the legal process for LEP individuals might require more than just providing interpreters in the courtroom. Recipient courts should assess the need for language services all along the process, particularly in areas with high numbers of unrepresented individuals, such as family, landlord-tenant, traffic, and small claims courts.

*Example:* Only twenty thousand people live in a rural county. The county superior court receives DOJ funds but does not have a budget comparable to that of a more-populous urbanized county in the state. Over 1000 LEP Hispanic immigrants have settled in the rural county. The urbanized county also has more than 1000 LEP Hispanic immigrants. Both counties have "how to" materials in English helping unrepresented individuals negotiate the family court processes and providing information for

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victims of domestic violence. The urban county has taken the lead in developing Spanish-language translations of materials that would explain the process. The rural county modifies these slightly with the assistance of family law and domestic violence advocates serving the Hispanic community, and thereby benefits from the work of the urban county. Creative solutions, such as sharing resources across jurisdictions and working with local bar associations and community groups, can help overcome serious financial concerns in areas with few resources.

There may be some instances in which the four-factor analysis of a particular portion of a recipient's program leads to the conclusion that language services are not currently required. For instance, the four-factor analysis may not necessarily require that a purely voluntary tour of a ceremonial courtroom be given in languages other than English by courtroom personnel, because the relative importance may not warrant such services given an application of the other factors. However, a court may decide to provide such tours in languages other than English given the demographics and the interest in the court. Because the analysis is fact-dependent, the same conclusion may not be appropriate with respect to all tours.

Just as with police departments, courts and/or particular divisions within courts may have more contact with LEP individuals than an assessment of the general population would indicate. Recipients should consider that higher contact level when determining the number or proportion of LEP individuals in the contact population and the frequency of such contact.

*Example:* A county has very few residents who are LEP. However, many Vietnamese-speaking LEP motorists go through a major freeway running through the county that connects two areas with high populations of Vietnamese speaking LEP individuals. As a result, the Traffic Division of the county court processes a large number of LEP persons, but it has taken no steps to train staff or provide forms or other language access in that Division because of the small number of LEP individuals in the county. The Division should assess the number and proportion of LEP individuals processed by the Division and the frequency of such contact. With those numbers high, the Traffic Division may find that it needs to provide key forms or instructions in Vietnamese. It may also find, from talking with community groups, that many older Vietnamese LEP individuals do not read Vietnamese well, and that it should provide oral language services as well. The court may already have Vietnamese-speaking staff competent in interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a telephonic interpretation service suffices.

## *2. Juvenile Justice Programs*

DOJ provides funds to many juvenile justice programs to which this Guidance applies. Recipients should consider LEP parents when minor children encounter the legal system. Absent an emergency, recipients are strongly discouraged from using children as interpreters for LEP parents.

*Example:* A county coordinator for an anti-gang program operated by a DOJ recipient has noticed that increasing numbers of gangs have formed comprised primarily of LEP individuals speaking a particular foreign language. The coordinator may choose to assess the number of LEP youths at risk of involvement in these gangs, so that she can determine whether the program should hire a counselor who is bilingual in the particular language and English, or provide other types of language services to the LEP youths. When applying the four factors, recipients encountering juveniles should take into account that certain programs or activities may be even more critical and difficult to access for juveniles than they would be for adults. For instance, although an adult detainee may need some language services to access family members, a juvenile being detained on immigration-related charges who is held by a recipient may need more language services in order to have access to his or her parents.

## *3. Domestic Violence Prevention/Treatment Programs*

Several domestic violence prevention and treatment programs receive DOJ financial assistance and thus must apply this Guidance to their programs and activities. As with all other recipients, the mix of services needed should be determined after conducting the four-factor analysis. For instance, a shelter for victims of domestic violence serving a largely Hispanic area in which many people are LEP should strongly consider accessing qualified bilingual counselors, staff, and volunteers, whereas a shelter that has experienced almost no encounters with LEP persons and serves an area with very few LEP persons may only reasonably need access to a telephonic interpretation service. Experience, program modifications, and demographic changes may require modifications to the mix over time.

*Example:* A shelter for victims of domestic violence is operated by a recipient of DOJ funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The shelter uses competent community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The shelter hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by the bilingual staff. The shelter has one counselor and several volunteers fluent in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The shelter works with community groups to access interpreters in the several Chinese dialects that they encounter. Shelter staff train the community volunteers in the sensitivities of domestic violence intake and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget. These actions constitute strong evidence of compliance.



## *Title VI of the Civil Rights Act of 1964*

### **Title VI of the Civil Rights Act of 1964**

#### **§2000d Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color or national origin**

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

#### **§2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action**

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and had determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

#### **§2000d-2. Judicial review; administrative procedure provisions**

Any department or agency action taken pursuant to section 602, shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedures Act, and such action shall not be deemed committed to a non-reviewable agency discretion within the meaning of that section.

**§2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide Employment**

Nothing contained in this subchapter shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

**§2000d-4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guarantee**

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

**§2000d-4a. "Program or activity" and "program" defined**

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of --

- (1) (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or  
(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2) (A) a college, university, or other postsecondary institution, or a public system of higher education; or  
(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;
- (3) (A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --  
(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or  
(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or  
(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship ; or
- (4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.

**§2000d-5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act**

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et. seq.], by the Act of September 20, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 236 et seq.], by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 631 et seq.], or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d-1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.



## **§ 2000d-6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies**

### **(a) Declaration of uniform policy**

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. 2000d-5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

### **(b) Nature of uniformity**

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

### **(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements**

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]

### **(d) Additional funds**

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

## **§2000d-7. Civil rights remedies equalization**

### **(a) General provision**

- (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.
- (2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

### **(b) Effective date**

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.



## *USDOT Title VI Regulations (49 CFR Part 21)*

### **TITLE 49-TRANSPORTATION**

#### **Subtitle A- Office of the Secretary of Transportation**

#### **PART 21 NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

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Appendix C to Part 21--Application of Part 21 to Certain Federal Financial Assistance of the Department of Transportation

Authority: 42 U.S.C. 2000d-2000d-7.

Source: 35 FR 10080, June 18, 1970, unless otherwise noted.

##### **Sec. 21.1 Purpose.**

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

**Sec. 21.3 Application of this part.**

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

- (1) Any Federal financial assistance by way of insurance or guaranty contracts;
- (2) Money paid, property transferred, or other assistance extended before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;
- (3) Any assistance to any individual who is the ultimate beneficiary; or
- (4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in Sec. 21.5(c).

The fact that a type of Federal financial assistance is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

**Sec. 21.5 Discrimination prohibited.**

(a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

- (1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.
  - (i) Deny a person any service, financial aid, or other benefit provided under the program;
  - (ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;
  - (iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
  - (iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
  - (v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;
  - (vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or
  - (vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.
- (2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of

subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

- (3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.
  - (4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.
  - (5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.
  - (6) Examples demonstrating the application of the provisions of this section to certain types of Federal financial assistance administered by the Department of Transportation are contained in appendix C of this part.
  - (7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.
- (c) Employment practices:
- (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.
  - (2) Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in appendix B to this part.
  - (3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.
  - (d) A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

## Sec. 21.7 Assurances required.

### (a) General.

- (1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. The Secretary shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.
- (2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) Continuing Federal financial assistance. Every application by a State or a State agency for continuing Federal financial assistance to which this part applies (including the types of Federal financial assistance listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application:

- (1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and
- (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

### **Sec. 21.9 Compliance information.**

(a) Cooperation and assistance. The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) Access to sources of information. Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

### **Sec. 21.11 Conduct of investigations.**

(a) Periodic compliance reviews. The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) Complaints. Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) Investigations. The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) Resolution of matters.

- (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in Sec. 21.13.
- (2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

**Sec. 21.13 Procedure for effecting compliance.**

(a) General. If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

- (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) Noncompliance with Sec. 21.7. If an applicant fails or refuses to furnish an assurance required under Sec. 21.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to Sec. 21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

- (1) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;
- (2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;
- (3) The action has been approved by the Secretary pursuant to Sec. 21.17(e); and
- (4) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by this Department until:

- (1) The Secretary has determined that compliance cannot be secured by voluntary means;
- (2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and
- (3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.



## **Sec. 21.15 Hearings.**

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by Sec. 21.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either: (1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record.

The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and Sec. 21.13 (c) and consent to the making of a decision on the basis of such information as is available.

(b) Time and place of hearing. Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) Procedures, evidence, and record.

- (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.
- (2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) Consolidated or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with Sec. 21.17.

**Sec. 21.17 Decisions and notices.**

(a) Procedure on decisions by hearing examiner. If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Secretary.

(b) Decisions on record or review by the Secretary. Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.

(c) Decisions on record where a hearing is waived. Whenever a hearing is waived pursuant to Sec. 21.15, a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) Approval by Secretary. Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(g) Post termination proceedings.

(1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

- (1) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

**Sec. 21.19 Judicial review.**

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

**Sec. 21.21 Effect on other regulations, forms, and instructions.**

(a) Effect on other regulations. All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for a recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof):

- (1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or
- (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) Forms and instructions. The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) Supervision and coordination. The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility on of title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

**Sec. 21.23 Definitions.**

Unless the context requires otherwise, as used in this part:

(a) Applicant means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(b) Facility includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

- (c) Federal financial assistance includes:
- (1) Grants and loans of Federal funds
  - (2) The grant or donation of Federal property and interests in property;
  - (3) The detail of Federal personnel;
  - (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and
  - (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) Primary recipient means any recipient that is authorized or required to extend Federal financial assistance to another recipient.

(e) Program or activity and program mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

- (1) (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or  
(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or  
(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
- (3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--  
(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or  
(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or  
(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

(f) Recipient may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

(g) Secretary means the Secretary of Transportation or, except in Sec. 21.17 (e), any person to whom he has delegated his authority in the matter concerned.

## Appendix A to Part 21--Activities to which This Part Applies

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 et seq.).
2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.).
3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391-1409, 1421-1425).
4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93 (n) and (o)).
5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).
6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico (14 U.S.C. 148).
7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).
8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821-832).
9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).
10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1-15 and 17-20 of the Federal Airport Act, 49 U.S.C. 1101-1114, 1116-1120).
11. Use of U.S. land acquired for public airports under:
  - a. Section 16 of the Federal Airport Act, 49 U.S.C. 1115; and
  - b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of Oct. 1, 1949, 50 U.S.C. App. 1622b).
12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352, and 1354(a)).
13. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).
14. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605).
15. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).
16. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).
17. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).
18. Use of grants made in connection with the High Speed Ground Transportation Act, as amended (49 U.S.C. 631-642)

## **Appendix B to Part 21--Activities to Which This Part Applies When a Primary Objective of the Federal Financial Assistance Is To Provide Employment**

1. Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 et seq.).

## **Appendix C to Part 21--Application of Part 21 to Certain Federal Financial Assistance of the Department of Transportation**

### **Nondiscrimination on Federally Assisted Projects**

(a) Examples. The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

- (1) Federal Aviation Administration.
  - (i) The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.
  - (ii) The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.
  - (iii) An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.
  - (iv) The pilot of an aircraft may not be required to help more extensively in fueling operations, and may not be offered less incidental service (such as windshield wiping), than other pilots, because of his race, color, or national origin.
  - (v) No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.
  - (vi) Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.
  - (vii) Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.
  - (viii) Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.
  - (ix) Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Urban Mass Transportation Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.
  - (x) The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.
- (2) Federal Highway Administration. (i) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction, planning, research, highway safety, engineering, property management, and fee contracts and other commitments with person for services and

expenses incidental to the acquisition of right-of-way. (ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) Urban Mass Transportation Administration.

(i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) Obligations of the airport operator--

- (1) Tenants, contractors, and concessionaires. Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.
- (2) Notification of beneficiaries. The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.
- (3) Reports. Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.





## *FHWA Title VI Regulations (23 CFR Part 200)*

### TITLE 23--HIGHWAYS

#### CHAPTER I--FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION PART 200 TITLE VI PROGRAM AND RELATED STATUTES IMPLEMENTATION AND REVIEW PROCEDURES

##### **Sections**

- 200.1 Purpose
- 200.3 Application of this part
- 200.5 Definitions.
- 200.7 FHWA Title VI policy.
- 200.9 State highway agency responsibilities.
- 200.11 Procedures for processing Title VI reviews.

**Authority:** Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619; 42 U.S.C. 4601 to 4655; 23 U.S.C. 109(h); 23 U.S.C. 324.

**Source:** 41 FR 53982, Dec. 10, 1976, unless otherwise noted.

##### **Sec. 200.1 Purpose.**

To provide guidelines for: (a) Implementing the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations, and (b) Conducting Title VI program compliance reviews relative to the Federal-aid highway program.

##### **Sec. 200.3 Application of this part.**

The provisions of this part are applicable to all elements of FHWA and provide requirements and guidelines for State highway agencies to implement the Title VI Program requirements. The related civil rights laws and regulations are listed under Sec. 200.5(p) of this part. Title VI requirements for 23 U.S.C. 402 will be covered under a joint FHWA/NHTSA agreement.

##### **Sec. 200.5 Definitions.**

The following definitions shall apply for the purpose of this part:

(a) **Affirmative action.** A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.

(b) **Beneficiary.** Any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any federally assisted program, i.e., relocatees, impacted citizens, communities, etc.

(c) **Citizen participation.** An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

(d) **Compliance.** That satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

- (e) Deficiency status. The interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.
- (f) Discrimination. That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under title 23 U.S.C.
- (g) Facility. Includes all, or any part of, structures, equipment or other real or personal property, or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alternation or acquisition of facilities.
- (h) Federal assistance. Includes:
- (1) Grants and loans of Federal funds,
  - (2) The grant or donation of Federal property and interests in property,
  - (3) The detail of Federal personnel,
  - (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
  - (5) Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.
- (i) Noncompliance. A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.
- (j) Persons. Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin", "Black not of Hispanic origin", "Hispanic", "Asian or Pacific Islander", "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.
- (k) Program. Includes any highway, project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.
- (l) State highway agency. That department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term State would be considered equivalent to State highway agency if the context so implies.
- (m) Program area officials. The officials in FHWA who are responsible for carrying out technical program responsibilities.
- (n) Recipient. Any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term recipient does not include any ultimate beneficiary under any such program.
- (o) Secretary. The Secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal Highway Administrator to whom the Secretary has delegated his authority in specific cases.

(p) Title VI Program. The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin in programs receiving Federal financial assistance of the type subject to Title VI itself. These Federal statutes are:

- (1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-d4 (49 CFR part 21; the standard DOT Title VI assurances signed by each State pursuant to DOT Order 1050.2; Executive Order 11764; 28 CFR 50.3);
- (2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655) (49 CFR part 25; Pub. L. 91-646);
- (3) Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601- 3619);
- (4) 23 U.S.C. 109(h);
- (5) 23 U.S.C. 324;
- (6) Subsequent Federal-Aid Highway Acts and related statutes.

#### **Sec. 200.7 FHWA Title VI policy.**

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR part 21; and related statutes and regulations.

#### **Sec. 200.9 State highway agency responsibilities.**

- (a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.
  - (1) Title 49, CFR part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.
  - (2) Section 162a of the Federal-Aid Highway Act of 1973 (section 324, title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances heretofore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal-Aid Highway Act of 1973 have been added to its assurances.
  - (3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State-signed assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.
  - (4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.
- (b) State actions.
  - (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
  - (2) Adequately staff the civil rights unit to effectively implement the State civil rights requirements.
  - (3) Develop procedures for prompt processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by the State.

- (4) Develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.
- (5) Develop a program to conduct Title VI reviews of program areas.
- (6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.
- (7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.
- (8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.
- (9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.
- (10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.
- (11) Beginning October 1, 1976, each State highway agency shall annually submit an updated Title VI implementing plan to the Regional Federal Highway Administrator for approval or disapproval.
- (12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.
- (13) Establishing procedures for pre-grant and post-grant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.
- (14) Establish procedures to identify and eliminate discrimination when found to exist.
- (15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

**Sec. 200.11 Procedures for processing Title VI reviews.**

(a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.

(b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.

(c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.

(d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.

(e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a recommendation that the State be found in noncompliance.

(f) The Office of Civil Rights shall review the case file for a determination of concurrence or non-concurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.

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U.S. Department of Justice  
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 26, 2001

TO: MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES  
GENERAL COUNSELS AND CIVIL RIGHTS DIRECTORS

FROM: Ralph F. Boyd, Jr.  
Assistant Attorney General  
Civil Rights Division

A handwritten signature in black ink, appearing to read "Ralph F. Boyd, Jr.", written over the printed name.

SUBJECT: Executive Order 13166 (Improving Access to Services for Persons with  
Limited English Proficiency)

Federal agencies have recently raised several questions regarding the requirements of Executive Order 13166. This Memorandum responds to those questions. As discussed below, in view of the clarifications provided in this Memorandum, agencies that have issued Limited English Proficiency ("LEP") guidance for their recipients pursuant to Executive Order 13166 and Title VI of the Civil Rights Act should, after notifying the Department of Justice ("DOJ"), publish a notice asking for public comment on the guidance documents they have issued. Based on the public comment it receives and this Memorandum, an agency may need to clarify or modify its existing guidance. Agencies that have not yet published guidance documents should submit agency-specific guidance to the Department of Justice. Following approval by the Department of Justice and before finalizing its guidance, each agency should obtain public comment on their proposed guidance documents. With regard to plans for federally conducted programs and activities, agencies should review their plans in light of the clarifications provided below.

**BACKGROUND OF EXECUTIVE ORDER 13166**

The legal basis for Executive Order 13166 is explained in policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency." 65 F.R. 50123 (August 16, 2000). This "DOJ LEP Guidance" was referenced in and issued concurrently with the Executive Order.

As the DOJ LEP Guidance details, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. Department of Justice regulations enacted to effectuate this prohibition bar recipients of Federal financial assistance from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination” because of their race, color, or national origin. These regulations thus prohibit unjustified disparate impact on the basis of national origin.

As applied, the regulations have been interpreted to require foreign language assistance in certain circumstances. For instance, where a San Francisco school district had a large number of non-English speaking students of Chinese origin, it was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs. *Lau v. Nichols*, 414 U.S. 563 (1974).<sup>1</sup>

The Supreme Court most recently addressed the scope of the Title VI disparate impact regulations in *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001). There, the Court held that there is no private right of action to enforce these regulations. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates the Title VI regulations, a private party could not bring a case to enjoin Alabama's policy. Some have interpreted *Sandoval* as impliedly striking down Title VI's disparate impact regulations and thus that part of Executive Order 13166 that applies to federally assisted programs and activities.<sup>2</sup>

The Department of Justice disagrees. *Sandoval* holds principally that there is no private right of action to enforce the Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166. Because the legal basis for Executive Order 13166 is the Title VI disparate impact regulations and because *Sandoval* did not invalidate those regulations, it is the position of the Department of Justice that the Executive Order remains in force.

“It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the education program - all earmarks of the discrimination banned by the regulations.” 414 U.S. at 568.

## **REQUIREMENTS OF EXECUTIVE ORDER 13166**

Federally Assisted Programs and Activities. The DOJ LEP Guidance explains that, with respect to federally assisted programs and activities, Executive Order 13166 “does not create new obligations, but rather, clarifies existing Title VI responsibilities.” Its purpose is to clarify for Federal-funds recipients the steps those recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin in violation of the Title VI disparate impact regulations. To this end, the Order requires each Federal Agency providing Federal financial assistance to explain to recipients of Federal funds their obligations under the Title VI disparate impact regulations.

In developing their own LEP guidance for recipients of Federal funds, an agency should balance the factors set forth in the DOJ LEP Guidance. These factors include, but are not limited to (i) the number or proportion of LEP individuals, (ii) the frequency of contact with the program, (iii) the nature and importance of the program, and (iv) the resources available.

As the DOJ LEP Guidance explains, “a factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers.” Similarly, the frequency of contact must be considered. Where the frequency and

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<sup>1</sup> “It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the education program - all earmarks of the discrimination banned by the regulations.” 414 U.S. at 568.

<sup>2</sup> See *Sandoval*, 121 S. Ct. at 1519 n.6 (“[W]e assume for purposes of this decision that § 602 confers the authority to promulgate disparate-impact regulations; . . . We cannot help observing, however, how strange it is to say that disparate-impact regulations are ‘inspired by, at the service of, and inseparably intertwined with’ § 601 . . . when § 601 permits the very behavior that the regulations forbid.”).



number of contacts is so small as to preclude any significant national origin based disparate impact, agencies may conclude that the Title VI disparate impact regulations impose no substantial LEP obligations on recipients.

The nature and importance of the program is another factor. Where the denial or delay of access may have life or death implications, LEP services are of much greater importance than where denial of access results in mere inconvenience.

Resources available and costs must likewise be weighed. A small recipient with limited resources may not have to take the same steps as a larger recipient. See DOJ LEP Guidance at 50125. Costs, too, must be factored into this balancing test. “Reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits in light of the factors outlined in the DOJ LEP Guidance. The DOJ LEP Guidance explains that a small recipient may not have to take substantial steps “where contact is infrequent, where the total costs of providing language services is relatively high and where the program is not crucial to an individual's day-to-day existence.” By contrast, where number and frequency of contact is high, where the total costs for LEP services are reasonable, and where the lack of access may have life and death implications, the availability of prompt LEP services may be critical. In these latter cases, claims based on lack of resources will need to be well substantiated.

Finally, consideration of resources available naturally implicates the “mix” of LEP services required. While on-the-premise translators may be needed in certain circumstances, written translation, access to centralized translation language lines or other means may be appropriate in the majority of cases. The correct balance should be based on what is both necessary to eliminate unjustified disparate impact prohibited by the Title VI regulations and reasonable in light of the factors outlined in the DOJ LEP Guidance.

Federally Conducted Programs and Activities. Executive Order 13166 also applies to federally conducted programs and activities. With respect to these, the Order requires each Federal Agency to prepare a plan to improve access to federally conducted programs and activities by eligible LEP persons. These plans, too, must be consistent with the DOJ LEP Guidance. Federal agencies should apply the same standards to themselves as they apply to their recipients.

## **PROCEDURAL CONSIDERATIONS**

Administrative Procedure Act: Agency action taken pursuant to Executive Order 13166 and the DOJ LEP Guidance may be subject to the Administrative Procedure Act's (“APA”) rulemaking requirements. 5 U.S.C. § 553. Although interpretive rules, general statements of policy, and rules of agency organization and procedure are not subject to section 553, courts have ruled that any final agency action that carries the force and effect of law must comply with section 553's notice and comment requirements. See *Paralyzed Veterans of America v. D. C. Arena*, 117 F.3d 579, 588 (D. C. Cir. 1997). Agencies, therefore, should consider whether the action they have taken or that they propose to take to implement Executive Order 13166 and Title VI of the Civil Rights Act is subject to the APA's requirements. If it is, they must comply with these statutory obligations. Agencies must bear in mind, however, that Executive Order 13166 “does not create new obligations, but rather, clarifies existing Title VI responsibilities.” Accordingly, agency action taken pursuant to Executive Order 13166 must not impose new obligations on recipients of Federal funds, but should instead help recipients to understand their existing obligations.

Executive Order 12866: Agency action taken pursuant to Executive Order 13166 and the DOJ LEP Guidance may also be subject to requirements set forth in Executive Order 12866 (*Regulatory Review and Planning*, Sept. 30, 1993). That Order directs agencies to submit to the Office of Management and Budget for review any “significant regulatory actions” the agency wishes to take. See § 6(a). Agencies, therefore, should consider whether the action they have taken or that they propose to take to implement Executive Order 13166 and Title VI of the Civil Rights Act is subject to Executive Order 12866's requirements. If it is, they should ensure that the action or proposed action complies with Executive Order 12866's obligations. With regard to federally conducted programs and activities, agencies should review their plans for their federally conducted programs in light of the clarifications below and make any necessary modifications.

## **FURTHER AGENCY ACTION**

Existing LEP Guidance and Plans for Federally Conducted Programs and Activities: Agencies that have already published LEP guidance pursuant to Executive Order 13166 or Title VI of the Civil Rights Act should obtain public comment on the guidance documents they have issued. Agencies should then review their existing guidance documents in view of public comment and for consistency with the clarifications provided in this Memorandum. The Justice Department's Civil Rights Division, Coordination and Review Section ((202) 307-2222), is available to assist agencies in making this determination. Should this review lead an agency to conclude that it is appropriate to clarify or modify aspects of its LEP guidance documents, it should notify the Department of Justice of that conclusion within 60 days from the date of this Memorandum. Any agency effort to clarify or modify existing LEP guidance should be completed within 120 days from the date of this Memorandum. Agencies likewise should review plans for federally conducted programs and activities in light of the above clarification.

New LEP Guidance and Plans for Federally Conducted Programs and Activities: Agencies that have not yet published LEP guidance pursuant to Executive Order 13166 and Title VI of the Civil Rights Act should submit to the Department of Justice, within 60 days from the date of this Memorandum, agency-specific recipient guidance that is consistent with Executive Order 13166 and the DOJ LEP Guidance, including the clarifications set forth in this Memorandum. In preparing their guidance, agencies should ensure that the action they propose to take is consistent with the requirements of the Administrative Procedure Act and Executive Order 12866. The Justice Department's Civil Rights Division, Coordination and Review Section, is available to assist agencies in preparing agency-specific guidance. Following approval by the Department of Justice and before finalizing its guidance, each agency should obtain public comment on its proposed guidance documents. Final agency-specific LEP guidance should be published within 120 days from the date of this memorandum. Agencies likewise should submit to the Department of Justice plans for federally conducted programs and activities. The Department of Justice is the central repository for these agency plans.

Federally assisted programs and activities may not be administered in a way that violates the Title VI regulations. Each Federal Agency is responsible for ensuring that its agency-specific guidance outlines recipients' obligations under the Title VI regulations and the steps recipients can take to avoid violating these obligations. While Executive Order 13166 requires only that Federal Agencies take steps to eliminate recipient discrimination based on national origin prohibited by Title VI, each Federal Agency is encouraged to explore whether, as a matter of policy, additional affirmative outreach to LEP individuals is appropriate. Federal Agencies likewise must eliminate national origin discrimination in their own federally conducted programs and activities. The Department of Justice is available to help agencies in reviewing and preparing agency-specific LEP guidance and federally conducted plans.



**U.S. Department of Justice  
Civil Rights Division**

*Office of the Assistant Attorney General*

*Washington, D.C. 20035*

January 11, 2002

**TO:** MEMORANDUM FOR HEADS OF FEDERAL GRANT AGENCIES  
GENERAL COUNSELS AND CIVIL RIGHTS DIRECTORS

**FROM:** Ralph R. Boyd, Jr.  
Assistant Attorney General  
Civil Rights Division

**SUBJECT:** Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)

I am writing to encourage agencies to expedite their work on limited English proficiency (LEP) guidance documents in order to be in a position to meet the 120-day deadline set forth in my memorandum dated October 26, 2001. A copy of that memorandum is attached.

**BACKGROUND**

On October 26, 2001, I issued a memorandum to clarify policy guidance issued by the Department of Justice (DOJ) entitled "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency." 65 F.R. 50123 (August 16, 2000) (DOJ LEP Guidance). That policy guidance had been issued to set forth general principles for agencies to apply in developing guidance on how their recipients can provide meaningful access to LEP persons and, therefore, comply with the Title VI disparate-impact regulations, as required by Executive Order 13166.

The memorandum instructed agencies that had issued LEP guidance for their recipients pursuant to Executive Order 13166 and Title VI of the Civil Rights Act to notify the Department of Justice, publish a notice asking for public comment on the guidance documents they have issued, and, if necessary, clarify or modify its existing guidance. Agencies that had not yet published guidance documents were to submit agency-specific guidance to the Department of Justice. Following review by the Department of Justice and before finalizing their guidance, the agencies were to obtain public comment on their proposed guidance documents.

## **FURTHER AGENCY ACTION**

The Department of Justice has learned that some agencies that had previously published LEP guidance had obtained significant public comment on those materials following the original publication of that guidance. The Department therefore believes that it is appropriate for these agencies to expedite their review of their existing guidance in light of the comment they have already received and the Department's October 26 memorandum. These agencies should notify the Department of Justice of any need to clarify or modify existing guidance by January 25, 2002.

Other agencies, however, have not yet obtained significant public comment on their previously published guidance. These agencies should immediately publish a request for comment on their existing guidance documents. In addition, they should expedite their review of their existing guidance in light of the comment they will obtain and notify the Department of Justice of any need to clarify or modify existing guidance as soon as possible.

If it is determined that an agency's existing guidance should be clarified or modified, that agency should seek public comment on any proposed revisions before making them final.

Finally, for those agencies that have not previously published LEP guidance documents, I request them to expedite their drafting of LEP guidance documents and to submit them to the Department of Justice as soon as possible. Following review by the Department and before finalizing its guidance, each of these agencies must then publish its agency-specific LEP guidance documents for public comment.

My October 26 memorandum requested that all new LEP guidance documents be published in final form by February 25th, 2002. Because many agencies have not yet submitted their guidance documents to the Department of Justice for review or taken steps to obtain public comment, I am concerned that they may have difficulty meeting this deadline. I thus request that all such agencies expedite their consideration of this matter and notify the Department regarding the status of their progress regarding the development of LEP guidance by January 22, 2002.

The DOJ's Civil Rights Division, Coordination and Review Section ((202) 307-2222), stands ready to assist agencies in this matter.



**U.S. Department of Justice  
Civil Rights Division**

*Office of the Assistant Attorney General*

*Washington, D.C. 20035*

July 8, 2002

TO: MEMORANDUM TO HEADS OF FEDERAL AGENCIES, GENERAL COUNSELS,  
AND CIVIL RIGHTS DIRECTORS

FROM: Ralph F. Boyd, Jr.  
Assistant Attorney General

SUBJECT: Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)

As you know, the Administration has affirmed its commitment to ensure that reasonable steps are taken to make federally funded and federally conducted activities meaningfully accessible to individuals who are limited English proficient (LEP). To that end, on June 18, 2002, the U.S. Department of Justice (DOJ) published final guidance to DOJ recipients on the requirement under Title VI of the Civil Rights Act of 1964, and the Title VI regulations, to ensure such access. 67 Fed. Reg. 41455. The guidance is attached and is also available on [www.lep.gov](http://www.lep.gov) and on [www.usdoj.gov/crt/cor/13166](http://www.usdoj.gov/crt/cor/13166) (the LEP portion of the website of the Civil Rights Division's Coordination and Review Section)

I am writing to ask for your continued assistance in implementing Executive Order 13166 to ensure meaningful access for LEP individuals to important Federal and federally funded rights, information, benefits, and services. The processes I am setting forth in this memorandum have also been shared, at a staff level, with members of the Interagency Working Group on LEP and Civil Rights Division contacts in many of your agencies.

On October 26, 2001, I issued a memorandum to clarify policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency." 65 Fed. Reg. 50123 (August 16, 2000) (DOJ LEP Guidance). On January 18, 2002, DOJ's initial guidance for recipients was republished for additional public comment. 67 Fed. Reg. 2671. Based on public comments filed in response to the January 18, 2002 republication, DOJ published revised draft guidance for public comment on April 18, 2002. 67 Fed. Reg. 19237. After taking into account additional comments, DOJ issued this final guidance to recipients.

It is now imperative that agencies take the following steps:

1. Federal agencies that provide Federal financial assistance must, pursuant to Executive Order 13166, publish guidance for their recipients on meaningful access for LEP individuals. Section A of this Memorandum discusses the procedures for publishing this guidance.
2. All Federal agencies, including those that do not provide Federal financial assistance, must create or modify plans, consistent with Executive Order 13166, to ensure meaningful access for LEP individuals to the important benefits, services, information, and rights provided by the agencies themselves. Further information on this process is discussed in Section B of this Memorandum.

3. All Federal agencies should consider participating, if they are not already doing so, in the Interagency Working Group on LEP and contributing appropriate links to the Working Group's website, [www.lep.gov](http://www.lep.gov). Section C discusses this initiative and requests further agency input and participation.

A. Agency-Specific Recipient Guidance on LEP (Applies to 30 Federal funding agencies)

As noted by Deputy Assistant Attorney General, Alex Acosta, in the last Interagency Working Group meeting on LEP, it is critical that agency LEP recipient guidance documents be consistent with one another. In its March 14, 2002 Report to Congress on the Assessment of the Total Benefits and Costs of Implementing Executive Order Number 13166 (available on both websites noted above), the Office of Management and Budget (OMB) has made it clear that the benefits of the Executive Order can be substantial, both to the recipients and to the ultimate beneficiaries. However, OMB also stressed that in order to reduce costs of compliance, consistency in agency guidance documents is critical, particularly since many recipients receive assistance from more than one Federal agency.

Therefore, as you move toward full implementation of Executive Order 13166, I am requesting that you use the DOJ LEP Guidance as your model for publication or republication of your recipient LEP guidance.<sup>(1)</sup> All funding agencies should modify Sections I-VIII of the DOJ LEP Guidance to the extent necessary to make the examples relevant to their recipients. The examples and additional information that agencies may have created for previous guidance document versions should be helpful in modifying the examples in Sections I-VIII. These examples may also be included in an appendix that agencies may want to attach, much like DOJ attached Appendix A with examples in the DOJ LEP Guidance.

The goal is for funding agencies to send us drafts of their proposed guidance (or proposed revised guidance) as soon as possible, but no later than July 29, 2002. Regardless of whether your agency has previously published guidance or not, all agencies should publish proposed guidance for comment that uses the DOJ LEP Guidance as a model. As discussed below, agencies have several options for doing so.

Agencies may simply want to modify the examples (such as types of recipients or programs or activities covered) in Sections I-VIII and not include an appendix. Other agencies (especially larger ones) may want to modify the examples, but also include an Appendix A (as DOJ did). Those examples would obviously be different from those in DOJ's appendix, but must be consistent with the standards set forth in Sections I-VIII. Smaller agencies may want simply to incorporate the DOJ LEP Guidance by reference, working with Coordination and Review Section staff to ensure that a clear, but less lengthy guidance document is issued.

Given the very real need for legal consistency, and for recipients to be assured that the standards that one agency applies to them are not different than those that another agency may apply to them, we expect modifications to focus on the examples. Any deviations from the standards presented in the guidance will require justification. Thus, if an agency feels that the standards set forth in the DOJ LEP Guidance need to be modified in any way, that agency will also need to provide a written justification for those modifications, and an explanation of why those modifications are consistent with the law and with the need to ensure that recipients are not subject to differing standards. All modifications to the final DOJ LEP Guidance that agencies propose to make should be highlighted, in redline/strikeout form if at all possible.

Pursuant to Executive Order 13166, all recipient LEP guidance documents require DOJ approval prior to publication. (Recipient LEP guidance documents that agencies have already published are effective until new guidance documents become final.) Once the guidance documents are published in final, agencies should conduct outreach to recipients to ensure that they are made aware of the guidance. The Civil Rights Division's Coordination and Review Section (202/307-2222) stands ready to assist agencies in this important matter.

B. Federally Conducted Plans (Applies to all 95 Federal agencies)

Executive Order 13166 also calls for all agencies to ensure that their own federally conducted programs and activities are meaningfully accessible to LEP individuals. To that end, each agency must have an LEP implementation plan in place. Those plans should be updated, as appropriate. The general standards set forth in

For instance, the four-factor analysis set forth in the DOJ LEP Guidance should be applied to each agency's activities. Primary focus of planning and implementation in this area should be with components or activities that have significant amounts of contact with the general public, or that have contacts which impact significantly on an LEP person's rights or access to vital information, benefits, or services. As these plans are finalized, they must be filed with the Coordination and Review Section. Please also consider placing them on your websites. The Coordination and Review Section website at [www.usdoj.gov/crt/cor/13166](http://www.usdoj.gov/crt/cor/13166) contains links to agency federally conducted LEP implementation plans already published on agency websites.

C. Interagency Working Group on LEP and [www.LEP.gov](http://www.LEP.gov) (Applies to all 95 Federal agencies)

In December of last year, I instituted the creation of an Interagency Working Group on LEP. That Working Group initially met in January and set a number of priorities for interagency collaboration. Three subcommittees of that Working Group meet bimonthly and are focused on three main areas: 1) creation and expansion of a one-stop website on LEP issues (the Clearinghouse Subcommittee); 2) creation of tools to assist recipients and beneficiaries in understanding and applying recipient guidance documents (the Outreach, Training, and Uniform Standards Subcommittee); 3) collaboration amongst agencies in making federally conducted activities meaningfully accessible to LEP individuals (the Consistent, Cost-Effective, and Competent Language Services Subcommittee).

I ask that you continue to support the efforts of this Working Group, particularly the efforts to create technical assistance tools for recipients and beneficiaries and to ensure high quality and cost-effective language assistance. Currently, approximately twenty agencies actively participate in the Working Group, which meets bimonthly. I urge your active participation, if you are not already an active member. The next meeting of the Interagency Working Group on LEP is being hosted by the Department of Education on July 9, 2002. Please contact the Coordination and Review Section's Chief, Merrily Friedlander, at (202) 307-2222 or at [merrily.a.friedlander@usdoj.gov](mailto:merrily.a.friedlander@usdoj.gov) if you are interested in becoming an active member.

In an effort to reduce costs of compliance for recipients and to ensure that agency efforts are having maximum impact given resources, I ask for your assistance in further developing the [LEP.gov](http://www.LEP.gov) website in the following ways.

- When agencies (either headquarters or regional offices) create useful documents regarding their programs or activities that are translated into languages other than English, they should strongly consider posting those documents on their websites and informing the Interagency Working Group so that those documents can be linked to and from [LEP.gov](http://www.LEP.gov). Many agencies may already have created such translations. For instance, the Social Security Administration has posted a number of documents in several languages on its site, and [LEP.gov](http://www.LEP.gov) links to those documents. Section 508 of the Rehabilitation Act of 1973 does not prevent agencies from posting documents in languages other than English in an appropriate PDF format, but care must be taken to ensure that new PDF files are created in a manner that makes them accessible. Links should be provided to Clearinghouse Subcommittee co-chairs John Hanberry ([John.Hanberry@do.treas.gov](mailto:John.Hanberry@do.treas.gov)) and Michael Katz ([Mkatz@coms.hhs.gov](mailto:Mkatz@coms.hhs.gov)) as well as to the [LEP.gov](http://www.LEP.gov) webmaster, Nancy Sweesy ([Nancy.Sweesy@usdoj.gov](mailto:Nancy.Sweesy@usdoj.gov)).
- We urge you to provide links to information that you may have on your websites regarding promising practices, compliance agreements, or other tools that may assist recipients in carrying out their responsibilities. If such documents exist but are not on your websites, I encourage you to place them there. For example, if your agency has demographic data showing numbers of LEP individuals in geographic areas, which is not presently available on your website, we strongly urge you to notify the above-named individuals of this information and to consider posting it on your website.
- We also urge you to provide links to your federally conducted LEP implementation plans and to any other information that your agency believes would be useful to include in the [LEP.gov](http://www.LEP.gov) site.

In addition, I am asking the Interagency Working Group to provide me with an Annual Report of its activities, including agency participation, on the anniversary of its inception, December 19, 2002. This Report will include a summary of activities, statement of achievements, and plans for additional action, and will be available on [LEP.gov](http://LEP.gov) as well as on the Coordination and Review Section's website.

I look forward to our continued joint efforts in this important endeavor of ensuring access for LEP individuals in all Federal and federally assisted programs.





**U. S. Department of Justice  
Civil Rights Division**

*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

NOV 12, 2002

TO: HEADS OF FEDERAL AGENCIES, GENERAL COUNSELS, AND CIVIL RIGHTS DIRECTORS

FROM: Ralph F. Boyd, Jr.  
Assistant Attorney General

SUBJECT: Tools to Ensure Implementation and Understanding of Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)

I am writing to ask for your continued assistance in implementing Executive Order 13166 to ensure meaningful access for limited English proficient (LEP) individuals to Federal and federally funded benefits and services. To assist you in this process, I am pleased to enclose three new tools that are available as a result of the work of our Federal LEP Interagency Working Group: (1) Brochure for Federal Agencies and Recipients; (2) Brochure for Beneficiaries of federally Assisted Programs; and (3) Self-Assessment Tool for Recipients of Federal Financial Assistance. Each of these tools is explained in Part I of this memorandum and also is available on our LEP interagency website, [www.lep.gov](http://www.lep.gov). The Outreach, Training, and Uniform Standards Subcommittee of the LEP Interagency Working Group developed these instruments to assist in the implementation of Executive Order 13166 and Title VI of the Civil Rights Act of 1964.

In Part II of this memorandum, I am asking all Federal agencies to draft or review and update their Federal Agency LEP Implementation Plans for their own federally conducted programs, and provide the Civil Rights Division with copies of those Plans as required by Executive Order 13166.

**I. Tools**

**1. *Brochure for Federal Agencies and Recipients (Applies to all 95 Federal agencies)***

The first brochure, entitled "Affirming LEP Access & Compliance in Federal and Federally Assisted Programs," is intended to be used as an outreach tool by both the Federal government and federally funded entities. As you will see, the front cover of the brochure provides a space where Federal agencies may place their own logo sticker or other agency identification. The inside portion of the brochure provides general information on Executive Order 13166, the elements of the four-factor analysis for assessing meaningful access for LEP individuals to Federal and federally assisted programs, and a brief overview of an effective LEP policy. The back covers of the brochure list the mission statement of the LEP Interagency Working Group and the contact information for the Department of Justice, including the Department's Title VI hotline. Agencies should substitute their own agency-specific contact information in place of the, Department of Justice information on the back panel, and then make copies and distribute the brochure as appropriate.

**2. Brochure for Beneficiaries of Federally Assisted Programs (Applies to 30 Federal funding agencies)**

The second brochure, entitled “Know Your Rights,” is targeted for LEP beneficiaries of federally assisted programs. Every effort was made to make the brochure as concise, simple, and reader-friendly as possible to ensure that it would be easy to understand and translate into various languages. As you will see, the inside middle column of the brochure lists several examples of what could constitute national origin discrimination based on LEP status. The inside right column gives each Federal funding agency the option of providing its own agency-specific examples of situations that may raise issues of LEP-related national origin discrimination. If an agency opts not to do so, this column can be filled in with the agency's contact information. Federal funding agencies should make copies of the brochure and distribute to their recipients as appropriate.

**3. Self-Assessment Tool for Recipients of Federal Financial Assistance (Specifically applies to 30 Federal funding agencies but also useful for all Federal agencies in preparing their Federal Agency LEP Implementation Plans)**

The third tool developed by the LEP Interagency Working Group is the “Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance.” This document is intended to assist organizations that receive Federal financial assistance in their strategic planning efforts to ensure that program goals and objectives address meaningful access for all of the people they serve or encounter, including LEP individuals. This tool will assist recipients in assessing their current other-than-English language services capabilities and planning for the provision of language assistance to LEP individuals they serve or encounter.

This document also provides a framework for the development of a Language Assistance Plan in light of general Title VI requirements. The program and grants offices of Federal funding agencies should inform recipients of this document and advise them to use it as a framework for ensuring compliance with Title VI and implementation of the Executive Order. The Outreach, Training, and Uniform Standards Subcommittee of the LEP Interagency Working Group is available to offer technical assistance on the document to Federal agencies. Although this tool was developed for recipients, Federal agencies also should consider using it to assess and evaluate their own programs as they develop their Federal Agency LEP Implementation Plans discussed below.

I urge each agency to use these three important tools developed by the LEP Interagency Working Group. The members of the Outreach, Training, and Uniform Standards Subcommittee are to be commended for their efforts in developing the tools and resources described above. Membership in the LEP Interagency Working Group, and its subcommittees, is not merely an extracurricular activity. The significant contributions of these groups help advance our combined mission to realize the goals of the Executive Order and Title VI. I urge every agency to actively participate in the LEP Interagency Working Group, if you do not already do so.

**II. Federal Agency LEP Implementation Plans**  
(Applies to all 95 Federal agencies)

In furtherance of full implementation of Executive Order 13166, I am asking that each Federal agency review the June 18, 2002 Department of Justice LEP Recipient Guidance Document (available at [www.lep.gov](http://www.lep.gov)), and use it as a guide for drafting or updating Federal Agency LEP Implementation Plans applicable to each agency's federally conducted programs. Many existing Federal Agency LEP Implementation Plans can be viewed at [www.lep.gov](http://www.lep.gov) (click on “Federal Agencies” and then “Federal Agency LEP Implementation Plans for Federally Conducted Programs”), although most of those are almost two years old and need updating. I am requesting that all Federal agencies submit to the Department the name, address, telephone number, and email address of the agency official(s) responsible for revising or drafting the agency's LEP Implementation Plan, as well as the estimated date for filing the Implementation Plan with the Department.

This information should be submitted to Merrily Friedlander, Chief, Coordination and Review Section (COR), at [Merrily.A.Friedlander@usdoj.gov](mailto:Merrily.A.Friedlander@usdoj.gov) no later than November 22, 2002. In addition, as required by Executive Order 13166, each Federal agency must send a copy of its Federal Agency LEP Implementation Plan to the Department (through COR in email or paper format). I also urge each agency to place a copy of its Federal Agency LEP Implementation Plan on its agency website and to provide COR with the agency web address so that COR can provide a web link to the agency Implementation Plan on [www.lep.gov](http://www.lep.gov). I encourage agencies to link their relevant LEP-related materials to this website.

Once again, I thank you for your support of the efforts of the LEP Interagency Working Group, and I encourage active participation by all Federal agencies in the Working Group.

I look forward to your continued joint efforts in this important endeavor.

Enclosures



**U.S. Department of Justice  
Civil Rights Division**

DJ#: 366-16-83

*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

DEC 13, 2002

Addressee

RE: Improving Access to Services for Persons with Limited English Proficiency

Dear Addressee:

On June 18, 2002, the Department of Justice (DOJ) issued final guidance to recipients of DOJ Federal financial assistance regarding the provision of meaningful access to limited English proficient (LEP) individuals. The guidance, which explains existing recipient obligations under Title VI of the Civil Rights Act of 1964 and the Title VI regulations, is attached for your information and further distribution to your membership. The guidance, along with a host of technical assistance and information on LEP, can also be found at <http://www.lep.gov>. I am writing you to ask your assistance and to offer our own.

First, the Civil Rights Division would appreciate your assistance in getting the word out to your members -- whether they be law enforcement agencies, courts, corrections agencies, or other recipients of DOJ assistance -- about the need to provide meaningful access to LEP individuals. To that end, I have enclosed a short article that could be included in any newsletters or other information that you send to your members.

Second, the Coordination and Review Section (COR) of the Civil Rights Division is able to offer speakers who can discuss the guidance at conferences or other member events. COR would also be interested in working with your organization in identifying model language access plans and practices. I encourage you to tap into these resources.

Thank you very much for your assistance in ensuring meaningful access for LEP individuals. If you have any questions, or would like to work with the Division in the ways mentioned above, please do not hesitate to contact Merrily A. Friedlander, Section Chief, Coordination and Review Section, at (202) 307-2222, or [Merrily.A.Friedlander@usdoj.gov](mailto:Merrily.A.Friedlander@usdoj.gov).

Sincerely,

Ralph F. Boyd, Jr. Assistant  
Attorney General

Attachments

A large, stylized handwritten signature in black ink, consisting of a large loop and a vertical stroke.



**U. S. Department of Justice  
Civil Rights Division**

*Office of the Assistant Attorney General*

*Washington, D.C. 20035*

**JUNE 10, 2005**

Dear Recipient of Federal Financial Assistance from the Department of Justice:

Re: New Limited English Proficiency (LEP) Materials

The Federal government is committed to ensuring that entities that receive Federal financial assistance, or who conduct Federal programs, take reasonable steps to provide meaningful access to services for individuals who are limited English proficient (LEP). See Executive Order 13166, reprinted at 65 FR 50101 (August 16, 2000). Recipients include any State agency, local agency, or private entity that receives Federal financial assistance. Our records indicate that your organization receives Federal financial assistance from the Department of Justice (DOJ). DOJ has published Guidance to its recipients of Federal financial assistance to assist recipients in their efforts to provide language assistance to the LEP individuals they encounter. See Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41455 (June 18, 2002) (available at <http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm>).

Most recently, DOJ's Civil Rights Division sponsored an LEP Conference on September 21, 2004 in Washington, DC. The Conference showcased innovative strategies used by Federal, state, and local agencies - as well as private service providers - for providing services to LEP individuals. The Conference offered leaders in the field the opportunity to exchange tips, tools, and practices, and to discuss more efficient and effective means of communication with LEP individuals.

At the Conference, DOJ, the Department of Health and Human Services' Office for Civil Rights, and the Department of Agriculture's Food and Nutrition Service jointly released a new Federal interagency LEP video entitled, "Breaking Down the Language Barrier: Translating Limited English Proficiency into Practice." The video explains the language access requirements of Title VI of the Civil Rights Act of 1964 (Title VI) and Executive Order 13166 through vignettes that expose the problems resulting from the absence of language assistance. The video goes on to show how these same situations could have been handled more appropriately if the service provider took reasonable steps to provide meaningful access.

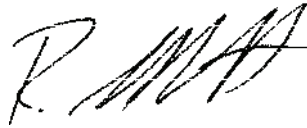
We are pleased to provide you with an English-language DVD version of the video for your own outreach and training purposes. Please do not hesitate to make additional copies of the video, which is also available as a streaming video link on [www.lep.gov](http://www.lep.gov). We expect to receive versions of the video in Spanish, Vietnamese, Chinese, and Korean in the near future. Please contact the Division's Coordination and Review Section (COR) at (202) 307-2222 to request a copy of the video in a particular foreign language.

In addition, an LEP "Know Your Rights" English language brochure that was released at the Conference is available in Arabic, Cambodian, Chinese, Haitian Creole, Hmong, Korean, Russian, Spanish, and Vietnamese. The English language version of the "Know Your Rights" brochure is enclosed for your information, and both the English and the foreign language versions have been posted under the "Community" section of [www.lep.gov](http://www.lep.gov).

I also encourage you to access and share the new LEP resource document, "Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field," which we released at the Conference. This document provides lessons from the experience of law enforcement, 911 call centers, domestic violence service providers, as well as court and DOJ personnel in providing meaningful language access to LEP individuals. It is available at [http://www.usdoj.gov/crt/cor/lep/tips\\_and\\_tools-9-21-04.htm](http://www.usdoj.gov/crt/cor/lep/tips_and_tools-9-21-04.htm).

Finally, COR provides LEP and Title VI training to Federal, state, and local agencies, as well as to community groups. Please contact COR at (202) 307-2222 if you would like to request a training session, or if we can be of other assistance in your efforts to ensure that no LEP person is denied meaningful access due to a language barrier.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Acosta". The signature is fluid and cursive, with the first name "R." and the last name "Acosta" clearly distinguishable.

R. Alexander Acosta Assistant  
Attorney General

Enclosure: LEP DVD  
LEP Brochure



**U. S. Department of Justice  
Civil Rights Division**

*Assistant Attorney General*

*Washington, D.C. 20035*

**DEC 12, 2005**

MEMORANDUM

TO: CIVIL RIGHTS DIRECTORS AND COUNSEL

FROM: Wan J. Kim  
Assistant Attorney General

SUBJECT: Nondiscrimination on the Basis of Race, Color, or National Origin: Hurricane-Related Issues

I am writing to ask for your assistance in responding to the urgent needs of limited English proficient (LEP) and other vulnerable communities affected by hurricanes Katrina and Rita. These communities are protected by Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs receiving Federal financial assistance.

As you may know, on October 5, 2005, the Coordination and Review Section (COR) hosted a Title VI/LEP coordination meeting of several key agencies involved in the hurricane relief and recovery effort. COR called the meeting as a result of reports it received regarding language, national origin, and race-related issues in the delivery of services to hurricane victims, and in response to suggestions made during a September 22 meeting of the Federal Interagency Working Group on LEP's Federally Conducted Committee. Thanks to the participants' overwhelming interest and commitment to assisting in civil rights-related aspects of hurricane relief and recovery, the October 5th meeting yielded a wealth of ideas and action items that I am pleased to share with you.

First, it is recommended that all Federal agencies review their web-sites, especially the hurricane relief portions, to ensure that important information relating to agency and recipient civil rights obligations, assistance options, and resources for those experiencing difficulty in accessing services, is provided in multiple languages. To assist you in this process, COR worked with the Department of Homeland Security and other agencies to conduct an assessment of census data, Department of Labor special tabulations data, Social Security Administration records, and Department of Education data. This assessment indicated that the languages most frequently implicated in the hurricane-affected areas include Spanish, Vietnamese, French, Korean, Chinese, Laotian, and Arabic. Several other languages were identified, but with less frequency; COR would be happy to provide this additional information upon request.

Second, I encourage each agency to consider civil rights issues in the dissemination of local rebuilding, recovery, and planning grants. Agencies should continue to utilize general civil rights-related grants language where appropriate. In addition, I am enclosing two attachments: the first provides examples of grants language relevant to LEP issues used by the Department's Office of Justice Programs and the Department of Housing and Urban Development; the second is a letter that was sent from the Department's Asset Forfeiture and Money Laundering Section to State and local law enforcement agencies. In order to expedite assistance to the Gulf Coast region, some Federal agencies and recipients have broadly waived requirements that are normally tied to contracts and/or to the receipt of Federal funds. I would caution, however, that where appropriate it should be clarified that statutory and regulatory civil rights obligations nevertheless continue to apply and cannot be waived.

Finally, I urge each agency to consider civil rights issues in all aspects of its hurricane response, both in the short term and the long term. There are many steps agencies can take to ensure that race, color, and national origin, including LEP status, do not impede access to information, shelters, and other evacuation and relief services. For example, hurricane task forces currently forming at various agencies can incorporate the full range of civil rights concerns into their agendas. Other proactive steps include:

- Conducting outreach to community and faith-based organizations serving minority populations for purposes of advising them about available assistance and including them in disaster preparedness, recovery, and reconstruction planning.
- Ensuring that agencies have in place language services so that LEP persons are able to communicate their needs, apply for assistance, and receive important information about the process.
- Reminding agency components, recipients, and community organizations of the eligibility standards for obtaining benefits, so that eligible individuals can access aid without difficulty.
- Providing technical assistance to the many recipients engaged in re-examining evacuation and disaster preparedness plans to ensure that plans address the specific needs of minority populations, particularly those that are isolated due to LEP, immigration, or income status.

I would also like to take this opportunity to remind you that the Department (through COR) serves as a clearinghouse for Title VI and LEP complaints. If agencies receive hurricane-related complaints with unclear jurisdiction, they should contact COR at (202) 307-2222 for assistance in determining the appropriate agency for referral.

Thank you for your continued support in protecting the civil rights of the Gulf Coast hurricane victims. I look forward to our continued joint efforts in this important initiative.

#### **Attachment 1**

The Department of Justice's Office of Justice Programs (OJP) includes limited English proficiency language in a competitive grant announcement. That language is reproduced in pertinent part below:

Limited English Proficiency Recipients of OJP financial assistance are required to comply with several Federal civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI) and the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), as amended. These laws prohibit discrimination on the basis of race, color, religion, national origin, and sex in the delivery of services. National origin discrimination includes discrimination on the basis of limited English proficiency (LEP).

To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Grantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. The U.S. Department of Justice has issued guidance for grantees to assist them in complying with Title VI requirements. The guidance document can be accessed on the Internet at [www.lep.gov](http://www.lep.gov), by contacting OJP's Office for Civil Rights at 202-307-0690, or by writing to the following address:

Office for Civil Rights Office of Justice Programs  
U.S. Department of Justice  
810 7th Street NW., Eighth Floor  
Washington, DC 20531



The Department of Housing and Urban Development's grant language on limited English proficiency can be found at page 13579 of the following link: <http://www.hud.gov/library/bookshelf8/supernofa/nofa05/ensec.pdf> . That language is reproduced in pertinent part below:

Executive Order 13166 seeks to improve access to federally assisted services, programs, and benefits for individuals with limited English proficiency. Applicants obtaining an award from HUD must seek to provide access to program benefits and information to LEP individuals through translation and interpretive services in accordance with LEP guidance published on December 19, 2003 (68 FR 70968). For assistance and information regarding your LEP obligation, go to [www.lep.gov](http://www.lep.gov).

## **Attachment 2**

### **MEMORANDUM**

**TO:** State and Local Law Enforcement Agencies

**FROM:** Nancy L. Rider, Deputy Chief  
Asset Forfeiture and Money Laundering Section

**SUBJECT:** Use of Shared Funds to Pay for Language Assistance Services  
Hurricane-Related Issues

The Asset Forfeiture and Money Laundering Section received a request from the Civil Rights Division's Coordination and Review Section to provide guidance on the use of equitably shared funds to pay for language assistance services. This memorandum serves as a guide to using shared funds to improve access to law enforcement services for persons with Limited English Proficiency (LEP).

It is permissible to use equitably shared funds to pay for language assistance services. In connection with their law enforcement activities and operations, recipient agencies are encouraged to consider the need for language services for persons with LEP and may use shared funds to provide such services. Examples of permissible uses include the costs of language training for law enforcement personnel and 911 operators, contracting for interpretation services, and printing law enforcement documents in languages other than English.

We appreciate the fine work State and local law enforcement agencies provide and hope that funds the Department has shared with your agencies will serve to further those efforts. If you have any questions, please contact Junior Financial Analyst Lisa Trueblood at (202) 616-0702.



U.S. Department of Justice  
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

**A Message to Recipients from  
Ralph F. Boyd, Jr.  
Assistant Attorney For Civil Rights  
United States Department of Justice**

Are you encountering more and more people who don't speak English in your work? Most of us are. And while most individuals living in the United States read, write, speak and understand English, there are many for whom English is not their primary language. For instance, based on the 2000 census, over 26 million American citizens or residents speak Spanish at home and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP."

What we sometimes forget is how much of a barrier language can pose for a person who does not speak English.

- It can be a barrier to accessing important benefits or services, including assistance from the justice system;
- It can be a barrier to understanding and exercising important rights;
- It can be a barrier to complying with governmental or other responsibilities; and
- It can be a barrier to understanding how to participate fully in our society.

The Federal government provides and funds an array of services that can be made and should be made accessible to otherwise eligible LEP persons. Our goal is to improve the accessibility of these programs and activities to eligible LEP persons. That is why, on June 18, 2002, the Department of Justice (DOJ) issued guidance to recipients of DOJ Federal financial assistance regarding the provision of meaningful access to LEP persons.

I know that many law enforcement, court, corrections, and other recipients of DOJ funds already have taken great steps in providing meaningful access to their LEP communities. The LEP Policy Guidance is based, in part, upon examples of such practices. The DOJ guidance document reiterates that recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important programs and activities. The guidance also assists in identifying how recipients can ensure meaningful access, including providing qualified interpreters and translators from several different options, and identifying important planning elements, with specific examples from the law enforcement, courts, and corrections contexts. That guidance, along with a host of technical assistance tools and information on LEP, can be found at <http://www.lep.gov/>.

The guidance is based on Title VI of the Civil Rights Act of 1964, and its implementing regulations, and is inspired by an Executive Order. Together, they require Federal agencies and recipients of Federal funds to take reasonable steps to ensure that LEP persons have meaningful access to programs and activities provided by or funded by the Federal government.

All recipients of Federal funds from any Federal agency - ranging from entities providing health and social services, job training, education and emergency services to victims' services, consumer protection, environmental protection, and transportation and beyond -- are also subject to the meaningful access requirement. This is also true in areas where English has been declared the official language.

The precise requirement - i.e., what reasonable steps are needed to provide that meaningful access - is determined by a four-factor balancing test:

1. Number of LEP persons eligible to be served or encountered;
2. Frequency of contact with LEP persons;
3. Nature and importance of the program to the LEP individuals; and
4. Resources available, including costs of providing LEP services.

So what does this mean? It means that 911 callers should be able to report crimes and other emergencies and be responded to, even if they do not speak English. It means that important information about legal rights should be provided in languages that can be understood. It means that parole opportunities for those in prison should not be limited based solely on English language ability. It means that children should not be used to interpret for police in domestic violence disputes. It means this and more.

It is important to note also what this does not mean and to reiterate the ultimate goals of the Federal civil rights law in this area. There have been concerns raised regarding this Federal LEP Initiative - concerns that the government is attempting to create a bilingual or multi-lingual society. But language services and the LEP Initiative are not intended to replace or supplant English. They are meant to be an interim measure. A measure that works alongside our commitment to English language acquisition.

We know that many people, particularly many of the elderly, may not have a realistic potential to learn English. We also know that a language cannot be learned overnight, even for those who are in English-as-a-second-language or other English language acquisition programs.

Thus, language access services are a bridge to help those who have not yet acquired, or cannot acquire, English proficiency. They are a bridge to help these millions of LEP members of the American public have meaningful access to statements of rights, complaint processes, government benefits and services, and other critical information and programs - to help them **today** until they, or the next generation, acquire the English proficiency that will give them even greater access **tomorrow**.



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*USDOJ Memos and Reports***BACKGROUND AND QUESTIONS AND ANSWERS  
October 26, 2001 DOJ Clarifying Memorandum  
Regarding Limited English Proficiency and Executive Order 13166****Background**

**LEP Executive Order.** Title VI of the Civil Rights Act prohibits discrimination on the basis of national origin, among other things. The LEP Executive Order (Executive Order 13166) ensures that, consistent with Title VI, persons with limited English proficiency (“LEP”) have meaningful access to federally conducted and federally funded programs and activities. The Order requires all agencies that provide Federal financial assistance to issue guidance on how Title VI applies to recipients of that assistance in their contact with persons who are LEP. The Order also requires that Federal agencies create plans for ensuring that their own activities also provide meaningful access for persons who are LEP.

**August 2000 DOJ Guidance.** The Department of Justice, at the time the EO was published, also issued a guidance document for agencies to follow in designing their own LEP guidance for recipients, and in creating plans for making Federal activities and programs meaningfully accessible. The guidance clarified long-standing LEP responsibilities under Title VI and the Title VI regulations, including disparate impact regulations and a 1976 DOJ regulation requiring translation of documents in certain circumstances. The DOJ guidance document told agencies to consider four factors in developing LEP guidance for their recipients (the number of LEP persons in the eligible service population or likely to be encountered in recipient activities and programs; the frequency with which LEP individuals come into contact with the program; the importance of the service or information provided by the program; and the resources available to the recipient of the Federal funds). Agencies have asked DOJ for additional guidance regarding how to balance these four factors.

**Agency Recipient Guidance and Federally Conducted Plans.** Pursuant to the Executive Order and the DOJ guidance document, a number of agencies have issued their own LEP guidance documents for their recipients. Several agencies have also created plans for making their own federally conducted activities meaningfully accessible to persons who are LEP (“Federally conducted plans”).

**Requests for Clarification.** There has been significant support among recipients for recipient guidance documents issued by agencies. A number of recipients of Federal funds, however, have indicated that they believe the documents could be confusing, and that they may impose requirements that are not necessary effectively to deliver important LEP services. Prompted by questions from the recipient community, the Departments of Health and Human Services and Labor have asked the Department of Justice for advice on how to move forward on LEP issues.

**DOJ Memorandum Clarifies August 2000 Guidance.** In response to these requests, on October 26, the Department of Justice issued a memorandum to agency heads. The memorandum reaffirms the Administration’s commitment to ensuring that LEP individuals have meaningful access to federally funded and federally conducted programs and activities. The Administration likewise recognizes that LEP services must be delivered in a cost-effective manner. Thus, the memorandum is designed to ensure the delivery of LEP services to eliminate invidious discrimination prohibited by Title VI itself and unjustified disparate impact prohibited by the Title VI regulations consistent with the four “reasonableness” factors outlined in the DOJ LEP Guidance.

- A factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be excluded from the program or activity absent efforts to remove language barriers.
- Frequency of contact must also be considered. Where the frequency and number of contacts with individuals who speak a particular language is very small, Title VI may impose fewer substantial LEP obligations on recipients. At the same time, when an agency serves a large LEP population, it will have to take more substantial steps to ensure that it meets its Title VI obligations.
- The nature and importance of the program is a consideration. Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith.
- Resources available are a consideration. A larger recipient with extensive resources may have to take greater steps than a smaller recipient with limited resources. Although on-the-premises translators may be needed in some circumstances, written translation, access to centralized interpreter language lines or other means, may be appropriate in others.
- Costs must be factored into this balancing test as part of the consideration of "resources available." "Reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits in light of the factors outlined in the DOJ LEP Guidance.

**DOJ Memorandum Clarifies Procedures for Recipient Guidance.** In addition to clarifying its LEP guidance, the DOJ memorandum also assures that the public be given a full opportunity to comment on agencies' LEP guidance. Thus, it directs agencies to obtain public comment on their existing recipient guidance. Agencies must review their existing and proposed recipient guidance documents for (a) consistency with DOJ's clarifications; (b) compliance with the Administrative Procedure Act (notice and comment requirements); and (c) compliance with requirements for significant regulatory action (See Executive Order 12866 (setting forth OMB clearance requirements)). It is up to each agency to determine whether its recipient guidance document is a significant regulatory action and whether the Administrative Procedure Act's notice and comment requirements apply.

**DOJ Memorandum Clarifies Procedures for Federally Conducted Plans.** The memorandum clarifies the steps that agencies should take in ensuring that recipients of Federal funds comply with Title VI of the Civil Rights Act. Federal agencies likewise should review plans for federally conducted programs and activities in light of the memorandum's clarifications.

### Questions and Answers

#### **Q. What does Executive Order 13166 require?**

Executive Order 13166 (E.O.13166) is directed at implementing the obligations imposed by Title VI of the Civil Rights Act of 1964 and the Title VI regulations. Accordingly, it prohibits recipients of Federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who are LEP. The Executive Order requires Federal agencies that provide Federal financial assistance to develop guidance to clarify those obligations for recipients of such assistance ("recipient guidance").

In addition, the Executive Order requires all Federal agencies to apply the same four-factor analysis as Federal financial assistance recipients in providing meaningful access for LEP individuals to all of its federally conducted programs and activities. Each Federal agency is required to develop a plan for taking reasonable steps to provide meaningful access for LEP persons, in light of the four-factor analysis.

#### **Q. Who will enforce the LEP rules?**

Most Federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act. To the extent that a recipient's actions are inconsistent with their obligations under Title VI, then such agencies will take the necessary corrective steps.

The Coordination and Review Section of the Civil Rights Division of DOJ has taken the lead in coordinating and implementing this Executive Order.



**Q. What are recipients of Federal funds required to do to meet LEP requirements?**

The actions that a recipient must take to meet the obligations imposed by Title VI of the Civil Rights Act are necessarily an individualized determination. There are no hard-and-fast rules. What might make sense for a large entity may not make sense for a smaller entity. The memorandum that the Department of Justice issues today clarifies that the steps that agencies and federally funded entities must take to ensure compliance with Title VI may vary depending upon the services they offer, the community they serve, and their resources. The Department of Justice stands ready to assist agencies in formulating guidelines that take the appropriate approach to LEP issues.

