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NOTICES

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Limited English Proficiency Guidance to Recipients of Federal Financial Assistance--Request for Comments

Wednesday, December 24, 2003

**\*74633** AGENCY: Office of the Secretary, Interior.

ACTION: Limited English Proficiency Guidance--request for comments.

**\*74634** SUMMARY: The Department of the Interior (DOI or Department) publishes for public comment Interim Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (DOI Recipient LEP Guidance). The DOI Recipient LEP Guidance is issued pursuant to Title VI of the Civil Rights Act of 1964 and its implementing regulations and Executive Order 13166.

DATES: Written comments are invited from interested persons and organizations. Comments should be submitted to DOI on or before January 23, 2004. DOI's Recipient LEP Guidance will become final after the comment period. However, DOI will review all timely submitted comments, and determine what modifications, if any, are necessary to the policy guidance, and issue modifications if necessary.

ADDRESSES: Comments should be sent to: E. Melodee Stith, Director, Office for Equal Opportunity, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 5221, Washington, DC 20240, E-mail: melodee--stith@ios.doi.gov, Phone: (202) 208-5693, FAX: (202) 208-6112.

FOR FURTHER INFORMATION CONTACT: Melvin C. Fowler, Civil Rights Staff Assistant, Office for Equal Opportunity, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 5221, Washington, DC 20240, E-mail: Melvin--C--Fowler@ios.doi.gov, Phone: (202) 208-3455, FAX: (202) 208-6112.

SUPPLEMENTARY INFORMATION: Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. (Title VI), and Title VI regulations, recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). 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 Department of Justice 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).

Because this Guidance also must adhere to the Federal-wide compliance standards and framework detailed in the model Department of Justice LEP Guidance issued on June 18, 2002, DOI specifically solicits comments on the nature, scope, and appropriateness of the DOI-specific examples set out in this guidance explaining and/or highlighting how those Federal-wide guidelines are applicable to recipients of DOI financial assistance.

It has been determined that this guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Department of the Interior

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, 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."

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 programs and activities 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 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 assisted programs and activities. [FN1]

FN1 The Department of the Interior 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 programs and identify 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.

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 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. [FN2] These are the same criteria DOI will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

FN2 The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable 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.

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 work with the Department of Justice to continue to provide assistance and guidance in this important area and to identify and share model plans, examples of best practices, and cost-saving approaches. 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 \*74635 (2001), as implicitly 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. This guidance document is thus published pursuant to Title VI, Title VI regulations, and Executive Order 13166, and is consistent with the Department of Justice model guidance.

Department of the Interior regulations promulgated pursuant to section 602 forbid recipients from "utilizing 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 respect to individuals of a particular race, color, or national origin." 43 CFR 17.3(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 the DOI, 43 CFR 17.3(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. [FN3] 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."

FN3 Improving Access to Services for Persons with Limited English Proficiency, 65 FR 50121 (August 16, 2000).

On that same day, the Department of Justice (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, the 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*. [FN4] 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.

FN4 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 ("[DOJ] assumes 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.") According to DOJ, "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 assistance agencies to enforce their own implementing regulations."

Pursuant to Executive Order 13166, DOJ developed its own guidance document for recipients ("LEP Guidance for DOJ Recipients") and initially issued it in final on June 18, 2002 (67 FR 41455, also available at <http://www.lep.gov>). 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 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.

### III. Who Is Covered?

Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and implementing regulations, recipients of Federal financial assistance are required to provide meaningful access to LEP persons. [FN5] Federal financial assistance includes grants, cooperative agreements, training, use of equipment, donations of surplus property, and other assistance. \*74636 Examples of recipients that receive DOI assistance include the following:

FN5 Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in this guidance also apply to the programs and activities of Federal agencies, including DOI's programs and activities. Examples include, but are not limited to, schools and other programs operated by the Bureau of Indian Affairs, environmental impact research and surveys, land management, national

parks, fish and wildlife programs and activities, power plants run by DOI, and others.