**Q. Has there been a change in Executive Order 13166?**

No. There has been no change to the Executive Order. This Administration and the Department of Justice are fully committed to ensuring that LEP persons have meaningful access to federally funded and federally conducted programs and activities.

**Q. Didn't the Supreme Court address and reject the LEP obligation under Title VI last term in *Alexander v. Sandoval*?**

No. In *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001), the Supreme Court held that there is no private right of action for private parties to enforce the disparate impact regulations under Title VI. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates the Title VI regulations, a private party could not bring a lawsuit under those regulations to enjoin Alabama's policy. *Sandoval* did not invalidate Title VI or the Title VI disparate impact regulations, and Federal agencies' obligation to enforce the statute and regulations remains in effect. Because the legal basis for the recipient guidance documents required under Executive Order 13166 is Title VI and the disparate impact regulations and because *Sandoval* did not invalidate either one, the Executive Order remains in force.

**Q. Why did DOJ issue new Guidance?**

A number of recipients of Federal funds have stated that they are confused by current LEP recipient guidance documents issued by Federal agencies. In addition, they have raised concerns that the public be provided sufficient opportunity to comment. The Department of Justice believes that, in light of these concerns, it was necessary to issue this clarifying memorandum.

The Department of Justice has issued this memorandum to clarify the guidance that it issued last August, in which it described LEP obligations that Title VI of the Civil Rights Act imposes. This memorandum makes clear that agencies must ensure that the public has sufficient opportunity to comment on their recipient guidance documents and agencies must review these documents in light of any comments they receive and this clarifying memorandum.

**Q. How is the October 26 Memorandum different from the earlier LEP Guidance?**

The October 26 Memorandum reaffirms the Administration's commitment to LEP services. It does not change the requirements of the existing Executive Order and existing DOJ guidance. It does require additional process designed to ensure sufficient public comment regarding agencies' responsibilities as follows:

First, the Memorandum states that agencies that published recipient guidance after Executive Order 13166 should: "After notifying the Department of Justice, obtain public comment on the guidance documents that they have issued." This means they must:

- Review that guidance for consistency with the four-factor analysis from the August 2000 DOJ LEP guidance and the October 26 clarifying Memorandum.
- Determine whether or not the document is a significant regulatory action that is subject to the requirements of Executive Order 12866 and whether it is subject to the notice and comment requirements of the Administrative Procedures Act.

Some agencies may determine that they need to revise their guidance, and others may determine that their guidance already complies with Title VI and procedural legal standards as clarified in the Memorandum and is not “significant regulatory action” subject to the requirements of Executive Order 12866.

- After notifying the Department of Justice, publish a notice asking for public comment on the guidance (as revised, if necessary, in light of the October 26 Memorandum). Prior to publication, DOJ should review any substantive revisions for consistency with the August 2000 guidance and clarifying Memo.
- Determine whether further revisions of their existing guidance are appropriate, in light of public comment received (and disseminate as appropriate).

Second, agencies that have not already published recipient guidance should consider these factors and clarifications in preparing guidance documents. They should then submit their guidance documents to DOJ for approval prior to publication, as is required by the Executive Order. Following approval by the Department of Justice and before finalizing its guidance, each agency should obtain public comment on its proposed guidance documents. Those agencies also need to make the determinations regarding the Administrative Procedure Act and Executive Order 12866 as explained above.

Third, as required by the Executive Order, agencies should continue to design and implement plans for making their own federally conducted programs and activities meaningfully accessible to LEP persons, and should consider the four-factor analysis from the DOJ guidance and today’s memorandum in doing so.

**Q. What about agencies that don’t grant Federal financial assistance? What do they have to do?**

Federal financial assistance includes, but is not limited to, grants and loans of Federal funds; grants or donations of Federal property; training; details of Federal personnel; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. If an agency does not engage in any of those activities, it does not grant Federal financial assistance and does not have to issue a recipient guidance document. However, it must still design and implement a federally conducted plan to ensure access for LEP individuals to all of its federally conducted programs and activities (basically, everything that it does).

**Q. Is DOJ saying that the existing recipient guidance documents are “significant regulatory action?”**

No. The memorandum explains that it is up to each agency to determine whether its recipient guidance is “significant regulatory action” subject to the requirements set forth in Executive Order 12866.

*USDOJ Memos and Reports*

**- Report To Congress -  
Assessment of the Total Benefits and Costs of  
Implementing Executive Order No. 13166:  
Improving Access to Services for Persons with  
Limited English Proficiency**

**March 14, 2002**

**EXECUTIVE SUMMARY**

Executive Order No. 13166 (Improving Access to Services for Persons with Limited English Proficiency) ( Aug. 2000) is designed to improve access to federally conducted programs and activities and programs and activities of recipients of Federal funding for persons, who as a result of national origin, are limited in their English proficiency (LEP). The Administration has emphasized the importance of ensuring that LEP individuals receive appropriate language assistance services and has commenced an effort to implement the Executive Order's provisions. In order to accomplish that goal in an efficient and effective manner, the Federal government should create clear and uniform standards defining how Federal agencies and recipients of Federal funds should implement the Order. Many entities, such as schools, local police departments, doctors, and hospitals, may receive funding from multiple Federal agencies. It is critical that these recipients be able easily to understand and implement with policies issued by multiple agencies, so that LEP individuals receive language assistance in a uniform and consistent manner.

Pursuant to Congressional mandate, this report assesses the total costs and benefits of providing language-assistance services under the Executive Order.<sup>1</sup> OMB has (i) reviewed the published literature, (ii) surveyed Federal and State agencies, (iii) solicited public comment through a *Federal Register* notice, (iv) devised rough numerical estimates of national costs and qualitative assessments of national benefits, and (v) performed case studies of the potential impact of the Executive Order in four sectors of American society: healthcare, welfare, transportation, and immigration.

The report focuses on the benefits and costs of providing language-assistance services to LEP persons pursuant to Executive Order 13166 and the Title VI regulations. In simple terms, benefit-cost analysis compares what has occurred or is expected to occur with a given policy change to what would have occurred in the absence of that change.<sup>2</sup> Under the Executive Order, "[e]ach Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons." In addition, "[e]ach agency providing Federal financial assistance [to hospitals, universities or a myriad of other State and other entities] shall draft Title VI guidance."

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<sup>1</sup> The FY 2002 Treasury and General Government Appropriations Act included a provision directing the Office of Management and Budget to submit a report to the Appropriations Committees assessing the total benefits and costs of implementing Executive Order 13166. The relevant language in the appropriation law states, "... That of the amounts appropriated, not to exceed \$6,331,000 shall be available to the Office of Information and Regulatory Affairs, of which \$1,582,750 shall not be obligated until the Office of Management and Budget submits a report to the Committees on Appropriations that provides an assessment of the total benefits and costs of implementing Executive Order No. 13166: Provided further, That such an assessment shall be submitted no later than 120 days after enactment of this Act." This report responds to this congressional request by using available data to estimate benefits and costs.

<sup>2</sup> OMB's March 2000, "Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements."

Federal agencies are currently in the process of implementing this Executive Order. Because of a lack of baseline information, we are currently unable to evaluate the incremental benefits or costs of implementation of the Executive Order. Thus, to assess the benefits and costs of LEP plans generally, this report uses data and assumptions about different types of language-assistance services that are being provided or that could be provided to LEP individuals in a variety of contexts.

The benefits of language-assistance services for particular LEP individuals, while not readily quantifiable in dollar units, can be significant. Improved access to a wide variety of services – ranging from the delivery of healthcare and access to food stamps to motor vehicle licensing and law enforcement – can substantially improve the health and quality of life of many LEP individuals and their families. Moreover, language-assistance services may increase the efficiency of distribution of government services to LEP individuals and may measurably increase the effectiveness of public health and safety programs.

The twenty most common foreign languages spoken in the United States are, in order of frequency, Spanish, French, German, Italian, Chinese, Tagalog, Polish, Korean, Vietnamese, Portuguese, Japanese, Greek, Arabic, Hindi, Russian, Yiddish, Thai, Persian, French Creole, and Armenian. Although there are many different native languages spoken by LEP persons, Spanish is by far the most common. Accordingly, agencies should strongly consider making services for Spanish-speaking LEP individuals a substantial focus of their LEP plans.

The costs of enhanced language assistance are difficult to quantify, but may also be significant. Based upon the limited data available and the range of assumptions set forth herein, we anticipate that the cost of LEP assistance, both to government and to the United States economy, could be substantial, particularly if the Executive Order is implemented in a way that does not provide uniform, consistent guidance to the entities that it covers. Of the economic sectors examined in the report, provision of language services could be most costly for the healthcare sector. This conclusion is tempered by the fact that many government agencies and private entities that serve a significant LEP population have already taken certain steps to provide language services. To the extent that such services are already being provided, the economic impact of implementing the Executive Order will depend upon the cost of any additional steps taken. Unfortunately, there was insufficient data to make a proper determination regarding current levels of language assistance provided by these entities, and we were unable to take into account in our cost estimates current levels of language assistance. Accordingly, the estimates herein address the overall cost of LEP assistance, not the possible additional costs that may ultimately be required to implement the Executive Order and agency guidance.

In sum, the ultimate benefits and costs of the Executive Order will depend on how it is implemented, a process that we understand has begun among the Federal agencies. We hope that this Report will assist Congress and provide these agencies with information that will be useful to them as they take steps to Implement the Executive Order.

## INTRODUCTION

The FY 2002 Treasury and General Government Appropriations Act included a provision requiring the Office of Management and Budget to report to the Appropriations Committees an assessment of the total benefits and costs of implementing Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency). The Order is designed to improve access to federally conducted programs and activities and programs and activities of recipients of Federal funding for persons, who as a result of national origin, are limited in their English proficiency (LEP). The Order requires each Federal Agency providing Federal financial assistance to publish guidance explaining Federal-funds recipients' obligations under Title VI regulations and to describe the steps recipients may take to satisfy these obligations. The Order also requires Federal Agencies to develop a plan to ensure appropriate LEP access to their own federally conducted programs and activities.

The Executive Order gave the Department of Justice (DOJ) the responsibility of assisting agencies in developing the plans and guidance documents mandated by Executive Order 13166. Title VI regulations as well as the Executive Order specifically require "reasonable steps to ensure meaningful access." What constitutes "reasonable steps to ensure meaningful access" turns on a consideration of the totality of the circumstances. DOJ has identified a four-factor analysis to help agencies determine whether this standard has been satisfied. These four factors are (i) the number or proportion of LEP individuals, (ii) the frequency of contact with the program, (iii) the nature and importance of the program, and (iv) the resources available and costs.

To date, ten agencies have published LEP guidance: Corporation for National and Community Service, Department of Education, Department of Justice, Department of Health and Human Services, Department of Labor, Department of Transportation, Department of Treasury, General Services Administration, National Aeronautic and Space Administration, and National Science Foundation.<sup>3</sup> These guidance documents, however, are not entirely uniform. Some rely on DOJ's four-factor test; others do not. Since certain State or private entities receive funds from multiple Federal agencies, such entities could conceivably be subject to inconsistent guidance and obligations.

On October 26, 2001, DOJ issued a memorandum clarifying questions raised regarding Federal Agencies' responsibilities under the Executive Order. The memorandum directed agencies that have issued LEP guidance documents to notify the Department of Justice and publish a notice asking for public comment on the guidance documents they have issued. Agencies that had not yet published guidance documents were to submit agency-specific guidance to the Department of Justice. DOJ continues to work with Federal agencies to develop these documents.

OMB has undertaken this benefit-cost analysis in a four-month period. OMB has (i) reviewed the published literature, (ii) surveyed Federal and State agencies, (iii) solicited public comment through a Federal Register notice, (iv) devised rough numerical estimates of national costs and qualitative assessments of national benefits, and (v) performed in-depth case studies of the potential impact of the Executive Order in four sectors of American society: healthcare, welfare, transportation and immigration. In addition, this report has been reviewed by three peer reviewers.

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<sup>3</sup> See <http://www.usdoj.gov/crt/cor/13166.htm>

## METHODOLOGY

### Data Collection Efforts

To assess the benefits and costs of implementing Executive Order 13166, a significant amount of data is required. Agencies are currently in the process of implementing the Executive Order. Because of a lack of baseline information on benefits and costs, we are at present unable to evaluate the incremental benefits or costs of implementation. Thus, this report instead uses data and assumptions about different types of language-assistance services that are being provided or could be provided to the LEP population. This Report follows a multi-faceted approach to data collection:

1. Literature Review: We reviewed numerous studies relevant to our assessment, many of which were recommended to us by public comments and Federal agencies, including:
  - Existing studies of the benefits and costs of improving the quality of communications and interactions between LEP individuals and the Federal government or federally funded services through the use of oral and written translation services.
  - Existing studies of the benefits and costs of increased provision of English instruction and the returns to proficiency in English.
  - Existing studies of similar language or translation issues in the international arena, (e.g. Canada, European Union, United Nations, and the Organization for Economic Cooperation and Development [OECD]).
  - Existing studies of the LEP population, including their characteristics and the services that they typically need and access.
  
2. Agency Data Call: Federal agencies were asked to provide information about the number or proportion of LEP individuals served, their frequency of contact with the agency/program, the nature and importance of the agency/program, and the resources available and costs. Specifically, we asked the following of all Federal agencies:

**Figure 1.1: Agency Data Call**

Number or Proportion of LEP Individuals:
<ul style="list-style-type: none"> <li>• Does your agency have a working definition of “Limited English Proficiency”? If so, please provide.</li> <li>• How many LEP persons are served by the agency? What proportion of the population served by the agency are LEP individuals? How does this vary by program? Please</li> </ul>
Frequency of Contact with the Program:
<ul style="list-style-type: none"> <li>• How many “encounters” does your agency typically have (per month and/or per year) with LEP individuals served? What is the nature of these encounters? Are they typically in-person, over the phone, or by form (email or mail)?</li> <li>• How much time do LEP individuals spend accessing the services your agency provides (preferably on a per person basis)? Do LEP individuals typically spend more or less time per encounter than non-LEP persons served by the agency? How does this vary by program?</li> </ul>
Nature and Importance of the Program:
<ul style="list-style-type: none"> <li>• What are the major programs serving LEP individuals in your agency? How many are served overall in each program? Are there specific programs that serve high numbers of LEP individuals? Please provide a breakdown by major program, if available.</li> <li>• What special services are typically provided by the agency for LEP individuals? How does this differ by major program?</li> </ul>

General Information:

- Is your agency aware of any existing studies of the benefits and/or costs of improving the quality of communications and interactions between LEP individuals and the Federal government or Federally funded services? If so, please provide copies or citations/references.
- Please provide several examples of “real-world” case studies that illustrate the benefits and costs of providing translation services to LEP individuals, as envisioned by Executive Order 13166, and related agency guidance. We are seeking examples from multiple perspectives, including LEP individuals, Federal agencies/recipients of Federal funds, and the international context.

While it was useful to collect information from agencies on a variety of topics related to Executive Order 13166, it was not possible to rely solely on the Federal agencies for data regarding the benefits and costs of Executive Order 13166 implementation. The Federal agency data call revealed significant gaps not only in the information available on the benefits and costs of Executive Order 13166, but also on the more basic questions of the number of LEP individuals served and costs of the services that were provided before the Executive Order was adopted. Thus, precise baseline data on pre-Executive Order conditions, necessary information to conduct a benefit-cost analysis of the Executive Order, are lacking. Indeed, most agencies are in the very early stages of their implementation process, and few, if any, have collected data on benefits and costs. This data gap only widened as we attempted to understand the benefits and costs at the State/community and business level where various entities such as law enforcement organizations, non-profit organizations, schools and firms accept Federal funding and are therefore affected by the Executive Order and related guidance documents. Despite the lack of complete data from all agencies, we obtained relatively useful data to inform our report. Agency information was used to provide context for our assessment, and was supplemented by information obtained through the literature review and public notice.

3. Federal Register Notice and Outreach Activities: On November 30, 2001, we placed a notice in the Federal Register seeking information to inform the development of this report. The public was given 30 days to provide comments and information in response to the notice. We received approximately 450 comments from individuals and organizations, which are summarized in the Public Comment section. The Federal Register notice provided an explanation of the assessment being conducted and requested that the public offer assistance by providing relevant information. We also encouraged commenters to provide qualitative or descriptive information in cases where quantitative information was not available or useful. The specific topics about which we sought assistance from the public are as follows:

**Figure 1.2: Federal Register Questions**

By what method may one quantify the numbers of LEP individuals and which languages they speak?
How may one understand the number of different languages spoken by LEP individuals, and their geographic distribution?
How may one characterize the interactions of LEP individuals with both Federal and Federally funded entities? For example, how frequently do LEP individuals interact with government at all levels? What types of government services do LEP individuals typically access? Are there types of services that LEP individuals access more or less frequently than non-LEP individuals?
How may one determine the benefits and costs of improving English language proficiency among LEP individuals?

By what means may one understand and quantify the level of services provided by the government or government-funded organizations to address the special needs of LEP individuals prior to Executive Order 13166? To what extent will changes be necessary to achieve full compliance with Executive Order 13166 and related guidance?
How may one quantify and describe the costs to the Federal government or recipients of Federal funds of providing oral and written translation services?
How may one quantify and describe the benefits to LEP individuals and society as a result of having oral and written translation services available, in accordance with Executive Order 13166?
By what method may one identify any existing studies of the benefits and costs of improving the quality of communications and interactions between LEP individuals and the Federal government or Federally funded services? Are there comparable studies of similar language or translation issues internationally (e.g. Canada, European Union, United Nations, and OECD)? Where can these studies be found?
By what method may one identify any existing studies of the benefits and costs of improving the quality of communications and interactions between LEP individuals and the Federal government or Federally funded services? Are there comparable studies of similar language or translation issues internationally. Where can these studies be found?
By what method may one identify “real-world” case studies that illustrate the benefits and costs of providing translation services to LEP individuals, as envisioned by Executive Order 13166, and related agency guidance? It is important to consider examples from multiple perspectives, including LEP individuals, Federal agencies/recipients of Federal funds, and the international context.
By what method may one identify existing academic research and “real-world” case studies from the following sectors: health, social services/income maintenance, education, transportation, law enforcement, and trade? Are there recommendations from additional sectors or perspectives from which to address this issue?
By what method may one identify any other information or resources that the public believes will assist in the effort to assess the benefits and costs of Executive Order 13166?

In addition to soliciting information through the Federal Register notice, we also discussed the benefits and costs of Executive Order 13166 with several small groups of representatives from organizations that had commented on the Federal Register notice.

## **Case Studies**

We also developed case studies to gain a better understanding of the benefits and costs of Executive Order 13166. While they do not yield representative data, the case studies provide real-world insight and serve as a check on aggregate estimates of total benefits and costs developed through modeling and assumptions. These areas included transportation, welfare, immigration, and healthcare. Each case study is discussed in more detail in the sections below. The case studies are designed to highlight how Executive Order 13166 might impact services provided across a spectrum of service delivery systems.



**Figure 1.3: Summary of Case Studies Examined**

<b>Case Study Type</b>	<b>Characteristics</b>
Motor Vehicle Administration	A relatively low intensity interaction with a relatively large percentage of the public on a periodic basis. Services are not for specialized populations. Interaction is relatively important, (e.g., determining whether an individual may drive legally). Services are delivered by State or local government agency.
Healthcare System	<p>Can be a relatively high intensity interaction (hospital stay) or a low intensity interaction (one time trip to a clinic for an immunization). Relevant to all segments of the population. Services sometimes provided by State or local government.</p> <p>However, services are often delivered by private providers who receive payment from Medicare or Medicaid on behalf of the patients, making them recipients of Federal funds.</p>
Welfare/Food Stamp Offices	A relatively high intensity interaction. Must see a large number of persons on a regular basis (re-certification every 3-6 months). Relevant to a specialized portion of the public (i.e., those comprising the low-income community). Services delivered by State or local government agency.
Immigration/INS	Can be a relatively high intensity interaction. Immigration process may require great deal of paperwork and take many years. Relevant to immigrants and their families or sponsors. Services delivered by the Federal government.

## **AN APPROACH TO UNDERSTANDING THE POTENTIAL COSTS AND BENEFITS OF IMPLEMENTING EXECUTIVE ORDER 13166**

The discussion below is organized into four main topics. First, we briefly consider the nature of the LEP population in the United States. Next, we turn to an evaluation of four “case studies” that consider the potential costs and benefits of implementing the Executive Order in the economic sectors of transportation, welfare, immigration, and healthcare. We then use a different approach to cost estimation and develop a range of aggregate estimates for the incremental cost of serving LEP persons. Finally, we consider various steps that agencies may wish to take in order to serve the LEP population most efficiently.

### **1. The LEP Population**

To assess the costs and benefits of implementing the Executive Order, an initial question is what constitutes a person with “limited English proficiency.” LEP individuals are persons who do not speak English as their native language and who have a limited ability to read, speak, or understand English. Whether a person is considered LEP in a particular circumstance may vary, however, depending on the type and degree of English skills necessary to participate in specific programs and services. In some cases, English-speaking ability may be less essential than reading and writing skills (*e.g.*, where participation in a program or activity requires reading and filling out a form). In other cases, speaking skills may be as important or even more important than reading and writing skills (*e.g.*, a hospital emergency room).

Determining the size of this population is difficult. The Census, including Census block-level data, may provide a rough, though possibly inaccurate, measure. The Census survey, however, does not address reading and writing skills. Many educated immigrants may have poor English speaking ability yet have substantially better skills in verbal understanding, writing, and reading English. On the other hand, many people speak and understand English well, but have limited English reading and writing skills.

Another conceivable measure may be drawn from immigration data. These data can occasionally be useful as a rough proxy for the LEP population because immigrant status and English proficiency may be strongly (though not perfectly) correlated variables. However, only a portion of foreign-born persons are LEP. As of March 2000, about 10.4% of the United States population was foreign born.

The most common foreign languages spoken in the United States are, in order of frequency, Spanish, French, German, Italian, Chinese, Tagalog, Polish, Korean, Vietnamese, and Japanese (see Figure A. 1 in Appendix A). However, given that many individuals speaking a foreign language at home are also proficient in English, the most common native languages spoken by the LEP population differ from the distribution of all foreign languages spoken in the United States. Although there are many different native languages spoken, Spanish is by far the most common language spoken by LEP individuals, surpassing the total of all others combined. Accordingly, agencies should strongly consider making services for Spanish-speaking LEP individuals a substantial focus of their LEP plans.

The LEP population consists primarily of adults, since those who are born or come to the United States as children typically become fluent in English. Adult immigrants to the United States who are deficient in English skills confront economic hardships. Limited English proficiency can be a significant barrier to employment, restricting employment to low-skill, low-wage jobs where English proficiency is not required.

## **2. Case Studies**

Our analysis focuses on the benefits and costs of providing language-assistance services to LEP persons as contemplated by Executive Order 13166. Benefit-cost analysis typically requires comparison of what occurred or is expected to occur given a policy change with the counterfactual – that is, what would have occurred in the absence of the change.<sup>4</sup> Because of a lack of baseline information, we are at present unable to evaluate the incremental benefits or costs of implementation of the Executive Order. Instead, our assessment of benefits and costs will focus on specific types and degrees of language-assistance services for the LEP population.

### **Potential Benefits of Executive Order 13166**

While it is not possible to estimate, in quantitative terms, the value of language-assistance services for either LEP individuals or society, we are able to discuss the benefits of the Executive Order qualitatively.

We identified two general categories of benefits that eligible LEP individuals experience when they receive meaningful access to Federally-conducted programs or activities or to the programs or activities of recipients of Federal financial assistance. First, LEP individuals may experience the intangible but very important benefit connected with the fulfillment of a legal right. Second, LEP individuals may benefit from an increase in access to Federally-conducted programs or activities or to the programs or activities of recipients of Federal financial assistance.

Government and American society likewise may benefit from Executive Order 13166. Increasing access to government programs may lead to cheaper, more targeted early intervention, avoiding long-term and more costly services to government and society. For example, the use of primary healthcare services aimed at prevention or early detection and treatment of disease could reduce the cost of late-stage disease treatment or emergency visits. Additionally, education or training programs could potentially lead to decreased costs for social service benefits such as Temporary Assistance for Needy Families (TANF), Food Stamps, and Medicaid.

Other efficiency gains may also result from the Executive Order. Providing language-assistance services to LEP individuals could decrease the amount of time that an LEP individual must interact with the benefit agency.<sup>5</sup> If forms are translated or bilingual staff is available to assist the individual, LEP interactions could take less time than requiring the LEP person to make multiple trips to the provider's office for services. This could benefit both the individual and the agency. More standardized provision of language services, moreover, may likewise lead to efficiency gains for the organizations providing them. "Patchwork" policies that have existed in the past, such as heavy reliance on telephonic interpreter services, could be reduced once formal policies are put in place. Finally, increased access to LEP services may reduce the harms associated with language constraints and improve the efficiency of the flow of goods and services from Federally-conducted and Federally assisted programs and activities to the intended recipients.

### **Illustrations of Benefits in Selected Sectors**

The benefits discussed above are clearly very difficult to quantify in units comparable to the costs of the Executive Order. Instead, we provide illustrations of the potential benefits of the Executive Order for each of the four sectors examined in this report.

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<sup>4</sup> "Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements." Office of Management and Budget, March 2000.

<sup>5</sup> "State Government Survey of State Departments, Agencies, and Programs: Persons with Limited English Proficiency." Preliminary report, December 21, 2001. The State of Maryland just completed this study of the state's ability to provide equal access to public services to LEP persons. The study found that of the state's departments, agencies, and programs encountering LEP clients, 28% reported delays in the provision of services due to language barriers, while 72% reported no delays.

### **Case Study I: Transportation**

By requiring Federally funded DMVs to provide language assistance services, Executive Order 13166 might provide the following benefits:

- Access: LEP individuals could have greater access to DMV services, enhancing their ability to obtain a valid driver's license or other documentation.
- Efficiency: LEP services could improve the efficiency of interactions with DMVs and LEP persons.

For example, a greater number of forms translated increased the chances that an LEP individual entering a DMV office would be able to read, understand, and complete a required form in a shorter amount of time. The use of bilingual staff in DMV offices could reduce the time per interaction because the bilingual staff can answer questions immediately without having to schedule a future meeting or call to request telephonic interpreter services. This time savings might also benefit the DMV, reducing cost to the DMV offices. However, these savings could be offset to some extent by the increased cost of providing more translation services (e.g. bilingual premiums for staff, paying for written translations, and use of paid interpreters.)

### **Case Study II: Food Stamps**

By requiring Federal agencies to take reasonable steps to provide language assistance in the context of the Food Stamps program, Executive Order 13166 might foster the following benefits:

- Access: Anecdotal evidence points to increased utilization of social services, such as Food Stamps, by LEP individuals when bilingual services are made available. Without language assistance services, LEP individuals might be discouraged from completing the application process since they may be unable to communicate with the food stamp office. Increased access to the food stamp program could enhance the diets of the entire LEP household, resulting in both immediate and long-term health benefits.
- Efficiency: An interview between an LEP food stamp applicant and the food stamp worker may take longer to complete and lead to errors in eligibility determination and payment levels if there are communication problems. While an eligibility interview for an LEP individual utilizing an interpreter could take longer than the same interview for a non-LEP individual, time would also be saved as a result of a decreased need to reschedule appointments and other activities around the LEP individual's ability to supply a translator. Based on anecdotal evidence obtained from the States of Texas and California, the use of a translator could double the amount of time taken for an eligibility interview with an LEP individual as compared to the same interview with a non-LEP individual, due to the need to restate both questions and answers. In contrast, the use of bilingual staff persons would minimize this time delay.

### **Case Study III: Immigration**

By requiring INS to take reasonable steps to provide meaningful access to immigration programs and activities, Executive Order 13166 may provide the following benefits:

- Access: Given the complexities of immigration law and regulation, clarity in the application procedures for benefits might allow individuals to access these services better and better understand the requirements for obtaining immigration benefits. This increased access to information could better enable LEP individuals to comply with immigration law and other requirements.

- Efficiency: A greater understanding of the immigration system, requirements, and rules may mitigate the number and/or frequency of immigration violations. Individuals often are not aware of the necessary procedures that must be followed to maintain a certain status, and consequently fall out of legal status due to a missed application filing or appearance at an INS service center. Reducing immigration violations would benefit the agency by reducing the cost of immigration proceedings. In addition, it would allow for otherwise eligible non-immigrants and immigrants to lawfully remain in the United States.

#### **Case Study IV: Healthcare**

The benefits of providing language services in the healthcare sector include increased access of LEP individuals to quality healthcare and better communication with healthcare professionals. Among Hispanics, those whose primary language is English find it easier to understand materials from the doctor's office than those who speak primarily Spanish, with 51 percent of English-speakers able to understand versus only 37 percent of Spanish-speakers.

Almost all individuals, LEP and non-LEP, need to access the healthcare system at multiple points in their lives. Making these interactions more effective and more accessible for LEP persons may result in a multitude of benefits, including: increased patient satisfaction; decreased medical costs; improved health; sufficient patient confidentiality in medical procedures; and true "informed consent" and understanding of other legal issues.

Possible decreases in number and severity of misdiagnoses or other medical errors: Individuals who have been the victims of medical errors may experience pain and suffering, and even death. Medical errors can be costly for the providers and insurance companies, and they can impart a large human cost as well. Some have estimated that 44,000, and possibly up to 98,000 hospital deaths per year are attributable to medical errors.<sup>6</sup> Medical errors can be extremely costly (estimated to be between \$17 billion and \$29 billion annually).<sup>7</sup> It is not known if these adverse events are experienced in any large number by LEP individuals or whether LEP status has contributed to this problem to any significant degree. One small study found that patients who did not speak English as their primary language were more likely to report drug complications and other medical complications.<sup>8</sup> Agencies should consider whether provision of language services to LEP individuals could help reduce medical errors by increasing the quality of information a provider obtains regarding their patient's condition. It may also be possible that language services to LEP individuals could decrease non-compliance with medical instructions, which can lead to severe consequences such as drug-resistant infections and unchecked progression of diseases.

Increased patient satisfaction: LEP patient satisfaction with healthcare has generated a significant amount of literature.<sup>6</sup> Language barriers appear to have a negative impact on patient satisfaction. For example, in a recent study, 33 percent of Hispanics cited communication problems with their doctor (versus 16 percent of non-Hispanic Whites). Similarly, data suggest that Hispanic and Asian American patients are less likely to find doctors' information very easy to understand.<sup>9</sup> Despite apparent communication difficulties, less than one-half of non-English speakers who said that they needed an interpreter said that they were always or usually provided with one.<sup>10</sup> Quality interpretation might decrease this satisfaction gap between LEP individuals and non-LEP individuals.

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<sup>6</sup> "To Err is Human: Building a Safer Health System." National Academy of Sciences Report. National Academy Press: Washington, DC; 1999.

<sup>7</sup> "To Err is Human: Building a Safer Health System." National Academy of Sciences Report. National Academy Press: Washington, DC; 1999.

<sup>8</sup> Ghandi T.K., et al. "Drug Complications in Outpatients." *Journal of General Internal Medicine* 2000; 15: 149- 154.

<sup>9</sup> Collins, Karen S., et al. "Diverse Communities, Common Concerns: Assessing Health Care Quality for Minority Americans." The Commonwealth Fund., March 2002.

<sup>10</sup> Collins, Karen S., et al. "Diverse Communities, Common Concerns: Assessing Health Care Quality for Minority Americans." The Commonwealth Fund., March 2002.

Decreased medical costs (as unnecessary emergency room usage decreases with an increase in outpatient visits): At least one researcher has concluded that, when use of a trained interpreter is available, primary and preventive care increases, and ER use decreases significantly<sup>11</sup>. When an ER visit does occur, the presence of a language barrier could increase the range and cost of diagnostic tests that are necessary and might increase the time that a patient remains in the ER.<sup>12</sup><sup>10</sup>Certain research has suggested that interpreters decreased this cost-differential but did not have an effect on the longer length of stay.<sup>13</sup> The presence of a language barrier may also result in an increased probability of admission into the hospital, but that increased probability is significantly reduced (but does not disappear) with the presence of an interpreter.<sup>14</sup> Finally, emergency room patients who received interpretation services when necessary may be more likely to keep follow-up appointments and less likely to return to the emergency room within 30 days of the first visit.<sup>15</sup>

True “informed consent” and understanding of other legal issues: Medical consent documents can be difficult to understand, even for native speakers. If medical procedures and associated documents, such as power of attorney forms, are successfully explained to LEP patients or their family members, legal and other problems might be avoided.

### **Potential Costs of Implementing Executive Order 13166**

The provision of language assistance services to LEP individuals requires Federal agencies and Federal-funds recipients to incur additional costs. Because sufficient information was not available on the cost of providing language-assistance services before and after issuance of the Executive Order, we were unable to evaluate the actual costs of implementing the Executive Order. Instead, this report uses assumptions about different types of language-assistance services that could be provided to the LEP population to assess costs. As the following case studies describe, additional costs could result from expenditures on translated documents, bilingual staff and associated premiums, contracts for oral interpreter services, agreements for telephonic interpreter services, a variety of capital investments, central planning and data collection, and additional staff time needed to serve LEP persons. In addition to these specific case studies, national cost estimates are also presented using aggregate United States data.

### **Case Study I: Transportation**

#### **Introduction**

The Department of Motor Vehicles (DMV) State offices are utilized by most adults in the United States. DMVs provide a wide array of important functions, including driver licensing and vehicle registration. In fact, about 191 million drivers were licensed and 218 million vehicles were registered in 2000.<sup>16</sup> Among numerous other services, DMVs also often record vehicle ownership, maintain driving records, provide emissions testing, and issue non-driver identification cards.

To accurately assess the costs of implementing Executive Order 13166 in the DMV sector, information about the level of services already provided to LEP individuals prior to implementation of Executive Order 13166 (*i.e.*, the “baseline”) and the level of services contemplated by Executive Order 13166 is needed. Because such information is unavailable, we must make assumptions for the purposes of estimating any benefit and cost figures.

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<sup>11</sup> Jacobs, Elizabeth J., et al. “Costs and Benefits of Interpreters.” Unpublished paper, Cook County Hospital/Rush Medical School, 2001.

<sup>12</sup> Hampers, L.C., et al. “Language Barriers and Resource Utilization in a Pediatric Emergency Department.” *Pediatrics*, June 1999; 103 (6 Pt 1): 1253-6.

<sup>13</sup> Hampers, Lou. AAP Meeting 2000.

<sup>14</sup> Lee, E.D., et al. “Does a Physician-Patient Language Difference Increase the Probability of Hospital Admission?” *Academic Emergency Medicine*, March 1998; 5 (3): 277.

<sup>15</sup> Bernstein, J., et al. “The Use of Trained Medical Interpreters Affects Emergency Department Services, Reduces Charges, and Improves Follow-Up.” Unpublished paper, Department of Maternal-Child Health, Boston University School of Public Health, 2000.

<sup>16</sup> *Highway Statistics 2000*, United States Federal Highway Administration.

State DMVs appear to provide varying levels of language services, depending on the funding resources available and the diversity of their respective population. Largely because of the Dymally-Alatorre Bilingual Services Act and the diversity of the State population, California, in particular, has taken numerous steps to ensure that its services are accessible to LEP individuals. California has also calculated the annual expenditures for the provision of language services.

### **Dymally-Alatorre Bilingual Services Act**

The Dymally-Alatorre Bilingual Services Act,<sup>17</sup> enacted in 1973, requires State and local agencies in California to ensure that they provide information and services in the various languages of their constituents. In particular, when State and local agencies serve a “substantial number of non-English speaking people,” they must: (i) employ a “sufficient number of qualified bilingual staff in public contact positions,” and (ii) translate documents explaining available services into the languages of their constituents.

For State agencies, the Act defines several of the above terms and phrases. A “substantial number of non-English speaking people” consists of 5 percent or more of the people served by any local office or facility of a State agency. “Qualified bilingual staff” are employees who have passed written or oral examinations that certify their ability to speak, write, and understand another language. “Public contact positions” are those in which employees meet, contact, and deal with the public while performing the agency’s function. To determine whether a State agency serves a “substantial number of non-English speaking people,” each local office must conduct a biennial survey to determine the language assistance needed. The Act also requires the State Personnel Board to provide technical assistance to State agencies and oversee the statewide language survey.

### **California Department of Motor Vehicles**

The California DMV complies with the Act by recruiting and hiring qualified bilingual persons to ensure a satisfactory level of service for California’s diverse non-English speaking population. Bilingual needs are identified by biennial statewide language surveys and ongoing needs assessments. Each of the approximately 310 field offices throughout the State conducts a language survey for a two-week period. During the survey period, each public contact employee records each public contact as well as the constituent’s language. If the percentage of contacts in a non-English language exceeds five percent, the field office is mandated to provide some bilingual services and printed materials in that respective language. DMV unit managers are responsible for alerting department administration when they perceive that a language need is not being met.<sup>18</sup> From the most recent language survey, the California DMV estimates 273,684,211 public contacts per year. Of that total, about 52 million (19 percent) are estimated to be non-English customer contacts.<sup>19</sup>

The DMV attempts to address customers’ language needs uniformly, regardless of office size. For larger offices, language needs are met by employing the mandated number of bilingual staff, along with the provision of other language services such as interpreters and translated material as needed. For offices with 25 or fewer equivalent full-time employees, language needs are met by one or more of the following methods: hiring bilingual staff, using contracted telephone interpretation services, using bilingual staff in other locations for interpretation services, and providing written translated material.

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<sup>17</sup> California Government Code § 7290 et seq.

<sup>18</sup> California State Auditor, “Dymally-Alatorre Bilingual Services Act: State and Local Governments could do more to address their clients’ needs for bilingual services,” November 1999. The California State Auditor notes that this informal approach may be inadequate because some field managers may not actually request the translated materials.

<sup>19</sup> Phone conversation with California DMV, Human Resources Division. December 10 & 11, 2001.

## Transportation Costs at a National Level

The total annual cost for the California DMV to provide language services is about \$2.2 million. (This number was derived from the California DMV's response to Dymally-Alatorre compliance questions for an Assembly Budget Hearing and an estimate of language survey costs.) Although we do not conclude or assume that this same level of service would be appropriate in every State under the Executive Order, we think it is helpful to understand the costs of California's plans. If the entire nation employed the California system, we might estimate the national costs as follows. Using data from the Census Bureau, we calculated that there may now be 4,311,169 individuals in California who would indicate that they speak English less than "well."<sup>20</sup> Extrapolating that information to the national level, it appears that this California population represents about 26 percent of all individuals who report speaking English less than "well" nationwide (16,520,770).<sup>21</sup> If one assumes that the California DMV costs of \$2.2 million per year represent about 26 percent of total costs, costs for all states to provide the same level of DMV language services as California would be about \$8.5 million per year. The above estimates assume a constant cost to provide language-assistance services to each LEP individual. In reality, the cost of providing language-assistance services to each LEP individual would vary by State for a number of reasons, most notably due to the demographic differences among states and the variety of services that might be appropriate for differing concentrations of LEP populations.

This is only a rough estimate, of course, and may overstate actual costs. As discussed above, to estimate the costs of implementing Executive Order 13166, one must have data regarding the level of services already provided to LEP individuals prior to implementation of Executive Order 13166 and the level of services contemplated by Executive Order 13166. Our analysis assumes that no language services are being provided. If one assumes that a substantial level of language-assistance services are already being provided, then the cost in the DMV sector would be considerably lower.

## Case Study II: Food Stamps

### Background

According to the Food Stamp Act of 1977, the purpose of the Food Stamp Program is "to permit low-income households to obtain a more nutritious diet by increasing their purchasing power." The Food and Nutrition Service is the agency within the United States Department of Agriculture responsible for implementing the Food Stamp Program, which provided approximately 17.3 million people with food assistance in 2001. The Food Stamp Program provides benefits either electronically or through coupons via a network of retail stores across the nation. Federal, State and local governments share the costs of administering the program, typically with the Federal government paying 50 percent of program administrative costs and 100 percent of program benefits.<sup>22</sup> Because food stamps are widely available to most people who meet the income and resource standards set by Congress, the Food Stamp Program serves a broad spectrum of the low-income population. In fiscal year 2000, the average food stamp household contained 2.3 persons, had a gross monthly income of \$620, and received approximately \$158 in monthly food stamp benefits.<sup>23</sup>

Since the passage of the Food Stamp Act in 1977, the Food Stamp program has required its services to be accessible to non-English speakers. The regulatory requirement is intended to ensure that individuals who do not speak or write English are not prevented from accessing needed food services because of language barriers. The regulation states, "[w]here a significant proportion of the population of the area served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the State agency shall take action to ensure that Program information... is provided to such persons in the appropriate language orally and in writing."<sup>24</sup>

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<sup>20</sup> This number represents the estimated number of persons in California who report speaking English less than well who are California LEP persons 18 years and older in 2000.

<sup>21</sup> To arrive at this number, the number of LEP persons 18 years and older who reported speaking English less than well in 1990 was multiplied by California's 18.9 percent growth rate over the past decade to arrive at 4,311,169 LEP persons.

<sup>22</sup> 7 CFR. 273.10. Characteristics of Food Stamp Households: Fiscal Year 2000. *Mathematica* Policy Research, Inc.

<sup>23</sup> Characteristics of Food Stamp Households: Fiscal Year 2000. *Mathematica* Policy Research, Inc.

<sup>24</sup> 7 CFR. 273.10. <sup>20</sup> This number includes only individuals 18 years and over.



## Food Stamp Costs at a National Level

Each of the approximately 4,000 food stamp program offices nationwide is required to assess the language usage of the community it serves. If the percentage of contacts in a non-English language exceeds five percent, the local office is required to provide applications and other printed materials in that particular language, as well as oral translation. Because translation 20 7 CFR. 273.1 0.Characteristics of Food Stamp Households: Fiscal Year 2000. *Mathematica* Policy Research, Inc. services for LEP individuals have been mandated in the Food Stamp Program since its inception, Executive Order 13166 may have no additional impact on the benefits or costs of providing such language services.

This case study utilizes cost information obtained from State agencies and local food stamp offices in Texas and California. By using the data provided on expenditures as a benchmark, one can obtain an estimate of the costs of provision of services to LEP individuals in the Food Stamp Program. While the Food Stamp Program has not instituted a systematic means of evaluating the language needs of the communities it serves, evidence suggests that State agencies and local offices have typically provided significant levels of both oral and written translation services as a matter of customer service.

This cost estimate is based primarily on information provided by the California Department of Social Services and is comprised of: (1) written translation services (2) oral translation services (3) wage premiums paid to bilingual staff and (4) the opportunity cost of additional time spent in eligibility interviews with LEP individuals.

## Food Stamp Program Language Services and Expenditures: Written Translation

The Food Stamp Program provides many forms and brochures to inform its clients of program benefits and requirements, and to enable them to provide the food stamp office with the information necessary to make accurate eligibility and benefit decisions regarding their case. While it is uncertain exactly how many forms and brochures have been translated and into how many different languages, we make assumptions based upon anecdotal information. For example, from July 1999 through June 2000, California's Department of Social Services has translated over 3,000 pages of written materials into 24 different languages.<sup>25</sup> Because in California the food stamp program is operated at the county, rather than State level, this does not represent the total number of documents translated, since some counties may translate additional forms. Several State commenters noted that they believed their States to be in compliance with Title VI of the Civil Rights Act of 1964, but are not certain about the scope of obligations under the Executive Order. Despite having some materials available in some foreign languages, certain State commenters suggested that Executive Order 13166 and the accompanying DOJ guidelines might require a more systematic approach to the provision of LEP services.<sup>26</sup>

California pays approximately \$73,000 per year to provide written translations for the food stamp program. Extrapolating this figure to the national level yields \$1.86 million for written translation.<sup>27</sup> To the extent that California counties also provide written translation services in addition to these, written translation costs will be higher.

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<sup>25</sup> Based on data provided by the State of California.

<sup>26</sup> Information provided by the State of Texas Department of Human Services.

<sup>27</sup> This assumes that the cost of written translation is heavily driven by the number of languages for which translation is necessary and that, on average other states will have to translate documents into half as many languages as California at half the cost. Therefore, the cost estimate is  $(\$36,500 \times 49 \text{ other states}) + \$73,000 = \$1.86 \text{ million for all states.}$

When calculating oral translation services, we take into account component costs, such as the wage differential typically paid to bilingual employees and the opportunity cost of the additional time spent with LEP clients that results from the need to translate conversations regarding eligibility, benefits, and other program requirements. Assumptions regarding the mix of oral translation services provided by each local food stamp office are necessary. We assume that 80 percent of eligibility interviews with LEP individuals will be conducted by bilingual case workers and that the other 20 percent of interviews will be conducted via language line interpreters.<sup>28</sup> Reports from both Texas and California indicate that \$100 per month is a reasonable estimate of premiums paid to bilingual staff.<sup>29</sup> Since there is no national data on the number of bilingual public-contact staff in the Food Stamp Program, information on bilingual staff supplied by Orange County, California will be used to extrapolate to a national estimate.<sup>30</sup> The wage premium is multiplied by the number of staff who receives such payments in Orange County, California.<sup>31</sup> Therefore, the total cost of bilingual workers for the county is approximately \$428,000. Given that Orange County contains approximately 5.8 percent of California's LEP food stamp recipients, extrapolating to the entire State yields a total of \$7.4 million. Extrapolating nationally yields a total of \$21 million for bilingual premiums.<sup>32</sup>

Evidence from California and Texas suggests that additional time is needed to conduct eligibility interviews with LEP individuals. This is the opportunity cost of the eligibility worker's time. When interpreters/translators are used, it could take twice as long to conduct interviews, due to the need to explain everything to the translator, who then relays the information to the LEP individual.<sup>32</sup> Furthermore, a one-hour interview often takes an additional fifteen minutes or more, even when using a bilingual worker, because of the need to explain the meaning of technical terms and concepts that can be complex and difficult to translate. In order to ascertain the opportunity cost of this additional time, we must determine the time differential between the time required to interview the average person versus the time required to work with the LEP individual. We estimate that it takes an additional 0.8 hours per LEP individual per year.<sup>34</sup> If we use Census data and assume that 4.1 percent of the population speaks English less than "well"<sup>35</sup> and that approximately 7.5 million households participate in the Food Stamp Program, we would estimate that there are 307,500 Food Stamp heads of households that are LEP.<sup>36</sup> Households were used rather than individuals because it is logical to assume that there will typically be one individual that interacts with the Food Stamp office on behalf of the family, which often consists of young children.

<sup>28</sup> This assumption is based on the proportion of costs for language line and bilingual premium for Orange County, California and the further assumption that as the Executive Order is implemented, food stamp offices will find it more cost effective to utilize bilingual workers.

<sup>29</sup> The State of Texas reported that they pay a five percent bilingual premium on an average monthly salary of \$2,017. The State of California reported that they pay \$100 over base salary for all certified bilingual workers.

<sup>30</sup> In Orange County, California, bilingual premiums vary by type of public contact staff, and typically range from \$0.40 to \$1.15 per hour over salary. Based on information that was provided by the Orange County Food Stamp Office.

<sup>31</sup> Using the actual wage premium amounts for each class of public contact staff, one would obtain \$428,016 for the County. Based on information provided by the Orange County Food Stamp Office.

<sup>32</sup> Since California contains 26% of the LEP population that are over age 18 according to Census data (as 2000 Census data is not available, we applied a growth factor to 1990's numbers), a national estimate can be obtained by assuming that California's costs represent 26% of total costs nationally.

<sup>33</sup> Based on information provided by local Texas Food Stamp office

<sup>34</sup> Assumes two interviews per LEP food stamp recipient household per year. Each interview averages one hour for non-LEP applicants.

<sup>35</sup> One of the questions on the decennial Census asks for the respondent's ability to speak English, allowing four responses: very well, well, not well, and not at all. According to the Census survey data, approximately 4.1% of the population, or about 10.4 million people, speak English less than "well," and approximately 7.65 percent of the United States population, or about 20 million people, report speaking English less than "very well."

<sup>36</sup> Based on FY 2000 administrative data from the Food and Nutrition Service. Also, households were used rather than individuals because it is logical to assume that there will typically be one individual that interacts with the food stamp office on behalf of the family.

In addition to what would be spent each year on language services, equipment and automation expenditures may also be necessary to accommodate the additional tasks envisioned to implement Executive Order 13166. For example, Texas estimates that it will cost approximately \$1.2 million to upgrade its automation system to accommodate the tracking of language-related information. Once upgraded, the system would be able to inform systematic assessments of the language needs of the agency's clientele and the services provided to them.

Further, additional telecommunications equipment, such as three-way speakerphones, may be needed to accommodate oral translation services. This is important because Texas and other States rely heavily on telephonic interpreter services for translation. These may cost from \$200 to \$400 per phone. Because these costs are ad hoc in nature and may vary widely, they have not been factored into the national food stamp estimate. Below is a summary of the costs determined thus far.

**Figure 2.1: Food Stamp/TANF Language Assistance Services and Costs**

Service	Explanation of Cost	Cost/Year
Written Materials	Average annual written translation costs: \$1.86 million <sup>37</sup>	\$1.86 million
Oral Translation Services (Additional Cost to Govt. of LEP Interaction)	Bilingual wage premium: \$21 million <sup>38</sup>	\$23.3 million
Translation Services (Additional Cost to Govt. of LEP Interaction)	Language line expenditures: \$2.3 million <sup>39</sup> Opportunity cost: \$2.6 million	
National Cost Estimate <sup>40</sup>	<ul style="list-style-type: none"> <li>• Cost of written materials: \$1.86 million</li> <li>• Cost of oral translation services: \$23.3 million</li> <li>• Total cost = \$1.86 million + \$23.3 million = \$25.2 million</li> </ul>	\$25.2 million  Opportunity costs = \$2.6 million

<sup>37</sup> This assumes that the cost of written translation is heavily driven by the number of languages for which translation is necessary and that, on average, other states will have to translate documents into half as many languages as California at half the cost. Therefore, the cost estimate is (\$36,500 x 49 other states) + \$73,000 = \$1.86 million for all states.

<sup>38</sup> Based on Orange County's cost for bilingual workers of \$428,016 extrapolated by Orange County's share of the LEP population in California (5.8%) = \$7.4 million for California and \$28.4 million nationally. County costs include 112 bilingual staff at an additional \$2,392 per year, 175 bilingual staff at an additional \$1,248 per year, and 151 bilingual staff at an additional \$828 per year.

<sup>39</sup> Based on California information obtained from California and Orange County. Uses Orange Co.'s cost of providing language line services for LEP individuals in the food stamp and CalWorks programs (\$49,000) to serve approximately 5.8% of California's LEP individuals. When this number is extrapolated, we obtain an estimate of \$844,827 for the State (\$49,000/5.8%) and \$3.2 million for the nation (\$844,827/26%). 26% represents California's percentage of the LEP population over age 18 for 2000.

<sup>40</sup> In addition to the annual cost of providing language services, some States and localities will incur additional costs to upgrade their computer systems and purchase additional equipment. For example, Texas commented that they plan to spend approximately \$1,240,000 to upgrade their computer system to be able to identify LEP clients and the languages they speak. Also, California commented that additional speakerphones were needed in some offices at a cost of \$190 each in order to accommodate interpreter line services. In addition to the annual cost of providing language services, some States and localities will incur additional costs to upgrade their computer systems and purchase additional equipment. For example, Texas commented that they plan to spend approximately \$1,240,000 to upgrade their computer system to be able to identify LEP clients and the languages they speak. Also, California commented that additional speakerphones were needed in some offices at a cost of \$190 each in order to accommodate interpreter line services.

To estimate the costs of providing language assistance in the Food Stamp program, one would have to make assumptions about the following:

- Baseline level (level of services already provided to non-English speakers prior to implementation of Executive Order 13166); and
- Level of services contemplated by Executive Order 13166.

Assuming that no local Food Stamp offices have yet made any effort to make their services accessible to LEP individuals, costs could total approximately \$25.2 million. This cost estimate, however, does not reflect the level of language-assistance services that are already being provided, nor does it quantify the efficiencies associated with the widespread practice of interviewing applicants for Food Stamps to determine their eligibility for multiple assistance programs (e.g., TANF and Medicaid) at the same time. To the extent that the Food Stamp households included in the numbers presented in this analysis also applied and were interviewed for other program eligibility determinations, this would represent a significant cost efficiency. These factors could reduce the overall estimate considerably.

Enforcement of the Food Stamp regulatory requirement that local offices provide bilingual services when the local LEP population achieves five percent of the overall population may have been hampered by the lack of systematic means to determine the size and proportion of LEP individuals in a service area. Rather, State and local offices may make these decisions on an ad hoc basis, perhaps a result of lawsuits or complaints.

### **Case Study III: Immigration**

#### **Historical INS Accommodations Provided to LEP Individuals**

In 1999, INS conducted over 2 million interviews and inspected over 520 million people. Although INS does not have data on how many of these individuals were considered LEP, INS estimates that a majority of these individuals came from either English or Spanish-speaking countries.

The costs of providing language assistance in all INS services for individuals, regardless of English language ability, could be substantial. INS provides a spectrum of services to individuals in the United States, ranging from asylum proceedings to interviews for naturalization to processing of petitions at local service centers. A significant number of the agency's clients, who may speak one of over 50 different languages, are likely to be LEP individuals.

Currently, INS utilizes a translation service to provide both telephonic and on-site translation for its customers. Total telephonic translation, including translations taking place in airports and during asylum proceedings, were \$1.4 million dollars in 2001. In addition, INS provides a customer help line to provide immigration and other related information. INS receives between 600,000 and one million phone calls per month at its National Customer Service Center. Customers can ask for assistance in either English or Spanish. About 25 percent of callers opt for assistance in Spanish.<sup>41</sup> In October and November 2001, 8.54 percent of callers indicated that they called for someone other than themselves (e.g., a family member or client) and, of this group, 15.25 percent indicated they called for that other person because he/she was not fluent in English or Spanish.<sup>42</sup> In total, therefore, 25 percent were Spanish speakers and 1.3 percent (15.25 percent of the 8.54 percent) were calls placed in English or Spanish for customers who spoke neither English nor Spanish.<sup>43</sup> Languages of greatest use, in addition to English and Spanish include Hindi, Chinese, Tagalog and Arabic, with each representing on average 2% of all calls. With an average daily volume of about 40,000 calls, this represents between 1,200 and 4,000 calls per day in each of these four languages.

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<sup>41</sup> This number is the cost of translation services contracted out to the Language Services of America, an outside translation service who provides the largest percentage of contracted translation services to the INS.

<sup>42</sup> Memo from INS official Michael Aytes dated 12/27/01.

<sup>43</sup> Memo from INS official Michael Aytes dated 12/27/01.

As an example, consider one INS regional office. The New York District Office houses an interpreter pool of over 120 permanent, intermittent and as-needed translators. These government employees provide a 24-hour/day service at a cost of between \$14.22 and \$26.04 per hour. Contracted on-site interpretations supplement these efforts and are provided for “credible fear” and “reasonable fear”<sup>44</sup> interviews at a cost of approximately \$2 million annually. INS estimates the cost of providing interpreters at asylum interviews at \$3.5 million per year. This calculation is based on the current telephonic interpretation contract with Language Service of America, under which telephonic interpreter services cost \$1.79/minute. The average asylum interview is one hour in length; thus, the average cost of providing an interpreter to an asylum interview is \$107. If the number of interviews per year remains at 36,000, and approximately 90 percent of applicants require interpreters, then at the current contract prices, this cost would total \$3.5 million.<sup>45</sup>

INS could incur further costs if it translated all forms into the languages of the LEP individuals it serves. INS has estimated that given its 123 public-use forms, translation costs fluctuate between \$189.00 and \$214.00 per document.<sup>46</sup> INS currently has 11 forms translated into several different languages (see Figure 2.2); the decision to translate a document is made on a case-by-case basis.

Further, all immigration inspectors, detention officers, and deportation officers are taught Spanish as part of their officer training. Immigration inspectors and deportation officers, as well as special agents and border patrol officers must be fluent enough to pass a Spanish language test as a condition of employment.

#### Translated INS Public-Use Forms<sup>47</sup>

Figure 2.2:

Form No.	Title	Foreign Languages
AR-11	Alien's Change of Address Card	Spanish, Chinese, Korean
I-9	Employment Eligibility Verification	Spanish
I-90	Application to Replace Alien Registration	Spanish, Arabic, Chinese
I-94	Arrival/Departure Document	Arabic, Chinese, Creole, Danish, Dutch, French, Icelandic, Italian, Spanish
I-94W	Nonimmigrant Visa Waiver Arrival/Departure Document	Arabic, Chinese, Icelandic, Italian, Japanese, Spanish, Swedish
I-539	Application to Extend/Change Nonimmigrant Status	Spanish, Chinese, Korean, Vietnamese, Russian
I-539A	Supplement A to Form I-539 Filing Instructions for V Nonimmigrant Status	Spanish, Chinese, Korean, Vietnamese, Russian
I-695	Application for Replacement for Form I-688A Employment Authorization or Temporary Residence Card	Spanish, Chinese, Korean, Vietnamese, Russian
I-765	Application for Employment Authorization	Spanish, Chinese, Korean, Vietnamese, Russian
I-821	Application for Temporary Protected Status	Spanish
I-823	Application - Alternative Inspection Service	French, Spanish
I-855	ABC Change of Address Form	Spanish

<sup>44</sup> Memo from INS official Michael Aytes dated 12/27/01.

<sup>45</sup> Memo from Michael Cronin to Merrily Friedlander, Chief, Coordination and Review Section (DOJ) dated 11/2/00.

<sup>46</sup> Memo from Michael Cronin to Merrily Friedlander, Chief, Coordination and Review Section (DOJ) dated 11/2/00.

<sup>47</sup> Translated as of December 2001.

In addition to formal interactions with the public, INS conducts community outreach as a way to educate the public on immigration procedures and issues. INS has implemented a community relations program in districts and sectors throughout the country. Community Relations Officers (CROs), particularly in areas with high immigrant populations, serve as a consistent point of contact for community groups, and meet regularly with external entities to identify immigration or INS-related issues or problems. CROs also identify local community-based organizations that work with or represent potential INS customers, and disseminate information to grass-roots community groups. The program is in the process of producing simple English versions of INS materials and translating them into appropriate languages. The INS also houses a staff with both English and Spanish language ability in the press office. The bilingual staff ensures that the Spanish-speaking community is kept apprised of immigration issues, information, and announcements. There is minimal translation of information available online at INS's website.

Costs of serving LEP individuals affect four areas within INS: (1) Adjudications; (2) Asylum Proceedings; (3) Detention and Removal Proceedings; and (4) Inspections. Adjudications are determinations made regarding an individual's adjustment of status or naturalization. Asylum proceedings include asylum interviews to determine whether there is a credible fear or reasonable threat to an individual's welfare to warrant asylum in the United States. Detention and removal proceedings occur to determine whether an individual is unlawfully in the United States and should be removed from the country. Inspections occur at points of entry into the country, which include national borders and airports.

### **The Houston INS Field Office Example<sup>48</sup>**

Data on costs associated with these four areas within INS is not available. This report focuses on field office operations, which deal primarily with adjudications and asylum issues.

The population served by Houston represents approximately two percent of the total LEP population nationwide. In conjunction with services provided by INS headquarters, such as the translation of 18 forms into several languages, and a national customer service call center, with services in both English and Spanish, the Houston field office employs a 40 percent bilingual staff. Individuals with language ability other than English are proficient in Spanish, Chinese, Vietnamese, German, Urdu, Korean, and French. No additional compensation is given to individuals with bilingual abilities and the Houston office utilizes both on- and off-site translation contracted services, in the event that a bilingual staff member is unable to accommodate an LEP individual. These contracted services are not used frequently, because Houston has the capacity to deal with most of their LEP clients through their bilingual staff.

In addition, the Houston office has an agreement with the local media to provide immigration and naturalization information to the public. INS publishes a weekly Spanish column in the local newspaper, in addition to broadcasting a weekly radio show in Spanish on a local station and an informational television program on a Hindi-broadcast television network. There are no production costs to INS for the broadcasting or publication of these materials, as the local media feels that this is a service that its listening audience wants and needs. The Houston office employs an Executive Liaison to the public, who coordinates its public information efforts.

### **Immigration Costs on a National Level**

In the United States, there are five languages (in addition to English) in which greater than two percent of the general public is proficient. These languages are Spanish, Chinese, French, Korean, and Vietnamese. Assuming that these languages are the focus of most oral and written translations, at an average translation cost of \$200.00 per form per language, translation of all 123 forms into five additional languages would amount to \$147,600, assuming that no additional demand for forms would be incurred. This cost would therefore not be annual, but instead a one-time cost after which there would be minimal translation costs.

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<sup>48</sup> Data is based on estimates provided by Roger Piper, Acting District Director, and Mariela Melero, Executive Liaison Officer, 12/18/01.

<sup>49</sup> It is also possible that INS would have individuals whose sole responsibility was to provide interpretation services. For the purposes of calculating an estimate, we assumed that either employees would be bilingual or the \$1.79 per minute translation line would be used. The cost for hiring in-house interpreters would therefore fall between these two alternatives.

INS has provided cost estimates. For fiscal year 2001, INS conducted 61,958 asylum interviews. The asylum program office estimates that approximately 90% of applicants require interpreters, therefore calling for 55,762 instances where interpretation services would be used. The average asylum interview is one hour, with a cost per minute of translation of \$1.79. With an average cost for providing an interpreter calculated at \$107 per individual per hearing, the total cost each year for asylum proceedings is estimated at \$5,966,534. INS currently has bilingual staff in its field offices, detention and removal centers, and ports of entry. If 60% to 70% of cases could be accommodated by these bilingual employees, where no premiums are given for multilingual language skills, the costs of providing these services would be reduced to between \$1,789,960 and \$2,386,613.<sup>49</sup>

In the adjudications arena, approximately 2 million interviews were conducted in the 2001 fiscal year. The adjudications program office estimates that approximately 90% or 1.8 million applicants require interpreters. With an average interview time of one hour, and cost per minute of translation at \$1.79, the approximate cost is \$107 per interview. The total cost of providing translation services for adjudication proceedings, therefore, is estimated at \$192,600,000. If 60% to 70% of these translations could be provided by bilingual employees, then the cost of contracted translation services would range between \$57,780,000 and \$77,040,000.

Individuals most frequently interact with the Immigration and Naturalization Service for inspections purposes at ports of entry. In fiscal year 2001, there were 510.5 million persons who underwent primary inspections. An additional 8.8 million individuals were referred to secondary inspections for administrative reasons. We assume that 88,715 non-administrative inspections, with a duration of one and a half hours, could require interpretation services. At \$1.79 a minute for translation services, the cost of providing language assistance is estimated at \$14,194,400. If 60% to 70% of these translations could be provided by bilingual employees, then the cost of contracted translation services would range between \$4,258,320 and \$5,677,760.

In the detention and removals sector, in fiscal year 2000, there were 161,572 total removals. Voluntary departures for fiscal year 2001 have amounted to 1,249,798<sup>50</sup> with aliens processed for removal under safeguard reaching 1,246,207<sup>51</sup>. Total detentions in fiscal year 2001 have reached 32,865.<sup>52</sup> INS acknowledges that it is difficult to estimate the amount of time required to conduct interviews for each of the detention and removal actions. Sufficient time to process an interview for a removal may take up to two hours, whereas an interview for a non-docket controlled voluntary departure may only require half an hour. As a result, INS's estimate for interpreter services assumes one hour of interpreter services for each action in this sector. In addition, INS has based its calculations on the premise that half of all interviews require full interpreter services, assuming that a large proportion of individuals in these categories either can speak English proficiently or can be assisted by an available INS bilingual employee. At \$107 an hour,<sup>53</sup> the total cost of interpreter services is estimated at \$145,008,647.<sup>54</sup> If 60% to 70% of these translations could be provided by bilingual employees, then the cost of contracted translation services would range between \$43,502,594 and \$58,003,458.

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<sup>50</sup> This number includes voluntary departures under docket control (relief from deportation granted by a judge or a district director) and non-docket control.

<sup>51</sup> This represents the number of aliens who depart the United States after having been apprehended more than 72 hours after entry.

<sup>52</sup> This number represents a snapshot of aliens in detention at the end of fiscal year 2001. The figure includes individuals both in proceedings and those held both in INS and non-INS facilities.

<sup>53</sup> Based upon the translation cost of \$1.79 per minute, assuming a one hour interview.

<sup>54</sup>  $\$107 \times [181,572 + 1,249,798 + 1,246,207 + 32,865] \times 50\%$ .

**Figure 2.3: INS Costs -National Estimates**

<b>National Estimates provided by INS Headquarters</b>	Translation of Documents	\$147,600 translation cost for existing documents
	National Call Center	\$6,900,000 <sup>55</sup>
	Asylum Interviews Interpreter Services	\$1,789,960 - \$2,386,613
	Adjudications Interviews Interpreter Services	\$57,780,000 - \$77,040,000.
	Inspections Interviews Interpreter Services	\$4,258,320 - \$5,677,760
	Detention and Removal Interpreter Services	\$43,502,594 - \$58,003,458
<b>Total</b>		<b>\$114,230,874 - \$150,007,831 annually plus \$147,600 one time translation form costs</b>

It is important to note the limitations of this cost estimate. First, it assumes that there are only five languages in need of oral translation. Second, the use of interpreter services, both on-site and off-site, has not been incorporated into the cost figures. The cost of bilingual staff is not reflected in these cost estimates because no premium is offered for bilingual ability, though these individuals do provide translation services and may save INS a substantial amount in additional contracted translation services. Third, the alternative of hiring employees to serve solely as translators was not explored in this cost analysis. This alternative may significantly mitigate costs by reducing the need to use contracted translators. Compensation for in-house translations is far less than contracted individuals, with hourly rates of on average \$26, compared to a contracted cost of \$107 per hour. A fourth limitation of this analysis is the reality of individuals who bring friends and family to provide translation services for them. As a result, the cost estimates as presented may be an inflation of the true fiscal burden that could be incurred.

Currently, INS has data on the number of individuals processed through each of the main areas of focus; however, data documenting the number of LEP individuals processed as a proportion of the total population served is unavailable. At this time, INS is unable to estimate the number of LEP individuals it currently serves.

<sup>55</sup> The National Customer Service Center provides toll free assistance in both English and Spanish. It is estimated that this is accessed 1.5 million times by callers nationwide, costing \$23,000,000 annually. At the time of publication, INS did not have data on the number of calls made in English and in Spanish. If 60% of these calls are made in English, the cost of providing this customer service line in Spanish would be \$6,900,000.