- . State fish and wildlife agencies;
- . State and local park and recreation departments;
- . State and local park police departments including fish and wildlife conservation law enforcement agencies;
- . State geological survey agencies;
- . State and local historic preservation agencies including historical sites and places; and
- . Irrigation districts and other public entities providing water and power services.

Sub-recipients are covered when Federal funds are passed through from one recipient to a Sub-recipient. Sub-recipients of DOI assistance include, for example:

- . County and city park and recreation agencies;
- . State and local government agencies; and
- . Public and/or private organizations.

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 of the recipient's programs or activities receives the Federal assistance. [FN6]

FN6 If DOI decided, however, to terminate Federal assistance to a recipient based upon noncompliance with its Title VI regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d-1.

Example: DOI provides assistance to a city parks and recreation department to develop or improve one particular park. All aspects of the city parks and recreation department's operations--not just the particular park slated for development or improvement--are covered.

Finally, some recipients operate in jurisdiction 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 programs and activities 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 (LEP) and therefore entitled to language assistance with respect to a particular type of service, benefit, or encounter. Examples of populations likely to include LEP persons that DOI recipients serve or encounter and accordingly, should consider when planning language services include, but are not limited to:

- . Persons who are actual or potential program beneficiaries of recreation or education programs including those applying for fishing and hunting licenses, or desiring information regarding program availability;
- . Persons visiting historical sites and places;
- . Persons who encounter natural resources conservation law enforcement officers or other law enforcement recipients of DOI assistance;
- . Persons needing information on health, environmental impact, safety, or other warnings or information from recipients of DOI assistance; and
- . Parents and family members of the above.

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

Recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs and activities. 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, DOI's guidance is intended to strike a balance between

ensuring LEP persons have meaningful access to critical services, benefits, and information while not imposing an undue burden 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. DOI recipients should apply the following four factors to the various kinds of contacts 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 previously has been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations.

Recipients should first examine their prior experience with LEP encounters 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 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. [FN7] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in \*74637 identifying populations for whom outreach is needed and who would benefit from the recipient's programs and activities were language services provided.

FN7 The focus on the analysis is on the 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 are not proficient in English. 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 upon the language spoken by those who are not proficient in English.

(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 a 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 a 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 intense solution. If a 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 a LEP individual seeks services, benefits, or information 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 provide language assistance services to residents of a community near a raging wildfire or other environmental emergency, to a person who is suspected of a crime committed in a park, or to an ill or injured park visitor, differ from obligations to individuals seeking to enroll in a voluntary conservation class. A recipient needs to determine whether denial or delay of access to benefits, services, warnings, 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, essential licenses, 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 assistance 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 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, using universally understood pictorial signs, or the formalized use of qualified community volunteers, for example, may help reduce costs. [FN8] 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.

FN8 Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

## VI. How Language Assistance Services Should Be Provided



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 other cases, 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, fire departments or other emergency services located near an Indian reservation may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many fire departments may 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 park--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.

## VII. Selecting Language Assistance Services

When selecting a language service, it is important to consider the quality and accuracy of such service in order to avoid serious consequences to the LEP person and the recipient. **\*74638**

### 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 identifying oneself 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 and the ability to communicate information accurately in both English and the other language and identify and employ the appropriate mode of interpreting;
- . 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 that the LEP person uses; [FN9]

FN9 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, there may be languages which do not have an appropriate interpretation of certain legal or technical terms. 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 written translations in that language that can be used again, when appropriate.

. 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; and

. Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in administrative hearings or law enforcement activities).

Some recipients, such as those offering educational or instructional programs, or public utility services, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the context of public safety and law enforcement activities, the use of certified interpreters is strongly encouraged. [FN10] Where 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.

FN10 For those languages in which no formal accreditation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter.