## **Case Study IV: Healthcare**

### **Medical Care**

Almost all healthcare providers are required to provide appropriate services to LEP individuals. Hospitals currently are required to provide appropriate services to LEP individuals under the HHS Culturally and Linguistically Appropriate Services (CLAS) standards published in 2000,<sup>56</sup> the Title VI regulations, and the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards of care. Most outpatient hospital clinics, community health centers (CHCs), and private doctors' offices receive some funds from Medicare/Medicaid billing. Both the Title VI regulations and the CLAS standards on provision of LEP services would apply to these types of providers. Some Centers for Medicare and Medicaid Services (CMS) programs (such as State Children's Health Insurance Program [SCHIP], and Medicaid) may cover interpretation services.

### **Interpretation Services in the Healthcare Context**

Throughout the country, there have been different efforts by healthcare providers to provide quality interpretation services to LEP individuals.

- Some hospitals, managed care organizations (MCOs), and providers offer a salary premium to their bilingual medical staff. Others do not offer a salary increase, but they still attempt to recruit bilingual staff from the community.
- Some medical schools, hospitals, and MCOs offer language classes to physicians and other medical personnel to allow them a sufficient ability to converse with the LEP individuals with which they most often come into contact.<sup>57</sup> These classes focus on obtaining the language abilities necessary to converse in a medical setting, as opposed to attempting to make the provider fully fluent for all settings. Studies such as Hampers et al have found that physician language-training programs resulted in a decreased use of outside interpreters, better medical histories obtained from the patient, and increased overall patient satisfaction.
- Non-profit organizations in some metropolitan areas have started "language banks" that recruit, train, and schedule interpreters in a variety of languages for doctors, hospitals, and other providers that need their services. The administrative costs are borne by the language bank themselves, and services are provided for a nominal fee. Anecdotal evidence, provided in listening sessions with advocates for LEP individuals, suggests that the average charge for this service runs at about \$20 per hour. No studies have been performed to determine use or availability of these language banks or actual cost.
- Some hospitals, MCOs, and university groups have organized volunteer interpreter services. Mainly staffed by bilingual individuals from the community or university staff and students, many of these groups provide instruction on interpretation (including terminology that a bilingual individual would not necessarily know, principles of confidentiality, etc.).
- Some facilities use "remote simultaneous interpretation" instead of traditional interpretation services such as having an interpreter physically present in the room or using a language line where an interpreter is available through a phone service. With this method, both the provider and patient are wearing headsets, and interpretation occurs almost immediately as the other participant speaks.

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<sup>56</sup> HHS's CLAS standards were issued by the Office of Minority Health within the Office of Public Health and Science, within HHS' Office of the Secretary, and are based upon the requirements of Title VI of the Civil Rights Act of 1964, as well as other State and Federal laws. Some of the standards (that are based on Title VI) are mandatory for those receiving Federal funds, while others are suggested.

<sup>57</sup> (Binder, Nelson, 1988; Hampers).

## Costs of Providing Services

We estimate below the costs of interpretation for LEP individuals for ER visits, inpatient hospital visits, and outpatient physician visits. The overall estimate does not include costs to non-physician providers such as physical or occupational therapists, chiropractors, or mental health professionals except psychiatrists. It does not cover care that is not provided in an ER, hospital, or office visit (including phone call consultations). It also does not cover fixed-cost translations of forms and hospital signs.

It is important to note that we are estimating the costs of services that might be provided regardless of the ultimate payer. In many cases, the costs fall on the individual provider, clinic, or hospital, with little or no reimbursement from insurance providers or government programs. We assume that the costs will generally be the same regardless of who bears it. It should also be noted that we are not making any particular judgments about what a given agency's guidance should provide, although (as later discussed) we believe that consistency and uniformity in agency guidance may be critical to reducing costs.

It is difficult to estimate the breakdown of interpretation services that could be or are being used in an average hospital, clinic, or private office. However, we can make some assumptions based on anecdotal evidence from physicians, hospitals, and medical advocacy groups to use in calculating average costs for each healthcare sector. These assumptions differ based on the site of care. Some hospital emergency departments, inpatient units, and on-site clinics may have an infrastructure that allows staff interpretation in a majority of cases, either by medical staff or by a centralized interpretation office that employs professional medical interpreters. Many community health centers (CHCs) serve distinct low-income communities, and often employ staff from those communities. It may be possible that those CHCs serving areas that have a moderate or high level of LEP clients are providing staff interpreters in a high proportion of their LEP cases. However, doctors' offices may not have bilingual staff or staff interpreters unless they are serving a very high volume of LEP individuals from one language group. We assume that some individuals will request that a friend or family member serve as the interpreter instead of requesting a professional interpreter.

It is possible at hospitals, community healthcare centers, and private offices that translation services could be provided by medical staffs, professional interpreters, a language bank, volunteer interpreters, friends or family, or commercial "language line" services." Each of these interpretation services has a different cost associated with it. Providers will not incur additional costs based on the interactions of LEP individuals with trained medical staff that are (at least functionally) bilingual, except in those cases where the staff are paid a premium for their bilingual skills. This is because these staff would have been interacting with the individual based on their main duties regardless of whether or not the patient was LEP. Professional interpreters on staff will be paid an hourly wage (anecdotal evidence suggests that this wage is about \$20/hour) that would not be incurred in the normal course of business. In addition to their hourly wage rate, these staff interpreters will receive benefits, such as health insurance, which we estimate to be worth 30 percent of their salary, bringing the overall hourly cost of these translators to \$26. Language banks run by non-profit firms also have a cost of \$20 per hour, based on anecdotal evidence. The language line cost varies, depending on the monthly usage and the negotiated contract price (if the provider has entered into a contract with the provider). We have estimated that the average cost for this service could be \$132 per hour, but it could be less depending on the volume and duration of interpretation services needed.

Given these assumptions about the types of services that will be used to provide interpretation and the costs of those services, one may apply the assumptions to the data at hand for the various healthcare sectors that are examined. Again, we note that these estimates do not imply a particular LEP obligation in a particular setting. Instead, they simply summarize possible costs if the described assistance is provided.

## Emergency Room Visits

There were 103 million visits to the Emergency Room in 1999.<sup>58</sup> Assuming an LEP population of approximately 4.1 percent of the total population,<sup>59</sup> this would translate to approximately 4.2 million individuals served. Further assuming an average interaction time in the ER of 10 minutes (that is, the time spent actively interacting with hospital staff, which would need to be translated, as opposed to time spent in the waiting room) yields a rough estimate of 704,000 hours of interaction time with LEP individuals in the emergency room. Given the assumptions about the breakdown of interpretation services above, the following costs might be possible:

**Figure 2.4: Cost of LEP Services for ER Visits**

Visit	Explanation of Cost	Cost
ER Visits	<p>For 704,000 hours of LEP interactions in the ER:</p> <ul style="list-style-type: none"> <li>• 50% medical staff = No cost</li> <li>• 10% staff interpreters at \$26 per hr = \$1.8 million</li> <li>• 15% language bank at \$20 per hr = \$2.1 million</li> <li>• 5% language line at \$132 per hr = \$4.6 million</li> <li>• 10% volunteer interpreters = No cost to hospitals (see below)</li> <li>• 10% friends and family = No cost to hospitals (see below)</li> </ul>	\$8.6 million costs to hospital

Therefore, the overall costs of providing interpreter services for emergency room visits might be as much as \$8.6 million for hospitals. It is important to note that this estimate does not include the “opportunity” costs to volunteers, friends, or family members who might accompany and help LEP persons understand their health-care situation. We do not estimate these “opportunity” costs here, but suspect they could be sizable in the aggregate. They would, however, be offset to the extent that the volunteer, friend, or family member would have accompanied and helped the individual, regardless of the need for language assistance. Obviously, changes in any of the assumptions underlying these calculations would affect the estimated cost of providing interpreter services for LEP emergency room visits.

## Inpatient Visits

There were 32 million inpatient admissions in 2000, with an average stay of 4.9 days<sup>60</sup>. We assume an aggregate of one hour of daily interactions with medical staff that would necessitate an interpreter (including services such as rehabilitation, nutrition, and social work). This assumption of one hour of essential interactions would translate to 6.4 million hours of interpreted interactions with LEP individuals in the inpatient hospital units, assuming that the LEP population is 4.1 percent of the total population.<sup>61</sup>

Again, given the assumptions about the interpretation services provided in a hospital setting, the following estimations can be made:

<sup>58</sup> National Center for Health Statistics Ambulatory Health Care Data. 17 August 2001. National Center for Health Statistics. <http://www.cdc.gov/nchs/about/major/ahcd/ercharts/htm>.

<sup>59</sup> See footnote 33.

<sup>60</sup> National Center for Health Statistics Ambulatory Health Care Data. 17 August 2001. National Center for Health Statistics. <http://www.cdc.gov/nchs/about/major/ahcd/ahcd1/htm>.

<sup>61</sup> 32 million inpatient admissions times 4.9 days times 4.1% LEP = 6.4

**Figure 2.5: Cost of LEP Services for Inpatient Visits**

Visit	Explanation of Cost	Cost
Inpatient Hospital Visits	For 6.41 million hours of LEP interactions in the inpatient units: <ul style="list-style-type: none"> <li>• 50% medical staff = No cost</li> <li>• 10% staff interpreters at \$26 per hour = \$16.7 million</li> <li>• 15% language bank at \$20 per hour = \$19.2 million</li> <li>• 5% language line at \$132 per hour = \$42.3 million</li> <li>• 10% volunteer interpreters = No cost to hospitals</li> <li>• 10% friends and family = No cost to hospitals</li> </ul>	\$78.2million costs for hospital

Therefore, the costs of providing services for inpatient hospital visits could be \$78.2 million for hospitals. Again, this figure does not incorporate an estimate of opportunity costs for assistance provided by volunteer interpreters, friends or family members.

**Outpatient (Office-based) Visits**

There were 921.4 million visits to outpatient providers,<sup>62</sup> which translates into 37.8 million visits by LEP individuals. One may assume that the doctor/patient interaction needing interpretation averaged about ten minutes or less. The breakdown of interpretation services will differ based on the type of provider. Many minorities and low socioeconomic status individuals are served by community health centers. As previously mentioned, many of these are actually chartered to target a certain type of population. For example, we talked to providers at a Community Health Center in San Francisco whose primary patient base was Asian. They provided comprehensive services for multiple Asian languages, mostly using bilingual staff. We assume that approximately 20 percent of LEP individuals go to CHCs, 15 percent go to outpatient clinics affiliated with a hospital, and 65 percent go to private physicians.

Overall, there are 6.3 million hours of LEP interactions for outpatient visits.<sup>63</sup> Given the breakdowns above, Community Health Centers will have 1.3 million hours of LEP interactions annually, outpatient hospital clinics will have 0.95 million hours of interactions, and private providers will have 4.1 million hours of interactions.

Again, given the assumptions about the types of services that will be used for interpretation in each of these different healthcare settings and the breakdown of the settings for outpatient visits, the following calculations can be made:

<sup>62</sup> National Center for Health Statistics Ambulatory Health Care Data. 17 August 2001. National Center for Health Statistics. <http://www.cdc.gov/nchs/about/major/ahcd/outpatientcharts/htm>.

<sup>63</sup> 921.4 million visits times 4.1% LEP times 10 minutes divided by 60 = 6.3

**Figure 2.6: Cost of LEP Services for Outpatient Visits**

<b>Visit</b>	<b>Explanation of Cost</b>	<b>Cost</b>
Outpatient Visits to CHCs	For 1.3 million hours of LEP interactions: <ul style="list-style-type: none"> <li>• 65 percent medical staff = No cost</li> <li>• 5% staff interpreters at \$26 per hour = \$1.6 million</li> <li>• 5% language bank at \$20 per hour = \$1.3 million</li> <li>• 5% language line at \$132 per hour = \$8.6 million</li> <li>• 10% volunteer interpreters = No costs to CHCs</li> <li>• 10% friends and family = No cost to CHCs</li> </ul>	\$ 11.5 million cost to CHCs
Outpatient Visits to Hospitals	For 0.95 million hours of LEP interactions: <ul style="list-style-type: none"> <li>• 50% medical staff = No cost</li> <li>• 10% staff interpreters at \$26 per hour = \$2.4 million</li> <li>• 15% language bank at \$20 per hour = \$3.0 million</li> <li>• 5% language line at \$132 per hour = \$7.1 million</li> <li>• 10% volunteer interpreters = No cost to hospitals</li> <li>• 10% friends and family = No cost to hospitals</li> </ul>	\$12.4 million cost to hospitals
Outpatient visits to private providers	For 4.1 million hours of LEP interactions: <ul style="list-style-type: none"> <li>• 25% medical staff = No cost</li> <li>• 5% staff interpreters at \$26 per hour = \$5.3 million</li> <li>• 20% language bank at \$20 per hour = \$16.2 million</li> <li>• 25% language line at \$132 per hour = \$135.4 million</li> <li>• 15% volunteer interpreters = No cost to providers</li> <li>• 10% friends and family = No cost to providers</li> </ul>	\$156.9 million cost to providers

Therefore, the costs of providing services for outpatient physician visits could total as much as \$180.8 million for providers, and \$29.1 million in opportunity costs to those providing free services. Again, this figure does not incorporate an estimate of opportunity costs for assistance provided by volunteer interpreters, friends or family members.

**Possible Cumulative Costs of the Four Healthcare Sectors**

Given the calculations of the four healthcare sectors, the possible cost to providers of providing interpretation services to LEP individuals might reach as much as \$267.6 million. This cost does not include translation of forms into multiple languages, although such cost is likely to be small compared to the total costs estimated. We emphasize that this a very rough estimate and does not account for the fact that many healthcare facilities have already taken substantial steps to address LEP issues.

**Summary of Case Studies**

The four case studies above reflect four different economic sectors. Many assumptions were necessary to arrive at the cost estimates above. Added together, the costs of the efforts outlined for all four case studies sum to \$538 million, which could represent a significant portion of the total costs of providing language assistance to LEP persons.

### 3. Aggregate National Estimate

We now turn to a top-down approach for estimating the total costs. The Executive Order affects two major aggregate categories: the public sector, which includes Federal, State, and local government and Federal funding recipients, with the largest easily being the healthcare sector.<sup>64</sup> Using various assumptions, one may estimate the amount of government and healthcare services provided to LEP persons. Based on the sector analyses included in this report, we develop a range of estimates for the extra cost of serving LEP persons and apply this additional cost to an estimate of the cost of the proportion of government and healthcare services consumed by LEP persons. This approach yields estimates that are not limited to specific programs or communities.

#### Federal, State, and Local Government

General government represents about \$1.14 trillion of GDP. This number represents the compensation of general government employees (including Federal, State, and local) plus general government consumption of fixed capital.<sup>65</sup> Assuming that, based on Census survey data, about 4.1 percent of the population may qualify as LEP,<sup>66</sup> their “share” of government services (assuming they receive the same level of service as the average person) is roughly \$46.7 billion.

#### Additional Cost of Serving LEP Persons

Given the limited amount of data and information currently available, it is difficult to accurately assess the additional cost involved with providing adequate access to LEP persons (“the LEP premium”). We have used the information available from the transportation, health, welfare, and immigration sector estimates to generate a range of incremental cost percentages.<sup>65</sup> As a general approach, we attempted to estimate the total cost to administer a program or service per person and the corresponding cost for language services per LEP person. Figure 2.7 illustrates how we used this approach to calculate an LEP premium and demonstrates the steps taken for this calculation. Applying this general approach to the DMV, Healthcare, and Food Stamp sectors, we estimate the LEP premium might range from 0.5 to 15 percent (see Figure 2.8). It is important to note that in these calculations, that no language assistance services are provided to LEP individuals.

**Figure 2.7: LEP Premium Cost Calculation-DMV Example**

LEP Premium Cost Calculation: DMV Example	
<b>Step 1: Calculate Cost Per Public Contact</b>	
California DMV Budget:	\$688 million
Number of Public Contacts:	274 million
Cost Per Contact = \$688 million / 274 million = \$2.51	
<b>Step 2: Calculate Additional Cost Per LEP Contact</b>	
DMV Expenditure on Language Services:	\$2.2 million
Number of LEP Contacts:	52 million
Additional Cost Per LEP Contact = \$2.25 million / 52 million = \$0.042	
<b>Step 3: Calculate LEP Premium by Dividing Additional Cost Per LEP Contact by Cost Per Contact</b>	
<b>LEP Premium = \$0.042 / \$2.51 = 1.7 Percent</b>	

<sup>64</sup> While there are funding recipients in a wide variety of fields, the public comments and our own research indicated that the costs to the healthcare sectors will greatly exceed the cost of all other sectors combined.

<sup>65</sup> Economic Report of the President, February 2002.

<sup>66</sup> Note that the California DMV also provided information on bilingual pay premiums, which can be used as an estimate for LEP premiums. The California DMV pays certified bilingual employees a \$100 per month pay differential. Since the average salary of State and local employees is about \$61,000 per year, the \$100 premium represents a 1.8 percent premium.

**Figure 2.8: Summary of Sector LEP Service Premium: Additional Cost of Services Per LEP Recipient**

Sector Estimate	Percentage Cost Increase <sup>67</sup>
Department of Motor Vehicles	1.7
Food Stamp Program	15.0
Immigration and Naturalization Service	See below <sup>68</sup>
Healthcare	0.5

Motor Vehicle Administration: The cost for the California DMV to provide services to all constituents was about \$687,262,000 for the current year. The DMV spends about \$2.2 million per year on language services. Based on biennial language survey data, the California DMV estimates that there are 273,684,211 public contacts per year. Of these contacts, about 52 million (about 19 percent of total contacts) are public contacts with LEP persons. By dividing total costs by total public contacts, we estimate that it costs the DMV about \$2.51 per contact. It costs an additional 4.2 cents (\$2.2 million / 52 million) per LEP contact, which corresponds to a 1.7 percent premium (4.2 cents / \$2.51).

Healthcare: Again, we estimate that our economy spends about \$1.38 trillion per year on healthcare (13.5 percent of GDP \* GDP). Based on data from the National Hospital Ambulatory Medical Care Survey, NHDS, NAMCS, and the NAHMCS, there are approximately 1,611,400,000 ER visits, inpatient hospital visits, outpatient physician visits, and dental visits. Healthcare costs are approximately \$856 per visit (\$1.38 trillion / 1,611,400,000 visits).<sup>69</sup> Using the data from our healthcare sector discussion, we estimate that healthcare providers could spend up to \$267.6 million on language services for approximately 66.1 million ER visits, inpatient hospital visits, outpatient physician visits, and dental visits by LEP persons. This represents about \$4.04 per visit (\$267 million / 66.1 million visits). This is a 0.5% (\$4.04/\$865) premium. While this is an average, the percentage premium will likely be lower for longer, more expensive high intensity interactions and higher for low intensity, less expensive interactions.

Food Stamp Program: The USDA budgets about \$2 billion to administer the food stamp program and provide services for all recipients. Because States share equally in the costs of administration, actual administrative expenditures are approximately \$4.1 billion. With 7.5 million households receiving food stamps, it costs about \$547 per household (\$4.1 billion / 7.5 million households) to administer the food stamp program. Using our estimates, the Food Stamp program would spend up to an additional \$25.2 million on language services. Because there are approximately 307,500 LEP households, LEP households might cost about \$82 more (\$25.2 million / 307,500 million LEP households), representing about a 15.0 percent premium (\$82 / \$547).

<sup>67</sup> The reader might notice that the estimated LEP premium in the healthcare and motor vehicle sectors is lower than the food stamp program premium. This difference is likely attributable to how the premiums were calculated. The DMV and healthcare estimates compared the incremental costs of providing services to LEP persons to the entire budget or expenditure in the program or sector. The food stamp estimate compared the cost of LEP services to the administrative costs of the program, which is a smaller base compared to the entire budget or expenditure in the program or sector. (2) The difference in the nature and intensity of interactions with the public. In the DMV example, interactions are relatively short and uncomplicated. On the other hand, in the food stamp example, interactions are much longer and involve the exchange of complex financial and personal information. Rather than being representative of government interaction with the public, these two examples likely represent two extremes, within which most public interactions would fall.

<sup>68</sup> Although included in our case studies, INS has not been included in our calculation of a national estimate as it is less representative of government services because it serves such a disproportionate number of LEP individuals due to its large number of interactions with the immigrant community.

<sup>69</sup> This represents the average costs. The median costs are likely to be considerably lower.

## **A View of Costs on the National Level**

We have assumed above that the portion of Federal, State and local government services provided to LEP persons is about \$46.7 billion. As noted, the LEP “premiums” in our public sector case studies ranged from 0.5% in healthcare services to 1.7% in the DMV context, to 15% in the Food Stamp program. Recognizing that the healthcare services and DMV services are likely more representative of the government services typically received by the LEP population, we might assume that the actual cost “premium” per LEP persons across all government services is closer to the 1-2% estimate than to 15%. Although at this point we are unable to endorse as accurate any single summation of LEP-associated costs across all government or government-funded services, we suspect that the number may be less than \$2 billion, and perhaps less than \$1 billion.<sup>70</sup> We emphasize that this figure would correspond to the aggregate cost of providing language assistance to LEP persons. It does not necessarily represent the additional cost of implementing the Executive Order, which may be substantially less than these figures, since many steps have already been taken by Federal agencies and recipients of Federal funds to serve the LEP population. It is worth noting, moreover, that no estimate of this type can be entirely accurate without a full understanding of the effects of LEP obligations on recipients of Federal funds (including healthcare entities). As addressed below, clear and uniform guidance that permits recipients to understand LEP obligations could help reduce the costs of implementation.

### **4. Serving the LEP Population Efficiently**

As discussed, the actual cost of implementing the Executive Order will depend upon the level of services that were already in place at the time the order was issued. The actual costs, moreover, also might be significantly reduced by proper implementation of the Order. There are two primary ways in which the costs associated with implementing Executive Order 13166 could be mitigated by the Federal government: (1) creating uniformity among the Federally conducted programs and activities and the programs and activities of recipients of Federal financial assistance with regard to the provision of LEP services, while recognizing the need for flexibility to address local circumstances, and (2) facilitating availability of, and access to, telephonic interpretation services, along with stimulating increased and more efficient supply of these services.

Most Federally conducted programs and activities and the programs and activities of recipients of Federal financial assistance already provide language services to some extent on an ad hoc basis. Such policies, which often include heavy reliance on telephonic interpreter services, may benefit from a more uniform and standardized approach. Such standardized approaches may make greater use of lower-cost solutions.

Uniform approaches include consistent guidance from Federal agencies, consistency in identifying best practices, and consistency in enforcement. Such uniformity might provide predictability and reduce legal and bureaucratic costs. The 10 agency-specific guidance documents already published set forth a variety of standards that Federal-funds recipients should use in determining whether they have complied with Title VI’s regulatory requirements. The Department of Justice’s guidance document, for example, sets forth a four-factor analysis for determining what constitutes “reasonable steps to ensure meaningful access” for LEP persons. The Department of Health and Human Service’s guidance to HHS funds recipients, however, expands DOJ’s four factors to seven factors. Although most-if not all-of the seven factors resemble at least one of DOJ’s four factors, the mere provision by one department or agency of an LEP analysis that differs from an LEP analysis provided by another department or agency is likely to create some confusion, result in increased costs, and interfere with the receipt of language assistance services by LEP individuals. Such confusion is most likely to manifest with a recipient that receives Federal financial assistance from more than one department or agency and is, thus, required to adhere to the guidance documents issued by those departments and agencies. One uniform set of guidance documents, with some flexibility to permit tailoring to each agency’s specific recipients, may reduce implementation costs.

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<sup>70</sup> This includes the 1-2% “premium” for government services and the \$267 million cost for the health care sector which represents the vast majority of costs for Federal funding recipients.



Another way in which the Federal government might mitigate the costs associated with implementing Executive Order 13166 would be to take appropriate action to facilitate the availability of, and increased access to, telephonic interpretation and other interpretation and translation services. These services have clear economies of scale, especially for the less often encountered languages. The Executive Order, by stimulating increased demand for language services, may increase the size and efficiency of the language service industry, and agencies might consider steps to facilitate bulk discounted purchasing of such services by Federal programs and recipients of Federal funds. Agencies should endeavor to find creative ways, including through technology, to reduce the costs to funding recipients of obtaining necessary oral or written translation services.

## **CONCLUSION**

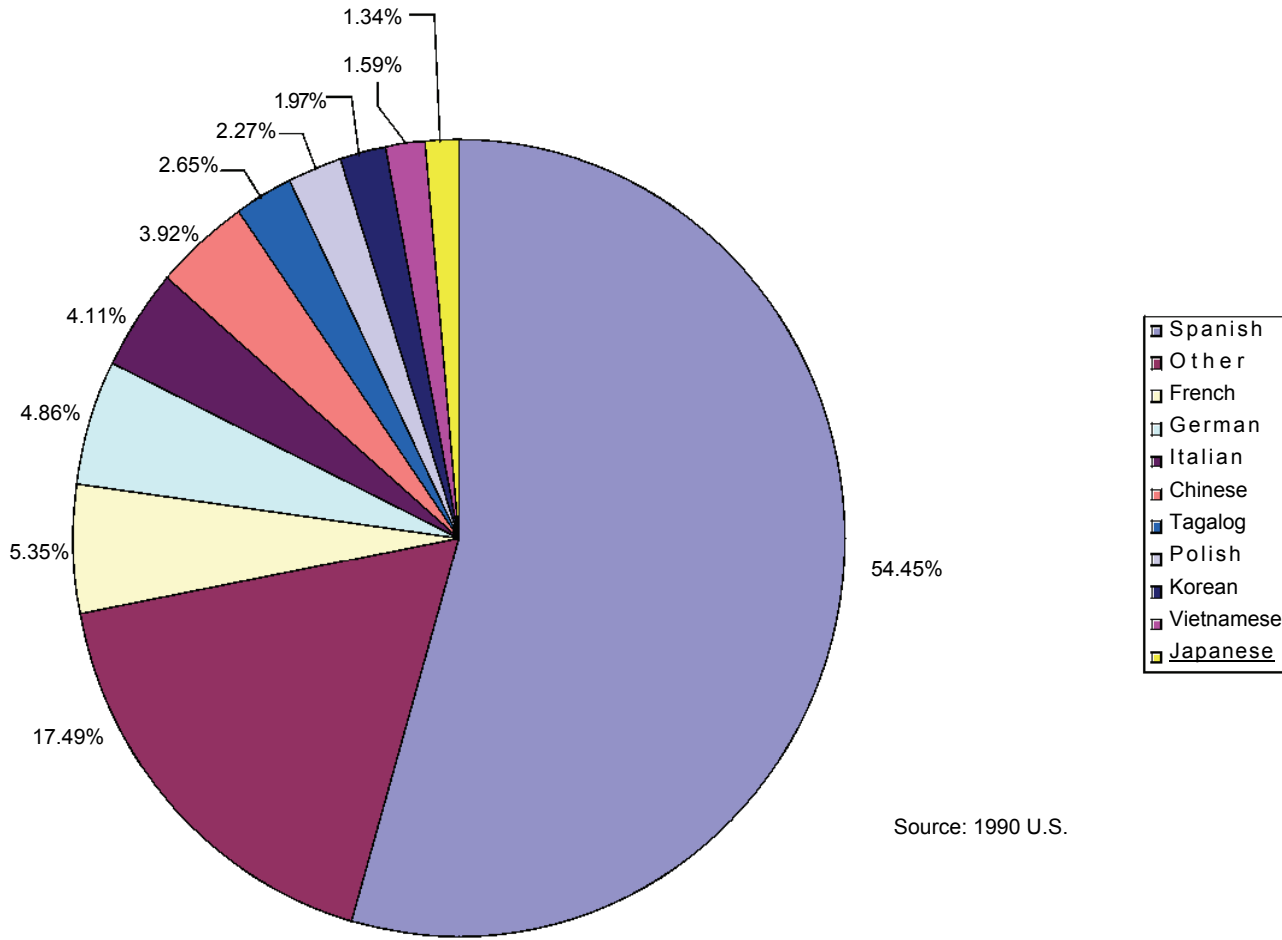
Federal agencies are currently in the process of implementing this Executive Order, and we were therefore unable to evaluate actual data relating to the benefits or costs of implementation. Instead, this report uses data and assumptions about different types of language-assistance services that could be provided to LEP individuals in a variety of contexts to assess the general benefits and costs of language assistance services.

The benefits of language-assistance services for particular LEP individuals, while not readily quantifiable in dollar units, can be significant. Such benefits may include improved access to a wide variety of services, more efficient distribution of government services, and more effective public health and safety programs.

The costs of enhanced language assistance are difficult to quantify, but may also be significant. The ultimate benefits and costs of the Executive Order will depend on how it is implemented, a process that we understand has begun among the Federal agencies. We hope that this Report will assist Congress and provide these agencies with information that will be useful to them as they implement the Executive Order.

# APPENDIX A: DEMOGRAPHICS

Figure A.1: 1990 Distribution of Non-English Languages Spoken at Home



Source: 1990 U.S.

## APPENDIX B: COMMENTS RECEIVED

### Public Response Log

Type of Org	Name of Org	Date	Comments
Congress	Hispanic Caucus/Asian Pacific American Cucus (19)	12/26	Importance of LEP svcs & LEP svcs as rights not to be quantified
English Only Adv	Eagle Forum	12/27	Emphasize importance of assimilation & cost of Executive Order
English Only Adv	English First		High Cost of Executive Order
English Only Adv	ProEnglish	12/28	Emphasize importance of assimilation & cost of Executive Order
English Only Adv	Public (350)	12/3 1	Emphasize importance of assimilation and/or express opposition to the Executive Order.
LEP Advocate	AARP	12/2 1	Emphasize importance of translation svcs to LEP persons
LEP Advocate	AHS	12/31	Health
LEP Advocate	Asian & Pacific Islander American Health Forum	12/14	LEP svcs as a right-not for quantification
LEP Advocate	Assn of Asian Pacific Community Health Orgs.	12/28	Emphasize importance of translation svcs to LEP persons
LEP Advocate	California Healthcare Interpreters Assn (2)	12/14	Stmt that little LEP info exists to assess C/B
LEP Advocate	CBPP	12/31	Health
LEP Advocate	CLS-Philadelphia	12/3 1	General importance of svcs
LEP Advocate	CUNY	12/28	Health
LEP Advocate	F of F Workers	12/31	Importance of svcs
LEP Advocate	GBLS	12/31	TANF/FS
LEP Advocate	Individual	12/31	Importance of svcs
LEP Advocate	Lewis & Clark	12/31	Importance of LEP svcs, unemployment insurance
LEP Advocate	MALDEF	1/3	General
LEP Advocate	MANNA	12/11	Emphasize importance of translation svcs to LEP persons
LEP Advocate	Michigan Hispanic Social Svcs Org.	12/20	Emphasize importance of translation svcs to LEP persons
LEP Advocate	National Health Law Program	12/28	Emphasize importance of translation svcs to LEP persons & provide comparative info on svcs provided
LEP Advocate	National Latino Behavioral Health Assn (3)	12/19	Emphasize importance of translation svcs to LEP persons
LEP Advocate	Nat'l Asian Pacific American Legal Consortium	12/28	Emphasize importance of translation svcs to LEP persons

LEP Advocate	Nat'l LEP Advocacy Task Force	12/28	Emphasize importance of translation svcs to LEP persons
LEP Advocate	Natl. Alliance for Hispanic Health (bunch of different groups)	1/18	Importance of svcs; Has attached files
LEP Advocate	NCPL	12/28	Food Stamp, work force
LEP Advocate	NELP	12/31	Labor Context
LEP Advocate	New York Lawyers for Public Interest	12/28	Emphasize importance of translation svcs to LEP persons & case studies
LEP Advocate	NHMA	12/31	Emphasize importance of translation svcs to LEP persons
LEP Advocate	NILC	12/28	General
LEP Advocate	Nizhoni Bridges, Inc.	12/10	Unresponsive
LEP Advocate	Project Vida	12/19	Emphasize importance of translation svcs to LEP persons
LEP Advocate	RIOS	12/20	Emphasize importance of translation svcs to LEP persons & case studies
LEP Advocate	Southern Poverty Law Ctr	12/28	Info on <i>Sandoval</i> Lawsuit
LEP Advocate	Translator and Interpreter	1/1	Importance of LEP svcs
LEP Advocate	Vosler	12/31	Translators needed
Local Govt	City of San Francisco	12/26	Translation cost estimate
Local Govt	Fresno County	12/28	Stmnt that implementation difficult & costly
Local Govt	Marin County	12/20	Emphasize importance of translation svcs to LEP persons
Provider	AMA	1/2	Problems with implementing & costs
Provider	California Medical Association	6/8	cost concerns, cost estimates, suggestions
Provider	Center for Healthy Families & Cultural Diversity	1/4	Unfunded mandate, possible solutions
Provider	Children's Hospital-Seattle	12/10	Interpreter info.
Provider	El Centro "La Familia"	12/20	Emphasize importance of translation svcs to LEP persons
Provider	California Primary Care Association	12/28	Benefits of Executive Order, collection of best practices
Provider	John's Hopkins System	12/27	Interpreter info.
State Agency	AK	12/30	Unfunded mandate
State Agency	Alabama Dept. Industrial Relations Unemployment Comp	12/20	unfunded mandate, DOJ should take lead in providing generic LEP material, other Federal agencies (like DOL should handle LEP negotiations

State Agency	CA Dept. of Mental Health	12/31	Importance of svcs & challenges of compliance, specific threshold
State Agency	CO Refugee	1/3	Pro Executive Order
State Agency	Colorado Dept of Labor & Employment	1/27	cost estimates (used threshold mechanism)
State Agency	IL Dept. of Labor	12/31	Compliance difficulties, costs estimate (used threshold)
State Agency	Indiana Family Social Services Administration	1/3	Cost estimate
State Agency	Kansas Dept. of Social & Rehabilitation Services	12/31	Challenges of compliance, use of ESL
State Agency	Michigan Family Independence Agency	1/16	service area assessment problems, cost estimates
State Agency	Minnesota Dept. of Human Services	12/27	Info on translation svcs provided in response to lawsuit
State Agency	Montana Dept. of Labor & Industry	12/28	Translation cost estimate
State Agency	Nevada Dept of Employment Training & Rehab.	12/19	unfunded mandate, Executive Order unreasonably broad, cost estimates
State Agency	New Jersey DOL	12/2 1	Use data collected for working age LEP (not 5 and up), cost estimate, benefits
State Agency	North Dakota Job Service	12/21	unfunded mandate
State Agency	Ohio Dept. of Job & Family Services/Human Services	12/27	Translation cost estimate & info on svcs provided, plan of action
State Agency	Oklahoma Employment Security Commission	12/2 1	Stmnt that Executive Order is unfunded mandate
State Agency	Oregon Employment Dept	12/31	Cost estimate
State Agency	Pennsylvania Dept of Labor & Industry	12/27	Cost estimate & unfunded mandate, ambiguous guidance
State Agency	South Carolina Employment Security Commission	12/19	cost estimate
State Agency	Tennessee DOL	1/7	concern with costs
State Agency	Texas Dept of Human Services	1/24	unfunded mandate, cost estimates
State Agency	Texas Workforce Commission	12/18	Stmnt that data systems don't track LEP info, ambiguity of "LEP"
State Agency	Vermont Dept. of Employment & Training	12/21	cost concerns, limited # of LEP persons
State Agency	Washington State	1/9	nothing
State Agency	Wisconsin Dept. Health & Family Services	1/8	increased access, consistent guidelines for Federal prog., cost estimate
State Agency	Wisconsin Dept. of Workforce Development	12/28	Translation cost estimate
State Agency	Wyoming Dept of Employment	12/19	cost estimate, high cost to modify existing technology
State Org	NASWA	12/31	Concern & implications/costs

Study	"Citizen"	12/29	Mexican Immigration
Study	Boston U. School of Public Health	12/13	Emergency Care
Study	Canadian Embassy	12/4	Language policy
Study	Prof. Jacobs-Cook G Hosp/Rush Med Col	12/28	Interpretation in health
Study	Prof. Schneider-Inst for Health Policy	12/31	Medicaid & interpretation
Study	Resources for Cross Cultural Healthcare	12/7	Interpretation & health outcomes
Study	The Children's Hospital	12/27	Emergency Care

## USDOJ Memos and Reports

**PLEASE NOTE: THE ASSISTANT ATTORNEY GENERAL  
OFTEN DEVIATES FROM PREPARED REMARKS**

Transcript of speech of Wan J. Kim  
before the Federal Interagency Working Group on Limited English Proficiency  
February 2, 2006 - 10:00 a.m.

Good Morning. I am pleased and honored to be present at today's meeting of the Federal Interagency Working Group on Limited English Proficiency.

As Merrily mentioned earlier, today marks the 4<sup>th</sup> Anniversary of this very important group.

As I surveyed your many accomplishments, I was amazed at all that you have been able to achieve over the course of just four years. Your efforts to advance the cause of providing meaningful access to limited English proficient persons have truly resulted in significant gains for this important area of civil rights. For a group that started with an essentially "blank slate," your accomplishments are beyond impressive.

When former Assistant Attorney General Ralph Boyd extended the initial invitation to participate in this initiative, he stated that the Group's goal would be to ensure that implementation of Executive Order 13166 remains a priority and is coordinated in a consistent manner across agencies. There is no question that this Working Group has been instrumental in achieving that objective.

The early expectation was that members of the Group would create and share tools and other forms of technical assistance for ensuring that the Federal provision of language services would be high quality, cost efficient, consistent, and effective. The Group's founders also envisioned that the Group would coordinate the implementation of Title VI and technical assistance to recipients by providing relevant best practices and sample tools used by the Federal government. I know you are all familiar with the many ways in which this Group has worked to achieve these objectives so I will take only a moment to highlight just a few of the most notable accomplishments.

### 1. LEP.gov

The phenomenal success of LEP.gov - a "one-stop shopping" approach to accessing LEP information - is a true testament to the value of this Group's work. Hits on LEP.gov rose from about 83,000 in FY 2004 to almost 221,000 in FY 2005, and they continue to rise this year.

You should all be proud of what you have achieved in providing an invaluable avenue for sharing and disseminating information about LEP issues. I hope you all share my commitment to ensuring that the website will continue to grow and provide useful information to government employees, recipients, advocates, and beneficiaries.

### 2. Brochures

In addition to disseminating information through the LEP.gov website, this Group has also been instrumental in the development of two important LEP brochures.

"Affirming LEP Access and Compliance in Federal and Federally Assisted Programs" has been an important tool that both Federal agencies and recipients have relied upon in devising and implementing effective LEP programs.

Similarly, the “Know Your Rights” brochure for beneficiaries has been translated into nine languages and serves as a highly effective form of outreach.

The effort began in an outreach committee of this Working Group and came to fruition through the financial and other support of the Department of Health and Human Services and the Food and Nutrition Service of the Agriculture Department, together with the Civil Rights Division.

### 3. Self - Assessment Tool for Recipients

The development of a self-assessment tool for recipients is yet another example of the many ways in which the efforts of this Working Group have resulted in concrete tools to improve the provision of LEP services.

The “Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance,” which is available on [LEP.gov](http://LEP.gov), was developed by one of the early committees of this Working Group and has directly enhanced the ability of many recipients to offer effective LEP programs to their beneficiaries.

### 4. Collaboration among agencies

One of the goals for this Group has always been to encourage collaboration among Federal agencies.

The tremendous success of the LEP video “Breaking Down the Language Barrier: Translating Limited English Proficiency Policy into Practice,” now available in four languages, is a fabulous testament to the success of this effort. This joint production by the Civil Rights Division's Coordination and Review Section, the Department of Health and Human Services' Office of Civil Rights, and the Department of Agriculture's.

Food and Nutrition Service is precisely the sort of inter-agency collaboration this Work Group was designed to encourage.

My hope is that the future will offer many similar opportunities for fostering such cooperation.

These are just a few examples of the many achievements of this Working Group. In addition, members of the Group have been responsible for making great strides within their agencies. Most have published recipient guidance documents and created Federally conducted plans for ensuring meaningful access to Federal as well as Federally funded programs.

But what I'd like to focus on today, as we reflect on the accomplishments of the last four years, is how best to build upon our previous successes and meet the many challenges that lie ahead.

Before doing so, though, I'd like to pause for a second to take note of what I perceive to be one of this Working Group's primary strengths: organizational flexibility. Often, one of the best indicia of success is the ability of a group like this to adapt and reconstitute itself to meet new challenges.

When originally formed, many of the goals and objectives for this Working Group were developed by small groups that met during the first session. Last year, however, members of the original Steering Committee met and decided to restructure the organization of the Group.

As a result, a new committee structure was formed to focus on various issues. These committees have met multiple times over the course of the last year and have amassed a new array of impressive accomplishments.



This sort of organizational flexibility that the Working Group has shown in re-designing its core structure is a true measure of the Group's strength - and undoubtedly a key element in its remarkable success. As we move forward, I hope we can continue to draw upon this strength in pursuing our core mission. Our core mission, of course, hasn't changed over the past four years - but each success helps us re-define the next challenge.

Now that most agencies have successfully completed work on their LEP guidance documents, we find ourselves ready to devote more time and attention to issues of compliance and enforcement. As the Working Group considers new frontiers, it is important to recognize that we have already started developing many wonderful models.

A successful resolution coming out of the Office of Justice Programs' (OJP) Office for Civil Rights offers one great example. Indeed, it's fitting that we find ourselves in this room today. Not only is this where the Working Group first got its start four years ago, but OJP has accomplished so much in the area of LEP.

Most recently, OJP's highly successful collaboration with the Philadelphia Police Department represents a wonderful example of what can be accomplished in the provision of technical assistance to recipients. Instigated by a compliance review initiated by OJP, the collaborative efforts of the Police Department, the City, advocacy groups, and OJP resulted in greater access for those who do not speak English. The Philadelphia Police Department implemented a new LEP policy in December of 2005. Today, when police officers are confronted with LEP individuals, they have available professional in-person interpreters, telephonic interpretation, and vital documents translated into seven languages.

The Philadelphia case also highlights the importance of developing effective relationships with community groups and advocacy organizations. My hope is that, in the weeks and months to come, various members of the Working Group can direct their efforts toward forging similar types of collaborative projects that will further the goals of this organization.

Michael Alston, the Director of OJP's Civil Rights Office, has been kind enough to allow us to distribute information pertaining to the Philadelphia agreement as a handout for this meeting. So, thank you Michael - for the handouts, of course - but mostly for your leadership and overall efforts in this area.

I also want to take this opportunity to express my hope that members of this Work Group can continue to extend this sort of collaborative technical assistance approach to interagency efforts to assist recipients. Our recent work on the provision of LEP services in disaster relief efforts is another great example of the value of this interagency approach.

As an outgrowth of an idea that emerged from the Federally Conducted Committee, we embarked on a broader project to examine the ways in which a coordinated response to hurricane relief and recovery efforts could assist in addressing the needs of LEP individuals and other vulnerable communities.

Merrily mentioned the December 12th memorandum that I circulated, in which I encouraged all agencies to review their websites, especially the disaster relief portions, to ensure that important information relating to agency and recipient civil rights obligations, assistance options, and resources for those experiencing difficulty in accessing services, is provided in multiple languages.

I also encouraged agencies to consider civil rights issues in the dissemination of local rebuilding, recovery, and planning grants and to continue to utilize general civil rights-related assurances.

My memo provided examples of assurances relevant to LEP issues and to budgeting for language assistance as part of the programmatic costs of implementing grants.

Finally, I urged each agency to consider the steps that can be taken to ensure that race, color, and national origin, including LEP status, do not impede access to information, shelters, and other evacuation and relief services in future assistance and in disasters.

Importantly, as agencies take action to strengthen disaster preparedness amongst ourselves and our recipients, we must all consider the efforts that can be taken to ensure that the specific needs of minority populations, particularly those that are isolated due to LEP, immigration, or income status, are addressed.

I understand that the Federally Conducted Committee has also come up with and developed another useful project, which is working its way to my office. The project entails surveying all Federal agencies to find out what LEP resources they've been using, what best practices they have discovered, and what challenges they have faced. The Committee suggested that the survey results could then be put into a report that all could share. I am certainly impressed with the ideas that keep coming from this Working Group.”

Finally, as this Group enters its fifth year of working together to promote the cause of providing meaningful access to LEP individuals, I am excited by what I see changing all around us.

Just recently, we learned from the Minnesota Administrative Offices of the Courts that the Minnesota Supreme Court had passed a proposed amendment to the Minnesota Rules of Civil Procedure to make it clear that foreign language interpreters must be provided for all litigants and witnesses, not only in criminal proceedings, but also in civil proceedings, at court expense.

This is an incredibly exciting development and I hope it is a harbinger of things to come.

It's interesting to note that the Coordination and Review Section had been asked to send a letter to the Civil Rules Committee Chair providing information about the requirements of Title VI and the DOJ LEP guidance. That letter was mailed on November 7th. Shortly thereafter we heard about the amendment being passed.

Whatever the effect the Division's letter may have had, the important point to note is that word is getting out about the requirements of Title VI in the area of language access - and real changes are taking place in the way that important services are being provided to LEP beneficiaries.

Before concluding my remarks this morning, I would like to take a moment to address one final topic.

In our efforts to continue building on the successes of the past, I am pleased to announce my support for a new project which I feel truly represents the exciting potential of this Working Group.

As many of you know, in 2004, the Civil Rights Division hosted an LEP conference for recipients, Federal government, and community and interpreter groups that showcased innovative strategies used by Federal, state, and local agencies, as well as private organizations, in providing services to LEP individuals. This conference offered leaders in the field a wonderful opportunity to exchange tips, tools, and practices and to discuss more efficient and effective means of communicating with LEP individuals.

This past year, in September 2005, the Division sought to build upon the initial success of this conference by hosting a smaller law enforcement “summit” which offered the participants, mostly DOJ recipients, a more in-depth opportunity to discuss issues and share strategies for developing and implementing effective LEP programs.

Both the 2004 conference and the 2005 summit were very well received and were followed by numerous requests from participants to host additional such events. As a result, a decision was made to form the Interagency LEP Conference Committee, dedicated to exploring the possibility of hosting an interagency LEP conference.

I recently received and reviewed a proposal from the Conference Committee to host a two or three-day Interagency LEP conference that would be designed to explore cross-cutting LEP issues in a multi-agency forum. I am pleased to announce my support for this proposal and my hope that other agency leaders will similarly commit to this endeavor.

I think the idea of an Interagency LEP conference is a wonderful project for this Group to undertake and will offer a unique opportunity for all of us to take advantage of the many natural partnerships that exist, and those that can be developed, in the provision of LEP services. I am excited about the possibility of seeing this proposal come to fruition - and I know that the energy and enthusiasm that have made this Work Group so effective in the past will undoubtedly ensure the future success of this project.

I know that this Working Group has been instrumental in shaping and promoting the LEP initiative and I am confident that it will continue to be an invaluable player in the future of this area of civil rights - an area that is of personal significance to me.

I am grateful for all of your hard work over the past four years - and I look forward to working with each and every one of you as we continue on our quest to meet the challenges of overcoming language barriers in the provision of Federal and Federally assisted services.



## Language Data from the U.S. Census Bureau

### Accessing and Using Language Data from the U.S. Census Bureau

- I. How can I get copies of the PowerPoint presentation given at the 2007 Federal Interagency Conference on Limited English Proficiency?

The PowerPoint presentation is available from the Census Bureau Web site at: [www.census.gov/acs/www/Downloads/Accessing\\_and\\_Using\\_Language\\_Data\\_from\\_the\\_Census\\_Bureau.ppt](http://www.census.gov/acs/www/Downloads/Accessing_and_Using_Language_Data_from_the_Census_Bureau.ppt)

- II. How can I use American FactFinder to find census Bureau language data?
1. Start at our main Web site [www.census.gov](http://www.census.gov)
  2. On the left-hand side, click on the blue bar for American FactFinder (AFF).
  3. On the AFF main site, on the left-hand side, scroll your mouse over the blue bar DATA SETS.
  4. Click on the second bullet that says "American Community Survey."
  5. Click on the radio button for the year you want. The latest data we have available is from 2005.
  6. On the second bullet labeled "Select a geographic type," pull the menu down and click on the geography you want.
  7. Once your geography is highlighted, click the ADD button, then click the NEXT button.
  8. Click on the second tab that says "by keyword."
  9. Type in "language" in the box and click SEARCH (note: you can isolate any other information you're looking for by typing in the word or looking at the "by subject" tab.
  10. You'll get the list of all tables with language data.
  11. Highlight the table(s) you want and click the ADD button.
  12. Click SHOW RESULTS.
- III. How can I download tables from American FactFinder?
1. Near the top right side of the page where you have your output table, you'll see three choices: OPTIONS, PRINT/DOWNLOAD, and RELATED ITEMS.
  2. Scroll your mouse over the PRINT/DOWNLOAD choice.
  3. Click on DOWNLOAD.
  4. On the pop-up window, keep the settings as they are and click OK.
  5. Once you have it saved on your hard drive, you can open it up and do whatever tabulations you want.
- IV. Where can I find documentation of the Accuracy of the Data, including instructions on how to calculate confidence intervals?
1. Start at the main Web site [www.census.gov](http://www.census.gov)
  2. On the middle of the page, click on the link for American Community Survey.
  3. Inside the Using the Data tab, click on the link for [Accuracy of the Data —2005](#).
  4. Click on the document that corresponds with the data of the year you want.

V. What are the key ACS language tables that are available from American FactFinder?

The Detailed Tables are the data products with the most detailed information on language. Two key tables include:

1. B16001. Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over. This table gives the most detailed language data available by English-speaking ability.
2. B16004. Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over. This table gives the four major language categories by English-speaking ability for the 5-17 year olds, 18-64 year olds, and 65 years and older populations.

VI. Where can I find information about other language-related products?

The Language Use Web page includes a list of Census 2000 products. Use the following directions to find that Web page.

1. Start at main Web site [www.census.gov](http://www.census.gov)
2. On the top right-hand side, click on Subjects A to Z
3. Click on L for language
4. Click on the link for Language Use Data

The most detailed language data available are accessible from the Language Use Web site using Census 2000 data. Choose Link F -- STP 224. Data are not available by English-speaking ability but are available down to the census tract level. Also, under Related Reports, the document How Good is "How Well?" An Examination of the Census English-Speaking Ability Question is available.

VII. What should I do if I need language information for a small geographic area?

In 2010 the ACS will release 5-year estimates for the smallest geographic areas. The most recent ACS data available at this time are based on one year of sample and cannot support the production of most small area data. You should therefore continue to use Census 2000 data following the step-by-step instructions in section II. You should select "2000 Decennial Census - Summary File 3" as the DATA SET.

VIII. Where will I find information about special tabulations?

1. For Census 2000:  
Look on the Language Use Web site at:  
***[http://www.census.gov/population/www/socdemo/lang\\_use.html](http://www.census.gov/population/www/socdemo/lang_use.html)***

Those labeled STP indicate special tabulations  
Go to the Gateway to Census 2000 at:  
***<http://www.census.gov/main/www/cen2000.html>***

On the left-hand side, under Information Links, click on the link for Special Tabulations.

2. For ACS:  
Please visit the Custom Tabulations Web site to get more information on requesting special tabulations from ACS.  
***[http://www.census.gov/acs/www/Products/spec\\_tabs/](http://www.census.gov/acs/www/Products/spec_tabs/)***

## Q&A on Executive Order 13166

### Commonly Asked Questions And Answers Regarding Executive Order 13166

#### Providing Meaningful Access to Individuals Who Are Limited English Proficient to Federally Assisted and Federally Conducted Programs and Activities

##### 1) Question: What is new in Executive Order 13166?

**Answer:** Executive Order 13166 (EO 13166) contains two major initiatives. The first is designed to better enforce and implement an existing obligation: Title VI of the Civil Rights Act of 1964 prohibits recipients of Federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who are limited English proficient (LEP). The Executive Order requires Federal agencies that provide Federal financial assistance to develop guidance to clarify those obligations for recipients of such assistance (“recipient guidance”). Thus, for instance, the Department of Justice (DOJ) is developing guidance specifically for its recipients, which are primarily State and local law enforcement agencies and departments of corrections.

Second, the Executive Order sets forth a new obligation: Because the Federal government adheres to the principles of nondiscrimination and inclusion embodied in Title VI, the Executive Order requires all Federal agencies to meet the same standards as Federal financial assistance recipients in providing meaningful access for LEP individuals to Federally conducted programs. Each Federal agency must thus develop a plan for providing that access. For example, DOJ components such as the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Bureau of Prisons, the Civil Rights Division, and others, are in the process of developing a combined plan. Each Federal agency must undertake the same process.

The Coordination and Review Section (COR) of the Civil Rights Division of DOJ has taken the lead in coordinating and implementing this Executive Order. In late August, Assistant Attorney General Bill Lann Lee sent a letter to heads of agencies, general counsels, and (where available) civil rights offices in every Federal agency. The letter informed each agency of its obligations under the Executive Order and of COR’s role in providing technical assistance and review to agencies.

##### 2) Question: What Federal activities are covered by the Executive Order?

**Answer:** The Executive Order covers all “Federally conducted programs and activities.” Anything a Federal agency does falls within the scope of Federally conducted programs or activities. All of the over ninety agencies are responsible for developing and implementing “Federally conducted plans” to ensure that persons who are LEP have meaningful access to Federal programs and activities.

The definition of Federally conducted programs is the same under Executive Order 13166 as the definition used under the regulations for application of Section 504 of the Rehabilitation Act of 1973 to Federally conducted programs. 28 CFR Part 39, Editorial Note, Section 39.102 Application. That definition states:

Under this section, a Federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of Federally conducted programs or activities covered by the regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public’s use of the Department’s facilities (cafeteria, library). Activities in the second category include programs that provide Federal services or benefits (immigration activities, operation of the Federal prison system).

Id.

Federally conducted activities include the provision of Federal benefits or services, the imposition of a burden on a member of the public, and any other activities a Federal agency conducts. For example, the investigation of a complaint of discrimination by an office of civil rights or the provision of information by a law enforcement agency that would inform a person of or allow a person to exercise their rights would be a “service.” The grant of authority to engage in temporary employment by the Immigration and Naturalization Service or of social security benefits would be a “benefit.” The imposition of taxes by the Internal Revenue Service or discipline upon a prisoner in a Bureau of Prisons correctional facility would be a “burden.” Another example of Federal activities covered by the Executive Order are law enforcement activities such as custodial interrogations, arrests and detentions, searches, investigations, etc., performed by Federal law enforcement agencies.

**3) Question: What is an agency’s “recipient guidance?”**

**Answer:** Throughout the questions and answers, when we refer to “recipient guidance” we mean to the guidance that agencies must develop to ensure that entities to which they grant Federal financial assistance comply with Title VI’s prohibition against national origin discrimination. Approximately 28 Federal agencies provide some form of Federal financial assistance to private, state, or local entities. Federal financial assistance includes, but is not limited to, grants and loans of Federal funds; grants or donations of Federal property; training; details of Federal personnel; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. For instance, the Department of Justice provides Federal financial assistance to several agencies, primarily State and local law enforcement agencies, and departments of corrections.

**4) Question: What is the general DOJ Guidance on Limited English Proficiency that was issued along with EO 13166? How can agencies use it? How is it different from the guidance that DOJ and other agencies are working on now?**

**Answer:** DOJ has consistently interpreted Title VI and its regulations to require recipients of Federal financial assistance to provide meaningful access to LEP individuals, and funding agencies have found recipients in violation of this obligation and prescribed remedial efforts on myriad occasions. The general DOJ LEP Guidance sets forth the standards DOJ has been applying, and it provides a framework for agencies to use in developing specific guidance for their own recipients. EO 13166 requires each agency to prepare guidance that is tailored to the agency’s recipients. For example, DOJ is preparing guidance as to how the general LEP standards apply in law enforcement agencies and departments of corrections. EO 13166 also requires agencies to apply the standards set forth in the DOJ LEP Guidance to their own Federally conducted activities. The general DOJ LEP Guidance can be found on the COR website at [www.usdoj.gov/crt/cor](http://www.usdoj.gov/crt/cor).

**5) Question: If an agency does not provide Federal financial assistance, does the Executive Order apply to that agency?**

**Answer:** Yes. EO 13166 requires that ALL Federal agencies take reasonable steps to provide meaningful access to their own Federally conducted activities. Each agency must develop and begin to implement a plan for doing so by December 11, 2000. That plan must be submitted to the Department of Justice, through the Coordination and Review Section, by sending it to:

Merrily Friedlander, Chief  
Coordination and Review Section  
Civil Rights Division  
United States Department of Justice  
P.O. Box 66560  
Washington, D.C. 20035-6560

COR staff is available to discuss these plans with agencies.



**6) Question: What is the time frame for action?**

**Answer:** By December 11, 2000, each agency must have developed and begun to implement a plan for providing meaningful access for LEP individuals to the agency's Federally conducted activities.

Also by December 11, 2000, each agency that provides Federal financial assistance must submit a draft of its guidance for recipients of that assistance to the Department of Justice, Civil Rights Division, Coordination and Review Section (COR), at the address noted above. COR will review each guidance for consistency with other agencies' guidance and with the Executive Order. Once COR approves the guidance, it must be published in the Federal Register for review and comment.

**7) Question: What standards should agencies apply to recipient guidance and to their plans for Federally conducted activities?**

**Answer:** Each agency and each recipient of Federal financial assistance must take reasonable steps to provide meaningful access to LEP individuals. Among the factors to be considered in determining what constitutes reasonable steps to ensure meaningful access are: (1) the number or proportion of LEP persons in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program; (3) the importance of the service provided by the program; and (4) the resources available to the recipient. These four factors are further explained in the DOJ LEP Guidance found on the COR website and published in the Federal Register on August 16, 2000.

**8) Question: If a recipient is covered by a State or local "English-only" law, must it still comply with the Title VI obligation and agency guidance interpreting that obligation?**

**Answer:** Yes. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel recipients of Federal financial assistance to violate Title VI. For instance, given our constitutional structure, State or local "English-only" laws do not relieve an entity that receives Federal funding from its responsibilities under Federal anti-discrimination laws. Entities in States and localities with "English-only" laws are certainly not required to accept Federal funding – but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of Federal assistance. Failing to make Federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

**9) Question: When developing plans and guidance regarding translations of documents, how do we determine which documents must be translated?**

**Answer:** It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document will be considered vital if it contains information that is critical for obtaining the Federal services and/or benefits, or is required by law. Vital documents include, for example: applications; consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; prison rule books; and written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. Non-vital information includes documents that are not critical to access such benefits and services. Advertisements of Federal agency tours and copies of testimony presented to Congress that are available for informational purposes would be considered non-vital information.

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, we recognize that it would be impossible, from a practical and cost-based perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients of Federal financial assistance, and EO 13166 does not require it of Federal agencies. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important for Federal agencies to continually survey/assess the needs of eligible service populations in order to determine whether certain critical outreach materials should be translated into other languages.

**10) Question: Does the Executive Order apply to materials on websites?**

**Answer:** Yes. However, the decision to place something on the web will not affect whether the document must be translated. For example, placement on the website should not change the agencies' or recipients' original assessment regarding the number or proportion of LEP persons that comprise the intended audience for that document.

The four-factor analysis applies to each individual "document" on the website. Generally, entire websites need not be translated, as only the vital information/documents within the website might need translation. If, in applying the four-factor analysis, the agency or recipient determines that a particular document/piece of information should be translated, that translation should also be posted on the website if the English-language version is on the website. If documents are translated within a website, the existence of the translation should be noted (in the appropriate language) at an initial entry point to the site (usually the homepage).

**11) Question: What about the standards for oral interpretation?**

**Answer:** The obligation to provide meaningful opportunity to individuals who are LEP is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program."

There are a number of steps which can assist recipients and Federal agencies in providing such oral assistance. They range from hiring bilingual staff or staff interpreters competent in the skill of interpreting, to contracting with qualified outside in-person or telephonic interpreter services, to arranging formally for the services of qualified voluntary community interpreters who are bound by confidentiality agreements. Generally, it is not acceptable for agencies or recipients to rely upon an LEP individual's family members or friends to provide the interpreter services. The agency or recipient should meet its obligations under EO 13166 or Title VI by supplying competent language services free of cost. In rare emergency situations, the agency or recipient may have to rely on an LEP person's family members or other persons whose language skills and competency in interpreting have not been established. Proper agency or recipient planning and implementation is important in order to ensure that those situations rarely occur.

**12) Question: Does the Executive Order apply to Federally conducted activities overseas or to foreign recipients of Federal financial assistance?**

**Answer:** No. The Department of Justice has determined that EO 13166 applies only within the United States and its territories and does not apply extraterritorially.

However, agencies that conduct activities overseas must still submit a plan for making their domestic activities accessible to people who are limited English proficient. That plan should indicate that the agency conducts Federal activities abroad, but that DOJ has determined that the EO does not apply to those activities.

Similarly, agencies that provide Federal financial assistance abroad and domestically must still create guidance for their domestic recipients, and may include a statement in the guidance indicating that the guidance does not apply extraterritorially.

**13) Question: Does Executive Order 13166 require that bids be let in languages other than English?**

**Answer:** Generally, current practice with regard to announcing Federal government contracts and grants would not be altered under the Executive Order. In determining what is required, the focus of the analysis in this situation is on the first factor – the number or proportion of eligible LEP persons. Except, perhaps, in territories, it is reasonable to expect that the number or proportion of eligible contract or grant recipients who are LEP and are themselves attempting to find and respond to announcements of grants and contracts is negligible.

**14) Question: If a Federal agency contracts with a private or other entity to conduct certain activities of the agency, does the Executive Order apply to the activities of the contractor?**

**Answer:** Yes. When a different entity conducts certain activities for the Federal agency, then the Executive Order applies to the entity's activities. The agency should ensure that the entity knows the general standards for LEP access and applies the agency's plan to the activities it is conducting on behalf of the agency. An agency cannot avoid its obligations by contracting them out. Mandatory compliance with the agency's LEP policy should be included in the contract.

**15) Question: What does Executive Order 13166 require for Federal employment practices?**

**Answer:** If English is essential in a job, the Executive Order would not require any services for LEP individuals. For jobs where agencies determine English is not essential, agencies should apply the four factors.

**16) Question: Where can I get a copy of the Executive Order and the DOJ General LEP Guidance? What about the Department of Health and Human Services' (HHS) recipient guidance?**

**Answer:** A copy of the Executive Order and DOJ's general LEP Guidance (both translated into Spanish and Chinese) can be found on the Coordination and Review website at [www.usdoj.gov/crt/cor](http://www.usdoj.gov/crt/cor). You can also link to HHS's agency-specific guidance for its recipients at that location.



## *Policies for Federal Agency Public Websites*



**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

**DEPUTY DIRECTOR  
FOR MANAGEMENT**

December 17, 2004

M-05-04

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Clay Johnson III  
Deputy Director for Management 

SUBJECT: Policies for Federal Agency Public Websites

The efficient, effective, and appropriately consistent use of Federal agency public websites is important to promote a more citizen centered government. This memorandum and attachment fulfill the requirements of section 207(f) of the E-Government Act of 2002 (Pub. L. No. 107- 3 47). Overall, the management of agencies' public websites should be in compliance with Federal information resource management law and policy.

Federal agency public websites are information resources funded in whole or in part by the Federal government and operated by an agency, contractor, or other organization on behalf of the agency. They present government information or provide services to the public or a specific non-Federal user group and support the proper performance of an agency function. Federal agency public websites are also information dissemination products as defined in Office of Management and Budget (OMB) Circular A-130, "Management of Federal Information Resources." Agencies must manage Federal agency public websites as part of their information resource management program following guidance in OMB Circular A-130, OMB "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" (67 FR 5365), this memorandum, and other information policy issuances.

OMB expects prompt and orderly implementation of the policies in this memorandum and its attachment. OMB expects agencies to become fully compliant with new requirements by 12/31/05 and continue to adhere to existing requirements. OMB will monitor agency compliance with these policies as part of its oversight of agency information resource management programs. The recommendations and best practices published by the Interagency Committee on Government Information (<http://www.webcontent.gov>) will aid your implementation of the policies outlined in the attachment.

If you have any questions regarding this memorandum, please contact Kimberly Nelson (202) 395-3787 [Knelson@omb.eop.gov](mailto:Knelson@omb.eop.gov), or Daniel Costello (202) 395-7857 [Dcostell@omb.eop.gov](mailto:Dcostell@omb.eop.gov), Policy Analysts, Information Policy and Technology Branch, Office of Management and Budget.

Attachment

### **Policies for Federal Agency Public Websites**

1. Establish and Maintain Information Dissemination Product Inventories, Priorities, and Schedules
  - A. Your agency is already required under OMB Circular A-130 and the Paperwork Reduction Act to disseminate information to the public in a timely, equitable, efficient, and appropriate manner<sup>1</sup> and to maintain inventories of information dissemination products.
  - B. Section 207 of the E-Government Act<sup>2</sup> requires your agency to develop priorities and schedules for making Government information available and accessible to the public, in accordance with public comment, and to post this information on your agency's website. Section 207 also requires your agency to report to OMB, as part of the agency's annual E-Government Act report, the final determinations of inventories, priorities, and schedules your agency has made.
  - C. Your agency must also post to your agency's website any updates to your agency's final determination of inventories, priorities, and schedules, and include this information in your agency's annual E-Government Act report.
  
2. Ensure Information Quality
  - A. Your agency is already required under the Information Quality Act and associated guidelines<sup>3</sup> to maximize the quality, objectivity, utility, and integrity of information and services provided to the public. This includes making information and services available on a timely and equitable basis.
  - B. Agencies must reasonably assure suitable information and service quality, consistent with the level of importance of the information. Reasonable steps include: 1) clearly identifying the limitations inherent in the information dissemination product (e.g., possibility of errors, degree of reliability, and validity) so users are fully aware of the quality and integrity of the information or service, 2) taking reasonable steps to remove the limitations inherent in the information, and 3) reconsidering delivery of the information or services.
  
3. Establish and Enforce Agency-wide Linking Policies
  - A. Agencies must now establish and enforce explicit agency-wide linking policies describing management controls for linking within and beyond the agency.
  - B. These policies must appropriately limit external linking to information or services necessary for the proper performance of an agency function.
  - C. Agency linking policies must also include reasonable management controls to assure external links remain active or otherwise continue to provide the level of quality (including objectivity, utility, and integrity) as intended by the agency and expected by users.
  - D. OMB's Information Quality guidelines exclude hyperlinks from the definition of information. This exclusion does not remove agency responsibility to exercise due diligence when determining whether to link externally. Therefore, when an agency determines external links are necessary for and material to the presentation of agency information or the delivery of services in the proper performance of an agency function, they must take reasonable steps to ensure the presentation is accurate, relevant, timely, and complete.

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<sup>1</sup> OMB Circular A-130, "Management of Federal Information Resources," section 8 (a)(5) available at <http://www.whitehouse.gov/omb/circulars/a130/a130trans4.pdf>, see also, The Paperwork Reduction Act available at [http://www.archives.gov/Federal\\_register/public\\_laws/paperwork\\_reduction\\_act/3501.html](http://www.archives.gov/Federal_register/public_laws/paperwork_reduction_act/3501.html)

<sup>2</sup> E-Government Act of 2002, Pub. L. No. 107-347, section 207(f)(2).