While quality and accuracy of language services is critical, the standards for such services vary depending on the service, program or benefit the recipient provides. For example, the quality and accuracy of language services in a hunter education and safety class, an interrogation of a suspect by park police, or environmental hazard warnings must be extraordinarily high, while the quality and accuracy of language services in a lighthouse tour need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. 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 certain activities in law enforcement, health, environmental, and safety services, or when important legal rights are at issue, a recipient probably would not be providing meaningful access if it only 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 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. For example, recipients can fill public contact positions such as lifeguards, park ranger, conservation law enforcement officers, or recreation program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff is 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. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is 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 provide accurate and meaningful communication with a 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 the interpreters used are competent to interpret any technical or legal terms specific to a particular program. Often an interpreter relies on non-verbal communication and nuances in language to accurately translate the source language into the target language. Video conferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters an opportunity to review the document prior to the discussion and address any logistical problems. **\*74639**

Using Community Volunteers. In addition to considering bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure that LEP persons have meaningful access, recipient-coordinated community volunteers working with community-based organizations also 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 regularly available.

Use of Family Members, Friends, Other Program Participants, or Acquaintances as Interpreters. Although recipients should not plan to rely on a 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, or other informal interpreter) in lieu of or to supplement the free language services the recipient offers. LEP persons may feel more comfortable when a trusted family member, friend, or other informal interpreter of their choice 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 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, or other informal interpreters 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, family, or financial 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 protect themselves or another individual in a criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LCP person. For DOI recipient programs and activities, this is particularly true in law enforcement settings, administrative hearings, situations in which health, safety, or access to important benefits, services, or information are at stake, or when credibility and accuracy are important to protect an individual's rights or access to important services or information.

An example of such a case is when conservation law enforcement officers respond to a hunting or fishing infraction. In such a cases, use of family members or friends to interpret for the alleged person cited for the hunting or fishing violation 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, or other program participants often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors indicates that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a park 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, a 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 to document the recipient's offer to provide language assistance services and the LEP person's response. Where precise, complete and accurate interpretations or translations of information and/or testimony are critical for law enforcement, adjudicatory, health, safety, 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 a 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 or likely to be affected by the recipient's program.

Such written materials could include, for example:

- . Consent and complaint forms;
- . Program materials describing program availability;
- . Geological maps and informational publications, under certain circumstances;
- . Written notices of rights, denial, loss, or decreases in benefits or services, or of public hearings that impact the community;
- . Hunter and aquatics safety education materials;
- . Vital portions of websites describing an Agency's mission, organization, programs, activities and services;
- . Notices advising LEP persons of free language assistance;
- . Prohibit and warning signs, brochures, or other informational material, including information on dangerous wildlife, natural hazards, **\*74640** environmental hazards, and other health and safety-related information;
- . 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; and
- . Applications to participate in a recipient's program or activity or to receive recipient benefits, services, licenses, permits, etc.

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 generally should not be considered vital, whereas applications for drug and alcohol counseling in prison should be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across 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 general 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 materials may be made more effective when done in tandem with other outreach methods, including utilizing the appropriate non-English language speaking 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 concerning 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 reasonably cannot 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 language assistance services to interpret or translate a 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 numerous 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 recipient should determine its obligation to provide written translations of documents 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), (see the next section of this document entitled Safe Harbor Guidelines), 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 the Department's Safe Harbor Guidelines at 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 are interested in specific examples of safe harbor guidelines. However, 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 Guidelines. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOI 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, even where the safe harbor numbers are not met for a particular language, a LEP person speaking that language should be given appropriate oral interpretation of important information.

Competence of Translators. As with oral interpreters, translators of written **\*74641** 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 competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can be often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary. [FN11] Having a second, independent translator check the work of the primary translator can often ensure competence. 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."

FN11 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.