<sup>3</sup> Information Quality Act, Pub. L. No. 106-554, section 515; see also, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" (67 FR 5365) and your agency's Information Quality Act guidelines.

E. Agencies must reasonably assure suitable information and service quality, consistent with the level of importance of the information. Reasonable steps include: 1) clearly identifying the limitations inherent in the information dissemination product (e.g., possibility of errors, degree of reliability, and validity) so users are fully aware of the quality and integrity of the information or service, 2) taking reasonable steps to remove the limitations inherent in the information, and 3) reconsidering linking to the information or services. Agency links to commercial organizations or interest groups present special challenges with respect to maintaining agency objectivity and thus must be used judiciously.

F. Agency linking policies must identify mandatory links and post (or link to) the following information on their principal website and any known major entry points to their sites: 1) the agency's strategic plan and annual performance plans; 2) descriptions of agency organizational structure, mission and statutory authority; 3) information made available under the Freedom of Information Act; 4) specific website privacy policies; 5) [FirstGov.gov](http://www.FirstGov.gov); 6) summary statistical data about equal employment opportunity complaints filed with the agency and written notification of "Whistleblower" rights and protections as required by the No Fear Act of 2002; 7) the agency point of contact for small businesses as required by the Small Business Paperwork Relief Act of 2002; and 8) other cross-government portals or links required by law or policy.

4. Communicate with the Public, State, and Local Governments.

A. Your agency is already required under OMB Circular A-130<sup>4</sup> to establish and maintain communications with members of the public and with State and local governments to ensure your agency creates information dissemination products meeting their respective needs.

B. Your agency is already required under the Paperwork Reduction Act to manage information collections from the public or State and local governments (including website surveys or questionnaires) in the manner prescribed in OMB's guidance in 5 CFR section 1320. For additional information see:

[http://www.access.gpo.gov/nara/cfr/waisidx/99/5cfr1\\_320\\_99.html](http://www.access.gpo.gov/nara/cfr/waisidx/99/5cfr1_320_99.html)

5. Search Public Websites.

A. You are already required under OMB Circular A-130 to assist the public in locating government information.

B. You must now ensure your agency's principal public website and any major entry point include a search function. However, agencies may determine in limited circumstances (e.g., for small websites) site maps or subject indexes are more effective than a typical search function.

C. By December 31, 2005, this search function should, to the extent practicable and necessary to achieve intended purposes, permit searching of all files intended for public use on the website, display search results in order of relevancy to search criteria, and provide response times appropriately equivalent to industry best practices.

D. By December 31, 2005, agency public websites should to the extent practicable and necessary to achieve intended purposes, provide all data in an open, industry standard format permitting users to aggregate, disaggregate, or otherwise manipulate and analyze the data to meet their needs.

E. Agencies should note the Interagency Committee on Government Information has provided to OMB recommendations for organizing, categorizing, and searching for government information. By December 17, 2005, OMB will issue any necessary additional policies in this area.

6. Use Approved Domains.

A. Your agency must use only .gov, .mil, or Fed.us domains unless the agency head explicitly determines another domain is necessary for the proper performance of an agency function.

B. This requirement recognizes the proper performance of agency functions includes an obligation for clear and unambiguous public notification of the agency's involvement in or sponsorship of its information dissemination products including public websites. It also recognizes in certain limited circumstances other domains may be necessary for the proper performance of an agency function.

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<sup>4</sup> OMB Circular A-130, "Management of Federal Information Resources," section 8 (a)(6) available at <http://www.whitehouse.gov/omb/circulars/a130/a130trans4.pdf>; see also, The Paperwork Reduction Act available at [http://www.archives.gov/Federal\\_register/public\\_laws/paperwork\\_reduction\\_act/3501.html](http://www.archives.gov/Federal_register/public_laws/paperwork_reduction_act/3501.html)

7. Implement Security Controls.
  - A. Your agency is already required to implement security policies in OMB Circular A-130, Appendix III; OMB memorandum M-04-25, "Reporting Instructions for the Federal Information Security Management Act and Updated Guidance on Quarterly IT Security Reporting;" National Institute of Standards and Technology (NIST) Special Publication 800- 44, "Guidelines on Securing Public Web Servers;" and other associated guidance from NIST. For additional information see:  
<http://www.whitehouse.gov/omb/circulars/a130/a130trans4.html>, <http://csrc.nist.gov/policies/FISMA-final.pdf>,  
<http://www.whitehouse.gov/omb/memoranda/fy04/m04-25.pdf>, <http://csrc.nist.gov/publications/nistpubs/800-44/sp800-44.pdf>
  - B. Your agency is already required to provide adequate security controls to ensure information is resistant to tampering to preserve accuracy, remains confidential as necessary, and the information or service is available as intended by the agency and expected by users. Agencies must also implement management controls to prevent the inappropriate disclosure of sensitive information.
8. Protect Privacy.
  - A. Your agency is already expected to protect the privacy of information about members of the public by continuing to implement OMB Circular A-130 Appendix I and OMB memorandum M-03-22, "OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002." For additional information see:  
<http://www.whitehouse.gov/omb/memoranda/m03-22.html>
9. Maintain Accessibility.
  - A. Your agency is already required to ensure accessibility for individuals with disabilities by implementing Section 508 of the Rehabilitation Act (29 U.S.C. 794d). Federal agency public websites must be designed to make information and services fully available to individuals with disabilities. For additional information see:  
<http://www.access-board.gov/index.htm>
  - B. Your agency is already required to provide appropriate access for people with limited English proficiency by implementing Department of Justice guidance for Executive Order 13166, "Improving Access to Services for People with Limited English Proficiency." Agencies must determine whether any individual document on their Federal agency public website(s) requires translation. For additional information see:  
<http://www.usdoj.gov/crt/cor/Pubs/lepqa.htm>
10. Manage Records.
  - A. You are already required to meet records management requirements by implementing OMB Circular A- 130 and guidance from the National Archives and Records Administration. See 36 Code of Federal Regulations (CFR), Parts 1220-1238). For additional information see:  
[http://www.archives.gov/records\\_management/index.html](http://www.archives.gov/records_management/index.html)



**EXECUTIVE ORDER 13166  
LIMITED ENGLISH PROFICIENCY  
RESOURCE DOCUMENT:  
Tips and Tools from the Field**

**September 21, 2004**

**U.S. Department of Justice  
Civil Rights Division**

# ***From the Executive Office of the President Office of Management and Budget 2002 Report:***

“The benefits of language-assistance services for particular LEP individuals, while not readily quantifiable in dollar units, can be significant.

Improved access to a wide variety of services – ranging from the delivery of healthcare and access to food stamps to motor vehicle licensing and law enforcement – can substantially improve the health and quality of life of many LEP individuals and their families.

Moreover, [it] may increase the efficiency of distribution of government services to LEP individuals and may measurably increase the effectiveness of public health and safety programs.”

<http://www.whitehouse.gov/omb/inforeg/lepfinal3-14.pdf>

**EXECUTIVE ORDER 13166**  
**LIMITED ENGLISH PROFICIENCY RESOURCE DOCUMENT:**  
**Tips and Tools from the Field**

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## Introduction: Overview of the Document and of the Federal Limited English Proficiency Initiative

Over the last few years, the Coordination and Review Section (COR) of the Civil Rights Division of the Department of Justice (DOJ) has spent considerable time meeting with, training, and learning from individuals working in sectors ranging from the justice system to the nonprofit and social service providers, to Federal, state, and local government, regarding the provision of language assistance to limited English proficient (LEP) individuals. We have done so because we are charged with coordinating enforcement and implementation of certain Federal civil rights laws that require entities that receive financial assistance from Federal agencies, as well as Federal agencies themselves, to ensure that they are taking reasonable steps to provide meaningful access for LEP individuals.

In June of 2002, DOJ issued guidance relating to language assistance pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. (Title VI) and its accompanying regulations. The guidance focused on recipients of DOJ financial assistance (primarily law enforcement agencies, departments of corrections, courts, domestic violence service providers, and entities having a law enforcement or juvenile justice mission). That guidance has served as a launching point for COR's training efforts and discussions with Federal, state, and other partners on the subject of language assistance. Often these interactions and trainings have become opportunities for sharing tips and tools from the field based on the experiences of recipients and communities working with LEP populations. Sharing anecdotes of community solutions that have been positively received, as well as sharing information about some of the drawbacks of certain approaches, offers entities opportunities to make great strides in developing their own solutions to language access concerns.

DOJ believes that this exchange of experiences more broadly is a useful tool for enhancing access for LEP persons. This document furthers that sharing.

### What Will You Find In This Document?

To develop this document, COR reviewed information collected in informal surveys of court personnel, social service providers, police departments, 911 call centers, several DOJ components (e.g., the Executive Office for United States Attorneys, the Federal Bureau of Investigation, and the Office of Justice Programs), to determine how these organizations have responded to the call for meaningful access for LEP individuals. This document lists many of the tips, tools, and practices identified in our surveys. We highlight some agencies that have taken an innovative approach or applied a strong policy or strategy to a particular aspect of language services.

This document does not endorse or suggest that any particular program is legally required. Nor would we presume to State that this project has encompassed all of the current innovations in this area; local innovation will certainly produce additional successful practices. Moreover, variations in size, resources, mission, and populations served mean that different approaches will work for different agencies. The examples are, as described, consistent with the goal of the DOJ LEP Guidance and with Title VI and regulatory requirements, but the Department has not conducted an extensive review of the agencies providing these examples, nor has it reviewed how all of the policies and practices are being implemented in practice. While we strove to provide as comprehensive an approach as possible, you might find that certain types of interactions with LEP individuals are not fully covered by these tips. Language access coordinators and decision-makers should consult the DOJ LEP Guidance, discussed below, in conjunction with this document. More work will be done to continue to seek out additional resources and strategies for communicating effectively with LEP individuals.

For more information on the work of the Coordination and Review Section of the Civil Rights Division, click on [www.usdoj.gov/crt/cor](http://www.usdoj.gov/crt/cor).

## What Is the Legal and Policy Background?

This document is part of a broader effort by the Department to share existing language access resources, practices, and tools for recipients. It is inspired by, and reflects the work of, entities in the field that focus on 911 call response, law enforcement, courts, and domestic violence, as well as some Federal program managers. The framework and grounding for choosing the tips and highlighting particular aspects of the recipient programs is Title VI, the Title VI regulations, and policy guidance issued by DOJ in this area.

Under Title VI and Federal agency regulations implementing Title VI, recipients of Federal financial assistance have a responsibility to take reasonable steps to provide LEP individuals with meaningful access to their programs and activities. Title VI and its accompanying regulations prohibit recipients from discriminating on the basis of race, color, or national origin.

Discrimination on the basis of national origin can occur if a recipient does not provide appropriate language assistance to LEP individuals because these individuals, whose language is usually tied to their national origin, will not have access to the same benefits, services, information, or rights that the recipient provides to everyone else. Thus, in certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate Title VI and its regulations prohibiting national origin discrimination.

To access Executive Order 13166, click on: [www.usdoj.gov/crt/cor/Pubs/eolep.htm](http://www.usdoj.gov/crt/cor/Pubs/eolep.htm);  
You can access the DOJ LEP Guidance for recipients at: [www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun1\\_82002.htm](http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun1_82002.htm).

Executive Order 13166, titled “Improving Access to Services for Persons with Limited English Proficiency,” required two things. First, it required Federal agencies to take reasonable steps to provide meaningful access for LEP people to federally conducted programs and activities (essentially, everything the Federal government does). Second, under the Executive Order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how those recipients can provide meaningful access to LEP persons and thus comply with Title VI and Title VI regulations.

Pursuant to Executive Order 13166, DOJ published final guidance for its own recipients on June 18, 2002. 67 Fed. Reg. 41455. DOJ’s LEP Guidance assists recipients with fulfilling their legal responsibilities to provide meaningful access to LEP persons. This policy guidance provides a description of the four factors recipients should consider in fulfilling their responsibilities to LEP persons. DOJ uses these factors in evaluating whether recipients are in compliance with Title VI and its regulations. These four factors are:

On December 18, 2002, the Assistant Attorney General for Civil Rights sent a letter to DOJ recipients of Federal financial assistance and representative organizations, providing them with a copy of the DOJ LEP Guidance and asking them to spread the word about the need to provide meaningful access to LEP individuals. To view this document, click on: [www.usdoj.gov/crt/cor/Pubs/BoydDec13LEPArtltr.htm](http://www.usdoj.gov/crt/cor/Pubs/BoydDec13LEPArtltr.htm). A copy of an article for newsletters can be found at: [www.usdoj.gov/crt/cor/Pubs/BoydLEPArt.htm](http://www.usdoj.gov/crt/cor/Pubs/BoydLEPArt.htm), or go to [www.lep.gov](http://www.lep.gov).

1. The number or proportion of LEP persons in the eligible service population;
2. The frequency with which LEP individuals come into contact with the program;
3. The importance of the benefit, service, information, or encounter to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and,
4. The resources available to the recipient and the costs of providing various types of language services.

The DOJ LEP Guidance should be used in conjunction with this document. Appendix A to the guidance provides additional information on how some DOJ recipients of Federal financial assistance, such as law enforcement, correctional institutions, courts, and domestic violence programs, can apply the four-factor analysis. See 67 Fed. Reg. 41466-41472.

The guidance also discusses the value and possible format of written language assistance plans, presents options for identifying language services and ensuring competency of interpretation and translation services, and provides DOJ's insights on when translations of certain vital documents should be considered.

Providing high quality and accessible services, benefits, information, and access to the justice system for LEP individuals requires resources but is often critical. Moreover, often the costs of failure to provide appropriate language access can be even higher than the costs of providing a qualified interpreter, translator, or bilingual staffer.

[www.lep.gov](http://www.lep.gov) is the website of the Federal Interagency Working Group on LEP. The website is intended to serve as a clearinghouse that contains useful information, guidance, demographic links, and resources for recipients, agency representatives, community members, and other stakeholders. This website is frequently updated to provide new tools that will facilitate language access.

Convictions can be overturned and defendants released for inaccurate interpretation during interrogation, evidence development, or testimony. Victims and witnesses may be unable to provide law enforcement and emergency responders with accurate information, resulting in additional human and financial costs. Poor translations may require expensive revisions and reprinting, or result in inaccurate information exchange. Thus, in addition to the legal requirement to provide meaningful linguistic access, recipients and others have many additional incentives to avoid initial non-compliance.

In addition, there are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of providing language services without sacrificing meaningful access for LEP persons. To that end, DOJ has provided and will continue to provide assistance and guidance in this important area. DOJ has established and oversees a Federal Interagency Working Group on LEP, which has developed a website, [www.lep.gov](http://www.lep.gov), to assist in disseminating this information.

The Civil Rights Division is also working closely with DOJ funding components to ensure that language access measures are considered in the funding and monitoring of recipient programs and activities. The Office for Civil Rights (OCR) of the Office for Justice Programs (OJP) is responsible for ensuring that recipients

of financial assistance from OJP and the Office of Community Oriented Policing Services (COPS) comply with civil rights laws that prohibit discrimination on the basis of national origin, including limited English proficiency. Since the DOJ LEP Guidance was issued, OCR has provided training to representatives from hundreds of organizations funded by OJP and COPS on providing services to their LEP communities.

For more information on the work of the Office for Civil Rights of the Office of Justice Programs, click on [www.ojp.usdoj.gov/ocr](http://www.ojp.usdoj.gov/ocr).

communities.

OCR has also recognized the value of the information exchanged during these interactions and has passed along some of these tips and tools from the field to the Civil Rights Division and incorporated them into its training presentations. OCR conducted a number of compliance reviews of law enforcement agencies regarding their level of services to LEP persons. Through these reviews, OCR was able to see a number of promising approaches to providing services to LEP populations up close and gauge their effectiveness through interviews with the affected LEP communities.

The Civil Rights Division is committed to providing the necessary LEP training and technical assistance to all interested stakeholders. These services are provided primarily by the Division's Coordination and Review Section (COR), which is responsible for coordination and implementation of the LEP initiative through the Executive branch. To date, COR has conducted over 50 LEP trainings at the Federal, state, local, and community levels, and will continue to do so as the need requires.

Additional technical assistance tools include brochures which can be found on [www.lep.gov](http://www.lep.gov) and a LEP video, which is an excellent companion to COR's general

COR has also worked with the United States Department of Health and Human Services and the Food Service of the United States Department of Agriculture to develop a video on the application of Title VI to LEP access issues, including vignettes regarding emergency 911 services, law enforcement, food stamps, and healthcare. To request a training session on LEP, brochures, a copy of the video, or for other technical assistance, please call COR at (202) 307-2222. TDD: (202) 307-2678.

With this background, we invite you to delve into the heart of this document – the Tips and Tools Chapters. We hope that this document will spark your creativity, provide examples you can replicate, and reaffirm what is already working for you as you endeavor to communicate effectively with all community members, regardless of language or national origin.

## **Chapter 1: General Tips and Tools Common to Courts, Police, 911 Call Centers, and Domestic Violence Specialists and Service Providers**

Whether you are a police officer, outreach worker, judge, intake worker, or emergency responder, chances are that you or your colleagues have encountered a limited English proficient (LEP) individual in carrying out your basic tasks. Having a strategy in place to deal with LEP issues effectively makes sense: it allows for cost-efficient and timely services that comply with the law and meet the needs of the public.

This General Tips and Tools Chapter provides Department of Justice (DOJ) recipient organizations, regardless of their primary mission, with a survey of strategies to deliver services to LEP community members. In reviewing the strategies that organizations used, we have found similarities cutting across disciplines and professions. One of the most important steps for effective communication is to set a policy and create a coherent plan for communicating with LEP individuals that includes a number of these common strategies. They are outlined in this chapter and are divided into five basic steps:

While this document focuses on various types of DOJ recipients, the strategies outlined in this General Chapter should be helpful to a wide variety of other organizations as well.

- A. Determining your organization’s language service needs;
- B. Identifying language resources to help you meet those needs, and ensuring that personnel know how to access and effectively utilize those resources;
- C. Familiarizing and training staff and managers with effective and innovative methods of communication with LEP individuals;
- D. Implementing and enforcing quality control measures to ensure that you are communicating accurately and effectively with LEP community members; and
- E. Conducting outreach to ensure that all community members, regardless of national origin or language, know that they can access your program, and can provide feedback to you on the language services you provide.

The five common steps are reflected in each of the chapters. You will notice some duplication of tips in order to emphasize certain practices in the context of particular types of recipients, but we have minimized this to the extent appropriate.

We hope that this General Tips and Tools Chapter will help you create, refine, and implement a plan to address a number of the LEP issues you currently face on the job. Once a plan has been established and implemented, it should be reviewed and updated as demographics, language resources, and other factors evolve.



## A. Determining Your Organization's Language Needs and Devising a Plan

### (1) Review the language needs of the communities you serve or encounter.

- ◇ Keep track of the languages you encounter on the job through a record-keeping method that is consistent with your agency's practice. Data should be reviewed to determine your agency's immediate language needs.
- ◇ There may be LEP communities that you are not reaching and that should be included in your assessment. These populations may need additional outreach in order to participate fully. Include seasonal workers, vacationers, motorists, and visitors in your assessment. (See Section E below).
- ◇ Other sources for demographic information include:
  - The demographics section of [www.lep.gov](http://www.lep.gov).
  - For Spanish speakers, the 2000 Census, at [www.census.gov/population/cen2000/phc-t20/tab04.pdf](http://www.census.gov/population/cen2000/phc-t20/tab04.pdf), provides detailed information down to census tract level and below as to the English ability of persons over the age of five who speak Spanish at home. Be aware of potential under-reporting, and account for the possibility that the community you serve may be larger than estimates predict.
  - For languages other than Spanish, the most detailed data on English ability from the 2000 Census is reported only in terms of general language groups (e.g., Asian/Pacific Islander, Indo-European, Other). In such cases, more refined predictions of potential LEP populations can be made by combining the language data that is available with other demographic data closely associated with language, such as ancestry, citizenship, foreign-born data, and prior residence. Access such data through American Factfinder, an interactive demographic mapping service maintained by the Census Bureau. Log on to <http://factfinder.census.gov/home/saff/main.html?lang=en>.
  - Also access "Census 2000 Brief: Language Use and English-Speaking Ability 2000 (October 2003) at [www.census.gov/prod/2003pubs/c2kbr-29.pdf](http://www.census.gov/prod/2003pubs/c2kbr-29.pdf).
  - Tables and maps of the thirty most commonly-spoken languages (which include languages spoken by individuals who also speak and understand English) can be found at [www.mla.org/census](http://www.mla.org/census) main. The tables provide information down to the zip code level.
  - The U.S. Department of Education and school districts maintain data on languages spoken in the local public school systems. Schools should also have knowledge of the LEP parent population. See <http://nces.ed.gov/fastfacts/display.asp?id=96> and <http://www.ncela.gwu.edu/stats/>.
  - Some agencies contract with the Census Bureau to conduct special counts of census data for particular demographic characteristics. For instance, the U.S. Department of Labor maintains a demographics tool broken down by Workforce Investment Area (WIA). The data sorts the number of people who speak one of 39 different languages by WIA and by state. Some limited social demographics such as education, employment status, and income are also provided for each group. The information is in Excel worksheet format, and can be downloaded in total or by specific State or workforce area. This information, and other technical assistance products for the workforce system, will be made available through [www.doleta.gov/usworkforce/lep](http://www.doleta.gov/usworkforce/lep) in the very near future. The project is a joint endeavor of the Department of Labor, Berkeley Policy Associates, and the Census Bureau.

- Community, ethnic, and faith-based organizations can assist you in identifying LEP communities in your service area. Include such organizations in an “advisory committee” as part of your continuing efforts to respond to LEP issues.
- Similarly, check with local interpretation and translation associations to determine which languages are most frequently requested. Ask for general information on the purposes for which interpretation and translation services are sought (e.g., medical, legal, immigration, or other purposes).

Want more info?

- Consult Chapter 6 of this document, entitled “Tips and Tools Specific to DOJ Federally Conducted Programs and Activities,” for a more detailed analysis of the use of census data and special counts.
- Contact Karin Wang, Vice President of Programs ([kwang@apalc.org](mailto:kwang@apalc.org)) or Dan Ichinose, Project Director of Demographic Research Unit ([dichinose@apalc.org](mailto:dichinose@apalc.org)) at the Asian Pacific American Legal Center (APALC) in Los Angeles for information about effectively utilizing school district statistics and other data to determine interpreter needs. See also, [www.apalc.org/pdffiles/ASP](http://www.apalc.org/pdffiles/ASP) Report.pdf.

**(2) Devise a written plan to meet the needs of LEP individuals in your area.**

- ◇ Helpful considerations include the four-factor analysis guiding the implementation of the Title VI language access requirement:
  - The number or proportion of LEP persons eligible to be served or likely to be encountered;
  - The frequency with which LEP individuals come into contact with your programs/activities;
  - The importance of your program, activity or service to people’s lives;
  - The resources you have at your disposal and costs of implementation.
- ◇ Formulate and distribute a written plan with instructions to staff on accessing interpretation, translation, and other language resources to serve LEP individuals. Your plan should address the various types of contact your staff have with LEP individuals. Your plan will minimize confusion and ambiguity when situations involving LEP individuals arise, and will enable your agency to determine training, administration, planning, and budgeting needs.
- ◇ The approach you identify in your plan may be different for less commonly-encountered languages than it is for languages encountered more frequently in your community.
- ◇ Give priority to first-response units and other services involving access to important benefits, services, information, or rights. The more serious the consequences, the more likely competent language services are necessary.
- ◇ Review, update, and refine your plan on a regular basis and as language group demographics and agency capabilities change. Do so in consultation with community groups and other stakeholders.

*Want more info?*

- Consult the handy self-assessment tool available at [www.lep.gov/selfassesstool.htm](http://www.lep.gov/selfassesstool.htm). This assessment asks crucial questions to enable you to determine the responsiveness of your program or activity to the needs of LEP individuals, and provides guidance on key elements of a written plan.

## **B. Identifying Language Resources to Help You Meet Your Needs**

### **(1) Differentiate between the many types of language service providers available, and determine which combination is appropriate for your program.**

- ◇ An interpreter listens to a communication in one language and orally converts to another language while retaining the same meaning.
- ◇ A translator replaces written text from one language into an equivalent written text in another language.
- ◇ Bilingual individuals have the ability to use two languages. A bilingual person can learn to become a translator or an interpreter, but is not automatically so qualified by virtue of his or her language abilities.

### **(2) When selecting services, consider the strengths and limitations of various language service providers.**

- ◇ For instance, a bilingual person may be fluent and well-suited to having direct monolingual conversations (e.g., Spanish to Spanish and English to English conversations) in more than one language, but may not be skilled at converting those conversations from one language to another.
  - In addition, some of your staff may be less than fully bilingual. However, their language skills may still be helpful for limited purposes such as outreach activities and basic conversation to set people at ease or to provide simple directions in ways that do not have significant consequences if accuracy is not perfect.
- ◇ By contrast, professional interpreters and translators are generally required to have undergone rigorous and specialized training.
  - Reflect on the importance of your services to the LEP community, the skill level and training of your bilingual staff, and the complexity of the communication, to determine whether the specialized skills of an interpreter or translator are required.

### **(3) Identify bilingual staff.**

- ◇ In-house multilingual staffing is a cost-effective way to provide language services to LEP individuals.
  - APALC is an example of a non-profit organization in Los Angeles adopting this approach. They have also worked with other organizations to develop a coordinated approach to providing language services to LEP individuals and to helping immigrant victims who come into contact with the legal system. Consult their publication “Expanding Legal Services: Serving Limited English Proficient Asians and Pacific Islanders,” by Gabrielle Hammond, November 2003. Click on [http://www.apalc.org/pdffiles/ELS Web.pdf](http://www.apalc.org/pdffiles/ELS%20Web.pdf), or go to <http://www.apalc.org> and click on “literature” to obtain this document and other APALC resources.

- In the social service setting, Safe Horizon, a New York City-based victim assistance agency, has partnered with the NYU Center for Immigrant Health to adapt medical interpreter curricula to the social service context. For more information, contact Tanaz Pardiwala Director of Community Organizing, at (718) 928-6953; TDD: (800) 810-7444 Hotline or [tanaz\\_pardiwala@safehorizon.org](mailto:tanaz_pardiwala@safehorizon.org).
- ◇ Where needs dictate, consider bilingual ability as a compensable hiring criterion for certain positions.
    - Some organizations and departments have instituted bilingual pay incentive programs. Employees who pass a proficiency exam and are willing to provide language services receive a bonus or salary differential.
    - Keep in mind that bilingual staff who are often called upon to facilitate communication with LEP individuals may find themselves routinely diverted from their normal work assignments.
    - For more information on pay incentives for pre-screened bilingual ability, consult *The Memorandum of Understanding* between the City of Fresno and the Fresno City Employees' Association [www.fcea.net/Final FCEA MOU FY03-05 . pdf](http://www.fcea.net/Final_FCEA_MOU_FY03-05.pdf) at pp. 32-33.
    - For employer perspectives on this issue, click on [www.ipma-hr.org/files/cpr\\_skill.pdf](http://www.ipma-hr.org/files/cpr_skill.pdf) at 9.
  - ◇ Create a directory of bilingual staff and their contact information. If appropriate for your agency's needs, bilingual staff and/or interpreters having contact with the public can wear badges indicating the languages they speak so that LEP individuals can easily identify such employees.
    - When bilingual staff provide or review written translations, they can often benefit from collaborating with others listed in the directory.
  - ◇ Test and train bilingual staff providing language services on a regular basis.
    - Untrained bilingual staff may not be versed in the standards of the interpreting profession (e.g., role, code of conduct, modes of interpretation, specialized terminology, etc.), resulting in compromised accuracy and statements with potentially limited evidentiary value. Both the agency providing services, as well as the LEP individual, have administrative, safety, and enforcement interests in accurately-rendered interpretation and translation services.
    - Enable bilingual staff to access interpreter training courses and translation and language skills training. Such access benefits both your organization and the communities you serve.
    - See also Section D on "Ensuring Quality Control" below.
  - ◇ Even when bilingual staff are used to provide direct services in a non-English language (rather than to provide interpretation), be sure to institute quality control measures and provide professional development opportunities to ensure that communication is effective and accurate.

**(4) Identify situations requiring the services of a professional interpreter or translator.**

- ◇ Establishing relationships with professional interpreters, translators, and other users of professional language services can help you to tap into a pool of qualified individuals to contact when necessary.
- ◇ Professional interpreters are trained to convey meanings accurately, avoid conflicts of interest, and maintain confidentiality, impartiality, and accuracy in the course of performing their professional duties.
- ◇ Interactions involving a possible deprivation of liberty, such as interrogations, should involve a fully-trained professional. Untrained bilingual staffers or informal communication techniques should be used only as a stop-gap measure to stabilize an emergency situation until a professional interpreter (telephonic or in-person) becomes available to assist.
  - In situations with legal implications in general, and criminal implications in particular, the stakes can be very high. For example, the terms of a temporary restraining order in a domestic violence case should be accurately conveyed, both to an accused batterer and to the alleged victim. Failure to do so may result in unintended consequences, e.g., compromised safety and/or misunderstandings leading to criminal liability.
- ◇ Professional interpretation and translation services are available in most cities. U.S. Attorneys' offices, state and Federal courts, and FBI regional offices often contract with such local interpretation and translation companies. Contact such entities for lists of potential individuals or companies. National, regional, and state interpreter and translator associations also post lists of members by language and geographical location.
  - For information on interpreter and translator associations, go to the interpretation/translation section of <http://www.lep.gov>.
- ◇ Monitor quality of interpretation and translation services. See Section D below.

**(5) Telephonic interpretation services can ensure resources when in-house demand is high or immediate interpretation is needed.**

- ◇ Telephonic interpretation is particularly useful for officers in the field, during 911 calls, or in other instances in which a range of languages could be encountered and swift response is necessary. Telephonic interpretation can be conducted utilizing a commercial telephonic interpretation service, professional interpreter, or trained bilingual staffer who cannot be available onsite (e.g., a police call at 3:00 a.m.).
- ◇ Commercial telephonic interpretation services are helpful where in-house language capacity is insufficient or unavailable. Telephone interpretation services are immediately available when crisis management is required in a range of languages. Such services can provide a per-minute rate in a broad range of languages.
- ◇ Monitor quality. Ensure that the provider you choose understands the context in which you operate and can accurately interpret or translate specialized terms you use, such as *Miranda* warnings. Other relevant information may include the connection time necessary for telephonic interpretation, and whether it is swift enough for your purposes.

*Want more info?*

- Contact Xenia Freeman, Director of Safe Horizon’s (NYC) Domestic Violence, Crime Victim, Rape and Sexual Assault, and September 11 Support Hotlines at [xfreeman@safehorizon.org](mailto:xfreeman@safehorizon.org), for more information on the utility of telephonic interpretation.

**(6) *Work collaboratively with community groups and academic institutions, and train bilingual/multilingual community members, university professors, graduate and law students, and language educators to provide language services on an as-needed basis.***

- ◇ Identify potential sources of language assistance through local community/ethnic organizations, university language departments, law schools, and other logical venues.
- ◇ Train the identified individuals to serve as part-time interpreters on an as-needed basis. Ensure their familiarity with applicable standards (e.g., ethical requirements, modes and protocols of interpretation, specialized terminology applicable to your program, etc.)
- ◇ On occasion, authorities have successfully used language educators and community members to interview/debrief witnesses in the absence of professional interpreters.
- ◇ Recognize the potential limitations of using such individuals. For example, a Spanish teacher may not necessarily be able to interpret accurately during a beat patrol investigation.
- ◇ Make sure to implement other quality-control measures.

*Want more info?*

- The Washington, D.C.-based Asian Pacific American Legal Resource Center (APALRC) has created a “Legal Interpreter Project” which focuses on training community members, law students, and others to provide quality interpretation and translation for other agencies in the area. The selection process includes recruitment, training, testing, and monitoring. Refer to <http://www.charityadvantage.com/apalrc/Home.asp> for detailed information about this project.

**(7) *Factor language assistance costs into your budget and planning process and include interpreter and translator costs in grant applications and contracts.***

**C. Working with LEP Individuals**

**(1) *Create convenient and accessible points of entry for the largest language minority communities, such as a dedicated telephone number for Spanish speakers.***

- ◇ Such a telephone number could be connected to community outreach units of courts and police departments and other organizations serving many different language groups.
- ◇ Alternatively, provide a recorded message in the most-commonly-spoken languages in your service area, explaining how callers can access the services you provide and receive language assistance if necessary. Post this phone number where the target community congregates.
- ◇ Be sure to provide a mechanism to enable LEP callers to access emergency services in the event that they are calling regarding an urgent situation. Courts and other agencies may also want to consider mechanisms to enable LEP callers to immediately access the services most often requested, such as information from the court clerk’s office.

**(2) Don't make assumptions regarding an individual's first language.**

- ◇ For example, a Native American from primarily Spanish-speaking Guatemala may not necessarily speak Spanish. His or her language may be altogether different.

**(3) Make language identification flashcards (also known as "I Speak \_\_\_\_\_")**

- ◇ The U.S. Census Bureau's version of these cards is available on <http://www.lep.gov/govt.html>. Simply show these cards to LEP individuals in order to determine native language, but account for the fact that the LEP beneficiary may be illiterate.
- ◇ Other Federal agencies, such as the Social Security Administration (SSA), have similar tools. The SSA has forms available to LEP beneficiaries in 15 languages. Access by clicking on <http://www.ssa.gov/multilanguage/index.htm>.

**(4) Consider providing language assistance, even when you think an individual's English is "probably good enough."**

- ◇ It is easy to overestimate the LEP person's English language skills, particularly if he or she appears to understand you.
- ◇ Also a person may not be LEP in some contexts, but may be LEP in others (e.g., a person who can ask for simple directions in English may not be sufficiently proficient to answer police interrogation questions).

**(5) When working through an interpreter, use short simple sentences that are free of idioms. Avoid compound phrases, double negatives, rambling phrases, colloquialisms, etc.**

- ◇ Examples of bad questions include: "You didn't say you wouldn't go there, did you?" or, "And then, although you knew it was wrong, you didn't, although you could have, stop him from what everyone knew was a mistake?"

*Want more info?*

- Check out the many resources of <http://sdnyinterpreters.org/>, the website of the Interpreters' Office for the United States District Court, Southern District of New York, also available through <http://www.lep.gov>.

**(6) Always address the LEP individual in the first person and look at that individual (not the interpreter) during questioning.**

**(7) Be aware that excluding an LEP person during long conversations with English-speaking individuals can sometimes convey negative messages. Wait until an interpreter or bilingual individual can be present to explain the communication to the LEP person and enable his or her participation.**

- ◇ Otherwise, the LEP individual may construe such communication as an indication of bias.

**(8) Be creative in asking questions of the LEP individual – you may have to ask the same question several ways before eliciting a response. Don't expect your interpreter to "fill in the blanks."**

**(9) Don't overlook and don't overestimate the power of pictures.**

- ◇ While not a substitute for a live interpreter, posting universal signs/symbols can help enormously in temporarily bridging communication gaps in a cost-effective fashion while awaiting the arrival of an interpreter or competent bilingual staffer (e.g., a picture of a person with a beard and one without might help get a quick description of a fleeing suspect while an interpreter is being contacted, but may lead police down the wrong path if more information is not obtained in a timely fashion).
- ◇ Over-reliance on pictures in complex, sensitive, or critical information exchanges can lead to a breakdown in communication.

**(10) Recognize the different modes of interpretation, and the contexts in which each is appropriate.**

- (11) Simultaneous Interpretation - A speaker (judge, lawyer, conference presenter, trainer, etc.) speaks in one language, while an interpreter simultaneously interprets what is being said into the LEP person's or audience's first language.
- Example: During a court proceeding, an interpreter sits next to the LEP defendant at the defense table and simultaneously interprets from English into the LEP person's language (either by whispering or using interpreting equipment) everything that is being said by lawyers, judges, and witnesses in the courtroom, so the proceeding can continue uninterrupted and the LEP person can follow what is being said.
- ◇ Consecutive Interpretation - The speaker (judge, lawyer, intake worker, police officer, etc.) makes a statement or asks a question, pauses, and then the interpreter renders what was said in the LEP person's first language.
- Example: During an interrogation, a police officer asks a question, the interpreter interprets the question, the LEP person answers the question in his or her first language, and the interpreter interprets the answer back to the officer in English. Consecutively interpreted sessions are of longer duration than when simultaneous interpretation is used.
- ◇ Sight Translation - On-the-spot oral translation of a document.
- Example: A document must be understood and signed by an LEP person before she can receive services from an organization that represents domestic violence victims, but the LEP person cannot read the document because it is in English. The interpreter translates the content of the document aloud into the LEP person's first language.

**(11) Consider and plan for the possibility that an LEP person may also have a disability.**



## D. Ensuring Quality Control

**(1) Bilingual staff and community members often do not have the training and expertise of professional interpreters and translators. Provide staff and others with training or arrange for bilingual employees or community members to attend interpreter training courses and to participate in opportunities to improve their language skills. Incorporate interpreter certification and evaluation exams into your LEP plan for those staff used as interpreters. In addition, evaluate and monitor language skills of bilingual staff used to provide direct service in a non-English language or to translate documents**

- ◇ Consult APALRC's Legal Interpreter Project, mentioned in Section B (6) above. This program is designed to enable community-based organizations to train bilingual individuals to perform basic interpretation tasks through cost-effective means. Click on <http://www.charityadvantage.com/apalrc/Home.asp>

**(2) Do not make assumptions about the language skills of your bilingual staff person, or even your interpreter/translator, regardless of apparent qualifications.**

- ◇ When obtaining translations, strongly consider having a "second-check" system.
  - It is more expensive to go back and fix a published document than to expend the resources to get it right the first time. Even excellent translators can benefit from the input of others.
  - Where time allows, consider having representatives of LEP groups also look at professional translations to ensure that they are "readable."
  - Before going to the presses, be sure to note the direction in which the language reads.
  - Put the name of the language, in English, somewhere on the document for ready identification.
- ◇ Learn more about your interpreter or translator's background before deciding to use that person's services, if time permits.
- ◇ Some background questions you might consider asking anyone providing language assistance include:
  - Are you a practicing interpreter or translator?
  - Where did you obtain your language skills (both English and the other language)? Will you be able to understand and be understood by the LEP person, who is from \_\_\_\_\_, or might there be a dialect or geography-based language barrier?

*Example: A Spanish-speaker from Latin America may have some difficulty understanding some vocabulary or pronunciation of a Spanish-speaker from Spain and vice versa.*

*Example: A person who speaks "White" Hmong may have some difficulty understanding "Green/Blue" Hmong.*

- How long have you been a practicing interpreter/translator?
- If not a practicing interpreter/translator, have you interpreted/translated before and, if so, in what situations?
- What specialized training have you received, or are you self-taught?

- Are you certified by and/or an active member of any interpreter/translator association?
  - [For spoken interpretation only] Are you able to perform simultaneous interpretation (technique where the interpreter interprets at the same time as the speaker)? Are you able to do consecutive interpretation (where there is a pause between language conversions)?
  - Do you know the LEP individual)? Have you ever seen him or her before?
  - What will you do if you don't understand something that [the LEP individual] has said/written?
  - What will you do if you believe you have interpreted/translated something inaccurately?
  - Do you receive continuing education?
  - Do you specialize in law enforcement, medical, educational, or some other type of interpretation (oral) or translation (written)?
  - Do you have any background issues I should know about? (Be sure to check!)
- ◇ If appropriate, give the individual providing language assistance relevant background information. For instance, consider providing:
- The LEP individual's name and native country and town;
  - The LEP individual's educational level, if known;
  - The LEP individual's ability to read and write, if relevant;
  - Any speech or other particularities, including the LEP individual's use of slang words, names, or other common words;
  - Information necessary to check for potential conflicts that the interpreter may have, as appropriate.
- ◇ Make sure that the person providing language services understands his/her ethical obligations.
- Professional interpreters are required to adhere to a code of ethics emphasizing confidentiality; impartiality; accuracy; avoidance of a conflict of interest; abstinence from communication with the LEP person beyond that which is necessary to carry out professional duties; and no adding to, editing, summarizing, or embellishing the LEP person's statement.
- ◇ Ensure that the parties understand each other.
- For instance, does the individual providing language services understand the LEP person and vice versa? Do you and the individual providing language services understand each other?
  - You might consider asking a question that requires more than a " yes" answer and, as appropriate, one to which you know the answer, so that you can determine if effective communication is going on.
- ◇ Make sure that the LEP individual is comfortable with the person providing language services.
- Do the interpreter and the LEP individual seem to know each other?
  - Do they come from traditionally adversarial communities? (This should ideally be determined before a face-to-face meeting between the interpreter and the LEP individual.)

- Is there any affinity between the interpreter or translator and a party who opposes your LEP individual's interests (e.g., if your LEP individual is a victim of domestic violence, is the interpreter somehow aligned with the batterer)?
- ◇ Instruct the person providing language services and the LEP individual to avoid having long dialogues between interpretations.
- ◇ When dealing with professional interpretation services (telephonic or in-person), be sure to ask the following additional questions, and to include appropriate terms in any contractual agreement regarding the services and qualifications of the interpreters:
  - Is the interpreter familiar with specialized terminology used in your field (e.g., American legal concepts such as *Miranda* warnings)?
  - Does the interpreter have experience in the particular field (e.g., legal, medical, or other interpreting)? How much experience does he/she have?
  - What is the cost? When entering into a contract with a telephonic interpretation service or professional interpretation/translation company, can the company offer services in a sufficient number of languages to justify the cost?
  - Are the interpreters familiar with both formal language and colloquialisms/street slang? Are the interpreters familiar enough with the community to be able to interpret effectively? People may share a single language, but speak it very differently.
  - What is the connection time necessary for telephonic interpretation? Is it swift enough for your purposes?

**(3) Ensure that the person providing language services answers all questions in the first person, as if he/she were the LEP person.**

*Want more info on quality control?*

- ◇ An assessment tool that agencies can use to determine the quality of their language assistance contractors is available at <http://www.lep.gov/selfassesstool.htm>.
- ◇ Also check out <http://sdnyinterpreters.org>, the website of the Interpreters' Office for the United States District Court, Southern District of New York, one of the sources for the tips above. This site can also be accessed through <http://www.lep.gov>.
- ◇ The American Translation Association has a guide to buying translations entitled: "Translation: Getting it Right." Contact the ATA at 225 Reinekers Lane, Suite 590, Alexandria, VA 22314 (703) 683-6100; <http://www.atanet.org>; e-mail: [ata@atanet.org](mailto:ata@atanet.org).
- ◇ Learn more about interpreter and translator standards in legal and quasi-legal settings from The National Association of Judiciary Interpreters and Translators (NAJIT) at [www.najit.org](http://www.najit.org).
- ◇ Consult the DOJ LEP Guidance, <http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.pdf> at pages 41461 to 41464, for guidance on assuring quality control in interpretation and translation.

## E. Conducting Outreach

**(1) Form alliances with community-based organizations that serve your various language communities. Such alliances can promote referrals and sharing of expertise, and spread awareness about assistance available to affected LEP community members.**

- ◇ Consider including representatives of such organizations on an LEP “advisory committee” to ensure ready access to resources, assistance, and feedback.

*Want more info?*

- Refer to the TAPESTRI feature box in Chapter 4 (Domestic Violence Service Providers and Specialists).
- For more information on building programs that link and train community interpreters with agencies needing interpreters, see Section B (6), above.

**(2) Distribute important information at temples, mosques, churches, synagogues, ethnic shopping centers, and other gathering places for non-native English speakers in your community.**

- ◇ Religious and ethnic organizations maintain their own internal communications networks for their members, and often serve as safe and familiar cultural havens for speakers of various languages. A community relations officer may, for example, attend an on-site intake or legal clinic conducted in partnership with a legal service organization.

*Want more info?*

- Consult the self-assessment tool at <http://www.lep.gov/selfassesstool.htm> for suggestions on outreach and providing notice of your services to LEP persons.
- Consider downloading and distributing the LEP “Know Your Rights” brochure, soon to be available in several languages, from <http://www.lep.gov>.

**(3) Consider partnering with media outlets (private television/radio stations and print media, ethnic and foreign language media) to develop feature stories, public service announcements, and dramatizations to deliver important information to non-English speakers in your community.**

- ◇ Some entities, such as courts and law enforcement agencies, have produced educational videos and other tools.
- ◇ COR recently developed a LEP video. Call COR at (202) 307-2222 for a copy.

*Want more info?*

- Consult the self assessment tool at <http://www.lep.gov/selfassesstool.htm> for suggestions on communicating information about your services through ethnic media outlets.

## Chapter 2: Tips and Tools Specific to 911 Call Centers

The three-digit telephone number, “9-1-1,” is the designated nationwide emergency telephone number for all individuals throughout the United States to request emergency assistance. The number enables fast and easy access to a centralized public safety answering point that can dispatch emergency services, including police, fire department, and emergency medical services. By virtue of the context in which emergencies arise, accessing emergency services takes place in a stressful environment ripe for mis-communication. The trained 911 call-takers and dispatchers must be able to accomplish their mission despite this high stress. Their task is easily compounded if the caller: (1) is wary of government because of unpleasant interactions with the government in his/her country of origin or here; and/or (2) has no familiarity with a government that provides a benevolent or helpful public service. When a caller has a limited ability to speak or understand English, the vital nature of the call presents a new and critical challenge.

Many of the general tips and tools set forth in Chapter 1 apply to 911 call centers as well. The following are our additional recommendations specific to making 911 services more effective and accessible to LEP communities. These recommendations are based on our general survey of practices that many 911 call centers – including Miami, FL; Prince George’s County, MD; Allentown, PA; Fairfax, VA; Oakland, CA; and others – use to communicate with callers who are LEP. LEP coordinators and decision-makers for 911 call centers should also consult the DOJ LEP Guidance.

### A. Identifying Need and Setting Policy

#### ***(1) Formulate a written policy/procedure for communicating with LEP callers.***

- ◇ 911 centers should have written procedures on communicating with LEP callers as part of standard operating procedures for call-takers and dispatchers. Such written procedures should specifically address the process for connecting to the 911 center’s telephonic interpretation service or to the appropriate in-house bilingual staff.

#### ***(2) Issue a Directive on the Importance of Communication with LEP callers.***

- ◇ In order for any written policy/procedure for communicating with LEP callers to be effective, the head of the 911 center should inform all staff of the vital nature of 911 services to LEP callers and the importance of effective communication to the mission of the call center.

#### ***(3) See Section A in Chapter 1, General Tips and Tools, for an in-depth discussion of how to assess your LEP needs and create a plan to address those needs.***

### B. Accessing Language Resources

#### ***(1) Employ In-House Bilingual Staff.***

- ◇ Use bilingual staff to communicate with LEP callers.
- ◇ Assess the language demographics within the call center’s jurisdiction in order to identify hiring needs for bilingual call takers and dispatchers.

#### ***(2) Advertise for bilingual call takers and dispatchers in ethnic newspapers.***

- ◇ Consider giving incentives or bonuses for language skills to recruit bilingual call takers and dispatchers.

- ◇ Ensure that bilingual staff are available for each shift, to allow for 24-hour language assistance. Have a telephonic interpretation service as a back-up to live personnel.
- (3) Monitor quality control, as discussed below, and provide bilingual staffers/dispatchers with ongoing training opportunities.**
- (4) Some 911 centers that have neither bilingual staff nor a contract with a telephonic interpretation service, communicate with LEP callers by accessing a city or county-wide language bank consisting of city or county employees who are bilingual.**
- (5) When bilingual operators are not available, contract with one of the several available telephonic interpretation services.**
- ◇ Some centers rely solely on telephonic interpretation services, while other centers use these services only when the caller's language is not recognized as one spoken by in-house staff or when sufficient in-house staff is not available.
  - ◇ Typically, under such systems, when a call-taker receives a call from an LEP individual and recognizes the foreign language, the call-taker places the individual on "hold" and contacts the interpretation service, usually through a speed dial button that connects the call-taker directly to the interpretation service. The call-taker asks for the appropriate language interpreter and, once the interpreter is available, the call-taker then connects the LEP individual to the call, so that there is a three-way call between the call-taker, the LEP individual, and the interpreter.
  - ◇ Where the foreign language spoken is unrecognizable, the call-taker places the LEP caller on "hold," and contacts the interpretation service for help in determining the language. Generally, interpretation services employ trained professionals who have expertise in determining the language of the LEP caller. When the 911 call-taker informs the interpretation service that he or she cannot identify the caller's language, the interpretation service representative, who is trained to recognize languages, identifies the language and connects the call-taker to the proper interpreter. Once this occurs, the call-taker connects the LEP individual to the call, so that there is a three-way call between the call-taker, the LEP individual, and the interpreter.
  - ◇ Assess your LEP needs by having a general understanding of the most frequently encountered languages within the call center's jurisdiction.
- (6) Because of the critical nature of 911 emergency calls, it is advisable to use a telephonic interpretation service that has trained its interpreters in the handling of 911 calls. This can be negotiated as a contract term.**
- (7) Some municipalities finance telephonic interpretation contracts with an emergency service fee that all city/county residents pay towards emergency services.**
- (8) See Section B in Chapter 1, General Tips and Tools, for more information on how to access language resources in your area.**

### C. Working With LEP Callers

**(1) *Pay careful attention to potential problems created when an LEP caller is placed on “hold,” or when there is a delay in responding while the 911 call-taker quickly obtains language services.***

- ◇ Train employees to obtain appropriate language services swiftly. Practice doing so to keep call takers sharp, particularly when LEP call volume is low.
- ◇ Make sure your call-taker knows how to say “please hold” or another appropriate phrase in the most frequently encountered languages in your service area. Some telephonic interpretation services provide material on how to say “please hold” phonetically in several different languages.
- ◇ Consider using music or some other appropriate “hold” message or sound so that the LEP caller knows not to hang up.
- ◇ If the caller hangs up and you have the phone number of the caller, call back with the language service provider on the line as quickly as possible.

**(2) *See Section C in Chapter 1, General Tips and Tools, for more information on working with LEP individuals.***

### D. Ensuring Quality Control

**(1) *Adopt and employ standards and quality control measures to assure an appropriate level of linguistic competency.***

- ◇ Test bilingual job applicants on their language skills, preferably under 911 simulated conditions, which are different from ordinary conversations in content, cadence, and emotional intensity.
- ◇ Test for demonstrated proficiency in English and the foreign language, the ability to convey accurate renditions back-and-forth in each language, and familiarity in both languages with specialized terms or concepts used in emergency situations.
- ◇ Where feasible, evaluate bilingual competency through city-wide testing of all city employees.

**(2) *Assess the efficacy of your language services by monitoring and by obtaining feedback from the community and from dispatch units.***

**(3) *Randomly review non-English language calls to ensure that bilingual staff and telephonic interpreters can communicate effectively with LEP callers.***

**(4) *Implement standards for dispatching units.***

- ◇ Have dispatchers inform the emergency response entity (police, fire department, or emergency medical services) that the caller is LEP and specify the caller’s language. The emergency responders should also have language assistance measures in place to interact effectively with the LEP individual once they arrive on the scene of the emergency.
- ◇ See section featuring the Miami 911 call center at the end of this chapter.

**(5) *See Section D in Chapter 1, General Tips and Tools, for more information on ensuring quality control measures and checks.***

## **E. Conducting Outreach**

### **(1) Create and distribute brochures in various languages about your services.**

- ◇ Brochures typically contain basic instructions for LEP individuals about what to do when making a 911 call (i.e., identifying their language, name and address, and type of emergency service required such as police, fire, or ambulance).
- ◇ Make and maintain contact with various language minority communities through traditional community relations activities – reaching out to schools, attending meetings of fraternal and social organizations, having a presence at ethnic fairs and celebrations, providing information through libraries and places of worship, and identifying several individuals or organizations that serve as primary contacts and “points of entry” into the language community.

### **(2) Make contacts in migrant worker communities, since such populations also include potential crime victims, litigants, and witnesses.**

- ◇ In order to conduct outreach to the migrant worker community, consider developing language cards with instructions on using the 911 system targeted at migrant workers and others who may not routinely call 911 in emergency situations.
- ◇ Laundromats and ethnic markets can be effective locations for posting and distributing outreach information.

### **(3) Partner with ethnic and other media outlets to deliver important information to LEP community members.**

- ◇ See the description of “Project Echo,” a media campaign in Minnesota aimed at providing timely emergency information to LEP individuals, at the end of this chapter.

### **(4) See Section E in Chapter 1, General Tips and Tools, for more ideas on how to conduct effective outreach to your community and service area.**



## **The Miami, Florida 911 Call Center: Responding to Need**

The City of Miami, Florida call center serves a large number of LEP individuals, and provides a good example of the types of options available to call centers.

According to Census 2000 data, 47.1% of the population of Miami speaks English less than “very well.” The majority of these individuals are Spanish speakers, followed by Creole speakers. These demographics highlight the need for the Miami Police Department’s 911 system to ensure that emergency assistance services to Miami’s LEP population are meaningfully accessible.

Miami’s call center employs at least 20 bilingual call-takers and dispatchers, four of whom are bilingual Creole speakers and the rest of whom are bilingual Spanish speakers. There are at least two bilingual Spanish speaking call-takers on duty 24 hours a day because of the frequency of calls by Spanish-speaking LEP callers. One of those call-takers screens and handles emergency calls and the other handles non-emergency calls. Miami also has a contract with a telephonic interpretation service to ensure that callers who speak languages other than Spanish and Creole will also have access to emergency assistance services and to handle interpretation for additional calls when volume is high.

In addition to the language assistance measures discussed above, Miami has taken steps to ensure that the continuum of language assistance does not end when the call-taker and LEP individual conclude their call. When the dispatcher contacts the first or second responders (police officers, fire department personnel, or emergency medical services technicians) to send them to the location of the emergency, the dispatcher also informs them of the language needs of the LEP individual so that the first/second responders include personnel who speak the LEP individual’s language. This enables the first/second responders to assist the LEP individual more efficiently and effectively by ensuring that language will not be an impediment to receiving immediate emergency assistance.

Contact: Major Hector F. Martinez  
Communications Section  
City of Miami Police Department Miami, FL  
(305) 579-6130  
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## **Project ECHO: A Focus on Outreach and Emergency Preparedness**

Emergency preparedness raises a host of challenges beyond 911 calls, and LEP communities should be taken into consideration as strategies are developed and updated. Project ECHO (Emergency and Community Health Outreach), in St. Paul, Minnesota, has done just that by creating emergency preparedness in and among the diverse language communities that comprise a large portion of St. Paul. ECHO uses emergency simulcasting on public TV and radio stations to provide timely emergency information to LEP individuals. ECHO's overall goal is to change the viewing behavior of LEP populations by getting them to turn to public television and radio for emergency information. ECHO plans to provide critical information to LEP individuals during an emergency (e.g., disease outbreak, chemical spills, weather, terrorism), and identify public television as a reliable source of emergency information.

ECHO will initiate the process with monthly broadcasts, scheduled to air on September 19, 2004. Broadcasts include an 18-minute segment in six different languages -- Hmong, Khmer, Lao, Somali, Spanish, and Vietnamese. Each broadcast will focus on a particular theme or issue; provide background on the issue including an interview with an expert from the particular LEP population; and will serve as an open forum, using culturally appropriate messages to reach the intended audience for each language. Subject matters scheduled for broadcast include influenza education, mental health issues, and fire and carbon monoxide safety, among others.

ECHO has settled on public television as its primary outlet for community outreach because of its availability to people who don't have cable access and because it has the potential to reach a broad LEP audience. The launch date for ECHO's website (<http://www.echominnesota.org>) is September 19, 2004.

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## Chapter 3: Tips and Tools Specific to Law Enforcement Agencies

Law enforcement personnel have contact with the public in a variety of ways. Officers meet members of the public when conducting routine patrol, responding to requests for services or assistance, interviewing witnesses or victims, or attending community outreach activities. While this section does not purport to address every type of law enforcement interaction, it does survey strategies used by law enforcement to communicate with LEP individuals in the most common situations.

Chapter 1 of this document, as well as the DOJ LEP Guidance (including Appendix A of that Guidance, which provides examples in the law enforcement context), should be consulted for a broader description of the ways in which meaningful language access can be assured.

Appendix A of the [DOJ LEP Guidance for recipients](#) discusses five areas of potential contact with LEP individuals:

- A. Receiving and responding to requests for assistance;
- B. Enforcement stops short of arrest and field investigations;
- C. Custodial interrogations;
- D. Intake/detention; and
- E. Community outreach.

See 67 Fed. Reg. 41468-69, DOJ LEP Guidance, at <http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.pdf>.

### A. Assessing Need and Setting Policy

#### **(1) Study your community to identify LEP populations, set policies, and implement strategies to ensure effective communication.**

- ◇ Always validate projections based on demographic data against program experience based on the observations of your staff and input from the community.

*Want more info?*

- The Summit County/Lorain, Ohio Model LEP Policies and Procedures Committee, highlighted in the box at the end of this section, is an example of one group using its collective eyes and ears to assess the “real world” LEP populations encountered by law enforcement. Contact Isabel Frammer, certified interpreter and one of the co-chairs of the Committee, at [isainterp@aol.com](mailto:isainterp@aol.com).

#### **(2) Include all stakeholders, including community groups and staff representatives, in your planning process for language access.**

#### **(3) Distribute your LEP plan to all staff likely to encounter LEP individuals on the job.**

- ◇ Include a list of resources and contact numbers for staff to easily access language services on the job, discussed in more detail in Section C of this chapter.

#### **(4) See Section A in Chapter 1, General Tips and Tools, for an in-depth discussion of how to assess your LEP needs and create a plan to address those needs.**

## B. Identifying Language Resources

### **(1) Consider recruiting bilingual staff and establishing programs/training to enhance the language capabilities of existing bilingual or monolingual staff.**

- ◇ Attracting bilingual staff may require strategic plans and aggressive recruitment.
- ◇ When hiring and training bilingual officers or other staff, account for dialects spoken, language nuances, and cultural diversity in your community.
- ◇ Training in basic, everyday expressions in another language can be very helpful. For instance, simple greetings and social language skills can help enormously in setting witnesses, victims, and community groups at ease and building a bridge of trust. In addition, providing language training to officers can be a useful tool to enable them to give simple commands and respond to common inquiries. However, such basic training does not substitute for the language skills necessary to decipher and express more complicated concepts, nor does it substitute for the skills necessary to engage in important communication, especially communication with potentially serious consequences.
- Various universities and other organizations have created electronic tools to supplement in-person language training. The University of Texas at Arlington, Center for Distance Education, for instance, has digitized and made “internet accessible” a state-developed course on “Spanish for Law Enforcement.” The Center for Distance Education is developing an online program that gives audio and visual cues; gives cultural training (*e.g.*, teaches officers about how much personal space is the norm in various cultures); and uses workplace-specific scripts and street vocabulary.

*Want more info?*

- Contact the Center for Distance Education, The University of Texas at Arlington, Box 19027, Arlington, Texas 7601 9- 0027. Voice (817) 272-5727; Voice (Toll Free) (888) 882- 3478; Fax (817) 272-5728.
- ◇ Bilingual Handbooks, glossaries and dictionaries online or in hard copy, should be made available to bilingual and other staff.
- Contact Virginia Benmaman, [benmamanv@cofc.edu](mailto:benmamanv@cofc.edu), Director of the Master of Arts Bilingual Legal Interpreting program at the College of Charleston (<http://www.cofc.edu/iegalint/>). Dr. Benmaman is the author of a “Bilingual Handbook for Public Safety Professionals” in English and Spanish.

### **(2) Translate vital forms and documents into languages commonly spoken in your community.**

- ◇ Translated Miranda warnings and other important notices, rights, and forms could provide convenience and clarity in arrest, interrogation, and booking situations involving literate LEP individuals. Translation of key documents can also assist interpreters in providing consistent interpretation of important law enforcement terminology.

*Want more info?*

- The FBI has made certain translations available through its Law Enforcement Online website for use by authorized law enforcement entities. For more information, see Section B in Chapter 6, DOJ Federally Conducted Programs and Activities.

**(3) *Making full use of existing staffs' language capabilities is one element of an effective LEP plan, as long as the plan does not require staff to perform tasks beyond their language skill level.***

- ◇ Make sure that your bilingual staffs' level of competence matches the need of the LEP persons being served, particularly when a failure to communicate could adversely impact an issue of importance to the LEP person.
- ◇ Encourage officers and other bilingual staff to call in professional interpreters and translators when needed.

**(4) *Form constructive working relationships with the LEP communities you serve by teaming bilingual officers with volunteers from community-based organizations.***

*Want more info?*

- See the featured box on the Haitian Roving Patrol at the end of this chapter, and contact: Officer Skip Brown, Delray Beach, Florida Police Department: (561) 243-7873.

**(5) *See Section B in Chapter 1, General Tips and Tools, for more information on how to access language resources in your area.***

### **C. Working with LEP Individuals**

**(1) *Arm your officers and staff with effective language tools and access protocols in order for them to fulfill their duties, and to protect and be protected, in every language.***

**(2) *Adopt a standard protocol to be used by officers and staff who are not bilingual when encountering a person who speaks little or no English.***

- ◇ As noted in Section C of Chapter 1, General Tips and Tools, some agencies use "I Speak \_\_\_\_\_" cards to identify an individual's primary language and enable the officer or staff to call for a bilingual officer or telephonic or in-person interpreter in the needed language.

*Want more info?*

- Contact Isabel Framer, certified interpreter and co-chair of the Ohio Model LEP Policies and Procedures Committee at [jsainterp@aol.com](mailto:jsainterp@aol.com) or co-chair Sheriff Alexander, Summit County, Ohio at <http://www.co.summit.oh.us/sheriff/contact.htm>; (330)- 643-2181 or TTY: (330)-643-2221.

**(3) *Create convenient points of entry for the most populous language minority communities, such as dedicated non-emergency telephone numbers for Spanish or other language speakers, or specialized liaison units that effectively work with the LEP persons in your area.***

- ◇ Consider setting up a dedicated non-emergency number for particular language speakers housed in the community outreach units of your police department.

- ◇ Provide a recorded message in various languages spoken with frequency in your service area, explaining how callers can access the services you provide and receive language assistance if needed. Post this phone number at social gathering places where the target community congregates.

**(4) See Section C in Chapter 1, General Tips and Tools, for more information on working with LEP individuals.**

#### **D. Ensuring Quality Control**

**(1) It is not the plan but the actual delivery of appropriate and competent language assistance when and where needed that defines “meaningful access.” Don’t let the good work done in developing your plans and policies go to waste by failing to implement them effectively.**

**(2) Be careful about substituting bilingual ability for the training and qualifications necessary to interpret accurately and completely.**

- ◇ Certain circumstances may require the services of a professional interpreter or translator. Management, bilingual officers, staff, and volunteers should recognize the limits of in-house language assistance ability, and identify the need to call in professional interpreters and translators.
- ◇ In the absence of a professional interpreter, quality control might be achieved by sending bilingual officers to interpreter trainings set up by courts and interpreter associations, and test officers’ language skills periodically.

**(3) Strive for the highest quality language services in situations in which there could be serious consequences to LEP individuals.**

- ◇ Timeliness is an element of quality.
- ◇ Training (or verifying competency) is important, but evaluation and monitoring are also key components to ensuring quality.
- ◇ Part of ensuring quality is making sure that officers understand the languages spoken in the community. For instance, when time to wait for the proper interpreter is available, a bilingual Spanish-speaking officer should not attempt to interrogate in Spanish an LEP person who speaks a little bit of Spanish but whose primary language is not Spanish.
- ◇ Drive home the point with all staff that failure to communicate effectively and follow quality protocols not only impedes services to LEP victims and to the community at large, but also can present law enforcement with safety, evidentiary, and legal challenges, provide perpetrators and alleged perpetrators with reason to challenge investigations, and increase monetary and human costs.

**(4) See Section D in Chapter 1, General Tips and Tools, for more information on ensuring quality control measures and checks. Also consult Appendix A of the DOJ LEP Guidance for specific information pertaining to law enforcement.**

## **E. Conducting Outreach**

- (1) Outreach to the LEP populations you serve plays an integral role in implementation and refinement of your LEP plan. When LEP individuals are aware of the existence of your language resources, they are more likely to access them to communicate safety and other concerns, and to be able to assist law enforcement.**
- (2) Conduct community outreach by using bilingual officers, staff, and volunteers.**
- (3) Extend community outreach by offering a wide variety of services important to LEP individuals (such as health or youth-related programs), hiring bilingual officers and staff, and partnering with volunteers from community-based and charitable organizations.**
  - Target resources to specific concerns by following the approach taken by the California Highway Patrol (CHP), which is involved in a traffic safety outreach program, El Protector, directed at the Hispanic community. When starting this program in 1987, CHP placed special emphasis on educating through dialogue with the community, instead of focusing solely on enforcement measures. The goal of the El Protector Program has been to reduce the disproportionate number of Hispanic drivers and victims involved in traffic-related collisions. By relying upon officers and staff that are bilingual and bicultural, agencies conduct activities designed to educate and encourage positive traffic safety behavior and to build better community relations between the Hispanic community and law enforcement agencies.

*Want more info?*

- Contact Sergeant Andres Ornelas, Statewide El Protector Coordinator, Community Outreach and Partnership Section, 2555 First Avenue, Sacramento, California 95818; (916) 657-8810; TTY: (800) 735-2929.
- (4) Work with community and ethnic organizations to sponsor diversity training and to train officers and staff on working with LEP individuals.**
  - (5) Partner with neighborhood schools, churches, community groups, landlord-tenant organizations, and others to provide civic education to recent immigrants. Use such partnerships to encourage participation in police and civic activities, enhance understanding of differences between laws in this country and those of the countries of origin, and encourage crime reporting and a sense of safety.**
  - (6) Effective communication is a two-way street. In organizing outreach to LEP communities, try to solicit suggestions on how to make your plan and its implementation better.**
  - (7) See Section E in Chapter 1, General Tips and Tools, for more ideas on how to conduct effective outreach to your community and service area.**

## **Storefront in East Dallas: A Focus On Community Outreach and Inclusion**

The Dallas Police Department's involvement with the Storefront project in East Dallas uses a comprehensive approach to addressing the needs of an immigrant population and promotes a recognition by police that gaining the trust of community is a major factor in effective policing. The Storefront is a community-based program that was started to assist immigrant populations adjust to their community, access municipal services, and help develop community trust of uniformed police officers. The Storefront began operation in 1985 in response to the large number of Southeast Asian immigrants and refugees arriving in the East Dallas area. Utilizing non-uniformed personnel to gain community trust, the program initially provided primarily food and clothing. Over the years, the Storefront has evolved into a multi-tiered operation serving many nationalities. It still continues to provide the much-needed assistance, but the emphasis is now on proactive crime prevention and community development, as well as reactive police responses.

Over the last five years, Sergeant Ray Ball has provided leadership by identifying grant funds that allow the Storefront to tailor its programs and services to the community. The program implements police initiatives to reduce criminal activity, work with youth at risk, improve access to healthcare, and create affordable housing in targeted areas. About 80% of the work done at the Storefront is providing or accessing services; the other 20% is responding to calls. When these new programs began, Sergeant Ball selected non-sworn, bilingual police employees and other bilingual persons from the community. Now he has both uniformed and non-uniformed staff. He also hires community persons as translators. Officers assigned to the Storefront are able to be creative and resourceful in their daily duties. The staff includes a sergeant, five sworn officers, four crime prevention specialists, and three grant-funded part-time bilingual community assistance clerks.

The Storefront is open from 6:30 a.m. to 6:30 p.m., Monday through Friday, but often provides services for evening and weekend planned events. The Storefront hosts various community and police-related meetings. It offers a Walk-in-Police Assistance Program where individuals from the neighborhood can make reports and receive assistance, information, and referrals as needed. The Storefront also provides interpreter services and cultural awareness sessions, consultation, and training for detectives during investigation. Interpretation services are available in ten languages - Vietnamese, Thai, Cambodian, Laotian, Mandarin, Cantonese, Chau Chinese, French, Spanish, and English.

Contact:           Sgt. Ray Ball  
                      East Dallas Storefront Dallas Police  
                      Department 4545 Bryan Street  
                      Dallas, TX 75204  
                      (214) 670-4413



## **Haitian Citizens Police Academy/Haitian Roving Patrol in Delray Beach, Florida: A Focus on Community Involvement**

Challenged by language and cultural differences coupled with alarming Haitian victimization and the existence of fear and mistrust towards authority, the Delray Beach, Florida, Police Department, community leaders, and residents joined forces to establish a community-based initiative to turn this around. In 1995, the Haitians Citizens Police Academy, believed to be the first of its kind in the nation, was formed. Community activists and residents from the Haitian community participated in a 10-week program of instruction on policing, code enforcement, city government, and other important information. The emphasis was on establishing a positive citizens/police alliance based on a strong sense of trust, respect, and partnership. The program has been an overwhelming success, and Haitian residents have embraced the philosophy of partnering and teamwork to improve their quality of life.

Since 1995, the Delray Beach Police Department has run five Haitian Citizens Police Academies with more than 200 Haitian residents attending. A volunteer Haitian Roving Patrol was started with just five members from the first class. The Haitian Roving Patrol currently consists of 14 Creole-speaking volunteers in marked police vehicles. They patrol the city's Haitian neighborhoods as well as other targeted areas, and are used during special events to supplement the regular police force. They are trained in observation and the use of mobile phones and police radios to call in suspicious activity for police follow-up. This increases the police presence in these areas, which lends a feeling of security to troubled neighborhoods. It also facilitates communication between the police and Creole-speaking LEP residents. In addition, the Haitian Roving Patrol members appear to have created a new sense of pride in the Haitian community.

According to the Delray Police Department, in 1998 the Haitian Roving Patrol was responsible for reducing robberies in the mostly Haitian Osceola Park area by 53 percent. They are credited with a 98-percent reduction in armed robberies in the Delray Square Shopping Plaza during that same year.

This unique program has received considerable notice. The Pew Charitable Trust highlighted it as one of twelve unique grassroots projects throughout the United States in a book called *Local Heroes Changing America*.

Contact:           Officer Skip Brown  
                          Volunteer Coordinator  
                          Delray Beach Police Department  
                          300 W. Atlantic Avenue  
                          Delray Beach, FL 33444  
                          (561) 243-7873.

## **Summit County/Lorain, Ohio Committee on Interpreter Services/ LEP Model Program for Law Enforcement: *A Focus on Planning***

Based on data from the 2000 Census alone, Summit County, Ohio would not be high on the list of jurisdictions requiring an extensive program of language assistance. In 2000, only 5.6% of county residents over the age of five reported that they spoke a language other than English at home. Of its Spanish-speaking community, which comprised only 1.24% of the county's overall population, just over 15% reported that they did not speak English very well or did not speak English at all, well below the national average for Spanish-speakers.

Yet in 2000, the Sheriff of Summit County became aware of many instances when language barriers had impeded the county's delivery of competent, effective, and timely law enforcement services, primarily when interacting with Spanish-speaking LEP persons. Realizing that the demographic data did not accurately reflect the LEP situation his officers found on the street or in the county detention facilities, and believing that the LEP problems and language assistance solutions were not unique to his jurisdiction, the Sheriff worked with the Department's contract Spanish interpreter, and the Chief of Police for the City of Lorain, Ohio to organize a committee of law enforcement officers from several local and state jurisdictions. The purpose of that committee, known as the Summit County/Lorain Interpreter Services/LEP Model Program for Law Enforcement Committee, is to identify commonly encountered situations in which law enforcement personnel interact with LEP persons, and to develop practical language assistance procedures to ensure that language does not bar competent, effective, and timely law enforcement.

The Committee leadership also convinced a number of recognized experts in the area of language services and legal interpretation from around the nation to form an advisory board to assist the law enforcement professionals making up the committee. A company that provides telephonic interpreter services is supporting the work of the Committee by providing teleconference services for advisory board members who do not live in the north central Ohio area. In addition, the Sheriff arranged training on the LEP requirements for all his senior officers and command staff.

The Committee is in the final stages of producing draft LEP policies, practices, and protocols, including a picture-based communication booklet, flashcard communication booklet, and "I Speak \_\_\_" cards for officers on the street, which serve as models for other jurisdictions. The Committee's approach in combining experts from both law enforcement, as well as the interpretation and translation fields, is now being evaluated for possible statewide and/or national application.

Contact: Sheriff Drew Alexander  
53 University Avenue  
Akron, OH 44308  
(330) 643-2181 or TTY (330) 643-2221 <http://www.co.summit.oh.us/sheriff/contact.htm>.

Or co-chair Isabel Frammer at [isainterp@aol.com](mailto:isainterp@aol.com)

## Chapter 4: Tips and Tools Specific to Domestic Violence Service Providers and Specialists

Domestic violence is a public health issue affecting the health, safety, and well-being of millions of families in the United States. Experts have described domestic violence as a broad pattern of behaviors that may involve physical, emotional, or mental abuse against victims. As a result, getting victims promptly linked to services and resources is critical to ending abusive relationships and protecting the victims. Victims who are LEP face unique barriers to reporting domestic violence. Their abusers may typically serve as their primary link to English-speakers if the abusers speak English. In addition to language barriers, LEP victims, depending on their legal status in the United States, may also worry about the immigration consequences of coming forward to report abuse. For these reasons and more, providing competent language services provided by those trained in confidentiality and ethics is critical.

This chapter provides some important tips and resources to assist entities in ensuring that victims of domestic violence and their family members have meaningful access to law enforcement, service providers, and the judicial system. These tips should be read in conjunction with the General Tips and Tools contained in Chapter 1. LEP coordinators and decision-makers should also consult the DOJ LEP Guidance, including Appendix A, which provides examples from the domestic violence context.

### A. Identifying the Need

**(1) *LEP individuals in your community may need your help. Do not assume that “someone else can help them.”***

- ◇ All shelters and service providers should be aware of languages commonly spoken in the community, and develop appropriate protocols and resources, including collaborating with immigrant community-based organizations, for responding to LEP individuals needing language assistance.
- ◇ When possible, partner with domestic violence service providers that focus on particular ethnic or immigrant populations. Do not assume that your organization is “off the hook” on providing language services simply because some other organization does.

Want more info?

- For one approach, see the Washington State Coalition Against Domestic Violence “Model Protocol on Services for Limited English Proficient Immigrant and Refugee Victims of Domestic Violence,” prepared in November 2002.
- ◇ See Section A in Chapter 1, General Tips and Tools, for an in-depth discussion of how to assess your LEP needs and create a plan to address those needs.

### B. Identifying Language Resources

**(1) *Community organizations have benefited from hiring and training bilingual employees to provide direct services. Many have worked with law students, undergraduate students, community members, and academics to provide language assistance. Consider hiring professional interpreters where necessary and appropriate.***

- ◇ If the language services are provided by an interpreter, translator, or bilingual person, make sure that those individuals are not connected to the client’s community. If those individuals are connected, make sure that they are trained on confidentiality. In many circumstances, the interpreter is a member of the community and may know the abuser or the abuser’s family. If this is true, remind the interpreter that any breach in confidentiality may put your client in danger.

This can be especially important in rural areas where there are fewer linguistic resources, leading to a natural tendency to find anyone who speaks the language without thinking about confidentiality. Language access can be provided telephonically working with trained interpreters from other parts of the state.

- ◇ Bilingual academics, students, and community members should be periodically tested/evaluated for competence in the appropriate level of bilingual ability required.

*Want more info?*

- Consult the General Tips and Tools Chapter 1, Sections B(6) and D(1).
- Consult the Rockland Family Shelter (featured below), concerning its training programs for volunteer interpreters.

**(2) Form linkages with other non-profits, community-based organizations (CBOs), associations, and faith-based organizations serving LEP communities to promote referrals, sharing of expertise, and dissemination of information to the linguistic communities in your service area.**

- ◇ The coalition group TAPESTRI, featured at the end of this chapter, utilizes the expertise of eight different organizations, with a combined capacity to communicate in 40 different languages.

**(3) Have a dedicated toll-free number providing referral resources for callers who speak various languages.**

- ◇ Once you have formed linkages with non-profits, CBOs and legal aid offices in your area, your dedicated phone lines (staffed by individuals who speak the various languages or can connect to an interpretation service) can refer LEP community members to service providers who are equipped to meet their linguistic needs.

**(4) See Section B in Chapter 1, General Tips and Tools, for more information on how to access language resources in your area.**

### C. Other Services for LEP Victims of Domestic Violence

**(1) Offer courthouse clinics where your staffing capacity permits. Such clinics are particularly helpful for individuals who could easily file *pro se* (proceeding without counsel) but for the language barrier. Have informational brochures available in multiple languages so that immigrant victims who come to the court system for help can learn about the range of legal options designed to help immigrant victims.**

- ◇ Consider posting trained bilingual staff members at local courthouses to explain court procedures to LEP individuals.
- ◇ Such an effort requires cooperative approaches with police, courts, and other service providers.

*Want more info?*

- A comprehensive informational pamphlet designed for immigrant victims is available in English and Spanish (Russian and Hindi in progress). Contact Legal Momentum Immigrant Women Program, 1522 K Street, NW, Suite 550, Washington, DC 20005, (202) 325-0040; [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org).
- A number of nonprofits have taken this approach. See General Tips and Tools Chapter 1, Section B (3).

- (2) **Consider offering English as a Second Language classes, vocational training, and childcare programs for the LEP community members you serve.** \_\_\_\_\_

*Want more info?*

- Contact Refugee Women's Alliance (featured at the conclusion of this chapter) or at (206)721-0243 or log on to <http://www.rewa.org/>.

- (3) **Conduct law enforcement trainings. Partner with victim-witness advocates/coordinators, community relations officers, or local prosecutors with whom you have come in contact.**

*Want more info?*

- Refer to TAPESTRI (featured at the conclusion of this chapter) at <http://www.TAPESTRI.org/>
- The New York City Community Response to Trafficking Program successfully partnered with the New York Police Department (NYPD) for trainings, resulting in the creation of an ethnically-sensitive anti-trafficking unit within the NYPD. This could be replicated for various units.
- Contact the Rockland Family Shelter (featured at the conclusion of this chapter), which has developed and conducted training programs for police departments concerning victims of domestic violence. (845) 634-3344; TTY: (845) 634-3119.

- (4) **See Section C in Chapter 1, General Tips and Tools, for more information on working with LEP individuals.**

#### **D. Ensuring Quality Control**

- (1) **Accuracy and effective communication are as critical in domestic violence situations as in any emergency situation. Do not rely on friends and family members to interpret for the LEP victim in important and sensitive interactions.**

- ◇ It is very important to avoid using children as interpreters in domestic violence cases. Since many children accompany the client to meetings or at the shelter, police departments, and other services, it is sometimes perceived as convenient to use children to interpret. Children can suffer psychological harm from having to hear and interpret the details of abuse.
- ◇ Consider adopting a protocol for community interpreters as described in Section A above.

- (2) **Be aware of the pitfalls that can result from using untrained, untested individuals for language assistance. For example, LEP victims could have their testimony incorrectly interpreted in court. Use only trained interpreters and translators for situations with potential legal exposure. The higher the stakes, the more important the use of trained language service providers.**

*Want more info?*

- See Section D in Chapter 1, General Tips and Tools, for more information on quality control.

## **E. Conducting Community Outreach**

- (1) Conduct outreach clinics at ethnic gathering places, including houses of worship, ethnic shopping areas, etc.**
- (2) Conduct intake clinics, answer questions, or simply post information at such gathering spots. Ask ethnic/religious/social organizations and/or community leaders to include information about your program in any newsletters or other information they circulate within the community.**

*Want more info?*

- Contact Anna Laboriel, Director of Satellite Offices, for the Rockland Family Shelter, which has satellite offices in immigrant communities and maintains a liaison with houses of worship attended by LEP immigrant women. (845) 634-3344; TTY: (845) 634-3119.
- Contact Latinas Unidas Por Un Nuevo Amanecer (LUNA) for information on immigrant leadership development. They can be reached at 4814 University Avenue, Suite 3, Des Moines, IA 50311 (515) 271-5060, [Latinas@lunaiowa.org](mailto:Latinas@lunaiowa.org).

- (3) Publish outreach information concerning domestic violence, sexual assault, and trafficking in the languages of the LEP populations served by your organization.**
- (4) See Section E in Chapter 1, General Tips and Tools, for more ideas on how to conduct outreach effectively to your community and service area.**

## **Rockland Family Shelter in New York City: *Doing What it Takes***

The Rockland Family Shelter program in New York City illustrates some of the steps that can be taken by smaller organizations to locate and provide language access and other services to LEP victims of domestic violence. The primary LEP populations served by the Rockland Family Shelter are Asians, Haitians, Hispanics, and Orthodox Jewish speakers of Yiddish, Russian, and Hebrew. The shelter participates in community outreach by having materials in several languages that describe the services provided as well as define domestic violence (for example “not just physical battery”). In addition, documents on legal rights are available in the shelter in Spanish and Haitian Creole. The shelter also has satellite offices set up in immigrant communities, and directors collaborate with local churches to provide access to immigrant women who seek out churches after arriving from their home country.

The shelter offers special services to LEP persons including weekly Spanish language and Haitian Creole support groups. The Asian Community Program, the Haitian Community Program, the Hispanic Community Program, and the Orthodox Jewish Community Program (Project Tivka) all employ advocates who specialize in the cultural and linguistic needs of LEP groups.

Translation and interpretation services are also available. All staff and volunteers undergo mandatory training for dealing with LEP persons and cultural competency. In addition, in response to the recent influx of Ecuadorian immigrants, service providers went into the community and actively recruited volunteers who could assist in bilingual communication. These volunteers were then trained and briefed on confidentiality requirements. Advocates also have continual access to interpretation and translation services in 17 Asian languages and dialects through a joint effort with the Asian Women’s Alliance of Kinship and Equality (A.W.A.K.E.), a local Asian community organization. Members of A.W.A.K.E. (especially board members) are encouraged to voluntarily assist in bilingual communication efforts. Bilingual volunteers, though they do not receive much training in interpretation and translation, are invited to regular meetings where they discuss outreach and receive some training on domestic violence response.

The Rockland Family Shelter works with both the police department and social services and has received referrals from all agencies involved in domestic violence response including clinics, counselors, etc. The shelter develops and conducts training for local police officers who work with domestic violence. The shelter directors also meet with police officers and chiefs somewhat regularly to discuss emerging issues in domestic violence response, including LEP issues. Additionally, police departments are encouraged to contact the shelter or A.W.A.K.E. when working with a victim who requires interpretation services that the police department cannot readily provide (usually a Southeast Asian dialect). However, this service is not used very regularly. Occasionally, when the police department is in a tight spot, the shelter provides interpretation services and refers police officers to a bilingual staffer or volunteer at Rockland Family Shelter.

Contact: Anna Laboriel, Director of Satellite Offices  
Rockland Family Shelter  
Center for Advocacy and Support Services 2 Congers Road  
New City, NY 10956  
(845) 634-3344

## **Refugee Women’s Alliance (ReWA) in Seattle, Washington: *Working Collaboratively Across Disciplines to Assist LEP Victims of Violence***

The Refugee Women’s Alliance (ReWA) has used constructive liaisons with police departments and other organizations as a means of providing services in a broad range of languages to victims of violence, while at the same time increasing cultural competence in, and sensitivity to, the issues facing victims of violence.

ReWA’s comprehensive range of services for LEP individuals include community outreach/education on domestic violence, sexual assault, and human trafficking in areas with significant LEP populations; English as a Second Language (ESL) and vocational classes with on-site child care; an on-site pre-school; support groups for refugee and immigrant battered women and those at risk of becoming victims of domestic violence; consultation and training to law enforcement agencies and other service providers likely to encounter LEP victims; and specialized services to help LEP women understand and navigate the legal system. Legal services include referrals to pro-bono legal representation, as well as weekly sessions/workshops with on-site and volunteer attorneys on family law and other issues. Staff interpreters are available to work with attorneys during these sessions. ReWA has also implemented a “co-advocacy” program designed to address the problems that can arise when two or three agencies are dealing with the same client. The “co-advocacy” program ensures that clients receive comprehensive assistance (e.g., emergency response, legal action, housing, and other needs), while avoiding duplication of effort and conflict.

The primary LEP populations served by ReWA are East African, East European, Southeast Asian, and others. Jointly, advocates speak 23 languages. ReWA’s Domestic Violence Program alone has seven advocates who speak about 14 languages, including Somali, Russian, Vietnamese, Cambodian, Ethiopian, Lao, and Chinese. Interpreters, usually native speakers of the language for which they provide interpretation, receive extensive training and are “screened” to ensure that they can read and write proficiently. They also receive additional training on how to accurately interpret and translate domestic violence terminology. ReWA publishes brochures in 11 different languages. The available brochures include a domestic violence brochure (available in 10 languages) for distribution by police departments. This domestic violence brochure defines domestic violence, explains a victim’s rights, describes ReWA’s services, and provides ReWA’s contact information. In addition to the brochures, ReWA also collaborates with the Seattle Police Department to produce sexual assault education videos in Cambodian, Russian, Somali, Vietnamese, and Amharic. The videos provide information for victims of sexual assault in ethnic communities, including an explanation of a victim’s rights and the resources available to assist the victim.

Contact:           Someireh Amirfaiz  
Executive Director, ReWA  
PO Box 28112Seattle, WA 98118  
(206) 721-0243, ext. 222; <http://www.rewa.org/>



## **TAPESTRI in Georgia: A Focus on Coalition-Building**

In 1996, a coalition of eight community-based organizations and eight professional advocates created TAPESTRI in order to combat violence and oppression of women in immigrant and refugee communities. Coalition members speak over 40 different languages and serve as advocates for immigrant and refugee families affected by domestic violence, sexual assault, and exploitation. TAPESTRI employees provide basic case management services to victims, including writing temporary protective orders, explaining general domestic law to victims, and where necessary, referring victims to attorneys. All interactions with clients are conducted with someone in the coalition who speaks the client's language. In the event that the client's language is not spoken, TAPESTRI hires an appropriate person who can interpret. TAPESTRI works with clients to obtain medical care, child care, educational, and other benefits. The coalition recognized that many immigrant and refugee women faced similar issues regardless of their community, so they developed an intervention strategy to assist women in confronting violence and oppression.

TAPESTRI's Immigrant and Refugee Coalition Challenging Gender Based Oppression consists of: 1) The Center for Pan Asian Community Services; 2) the International Women's House; 3) Caminar Latino which provides a Spanish hotline, support groups, and advocacy for Latino families; 4) the Refugee Family Violence Prevention Project of Refugee Family Services; 5) Women Watch Africa, Inc.; 6) Shalom Bayit/Jewish Family and Career Services; 7) Refugee Women's Network; and 8) RAKSHA which works with the South Asian community. Many of these organizations provide counseling to victims, and all provide direct services including legal referrals. All of these services are in the appropriate non-English language. If the language is not available, TAPESTRI will hire the services of an interpreter.

TAPESTRI Men's Program was created in 1999, and staff members from this program have worked with immigrant and refugee men from over 18 countries. This program provides community education and 24 weeks of family violence intervention lessons for men in the appropriate non-English language.

TAPESTRI is involved in a number of activities including multicultural training on issues of domestic violence, sexual assault, and human trafficking for mainstream service providers, professionals, and criminal justice system personnel. Generally, mainstream service providers consist of local shelters. The training involves general orientation to American culture by making clients aware of cultural barriers and providing tips on bridging language barriers in American culture.

For the past few years, TAPESTRI has provided training on immigration and refugee issues to police officers throughout the State of Georgia at the police training academy in Forsyth, Georgia. TAPESTRI has developed a course outline and training schedule that meets the needs of criminal justice/law enforcement system personnel who attend their courses. TAPESTRI has bilingual and bicultural trainers who train police officers on LEP issues.

Through its community education and outreach program, TAPESTRI educates refugees and immigrant communities about domestic violence, sexual assault, and human trafficking. TAPESTRI conducts in-person training and publishes a biannual educational newsletter on emerging issues of concern to refugee and immigrant women. TAPESTRI has developed brochures, posters, and flyers in different languages. TAPESTRI has placed these brochures in various ethnic markets.

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## Chapter 5: Tips and Tools Specific to Courts

Over the past ten years, as the immigrant population has grown, so has the community of LEP individuals needing access to the courts and other important services. The population of LEP individuals has grown in number, as well as in diversity, leaving court administrators and clerks with the challenge of providing timely and effective interpretation and translation services for an increasing number of different language groups. Despite these difficulties, state Supreme Court Justices, state officials, clerks of court, and court administrators have, in many instances, exhibited a strong commitment to providing the language services necessary to have an accessible and fair judicial system. Many state judicial systems have found creative, cost-effective means of ensuring that LEP persons obtain needed court services. For example, New Jersey and Oregon court policies provide for interpreters at public expense for any party or witness in civil and criminal cases, as well as for other LEP individuals who need to contact court personnel at the courthouse, whether in or outside of the courtroom. Below we have listed some ideas from the field on developing an effective language assistance plan and policy for your judicial system.

“At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individuals must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person’s language or that a competent interpreter is provided during consultations between the attorney and the LEP person.” DOJ LEP Guidance, Appendix A, June 18, 2002 (found at <http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.pdf>.)

This chapter should be read in conjunction with Chapter 1, General Tips and Tools. Court administrators, LEP coordinators, and decision-makers should also consult the DOJ LEP Guidance.

### A. Assessing the Needs of Your Court System and Creating a Plan

#### (1) Assess the language capability of your court system and analyze the existing barriers for LEP individuals seeking court services.

- ◇ One suggestion is to authorize a committee to analyze your court system and draft findings detailing your language needs and recommendations for addressing those needs, including obtaining the services of a private contractor, if appropriate.

*Want more info?*

- Consult the Oregon Judicial Department’s website concerning the “Access to Justice for All” committee, which is considering measures to improve delivery of services to LEP and other underserved populations at <http://www.OJ.D.state.or.us>.
- Also, see the very detailed “2000 Language Need and Use Study” published by the California Judicial Council, which includes an analysis of demographic trends and the changing language needs in different counties throughout the state at <http://www.courtinfo.ca.gov/programs/courtinterpreters/documents/needusestudy.pdf>.
- The end result of this privately-contracted study was the designation of five additional languages for inclusion in California’s Court Interpreter Certification Program. See [www.courtinfo.ca.gov/programs/courtinterpreters/courtinformation.htm](http://www.courtinfo.ca.gov/programs/courtinterpreters/courtinformation.htm).

**(2) Develop a comprehensive written plan for the provision of services to LEP individuals, and train court staff on the practices and procedures contained in your plan.**

- ◇ Many courts have already implemented plans for the provision of services to LEP individuals. These typically include use of court interpreters, including measures to ensure their competence and ethical conduct, training for court staff on how to access language services, translation of vital documents, and appropriate signage for LEP individuals, among many other things. One need not reinvent the wheel to create a viable LEP plan, as some jurisdictions have already published comprehensive plans.
- ◇ State court administrators should consider statewide plans that provide for local level courts to develop their own needs assessments, policies, and procedures for ensuring access to justice for LEP persons.

**(3) As part of assessing need, keep track of the languages for which interpreters are requested to determine if changes or additions to your LEP plan warrant consideration.**

- ◇ Be sure to adjust as demographics change. Such information may include the frequency with which interpretation services are required in those languages, and whether the services are requested in civil or criminal proceedings or in interactions outside of the courtroom.
- ◇ Keeping track of which languages are most frequently encountered is essential, and will give a better idea of how to provide appropriate language coverage. For example, if there is a large LEP Spanish-speaking community and a very small Mixtec-speaking community, you may wish to hire a Spanish interpreter and contract out for Mixtec interpreting. However, you need to ensure the competence and ethics of the contractor, since this person may not be subject to the same rigorous on-going training as an in-house interpreter.

*Want more info?*

- See DOJ LEP Guidance at [http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun1\\_82002.htm](http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun1_82002.htm).
- More information on how to ensure competence is located in Section D below under “Quality Control.”

**(4) Make interpretation and translation services freely available in civil and criminal matters.**

- ◇ Some court systems, including the Oregon Judicial Department and the New Jersey Courts, have policies providing free interpreting services to parties needing to communicate with court staff, regardless of the nature of the matter presented. All individuals seeking services from the courthouse are served. This approach recognizes the importance of court proceedings, which can permanently alter the lives of individuals involved in the process. Implementing an approach of ensuring qualified and timely language interpretation as needed ensures compliance with civil rights laws as well as access to justice for LEP persons.

*Want more info?*

- Consult the Oregon Judicial Department’s Coordinator for Interpreter Certification Program, Lois M. Feuerle, at (503) 986-7021; TTY: (503) 986-5504; Lois.M. FEU RLE@[ojd.state.or.us](mailto:ojd.state.or.us).
- Consult Robert Joe Lee, Court Executive, Language Services Section, New Jersey Judiciary: [RobertJoe.Lee@judiciary.state.nj.us](mailto:RobertJoe.Lee@judiciary.state.nj.us).

- ◇ In some instances, Federal grants are available for this purpose. The Missouri State Courts Administration received a 2003 STOP Violence Against Women Act Grant from the U.S. Department of Justice, which enabled the state to provide interpreters to assist LEP victims of domestic violence in filling out forms and seeking restraining orders, and later in the proceedings, interpreters were to assist during hearings and trials.

**(5) In addition to providing interpreters and translators inside the courtroom, courts encounter LEP individuals in many settings outside the courtroom. These could include the court clerk's office, *pro se* assistance offices, and many other important aspects of the court program. After reviewing the most important access points for LEP persons and identifying community language needs, courts can take many positive steps to ensuring access to the courthouse for LEP persons.**

**(6) See Section A in Chapter 1, General Tips and Tools, for an in-depth discussion of how to assess your LEP needs and create a plan to address those needs.**

## **B. Identifying Language Resources**

**(1) Seek out the assistance of the state court administrator, state court consortiums, and national and state organizations of judiciary interpreters. The Federal courts may also be able to provide lists of interpreter resources.**

**(2) Partner with educational institutions or community groups to identify individuals who can be trained and certified or qualified.**

*Want more info?*

- ◇ Contact Dr. Virginia Benmaman, [benmamanv@cofc.edu](mailto:benmamanv@cofc.edu), Director of the Master of Arts Bilingual Legal Interpreting program at the College of Charleston (<http://www.cofc.edu/iegalint/>). The College of Charleston has a program to train college graduates who are fluent in Spanish to do legal interpreting. The program includes 14 courses and an interpreting internship in the jurisdiction of the student's choosing.
- ◇ For indigenous languages, the Oregon Judicial Department coordinates with the Oregon Law Center to identify individuals who are bilingual in English and an indigenous language, and it then provides training on the ethics, protocols, and modes of interpreting.
- ◇ The National Association of Judiciary Interpreters and Translators (NAJIT) can also be a key resource in identifying and training potential interpreters: <http://najit.org/>.
- ◇ The Interpreters Office for the U.S. District Court, Southern District of New York (Nancy Festinger, Chief Interpreter) is a valuable resource for obtaining information on training, quality control, and evaluation methods for interpretation in languages for which certification is not yet available. The office also has a comprehensive list of interpreters working in various languages throughout the US.
- ◇ Other valuable resources for interpreter identification and training include Bruno Romero, Ohio Supreme Court Interpreter Services Program Manager, at [RomeroB@sconet.state.oh.us](mailto:RomeroB@sconet.state.oh.us); and National Association of Judiciary Interpreters and Translators Board Member Isabel Framer at [isainterp@aol.com](mailto:isainterp@aol.com).

**(3) If your court or state has developed a training program, advertise and get media coverage so that you expand the pool of possible trainees.**

**(4) If you have a limited number of interpreters, consider utilizing interpreters from nearby larger metropolitan areas.**

- ◇ Pay special attention to scheduling when you bring interpreters from far away (See Tip 6 below).

**(5) Consider using telephone interpreter services for short, non-evidentiary hearings.**

*Want more info?*

- Contact the Oregon Judicial Department and inquire about its Telephone Interpreter Pilot Project.
- Contact Robert Joe Lee, Court Executive, Language Services Section, New Jersey Judiciary, [RobertJoe.Lee@judiciary.state.nj.us](mailto:RobertJoe.Lee@judiciary.state.nj.us).

**(6) Use your interpreter's resources efficiently.**

- ◇ If appropriate, schedule courtroom events involving interpreters in a way that maximizes their time in your court. For example, if two litigants in different cases both require interpreters in the same language, schedule hearings, if appropriate, such that the interpreter will not have to make repeated trips to accommodate both requests.
- ◇ Recognize that language interpreting is a physically and intellectually strenuous activity. Plan to have "relief" available for the interpreter and/or take breaks as needed

*Want more info?*

- Review the New Jersey Judiciary Interpreters Office website to see how courtroom coverage by interpreters is ensured, at <http://www.judiciary.state.nj.us/interpreters/index.htm>.

**(7) Prominently post signs in the non-English languages commonly encountered in your service area in strategic locations throughout the courthouse, directing LEP litigants, witnesses, and others to common courthouse destinations.**

**(8) Use a telephonic interpretation service to assist LEP individuals needing assistance in clerks' offices and other offices outside of the courtroom, or hire bilingual staff.**

**(9) Partner with legal service organizations to offer self-help centers at courthouses that may be staffed by bilingual volunteers, bilingual staff attorneys from legal services organizations, or even bilingual law students as part of their clinical program.**

- ◇ Publicize such clinics on the radio or at churches, synagogues, community centers, ethnic markets, and other social hubs.

*Want more info?*

- Consult the Oregon Judicial Department website at <http://www.OJD.state.or.us>, concerning a project at the Marion County Courthouse in which direct services are provided in Spanish to victims of domestic abuse.

**(10) See Section B in Chapter 1, General Tips and Tools, for more information on how to access language resources in your area.**

## C. Working with LEP Individuals and Interpreters

### (1) *Be aware that witnesses may find the courtroom environment and its personnel intimidating.*

- ◇ Some witnesses may find the judicial process intimidating. Cultural or language barriers may exacerbate this problem. Courthouse personnel, including interpreters, should avoid compounding such anxiety and endeavor to build trust.

### (2) *Trial judges can take certain measures to ensure that interpreting in the courtroom proceeds smoothly. Try the following:*

- ◇ Remind the parties and witnesses to speak clearly into the microphones. Assure the interpreter(s) that, if they so request, any unheard testimony can be repeated.
- ◇ Ask the prosecutor or other parties involved to provide the interpreter(s) with relevant background information, such as a copy of the indictment, pleadings, and, particularly in cases involving scientific or other specialized terminology, any filings or lists that might include such terminology so that the interpreter can be prepared.
- ◇ Before the trial gets underway, establish ground rules for any challenge to the interpretation to be taken up at sidebar. The interpreter may have to be included in such conversations. Note that the party challenging the interpretation has the burden to show that it was inaccurate.
- ◇ Instruct the jury regarding the function of interpreters, i.e., that they work for the court, and not for either of the parties.
- ◇ Instruct the interpreter that he/she is obliged to inform the parties of any previous out-of-court contact with the case or the parties.
- ◇ On the rare occasion when an interpreter requests permission to speak or clarify (e.g., an inability to hear or understand the witness), the interpreter should address the court in the third person. For example, “the interpreter would request the court to instruct the witness to speak into the microphone.”
- ◇ Instruct witnesses to stop answering if they hear the word, “objection,” and wait for the judge’s ruling. Instruct witnesses not to direct any comments or questions to the interpreter during testimony.
- ◇ Instruct witnesses to wait for the question to be interpreted before they answer and to answer in their primary language, rather than to fluctuate back and forth between English and their native language.
- ◇ Witnesses should listen to the interpreter, even if they understand some English.
- ◇ Instruct the witness to inform the judge if he or she is unable to understand the interpreter.
- ◇ Many such techniques will help court reporters in both LEP and non-LEP situations as well.
- ◇ Ensure quality of interpreting services as discussed in Section D below and review Section D of Chapter 1, General Tips and Tools.

*Want more info?*

- Check out <http://sdnyinterpreters.org>, the website of the Interpreters Office for the United States District Court, Southern District of New York, also available through <http://www.lep.gov>.
- Refer to the New Jersey Judiciary Courts Online site, <http://www.judiciary.state.nj.us/interpreters/index.htm>.
- See Oregon's Unified Court Trial Rule 7.080, which allows the interpreter to require counsel to provide the interpreter in advance a list of specialized terms expected to be used at trial. The list is confidential and not subject to discovery.

**(3) If multiple parties need interpreters, assign each individual needing interpreting services his or her own interpreter.**

**(4) Establish a courthouse kiosk or other locations with self-help materials, such as pro se forms translated into non-English languages commonly used in your jurisdiction.**

- ◇ Note: Not all LEP individuals in your community are able to read or will have access to the web. To supplement your efforts, provide recorded information on dedicated phone lines in the languages commonly used in your community. Helpful information can include the purpose and location of pro se forms, instructions for completing and filing the forms, and legal service agencies that may be able to help pro se plaintiffs.

*Want more info?*

- Consult the Oregon Judicial Department's website, which has a Spanish language version of the cite with links to Spanish language forms used to explain and obtain protective orders and other documents related to domestic violence. <http://www.ojd.state.or.us/espanol/index.htm>
- The North Carolina Courts' Foreign Language Service Project created brochures in Spanish explaining how the criminal courts operate. For more details, visit: <http://www.nccourts.org/citizens/cprograms/foreign/default.asp>

**(5) Ensure that multilingual staff are available at the information booth or can be easily contacted by information booth personnel.**

**(6) See Section C in Chapter 1, General Tips and Tools, for more information on working with LEP individuals.**

## D. Ensuring Quality Control

**(1) If a state interpreter certification program does not exist in your state, create one that requires interpreters to have an appropriate educational background and training in modes of interpreting, ethics, and cultural competence.**

- ◇ Courts have typically determined that certification and training provide the necessary assurance of quality and accuracy. However, establishing a certification program from scratch may be a costly and daunting project. Many court systems have solved this problem for themselves by pooling their resources with other courts to establish a shared testing and training program for various languages that they encounter.

*Want more info?*

- See website of the National Center for State Courts (NCSC) at <http://www.ncsconline.org> and the FAQs at <http://www.ncsconline.org/wc/publications/ResCtInteConsortCertFAQsPub.pdf>. The NCSC has established and administers a Consortium for State Court Interpreter Certification that includes 31 states. This allows states to share the costs of developing model formats for tests and testing forms, hiring experts, and conducting biennial revision of test forms. See the Consortium's "Agreement for Consortium Organization and Operations" at <http://www.ncsconline.org/wc/publications/ResCtInteConsortAgree2002Pub.pdf>.
- New Jersey's "NJ Courts Online" site gives detailed information about the interpreter certification process. Access this site by clicking on <http://www.judiciary.state.nj.us/interpreters/intro.htm>.
- Currently many states, including California, Minnesota, North Carolina, Oregon, Wisconsin, and many others have certification programs for court interpreters.

**(2) If no certification program exists for a particular language, create an effective methodology to establish the qualifications of a prospective interpreter.**

*Want more info?*

- The Oregon Judicial Department has a process for qualifying interpreters when no certified interpreter is available, and has published the procedure in Chapter 20 of its "Judge's Benchbook." Consult Oregon's website for more information at <http://www.ojd.state.or.us/osca/cpsd/interpreterservices/index.htm>.
- The Washington State Administrative Office for the Courts has published a colloquy for judges to use in determining an interpreter's qualifications. Contact the Interpreter/Guardian line at 360-705-5301 or consult the website for additional links and information at <http://www.courts.wa.gov/programs/orgs/posinterpret/>.
- The North Carolina Courts have published statewide guidelines on the use of interpreters, and utilize many state and some Federally certified Spanish interpreters. Consult the North Carolina Courts' website at <http://www.nccourts.org/citizens/cprograms/foreign/default.asp>.
- Another resource is the New Jersey Courts' site, which contains a Manual for Judges and Other Court Personnel, at <http://www.judiciary.state.nj.us/directive/vicops/timan2.pdf>.



**(3) Provide new interpreters, as well as judges, attorneys and other court personnel, with training on the interpreter's code of ethics, protocols, and modes of interpreting (simultaneous, consecutive, and sight translation) to be utilized by interpreters inside and outside the courtroom.**

- ◇ Require working court interpreters to have continuing education on these subjects in order to maintain their certification or qualification.

*Want more info?*

- Review Oregon Judicial Department's interpreter's code of ethics at <http://www.ojd.state.or.us/osca/cpsd/interpreter/documents/ethicscode.pdf>.
- Also consult the New Jersey Courts' website, <http://www.judiciary.state.nj.us/interpreters/codepub.htm>.

**(4) When new or less experienced interpreters are hired, assign mentors to assist them in familiarizing themselves with courthouse processes and to evaluate their performance.**

- ◇ Consider staffing new interpreters to less complex matters like traffic court, as opposed to a felony calendar.

*Want more info?*

- See King County Superior Court information featured below.
- Consult the North Carolina Courts' website at <http://www.nccourts.org/citizens/cprograms/foreign/default.asp> for more information concerning its mentoring program for new interpreters.

**(5) The administrative offices of the state courts should consider creating/providing a state-coordinated glossary of legal terms and their translations into commonly encountered non-English languages.**

- ◇ Using a glossary is a good way to ensure consistent interpretation of complex legal terminology. Use of a glossary may simplify the interpreter's job and avoid confusing an LEP witness, who could hear two different (though presumably reliable) interpretations of a complex term. To ensure consistent and accurate interpretation of legal terminology inside and outside of the courtroom, work with staff, contract and telephonic interpreters, and translators to develop legal glossaries and translations of legal and quasi-legal forms in the most often encountered languages, and make such glossaries available online and in hard copy for general use. In the alternative, access existing legal glossaries and forms available online and adapt them to suit local requirements. As glossaries are always works in progress, solicit ongoing feedback on additions and/or edits.

*Want more info?*

- See the North Carolina Courts' website at <http://www.nccourts.org/citizens/cprograms/foreign/default.asp>.
- Check out the legal glossaries available on the New Jersey Courts' website, <http://www.judiciary.state.nj.us/interpreters/glossary2.pdf>.

**(6) See Section E in Chapter 1, General Tips and Tools, for more ideas on how to conduct outreach effectively to your community and service area.**

## **The Story of Seattle's King County Superior Court Interpreter Program: *A Focus on Quality and Efficiency***

When you enter the Office of Interpreter Services in the King County Superior Court in Seattle, Washington, you are immediately struck by the pictures, postcards, and memorabilia from various countries that have been brought to the offices by the hundreds of interpreters who have worked there. There is a room set aside for interpreters to take breaks and for clients, interpreters, and lawyers to meet in private. These touches may seem small, but they reflect the larger reality: this office is designed to support a professional interpretation corps in order to ensure the integrity of the judicial system and effective communication for LEP persons. So far, the program has provided interpreters in 110 languages.

Martha Cohen, who helps run the program, goes to great lengths to explain that this is a “low-tech operation focused on quality, not automation.” She has yet to find calendaring software that meets her needs, so the program keeps three sets of hard-copy documents up to date in more traditional fashions. First, they have a language bank notebook that reflects the experience, education, and availability of various interpreters by language. The notebook contains the Interpreter Information Record for each interpreter. Certified interpreters are used whenever possible. Court certification is available in seven languages in Washington State: Cambodian, Korean, Russian, Cantonese, Vietnamese, Lao, and Spanish. Information on the Washington State court interpreter program can be found at <http://www.courts.wa.gov/programs/orgs/posinterpreter>.

Interpreters are asked to attend orientations as well. Interpreters are expected to follow a code of conduct. New interpreters are used in non-felony cases first, whenever possible. One of the experienced interpreters on staff goes to the assignment with a new interpreter and works with the judge or commissioner to ensure that the interpretation goes smoothly. If the interpretation is in a language the experienced staff members are not familiar with, they can still focus on the mechanics of interpreting: Is the interpreter trainee using the first person? Is the length of the interpretation reflective of the length of the statement being interpreted (understanding that there may be a difference in length that is caused by the difference in language or a need to describe something for which there are no direct translations)? Is the interpreter staying focused on the hearing? Is the interpreter interpreting everything that is being said?

The program also uses 3x5 cards that track every case. Each time an interpreter or translator is used, the card is updated. Even though interpreters are bound to a code of ethics, this office goes the extra step to ensure that there is no appearance of conflicts and attempts to avoid using any particular interpreter to interpret for more than one party or side of a particular case or in more than one aspect of that case. The program staff also keep an extensive calendar of all of the interpretations being provided in their jurisdiction each day. An Interpreter Request Form can be submitted by telephone, e-mail, or walk-in requests.

King County also provides interpreters for family law facilitations, the protection order office, and LEP parents of juveniles in all juvenile justice cases.

The Office of Interpreter Services also works closely with judges and commissioners on an interpreter services advisory committee and provides orientations for new judges and commissioners regarding the interpreter program and the appropriate use of interpreters. Scheduling has been a key to efficient use of interpreter funds, and judges and commissioners are extremely responsive to the need to call cases requiring interpreters when the interpreters are available. The office also strives to ensure that experienced interpreters are assigned to cases with newer judges and commissioners.

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## **The New Jersey Judiciary: A Policy of Providing Interpreters When They Are Needed**

The New Jersey Judiciary has been at the forefront of court interpretation and translation policies and practices. The Judiciary provides a broad range of innovative services to LEP individuals.

In 1982, the New Jersey Chief Justice appointed a task force to look at how to provide equal access for all linguistic minorities. The task force took census data and interviewed judges, lawyers, and administrative staff in New Jersey. Three years later, the task force issued its final report entitled Equal Access to the Courts for Linguistic Minorities

<http://www.judiciary.state.nj.us/interpreters/actnplan.htm>, setting forth a definitive LEP plan/road map, and also began to collect statistics on interpreted events. The most requested languages identified in the report were Spanish, Portuguese, Polish, Korean, American Sign Language, Haitian Creole, Arabic, Egyptian Colloquial, Mandarin Chinese, Russian, Vietnamese, Turkish, and Italian.

“The integrity of the judicial system relies significantly on effective communication. Without quality interpretation and translation, access to the court system for LEP litigants and witnesses is limited, sometimes with serious consequences. Without effective communication, judges may as well prepare for reversals, law enforcement and prosecutors may as well prepare for cases to get thrown out, and LEP communities may lose confidence in our justice system,” explains longtime leader and speaker in the field of court interpreting, Robert Joe Lee, New Jersey Court Executive, Language Services Section, Special Programs Unit.

The New Jersey Judiciary has several procedures in place for language assistance inside and outside the courtroom. An interpreter is assigned at an LEP person’s point of entry into either a court or a court support office, such as the domestic violence unit. If no staff or contract interpreter is available on site, one is identified from the registry of the Administrative Office of the Courts in another area of the state and brought in, or contacted by telephone. On February 26, 2004, interpreting standards were adopted for the New Jersey Superior Court and for the Tax Court. The standards provide for interpreter assistance for all persons, including parents of minor parties, for all stages of court proceedings, intake interviews, and direct service situations that involve court personnel. See [http://www.judiciary.state.nj.us/directive/personnel/dir\\_03\\_04.pdf](http://www.judiciary.state.nj.us/directive/personnel/dir_03_04.pdf).

The New Jersey Administrative Office of the Courts also provides headsets and telephonic interpreting equipment to each judicial district. It sets the rates of pay for telephonic interpreters, monitors quality and, if there is a problem, proceedings are interrupted and the Office performs an investigation. Newly-hired judges and staff are trained on an ad hoc basis. There are separate training manuals for judges, interpreters, and court administrative staff.

New Jersey also provides translations. Formal procedures have been established for issuing translations to ensure that all forms and informational brochures are being translated into Spanish for all parts of the courts, including for domestic violence matters. The procedures specify how the translation will be issued, what documents will be in Spanish alone, and what documents will be in a Spanish-English format.

The Administrative Office of the Courts is currently identifying all documents that should be translated, with each office that generates documents being asked to rank documents to be translated in order of importance. The objective is to produce official translations of those documents beginning with Spanish and followed by other languages to be chosen based on court statistics on interpreted events. The current documents available online in Spanish include: “How to Sue in Small Claims Court - Non-Auto;” “Summons and Return of Service;” and “Financial Questionnaire to Establish Indigency–Municipal Court.” In addition, two professional translators focus on ensuring that translations are done efficiently and correctly.

In addition to translating court-generated documents, both staff and contract interpreters are used to sight-translate court documents into whatever language is needed. At the direction of the court, they are also available for translations of correspondence and other documents. Staff interpreters who have passed the Spanish legal translation test may also perform written translations of a wide range of documents written in Spanish or English.

The New Jersey Judiciary currently has staff court interpreters in Spanish, Galician, Norwegian, Portuguese, Swedish and Ukrainian. In addition, a centralized list of contract interpreters and language agencies is publicly available through a link on the New Jersey Judiciary website.

New Jersey takes quality control very seriously. A professional performance exam for court interpreting is offered in 15 languages (complete information regarding this exam is available on the website). All prospective interpreters are required to attend a seminar on the *Code of Professional Conduct for Interpreters*, which is offered ten times a year. Interpreters must take the test, if a test exists, in their language pair and, if no test exists for that language, the interpreter must sign an affidavit saying he or she possesses the requisite interpreting competency. Newly-appointed Superior Court judges and municipal judges must attend an orientation offered once a year, which includes information on language access issues. Municipal courts offer the orientation three times a year for new employees, and other employees may attend upon request as well. The orientation covers such topics as “Learn what the Supreme Court expects court interpreters to do;” “Obtain information on resources for developing interpreting skills;” and “Find out how the court interpreter test program is managed.” See <http://www.judiciary.state.nj.us/interpreters/codesemw.htm>. By 2003, all judges or court support personnel with any probability of needing to deliver services to linguistic minorities received an initial orientation. The *njcourts.online* website lists information on telephonic interpreting companies as well as operational standards for telephonic interpreting. See <http://www.judiciary.state.nj.us/directive/vicops/timan1.pdf> and [http://www.judiciary.state.nj.us/directive/vicops/odir14\\_01.pdf](http://www.judiciary.state.nj.us/directive/vicops/odir14_01.pdf).

A telephonic interpreting program was implemented in 2001 as an adjunct to the Judiciary’s system of staff and contract interpreters. Operational standards call for use of telephonic interpretation under certain circumstances when no on-site interpreter is reasonably available. However, reliance on telephonic interpreter services is authorized only where (1) it is more fiscally responsible to obtain the telephonic interpreter; and (2) the quality of interpretation is not compromised.

The New Jersey Judiciary continues to work to refine its comprehensive language assistance program in the face of the changing language demographics of the state and the difficult challenges of shifting fiscal human resources. Both its underlying plan and its approach to ensuring quality control in the actual delivery of services continue to be a model for other state court systems.

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## The Oregon Courts: A Comprehensive Approach

The Oregon Judicial Department (OJD) has a comprehensive program to ensure access to LEP individuals who require interpreting services both inside and outside of the courtroom, whether in criminal or civil proceedings. In addition, the Oregon legislature has enacted measures that require the provision of interpreting services for LEP parents (or for those who serve in loco parentis) of minors who appear in juvenile proceedings. Oregon statutes similarly mandate that LEP individuals who appear in administrative proceedings, including hearings before the Workers Compensation Board, Bureau of Labor and Industry, Board of Parole, Department of Corrections, and Hearing Officer Panels of the Oregon Youth Authority.

OJD's programs include measures to ensure the quality of interpreting and translating services, to inform LEP communities of available court services, to provide direct services in commonly encountered languages, and to assess and adjust programs to the changing needs of a diverse and dynamic LEP population.

OJD became a founding member of the National Center for State Courts Consortium (NCSC) for State Court Interpreter Certification in 1995. The Consortium was established to help state courts develop and share the costs of comprehensive interpreter certification programs. It created a readily accessible source of expertise for OJD and consortium members. Moreover, OJD's participation in the NCSC's Consortium helped defray the costs of creating its certification program and allowed it quickly to establish a methodology for assessing the qualifications of interpreters. The Court Interpreter Certification test screens applicants' language skills in both English and the foreign language, measures candidates' skills in modes of interpreting, and establishes that candidates possess the requisite substantive knowledge of interpreter ethics and professional responsibilities. OJD's court interpreter certification program includes the Spanish, Russian, and Vietnamese languages, as these are the LEP communities most frequently encountered in the courts of the state.

In addition to 16 staff interpreters, the OJD uses the services of approximately 80 certified interpreters, who are sent to particular districts based on the needs of the local courts. Staff interpreters are sometimes called upon to travel between counties and circuits in order to better utilize their services throughout the state. To ensure consistent quality interpreting in the state, judges are required by statute to use a certified interpreter if one is available. However, even in situations where there is no certified interpreter available locally, the OJD undertakes steps to ensure that quality is maintained by bringing in interpreters from out-of-state and even from outside the country when necessary. Certified interpreters are required to maintain and improve their skills through continued education. The OJD Interpreter Unit sponsors such events regularly. In addition, judges are provided with a colloquy that helps them assess the qualifications of an interpreter who is identified from a list prepared by the Court Interpreter Services Office. It is the policy of OJD never to use friends and family members as a source of interpreters.

Through its liaison with community organizations like the Oregon Law Center (OLC), OJD has tapped a pool of potential interpreters and translators of indigenous languages on legal terminology, court protocols, interpreting modes, professional ethics, and language skills. The project also includes role-plays and mock trials at the courthouse, in which trainees practice interpreting and receive feed-back to improve their skills. Moreover, in a proactive effort to ensure quality interpretation and translation services for an emerging population of indigenous immigrants, OJD has also partnered with OLC to devise glossaries of legal terms in several indigenous languages. In addition, OJD has partnered with the Immigrant and Refugee Community Organization to provide three sets of interpreter skills-building training modules for Russian interpreters.

In an effort to improve access to justice for the approximately 40,000 members of indigenous communities from Mexico and Central America living and working in Oregon, the OLC and OJD embarked upon a pilot project. The OLC/OJD initiative included a training to prepare certified Spanish-English interpreters to work as "relay" interpreters for language minority litigants and witnesses. An example of a "relay" interpretation is when one person interprets between an indigenous language and Spanish and the second person interprets between Spanish and English.

Two subsequent trainings focused on teaching interpretation skills to speakers of indigenous languages, including Mixteco, Triqui, Zapoteco, Nahautl, Tarasco, Akateco, Kanjobal, and others.

In addition to its interpreter training and recruitment programs, OJD uses translated documents as a means of providing access to LEP individuals. OJD has translated the Oregon Family Abuse Prevention Act materials into Spanish, and instructions needed to obtain Temporary Protective Orders (TPOs) into Spanish, Russian, Vietnamese, and Korean. These documents are available in the courthouses and on the OJD Family Law website, which currently contains the Spanish language version. The Russian, Vietnamese, and Korean versions will be posted in the near future. <http://www.OJD.state.or.us/osca/cpsd/courtimprovement/familylaw/fapaforms.htm>. The website also contains links to other websites that have translated legal documents, such as the Oregon Bar Association website, which has Spanish, Russian and Vietnamese translations of information about wills, small claims, bankruptcy, and other legal matters.

In the Marion County courts, LEP victims of domestic violence can receive direct assistance in Spanish to seek TPO's from an abusive domestic partner. OJD has also undertaken several pilot projects in which telephone interpreters are used in short non-evidentiary hearings, usually involving LEP persons who speak one of the less commonly encountered language. However, telephonic interpreting also has been used in the trial of a minor traffic infraction.

Finally, the OJD has established the "Access to Justice for All" Committee, whose mission it is to continually reassess OJD's program needs and to make recommendations on how to improve racial, ethnic, and gender fairness in the Oregon court system. The Access Committee implements subcommittee recommendations, monitors the progress of pilot projects, and makes its own recommendations to the OJD for the improvement of access to service for all those seeking services from Oregon Courts.

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## Chapter 6: Tips and Tools Specific to DOJ Federally Conducted Programs and Activities

Most of this document has addressed recipients of Federal financial assistance who, even before Executive Order 13166, were required by Title VI of the Civil Rights Act of 1964 to serve LEP individuals. Title VI does not cover Federal agencies themselves; it only covers their recipients. However with the issuance of Executive Order 13166, for the first time, all 95+ Federal departments and agencies are also required to develop and implement appropriate language assistance plans (LAPs) governing their own “Federally conducted” programs and activities. These internal Federal agency LAPs must be consistent with the standards applicable to recipients of Federal financial assistance.

DOJ houses a wide variety of agencies, from the Federal Bureau of Prisons and Federal Bureau of Investigation, to the United States Marshals Service, Executive Office for United States Attorneys, and the Civil Rights Division. In developing the LAP for DOJ, we faced the same series of questions as many large recipients seeking to develop and implement a cost-effective plan. Is a single, comprehensive language assistance plan preferable to a composite plan developed independently by each component? Does the need for speedy implementation outweigh the potential benefits of a longer, more reflective period of assessment? Should existing fiscal resources govern the scope of the plan, or should the scope of the plan determine requests for future fiscal resources? What implementation activities should be a priority until necessary fiscal resources become available? The analytical approaches utilized, insights gained, and techniques implemented by DOJ in developing its LAP can perhaps assist other law enforcement, correctional, and judicial officials in their search for reasonable, cost-effective, and creative LEP policies and procedures.

### A. Determining Your Organization’s Language Needs

#### ***(1) Identify your language needs.***

- ◇ Section A of Chapter 1, General Tips and Tools, provides suggestions for identifying your current LEP needs and preparing for your projected needs, including tips on accessing census, Department of Education, and school district data on minority language populations eligible to participate in your program or activity; tips on determining English-language ability of non-English speaking populations; and suggestions for navigating the different data sets available to predict the varying needs of different language groups.
- ◇ Organizations can conduct a review or “count” of the number and type of LEP individuals accessing a program or activity or accessing services in individual offices/ jurisdictions. This approach, while labor-intensive, provides a detailed picture of the LEP communities actually served by a particular organization. Such counts need not be for all offices within a system, or be conducted over an entire year. The scope and timing of a count can be limited, so long as the offices chosen to participate, or the length of time over which the count or census takes place, can reliably produce data of statistical significance. Control for possible undercounts attributable to LEP community perceptions of current or past language barriers, and revise periodically to test for demographic shifts.

#### ***(2) Devise a language assistance plan for situations involving the LEP individuals participating in or benefiting from your program or activity. Some suggestions include:***

- ◇ Obtain commitment and support by program or office leadership;
- ◇ Make available senior program or office officials to function as LEP managers or coordinators;
- ◇ Establish a planning committee with representation from all levels of staff (i.e., administrative/ technical support staff, budget/information technology staff, professional staff).

- ◇ Consult with stakeholders (linguistic community groups, professional interpreter associations, etc.).
- ◇ Keep a clear and consistent focus on the nature and needs of LEP populations to be served;
- ◇ Establish practical and straightforward language policies and procedures;
- ◇ Adopt realistic standards that you can meet, but do not underestimate needs or your agency's ability to meet them;
- ◇ Recognize that there may be no "one-plan-fits-all" approach in designing a language assistance plan for a large agency with multiple components/offices. For example, DOJ, which is composed of over 33 different components tasked with different missions and administering significantly different programs and activities, rejected the concept of a uniform approach in developing its own internal LAP. A single LAP may not be viable for your entire agency, particularly if you engage in a wide range of activities or serve a geographically large or linguistically diverse jurisdiction.

**(3) *When creating a plan for a large organization with many sub-components having various missions and types of contact with the LEP public, outline a series of fundamental language assistance principles, identify the components most likely to interact with or impact significant LEP populations, and set component-specific goals or objectives.***

- ◇ Direct each identified component to conduct its own assessment of language assistance needs and, as appropriate, develop a component plan that is consistent with its functions.
- ◇ Be sure to follow up and monitor progress so that this does not simply become a plan to plan. Build in benchmarks and accountability, where possible and appropriate.

*Want more info?*

- Review the DOJ LAP at <http://www.usdoj.gov/crt/cor/lep/dojimp.htm>. Since the adoption of the DOJ LAP, several components have made significant commitments to, and progress in, improving access for LEP persons.

**(4) *For agencies with multiple components or offices, test-drive a pilot plan in select components/regions/offices.***

- ◇ A pilot plan can, for example, help you assess the effectiveness of using a universal approach to address the needs of different language communities in your agency's different operations/regions or within a particular region.
- ◇ Such pilot sites can act as a test bed for resolving questions (e.g., the impact on organizational mission, the role of English-speaking officials and staff in monitoring services and benefits in other languages, the potential for staff/beneficiary confusion or disputes as to what must be provided, the role of language minority community outreach, and the real world fiscal costs).
- ◇ Program officials and staff may be more likely to accept and act upon the experience and answers provided by their own colleagues in the test pilot cities. Further, such an approach limits internal confusion and fiscal waste.
- ◇ Officials and staff involved in the pilot planning process can become an internal cadre of potential trainers and mentors available to others in the organization as they begin to implement LAPs in their own offices.



*Want more info?*

- Consider the experience of the Executive Office for United States Attorneys (EOUSA), which was tasked with the daunting responsibility of bringing 93 different U.S. Attorney’s Offices into compliance with Executive Order 13166. EOUSA elected to use pilot LAPs to help develop the above-outlined elements of an effective LAP in the context of a Federal legal office. Among the lessons learned by the EOUSA pilot LAP participants were that: (1) the level of staff commitment at the planning stage exceeded expectations; (2) the level of expenditures for language services at the implementation stage fell short of expectations; and (3) the inclusion of language providers and LEP community representatives as part of the planning process helped improve the final LAP product. See the EOUSA description featured at the end of this section.

**(5) See Section A in Chapter 1, General Tips and Tools, for an in-depth discussion of how to assess your LEP needs and create a plan to address those needs.**

## **B. Identifying Language Resources to Help You Meet Your Needs**

**(1) Don’t reinvent the wheel. Build upon the work of others, and then pass your own work on.**

- ◇ Share among offices within the organization. Many U.S. Attorney’s Offices (USAOs) have informally developed and translated for their own local use a number of forms, notices, instructional sheets, and informational brochures into one or more languages. The Executive Office for United States Attorneys is developing an inventory of these locally translated documents and plans to make them available to all USAOs through its website. This allows existing translated documents to be easily modified or customized by each USAO, and allows otherwise limited resources to be focused on expanding the number of documents or languages contained in its internal collection.
- ◇ Share between different entities with similar missions: The FBI has translated a number of forms, notices and waivers into a variety of languages. For example, the FBI’s “Advice of Rights” has been translated into 35 languages or dialects; a “Consent to Search Premises” form is available in 17 languages or dialects; and its “Your Rights at Line-up” form is available in 10 languages. To aid the thousands of state and local law enforcement agencies across the country, many of which are recipients of DOJ Federal financial assistance, the FBI is making copies of these (and other) translated law enforcement documents available through its Law Enforcement Online website for use by authorized law enforcement entities. Sample documents will soon be available to the public on <http://www.lep.gov>.
- ◇ When you develop and implement your own LAP and associated tools, consider contributing them to the growing inventory of LEP resources, including a database like <http://www.lep.gov>, to assist other organizations in following your lead.

**(2) See Section B in Chapter 1, General Tips and Tools, for more information on how to access language resources in your area.**

## C. Working with LEP Individuals

### **(1) Identify how your first receivers interact with LEP persons to determine language access techniques/devices that should be immediately available.**

- ◇ Staff members who direct the flow of public access to the services or benefits you provide are the most likely candidates for interaction with LEP individuals. Such “first receivers” play a critical role in serving as your organization’s first point of contact with the LEP communities you serve.
- ◇ Adopt language assistance procedures and tools that complement the work of your first receivers. For example, where programs or personnel rely extensively on the telephone (e.g., hotlines, emergency response centers, or those receiving telephonic applications for services or benefits), printed “I Speak\_\_\_\_\_” cards are of little value. Instead, provide the public with dedicated language access telephone numbers, language-appropriate telephonic information, or automate the access process by including language assistance automatic dialers on staff telephones. Conversely, where a program or designated staff principally deal with members of the public in face-to-face encounters (e.g., certain police, enforcement or service agencies or walk-in emergency medical clinics), the availability of printed “I Speak\_\_\_\_\_” cards and translated brochures and application forms becomes much more important and useful.

### **(2) See Section C in Chapter 1, General Tips and Tools, for more information on working with LEP individuals.**

## D. Ensuring Quality Control

### **(1) Reinforce language access procedures with visual tools and notices that simplify the communication process, particularly for those staff who are new or less familiar with your organization’s LAP.**

- ◇ For example, you can ensure that employees have telephonic interpreter access procedures readily available. To accomplish this, DOJ’s Civil Rights Division linked language assistance procedures to the opening page of its internal network, used by Division employees only. Another equally effective but decidedly non-tech approach is used by the Division’s Coordination and Review Section, which has affixed stickers with the number and access code for telephonic language assistance on the base unit of every staff member’s telephone. Now, when staff members are on the telephone and wonder how to access interpretative services, the answer is staring them in the face.
- ◇ Be sure to supplement visual aids and other LAP-associated “reminders” with intensive periodic re-training, as emphasized in Chapter 1, General Tips and Tools. Ensure that staff do not rely exclusively on information contained in such visual aids because it is “easier to remember.” Staff should be trained on all aspects of your LAP and should be prepared to anticipate situations where use of telephonic interpretation services or other expedient methods is not viable.

### **(2) See Section D in Chapter 1, General Tips and Tools, for more information on ensuring quality control measures and checks.**

## **E. Conducting Outreach**

### **(1) Meet with ethnic community leaders and post information at ethnic gathering places.**

- ◇ LAP planning committee members can consider identifying the service providers and faith-based or other groups most closely associated with the language communities you serve. Publicize access efforts to such groups and make translated forms and brochures available to them for dissemination and posting at ethnic social gathering places.

### **(2) Form linkages with your Federal partners across program areas to conduct joint outreach.**

- ◇ You may find that other Federal partners experience goals and challenges similar to yours. For example, Federal law enforcement agencies and USAOs may serve on joint task forces. Consider holding meetings as a group with ethnic community organizations, service providers, and professional interpreters/translators on issues of relevance. Solicit input from such organizations and individuals regarding outreach strategy.

### **(3) See Section E in Chapter 1, General Tips and Tools, for more ideas on outreach activities.**

or email Juan Milanes at: [Juan.Milanes@usdoj.gov](mailto:Juan.Milanes@usdoj.gov)

## **The Executive Office for United States Attorneys: Piloting System-Wide LAPs and Doing it Right Locally to Get it Right Nationally**

In 2001, the Executive Office for United States Attorneys (EOUSA) was tasked with the responsibility for developing an integrated language assistance plan (LAP) for all 93 U.S. Attorneys' Offices (USAOs) in the United States and its territories. EOUSA began with a language resource and language needs survey involving all 93 USAOs, with a particular focus on the language minority groups routinely encountered rather than the language minority groups that might reside within the jurisdiction served by each office.

Based in part on the survey, EOUSA selected three pilot districts to develop and evaluate LAPs, and each was asked to designate an LEP coordinator. The LEP coordinator from each pilot district was then provided in-depth LEP training and the elements of an effective local LAP. Following the training, each returned to his or her district and, under the leadership of the local U.S. Attorney, created an LEP committee to craft the USAO LAP. Over a period of three-four months, each district drafted and began implementation of its LAP. At the same time, the EOUSA drafted governing LEP policies and procedures detailing the common framework and language assistance principles for all USAO programs and activities.

After a short evaluation period, the pilot district LEP coordinators, the EOUSA, and the Civil Rights Division's Coordination and Review Section held a series of teleconferences to discuss the experiences of the pilot districts and to identify any "lessons learned" of potential value to sister USAOs. These teleconferences led to an updated EOUSA LEP training program. That training program was then taped and edited for broadcast in June 2004 by the Justice Television Network to all USAOs. Based on this video training and additional consultations with the EOUSA as needed, the remaining 90 USAOs have finalized, or are in the process of finalizing, LAPs for their respective districts. The LEP broadcast tape was also added to the EOUSA inventory of LEP training materials for future use.

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## **Conclusion**

Serving the needs of individuals with limited English proficiency and ensuring that they have meaningful access to Federally assisted and Federally conducted programs is a vitally important project. We created this document to assist you in your efforts to serve your LEP community members.

We hope that in reading this document you will be able to draw upon the experiences of others and take advantage of all the resources that are out there. We believe that one of the most effective ways to ensure meaningful access for LEP persons is to share successful strategies and available resources. Our goal in developing this document was to establish a framework for compiling and disseminating techniques and strategies from around the country for addressing the needs of LEP individuals.

In this spirit, we encourage you to view this document as a starting point in an ongoing process of striving to develop, disseminate, and build upon promising practices in the field. We hope that you will find these practices, tips, and tools useful as we all continue to search for creative and effective ways to adequately serve the needs of LEP communities. We look forward to continuing to work with all of you as we strive to achieve our common goal of ensuring meaningful access for all.