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. [FN12]

FN12 For instance, there may be languages which do not have an appropriate direct translation of some natural resources terms or historic references. The translator should be able to provide an appropriate translation and make the recipient aware that an appropriate direct translation does not exist. 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 historic references, geological terms 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 the recipient's previous translations of similar material may be helpful. In addition to the translator's assessment of the material, community organizations may be able to help consider whether a document is written at a good level for the audience.

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, a recipient may use less-skilled translators to translate simple documents that have no legal, health, access to benefits and services, or safety consequences. However, to the extent documents contain this type of critical information, recipients should consider using highly skilled translators to translate their contents (including, e.g., information or documents regarding certain law enforcement, health and safety services and certain legal rights, applications, warnings, or prohibitions). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that LEP persons have meaningful access.

## VII. Elements of an 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. The LEP Plan should lead most recipients to document their language assistance services, and how staff and LEP persons can access those services.

Despite the benefits associated with a written plan, certain DOI recipients, such as recipients serving very few LEP persons or 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 recipient's obligation to ensure that LEP persons have meaningful access to its program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate its 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.

The following five steps may be helpful in designing a 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 encountered and the frequency of encounters. This requires a recipient 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. 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. At <http://www.usdoj.gov/crt/cor/13166.htm> or <http://www.lep.gov> the Census Bureau "I speak card" can be found and downloaded. 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 identify themselves as requiring language assistance services.

### (2) Identifying 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; and
- . How to ensure competency of interpreters and translation services.

### (3) Training Staff

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

- . Staff knows about LEP policies and procedures; and, **\*74642**
- . Staff that have contact with the public are trained to work effectively with in-person and telephone interpreters and make materials that have been translated readily available.

Recipients may want to include this training as part of its 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 a 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 implement and reinforce its terms.

### (4) Providing Notice to LEP Persons

Once an Agency has decided that it will provide language services based on the four factors, 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 such notice include:

- . Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information, benefits, 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. [FN13] 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. [FN14] This is particularly true in areas with high volumes of LEP persons seeking access to the DOI recipient's recreational areas, historical sites, and fishing or hunting activities. Appropriate notice to LEP persons also is important to ensure their access to information about environmental concerns.

FN13 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 language assistance service.

FN14 The Social Security Administration has made such signs available at its Web site, (see <http://www.ssa.gov/multilanguage/langlist1.htm>). The signs could be modified for recipient use.

- . Stating in outreach documents that language services are available from the Agency. Announcements could be published in brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be put on the front of common documents.

- . Community organizations. The recipient could work with community-based organizations and other stakeholders to inform LEP individuals of the



recipient's 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.

- . Printed media. The recipient could publish notices in local newspapers in languages other than English.

- . Broadcasts. The recipient could provide notices on non-English-language radio and television stations about the available language assistance services and how to get them.

- . Schools. The recipient could inform LEP persons of the availability of language services through presentations and/or by providing notices at schools and religious organizations.

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

Recipients should, where appropriate, have a process for determining whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and informing employees and LEP persons of any changes in services. 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 certain service areas 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, additional resources and the costs imposed;

- . Whether existing assistance is meeting the needs of LEP persons;

- . Whether staff knows about and understands the LEP plan how to implement it; and

- . Whether identified sources for assistance are still available and viable.

In addition to the five elements typically found in effective implementation plans, such 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. The requirement to provide meaningful access to LEP persons is enforced and implemented by DOI through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DOI 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, DOI will inform the recipient in writing of this determination, including the basis for the determination. DOI uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOI will attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOI must secure compliance through the termination of Federal assistance after the DOI recipient has been given an opportunity for an administrative hearing, by referring the matter to a Department of Justice litigation section to seek injunctive relief or by pursuing other enforcement proceedings. DOI engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOI 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, DOI'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, DOI acknowledges that the implementation of a comprehensive system to serve LEP \*74643 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, DOI will look favorably on any intermediate steps the 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 activities of recipients and for all potential language minority groups reasonably may require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOI recipients should ensure that they first provide appropriate assistance for significant LEP populations and activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

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