***To obtain this document in alternate formats, call the Coordination and Review Section at:***

***(202) 307-2222 or TDD: (202) 307-2678***

***To obtain this document on the World Wide Web, go to <http://www.lep.gov>***



***GOA Report on Transportation Services***

**GAO**

United States Government Accountability Office  
Report to the Ranking Minority Member,  
Committee on Banking, Housing, and  
Urban Affairs, U.S. Senate

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November 2005

TRANSPORTATION SERVICES  
Better Dissemination and Oversight of  
DOT's Guidance Could  
Lead to Improved Access for  
Limited English-Proficient Populations



**Highlights**

Highlights of GAO-06-52, a report to the Ranking Minority Member, Committee on Banking, Housing, and Urban Affairs, U.S. Senate

**Why GAO Did This Study**

More than 10 million people in the United States are of limited English proficiency (LEP), in that they do not speak English at all or do not speak English well. These persons tend to rely on public transit more than English speakers. Executive Order 13166 directs Federal agencies to develop guidance for their grantees on making their services accessible to LEP persons. The Department of Transportation (DOT) issued its guidance in 2001, with revised guidance pending issuance. This report reviews (1) the language access services transit agencies and metropolitan planning organizations have provided, and the effects and costs of these services; (2) how DOT assists its grantees in providing language access services; and (3) how DOT monitors its grantees' provision of these services.

**What GAO Recommends**

GAO recommends that the Secretary of DOT (1) ensure that DOT's revised LEP guidance is directly distributed to all DOT grantees; (2) consider providing additional assistance to grantees in providing language access; and (3) more fully incorporate the revised guidance in current review processes, and establish consistent norms for what constitutes a language access deficiency. DOT generally concurred with the findings and recommendations in this report. [www.gao.gov/cgi-bin/getrpt?GAO-06-52](http://www.gao.gov/cgi-bin/getrpt?GAO-06-52).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Kate Siggerud at (202) 512-2834 or [siggerudk@gao.gov](mailto:siggerudk@gao.gov). Translated report summaries are available in Spanish, Chinese, Vietnamese, and Korean at [www.gao.gov/special.pubs/translations](http://www.gao.gov/special.pubs/translations).

**TRANSPORTATION SERVICES**

**Better Dissemination and Oversight of DOT's Guidance Could Lead to Improved Access for Limited English-Proficient Populations**

**What GAO Found**

Transit agencies and metropolitan planning organizations provide a variety of language access services, predominantly in Spanish, but the effects and costs of these services are largely unknown. Types of services provided included, among other things, translated brochures and signs; multilingual telephone lines; bilingual drivers; and interpreters at public meetings. However, few agencies we visited had conducted an assessment of the language needs in their service areas, or had conducted an evaluation of their language access efforts. As a result, it is unclear whether agencies' efforts are comprehensive enough to meet the needs of LEP persons, and community groups in the areas we visited saw important gaps in agencies' services. In addition, although those costs are largely unknown, several agencies saw providing language access as a cost of doing business, not as an additional cost. However, if efforts were to be expanded to include additional services or languages, agency officials told us that costs could become prohibitive.

DOT assists grantees in providing language access through its guidance and other activities, but DOT has made limited efforts to ensure that grantees are aware of the available assistance, which was not often accessed by the agencies we visited. This assistance includes DOT's guidance—which provides a five-step framework for how to provide meaningful language access—as well as workshops and peer-exchange programs that include language access practices, and training courses that touch on language issues. DOT also participates in a Federal LEP clearinghouse, [www.lep.gov](http://www.lep.gov). However, few agencies we visited had accessed these resources. Several local officials stated that easily accessible training and assistance specific to language access and examples of how to implement DOT's guidance could help them more effectively provide access to LEP populations.



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## Abbreviations

DOJ	Department of Justice
DOT	Department of Transportation
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
LEP	Limited English proficiency
MPO	Metropolitan Planning Organization
NHI	National Highway Institute
NTI	National Transit Institute

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**United States Government  
Accountability Office  
Washington, D.C. 20548**

November 2, 2005

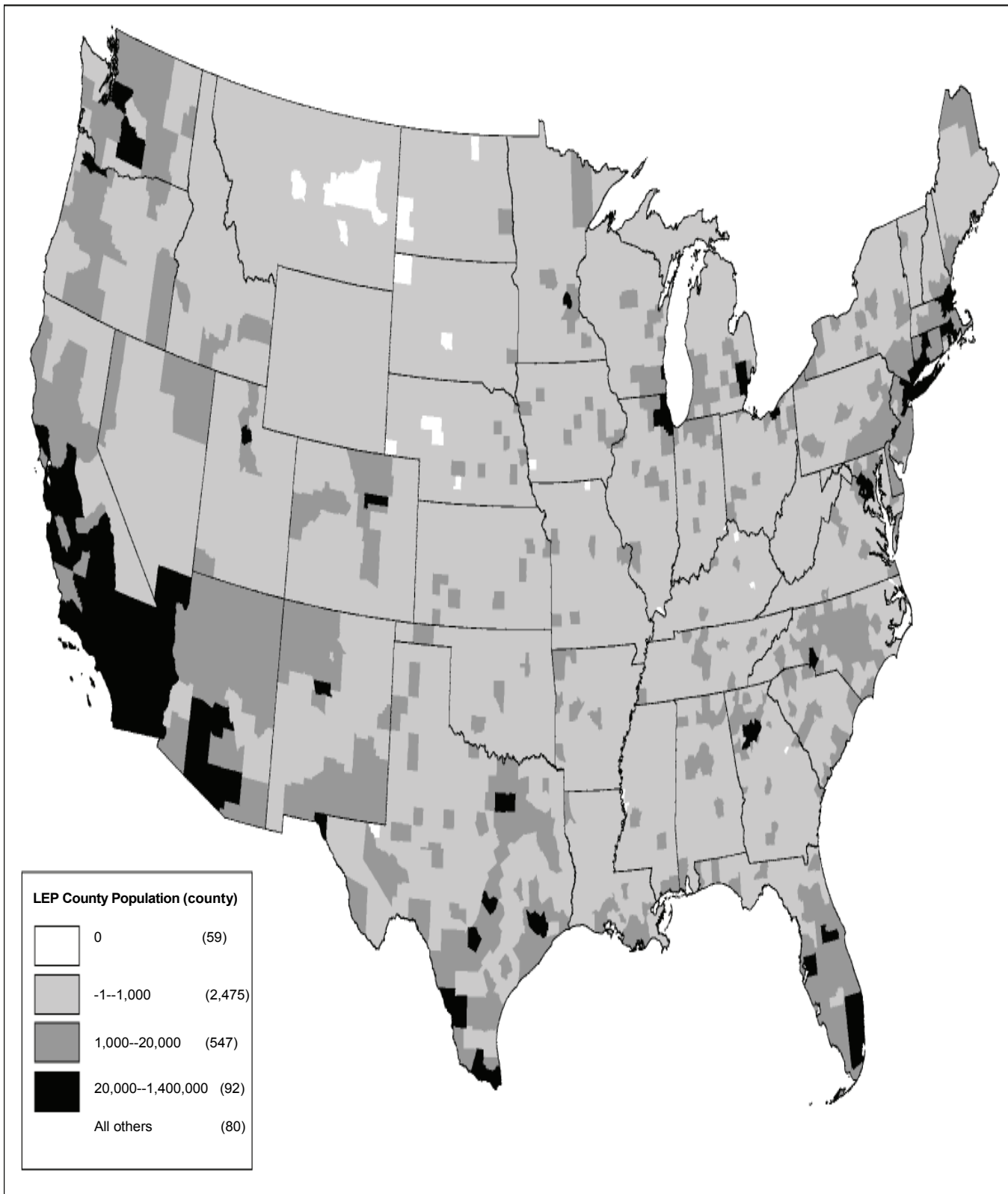
The Honorable Paul S. Sarbanes  
Ranking Minority Member  
Committee on Banking, Housing, and Urban Affairs United States Senate

Dear Senator Sarbanes:

The United States has a highly diverse population representing cultures from all over the world. English is not the primary language of many people living in the United States, and significant numbers have little or no English skills. According to the 2000 U.S. Census, more than 10 million people reported that they do not speak English at all, or do not speak English well. These persons of limited English proficiency (LEP), like English speakers, may depend on government for a wide range of services, including public transportation. For many LEP persons, public transit is a key means of achieving mobility. According to the 2000 Census, more than 11 percent of LEP persons aged 16 years and over reported using public transit as their primary means of transportation to work, compared with about 4 percent of English speakers.

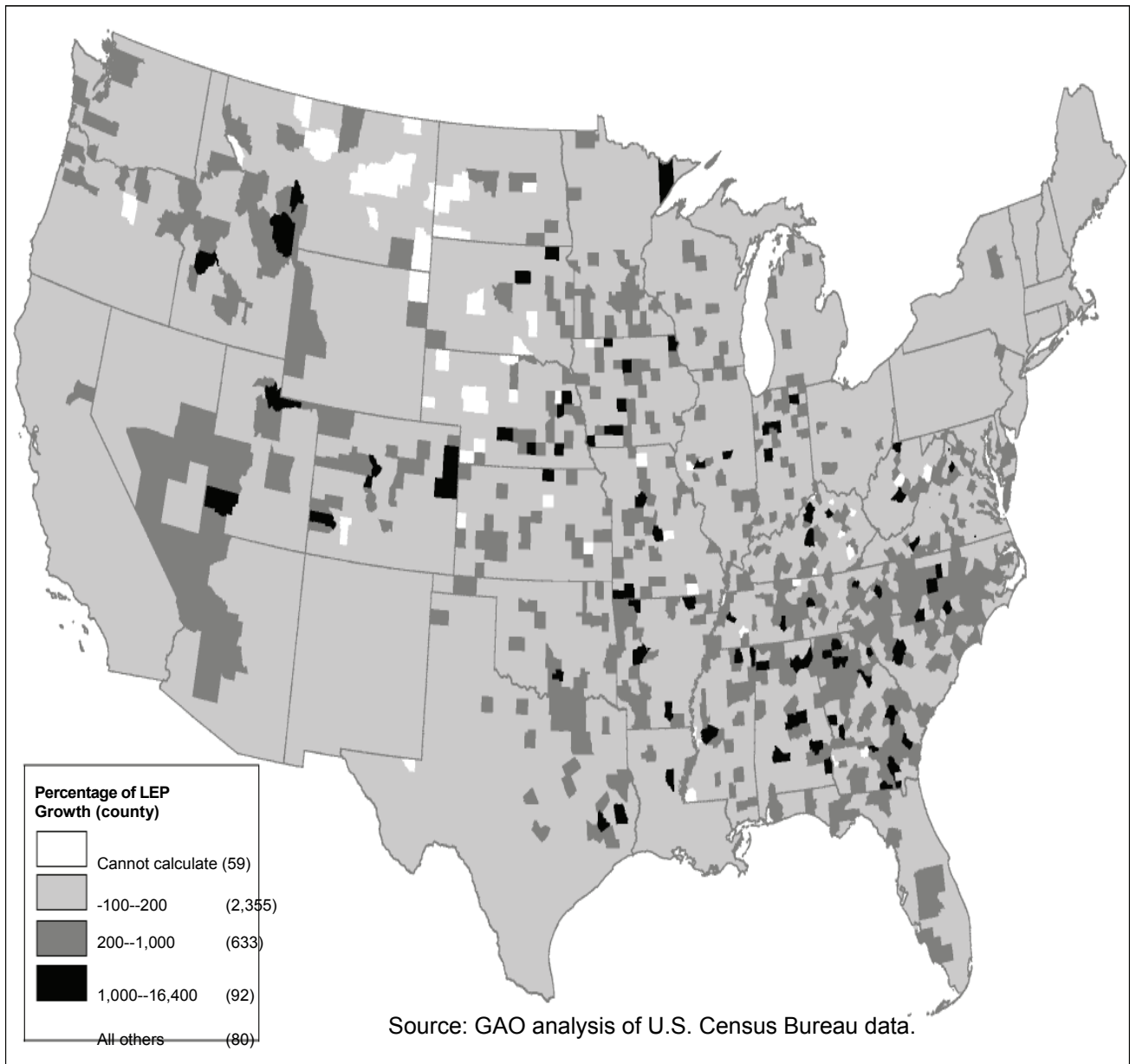
The number of persons reporting that they do not speak English at all or do not speak English well grew by 65 percent from 1990 to 2000. As figures 1 and 2 demonstrate, while LEP populations tend to be largest in counties in border and coastal states, the largest growth in these populations is occurring in the Midwest and the South. Among limited English speakers, Spanish is the language most frequently spoken, followed by Chinese (Cantonese or Mandarin), Vietnamese, and Korean.

Figure 1: LEP Population in 2000, by County



Source: GAO analysis of U.S. Census Bureau data.

**Figure 2: Percentage Growth of LEP Populations between 1990 and 2000, by County**



Title VI of the Civil Rights Act of 1964<sup>1</sup> prohibits recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin. Executive Order 13166, which was signed by President Clinton in 2000,<sup>2</sup> sought to clarify the responsibilities of Federal agencies and their grant recipients under Title VI to make their programs and activities accessible to LEP populations, and it required Federal agencies to issue guidance to their funding recipients to avoid discriminating on the basis of national origin. The Department of Transportation (DOT) issued guidance in 2001, which discusses strategies for providing services to LEP persons, based on guidelines put forth by the Department of Justice (DOJ). This guidance, while in effect for grantees since 2001, was subsequently revised by DOT after public comments were received on it.

<sup>1</sup> 42 U.S.C. § 2000d et seq.

<sup>2</sup> Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." 65 Fed. Reg. 50121 (Aug. 16, 2000).

The revised guidance was approved by DOJ on August 25, 2005, and DOT is preparing to publish and release this revised guidance.

Advocacy organizations and others have raised concerns over the extent to which DOT's guidance to its funding recipients is being implemented. A lack of English skills has the potential to hinder many LEP persons from fully utilizing public transit services and meaningfully participating in the transportation planning process. The inability to effectively access public transit services can result in an array of harmful consequences for LEP persons, including a reduction in employment opportunities, increased difficulty in accessing other needed services, the perpetuation of social isolation, and the diminishment of overall quality of life. In light of these issues, this report discusses (1) the types of language access services that transit agencies and metropolitan planning organizations (MPO) have provided to the LEP populations in their service areas, and the effects and costs of these services; (2) how DOT and its modal administrations assist grantees in providing language access services for LEP populations; and (3) how DOT and the responsible modal administrations monitor grantees' provision of language access services for LEP populations.

To determine the types of language access services that transit agencies and MPOs provided to LEP populations, we visited seven metropolitan statistical areas<sup>3</sup> in Arkansas, California, Illinois, North Carolina, and Texas.<sup>4</sup> We used census data to select these site visit locations on the basis of the size, proportion, and growth of the LEP population, the number of languages spoken, and the extent of public transit use.<sup>5</sup> We conducted semistructured interviews with officials from 20 transit agencies, 7 MPOs, and 16 community and advocacy groups and reviewed various documents and other information. We complemented these case studies and interviews with findings from a 2004 study, conducted for the New Jersey Department of Transportation, which included a survey of 32 transit agencies around the country, and surveys and focus groups with LEP persons in New Jersey.<sup>6</sup> To understand how DOT assists transit agencies and MPOs in providing language access services, we interviewed DOT officials with knowledge of the resources available on language access. We reviewed and analyzed the assistance provided by DOT as well as other Federal resources related to language access. To document how DOT's Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) monitor transit agencies' and MPOs' provision of language access services, we interviewed FTA officials responsible for Title VI compliance reviews and triennial reviews, FTA and FHWA officials responsible for planning certification reviews, and regional officials in the areas we visited. We reviewed the documentation and results of these three review processes and analyzed the extent to which language access is considered by the reviews and norms have been developed for reviewers to use in identifying deficiencies related to language access. Furthermore, we reviewed the status and outcomes of LEP complaints that were made to FTA against transit agencies and MPOs. We conducted our work from February 2005 through October 2005 in accordance with generally accepted government auditing standards.

Appendix I contains more information about our scope and methodology.

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<sup>3</sup> A metropolitan statistical area is a core area containing a substantial population nucleus, together with adjacent communities, having a high degree of social and economic integration with that core. Metropolitan statistical areas comprise one or more entire counties. The Office of Management and Budget defines metropolitan statistical areas for the purposes of collecting, tabulating, and publishing Federal data. Metropolitan statistical area definitions result from applying published standards to U.S. Census Bureau data.

<sup>4</sup> The metropolitan statistical areas we visited were as follows: (1) Los Angeles/Riverside/Orange County, California; (2) San Francisco/Oakland/San Jose, California; (3) Chicago/Gary/Kenosha, Illinois, Indiana, Wisconsin; (4) Austin/San Marcos, Texas; (5) Fayetteville/Springdale/Rogers, Arkansas; (6) Raleigh/Durham/Chapel Hill, North Carolina; and (7) Greensboro/Winston-Salem/High Point, North Carolina.

<sup>5</sup> We did not include in our site visits, areas that recently had in-depth reviews by FTA as well as agencies that had been highlighted in a recent report prepared for the New Jersey Department of Transportation, in order to broaden the limited amount of research and data available in this area.

<sup>6</sup> Dr. Rongfang (Rachel) Liu, *Mobility Information Needs of Limited English Proficiency (LEP) Travelers in New Jersey* (December 2004). Dr. Liu prepared this study for the New Jersey Department of Transportation/Federal Highway Administration. The results of this study cannot be generalized to all transit agencies or to all LEP persons.

## Results in Brief

Transit agencies and MPOs provided a variety of types and levels of language access services, predominantly in Spanish, with the effects and costs of these services largely unknown, although the cost burden of these services currently does not seem significant. The types of language access that these agencies provided included a wide variety of communication strategies, such as translated information brochures and signs, multilingual telephone services, translated Web sites, bilingual drivers and customer service staff, translated recorded announcements, and interpreters at public and community meetings. Almost all of the 27 transit agencies and MPOs we visited provided some materials and services in at least one language other than English, typically Spanish, although few agencies we visited regularly provided much material or service in other languages. For example, although most of the transit agencies we visited had at least Spanish-speaking operators available through their telephone information lines, only 7 transit agencies utilized multilingual telephone lines to provide service in languages other than English and Spanish. The effects of the language access services provided by transit agencies and MPOs on meeting the needs of LEP communities are not well known or understood. Few agencies we visited had conducted an explicit assessment of the needs of the LEP communities in their service areas, or an evaluation of the effectiveness of their language access efforts, even though DOT's LEP guidance recommends such activities. As a result, it is unclear whether those agencies' language access activities are comprehensive enough to meet the needs of LEP persons, and community and advocacy groups in the areas we visited perceived important gaps in agencies' language access activities. For example, 1 group told us that information on service changes is not consistently provided in languages other than English, which can result in LEP individuals waiting for buses that were rerouted. Furthermore, our case studies suggested that a lack of proactive agency outreach and publicizing of agency services to LEP communities may limit the impact and utilization of the materials and services provided, whereas more proactive agency outreach and publicizing to these communities might result in increased utilization of the services and benefits, such as enhanced public support for the agency and increased ridership. For example, although several transit agencies provided multilingual telephone services, community groups we spoke with often were not aware of the existence of such services. While costs related to providing language access services are largely unknown, we found that several agencies perceive providing language access as a cost of doing business, not as an additional cost, at the current level of activity. However, if the agencies were to significantly expand their efforts to include additional languages beyond English and Spanish, additional materials, or additional services, agency officials told us that costs could become prohibitive.

DOT and its modal administrations assist grantees in providing language access through DOT's guidance and other activities, but they have made limited efforts to ensure that grantees are aware of this available assistance, which was not often accessed by the transit agencies and MPOs we visited. The most extensive assistance DOT provides is the LEP guidance itself, which provides grantees with a five-step framework for how to provide meaningful access to LEP populations, along with some information on how to implement such a framework. DOT's LEP guidance was published in the *Federal Register*, but was not publicized through any other direct methods, and the majority of transit agencies and MPOs we visited were not aware of it. In part, this lack of awareness may be due to staff turnover within agencies since the initial release of the guidance, although a DOT official told us that they have done little to promote the guidance since its release. Of the 9 transit agencies and 3 MPOs we visited that were aware of the guidance, only 3 had changed their language access activities in response to it, and only 1 transit agency appeared to have fully implemented the five-step framework. In part, this is because most transit agencies and MPOs told us that they already had been providing language access services for many years prior to the executive order and DOT's LEP guidance. In addition, FTA and FHWA have given workshops at a few annual conferences that specifically addressed the framework in the guidance and provided information on how to implement portions of it, but few agencies we visited had reported attending these workshops. DOT also participates in the Federal Interagency Working Group on Limited English Proficiency, which provides information and technical assistance to Federal grantees through an on-line clearinghouse at <http://www.lep.gov>, although most of the Web site's information is not specific to transportation. Other DOT resources, such as peer-exchange programs hosted by FTA and FHWA, have a few postings that discuss language access activities. Training curricula offered through FTA's National Transit Institute and FHWA's National Highway Institute touch on language access services through a broader context, such as the transportation planning process, and not all of these curricula specifically mention the guidance. Several transit agencies and MPOs we visited stated that better training and technical assistance that is easily accessible and specific to language access and on how to implement DOT's LEP guidance could provide them with ways to more effectively provide access to LEP populations.

Transit agencies' and MPOs' provision of language access services for LEP populations is monitored through FTA's in-depth Title VI compliance reviews and two broader reviews—FTA's triennial reviews of transit agencies and planning certification reviews conducted jointly by FTA and FHWA. However, these reviews do not assess grantees' activities according to the framework in DOT's guidance and do not have consistent criteria for determining whether an agency is deficient in providing such services. While the framework and suggestions contained in DOT's LEP guidance are not requirements, they serve as a useful guide for ensuring that grantees' provision of language access services to LEP persons is in compliance with Federal requirements under Title VI. However, the Title VI compliance reviews and the planning certification reviews do not incorporate the LEP guidance, and the triennial reviews have only a few specific questions referencing the LEP guidance. Deficiencies regarding language access, to the extent they exist, are rarely identified during these review processes. Furthermore, the criteria that are used in these review processes to identify a deficiency in providing language access services are inconsistent and unclear. For example, under triennial reviews, a deficiency is only determined if a complaint has been made against the local agency, although under the other reviews, a complaint need not be made for a deficiency to be found. As a result, what constitutes a deficiency under one review may not constitute a deficiency under another, although agencies under review may be providing the same level of service. In addition to the three review processes, FTA investigates Title VI complaints filed by the public alleging national origin discrimination against LEP persons. FTA's investigations focus on whether a recipient has taken reasonable steps to provide meaningful access to LEP persons. To date, FTA has received only one complaint related to language access. In that case, FTA found that the agency under question should have provided language access to its planning process. Without more thorough and consistent monitoring that takes into account DOT's guidance, agencies' language access activities are likely to remain varied and inconsistent and may leave agencies open to further complaints.

We are making recommendations in this report that the Secretary of Transportation take actions to ensure that DOT grantees are made fully aware of the agency's LEP guidance and their related responsibilities, that transit agencies and MPOs are provided with useful assistance in developing and improving their language access services, and that mechanisms are in place for clear and consistent oversight and monitoring of transit agencies' and MPOs' language access activities. In commenting on a draft of this report, DOT generally concurred with the findings and recommendations and offered a number of technical comments, which were incorporated as appropriate.

## Background

The statutory and regulatory framework for improving access to services for LEP persons stems from Title VI of the Civil Rights Act of 1964,<sup>7</sup> an executive order, DOJ regulations and guidance, and DOT regulations and guidance. Section 601 of Title VI provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>8</sup> Section 602 of Title VI directs Federal agencies to implement section 601 of the act by issuing rules, regulations, or orders.<sup>9</sup> In its efforts to implement section 601, DOJ has issued regulations that bar unjustified disparate impact on the basis of national origin.<sup>10</sup>

On August 11, 2000, President Clinton issued Executive Order 13166 to improve access to Federally conducted and Federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency.<sup>11</sup> The order encouraged all Federal agencies to take steps to ensure that any recipients of Federal financial assistance under their purview provide meaningful access to their LEP applicants and beneficiaries. The order further requires that each Federal agency providing Federal financial assistance to prepare guidance specifically tailored to its recipients. The agencies' guidance must then be reviewed and approved by DOJ before being issued.

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<sup>7</sup> 42 U.S.C. § 2000d et. seq.

<sup>8</sup> 42 U.S.C. § 2000d.

<sup>9</sup> 42 U.S.C. § 2000d-1.

<sup>10</sup> Disparate impact claims involve practices that are facially neutral in their treatment of different groups but that, in fact, fall more harshly on one group than another and cannot be justified by business necessity. *Raytheon Co. v. Hernandez*, 540 U.S. 44 (2003). Under the disparate impact theory of discrimination, a facially neutral practice may be deemed illegally discriminatory without evidence of subjective intent to discriminate, which is required in disparate-treatment cases.

<sup>11</sup> 65 Fed. Reg. 50121.



DOJ released guidance<sup>12</sup> in 2000 that set forth general principles for Federal agencies to apply to ensure that their programs and activities provide reasonable access to LEP persons and, thus, do not discriminate on the basis of national origin. The DOJ guidance explains that, with respect to Federally assisted programs and activities, Executive Order 13166 “does not create new obligations, but rather, clarifies existing Title VI responsibilities.” Although Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons, Federal agencies’ LEP guidance recognize that each situation is fact-specific, and that it would not make sense for the guidance to mandate specific approaches to comply with Title VI. Rather, the purpose of Federal agencies’ guidance is to provide recipients with a framework for assessing their obligations under Title VI, while maintaining flexibility for the recipients to determine how best to comply with those obligations. Thus, the guidance outlines steps Federal-funds recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin, which would be in violation of Title VI regulations.<sup>13</sup> In general, the test for assessing the existence of national origin discrimination on the basis of language under Title VI is to determine whether the failure to provide a service in a language that a recipient understands will prevent the recipient from receiving essentially the same level of service benefit as an English speaker.

DOJ’s guidance established a four-factor analysis to help determine the extent of a funding recipient’s obligation to provide LEP services. These four factors are (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance to people’s lives of the program, activity, or service provided by the grantee; and (4) the resources available to the grantee and costs. According to DOJ, the intent of the analysis is to suggest a balance that ensures meaningful access by LEP persons to critical services, while not imposing undue burdens on small businesses, local governments, or nonprofits.

DOT issued its guidance in 2001. This guidance was generally consistent with DOJ’s guidance but included three additional factors, as well as the four factors previously outlined, suggesting that funding recipients should also consider (1) the level of services provided to fully English-proficient people; (2) whether LEP persons are being excluded from services, or are being provided a lower level of services; and (3) whether the agency has adequate justification for restrictions, if any, on special language services. The guidance states that such restrictions would be accepted only in rare circumstances. On the basis of public comments, DOT subsequently revised its guidance, and the revised guidance was approved by DOJ on August 25, 2005. DOT is currently preparing to publish and release its revised guidance.

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<sup>12</sup> 65 Fed. Reg. 50123. Additionally, DOJ developed its own guidance document for its funding recipients, which was initially issued on January 16, 2001. 66 Fed. Reg. 3834. Revised guidance was issued on June 18, 2002, after revising the guidance to reflect public comments.

67 Fed. Reg. 41455.

<sup>13</sup> In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted regulations similar to the DOJ regulations, and held that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. The Court held that a San Francisco school district that had a significant number of non-English-speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs. In *Alexander v. Sandoval*, 532 U.S. 275 (2001), a non-English-speaking applicant for a driver’s license brought a lawsuit challenging Alabama’s requirement that driver’s license examinations be conducted only in the English language. The plaintiff claimed that this violated Title VI of the Civil Rights Act of 1964 by discriminating against non-English speakers on the basis of their national origin. Without addressing the merits of the claim, the Supreme Court held that a private individual was not entitled to file a lawsuit to enforce DOJ regulations on disparate impact under Title VI. DOJ has emphasized that the Court did not invalidate its regulations under Title VI or Executive Order 13166, and that those remain in force. See the October 26, 2001, Memorandum for Heads of Departments and Agencies General Counsels and Civil Rights Directors from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division.

In addition to describing factors that funding recipients should consider in assessing their obligations to provide LEP services, DOT's guidance outlines several key components to an effective language access program, stating that grantees should (1) conduct an assessment of the language groups within their service areas and the language needs of these groups; (2) develop and implement written plans outlining their strategies for ensuring access to services for LEP populations; (3) make staffs aware of the LEP access plan, and train the staffs and provide them with the tools necessary to carry out the plan; (4) ensure that language access services are actually provided in a consistent manner, and that LEP populations are aware of the services; and (5) develop monitoring programs that allow grantees to assess the success of their LEP access programs and to identify needed modifications. These five steps are designed to help DOT grantees ensure that they are not administering their programs in a way that results in discrimination in violation of Title VI.

Several offices within DOT, particularly the Office of Civil Rights within FTA, have responsibility for ensuring that transit operators and transportation planning entities receiving DOT funds are in compliance with Title VI and responsibility for monitoring and overseeing their language access activities.

### **Several Types of Language Access Services Are Provided, but Little Is Known about the Effects and Costs of Services**

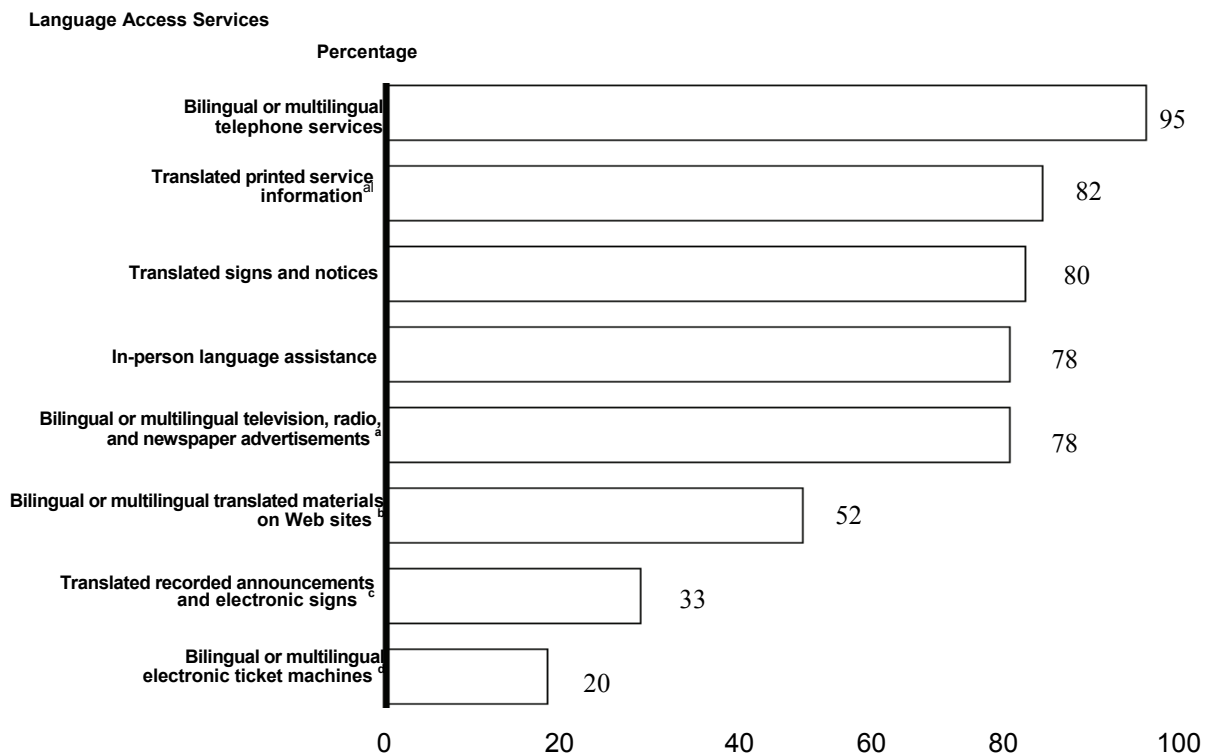
The types of language access services provided by the transit agencies and MPOs we visited included translated service brochures, multilingual telephone lines, translated Web sites, bilingual customer service staffs, and a host of other services. However, the effects and costs of these services are largely unknown. The extent of language access provided varied across the areas we visited during our case studies, and services provided often varied across agencies within the same metropolitan area. Almost all of the transit agencies and MPOs we visited provided at least some language access services in Spanish, the largest LEP language group, and some agencies provided services in other languages. Little is known about the effects of these services on improving access to public transportation and the transportation planning and decision-making process for LEP populations, but community and advocacy groups in the areas we visited identified several gaps in the language access services provided by agencies, such as a lack of awareness in the community about the services available. Given such problems, community groups told us that more proactive agency outreach to LEP communities to determine specific needs and advertise existing services might improve the effectiveness of language access services, whereas a lack of outreach and poor publicizing of available services could likely reduce the impact and utilization of the materials and services provided. One agency cited the positive benefits it received by improving its outreach to non-English-speaking populations, including increased ridership and enhanced public support for the agency. Little is also known about the costs of providing such services, and most agencies saw the language access they provide as a cost of doing business as opposed to an additional cost; however, agencies told us that costs could become prohibitive if services were substantially expanded or provided in several additional languages.

### **Types and Level of Language Access Services Varied, Although Core Services Are Offered in Spanish by Most Agencies We Visited**

During our case studies, we found that providing language access to LEP populations can be incorporated into all of the different ways in which transit agencies and MPOs communicate with the public, not only regarding the transportation services they provide but regarding how agencies provide LEP communities with access to the transportation planning and decision-making process. Transit riders and potential transit riders may need a variety of different types of information to plan their trips, use the transit system, and participate in the transportation planning and decision-making process. For example, potential riders may need to know about the existence of available services, destinations, and travel options, and about time schedules, route options, and transfer policies. When in the transit system, riders may need to know where stops are located, whether service changes have occurred, about available fare and payment options, and about emergency and safety information. Riders may also need confirmation that they are on the right route or are exiting at the correct stop. To participate in the transportation planning and decision-making process, individuals need to know how the process works, what is the purpose and effect of their participation, and when and where public meetings are being held, in addition to needing to be able to understand the proceedings of public meetings and to make statements and participate in those discussions.

To provide such access to LEP populations, transit agencies and MPOs employed a host of different communication strategies, including the following: providing bilingual or multilingual telephone services; translating written materials; translating signs or notices posted at stations, at stops, or on vehicles; providing in-person language assistance through drivers, interpreters, or multilingual customer service staffs; advertising in other languages on television, on radio, or in newspapers; translating materials on their Web sites; translating recorded announcements or electronic signs; or making ticket machines accessible in other languages. In providing language access, the agencies in each of the areas we visited faced different challenges. In North Carolina and northwest Arkansas, agencies are facing a substantial recent growth in the size of the Spanish-speaking population. (See app. I for more information on the size and growth of LEP populations in these two areas.) In parts of California—the San Francisco Bay Area and the Los Angeles and Orange County areas—and in Chicago, Illinois, the predominance of a number of Asian and other language groups, in addition to a large percentage of Spanish-speakers, presents further challenges. Agencies in Austin, Texas, have also experienced growth in Asian languages spoken in the area. Figure 3 shows the percentages of the transit agencies and MPOs we visited that provided services in at least Spanish for each of these communication strategies. However, in some cases, agencies may not utilize these communication strategies, even in English, and these agencies are not included in the percentage calculation.

**Figure 3: Percentage of Transit Agencies and MPOs We Visited That Make These Types of Language Access Services Available in at Least Spanish**



Source: GAO analysis of site visit data.

Note: Some agencies provide information and services in other languages, in addition to English and Spanish. We visited 20 transit agencies during our site visits.

<sup>a</sup> Included in this percentage are 20 transit agencies and 7 MPOs.

<sup>b</sup> Included in this percentage are 20 transit agencies and 7 MPOs. Four transit agencies and 1 MPO posted translated information to their Web sites without indication that the translated material was available.

<sup>c</sup> Included in this percentage are just the 12 transit agencies that have recorded announcements or electronic signs.

<sup>d</sup> Included in this percentage are just the 5 transit agencies that utilize electronic ticket machines.

The following sections discuss transit agency and MPO activities within each of the broad categories shown in figure 3, and highlight examples from the seven metropolitan statistical areas we visited. Following the discussion of these activities, we further discuss agencies' community outreach activities related to LEP populations and to the community and advocacy groups that represent them.

### **Bilingual or Multilingual Telephone Services**

All but 1 of the 20 transit agencies we visited had at least some telephone operators who were bilingual in English and Spanish, but the availability of telephone information in other languages varied. In contrast, a survey of 32 transit agencies conducted for the New Jersey Department of Transportation found that only one-half of responding agencies used multilingual telephone lines or bilingual or multilingual persons in call centers.<sup>14</sup> A few transit agencies we visited in highly diverse areas, such as San Francisco and Los Angeles, had operators fluent in other languages. For example:

- The Metropolitan Transportation Authority in Los Angeles and San Francisco's Municipal Transportation Agency have operators that speak Tagalog and Chinese.
- The Bay Area Rapid Transit has Chinese-speakers available in its call center.

In other cases, telephone services were not language accessible. For example, the San Francisco Bay Area's 511 traveler information line, which provides information on all of the transportation options available in the area, is currently only accessible in English.

Transit agencies in Chicago; Los Angeles; Orange County; and Greensboro, North Carolina, had access to a three-way call translation service in numerous languages. While this service is available through these agencies' general transit information lines, which are advertised on most agency materials, the fact that translation services are available through the three-way call service is not well publicized. Therefore, LEP persons may not be aware of these translation services. For example, representatives of a Chinese community center in Chicago were not aware that Chinese translators were available through the Chicago Regional Transportation Authority's language line, although those representatives said they often assist new Chinese immigrants in learning how to use the transit system. In addition, the New Jersey study found, through its surveys and focus groups with LEP persons, that awareness of the existence of the translation services available in New Jersey was very low, although the study found such services to be valued by LEP persons. Some community groups also pointed to the availability of bilingual or multilingual operators as one of the most critical and useful services that agencies can provide to LEP persons.<sup>15</sup> Without such services, LEP persons must rely on family, friends, or other transit riders who speak their language to provide assistance.

Transit agencies told us that complaints in other languages could also be taken through their bilingual or multilingual telephone services; many agencies had received complaints in languages other than English, primarily in Spanish. However, specific complaints about language access were rare, with only agency reporting such a complaint in relation to a rider's having trouble communicating with a driver.

In some areas we visited, other non-transportation agencies receiving Federal financial assistance also had contracts for multilingual telephone translation services. Because those agencies also are subject to the executive order and Federal agency LEP guidance, the existence of such contracts presents an opportunity for local agencies to coordinate in order to more efficiently provide such services. Few of the transit agencies or MPOs we visited had coordinated with any other non-transportation agencies in their service areas in this regard. However, in North Carolina, transit agencies in Raleigh, Durham, Chapel Hill, and Greensboro all have relationships with other city departments that can assist with language access needs, such as sharing bilingual operators.

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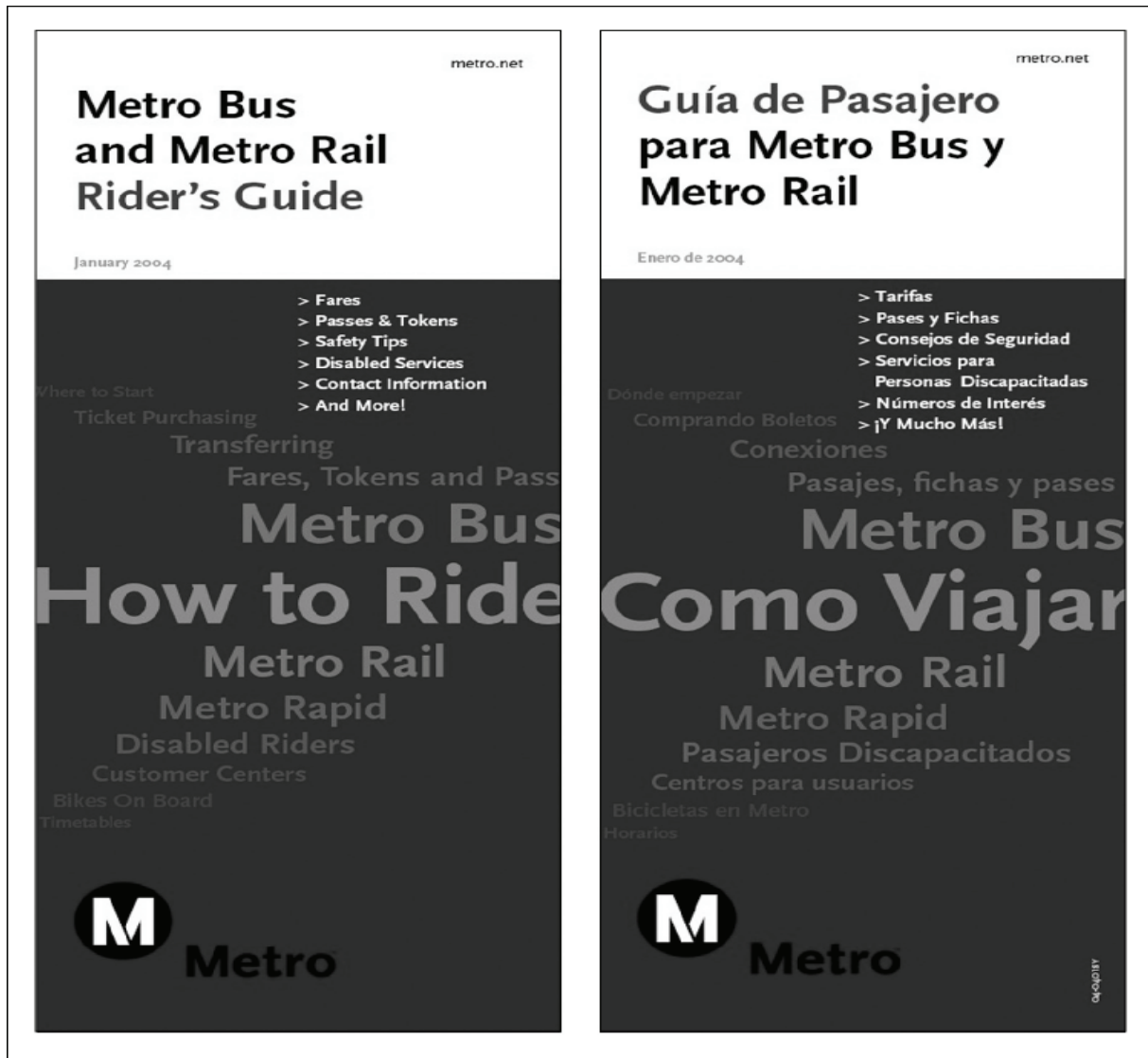
<sup>14</sup> Liu, *Mobility Information Needs of LEP Travelers*, p. 32.

<sup>15</sup> Liu, *Mobility Information Needs of LEP Travelers*, p. 29.

**Translated Printed Service Information**

All but 2 of the 20 transit agencies we visited printed at least some schedules and maps, how-to-ride guides, applications for specialized transportation, or other service information materials in Spanish, and many transit agencies provided extensive amounts of printed materials in Spanish. (See fig. 4 for a sample of a translated service information brochure.) In addition, the New Jersey survey of 32 transit agencies found that two-thirds of responding agencies provided translated timetables and route maps.<sup>16</sup> However, officials at 3 transit agencies indicated that they often do not translate the language on maps and schedules because most of the information consists of numbers, which are universal.

**Figure 4: English and Spanish Versions of the Los Angeles County Metropolitan Transportation Authority's Rider's Guide**



Source: Los Angeles County Metropolitan Transportation Authority.

<sup>16</sup> Liu, *Mobility Information Needs of LEP Travelers*, p. 32.

Seven transit agencies we visited also provided selected guides and maps in languages other than Spanish that are prevalent in their service areas, and 4 agencies are able to provide translated materials upon request. Some examples include the following:

- The Alameda-Contra Costa Transit District in the San Francisco Bay Area regularly prints service information in Spanish and Chinese.
- Also in the San Francisco Bay Area, the Bay Area Rapid Transit's rider's guide is printed in Spanish and Chinese.
- On request, the Los Angeles County Metropolitan Transportation Authority can provide information in several other languages, although the agency acknowledged that such requests were very rare. The agency also produced informational brochures in Chinese to advertise the opening of its Gold Line light-rail service, which passes through Chinatown in downtown Los Angeles.

Some community groups we spoke with indicated that, if service information materials are not translated, many LEP transit riders will likely learn to use the system from family, friends, or others in their community. However, a lack of translated printed materials may discourage use of the system or participation in the transportation planning and decision-making process by affected language groups. Officials at ' agency told us that providing information in the language the community is most comfortable with sends a message that they are welcome on the system and in the planning process, while not doing so may send the message that they are unwelcome. Community groups also told us that more translated service information could encourage greater ridership and make the system more welcoming to LEP persons. In addition, the New Jersey study found that, next to having a staff person speaking their native language, LEP groups most preferred to have timetable, schedule, and other information in their native language.<sup>17</sup>

While MPOs can serve a variety of functions and may provide a wide variety of services related to transportation, we specifically focused on informational materials related to transportation planning and public involvement provided by MPOs we visited. Three of the 7 MPOs we visited had translated a summary of their transportation plan into Spanish, with MPO, the Metropolitan Transportation Commission in the San Francisco Bay Area, also translating the document into Chinese. Two MPOs had translated a citizen's guide to participation in the transportation planning process into Spanish. Another MPO had translated a transportation needs survey into Spanish.

### **Bilingual or Multilingual Signs and Service Change Notices**

Transit agencies we visited provided several different types of translated signs in vehicles or at stations and stops. Of the 4 agencies out of 20 that did not have such signs, 2 were primarily paratransit operators whose vehicles are operated by contractors. The types of translated signs provided included basic service information on bus stop signs, postings of service changes, fare box signs, emergency exit and priority-seating signs, public meeting notices, and posters for informational campaigns. Without translated postings of service changes, bus stop closures, or fare policies, LEP persons are at a disadvantage in accessing the transit system. One community group cited an instance of LEP persons waiting at a bus stop that had been closed due to a city event. This situation occurred because the transit agency had not posted translated notices at the bus stop announcing the closures.

Of the transit agencies we visited, 8 had some basic service information signs at rail stations or bus stops available in languages other than English, and 1 agency we visited had such information available in languages other than Spanish at selected bus stops. For example, Transportation Authorities in Orange County and Los Angeles provide some information at some bus stops in Spanish (such as the direction of travel and information on their telephone lines). One agency, the Alameda-Contra Costa Transit District in Oakland, estimates that approximately 750 of its 1,200 signs are translated in Chinese and Spanish, with signs in bus shelters in the city of Oakland, California, now being replaced with seven-language signs, an example of which is shown in figure 5.

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<sup>17</sup> Liu, *Mobility Information Needs of LEP Travelers*, p. 28.



Officials at 3 transit agencies stated that they had not translated street signs, or did not translate the entire sign, because much of the information is numeric and because including several languages on such signs would become unwieldy for transit riders to effectively use. Agency officials also indicated that cost could become an issue in replacing all of the signs throughout their systems, and some agencies were looking into utilizing more pictograms in order to avoid the use of multiple languages while providing more universal access. However, some community group representatives told us that, although the use of pictograms can be a useful way to communicate with non-English speakers, some translated language may need to accompany the pictograms in order for the information to be communicated effectively.

- Several of the transit agencies we visited posted or provided, in languages other than English, information on service changes or closures at rail stations, at bus stops, and in vehicles. Some examples include the following:
- The Orange County Transportation Authority puts service change flyers in English and Spanish in vehicles on affected bus routes.
- The Golden Gate Transit in San Francisco posts Spanish and English service change notices at its central transit hub.
- The Alameda-Contra Costa Transit District provides service change brochures in Chinese and Spanish.

Ten transit agencies had on-board signs that included information on fares or emergency exits and priority-seating signs for elderly and disabled persons, and 10 agencies posted public meeting notices on their vehicles, translated into at least Spanish. A few agencies also provided fare information or posted public meeting notices on buses or in stations in other languages. For example:

- The San Francisco Municipal Transportation Agency and the Alameda-Contra Costa Transit District both provide fare information in Chinese and Spanish.
- The San Francisco Municipal Transportation Agency posts some meeting notices on its vehicles in Chinese and English, as shown in figure 6.

**Figure 6: Meeting Notice Posted on a Bus in San Francisco, California, in English and Chinese**

**Upcoming Central Subway Community Meetings**  
**We need your input! Please attend!**  
 即將召開中央地鐵社區會議。我們需要了解你們的意見。請來參加！

**THIRD STREET LIGHT RAIL**  
*The Central Subway is a 1.7-mile underground continuation of the Third Street Light Rail Project, that completes the link from the Fourth/King stop to Chinatown.*  
 中央地鐵全長1.7英里。第三街輕軌鐵軌的延續。可直達維多利亞/國王街和華埠。

**COMMUNITY MEETING**  
**Tuesday, December 14, 2004**  
**6:30pm - 8:30pm**  
 社區會議  
 2004年12月14日(週二)晚6時30分至8時30分  
 Pacific Energy Center • Conference Center  
 851 Howard Street

**COMMUNITY ADVISORY GROUP MEETING**  
**Thursday, January 6, 2005**  
**6:30pm - 8:30pm**  
 社區顧問團體會議  
 2005年1月6日(週四)晚6時30分至8時30分  
 Yerba Buena Center for the Arts • Conference Room  
 (2nd Floor of the Gallery Forum Building)  
 701 Mission Street

Source: The San Francisco Municipal Transportation Agency.



In addition, some transit agencies we visited had translated other types of signs, such as posters in English and Spanish, generally designed under the auspices of new initiatives or information campaigns. For example, METRA Commuter Rail in Chicago and the Los Angeles County Metropolitan Transportation Authority both placed posters in English and Spanish that highlight safety issues on those systems. Orange County Transportation Authority officials credit the wide acceptance of the agency's new "no pennies" fare policy to the bilingual "Hasta Luego Pennies" campaign, as shown in figure 7.

**Figure 7: Posters in Orange County, California, in English and Spanish**




Source: Orange County Transportation Authority.

### **In-Person Language Assistance**

While all but 3 of the transit agencies we visited had bilingual drivers on staff, some agency officials noted that those drivers are generally not required or instructed to make announcements in other languages and are generally not assigned to routes where their language skills may be useful. Some agency officials indicated that union rules allow drivers to select preferred routes on the basis of seniority. Therefore, there is no indication of the number of bilingual drivers that are utilizing their languages skills, although agency officials knew of individual occurrences. Three agencies we visited—Golden Gate Transit in California; Capital Metro in Austin, Texas; and Chapel Hill Transit in North Carolina—had provided their drivers with useful phrase or word guides in Spanish, an example of which is shown in figure 8. A few other agencies, including the Capital Area Rural Transportation System and the Capital Metro in Austin, Texas, and the Ozark Regional Transit in northwest Arkansas, have bilingual employees available to translate over the radio on the bus.

Figure 8: Golden Gate Transit's Spanish Phrase Guide for Drivers



**Your Guide to  
Communicating  
with  
Spanish Speaking  
Customers**

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**Guía Para la  
Comunicación  
con Clientes que  
Hablan Español**

Thanks to Bus Operator  
Tony Galloway for brochure concept  
and Bus Operator Oscar Jacobs and  
Public Information Clerk Connie Prado  
for assistance in making it  
as accurate as possible.  
Thanks also to Davie Comaduran,  
Art Director, for her assistance and  
to her husband, Francisco Comaduran,  
for his assistance in translating.

**Revised December 1997**

**General Travel**

I'm sorry, you will have to get off the bus.  
**Lo siento, tiene que bajarse del autobús.**

Where have you come from?  
**¿De dónde viene?**

What town have you come from?  
**¿De qué pueblo viene?**

What is the name of the place?  
**¿Cuál es el nombre del lugar?**

Where did you get on the bus?  
**¿En dónde se subió usted en el autobús?**

What town are you going to?  
**¿A qué pueblo va a ir?**

I will take you there.  
**Yo lo llevaré ahí.**

Where do you live?  
**¿Dónde vive?**

Can you write that down for me?  
**¿Podría usted escribir eso para mí?**

I'm sorry, there is no room for your luggage.  
**Lo siento, no hay espacio para su equipaje.**

You can't bring that on here.  
**Usted no puede traer eso aquí.**

Can you put your bags by the rear door?  
**¿Podría poner su equipaje cerca la puerta de atrás?**

Can you ring the bell next time, please?  
**Por favor, toque el timbre la próxima vez.**

You must ring the bell if you want me to stop.  
**Usted tiene que tocar el timbre si quiere que yo pare.**

Where are you going to, please?  
**¿A dónde va? por favor.**

I don't go there, but the number \_\_\_\_\_ does.  
**Yo no voy ahí, pero el número \_\_\_\_\_ lo llevará.**

Are you a Senior?  
**¿Es usted mayor de edad?**

Do you want the next stop?  
**¿Quiere usted la siguiente parada?**

Shall I tell you when we get there?  
**¿Tendré que decirle, cuando lleguemos allá?**

This is your stop.  
**Esta es su parada.**

**Fares**

Have you any money?  
**¿Tiene dinero?**

If you have no money, you cannot travel.  
**Si no tiene dinero, no puede ir en el autobús.**

How much did you pay on the other bus?  
**¿Cuanto pagó usted en el otro autobús?**

This transfer is not valid. You will have to pay again.  
**Este transfer no es válido, Tiene que pagar otra vez.**

This transfer is past the time limit.  
**Este transfer ya se paso de la hora limitada.**

This transfer is punched for a different day.  
**Este transfer es para otro día.**

How many people are you paying for?  
**¿Por cuántas personas está usted pagando?**

You have to put the money in there.  
**Usted tiene que poner el dinero ahí.**

I don't give change.  
**No le puedo dar cambio.**

Put the dollar bills in there.  
**Ponga los billetes dentro de ahí.**

Don't fold the bills.  
**No doble los billetes.**

Put the coins in there.  
**Ponga las monedas ahí.**

Ask if someone can change the money for you.  
**Pregunte si alguien le puede cambiar su dinero.**

You will have to pay more, please.  
**Usted tiene que pagar más, por favor.**

I'm not allowed to handle the money.  
**No me permiten recibir ningún dinero.**

Do you want a transfer?  
**¿Quiere un transfer?**

Do you need this transfer again?  
**¿Necesitará este transfer otra vez?**

You will need this transfer for the other bus.  
**¿Va a necesitar el transfer para el otro autobús?**

I have to see your transfer please.  
**Tengo que ver su transfer, por favor.**

**General Statements**

How are you?  
**¿Como está usted?**

I am very well.  
**Estoy muy bien.**

...and how are you?  
**¿...y como está usted?**

I am well also.  
**Yo también estoy bien.**

I'll see you next week.  
**Lo veré la próxima semana.**

I'll see you tomorrow.  
**Lo veré mañana.**

See you later.  
**Hasta luego.**

Have a good weekend.  
**Que tenga un buen fin de semana.**

Are you going to work?  
**¿Va para el trabajo?**

Are you going home?  
**¿Va para la casa?**

Good morning.  
**Buenos días.**

Good afternoon/evening.  
**Buenas tardes.**

You're welcome.  
**De nada.**

Have a good day.  
**Que pase buen día.**

Please stand behind the white line  
**Por favor, estacionarse detras la linea blanca**

Good night.  
**Buenas noches.**

What is your name?  
**¿Cómo se llama?**

Come here, please.  
**Venga aquí, por favor.**

Stop there, please.  
**Pare ahí, por favor.**

Come with me, please.  
**Venga conmigo, por favor.**

Hurry up, please.  
**Dese prisa, por favor.**

That's enough.  
**Es suficiente.**

One moment, please.  
**Un momento, por favor.**

Watch your step.  
**Tenga cuidado.**

Are you ill?  
**¿Está enfermo?**

Do you need a doctor?  
**¿Necesita un doctor?**

Please do not move.  
**Por favor, no se mueva.**

Do you understand?  
**¿Entiende?**

I'm sorry.  
**Lo siento.**

Please move to the rear of the bus.  
**Por favor, muevesi atras del autobús.**

The Fare is:  
**El Pasaje es:**

- 1 Uno
- 2 Dos
- 3 Tres
- 4 Cuatro
- 5 Cinco
- 6 Seis
- 7 Siete
- 8 Ocho
- 9 Nueve
- 10 Diez
- 11 Once
- 12 Doce
- 13 Trece
- 14 Catorce
- 15 Quince
- 16 Dieciseis
- 17 Diecisiete
- 18 Dieciocho
- 19 Diecinueve
- 20 Veinte

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- 25 Veinticinco
- 30 Treinta
- 35 Treinta-y-cinco
- 40 Cuarenta
- 45 Cuarenta-y-cinco
- 50 Cincuenta
- 55 Cincuenta-y-cinco
- 60 Sesenta
- 65 Sesenta-y-cinco
- 70 Setenta
- 75 Setenta-y-cinco
- 80 Ochenta
- 85 Ochenta-y-cinco
- 90 Noventa
- 95 Noventa-y-cinco

©1997 Golden Gate  
Transit Authority  
Spanish Speaking  
11-10-97

Source: Golden Gate Transit

Many of the transit agencies reported that they had some bilingual staffs in customer information booths or ticket offices, although agencies tended not to look for bilingual customer service staffs in particular. Agency officials in several areas stated that customer service personnel have language skills because their employees reflect the ethnic and language diversity of their region. For public meetings related to the transportation planning and decision-making process, 2 transit agencies and 4 MPOs had Spanish interpreters or bilingual employees or board members available if needed at most public meetings, while 6 transit agencies and 3 MPOs had Spanish interpreters available by request. In areas where there is a preponderance of other languages spoken, interpreters in languages other than Spanish were generally provided on a “by-request” basis, although 1 agency reported that it regularly provided Chinese translators.

While 6 transit agencies we visited had cultural sensitivity included in their staff training, only 9 provided training or technical assistance to their employees that directly related to LEP issues. The New Jersey survey of transit agencies found that only one-quarter of the responding agencies had training for customer service employees that was specific to LEP service.<sup>18</sup> Five agencies we visited offered free Spanish classes to employees. For instance, Chapel Hill Transit hired a contractor to teach conversational Spanish to supervisors, dispatchers, and those employees who answer telephones during work hours. The agency has not been able to offer the course to drivers because of budgeting issues, since attending the course would be considered part of the drivers’ work week and they would have to be paid overtime. However, the town of Chapel Hill does offer tuition reimbursement to drivers who want to take Spanish classes on their own time.

Community groups regularly pointed out the importance of having as many bilingual bus drivers and customer service staff as possible. At a community meeting in Aurora, Illinois, held by the Chicago Area Transportation Study, the need for more bilingual bus drivers was highlighted as a community transportation need. The New Jersey focus groups with LEP travelers also found that the inability to communicate with bus drivers was one of the chief complaints of the LEP travelers in New Jersey.<sup>19</sup> In terms of the availability of interpreters at public meetings, community groups we met with criticized the fact that interpreters are frequently only provided on a “by-request” basis. Agencies generally require that requests be made 3 days in advance of the meeting, but community groups told us that if an agency is advertising the meeting in different languages, as many of the agencies we visited did, they should be prepared to provide access to the proceedings of the meeting in those languages, rather than relying on the public to request translation.

### **Bilingual or Multilingual Television, Radio, and Newspaper Advertisements**

Fourteen transit agencies and 6 MPOs we visited posted notices of public meetings in newspapers printed in languages other than English—with 10 posting notices in more than one language. A few agencies posted such notices in as many as five different language newspapers. For example, the Los Angeles County Metropolitan Transportation Authority publishes its “Metro Briefs,” which includes notices of public meetings and other information, in Thai, Korean, Chinese, Armenian, and Spanish language newspapers. Spanish radio and television advertisements were also placed by several agencies, sometimes in relation to ongoing information campaigns, such as rail safety campaigns. For example, METRA Commuter Rail in Chicago advertised its rail safety campaign on television and radio in Spanish.

### **Bilingual or Multilingual Translated Materials on Web sites**

Eleven of the 20 transit agencies we visited had some information on their Web sites that was available in other languages; however, 4 of the 11 made no indication on their home pages that translated materials were available. Of the 7 MPOs we visited, 3 had such translated information posted on their Web sites, and 2 had links on their home pages indicating that translated materials were available. Some examples of translated Web sites include the following:

- The Alameda-Contra Costa Transit District’s Web site provides basic rider information in Spanish, Vietnamese, and Chinese—the three largest LEP populations in its service area—that is directly accessible through links in those languages on the home page.

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<sup>18</sup> Liu, *Mobility Information Needs of LEP Travelers*, p. 32.

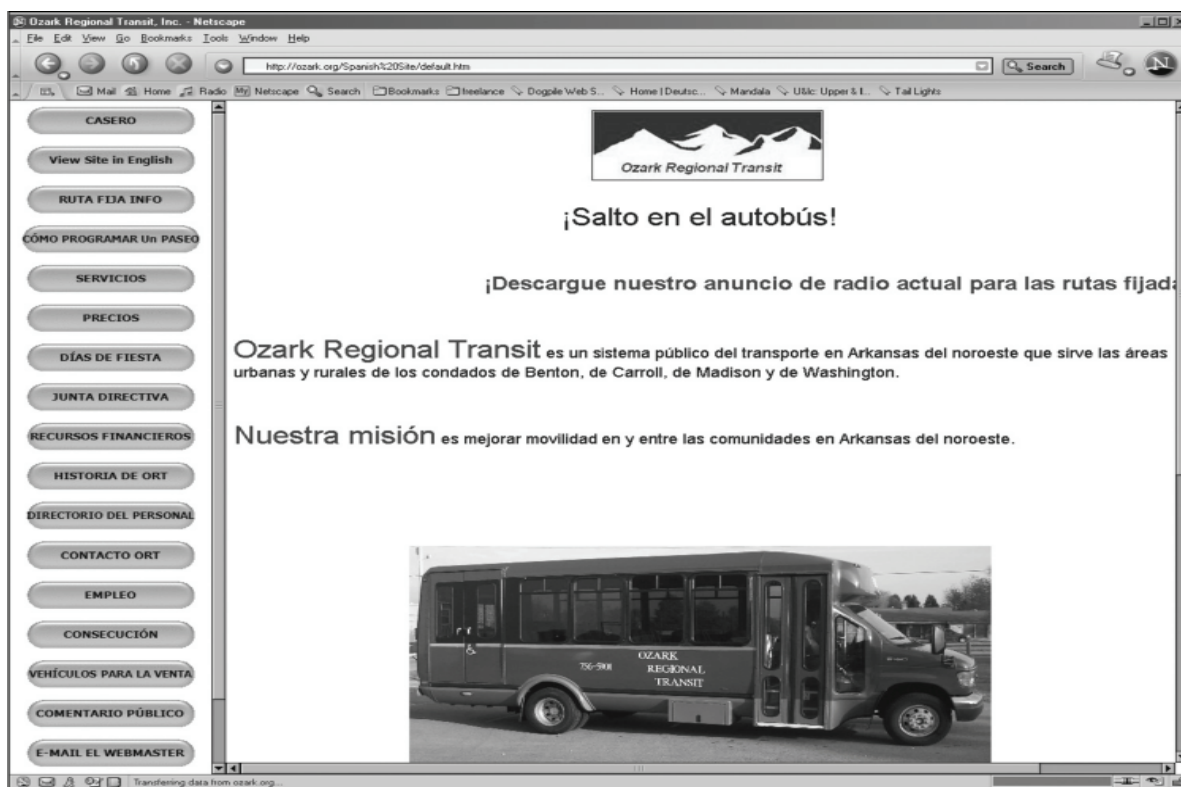
<sup>19</sup> Liu, *Mobility Information Needs of LEP Travelers*, pp. 27-28.

- The Regional Transportation Authority in Chicago, and the Bay Area Rapid Transit and the Golden Gate Transit in San Francisco, have basic transit information available in seven and eight other languages, respectively, indicated by country flag icons on the agencies' home pages. The languages chosen are not fully reflective of the major LEP groups in these areas, however, because these Web sites also serve tourism purposes. For example, in Chicago, the Regional Transportation Authority's Web site is translated into French, German, and Japanese, although these are not major LEP groups in the city. However, the site is not accessible in Chinese, although Chinese is the third largest LEP population in Chicago.

Four transit agencies and 1 MPO had posted translated materials to their Web sites but did not indicate on the home pages that those materials were available. For example, materials translated into Spanish are posted on the Los Angeles County Metropolitan Transportation Authority's Web site, but a user must navigate through links that are in English to get to them. Also, the San Francisco Municipal Transportation Agency has part of its Title VI plan translated into Spanish and Chinese, but the user must navigate through at least two links in English to find the translations. Only 1 agency we visited, the Ozark Regional Transit, a small urban operator in northwest Arkansas managed by First Transit, had made its entire Web site accessible in another language, Spanish, as seen in figure 9. A link in Spanish on the home page leads to a fully translated version of the Web site. Furthermore, while many agencies have Web-based trip planners, none of the agencies we visited had made that function fully available in other languages.<sup>20</sup>

Translated Web sites were not frequently identified by community groups as being particularly useful for LEP persons because LEP persons often do not have access to the Internet, according to the community group representatives we met with. In addition, the New Jersey study found that LEP focus groups did not often rate translated Web

**Figure 9: Spanish Version of the Ozark Regional Transit's Web Site Home Page**



Source: Ozark Regional Transit, a public transit system managed by First Transit.

<sup>20</sup> Two examples of agencies with language-accessible trip planners are the Washington Metropolitan Area Transportation Authority, which makes that function available in several languages, and the Tri-Met in Portland, which makes that function available in Spanish. We did not visit these agencies.

sites as a major resource in addressing mobility needs.<sup>21</sup> However, providing translated information on an agency Web site without indication in that language that it is available is likely to reduce the usefulness of that information to those LEP persons who do have Internet access.

### **Translated Recorded Announcements and Electronic Signs**

Only 3 of the transit agencies we visited had recorded announcements in other languages on their vehicles or at their facilities, although many agencies do not utilize recorded announcements at all. Also, although a few transit agencies employ electronic media, such as televisions or ticker-tape style displays, only 1 provided translated information on its ticker-tape display. Examples of translated recorded announcements include the following:

- The Capital Metro in Austin provides recorded announcements on its buses in English and Spanish, which are also broadcast outside the bus at bus stops.
- The Bay Area Rapid Transit has Spanish and Chinese announcements recorded and available for use in the event of an emergency in its train stations or on its trains.
- The Gold Line light-rail line in Los Angeles has recorded announcements of stops and rider instructions in English and Spanish.

### **Bilingual or Multilingual Electronic Ticket Machines**

Of the transit agencies that utilize electronic ticket machines for rail services—the Chicago Transit Authority, the METRA Commuter Rail in Chicago, the Los Angeles County Metropolitan Transportation Authority, the Bay Area Rapid Transit, and the San Francisco Municipal Transportation Agency—only the Los Angeles County Metropolitan Transportation Authority had some machines accessible in English and Spanish. This agency has installed ticket machines that are accessible in Spanish on a newer light-rail line that passes through a predominantly Hispanic neighborhood, and officials told us they were considering replacing all ticket machines with machines that will be accessible in six to eight languages. One group we met with pointed out that, without translated information on fare discounts and without ticket machines that are language accessible, LEP persons may not be aware of the fare options available to them in the same manner that English speakers would be, potentially leading to LEP persons' paying more than needed for their trips.

### **Communicating Directly with LEP Communities or Community and Advocacy Groups Representing LEP Persons**

Almost all of the transit agencies and MPOs we visited had made at least some effort to communicate more directly with communities and to conduct outreach with LEP communities and the community and advocacy groups that serve LEP persons. For example, in Greensboro, the city recently started a new program with Lutheran Family Services, a community group that works with many LEP persons, to provide an orientation for recent immigrants and refugees to the area. Under the program, city departments identified as having the most public interaction with LEP persons, make an interactive presentation of services provided. These presentations are given in English and simultaneously translated into several languages, including Spanish, Vietnamese, Arabic, and Russian, depending on the availability of translators. The city is also producing a video on its services, including public transit, which will be translated into Spanish and into other languages upon request. In Orange County, the Orange County Transportation Authority conducts a program that includes visiting Spanish-speaking senior centers to inform seniors about the agency and its services. As part of the program, the agency will bring a bus to the centers and walk the seniors through every step of riding the bus, including getting on, paying the fare, and exiting. In addition, 2 agencies reported holding information sessions at bus terminals when service changes or fare adjustments are about to occur. For example, the Durham Area Transit Authority publicizes such information sessions in the Spanish community, and then has translators on hand at bus terminals to explain service changes and answer any questions.

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<sup>21</sup> Liu, *Mobility Information Needs of LEP Travelers*, p. 28.

In terms of transportation planning and decision making, Federal law and regulations require transit agencies and MPOs to involve the public in transportation planning and decision-making processes, and Title VI, as well as DOT's guidance, suggests that agencies should also make this process accessible to non-English speakers. Providing language access to planning and decision making can include all of the communication strategies used by transit agencies and MPOs in this process. Some communication strategies for public participation will fall into the strategies previously outlined, such as providing interpreters at public meetings and posting translated notices of community or public meetings on Web sites, at stations, in vehicles, in newspapers, or on television or radio. Some agencies also employed more direct tactics to include LEP groups in the planning process. For example, several transit agencies and MPOs we visited mailed out notices of community and public meetings to community and advocacy groups representing LEP persons, although in some cases, these notices were not sent out in languages other than English. In addition, several agencies we visited distributed translated public meeting notices in various establishments throughout the community. For example, the Golden Gate Transit in the Bay Area distributes meeting notices in Spanish at convenience stores, restaurants, and laundromats in predominantly Hispanic neighborhoods. Some transit agencies and MPOs also kept in regular contact with community and advocacy groups representing LEP persons or created specific advisory boards that occasionally influenced language access activities. For example, the Orange County Transportation Authority created a citizen's advisory committee that pushed for the agency to provide translated notices of service changes. In addition, some agencies reached out directly to LEP communities with regard to the planning and decision-making process. For example, Capital Metro in Austin started an outreach campaign that involved sending teams of staff and volunteers, many of whom were bilingual, into the community to provide information on new transportation projects face-to-face. Capital Metro found that this outreach resulted in greater public support for the agency and in increased ridership.

Despite some of these efforts, community group representatives we spoke with were often critical that agencies' outreach efforts related to planning and decision making were generally not proactive and inclusive of LEP persons. For example, one representative we spoke with told us that attendance at a public meeting on transportation projects in a predominantly Chinese-speaking neighborhood was not well attended by members of that community, and that no Chinese translator was on hand at the meeting. This representative believed that better outreach to that community to encourage community involvement would have led to higher attendance. A representative of another group explained that community meetings are often very difficult to access for Spanish-speaking members of the community, and that the local MPO tends to work with elected officials rather than working more directly with members of the community.

In the New Jersey surveys and focus groups of LEP travelers, some LEP groups in New Jersey indicated that a lack of adequate transportation services was the biggest impediment to their mobility. Without access to and involvement with local transit agencies and planning entities, the needs of this community are not likely to be heard by these agencies. Furthermore, failing to provide language access to decision making can lead to complaints of discrimination. FTA has received one complaint that LEP persons were not given adequate access to the planning and decision-making process.

### **Effects of Language Access Services on Meeting Needs Are Not Well Known**

The efficacy of the LEP access services provided is largely unknown due to a lack of data. Most transit agencies and MPOs we visited could provide only limited information about the utilization or effectiveness of their language access services. Furthermore, few of the agencies we visited had conducted a formalized assessment of the needs of the LEP populations in their service areas, or had assessed the success of their language access activities in meeting these needs, although DOT's LEP guidance recommends that they do so. Data limitations were present in analyzing the effects of all types of LEP access services. For example, although some transit agencies print thousands of translated brochures, they do not keep track of how many brochures are placed on buses or in stations. In addition, because many brochures are printed with English and another language in the same booklet, it is impossible to know whether the language accessible section is being utilized. Data on the utilization of bilingual or multilingual telephone operators were also generally not available for the majority of the transit agencies because they do not formally track calls received in languages other than English. In those instances where calls were tracked, they were predominantly in Spanish, and calls in other languages were generally not common. For 1 transit agency, of the 378 calls in languages other than English that were received in 2004, 90 percent of them were in Spanish. For another, just 3 percent of calls were in languages other than English and Spanish. One agency in Los Angeles did receive a relatively large percentage of calls in Russian, Farsi, and Armenian to its language line. For Web sites, data on the utilization of multilingual pages

were only available in some instances. Even when tracked, these Web site data were often inconclusive regarding how often the translations were accessed relative to English portions of the sites. Finally, information on the effectiveness of translated signs was not determined by any of the transit agencies or MPOs we visited.

Although little effort had been made by the transit agencies and MPOs we visited to closely examine the impact of their LEP activities, a few agencies were considering language issues as part of their more comprehensive assessments of ongoing communication and outreach efforts. For example, the Regional Transportation Authority in Chicago has started a long-term study of the overall communication strategies of all the transit agencies in Chicago, including language access issues. Part of the study's methodology was for a researcher to ride along with a LEP rider to identify areas where communication was lacking and the rider encountered problems. The study found that language barriers made it difficult to understand changes to schedules or service, or changes in how to navigate through the system.

The study is looking at an increased use of pictograms as one potential solution to making access easier for LEP populations.

Despite the lack of supporting data, most agencies felt that they were adequately responding to the demand for language access services in their areas. Agency officials believed that because no complaints had been recorded concerning the level of language access provided, and because they generally did not receive many requests for translated materials or interpreters, they were doing a reasonable job of providing such access. Several agency officials did state that there was still room for improvement, and some were considering providing more information in languages other than Spanish. Agency officials also recognized the need for greater outreach efforts in general, especially for ethnic communities that may have language barriers, since turnout at public meetings by these groups is typically low. However, some agency officials told us that agencies may lack the needed staff to regularly conduct proactive community outreach activities.

By contrast, community and advocacy groups we met with generally saw several shortcomings in the provision of language access services, sometimes within the larger context of how transit agencies and MPOs communicate with the public in general. In their opinion, a lack of complaints regarding LEP issues did not necessarily mean that transit agencies were doing a satisfactory job, but rather might reflect the fact that many LEP persons were not likely to complain about the provision of language access services, due to cultural differences and wariness about interacting with government agencies. Many community group representatives we spoke with complained of a lack of knowledge in the community about the materials and services that were available, and a lack of materials in languages other than Spanish. Even in areas where transit agencies do provide translated materials, representatives of community groups stated that these materials were often not readily available or easy to locate. In addition, many community groups were unaware of the existence of multilingual telephone lines, or they complained that Spanish-speaking operators were often not available when they called.

In addition to questioning the level of service information available to LEP populations, community groups cited concerns about the lack of actual transit services available to certain communities where large LEP populations reside, as well as concerns about a lack of effective involvement of these communities in the planning and decision-making process, as previously discussed in this report. Many representatives we spoke with were unaware of public meetings held by transit agencies and MPOs, and they complained about the lack of ongoing communication with them and the communities they represent. Furthermore, representatives of community groups told us that these agencies rarely used them as a resource or consulted with them on LEP transportation issues.

These representatives made several suggestions regarding how language access services could be improved, and which types of activities would likely be most effective in meeting community needs. Several suggestions involved facilitating the inclusion of ethnic communities, including LEP persons, in the planning process. For example, representatives from one group stated that public meetings should have agendas that are clear, specific, and of value to the community, and that these communities should be sought out and included early in the process. Other representatives stated that established community and advocacy groups should be used more effectively as a conduit to the community. Regarding language access services, community group representatives recommended having ticket machines and discount fare information available in other languages so that LEP communities could take advantage of fare discounts. They also said that having spoken announcements in other languages or having bus drivers or other personnel available to communicate in other languages would be highly effective in improving access for LEP persons.

of fare discounts. They also said that having spoken announcements in other languages or having bus drivers or other personnel available to communicate in other languages would be highly effective in improving access for LEP persons.

The New Jersey survey and focus groups of LEP travelers provided some data on the needs of LEP transit users. Like the community group representatives, some LEP groups in this study reported that inadequate service in their neighborhoods was their chief concern. In terms of travel assistance needed, LEP groups most often cited having a driver or staff person available to assist them in their own language. Reaction was split among LEP travelers on whether multilingual telephone lines were helpful. Some travelers felt they were helpful, and others felt that if the information is prerecorded, it is not effective. While New Jersey Transit does have a multilingual telephone line (not prerecorded), most of the respondents in this study were not aware of the service, which was likely due to a lack of advertising. Finally, LEP groups stated that Web sites were also not particularly helpful because many of the respondents did not have access to the Internet.<sup>24</sup>

### **Costs May Not Be Burdensome at the Current Level of Activity, but They Could Escalate with Additional Languages and Services**

On the basis of our site visit data, we determined that agencies generally did not believe that the costs for existing language access activities were burdensome.<sup>25</sup> Many transit agencies believed that providing services to LEP populations makes sound business sense. Such agencies recognize that LEP populations represent a significant portion of both their current and their potential ridership. Thus, making services more accessible to LEP persons could increase ridership. For instance, officials at Austin's Capital Metro told us that their outreach efforts to LEP communities has resulted in increased ridership and greater public support for the agency.

While several of the transit agencies we interviewed did not view LEP language access costs as burdensome, the majority of agencies were unable to provide much data on many of the costs associated with their LEP access services. Sometimes these costs were simply not tracked because they were spread out over several departments, or because LEP access activities were not separated from broader costs. The New Jersey survey of transit agencies also found little available data on costs, with only one-third of respondents sharing cost information.<sup>26</sup> Of the respondents to that survey providing cost information, about one-half of them reported annual costs of between \$10,000 and \$30,000; one-quarter reported costs of under \$5,000; and one-quarter reported costs greater than \$100,000.

Transit agencies and MPOs were able to avoid incurring substantial additional costs by utilizing existing staff. For instance, many agencies stated that rather than contracting out for interpreters at public meetings, they bring in bilingual staff members, use bilingual board members, or rely on community groups or individuals to bring their own interpreters as needed. A similar situation occurs in providing interpreters for customer service telephone lines. While 7 transit agencies have access to some form of a language line with formalized services, many agencies have operators who are bilingual or who will utilize various bilingual staff members throughout their operations to field LEP calls when needed. In terms of printed documents and materials, many of the transit agencies and MPOs we visited have their translations done in-house using bilingual staff members. Often, translation is not part of these staff members' official responsibilities, but it is done on a voluntary basis at no cost to the agency beyond the use of staff time.

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<sup>24</sup> Liu, *Mobility Information Needs of LEP Travelers*, pp. 28-29.

<sup>25</sup> Several different cost components can be associated with efforts to provide access to public transit for LEP persons. These costs must be differentiated from costs that would ordinarily be experienced by an agency whether a service is provided in English or in another language. Extra costs borne by an agency that are directly attributable to LEP access activities include the following: outside translation and interpreter costs, cost differentials for developing and printing materials in other languages versus providing these services in English, the creation of translated pages on Web sites, premiums paid to bilingual employees, and software costs to provide multiple languages options at ticket machines.

<sup>26</sup> Liu, *Mobility Information Needs of LEP Travelers*, p. 32.



Although several transit agencies and MPOs did not report unduly burdensome costs, the cost of providing LEP access has the potential to increase significantly if agencies seek to undertake more comprehensive programs.<sup>27</sup> As we previously discussed, many agencies rely on existing staff to do their translations of materials and to act as interpreters. Utilizing existing staff becomes more difficult when an agency attempts to provide access beyond just one or two languages. In that case, agencies would likely have to contract out for translation and translator services, or have to expend additional time and effort during the hiring process to find qualified candidates fluent in the languages desired. Contracting out for both translation and translator services can be costly. For example, the Capital Metro in Austin estimates that it spends between \$10,000 and \$15,000 a year for outside translations of materials. The Chicago Transit Authority stated that it spent over \$1,100 for interpreters at four public hearings in 2004.

Costs will also rise for agencies if they seek to make more comprehensive translated information about their services and programs available through multiple sources. For example, only 1 agency we visited had developed a comprehensively Web site. In addition to any translation costs incurred, developing fully translated Web sites is likely to require modifications to an agency's Web site architecture, which has the potential to be costly. For instance, the Chicago Transit Authority estimated that the initial costs of translating its Web site into Spanish, Chinese, and Polish could potentially be between \$74,000 and \$99,000. In addition, the ongoing costs for maintaining the translated sites could also be substantial. Agency officials told us that the capability to update just the Spanish section of a translated Web site on a regular basis would require a new full-time employee and the purchase of additional software, costing an estimated \$47,000 to \$60,000 annually. In addition, providing language line service that covers multiple languages could raise costs significantly for transit agencies, depending on the usage of the line. Costs for language line services vary, depending on the provider as well as the language being translated, but generally costs per minute range from \$1.00 to \$1.50, which can add up to significant amounts. For example, the Chicago Regional Transportation Authority's language line cost about \$16,000 in 2004, and Access Services in Los Angeles spent \$3,500 in the first 3 months of 2005. In addition, to the extent that agencies seek to provide printed materials in languages other than Spanish, there would be increased typesetting and formatting issues that would give rise to higher costs as well. This is especially true with languages using non-Roman alphabets. For example, officials at the Orange County Transportation Authority estimated that the cost of producing materials in Chinese would be significantly more than for Spanish materials. Finally, in terms of public outreach, a shift to more proactive strategies may lead to higher costs. Transit agencies and MPOs that take the initiative to actively reach out to various community groups and LEP populations would likely need to dedicate a greater amount of staff time and resources.

### **DOT Assists Grantees on Language Access Services through Its Guidance and Other Activities, but These Resources Are Not Often Accessed by Local Agencies**

DOT's LEP guidance provides grantees with a five-step framework for how to provide meaningful access to LEP populations, along with some information on how to implement such a framework; however, officials at the majority of the 20 transit agencies and 7 MPOs we visited were not aware of the LEP guidance. Of the agencies that were aware of the guidance, only 3 had changed their language access activities in response to it, and only 1 transit agency appeared to have fully implemented the five-step framework. DOT and DOJ have also provided other types of assistance on language access services—such as workshops, a DOJ-sponsored interagency Web site, and other resources—but most of the transit agencies and MPOs we visited had not accessed these resources. Officials at transit agencies and MPOs we visited stated that training and technical assistance that is widely available, and specific to language access and how to implement DOT's LEP guidance, could help them more effectively provide access to LEP populations.

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<sup>27</sup> Cost considerations are one of the factors that Federal agency guidance suggests agencies consider when determining what constitutes reasonable access. DOJ's guidance to Federal agencies states that the resources available to an agency may have an impact on the nature of the steps that recipients must take. Smaller recipients with more limited budgets would not be expected to provide the same level of services as larger recipients with larger budgets. 67 Fed. Reg. 41455, 41460 (June 18, 2002).

## **DOT's LEP Guidance Provides Steps to Meaningful Access, but DOT Took Limited Steps to Make Grantees Aware of Guidance**

DOT's 2001 LEP guidance outlines five steps funding recipients should take to provide meaningful access for LEP persons, including (1) conducting an assessment of the language groups within their service areas and the language needs of these groups; (2) developing and implementing written plans outlining their strategies for ensuring access to services for LEP populations; (3) making staff aware of the LEP access plan, training them, and providing them with the tools necessary to carry out the plan; (4) ensuring that language access services are actually provided in a consistent manner and that LEP populations are aware of these services; and (5) developing monitoring programs that allow agencies to assess the success of their LEP access programs and to identify needed modifications. The guidance gives some information on how to implement the framework and examples of promising practices. For example, the guidance lists components that a written plan should generally include, although it does not provide examples of such a plan.

DOT made its guidance available to its funding recipients through the Federal Register, its Web site, and the DOJ interagency Web site;<sup>28</sup> however, DOT headquarters officials did not distribute the guidance through any other direct method to ensure that grantees were aware of it, such as through a policy memorandum or other outreach to grantees. According to a DOT official, DOT relies on its operating agencies to make grantees aware of the guidance, and, in turn, these operating agencies may rely on regional representatives to make grantees aware of the guidance. In the areas we visited, however, FTA regional representatives had not disseminated the guidance or made grantees in their areas aware of the guidance. Staff turnover in DOT's agencies, as well as in local transit agencies and MPOs, likely complicate agency awareness of the guidance, since newer employees may not be aware of documents issued years earlier. Although, according to a DOT official, DOT has not done much to reinforce awareness of the guidance, or grantees' responsibilities under it, since its original publication in the Federal Register in 2001.

As a result, the majority of officials we visited during our site visits who are primarily responsible for implementing aspects of DOT's guidance were not aware of the guidance. Some of the officials we visited who were aware of the guidance had not made significant changes in response to it. Rather than citing DOT's guidance, officials at the transit agencies and MPOs we visited indicated that they provide language access activities in response to their customer base and demographics, as a result of the Environmental Justice initiative,<sup>29</sup> or as a result of requests from community groups or board members.

Officials at many transit agencies and MPOs we visited said they had been providing language access services for many years prior to the executive order and DOT's guidance. Other officials indicated that they were not sure what their responsibilities were under the guidance.

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<sup>28</sup> DOT's guidance is available electronically on FTA's Web site under "Transit Data & Info" and then "Title VI policy, Guidance & Procedures," and through FHWA's Civil Rights Office Web site under "Non-Discrimination."

<sup>29</sup> Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," issued on February 11, 1994, directed every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on "minority populations and low-income populations." DOT's environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without sacrificing safety or mobility. There are three fundamental environmental justice principles, which are to (1) avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations; (2) ensure the full and fair participation by all potentially affected communities in the transportation decision-making process; and (3) prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Of the 9 transit agencies and 3 MPOs we visited that were aware of DOT's guidance, only 2 transit agencies and 1 MPO made changes to their languages access activities as a result. Examples of agency responses to the guidance include the following:

- The Alameda-Contra Costa Transit District developed an inventory of its language access activities, with several proposals for improving language access services that are now being implemented.
- The Metropolitan Transportation Commission in the San Francisco Bay Area indicated that, while it had not significantly changed its practices as a result of the guidance, it had increased its efforts.
- The Chicago Transit Authority formed a committee to examine LEP issues after the release of the guidance in 2001. This committee determined the languages spoken in its service area from Census data and has discussed the idea of implementing a survey to determine what language needs exist. No current plan or timeline for developing or implementing the proposed survey exists.

Officials from the California, North Carolina, and Texas state departments of transportation reported that they had begun to monitor their small urban and rural grantees' LEP activities as a result of the executive order and DOT's guidance. As a result, some materials have been provided to grantees about their responsibilities under the guidance.<sup>30</sup>

Some of the transit agencies and MPOs we visited told us that technical assistance and information would be helpful in implementing DOT's guidance, and 1 transit agency cited a lack of funds and time to conduct an assessment of language access needs and to provide and evaluate language access activities. For example, an MPO in North Carolina said it would benefit from the ability to easily access practical resources on language access services for LEP persons. In addition, agency officials at a transit agency in California told us that an example of a needs assessment—with estimates of the cost to conduct one and effective ways to outreach to LEP persons—would be very helpful. A DOT official told us that, in anticipation of issuing DOT's revised guidance, additional training and assistance was being considered within DOT.

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<sup>30</sup> The California Department of Transportation has developed a written department policy for LEP persons. The intent of the policy is to ensure departmental employees are aware that LEP persons shall be provided meaningful access to the department's programs, activities, and services that are normally provided in English. In addition to the draft policy for LEP, the department is in the process of finalizing "standard" LEP office procedures for the various program areas and districts to use. Finally, the department developed an LEP training module, which includes requirements under state law (Dymally-Alatorre Bi-lingual Services Act of 1973); Federal law (Title VI of the Civil Rights Act of 1964); and Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." This training module will be used to inform departmental staff of LEP requirements and assist them to ensure that the regulatory requirements are met. Process reviews of program areas will be conducted in conjunction with Title VI reviews to determine the level of compliance; corrective action, if necessary; and best practices.

## Other Federal Resources Address Language Access Issues to Varying Degrees, but They Are Not Frequently Used by Grantees

### DOT's Workshops at Conferences and Federal Web Sites Provide Some Assistance on DOT's LEP Guidance

FTA and FHWA have hosted a few workshops at annual conferences<sup>31</sup> that have provided assistance on how to implement portions of the framework described in the guidance.<sup>32</sup> Presentations held by FTA and FHWA reviewed the LEP executive order, and DOT's LEP guidance, and provided workshop participants with real-world LEP information, including how to identify LEP populations in their service areas. For example, workshops included the following:

- Strategies for Complying with FHWA LEP Requirements, was held at the Southern Transportation Civil Rights Conference in Orlando in August 2005.<sup>33</sup> This training identified strategies to ensure that LEP persons have access to programs, services, and information through the application of DOT's guidance. In addition to this presentation, a "train the trainer" curriculum was developed regarding LEP awareness.<sup>34</sup> Training attendees were provided with a manual with resources on providing language access, which included DOT's guidance, language identification flash cards, language statistical data, language assistance self-assessment tools, and commonly asked questions and answers.
- Fair Transportation: Incorporating Equity Concerns into Transit Planning and Operations, presented to the Conference of Minority Transportation Officials by FTA's Office of Civil Rights, occurred in July 2005. This presentation discussed the changing demographics and growing multicultural nature of the American population and the increase in the number of LEP persons nationwide. FTA staff summarized the requirements of DOT's LEP guidance, and recommended that transit agencies incorporate attention to the needs of LEP persons into elements of their routine planning and operations, such as their complaint procedures, marketing, customer surveys, and community outreach.
- LEP: A Lesson in Redefining Public Involvement was given at the 2003 Conference of Minority Transportation Officials National Meeting and Training Conference. This presentation provided information about the LEP executive order and DOT's guidance, and used real-world examples to illustrate the complications an agency may face as a result of not providing information to LEP populations during the planning process. The presentation also defined compliance with the LEP executive order by listing important components in DOT's guidance (i.e., a needs assessment, a written language assistance plan, language assistance, and monitoring).
- How to Identify LEP Populations in Your Locality was given by FHWA at the American Association of State Highway and Transportation Officials' 2004 Civil Rights Conference. This presentation also provided information on the LEP executive order; DOT's guidance; and specific information about what resources can be used to identify LEP populations, which is the first step of conducting a needs assessment. For example, the presentation highlighted using Census and state departments of education data to identify the size and location of LEP populations. This presentation is available on FHWA's Civil Rights Web site.

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<sup>31</sup> Since 2003, FTA and FHWA have held workshops that specifically address language issues in the context of the guidance at conferences held by the Conference of Minority Transportation Officials, the American Association of State Highway and Transportation Officials, and the Community Transportation Association of America.

<sup>32</sup> The North Carolina State Department of Transportation became aware of DOT's LEP guidance through a 2-day workshop on Civil Rights and Environmental Justice, which was given by FHWA at the department's request.

<sup>33</sup> According to the FHWA official, the presentation should soon be available on FHWA's Civil Rights Web site. Additionally, this official told us the presentation will be shared with others via FHWA's internal Community of Practice Web site.

<sup>34</sup> This curriculum was developed for Maryland state employees to assist them in implementing a proposed law on language access. The Maryland State Senate Bill requires state departments, agencies, or programs to take reasonable steps to provide equal access to public services for LEP individuals, which includes the translation of forms and documents ordinarily provided to the public into any language spoken by any LEP population that constitutes 3 percent of the overall population within the geographic area served by a local office of a state department, agency, or program.

Besides offering workshops, DOT also participates in the Federal Interagency Working Group on Limited-English Proficiency, which provides resources to Federal grantees mainly through its Web site, <http://www.lep.gov>. The resources available on the Web site are generally not specific to transportation, with the exception of DOT's LEP guidance and a multilingual video on using public transit, "Making Public Transit Work for You," which was produced by the Contra Costa Commute Alternative Network. The Web site, which is maintained by DOJ, serves as a clearinghouse by providing and linking information; tools; and technical assistance about LEP and language services for Federal agencies, recipients of Federal funds, users of Federal programs and Federally assisted programs, and other stakeholders. While most of the information on the Web site is not specifically about transportation, some of it could be applicable to transit agencies. For example, the Web site contains a variety of tools—including a self-assessment—to help local agencies assess their current language services and plan for the provision of additional language assistance to LEP individuals. The Web site also provides an overview of how to develop a language assistance plan, and it contains performance measures, such as a measure of the extent of ongoing feedback from the community, in order to evaluate the effectiveness of LEP activities. In addition, there is a video on the Web site regarding LEP access issues that could be used in training for customer service personnel at transit agencies. FTA's Title VI Web page provides a link to this Web site.

### **Other DOT Resources Have Few Language Access Activities or Touch on Language Issues in a Broader Context**

FTA and FHWA have two peer-exchange programs through which local agencies can share innovative or effective practices on various topics that have sometimes included language access. FTA's peer-exchange program, called Innovative Practices for Increased Ridership, and FTA and FHWA's collaborative peer-exchange program, called the Transportation Planning Capacity Building Program, allow agencies to easily share information over the Internet. FTA's Innovative Practices Web site serves as a central information resource for innovative strategies on various topics. Innovative practices are submitted by transit organizations and reviewed by FTA, and these practices are then made available for other transit organizations to search records, review innovations, and potentially implement similar programs. A search of FTA's Innovative Practices Web site revealed some assistance on language access issues. In one example, a transit agency in Maine created a multilingual brochure that provided basic information about riding its bus service in eight languages, including Spanish, Serbo-Croatian, Russian, Khmer, Somali, Vietnamese, French, and English, and plans to translate the brochure into six more languages, including Farsi, Arabic, Acholi, Swahili, Chinese, and Bulgarian. The transit agency credits this effort with increasing its ridership.

The Transportation Planning Capacity Building Program<sup>35</sup> provides resources to local agencies through its Web site, where users can search various topics to find out if any other agency has posted helpful information on those topics. LEP resources are not directly available through an explicit link on this Web site. However, a search of the program's Web site under Title VI and Environmental Justice issues revealed some assistance on language access. For example, the materials from a workshop called Identifying and Engaging Low Literacy and Limited English Proficiency populations in the Transportation Decision-making Process, which was held in Atlanta in May 2004, was made available to users on the Web site. The workshop refers to the LEP executive order and describes innovative and effective practices that some agencies have employed to improve awareness among communities and transportation planning agencies of the existence of low-literacy and LEP populations in their areas.

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<sup>35</sup> The Transportation Planning Capacity Building Program is designed to help decision makers, transportation officials, and staffs resolve the increasingly complex issues they face when addressing transportation needs in their communities.

FTA and FHWA also provide Federal grantees with training and technical assistance—through the National Transit Institute (NTI) and the National Highway Institute (NHI), respectively—that address language access issues to some extent in training on other subjects, such as public participation in the transportation planning process. Funded by grants from FTA, NTI provides training, education, and clearinghouse services in support of public transportation. Representatives from NTI identified five training courses in which language issues were discussed in the broader context of other issues.<sup>36</sup> In addition, NTI is developing a course for transit employees that will specifically address cross-cultural communications, including tips for overcoming language barriers, such as speaking slowly, being patient, and not using slang words. NHI also provides training, resource materials, and technical assistance to the transportation community, although, like NTI training, language issues are addressed as they relate to the course content. An official from NHI identified two training courses in which language issues were discussed. An example is NHI’s course called Fundamentals of Title VI/Environmental Justice, in which LEP issues are woven into the course materials. The training gives examples of outreach done by various agencies, which includes providing meeting materials and flyers in Spanish. Another course, entitled Public Involvement Techniques for Transportation Decision Making, describes the importance of including LEP populations in the planning process; provides suggestions on effective ways to reach out to LEP populations, such as through community groups and informal meetings; and outlines ways to continue communication with LEP groups once a connection has been established. For example, the training states that providing translated materials and interpreters at meetings is essential in reaching non-English speakers. NHI and NTI representatives told us that they are working to combine their relevant training courses on public involvement in the transportation planning process into one course.

### **Other Available Federal Resources Are Rarely Used by Grantees**

The majority of transit agencies and MPOs we visited did not access the Federal resources previously discussed because many officials were unaware that these resources exist. Only a few agencies we visited had reported attending workshops held at annual conferences on language access issues,<sup>37</sup> and no agency we met with had reported accessing information available through <http://www.lep.gov>. Furthermore, statistics on the number of Internet users that accessed LEP resources on the Web-based peer-exchange programs indicate that these resources are not accessed often in comparison to other resources on those Web sites. A few transit agencies we visited were aware of or had accessed the NTI training entitled Public Involvement in Transportation Decision-Making, which includes a section on ensuring that nontraditional participants—that is, minority, low-income, and LEP populations—are included in the public involvement process associated with transportation planning.

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<sup>36</sup> In addition to the five courses identified, 1 transit agency in North Carolina cited an NTI training course, entitled Customers, Conflicts, and You: A Transit Operators Guide to Problem Solving, in which language was discussed.

<sup>37</sup> We did not review overall attendance at these workshops to determine the extent to which this information was accessed by transit agencies nationwide, but rather we focused on whether the agencies we visited were aware of the resources that DOT provides.

## Three Review Processes Provide Limited Monitoring of Language Access Activities, and Criteria for Finding a Deficiency Are Inconsistent

Language access activities of transit agencies and MPOs are monitored through three review processes—FTA’s Title VI compliance reviews, FTA’s triennial reviews, and planning certification reviews conducted jointly by FTA and FHWA (described in table 1). However, these reviews do not fully take into account Executive Order 13166 or DOT’s LEP guidance, and the criteria for finding a deficiency with regard to providing language access are inconsistent.

**Table 1: FTA and FHWA Reviews**

Type of review	Description and scope
Title VI compliance review	A Title VI compliance review is conducted to determine if the grantee’s required efforts under Title VI of the Civil Rights Act of 1964 are represented to the Federal Transit Administration (FTA). This review lasts 2 to 3 days and assesses implementation of Title VI programs in areas such as general reporting requirements, service standards and policies, and language access. This review covers each agency’s policies, procedures, and record keeping related to Civil Rights and Title VI.
Triennial review	The triennial review is a periodic process review that is conducted at least once every 3 years for each formula grant recipient. The results of the triennial review are integrated into FTA’s grant management functions and ultimately serve as the basic review of FTA’s comprehensive oversight program. Although it is broad in scope, the triennial review is the only FTA review that is statutorily mandated.
Planning certification review	The planning certification review occurs at least once every 4 years in all Transportation Management Areas, which are metropolitan areas that have a population that exceeds 200,000 people. Unlike the aforementioned reviews, the planning certification review is conducted jointly by FTA and the Federal Highway Administration (FHWA). The objective of this review is to enhance the effectiveness of Federal oversight of the transportation planning process. The planning certification review process includes a desk review, on-site interviews with all participants in the planning process, and input from the public. The review concludes with a final report of findings and recommendations, which is intended to provide an overview of the planning process and identify areas where FTA and FHWA need to provide guidance or direction to the process.

Source: GAO.

The Title VI compliance review<sup>38</sup>—an in-depth review of a limited number of transit agencies, MPOs, and state DOTs—does not assess language access activities using the LEP guidance, but rather assesses them using guidelines in an FTA circular, which asks agencies to describe the language access they provide.<sup>39</sup> However, the circular does not provide agencies with a framework, and does not have much specificity regarding what agencies should provide in terms of language access. FTA officials told us that the circular is used for the compliance review because it is a requirement for agencies, while agencies are not required to implement all aspects of DOT’s LEP guidance. The officials further stated that they have considered including more aspects of DOT’s guidance in the compliance review.

<sup>38</sup> Since 2002, FTA has conducted roughly six compliance reviews per year of transit providers, state DOTs, or MPOs, final reports from these reviews are available on FTA’s Title VI Web page. See [http://www.fta.dot.gov/16241\\_ENG\\_HTML.htm](http://www.fta.dot.gov/16241_ENG_HTML.htm). FTA identifies recipients for review on the basis of complaints against the recipient, media reports, recommendations of regional civil rights officials, outstanding findings on past triennial reviews, and FTA’s desire to review both smaller and larger grantees in areas around the country.

<sup>39</sup> Recipients of FTA funding assistance are subject to the Title VI compliance conditions associated with the use of these funds pursuant to FTA Circular 4704.1, “Title VI Program Guidelines for Grant Recipients,” dated July 26, 1988; Part II, Section 117(a) of the FTA Agreement; and FTA Circular 4702.1, “Title VI Program Guidelines for Federal Transit Administration Recipients,” dated May 26, 1988. The program guidelines of FTA Circular 4702.1 define the components that must be addressed and incorporated in the recipients’ Title VI Program and are the basis for the selection of compliance elements that are reviewed in FTA discretionary reviews.

We reviewed Title VI compliance reviews completed between 2002 and 2004 and found that the scope of these reviews of language access activities varied, and may not assess local agencies' language activities across the entire breadth of communication strategies previously outlined in this report. For example, in one review, an agency was found deficient because it did not have safety and emergency information translated, yet in other reviews it was unclear whether safety and emergency information was included in the scope of the review. Furthermore, the scope of the multilingual communications portions of the Title VI compliance reviews has varied on the basis of the primary objective of the endeavor. Some of these reviews considered only the extent to which language assistance was provided to persons wanting to involve themselves in the transit system's planning and decision-making processes because the scope of the reviews focused solely on these processes. Other reviews evaluated only the extent to which language assistance was provided to persons wanting to use the transit system. Table 2 provides examples of deficiency findings related to language access from these Title VI reviews.

**Table 2: Language Access Deficiencies Found through Title VI Compliance Reviews**

Agency	Type of review	Finding	Recommendation	Agency response
Chicago Transit Authority	Limited scope review – Review of Service/ Fare Change	The agency did not adequately communicate information at public meetings in other languages.	The agency should improve its community outreach efforts to ensure that minority residents are heard.	The agency pledged to establish a public participation process that increases the number of public meetings and outreach to community organizations.
Metro St. Louis	Limited scope review – Review of Service/ Fare Change	Review found that language access considerations may not have adequately been taken into account.	Review recommended that the agency evaluate whether there is a need for considering limited English-proficient (LEP) persons when disseminating information.	The agency indicated that it would prepare a written assessment of the need to address LEP needs. The assessment will include targeted surveys of operators and customers on routes known to serve immigrant populations, as well as interviews with advocacy groups, community groups, and human service agencies that serve immigrant populations.
New York City Transit	Full Title VI compliance review	Sampling of vehicles and facilities failed to confirm the consistent use of Spanish in safety and emergency evacuation procedures.	Within 90 days, the agency must submit to the Federal Transit Administration (FTA) documentation that a Policy for Translating Customer Information Materials has been finalized and implemented.	The agency submitted its draft policy, which indicated it would translate safety notices into Spanish, and FTA accepted it. The agency also provided several examples in its quarterly progress reports of safety messages translated into Spanish.

Source: GAO review of Title VI compliance reviews, 2002-2004.

In March of 2003, FTA's Office of Civil Rights conducted a pilot Title VI compliance review of the Brownsville Urban System in Texas, specifically looking at the extent to which the agency had implemented DOT's LEP guidance. This pilot was initiated as part of a refocusing of Title VI compliance reviews on more specific issues within Title VI, including multilingual communications, fare increases, service changes, and equitable allocation of resources. Brownsville was selected by FTA's Office of Civil Rights for the pilot assessment for multilingual communication because of its large Spanish-speaking community.<sup>40</sup> The assessment guidance used in the pilot incorporated sections of DOT's guidance in addition to the multilingual facilities section of the FTA circular used in other Title VI compliance reviews.

<sup>40</sup> FTA's Office of Civil Rights informed us that they have plans to conduct a similar assessment of another entity in fiscal year 2006.



The assessment focused on whether the Brownsville system had ensured meaningful access to LEP persons by assessing 11 different aspects of providing greater access to LEP persons. For example, the review focused on whether the agency had a needs assessment and a written language assistance plan; the agency's provision of language services (e.g., oral interpretation; written translations; and alternative, nonverbal methods); and its provision of language access to its grievance or complaint procedures. Brownsville was found deficient in 5 of the 11 areas, as shown in table 3.

**Table 3: Results of the Pilot LEP Review of the Brownsville Urban System in Texas**

<b>Area examined</b>	<b>Result of Review</b>	<b>Recommendation</b>
Needs assessment	Deficiency - overall assessment not conducted	Identify other language needs in the community
Assessment of linguistically isolated population	Deficiency - assessment not conducted	Identify linguistically isolated populations during overall assessment
Identification of barriers	Deficiency - not conducted	Identify communication barriers during overall needs assessment
Written language assistance	Deficiency - language assistance plan not in writing	Draft written language assistance plan
Availability of multilingual communications	Deficiency - reasonable efforts to provide multilingual communications; however, several items found only in English	Translate the hours of operation and remaining information on the route schedules and system maps into Spanish
Staff training	No deficiency - staff aware of and understand language assistance plan	None
Special language assistance	No deficiency - adequate and effective methods for notification of language assistance	None
Monitoring	No deficiency - regular oversight provided	Use passenger survey for additional feedback
Types of language services	No deficiency - adequate mix of oral interpretation and written translations	Consider the use of alternative, non-verbal methods of communication
Grievance or complaint procedures	No deficiency - adequate complaint procedure in place	Put complaint procedure in writing
Limited English proficient community outreach and education	No deficiency - adequate community outreach	None

Source: GAO review of the Brownsville Pilot Title VI Assessment on Language Access.

The FTA's Office of Civil Rights has also recently developed an initiative that focuses on fare and service changes, but the FTA's advice to agencies related to this initiative has not always been consistent. While this initiative is based on the Executive Order on Environmental Justice, it does include an LEP component. In 2004, the FTA developed and disseminated a self-assessment (also posted on the FTA's Title VI Web site) to about 20 transit agencies considering

fare and service changes. This assessment included questions about the public involvement process and asked the transit agency whether it believed outreach to the LEP population was warranted, and, if so, what steps the transit agency had taken or was planning to take to inform its LEP population about the service or fare changes and to offer this population the chance to comment on the changes. The majority of the agencies that returned this self-assessment reported that they had taken steps to reach out to their LEP populations using methods similar to those previously noted in this report, such as posting information about the upcoming fare increases in multiple languages in vehicles and stations, advertising the changes in other-language newspapers, and including interpreters at public meetings established to discuss the changes. Several of the transit agencies responding to this initiative stated that they had not engaged in LEP outreach because the number and proportion of LEP persons in their service areas were very small (i.e., less than 1 percent).

For 1 agency, FTA encouraged the agency to conduct a further assessment of the LEP population, even though the agency reported that only 119 residents in its service area (less than 1/2 of 1 percent) did not speak English well. Yet, in another location, where the agency reported that only 1/2 of 1 percent of the service area population was LEP, FTA encouraged the transit agency to monitor demographic trends to determine whether limited English proficiency may become more relevant in the future, rather than conduct a further assessment.

Another of the review processes, the triennial review, looks at whether transit agencies that receive Urbanized Area Formula Grants have complied with statutory and administrative requirements in 23 areas, one of which is Title VI<sup>41</sup>. Because this review covers a wide variety of activities and Federal requirements, it is not as in-depth with regard to Title VI as Title VI compliance reviews. However, the triennial review serves as the basic review of FTA's oversight program. Under the Title VI section of the triennial review, specific questions make reference to DOT's LEP guidance: "Has the grantee assessed and addressed the ability of persons with limited English proficiency to use transit services? Are schedules and other public information provided in languages other than English? If yes, what other languages are provided?" In the triennial review, the grantee is found deficient only if a complaint has been made and the grantee has not conducted an assessment of the population and the need for LEP materials. However, several community and advocacy groups we met with indicated that there may be language barriers to making a complaint, and, as we previously discussed, there may be different cultural or social norms that preclude LEP persons from making complaints (i.e., some persons may feel that it is not their place to question the government, or may feel uncomfortable doing so).

Because a deficiency is found only if a complaint has been made and the agency has not conducted an assessment, findings of deficiencies are rare; although our case studies and the New Jersey survey of transit agencies suggest that most agencies have not conducted a language needs assessment.<sup>42</sup> We reviewed 34 triennial reviews conducted in fiscal year 2005 that identified one or more deficiencies in the area of Title VI and found only one deficiency related to LEP. In 2005, the Fayetteville Area System of Transit was found deficient for not conducting an assessment of the extent to which there are LEP persons in its service area. Within 90 days, the agency was to provide FTA with documentation that it had conducted an LEP assessment and with information on the steps it would take to address any needs identified.

The third of the three review processes that monitor language access activities is the planning certification review, which looks at how well state and regional planning processes comply with DOT planning regulations.<sup>43</sup> This review is conducted jointly by FTA and FHWA and is also not as in-depth with regard to Title VI as Title VI compliance reviews. One section of the review guidelines is directed at LEP issues with regard to public participation in the planning process, but the review does not incorporate the LEP guidance. The section states that agencies should "if

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<sup>41</sup> The triennial review focuses on compliance with statutory and administrative requirements, and, should the review reveal a deficiency on the part of the grantee to comply with Title VI—or any other of the 23 oversight topics—further and more detailed reviews will follow to ensure continued adherence to Federal standards. In addition, grantees found not to be in compliance may have their funding reduced or eliminated. FTA conducts this review with some of its own personnel, but it also uses several contractors to complete the review.

<sup>42</sup> Liu, *Mobility Information Needs of LEP Travelers*, p. 32.

<sup>43</sup> DOT prepares review guidelines for reviewers at the regional level. These reviewers may modify their review questions on the basis of regional differences. Every state and regional planning process is reviewed every 3 years. Of the approximately 400 MPOs across the country, only the largest one-third of them (in areas with populations over 200,000) is subject to formal certification. The remaining agencies are required to self-certify. Over a 3-year period, about 130 to 140 regional planning processes are reviewed.

necessary, make available communications for the hearing impaired and provide sign and foreign language interpreters.” It is not clear what constitutes a deficiency in these reviews, and during the past 2 years, there have been no deficiency findings regarding language.

In addition to the review processes, FTA investigates Title VI complaints filed by the public alleging national origin discrimination against LEP persons. These investigations focus on whether a recipient has taken reasonable steps to provide meaningful access to LEP persons. However, FTA has received only one complaint related to language access to date. The complaint—which was made by West Harlem Environmental Action, Inc.,<sup>44</sup> against New York City Transit in November 2000—stated that no opportunity had been given for community groups to comment on New York City Transit’s capital plan to construct additional bus parking facilities next to an existing bus depot. The complaint further stated that the capital plan was not published in Spanish and no monolingual Spanish-speaking resident of northern Manhattan was afforded the opportunity to comment on the capital plan. New York City Transit noted that since Executive Order 13166 and the LEP guidance were issued after the development of its 2000- 2004 capital program, there was no requirement to issue the plan in any language other than English at that time. FTA responded that although the executive order and the LEP guidance were issued subsequent to the issuance of the plan, New York City Transit should have provided language access under its 1988 Circular on Multilingual Facilities. In resolving the complaint, FTA requested (1) copies of Spanish translations of public hearing notices and summaries of the capital program and (2) a report on what steps New York City Transit had taken to involve the public, including minority, low-income, and LEP populations, in its 2005-2009 capital planning process. FTA closed its investigation of this complaint in letters of finding transmitted in January 2005.

## Conclusions

Transit agencies and MPOs across the country are providing a wide variety of language access services. Determining and providing reasonable and effective language access to transportation services, however, is not a clear-cut matter. To do so, an agency must have a strong understanding of the size and location of the LEP community in its area as well as the information needs of this community, although such assessments are rarely done. The agency must then deal with a whole host of issues, such as determining which language access services to provide and in what quantity, how translations are to be accomplished, where such materials or services are best distributed, and how such materials and services are best publicized to the LEP communities. For agencies in very diverse areas, the challenges grow exponentially. Specifically, some of the questions they may need to address are as follows: How many languages should materials and services be translated into? Is there a threshold with regard to the size or proportion of different language groups before translations should be provided? Will translated signs be too complex for transit users to effectively use? Will the costs of translations, telephone, and Web services be burdensome, given the relatively light use some of these services may receive? Furthermore, providing language access is just one part of a larger communication strategy for these agencies, which can include determining how to provide useful information in English, how to communicate with the hearing or sight impaired, or how to deal with communication to persons with cognitive disabilities. One clear need in all of these instances is for agencies to outreach to these various communities and work in partnership to determine and meet a variety of information needs.

DOT’s LEP guidance, and many of the available Federal resources, can provide some assistance to transit agencies and MPOs when facing these challenges and making decisions about the level of language access to provide; however, the absence of local agency awareness of the existence of these resources limits their usefulness. In addition, for some transit agencies and MPOs, the available assistance was not effective in helping them answer some of the difficult questions previously outlined, because the assistance does not provide much information on what a good language and needs assessment contains, or how one is done. It also does not provide templates or examples of effective language access plans, nor does it provide much help in determining how to monitor and judge the effectiveness of agencies’ language access activities. Given the lack of data available on the effectiveness of services, the availability of such assistance takes on greater importance. More direct dissemination of the LEP guidance and available

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<sup>44</sup> West Harlem Environmental Action, Inc., is a nonprofit, community-based, environmental justice organization dedicated to building community power to fight environmental racism and improve environmental health, protection, and policy in communities of color.

assistance, and the development of additional assistance related to conducting assessments, developing plans, and monitoring the effectiveness of language access activities could help connect local agencies with information and resources that may help them improve access to their services for LEP persons.

While complaints concerning language access are rare, transit agencies' and MPOs' language access efforts are often perceived by community groups to be lacking in certain areas, particularly with regard to the inclusion of such communities in decision-making processes, thus opening up the potential for further complaints against these agencies for not providing reasonable language access. At present, however, monitoring and oversight activities conducted by FTA and, to a lesser extent, FHWA, are not likely to remedy perceived gaps in the provision of language access, due to the inconsistencies in scope and criteria for what constitutes a deficiency. For example, one of the chief complaints of community groups is the lack of involvement of LEP communities or the community groups that represent them, in decision-making processes; however, planning certification reviews do not look at involvement per se, but rather they focus on whether interpreters were provided at public meetings "if necessary." Furthermore, FTA's pilot review of language access, which used DOT's LEP guidance, revealed several deficiencies that would not have been found under current review processes, and these deficiencies can commonly be found across countless numbers of agencies. It is important, though, to consider that findings of deficiency, such as those found under the pilot review, do not necessarily indicate that an agency has been discriminatory. Nonetheless, further incorporation of key aspects of DOT's LEP guidance in existing review processes and consistent criteria for what constitutes a deficiency could help transit agencies and MPOs understand their responsibilities under the executive order and DOT's LEP guidance and lead to improved services for LEP persons.

### **Recommendations for Executive Action**

To improve awareness and understanding of DOT funding recipients' responsibilities to provide language access services, we recommend that, upon final issuance of DOT's LEP guidance, the Secretary of the Department of Transportation ensure that the guidance is distributed to all DOT funding recipients through a policy memorandum or other direct methods and direct regional personnel to make grantees in their areas fully aware of the existence of the guidance, and of grantee responsibilities under the guidance.

To enhance and improve transit agencies' and MPOs' language access activities, we recommend that the Secretary, when issuing DOT's revised LEP guidance, take the following two actions:

- Provide additional technical assistance, such as templates or examples, to aid these agencies in developing assessments of the size, location, and needs of the LEP population; plans for implementing language access services; and evaluations of the effectiveness of agencies' language access services.
- Publicize the availability of existing Federal resources on LEP issues, including workshops, <http://www.lep.gov>, peer-exchange programs, and available training to transit agencies and MPOs, and make these resources easily accessible through an explicit link to LEP Assistance on the Transportation Planning Capacity Building Program's Web site.

To ensure that transit agencies and MPOs understand their responsibilities to provide language access, and to ensure that they are providing adequate language access to their services and their transportation planning and decision-making processes, we recommend that the Secretary more fully incorporate the revised LEP guidance into current review processes by taking the following three actions:

- Include questions on whether agencies have conducted assessments, have language access plans, and have evaluation and monitoring mechanisms in place in Title VI compliance reviews and triennial reviews.
- Include more specific questions regarding language access to the planning process and involvement of LEP communities in planning certification reviews.
- Establish consistent norms for what constitutes a deficiency in the provision of language access across and within these review processes, ensuring that what constitutes a deficiency could directly lead to lesser service for LEP persons or complaints against the agency.

## Agency Comments

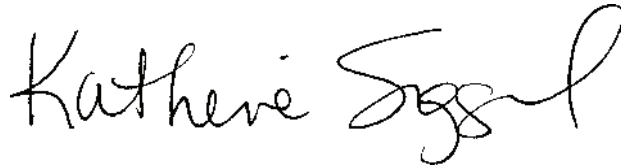
We obtained comments on a draft of this report from DOT officials who generally agreed with the findings and recommendations in the report. These officials also provided technical clarifications, which we incorporated in the report as appropriate. In particular, the officials said that DOT is already planning to take actions to address some of our recommendations, including ensuring that its revised LEP guidance is fully and appropriately distributed, and enhancing its training and technical assistance to grantees.

We also provided DOJ with an opportunity to comment on segments of the report that pertain to DOJ processes and policies. DOJ provided technical clarifications, which we incorporated in the report as appropriate.

We are sending copies of this report to the appropriate congressional committees and to the Secretary and other appropriate officials of the Department of Transportation. We will also make copies available to others upon request. The report will be available at no charge on the GAO Web site at <http://www.gao.gov>. In addition, translated summaries of this report in Spanish, Chinese, Vietnamese, and Korean will be available at no charge on the GAO Web site at <http://www.gao.gov/special.pubs/translations>.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or at [sig-gerudk@gao.gov](mailto:sig-gerudk@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Katherine Siggerud". The signature is written in a cursive, flowing style.

Katherine Siggerud  
Director, Physical Infrastructure

## Appendix I

### Scope and Methodology

To determine the types of language access services that transit agencies and metropolitan planning organizations (MPO) provide to limited English-proficiency (LEP) populations, we visited seven metropolitan statistical areas in Arkansas, California, Illinois, North Carolina, and Texas. We used U.S. Census Bureau data to select site visit locations, on the basis of the size and proportion of the LEP population, the number of languages spoken, the growth of the LEP population, and the extent of public transit use, to capture a variety of different circumstances agencies may face in providing language access services. We eliminated from our site visits areas that had recently had in-depth reviews by the Federal Transit Administration (FTA), as well as agencies that had been highlighted in a recent report for best practices in providing LEP access, to broaden the limited amount of research and data available in this area. Notable areas eliminated from our potential site visits for these reasons included New York, New York; Washington, D.C.; Portland, Oregon; and Seattle, Washington.<sup>1</sup> The relevant statistics for the seven areas we visited are presented in table 4.

**Table 4: Census Data on Language Ability and Transit Use for Seven Site Visit Location**

Metropolitan statistical area	Total population aged 5 years and over in 2000 that spoke English less than well	Percentage of population in 2000 that spoke English less than well	Percentage change in Persons that spoke English less than well 1990-2000	Major languages spoken by the LEP population	Estimated percentage of LEP persons aged 16 years and over using public transportation <sup>a</sup>
Los Angeles/ Riverside/ Orange County, CA	2,024,765	12.4	30.0	Spanish, Chinese, Vietnamese, and Korean	14.5
San Francisco/ Oakland/ San Jose, CA	551,266	7.8	59.0	Spanish, Chinese, Vietnamese, and Korean	16.3
Chicago/Gary/ Kenosha, IL, IN, WI	522,238	5.7	75.0	Spanish, Polish, Chinese, and Korean	11.9
Austin/ San Marcos, TX	67,115	5.4	209.0	Spanish and Vietnamese	10.5
Raleigh/Durham, Chapel Hill, NC, Point, Rogers, AR	38,365	3.2	607.0	Spanish and Chinese	3.8
Greensboro/ Winston-Salem/ High Point, NC	33,633	2.7	544.0	Spanish and Vietnamese	1.1
Fayetteville/ Springdale/ Rogers, Arkansas <sup>b</sup>	9,621	3.1	1,892.0	Spanish and Vietnamese	0.0

<sup>1</sup> For more information on the specific language access activities of the main transit agencies in these four areas, see Dr. Rongfang (Rachel) Liu *Mobility Information Needs of Limited English Proficiency (LEP) Travelers in New Jersey* (December 2004). Dr. Liu prepared this study for the New Jersey Department of Transportation/Federal Highway Administration.

<sup>a</sup> All estimated percentages have margins of error not exceeding plus or minus 2.5 percentage points at the 95 percent confidence level.

<sup>b</sup> At the time of the 2000 Census, transit service in this area was predominantly demand-response. Since then, Ozark Regional Transit has begun some limited fixed-route service.

We conducted semistructured interviews with officials from 20 transit agencies and 7 MPOs in these locations who were responsible for some facet of providing language access services. We interviewed officials from various departments, including operations, marketing, public affairs, community relations, training, civil rights, and planning. At smaller agencies, we interviewed the general managers as well as other agency officials. We chose agencies in each location according to their size and characteristics. For example, we interviewed the largest transit agency in each location, and where there were several transit agencies operating, we then interviewed the next largest agencies. In certain locations, such as the Southern California area and the San Francisco Bay Area, we were unable to interview all of the agencies in the area due to the large number of transit agencies. In these areas, we chose additional agencies on the basis of different operating characteristics. For example, in Los Angeles, California, we chose to interview the major provider of specialized transit services for persons with disabilities, whereas, in the San Francisco Bay Area, we chose a suburban bus system to complement the urban systems we were obtaining information on. We also interviewed officials from the major MPOs in areas we visited. In some cases, an MPO also may provide some level of transportation service. For example, the Metropolitan Transportation Commission in the San Francisco Bay Area operates the region's 511 transportation information lines. In these instances, we did not count such agencies as transit agencies, but we included the services they provide in the appropriate section of this report.

We structured the agency interviews on the basis of the elements of the Department of Transportation's (DOT) LEP guidance and the findings of previous research and surveys conducted of the language access activities of transit agencies. During our interviews, we discussed the types of language access activities provided in terms of day-to-day transportation services and in the planning and decision-making process; we also discussed the costs and effects of these services. We also reviewed documents and other information in support of the language access services provided by transit agencies and MPOs.

We also interviewed representatives from 16 community and advocacy groups in the areas we visited as well as representatives from national advocacy groups, such as the National Council of La Raza, the Center for Community Change, and the National Asian Pacific American Legal Consortium. We chose groups in the locations we visited on the basis of recommendations from these national groups, FTA regional officials, transit agency officials, and our own research into the transportation issues in these areas. We structured these interviews in order to understand the perspectives of these community and advocacy groups with regard to how transit agencies and MPOs in the areas are providing access to their services to the communities these groups serve, and the effects of these services on meeting the needs of LEP communities. The agencies and groups we included in our interviews are listed in table 5.

**Table 5: Transit Agencies, MPOs, and Community and Advocacy Groups Interviewed**

<b>Metropolitan statistical area Agency or group name</b>		<b>Description</b>
Los Angeles/ Riverside/ Orange County, California	Los Angeles County Metropolitan Transportation Authority	The primary provider of bus, subway, and light-rail transit services within the county of Los Angeles.
	Access Services	A paratransit service provider in the Southern California region.
	Orange County Transportation Authority	The second largest transit provider in Southern California, serving Orange County.
	Southern California Association of Governments	Metropolitan planning organizations (MPO) for the Southern California region.
	Los Angeles Busrider’s Union	An organization in Los Angeles that seeks to promote environmentally sustainable public transportation for the entire population of Los Angeles.
	Alameda Corridor Jobs Coalition	A grass roots organization that represents 35 other community-based organizations in Los Angeles, whose goal is to secure jobs and careers that offer communities living wages and ethical benefits.
	Center for Community Change	A social justice organization. Part of the center is the Transportation Equity Project that seeks to advance equity in transportation planning and policy.
	Asian Pacific American Legal Center	Provides Asian and Pacific Islander and other communities with multilingual, culturally sensitive services and legal education.
	Legal Aid Foundation of Los Angeles	The frontline law firm for low-income people in Los Angeles.
	Africans in America Community Resource Center	A community group in South Los Angeles that represents Africans living in Southern California.
South Asian Network	A grassroots, community-based organization dedicated to advancing the health, empowerment, and solidarity of persons of South Asian origin in Southern California.	
San Francisco/ Oakland/San Jose, California	Municipal Transportation Agency	The primary provider of bus and rail transit services in the city of San Francisco.
	San Francisco Bay Area Rapid Transit District	A regional rail transit provider serving the nine-county Bay Area.
	Alameda-Contra Costa Transit District	The primary bus transit provider in the city of Oakland and the counties of Alameda and Contra Costa.
	Golden Gate Transit	The primary bus transit provider in Marin County.
	Metropolitan Transportation Commission	MPO for the nine-county Bay Area.
	Chinatown Community Development Center	The center provides services in six work areas—programs, advocacy and organizing, planning, housing development, property management, and tenant services—and has done some work in the provision of public transportation in its community.



Metropolitan statistical area Agency or group name	Description	
San Francisco/ Oakland/ San Jose, California	Rescue MUNI	A transit advocacy organization for the city of San Francisco.
	Urban Habitat	An advocacy and organizing group that seeks to connect environmentalists, social justice advocates, government leaders, and the business community.
Chicago/Gary/Kenosha, Illinois, Indiana, Wisconsin	Chicago Transit Authority	Chicago Transit Authority serves Chicago and 40 suburbs with its extensive train lines and bus routes.
	PACE Suburban Bus	The provider of bus service to Chicago's six-county suburbs
	METRA Commuter Rail	The provider of commuter rail service between the downtown Chicago business district and the counties of Cook, DuPage, Lake, Will, cHenry, and Kane.
	Regional Transportation Authority	The financial oversight and regional planning body for the three public transit operators in northeastern Illinois: the Chicago Transit Authority, METRA commuter rail, and PACE suburban bus.
	Chicago Area Transportation Study	MPO for the northeastern Illinois region.
	Center for Neighborhood Technology	An advocacy group based in Chicago with a mission to invent and implement new tools and methods that create livable urban communities for everyone.
	Chicago Chinese Community Center	The primary community provider of services to Chicago Chinatown residents.
Austin/San Marcos, Texas	Capital Metro	The primary provider of bus transit services in the city of Austin
	Capital Area Rural Transportation System	The provider of bus transit service in the counties of Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Travis, and Williamson.
	Capital Area Metropolitan Planning Organization	MPO for Williamson, Travis, and Hays counties.
	Just Transportation Alliances	An organization that seeks to organize people with disabilities, seniors, low-income individuals, and others for equitable transportation through state and local alliances.
	Poder (Bus Rider's Union)	A grass-roots organization that advocates for the Hispanic communities in Austin.

Metropolitan statistical area Agency or group name		Description
Fayetteville/ Springdale/ Rogers, Arkansas	Razorback Transit	The primary provider of bus transit services in the city of Fayetteville, with the vast majority of its ridership consisting of students and faculty at the University of Arkansas.
	Ozark Regional Transit, a public transit system managed by First Transit	The primary provider of bus transit and demand-response transit services, serving both the urban and rural areas of Benton, Carroll, Madison, and Washington counties.
	Northwest Arkansas Regional Planning Commission	The designated MPO for transportation in northwest Arkansas.
	Rogers Community Support Center	A community center in Rogers, Arkansas, that Provides information and assistance to members of the community.
Raleigh/Durham/Chapel Hill, North Carolina; and Greensboro/Winston-Salem/ High Point, North Carolina	Capital Area Transit	The provider of bus transit services in the city of Raleigh.
	Durham Area Transit Authority	The provider of bus and paratransit services, serving all parts of Durham, including Research Triangle Park.
	Chapel Hill Transit	The provider of bus transit services throughout the Chapel Hill, Carrboro, and University of North Carolina community.
	Triangle Transit Authority	The provider of regional bus transit services in Research Triangle Park, connecting to the cities of Raleigh and Chapel Hill.
	Greensboro Transit Authority	The primary provider of bus transit services in the city of Greensboro.
	Capital Area MPO	MPO for the Raleigh/Durham metropolitan area.
	Durham-Chapel Hill MPO	MPO for the western part of the Research Triangle Area.
	El Centro Hispano	A nonprofit, community-based organization based in Durham dedicated to Latino empowerment through education and leadership development.

We also conducted interviews with officials within the Texas, California, and North Carolina departments of transportation and conducted additional Internet research of State departments of transportation, to determine how these agencies were involved in Transportation Association of America, which operates a list-serve of Job Access and Reverse Commute grantees, send a query requesting that any grantees involved in providing language access services under those grants provide information on the types of services they offer. We received two responses from this query.

We complemented these case studies and interviews with findings from a survey of transit agencies across the country and surveys and focus groups with LEP persons in New Jersey conducted for the New Jersey Department of Transportation<sup>47</sup>. We reviewed the methodology of this study and found it to be sufficiently reliable for the purposes of our report. However, the results of the surveys and focus groups reported in this study cannot be generalized to the full universe of transit agencies or LEP persons. Rather, we used the findings in this study to provide additional information on the types of strategies that agencies use as well as the types of challenges that LEP populations face.

We synthesized the information we collected from the site visits, structured interviews, and the New Jersey study. We analyzed this information to identify major themes, commonalities, and differences in the level of language access provided by transit agencies and MPOs. We observed that almost all transit agencies and MPOs we visited provided some level of language access services, although levels varied across agencies and locations. Because these findings are based on a nonprobability sample of case studies and a survey of 32 transit agencies, they cannot be generalized to the full universe of transit agencies or MPOs across the country<sup>48</sup>. These case studies are meant to highlight the variety of different strategies agencies may use to improve communication with LEP persons, as well as key themes that emerge under various circumstances.

To understand how DOT assists local agencies in providing language access services, we interviewed officials at the Offices of Civil Rights in FTA and the Federal Highway Administration (FHWA), representatives from the National Transit Institute and the National Highway Institute, and DOT regional officials. During our interviews, we identified and discussed various resources available that may include information on language access activities, including training curricula and workshops. We interviewed officials from FHWA offices in California, Maryland, and New Jersey regarding some of their LEP activities, such as hosting workshops at annual conferences and other assistance they have provided grantees. We reviewed Executive Order 13166, the Department of Justice's (DOJ) and DOT's draft LEP guidance, other Federal laws and regulations, and research related to providing access to services to LEP populations. We requested copies of identified trainings and reviewed them. We also identified and reviewed other various DOT resources and other Federal resources to determine whether language access issues were addressed, including [www.lep.gov](http://www.lep.gov) and peer-exchange programs maintained by FTA and FHWA.

To understand the extent to which local agencies are accessing DOT's resources, we discussed with local agency officials their awareness and implementation of DOT's LEP guidance. We also discussed with these officials whether the agency has accessed DOT's resources and, if so, had the resources been helpful in the provision of language access activities. In addition, we reviewed Web statistics for materials available on the Internet for additional information on how often those materials were accessed.

To document how FTA and FHWA monitor transit agencies' and MPOs' provision of language access services for LEP populations, we interviewed officials from the FTA Office of Civil Rights; the FTA Office of Program Management; and FHWA's Office of Planning, Environment and Realty. We also interviewed FTA regional representatives from Arkansas, California, Illinois, North Carolina, and Texas. We reviewed oversight documents pertaining to Title VI compliance reviews, triennial reviews, and planning certification reviews to determine how language access is considered by these reviews (i.e., specific questions regarding language access activities) and to what degree these reviews incorporate DOT's LEP guidance. In addition, we collected available data on any findings from these reviews to analyze the extent to which norms have been developed for reviewers to determine whether deficiencies are found and reported. Furthermore, we reviewed the status and outcomes of LEP complaints.

We conducted our work from February 2005 through October 2005 in accordance with generally accepted government auditing standards.

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<sup>47</sup> Liu, Mobility Information Needs of LEP Travelers.

<sup>48</sup> Results from nonprobability samples cannot be used to make inferences about population because in a non-probability sample, some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

## Appendix II

### Resources Available on Providing Language Access for Transportation Services

#### Provision of Language Access Services

- Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency: Executive Order 13166 was signed by President Clinton in 2000. It clarifies Federal agencies and their grant recipients' responsibilities under Title VI, to make their services accessible to LEP pDOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries: DOT's guidance was issued in 2001. It discusses strategies for providing services to LEP persons and outlines a five-step framework to an effective language access program as well as innovative practices. <http://usdoj.gov/crt/cor/lep/dotlep.htm>
- Federal Interagency Working Group on Limited-English Proficiency: The [www.lep.gov](http://www.lep.gov) Web site, maintained by DOJ, serves as a clearinghouse, providing and linking information, tools, and technical assistance regarding LEP and language services for Federal agencies, recipients of Federal funds, and users of Federal programs and Federally assisted programs. The Web site includes a self-assessment tool and an overview of how to develop a language assistance plan with performance measures. There is also a video available from the Web site on LEP access issues that could be used in training for customer service personnel at transit agencies. [www.lep.gov](http://www.lep.gov)
- FTA Title VI Web site: FTA's Title VI Web site provides information and resources on Title VI, including links to Executive Order 13166, DOT's LEP guidance, and [www.lep.gov](http://www.lep.gov). [http://fta.dot.gov/16241\\_ENG\\_HTML.htm](http://fta.dot.gov/16241_ENG_HTML.htm)
- FHWA Office of Civil Rights Web site: FHWA's Office of Civil Rights Web site provides links to Title VI, Executive Order 13166, and DOT's LEP guidance. <http://fhwa.dot.gov/civilrights/nondis.htm>
- Workshop entitled How to Identify Limited English Proficient (LEP) Populations in Your Locality: This workshop was given by FHWA at the American Association of State Highway and Transportation Officials' 2004 Civil Rights Conference. The workshop provides information on the LEP executive order, DOT's LEP guidance, and specific information populations. <http://usdoj.gov/crt/cor/Pubs/eolep.htm> about what resources can be used to identify LEP populations. <http://fhwa.dot.gov/civilrights/confworkshops04.htm>
- FTA's Innovative Practices to Increase Ridership: The Web site serves as a central information resource on innovative strategies on various topics. Innovative practices are submitted by transit organizations, reviewed by FTA, and are then made available for other transit organizations to search records, review innovations, and potentially implement similar programs. Innovative practices regarding language access services are available. <http://ftawebprod.fta.dot.gov/bpir/>
- FTA and FHWA's Transportation Planning Capacity Building Program: Users can search various topics to find out if like sized or any type of agency has posted any helpful information on those topics. Information regarding language access services is available. <http://planning.dot.gov/>
- National Transit Institute course entitled Public Involvement in Transportation Decision-Making: This course includes a section on ensuring that nontraditional participants, that is, minority, low-income, and LEP populations are included in the public involvement process that is associated with transportation planning. <http://ntionline.com/>

- *National Highway Institute course entitled Fundamentals of Title VI/Environmental Justice and Public Involvement in the Transportation Decision-Making Process:* These courses include a discussion on language access issues in the planning process. <http://nhi.fhwa.dot.gov/>
- *Caltrans Title VI Web site:* Caltrans' Title VI Web site includes information and resources on Title VI and links to FHWA's Office of Civil Rights training resources, the Web site for the Civil Rights Division of DOJ, and [www.lep.gov](http://www.lep.gov). In addition, there are three training videos available for free, one specifically on the language assistance for LEP persons. [http://dot.ca.gov/hq/bep/title\\_vi/t6\\_index.htm](http://dot.ca.gov/hq/bep/title_vi/t6_index.htm)
- *Mobility Information Needs of Limited English Proficiency (LEP) Travelers in New Jersey:* A report written by Dr. Rongfang (Rachel) Liu, prepared for the New Jersey Department of Transportation/ Federal Highway Administration. December 2004. [http://transportation.njit.edu/nctip/final\\_report/LEP.htm](http://transportation.njit.edu/nctip/final_report/LEP.htm)

### Community Involvement in Transportation Planning

- *The Metropolitan Transportation Planning Process: Key Issues: A Briefing Notebook for Transportation Decisionmakers, Officials, and Staff:* Published by the Transportation Planning Capacity Building Program, this document has information on public participation, including sections on Title VI and Environmental Justice. <http://planning.dot.gov/documents/BriefingBook/BBook.htm>
- *Public Involvement Techniques for Transportation Decision-Making:* Published by FHWA, this document discusses public involvement techniques for transportation decision making for ethnic, minority, and low-income groups, such as including community groups that may provide access to individuals and can serve as forums for participation. <http://ifhwa.dot.gov/reports/pittd/contents.htm>.
- *Final report September 2002: Title VI Challenge Grant from the Federal Transit Administration to the National Capital Region Transportation Planning Board:* This report outlines recommendations for how to include communities not typically involved in the transportation planning process. Included in the report is a discussion concerning LEP issues. <http://planning.dot.gov/Documents/EnvJustice/EJFinalReport.htm>
- *Innovations in Public Involvement for Transportation Planning:* This document discusses techniques for getting the public involved in transportation planning, such as using surveys with questions in languages other than English and accessible to persons with disabilities. <http://ntl.bts.gov/DOCS/trans.html>

## Appendix III

### GAO Contact and Staff Acknowledgments

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Executive Order No. 13166 (Improving Access to Services for Persons with Limited English Proficiency) (Aug. 2000) is designed to improve access to Federally conducted programs and activities and programs and activities of recipients of Federal funding for persons, who as a result of national origin, are limited in their English proficiency (LEP). The Administration has emphasized the importance of ensuring that LEP individuals receive appropriate language assistance services and has commenced an effort to implement the Executive Order's provisions. In order to accomplish that goal in an efficient and effective manner, the Federal government should create clear and uniform standards defining how Federal agencies and recipients of Federal funds should implement the Order. Many entities, such as schools, local police departments, doctors, and hospitals, may receive funding from multiple Federal agencies. It is critical that these recipients be able easily to understand and implement with policies issued by multiple agencies, so that LEP individuals receive language assistance in a uniform and consistent manner.

Pursuant to Congressional mandate, this report assesses the total costs and benefits of providing language-assistance services under the Executive Order.<sup>1</sup> OMB has (i) reviewed the published literature, (ii) surveyed Federal and state agencies, (iii) solicited public comment through a *Federal Register* notice, (iv) devised rough numerical estimates of national costs and qualitative assessments of national benefits, and (v) performed case studies of the potential impact of the Executive Order in four sectors of American society: healthcare, welfare, transportation, and immigration.

The report focuses on the benefits and costs of providing language-assistance services to LEP persons pursuant to Executive Order 13166 and the Title VI regulations. In simple terms, benefit-cost analysis compares what has occurred or is expected to occur with a given policy change to what would have occurred in the absence of that change.<sup>2</sup> Under the Executive Order, "[e]ach Federal agency shall prepare a plan to improve access to its Federally conducted programs and activities by eligible LEP persons." In addition, "[e]ach agency providing Federal financial assistance [to hospitals, universities or a myriad of other state and other entities] shall draft Title VI guidance."

Federal agencies are currently in the process of implementing this Executive Order. Because of a lack of baseline information, we are currently unable to evaluate the incremental benefits or costs of implementation of the Executive Order. Thus, to assess the benefits and costs of LEP plans generally, this report uses data and assumptions about different types of language-assistance services that are being provided or that could be provided to LEP individuals in a variety of contexts.

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<sup>1</sup> The FY 2002 Treasury and General Government Appropriations Act included a provision directing the Office of Management and Budget to submit a report to the Appropriations Committees assessing the total benefits and costs of implementing Executive Order 13166. The relevant language in the appropriation law states, "... That of the amounts appropriated, not to exceed \$6,331,000 shall be available to the Office of Information and Regulatory Affairs, of which \$1,582,750 shall not be obligated until the Office of Management and Budget submits a report to the Committees on Appropriations that provides an assessment of the total benefits and costs of implementing Executive Order No. 13166: Provided further, That such an assessment shall be submitted no later than 120 days after enactment of this Act." This report responds to this congressional request by using available data to estimate benefits and costs.

<sup>2</sup> OMB's March 2000, "Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements."

The benefits of language-assistance services for particular LEP individuals, while not readily quantifiable in dollar units, can be significant. Improved access to a wide variety of services – ranging from the delivery of healthcare and access to food stamps to motor vehicle licensing and law enforcement – can substantially improve the health and quality of life of many LEP individuals and their families. Moreover, language-assistance services may increase the efficiency of distribution of government services to LEP individuals and may measurably increase the effectiveness of public health and safety programs.

The twenty most common foreign languages spoken in the United States are, in order of frequency, Spanish, French, German, Italian, Chinese, Tagalog, Polish, Korean, Vietnamese, Portuguese, Japanese, Greek, Arabic, Hindi, Russian, Yiddish, Thai, Persian, French Creole, and Armenian. Although there are many different native languages spoken by LEP persons, Spanish is by far the most common. Accordingly, agencies should strongly consider making services for Spanish-speaking LEP individuals a substantial focus of their LEP plans.

The costs of enhanced language assistance are difficult to quantify, but may also be significant. Based upon the limited data available and the range of assumptions set forth herein, we anticipate that the cost of LEP assistance, both to government and to the United States economy, could be substantial, particularly if the Executive Order is implemented in a way that does not provide uniform, consistent guidance to the entities that it covers. Of the economic sectors examined in the report, provision of language services could be most costly for the healthcare sector. This conclusion is tempered by the fact that many government agencies and private entities that serve a significant LEP population have already taken certain steps to provide language services. To the extent that such services are already being provided, the economic impact of implementing the Executive Order will depend upon the cost of any additional steps taken. Unfortunately, there was insufficient data to make a proper determination regarding current levels of language assistance provided by these entities, and we were unable to take into account in our cost estimates current levels of language assistance. Accordingly, the estimates herein address the overall cost of LEP assistance, not the possible additional costs that may ultimately be required to implement the Executive Order and agency guidance.

In sum, the ultimate benefits and costs of the Executive Order will depend on how it is implemented, a process that we understand has begun among the Federal agencies. We hope that this Report will assist Congress and provide these agencies with information that will be useful to them as they take steps to implement the Executive Order.



## *Self-Assessment and Planning Tool*

### **Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance**

This two-part document is intended to assist organizations that receive Federal financial assistance in their strategic planning efforts to ensure that program goals and objectives address meaningful access for all of the people they serve or encounter, including those who are limited-English proficient. First, this tool will assist recipients in assessing their current other-than-English language services capabilities and planning for the provision of language assistance to Limited English proficient (LEP) individuals they serve or encounter. As recipients may be developing performance measures to assist them in evaluating the effectiveness of their program and program delivery, by using this tool, they will be able to assess that effectiveness relative to individuals who are LEP.

The planning and self-assessment questions in Part A of this document are guided by the requirements of Title VI of the Civil Rights Act of 1964, as amended, and Title VI regulations, as set forth in guidance memoranda from the U.S. Department of Justice (DOJ), Civil Rights Division. (See, e.g., 65 FR 50123 (August 16, 2000), and 67 FR 41466 (June 18, 2002), also available at <http://www.lep.gov>. Part B is intended as a follow-up to Part A, and provides a framework for the development of a Language Assistance Plan (LAP) also in light of general Title VI requirements.<sup>1</sup>

#### **INTRODUCTION**

##### **Executive Order 13166**

Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency,"<sup>2</sup> was created to "... improve access to Federally conducted and Federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP)..." President Bush affirmed his commitment to Executive Order 13166 through a memorandum issued on October 25, 2001, by Assistant Attorney General for Civil Rights, Ralph F. Boyd, Jr. Federal agencies were directed to provide guidance and technical assistance to recipients of Federal funds as to how they can provide meaningful access to limited English proficient users of Federal programs. In addition, Federal agencies were told to look at how they served people who were limited in their English proficiency and to see what measures they could take in their direct contacts with LEP individuals that would increase meaningful access. In addition, a Federal Interagency Workgroup on Limited English Proficiency (Workgroup) was formed to coordinate guidance and technical assistance effort throughout the Federal Government in support of EO 13166. One of the Workgroup's first accomplishments was the creation of a Federal web site (<http://www.lep.gov>). The site is a work in progress and is designed to be a one-stop referral shop for recipients, Federal agencies and communities in the quest for LEP information and technical assistance. It is through the coordinated efforts of the Workgroup that this planning and self-assessment tool has been created.

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<sup>1</sup> Non-Federal Government materials and references cited herein are provided for illustrative purposes only and are not specifically endorsed or approved by the Federal Government. Permission to reprint this public domain publication is not necessary. However, if the materials are reprinted, please cite the source and retain the credits to the original author.

<sup>2</sup> 65 Fed. Reg. 50121 (August 16, 2000), signed by President William Clinton on August 11, 2000.

## **Title VI**

The basis for EO 13166 is Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (hereinafter Title VI), which provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity “to effectuate the provisions of [section 601] \* \* \* by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. 2000d-1.

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), affirmed then Department of Health, Education, and Welfare (HEW) policy (in line with HEW's Title VI regulation which is similar to that of DOJ, 45 CFR 80.3(b)(2)), stating that a recipient's failure to ensure meaningful opportunity to national origin minority, limited-English proficient persons to participate in the Federally funded program violates Title VI and Title VI regulations. In the *Lau* case, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable affirmative steps to provide them with a meaningful opportunity to participate in the Federally funded education program.

The requirement to provide meaningful access under Title VI applies beyond the education context to include all of the programs and activities of all recipients of Federal financial assistance.

### **PART A: SELF-ASSESSMENT**

The questions in this part are intended for use by Federal recipients in conducting a self-assessment of their progress in providing language assistance to LEP persons. The questionnaire is divided into four sections and is designed to assist in a balanced assessment of the following four factors: (1) Demography - The number or proportion of LEP persons eligible to be served or likely to be encountered; (2) Frequency of Contact - the frequency with which LEP individuals come in contact with the program and/or activities; (3) Importance - the nature and importance of the program, activity, or service to people's lives; and (4) Resources - the resources available and costs.

#### **Section I: Demography**

The determination to provide language assistance services should include an assessment of the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of LEP persons served or encountered, the more likely language services are needed.

According to the 2000 Census, Profile of Selected Social Characteristics, Supplementary Survey Summary (Table QT-02), English is the only language spoken at home by an estimated 82.4 percent (209,860,377) of the population 5 years of age and over (254,746,174). The remaining 17.6 percent (44,885,797) speak a language other than English. Of those U.S. residents 5 years of age and older who speak languages other than English at home, the same Census 2000 Survey estimates that 43.4 percent (19,492,832) speak English “less than very well.” For these people-- approximately 7.7 percent of the total population of persons five years of age or older-- language can be a barrier to obtaining meaningful access to programs and activities conducted or services or information provided by recipients of Federal financial assistance.

There are a variety of sources for demographic information. As noted immediately above, the Bureau of Census is one potential source. Detailed information about the racial and ethnic populations you serve or might serve, including languages, can also be inferred from Department of Education data. You can link directly to the Bureau of the Census, Department of Education, and other demographic data on <http://www.lep.gov> by selecting the Demographics button.

The following questions are aimed at identifying whom it is you serve. Please note that the term “serve” is used to include not only those who are often considered direct beneficiaries of government programs and activities, but also those individuals with whom law enforcement or other enforcement entities may have encounters, as

well as those individuals who are or should be subject to public information missions of recipients. Recipients should also consider LEP parents or guardians when their English proficient or LEP minor children and dependents encounter their programs, activities, or services:

- Has your organization developed a demographic profile of the population served or likely to be served by your Federally funded programs and activities? YES NO
- By primary language spoken? YES NO  
If so, list the language groups and the languages spoken.
- If not, you can begin your efforts by going to <http://www.lep.gov> .
- In addition to the Census and the Department of Education, you can help identify language needs by calling on community-based organizations in your service area.
- Is your institution working with any community-based organization(s) that is (are) familiar with the language needs of individuals participating in any of your programs and activities, or to whom you provide services or encounter? YES NO  
If so, describe.

Once your organization has identified general demographic data, which will give you a good overview, you are in a better position to move to the individual level for those people you serve.

## **Section II: Frequency of Contact**

The following questions are designed to help recipients assess the frequency with which LEP individuals are contacted or encountered and the respective language groups. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If a LEP person accesses a program or service on a daily basis, a recipient has greater duties than if the same person's frequency of contact with a recipient's program or activity is unpredictable or infrequent. Notwithstanding, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

- Does your organization have a process for surveying, collecting and/or recording primary language data for individuals that participate in your programs and activities? YES NO  
If so, describe the categories used in the collection of data, where the data resides, and who can access the data.

## **Section III: Importance**

Once you have assessed what languages to consider with regard to access, both through an analysis of the demography and frequency of contact, you can then look at the nature and importance of your programs, activities, or services.

As a rule of thumb, the more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. You should then determine whether denial or delay of access to services or information could have serious implications for the LEP individual.

- Do you conduct compulsory activities? YES NO

(For example, do you require applications, consent, interviews, or other activities prior to participation in any of your programs and/or activities, in order to obtain some benefit, service, or information, or in order to participate in a higher level program? ) Do you conduct involuntary programs or activities (like custodial interrogations, hearings, trials, evictions, etc.) or provide compulsory education or other mandatory programs or activities?

If so, what are they?

- In addition to the above, do you conduct programs or activities that have serious consequences, either positive or negative, for a person who participates? (including, but not limited to, for example: health, safety, economic, environmental, educational, law enforcement, housing, food, shelter, protection, rehabilitation, discipline, transportation, etc.). YES NO

What are they?

- Have you determined the impact on actual and potential beneficiaries of delays in the provision of services or participation in your programs and/or activities (economic, educational, health, safety, housing, ability to assert rights, transportation costs, etc.)? YES NO

If so, what are they?

#### **Section IV: Resources**

Once you have reviewed your demographics, frequency of contact, and importance of your programs, activities, or services, a good self-assessment will identify the resources (dollars and personnel) available to ensure the provision of language assistance to LEP persons participating in your programs and/or activities. The level of resources and the costs may have an impact on the nature of the language assistance provided. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with large budgets. In addition, “reasonable costs” may become “unreasonable” where the costs substantially exceed the benefits.

Reduction of costs for language services can be accomplished by such options as the use of technology (such as sharing through the internet, telephonic language lines, etc.); the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. You should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns.

- Have you identified the resources needed to provide meaningful access for LEP persons? YES NO
- Are those resources currently in place? YES NO
- Is there a staff member in your organization assigned to coordinate language access activities? YES NO  
If so, please identify by name or title, etc.
- Have you identified the points of contact where a LEP person interacts with your organization? YES NO  
If so, please describe.
- Given the identified points of contact, is language assistance available at those points? YES NO
- If so, please describe.
- By language spoken, how many employees in your organization fluently speak a language other than English?

- What percent of the total employees in your organization are bilingual and able to competently assist LEP persons in the LEP person's language?
- Do you utilize employees in your organization as interpreters? (Interpreting is a different skill than being bilingual and able to communicate monolingually in more than one language. Interpretation requires particular skills. For more information, see [www.lep.gov](http://www.lep.gov).)  
YES NO

Employees within our organization provide interpreter services (circle one):

some of the time.

most of the time.

always.

never.

- What are the most common uses by your organization of other than employee (outside sources) language interpreter services?
- What outside sources for interpreter services do you use?

\_\_\_\_\_ Contract interpreters

\_\_\_\_\_ Telephone services

\_\_\_\_\_ Community-based organizations

\_\_\_\_\_ Language banks

\_\_\_\_\_ Other (please specify)

- For what languages other than English are outside sources of language interpreters most commonly used? If so, how?
- Although you should not plan to rely on an LEP person's friends, family members, or other informal interpreters to provide meaningful access, are there times when you appropriately allow use of such informal interpreters? (See DOJ LEP Guidance from June 18, 2002, <http://www.lep.gov> ) YES NO  
If so, under what circumstances?
- Are minors used as interpreters? YES NO  
If so, under what circumstances and how are issues such as competency, appropriateness, confidentiality, and voluntariness assessed? (See information on use of friends and family members, including minors, in the June 18, 2002 DOJ LEP guidance at [www.lep.gov](http://www.lep.gov)).
- If additional resources are needed to ensure meaningful access, have you identified the cost of those resources? YES NO

- Are there any limitations in resources (dollars and personnel) that could impact the provision of language assistance services? YES NO
- If so, have you explored all options available to you in order to ensure the provision of language assistance services? YES NO

For example, if there is a significant LEP population in a single language, you may wish to look at the option of hiring staff who are bilingual, bi-cultural, and knowledgeable in the particular area which you are serving, *i.e.*, healthcare, education, science, etc. If there is a very small language population, you would not necessarily need to hire staff to meet that need; instead, you may wish to contract for that assistance. (See <http://www.lep.gov> for more specific help.)

## **PART B: DEVELOPING A LANGUAGE ASSISTANCE PLAN**

This section is intended to provide a general overview for the development of a Language Assistance Plan (LAP) for LEP beneficiaries or potential beneficiaries. Each Federal recipient may choose to develop an LAP differently. Regardless of the format selected, careful consideration should be given to whether the LAP is sufficiently detailed to address the answers to the questions set forth in Part A, Self-Assessment.

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written LAP for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

Good LAP's should be:

- (1) based on sound planning;
- (2) adequately supported so that implementation has a realistic chance of success; and,
- (3) periodically evaluated and revised, if necessary.

The first topic covered in this part is the establishment of goals in a LAP. The second topic in this part is a brief overview of points that may be considered in developing a comprehensive LAP.

### **Section I: Goals**

The process of developing goals flows from the self-assessment that has been conducted. Goals should reflect your individual circumstances. It is recommended that they be designed based, at least in part, as the result of focused research and benchmarking and on best practices identified by community organizations, other Federal recipients, professional organizations, advocacy groups, and experts in the language assistance field.

The fundamental Title VI requirement is that Federal recipients ensure meaningful access for LEP individuals to the Federal recipient's programs and activities. Therefore, the goals for the provision of language assistance to LEP individuals should relate to a thorough assessment of the target population for each program and activity, the geographical location where the programs and activities will take place, and the expected outcome(s) of the programs and activities.

Generally, goals that are effective indicate:

- \* to whom they apply;
- \* the expected outcome;
- \* when the outcome is expected to materialize; and,
- \* how success will be measured.

Effective goals for the provision of language assistance to LEP individuals address the language as well as the cultural context within which the service is provided. To enhance their language assistance capabilities, you may also choose to have goals in such areas as basic language training for staff, language assistance policy design and implementation, and outreach initiatives for language isolated communities.

## **Section II: Planning**

Many Federal recipients have found that it is useful, when developing or revising a LAP, to establish a committee or work group that includes administrators, professional and administrative support staff, potential beneficiaries, and members of community organizations. By working with a diverse group that includes stakeholders, you can receive more comprehensive input from those whose support and efforts may be important to the success of your LAP. Inclusive approaches in plan design and development tend to promote overall community awareness and support. In addition, these individuals will be valuable resources to draw upon during plan evaluation and plan improvement activities.

One of the first things to consider in developing a plan is taking the information you have gained in your self-assessment (Part A), with your goals, and converting it into a viable plan or roadmap that helps your organization identify and address gaps, while at the same time moving toward a coordinated and comprehensive approach to meeting the needs of your organization.

Have you developed a comprehensive plan for language assistance to LEP persons? YES NO

If not, or if you just want more information to consider in assessing the comprehensiveness of your already existing plan, there are some useful pointers on <http://www.lep.gov> .

Briefly, in designing a comprehensive LAP you should follow the following five steps:

1) Identification of LEP Persons; 2) Language Assistance Measures; 3) Training Staff; 4) Providing Notice to LEP Persons; and, 5) Monitoring and Updating the LAP.

### **1. Identification of LEP Persons**

This first step comprises your consideration of the information obtained from the first two self-assessment factors: the number or proportion of LEP individuals eligible to be served or encountered, and the frequency of encounters. This information identifies LEP persons with whom you have contact.

In refining your assessment of your target LEP population, you can use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to your staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. You can access examples of such cards, at no cost, on the Internet at <http://www.lep.gov> . In addition, when

records are kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

## **2. Language Assistance Measures**

In developing an effective LAP, you should also consider including information about the ways language assistance will be provided. For instance, you may want to include information on:

- Types of language services available
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with your staff.

## **3. Training Staff**

It is essential for the members of your organization to know your organization's obligations to provide meaningful access to information and services for LEP persons. It is, therefore, recommended that your LAP plan include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

You may want to include this training as part of the orientation for new employees. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. The manner in which the training is provided is within your organization's discretion.

## **4. Providing Notice to LEP Persons**

Once you have decided, based on the four-factor self-assessment in Part A, that provision of language services will be implemented, it is important to let LEP persons know that those services are available and that they are free of charge. You should provide this notice in a language LEP persons will understand. Some ways of accomplishing this objective include:

- Posting signs in intake areas and other entry points.
- Stating in outreach documents (brochures, booklets, outreach and recruitment information) in appropriate languages that language services are available.
- Working with community-based organizations to inform LEP persons of the language assistance available.
- Using a telephone voice mail menu in the most common languages encountered.
- Including notices in local newspapers in languages other than English.
- Providing notices in non-English language radio and television stations about the availability of language assistance services.
- Presentations and/or notices at school and religious organizations.

## **5. Monitoring and Updating the LAP**

You should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and provide notice of any changes in services to the LEP public and to employees. In addition, you should consider whether changes in demographics, types of services, or other needs require annual reevaluation of your LAP.



One good way to evaluate your LAP is to seek feedback from the community, and assess potential LAP modifications based on:

- Current LEP populations in service area or population encountered or affected.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances, additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LAP and how to implement it.
- Whether identified sources for assistance are still available and viable.

Exemplary practices and further policies with regard to written LAPs can be found at <http://www.lep.gov> . The following questions are designed to assist in assessing your planning needs.

- Does your organization have a written policy on the provision of language interpreter and translator services? YES NO
  - If so, is a description of this policy made available to the general public? YES NO
  - If so, how and when is it made available?
- In what languages other than English is it made available?
- Do you inform your employees of your policies regarding LEP persons? YES NO
  - If so, how? And How often?
- Do you inform your subcontractors of your policies regarding LEP persons? YES NO
  - If so, how? And How often?
- Do you inform your subcontractors of their obligation to provide language assistance to LEP individuals who either participate in their programs and activities and/or to whom services are provided? YES NO
  - If so, how? And How often?
- Do your subcontractors have a written policy on the provision of language interpreter and translator services? YES NO
  - If so, is it distributed to the general public? YES NO
  - If so, when and how is it made available?
- In what languages other than English is it made available?
- Are beneficiaries informed that they will be provided interpreting services at no cost? YES NO
- How are they informed and at what points of contact?
- Do you ensure that your translators and/or interpreters are qualified to provide interpreting services (which is a different skill than being bilingual) and understand any confidentiality requirements? YES NO
  - If so, how?

- Is ability to speak a language other than English a factor in hiring decisions in your organization? YES NO
  - If so, how do you identify which languages are needed?
- Do you ensure that your bilingual staff are qualified to provide services in another language? YES NO
  - If so, how?
- List the written materials that you provide to the public.
- Do you provide written materials to the public in languages other than English? YES NO
- Is the public notified of the availability of the translated materials? YES NO
  - If so, how?
- List all written materials provided to the public in languages other than English and the languages for which they are available.
- Are there set criteria for deciding:
  - Which materials will be translated?
  - Who will translate the materials?
  - How you will assess competency to translate?
  - Who will provide a second check on the translation?
  - Into which language(s) the materials will be translated?
  - Are all translated materials pre-tested before made final? YES NO
  - If no, which materials are not pre-tested and why?

### **Section III: LAP Evaluation**

The following information is provided to assist you in identifying methods and approaches for evaluating a LAP. You are encouraged to review your LAP annually and to develop approaches for evaluation that are consistent with your respective LAP designs, individual needs and circumstances. The evaluation process allows for quality feedback into your organization. Also, the evaluation process can be used as a sentinel to detect problems before they grow, and to confirm best practices.

Because Federal law does not prescribe a particular program model or evaluation approach, the approach to, and design of, an effective LAP evaluation will vary for each Federal recipient. The questions set forth below are provided as primers for you to use in developing your own approach.

- Do you have and use a tool for collecting data on beneficiary satisfaction with interpreter services? YES NO
- Have any grievances or complaints been filed because of language access problems? YES NO
  - If so, with whom?
- Do you monitor the system for collecting data on beneficiary satisfaction and/or grievance/complaint filing? YES NO
- Are the data used as part of a review by senior management of the effectiveness of your organization's language assistance program implementation? YES NO
- Do you regularly update your LAP and assess for modifications given changing demographics, or changes or additions to your programs? YES NO

– Do you obtain feedback from the community? YES NO

Generally, organizations measure “success” in terms of whether a plan, when implemented, leads to the achievement of the particular goals the organization has established. If the organization has established no particular goals, it can still be successful if the results are in concert with the organization's desired outcomes. In this case, the desired outcome is the provision of language assistance, when necessary, in order to ensure that LEP persons are able to participate meaningfully in the Federal recipients' programs and activities.

You should modify your LAP if it proves to be unsuccessful after a legitimate trial. As a practical matter, you may not be able to comply with this Title VI requirement unless you periodically evaluate your LAP.

*The Interagency Working Group on LEP welcomes and encourages your comments regarding this tool. Modifications will be made, if appropriate, based on the experiences of recipients and others using this tool. To provide written comments, please write:*

The Interagency Working Group on LEP  
C/O Coordination and Review Section - NYA  
Civil Rights Division  
Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530



## *Working with Spoken Language Interpreters*

### **Guidelines for Working with Spoken Language Interpreters**

✓ **Use qualified interpreters to interpret**

The most basic requirement is that you have access to an experienced and qualified interpreter who can truly aid communication rather than getting in the way or distorting the messages that you and the patient want to communicate. Being bilingual in English and the patient's language is only a prerequisite for being able to interpret (just as speaking English is only a prerequisite for teaching it; being a native speaker doesn't make you a language teacher). A qualified, professional interpreter has the special skills needed to fully understand anything another person wants to say and to make that person's message clear to another person in a different language. In addition, like any professional, a qualified interpreter knows her role, her limitations, and her responsibilities as an interpreter for others.

✓ **Don't depend on children or other relatives and friends to interpret**

Do NOT ask children or relatives or friends of the person you are going to meet with to interpret. Do not call upon staff members or others unskilled in interpreting unless more qualified professionals are not available. If bilingual staff with other responsibilities do the interpreting, they must not try to do two things at once, e.g., interpreting and counseling.

✓ **Have a brief pre-interview meeting with the interpreter**

Plan to meet with the interpreter for a couple of minutes before the interview to explain the situation and any background needed for understanding what you plan to talk about. Agree with the interpreter in advance on such things as how the interview will start and where the interpreter should sit.

✓ **Establish a good working relationship with the interpreter**

If possible, try to work with the same interpreter over time so that you can establish a comfortable working relationship. Although your roles are quite different, you need to be able to work together as a team.

✓ **Plan to allow enough time for the interpreted session**

Schedule enough time for the interview, remembering that an interpreted conversation requires every statement or question to be uttered twice.

✓ **Address yourself to the interviewee, not the interpreter**

Speak directly to the patient, not to the interpreter, addressing the patient rather than the interpreter as "you". Your eye contact should be with the patient, not with the interpreter - because it is the patient you are talking to, not the interpreter.

✓ **Don't say anything that you don't want the other party to hear**

Expect everything you say to be translated as well as everything the patient says. But remember that what can be said in a few words in one language may require a lengthy paraphrase in another.

✓ **Use words, not just gestures, to convey your meaning**

Use words as much as possible to express your meaning, not gestures. Words are easier for the interpreter to deal with, and of course, the patient won't be hearing your words at the time, as they'll be seeing your gestures.

✓ **Speak in a normal voice, clearly, and not too fast**

Speak in your normal voice, not louder or slower (unless the interpreter asks you to slow down). Sometimes it is easier for the interpreter to interpret speech produced at normal speed, with normal rhythms, than artificially slow speech.

✓ **Avoid jargon and technical terms**

Avoid idioms, technical words, or cultural references that the interpreter either might not understand or might have difficulty translating. (Some concepts may be easy for the interpreter to understand but extremely difficult to translate).

✓ **Keep your utterances short, pausing to permit the interpretation**

For consecutive interpreting, you should speak for a short time – one longer sentence or three or four short ones, and then stop in a natural place to let the interpreter pass your message along. Be aware of the length or complexity of your speech so as not to unduly tax the interpreter's memory. Short simple sentences are obviously easier. Do not pause for interpretation in the middle of a sentence since the interpreter may need to hear the whole sentence before she can even start to interpret it.

✓ **Ask only one question at a time**

If you chain questions together, you may not be able to match questions with answers.

✓ **Expect the interpreter to interrupt when necessary for clarification**

Be prepared to have the interpreter interrupt when necessary to ask you to slow down, to repeat something she didn't quite get, to explain a word or concept she might not be familiar with, or to add an explanation for something the patient may not be able to understand without some background information.

✓ **Expect the interpreter to take notes if things get complicated**

Don't be surprised if the interpreter takes notes to facilitate recall. This is an aid to memory, not an interruption.

✓ **Be prepared to repeat yourself in different words if your message is not understood.**

If mistranslation is suspected (for example if the response doesn't seem to fit with what you said) go back and repeat what you said in different words.

✓ **Have a brief post-interview meeting with the interpreter**

Meet with the interpreter again after the interview to assess how things went, to see if the interpreter is satisfied or has questions or comments about the process of communication.

# Employee Language Skills Survey

Employee Name: \_\_\_\_\_

\_\_\_\_\_ is committed to maintain its readiness to serve the needs of our members. Many employees receive bilingual pay for regularly using their skills in languages other than English. We want to compile information about the full resources available amongst our work force and are therefore requesting all employees to provide this information.

**Directions:** Please circle or add below any language(s) you know (including Sign Language), fill in the dialect, region or country of the language, and circle your level of fluency for each language in Speaking, Reading and Writing. Also, please indicate if you use this language regularly in your job, and if you do not, indicate if you are willing to use it as needed if requested. Lastly, please **sign** and **date** and return promptly to -----.

Language (circle)	Dialect, region, or country	Level of Fluency (circle) (F)=Fluent, (M)=Moderately, (S)=Somewhat Fluent, (N)=None at all						Do you use this language regularly in your job? (circle)	If you do not use this language in your regular job, would you be willing to use it as needed if so requested? (circle)	Are you certified as a Translator, Interpreter, or N/A?							
		Speaking		Reading		Writing											
Chinese	China	F	M	S	N	F	M	S	N	F	M	S	N	Yes	No	No	Interpreter

Example:

List Language Spoken	Dialect, region, or country	Level of Fluency (circle) (F)=Fluent, (M)=Moderately, (S)=Somewhat Fluent, (N)=None at all						Do you use this language regularly in your job? (circle)	If you do not use this language in your regular job, would you be willing to use it as needed if so requested? (circle)	Are you certified as a Translator, Interpreter, or N/A?			
		Speaking		Reading		Writing							
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	
		F	M	S	N	F	M	S	N	Yes	No	No	

Please list your typical/normal work hours: Start Time \_\_\_\_\_: \_\_\_\_\_ AM/PM      Leave Time \_\_\_\_\_: \_\_\_\_\_ AM/PM  
 Comments: \_\_\_\_\_

Employee Name: \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

*Thank you for your assistance.*





## Choosing a Language Access Provider

### Choosing a Language Access Provider

#### Introduction

Where an organization lacks ability to satisfy its language assistance needs entirely through internal staff resources, the identification and selection of volunteer or contract third party language providers can be a vital part of any language access program serving limited English proficient individuals (LEP). This part of the website provides Federal agencies and recipients with helpful information on choosing a language services agency.<sup>1</sup> Knowing how to choose a competent provider and how to work effectively with that provider can play a role in successfully integrating third party of language services into your delivery of services and benefits to the public. Clear communication, defined expectations, and working in partnership will lead to more effective, high-quality, and cost-effect language assistance.

#### What are *translation* and *interpretation* services?

The following are commonly accepted definitions of “translation” and “interpretation.”

**Translation** is the process of *transferring ideas expressed in writing from one language to another language.*

**Interpretation** is the process by which *the spoken word is used when transferring meaning between languages.*

Successful translation and interpretation services achieve meaning and ease of understanding for the target audience, avoiding the awkwardness of literal conversion from English and recognizing literacy concerns. Literal conversion from English to other languages can be confusing because many words and phrases do not have a non-English equivalent. Indeed, one of the governing principles of competent language services is “meaning for meaning” rather than “word for word.”

#### Cultural Nuance

The goal of achieving meaning and ease of understanding is furthered by conveying “cultural nuance.” Cultural nuance is supported when translators and interpreters are at home in both the American culture and the culture of the target language community.

Three terms you may come across in discussions about culture and language are “bicultural,” “cultural concordance,” and “native speaker.” “Bicultural” is used to convey the feeling of being at home in two cultures, but does not necessarily confer “cultural concordance.” The latter is used to describe circumstances when the translator or interpreter is from the same culture as the LEP individual. “Native speaker” describes an individual whose first language and culture is other than English and American.

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<sup>1</sup> In preparing this information, the Federal Interagency Workgroup acknowledges Ms. Cindy Roat, a Seattle-based language access expert and consultant, who, under a grant from The California Endowment, prepared a paper entitled *How to Choose and Use a Language Agency: A Guide for Health and Social Service Providers Who Wish to Contract with Language Agencies*. The paper, directed toward the health care sector and focused on interpreter services, is available online at <http://www.caldendow.org> or by calling 1-800-449-4149. This section incorporates and generalizes much of the structure and text of her work.

## How does a language agency fit into your language access program?

A language provider is an organization that provides interpretation and/or translation services to another organization, usually in return for a fee. How a language agency can best serve your organization depends on the level of demand, language mix of your customers, the competence of readily available internal language resources, and the capacity of providers that are available to you.

### 1. Auxiliary support for overextended staff and/or contract interpreters/translators.

Organizations with in-house staff interpreters/translators and trained bilingual staff who serve as interpreters/translators may retain an agency as an auxiliary resource when the regular resources are not available. Unmet needs can then be filled on an ad hoc basis without incurring the cost of hiring more staff.

### 2. Primary source for interpreters/translators of languages infrequently encountered.

Some organizations use providers primarily to provide interpreters/translators only for those languages infrequently encountered. Some providers, because of the wide range of companies served and languages encountered, have market incentives and built-in economic efficiencies for maintaining interpreters or translators across a broad spectrum of languages.

### 3. Primary source of all language assistance needs.

For some organizations, it is more efficient and effective to outsource all language assistance needs. The language agency services can then be integrated into customer service without adding internal service capacity.

## What can you expect from a language agency?

Language providers are just like any of your other contract-based business relationships.

There should be a clear contract in place that specifies responsibilities, assigns liability, sets pay rates and lays out the ways in which difficulties or disputes are resolved. Some providers may be able to provide additional services, such as customized billing, data collection, language identification cards, training, etc.

1. **Quality of Product:** The most important expectation to have of a language provider is quality interpreting and translating. A provider should be willing to guarantee the quality of the language services being sold. As noted earlier, this does not mean simple accuracy of verbatim interpretation and translation from English to the target language. Rather the interpretation and translation effort should be fully cognizant of the culture of the target language so as to make certain that the true *meaning* is conveyed.

2. **Customer Service:** A language provider should be able to provide high quality customer service. Some of the characteristics of high quality service are:

- a. Ability to meet demand for interpretation. The provider should be able to fill most of the appointments you assign, except in languages that the provider told you at the time of contract could not readily be provided.
- b. Ability to meet demand for translation. Translations must be done for meaning and ease of reading, avoiding the awkwardness, and often inaccuracy, of literal translations from English. The provider should be fully familiar with the strengths and weaknesses of different methods of translation, and be able to advise you on the most appropriate methods for the immediate circumstances, including the advisability of dual-language print materials. At times, field-testing may be necessary to assure that translation goals are met. The provider should be able to meet time deadlines for production of translated materials.
- c. Low cancellation rates; on time service delivery. If a provider commits to sending an interpreter, then the interpreter should be there, and on time.

- d. Acceptable emergency response time. Provision should be made in the contract for emergency situations that require language assistance immediately.
- e. Implementation. A provider should be willing to train your employees on how to access the provider interpretation services, and how to best use and interact with interpreters.
- f. Rational scheduling of interpreters. A provider must allow sufficient time for interpreters to fulfill obligations.
- g. Rapid rates of connection. With telephonic interpreting, the provider should be able to provide an average connect rate of under one minute, measured from when the phone starts ringing at the provider to when an interpreter is on the line.
- h. Effective complaint resolution. The provider should provide a key company contact to resolve any complaints or concerns.

### **How do you choose the best language provider for meeting your needs?**

Although needs may differ, there are common concerns that will help in choosing a language provider. These can be grouped under three headings: (1) Quality of Interpreters and Translators; (2) Delivery of Services; and (3) Administration. Here are some questions to ask.

#### **1. Quality of Interpreters and Translators**

- a. How does the provider recruit interpreters and translators? The most successful providers appear to recruit interpreters and translators on an ongoing basis from a wide range of sources. They may also maintain close on-going relationships with immigrant and refugee communities, as well as with professional organizations and training programs.
- b. Does the provider screen translator and interpreter candidates? All agencies establish a minimum requirement for translators and interpreters, but that floor may vary from provider to provider. All should be screened for their language skills in both active languages. A measure of professional competence may be found by looking at indicators such as years of experience, formal education in translation and interpretation, and accreditation from professionally recognized organizations.
- c. Does the provider require interpreters and translators to receive professional training? It is critical that interpreters and translators be trained, if not formally, then in-house. Basic initial training can run from four hours to over 200, with 40 hours being a common length. For interpreters, training ideally should include the role of the interpreter, ethics, basic conversation skills, and handling the flow of a session.
- d. Does the provider require any continuing education? Continuing education should be considered a reasonable expectation.
- e. Are the provider interpreters or translators certified, and, if so, by whom? It is useful to know how many certified interpreters and translators the provider has in each language and the source of the certification.
- f. What Code of Ethics are the interpreters/translators asked to follow? Ask for information on the codes of ethics that are used by the provider.
- g. What protocols are interpreters expected to use? Many providers have developed internal protocols used by employees or contractors. You should make sure that the protocols are consistent with your internal needs. For example, a protocol might instruct the interpreter as to what to do if there is a communication breakdown.

- h. How does the provider provide long-term quality assurance for interpretation or translation? The cost of language services must be backed up by assurance that the services provided are accurate and reliable. Quality assurance is critical in terms of protecting access for individuals who are limited in their English proficiency.
- i. What mechanisms does the provider have to instruct interpreters about specific policies and procedures of your organization? A training mechanism should be in place to assure that interpreters fit into your organization.
- j. Does the provider specialize in any particular field or industry? Some providers serve all venues: legal, medical, social services, financial, customer service, educational, etc. Others, however, specialize in only one or perhaps two areas. Regardless, you must make sure that the provider expertise aligns itself with your needs.

## 2. Provision of Language Services

- a. Available languages. A critical factor to consider in choosing a provider is the depth, breadth, and quality of its interpreter and translator pool. Some providers specialize in specific languages only (i.e., Spanish) or language groups (i.e., Eastern European). Given your specific language needs, you may find that instead of contracting with one language provider, you may wish to contract with more than one. In that way, you can take advantage of each one's strengths.
- b. Back-up alliances. Some providers have back-up agreements with other providers to cover requests that might otherwise go unanswered. While this practice will certainly expand the provider capacity, you will want to make sure that the allied providers maintain the same standards that you would expect from the contracted provider.
- c. Responsiveness (for in-person interpreters). The provider should track and share information on what percentages of all requests the provider is able to fill.
- d. No-Show Rates (for in-person interpreters). The provider should track and share information on what percentages of all requests result in no-shows.
- e. Connect times (for telephonic interpreters). Connect times of 45 seconds or less are competitive. Times should be calculated from when the call starts to ring at the provider until an interpreter is on the line.
- f. Standard equipment requirements (for telephonic interpreters). Many telephonic interpreter services will be able to recommend specific speaker phone technologies. Because technologies may add to costs while improving quality, you must learn about necessary technological upgrades that may need to be made.
- g. Disaster recovery system (for telephonic interpreters). If there were some sort of national disaster, access to telephone interpreters would become more important. You should ask the provider if contingency plans are present for language access in such times of crisis.
- h. Switching Equipment (for telephonic interpreters). For those with experience with call centers and telecommunications, information on the provider's switching system can tell you a great deal about how prepared it will be to handle a large volume of calls, track connectivity statistics, and provide accurate billing and reporting.
- i. Testing translated material. Some providers test the accuracy of translated materials. For example, a provider may offer to conduct focus group (a group from the targeted audience) testing as part of the service.

- j. **Additional services.** Some providers offer ancillary support services that may be of use to you. The more services offered, the more of a partner they can become.

### 3. Administration

- a. **Fees.** In-person interpreter fees are usually charged by the hour, with a one-hour minimum. Telephone interpreter fees are usually charged by the minute, although fees may vary by the time of day or particular language. Translation services are often charged by the word or page. Regardless, the cost usually varies according to how difficult it is to recruit interpreters and translators in any given language. There also may be a variety of charges/discounts associated with the service, such as a one-time set-up fee, a monthly minimum, volume discounts, cancellation fees, etc. Make sure you are aware of pricing information before you sign-up.
- b. **Cancellation policies.** What is the provider's cancellation policy? If you cancel a request for an interpreter, will you be charged? Most providers will not charge if the cancellation is more than 24 hours before the appointment. Some providers will charge, as they feel it only fair to pay the interpreter whose time has been reserved and who may not be able to get another appointment to replace the cancelled one. Same-day cancellations are almost always charged.
- c. **Company history.** Trust is integral to a good working relationship. Learning as much as you can about the people who run the provider and their experience is important. Request, and follow-up on, current and past referrals.
- d. **Industry involvement.** A key factor in your consideration of a provider may be how much commitment the provider has given to the ongoing development of the fields of interpretation and translation. You may want to know whether the provider is a member of a national, regional, or local organization dedicated to the advancement of the interpretation and translation fields.
- e. **Key documents.** At a minimum, you should ask to see a standard contract and a sample billing statement prior to signing. If you need specific information that is not in the standardized bill, then you should bring that up in contract negotiations. You must have assurances that the provider has the capacity to track the data you need.

#### How do I use a provider?

The most important part in working with a provider is clear communication. The provider, when used properly, becomes part of your "language access team." However, how you are organized internally will have a considerable effect on how smoothly the collaboration goes.

1. **Internal systems in place.** It should be clear to your employees when the need for an interpreter should be noted, who is responsible for ordering the interpreter and how that is to be done. In addition, staff should know who has the responsibility to cancel the interpreter if necessary. When possible, documentation should be available in hard copy. Your employees should also recognize the need to have vital documents, such as a patient consent form in the health care setting, translated into appropriate languages.
2. **Information to the interpreter.** In addition to date, time and place, the interpreter should be given the nature of the interpretation, the names of the people involved, and any other information necessary to support a successful language access intervention.
3. **Direct contact with translators and interpreters.** You should ascertain whether direct contact with translators and interpreters is allowed. Direct contact with translators and interpreters can help resolve issues immediately, without the need for the provider to act as a go-between.

## How do I monitor a provider performance?

There are a number of ways to monitor a provider's performance. On the interpretation side, you can track requests filled, requests returned, no-show and late arrival rates, billing error rates, complaints, responsiveness, resolution of problems, and reoccurrence of problems. You may want to actively solicit feedback from your customers and your employees about the provider, either through routine feedback or periodic surveys.

On the translation side, look out for these major concerns:

- ◇ Literal translations ranging from awkward, at best, to misleading or completely incomprehensible.
- ◇ Translations that miss the mark due to the translator's lack of relevant cultural knowledge, including lack of familiarity with local language patterns and word use.
- ◇ Translations done at a reading level that is too difficult for the intended audience.
- ◇ Translations done in a style that is not suitable for the purpose of the document.
- ◇ Errors that reflect lack of careful proofreading of the final product.

### Sample Questionnaire

You may wish to consider and/or adapt the following questionnaire as a means of gathering and comparing information from language service providers.

#### Language Service Provider Information

Name of Provider: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

FAX Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Website Address: \_\_\_\_\_

Service Provider Contact Person:

a. Name: \_\_\_\_\_

b. Email Address: \_\_\_\_\_

c. Telephone Number: \_\_\_\_\_

Does the provider belong to any professional language organization? \_\_\_ Yes \_\_\_ No

If yes, list the professional language organization.

\_\_\_\_\_

Is the provider on the General Services Administration's General Services Supply list or state or local schedules? \_\_\_ Yes \_\_\_ No

(If you want to find out more about GSA's Supply Schedule, please visit [www.lep.gov](http://www.lep.gov); look at the Federal Agencies or Recipient site under Resources "GSA Language Services Schedule.")

## Description of Services

### Geographic Area(s) Served:

### Language Services Offered (check all that apply):

- Face-to-face Interpreting Services
- Telephonic Interpreting Services
- Translation Services (Written materials)
- Translation Services (Website expertise)
- Other (Please Specify) \_\_\_\_\_

### Area(s) of Expertise:

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Medical/Health  | <input type="checkbox"/> Law/Courts/Prisons | <input type="checkbox"/> Conference          |
| <input type="checkbox"/> Social Services | <input type="checkbox"/> Insurance          | <input type="checkbox"/> Defense Industry    |
| <input type="checkbox"/> Education       | <input type="checkbox"/> Commercial         | <input type="checkbox"/> Other (Please list) |

### Languages Available

Please list the languages available. List only languages that have at least one active interpreter or translator currently and regularly available. Please indicate how many interpreters/translators available for each language are native speakers and, if so, from where (e.g., Spanish - Mexico, Spain, Ecuador, etc.)

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## Methods of Interpretation and Translation

### Interpretation Services:

- Consecutive (Interpreter waits for speaker to pause and interprets each section immediately afterward.)
- Simultaneous (Interpreter interprets simultaneously as the speaker talks.)
- Summarization (Interpreter provides a summary of the speaker's remarks.)
- Sight translation (Interpreter reads aloud the English document in another language or reads the non-English document in English.)
- Other (Please Describe)

### Translation Services:

- Back (two-way) Translation (One bilingual translator translates from English to the target language, then a second bilingual person translates from the target language back to English.)
- One-way Translation (A single bilingual individual translates from English to the target language.)

\_\_\_ Committee Translation (Two or more bilingual translators independently translate from English to the target language, then meet to produce a final version by resolving differences.)

\_\_\_ Original Language (Instead of translating from English to the target language, a document is created in the target language from scratch.)

\_\_\_ Other (Please Describe)

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### Quality Assurance Practices

**Initial Screening: Please describe how potential interpreters/translators are screened.**

**Please place an "X" next to the skills evaluated in initial screening.**

\_\_\_ Basic Language Skills \_\_\_ Interpretation Skills

\_\_\_ Industry-specific Terminology \_\_\_ Cultural Awareness

\_\_\_ Ethics \_\_\_ Sight Translation

\_\_\_ Written Translation Skills \_\_\_ Other (Explain)

### Training

Are interpreters/translators required to have basic training after hiring? \_\_\_ Yes \_\_\_ No

If yes, please describe who offers the training (e.g., in-house or external, number of hours, topics covered, etc.) and what the training program consists of. If the trainer is external, please list the name and full address of the training organization.

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Is continuing education (CE) required? \_\_\_ Yes \_\_\_ No

If yes, how many hours per year? \_\_\_ Hours

### Certification

("Certification" refers to a scientifically validated and reliable process to guarantee skills and abilities.)

What percentage of your translators and interpreters are certified by:

\_\_\_ Internal Process (\_\_\_ Translators \_\_\_ Interpreters)

\_\_\_ State Process (\_\_\_ Translators \_\_\_ Interpreters)

Name(s) of State(s): \_\_\_\_\_



\_\_\_ Federal Court (\_\_\_ Translators \_\_\_ Interpreters)

\_\_\_ Private External Organization (i.e., American Translators Association)

Please list private external organizations separately:

### **Quality control/monitoring process**

Please describe all internal quality control/monitoring processes.

Interpretation: (For example, is a practicum required? [ A practicum is defined as a time when a novice interpreter observes and is observed on the job by an experienced interpreter]; Are calls monitored?; etc.)

Translation: (For example, Are cognitive tests completed?; Is there an independent review process by native speakers?; etc.)

How do you monitor the quality of interpreting and translation services over time?

Interpretation:

Translation:

What system is in place to resolve complaints?

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### **Administration**

#### **Administrative Policies**

Hours of operation (e.g., 24/7, 9:00-5:00 M-F, etc.) \_\_\_\_\_

What is the confirmation policy for interpreter services? (Within what time of receiving a request will you confirm that an interpreter is or will be available?)

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What is the cancellation policy for interpreter services? (Within how many hours of the appointment may the client cancel without being charged?)

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Is there a privacy and confidentiality policy? \_\_\_ Yes \_\_\_ No

If yes, please describe.

---

What, if any, are the provider's policies with regard to direct contact between a translator/interpreter and the client?

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For telephonic interpreter services only:

What is the average connect time? (Include your definition of "connect time.")

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Are telephone services redundant? (For example, if an emergency rendered primary telephone services inoperative, is the provider prepared with a secondary service to guarantee access?) \_\_\_ Yes \_\_\_ No

### **Pricing**

Please describe pricing practices and fee schedule.

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Some questions that could be answered are:

Does the provider make estimates for work to be performed?

Does the provider offer volume discounts?

Does the provider offer services on a single use basis?

Will the provider allow limited test calls prior to contracting for telephonic interpreting?

What information for tracking purposes can be provided on billing statements? (For example, separate tallies by languages, average time per interpretation event, etc.)

### **Billing**

Please describe billing practices.

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Answers to the following questions would help clarify billing information.

How often does the provider bill?

What are the terms?

Are there late fees?

What information for tracking purposes can be provided on the bill?

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**Experience**

References. (Current and Past)

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Does the provider furnish, or has it furnished, translation or interpretation services to any Federal, state or local agency? \_\_\_ Yes \_\_\_ No

If yes, list the organization and the type of services provided.

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Additional comments from service provider:



*Working with Spoken Language Interpreters*

2004 Census Test	United States Census 2010 LANGUAGE IDENTIFICATION FLASHCARD	
<input type="checkbox"/>	ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.	1. Arabic
<input type="checkbox"/>	Խոսողների կամ նշանակալից արտահայտումների համար հարցազրույցը կատարվում է հայերենով:	2. Armenian
<input type="checkbox"/>	যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বক্সে চাপ দিন।	3. Bengali
<input type="checkbox"/>	ឈ្មោះបញ្ជាក់ក្នុងប្រអប់នេះ បើអ្នកអាន ឬនិយាយភាសា ខ្មែរ ។	4. Cambodian
<input type="checkbox"/>	Motka i kahhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.	5. Chamorro
<input type="checkbox"/>	如果你能读中文或讲中文，请选择此框。	6. Simplified Chinese
<input type="checkbox"/>	如果你能讀中文或講中文，請選擇此框。	7. Traditional Chinese
<input type="checkbox"/>	Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.	8. Croatian
<input type="checkbox"/>	Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.	9. Czech
<input type="checkbox"/>	Kruis dit vakje aan als u Nederlands kunt lezen of spreken.	10. Dutch
<input type="checkbox"/>	Mark this box if you read or speak English.	11. English
<input type="checkbox"/>	اگر خواندن و نوشتن فارسی بلد هستید این مربع را علامت بزنید.	12. Farsi

- |                          |  |                    |
|--------------------------|--|--------------------|
| <input type="checkbox"/> | Cocher ici si vous lisez ou parlez le français.                                      | 13. French         |
| <input type="checkbox"/> | Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen.                | 14. German         |
| <input type="checkbox"/> | Σημειώστε αυτό το πλαίσιο αν διαβάζετε ή μιλάτε Ελληνικά.                            | 15. Greek          |
| <input type="checkbox"/> | Make kazye sa a si ou li oswa ou pale kreyòl ayisyen.                                | 16. Haitian Creole |
| <input type="checkbox"/> | अगर आप हिन्दी बोलते या पढ़ सकते हैं तो इस बक्स पर चिह्न लगाएँ।                       | 17. Hindi          |
| <input type="checkbox"/> | Kos lub voj no yog koj paub twm thiab hais lus Hmoob.                                | 18. Hmong          |
| <input type="checkbox"/> | Jelölje meg ezt a kockát, ha megérti vagy beszéli a magyar nyelvet.                  | 19. Hungarian      |
| <input type="checkbox"/> | Markaam daytoy nga kahon no makabasa wenno makasaoka iti Ilocano.                    | 20. Ilocano        |
| <input type="checkbox"/> | Marchi questa casella se legge o parla italiano.                                     | 21. Italian        |
| <input type="checkbox"/> | 日本語を購んだり、話せる場合はここに印を付けてください。   | 22. Japanese       |
| <input type="checkbox"/> | 한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오.   | 23. Korean         |
| <input type="checkbox"/> | ໄວ້ສາມູນີ້ເພື່ອບັນທຶກການໃຊ້ພາສາ.   | 24. Laotian        |
| <input type="checkbox"/> | Prosimy o zaznaczenie tego kwadratu, jeżeli posługuje się Pan/Pani językiem polskim. | 25. Polish         |

<input type="checkbox"/>	Assinale este quadrado se você lê ou fala português.	26. Portuguese
<input type="checkbox"/>	Însemnați această celulă dacă citiți sau vorbiți românește.	27. Romanian
<input type="checkbox"/>	Пометьте этот квадратик, если вы читаете или говорите по-русски.	28. Russian
<input type="checkbox"/>	Обележите ovaj kvadratić ukoliko čitate или говорите српски језик.	29. Serbian
<input type="checkbox"/>	Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky.	30. Slovak
<input type="checkbox"/>	Marque esta casilla si lee o habla español.	31. Spanish
<input type="checkbox"/>	Markahan itong kuwadrado kung kayo ay marunong magbasa o magsalita ng Tagalog.	32. Tagalog
<input type="checkbox"/>	ໝາຍເຖິງຫມາກສ່ວນນີ້ຖ້າທ່ານຮູ້ສູດພາສາໄທ.	33. Thai
<input type="checkbox"/>	Maaka 'i he puha ni kapau 'oku ke lau pe lea fakatonga.	34. Tongan
<input type="checkbox"/>	Відмітьте цю клітинку, якщо ви читаете або говорите українською мовою.	35. Ukrainian
<input type="checkbox"/>	اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانے میں نشان لگائیں۔	36. Urdu
<input type="checkbox"/>	Xin đánh dấu vào ô này nếu quý vị biết đọc và nói được Việt Ngữ.	37. Vietnamese
<input type="checkbox"/>	באסייבונט דעם קעסטל ווייב איך לייענט אדער רעדט אידיש.	38. Yiddish





## *LEP Useful Online Publications and Websites*

### **LEP Useful Online Publications and Websites**

1. U.S. Department of Transportation Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons -
  - <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-23972.htm>
2. Title VI of the Civil Rights Act of 1964
  - <http://www.usdoj.gov/crt/cor/coord/titlevistat.htm>
3. Executive Order 13166. Improving Access to Services for Persons with Limited English Proficiency Order made by President William J. Clinton on August 11, 2000
  - <http://www.usdoj.gov/crt/cor/Pubs/eolep.pdf>
4. LEP homepage. Provided on this website are information and guidance for Federal agencies, recipients of Federal funds and community individuals and organizations.
  - <http://www.lep.gov>
5. Statistics on English Speaking Ability of the U.S. Population. Determined by language spoken at home for the population of 5 years and over.
  - <http://www.census.gov/population/cen2000/phc-t37/tab01a.pdf>
6. LEP data for the District of Columbia (data can be obtained by state). Determined by language spoken at home for the population of 5 years and over.
  - <http://doleta.gov/reports/CensusData/data/District%20of%20Columbia/Washington%20DC%20Totals.xls>
7. Limited English Proficiency Brochure. What Federal Agencies and Federally Assisted Programs Should Know About Providing Services to LEP Individuals
  - [http://www.lep.gov/lep\\_aug2005.pdf](http://www.lep.gov/lep_aug2005.pdf)
8. Know Your Rights Beneficiary Brochure. Are you unable to speak, read, write or understand English well? If so, you are Limited English Proficient (LEP). Federal agencies and organizations that get money from the Federal government have to take reasonable steps to help people who have trouble with English. Sometimes, when a government agency or an organization does not help you because you are LEP, they violate the law.
  - [http://www.lep.gov/LEP\\_beneficiary\\_brochure.pdf](http://www.lep.gov/LEP_beneficiary_brochure.pdf)
9. Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance. Intended to assist Federally assisted organizations in their efforts to ensure that program goals and objectives address meaningful access for all of the people they serve, including those who are limited-English proficient.
  - <http://www.lep.gov/selfassesstool.htm>
10. "I Speak" Language Identification Flashcard. From the Department of Commerce, Bureau of the Census, the "I Speak" Language Identification Flashcard is written in 38 languages and can be used to identify the language spoken by an individual accessing services provided by Federally assisted programs or activities.
  - <http://www.lep.gov/ISpeakCards2004.pdf>

11. Interpreter Services for Social Security business (Example)
  - <http://www.ssa.gov/multilanguage/langlist1.htm>
12. Choosing a Language Access Provider. Where an organization lacks ability to satisfy its language assistance needs entirely through internal staff reserves, the identification and selection of volunteer or contract third party language providers can be a vital part of any language access program serving LEP individuals. <http://www.lep.gov/leptatool.htm>
13. Identifying Language Resources to Meet Needs/Working with LEP Individuals
  - <http://www.usdoj.gov/crt/lep/lepdoc%20chapter1.htm#b>
14. LEP Frequently Asked Questions: <http://www.lep.gov/faq.html>
15. Glossary of Terms: <http://www.doleta.gov/reports/CensusData/Glossary.cfm>
16. Electronic CFR Beta Test site: <http://www.gpoaccess.gov/ecfr/>
17. Electronic USC Beta Test site: <http://www.access.gpo.gov/uscode/index.html>
18. EPA's Environmental Justice Website:
  - <http://www.epa.gov/compliance/environmentaljustice/index.html>
19. EPA's Public Involvement Policy, May 2003
  - <http://www.epa.gov/publicinvolvement/policy2003/frnlead.pdf>
20. Executive Orders found at:
  - [http://www.archives.gov/Federal\\_register/executive\\_orders/disposition\\_tables.html#top](http://www.archives.gov/Federal_register/executive_orders/disposition_tables.html#top)
21. Federal Register at: <http://www.gpoaccess.gov/nara/index.html>
22. Federal Highway Administration (FHWA), Office of Civil Rights
  - <http://www.fhwa.dot.gov/civilrights/index.htm>
23. FHWA's A Citizen's Guide to Transportation Decisionmaking
  - <http://www.fhwa.dot.gov/planning/citizen/index.htm>
24. FHWA's Community Impact Assessment: A Quick Reference for Transportation"
  - <http://www.ciatrans.net/TABLE.html>
25. FHWA Environmental Justice Brochure
  - <http://www.fhwa.dot.gov/environment/ej2000.pdf>
26. FHWA Environmental Justice Brochure in Spanish
  - <http://www.fhwa.dot.gov/environment/ejustice/espanol/justicia.htm>
27. FHWA's Environmental Justice Website:
  - <http://www.fhwa.dot.gov/environment/ejustice/facts/index.htm>
28. FHWA's Interactive "Public Involvement Techniques," 2004
  - <http://www.planning.dot.gov/Pitool/toc-foreword.asp>
29. FHWA Office of Planning, Environment, and Realty "How to Engage Low-Literacy and Limited English Proficiency Population in Transportation Decisionmaking"
  - <http://www.fhwa.dot.gov/hep/lowlim/index.htm>

30. FL DOT's "Public Involvement Handbook for Median Projects," 1995
  - <http://www.cutr.usf.edu/research/pimedian.pdf>
31. FHWA's "Public Involvement Techniques for Transportation Decision-Making," 1996
  - [www.fhwa.dot.gov/reports/pittd/cover.htm](http://www.fhwa.dot.gov/reports/pittd/cover.htm)
32. U.S. Government Printing Office (GPO): <http://www.gpoaccess.gov/>
33. Hablamos Juntos: Robert Wood Johnson Foundation. Language Policy and Practice in Health Care
  - <http://www.hablamosjuntos.org>
34. Interagency Working Group on EJ:
  - <http://www.epa.gov/compliance/environmentaljustice/interagency/index.html>
35. International Association for Public Participation "The IAP2 Public Participation Toolbox"
  - <http://www.iap2.org/boardlink/toolbox.pdf>
36. Legislation: <http://thomas.loc.gov/>
37. Library of Congress: <http://www.loc.gov/>
38. MN DOT's "Hear Every Voice: A Guide to Public Involvement at MN DOT," June 1999:
  - <http://www.dot.state.mn.us/pubinvolve/pdf/sep10hev.pdf>
39. Modern Language Association (MLA). You can identify many languages spoken in the US, States, Counties and even in a particular zip code.
  - [http://www.mla.org/map\\_main](http://www.mla.org/map_main)
40. National Archive's Federal Register: [http://www.archives.gov/Federal\\_register/index.html](http://www.archives.gov/Federal_register/index.html)
41. National Clearinghouse for English Language Acquisition and Language Instructional Education Programs (NCELA)
  - <http://www.ncela.gwu.edu/policy/states/reports/statedata/2001/index.html>
42. National Environmental Justice Advisory Council
  - <http://www.epa.gov/compliance/environmentaljustice/nejac/index.html>
43. OMB Circulars: <http://www.whitehouse.gov/omb/circulars/index.html>
44. Lisa Beever and Nancy Wagner's "Planning Games and Public Involvement"
  - <http://www.ciatrans.net/Planning.pdf>
45. President Clinton's August 11, 2000 Statement on Limited English Proficiency
  - <http://www.usdoj.gov/crt/cor/Pubs/lepstmt.htm>
46. State by state LEP data from State Department of Education (level of access varies by state)
  - Arkansas: [http://adedata.k12.ar.us/FY06\\_07/Schools](http://adedata.k12.ar.us/FY06_07/Schools)
  - Minnesota: [http://education.state.mn.us/MDE/Data/Data\\_Downloads/Student/Languages/index.html](http://education.state.mn.us/MDE/Data/Data_Downloads/Student/Languages/index.html)
  - Massachusetts: <http://www.doe.mass.edu/ell/statistics>
47. Sus Derechos bajo el Título VI de la Ley de los Derechos Civiles del 1964
  - <http://www.usdoj.gov/crt/cor/Pubs/TitleVISpan.htm>
48. TRB News' Special Issue: "Going Public: Involving Communities in Transportation Decisions"
  - <http://gulliver.trb.org/publications/trnews/trnews220.pdf>

49. TRB PI Committee's Draft "Assessing the Effectiveness of Project-Based Public Involvement Processes: A Self-Assessment Tool for Practitioners,"
  - <http://trb-pi.hshassoc.com/publications/assessmenttool.pdf>
50. TRB PI Committee's, "State of the Practice: White Paper on Public Involvement"
  - <http://trb-pi.hshassoc.com/publications/trbwhitepaper.pdf>
51. U.S. Department of Agriculture Website
  - <http://www.usda.gov/>
52. U.S. Census Bureau. Contains numerical data and mapping tools down to Census block groups.
  - <http://factfinder.census.gov/servlet/BasicFactsServlet>
53. Census Bureau American Community Survey (ACS) website:
  - <http://www.census.gov/acs/www/>
54. A Summary of ACS is on FHWA EJ website:
  - <http://www.fhwa.dot.gov/ctpp/about.htm>
55. U.S. Census Bureaus Minority Links
  - <http://www.census.gov/pubinfo/www/hotlinks.html>
56. U.S. Census Bureau Website
  - <http://www.census.gov/>
57. U.S. Department of Energy: "How to Design a Public Participation Program"
  - <http://www.em.doe.gov/ftplink/public/doeguide.pdf>
58. U.S. Department of Justice, Civil Rights Division
  - <http://www.usdoj.gov/crt/crt-home.html>
59. USDOJ's Departmental Plan Implementing Executive Order 13166
  - <http://www.usdoj.gov/crt/cor/lep/dojimp.htm>
60. USDOJ's Federal Protections Against National Origin Discrimination
  - <http://www.usdoj.gov/crt/legalinfo/natorigin.htm>
61. USDOJ's Guidance, Material and Overview on Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency
  - <http://www.usdoj.gov/crt/cor/13166.htm>
62. USDOJ's October 26, 2001 Clarifying Memorandum Regarding Limited English Proficiency and Executive Order 13166
  - <http://www.usdoj.gov/crt/cor/lep/Oct26BackgroundQ&A.htm>
63. USDOJ's Brochure Regarding Rights Under Title VI of The 1964 Civil Rights Act
  - <http://www.usdoj.gov/crt/cor/Pubs/t6broch.htm>
64. Department of Labor (DOL) Census Data Tool, Special Tabulation on LEP
  - <http://www.doleta.gov/reports/CensusData/download.cfm>
65. U.S. Department of Transportation Civil Rights Library
  - <http://www.dotcr.ost.dot.gov/asp/crlibrary.asp>



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*Binder Spine*

**LIMITED ENGLISH PROFICIENCY**