

# Limited English Proficiency

## LEP

**Delivering services to all persons regardless  
of race, color, or national origin**

**An overview of U.S. Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**

**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.

## **You must take reasonable steps**

- **The federal government and those receiving assistance from the federal government must take reasonable steps to ensure that LEP persons have meaningful access to the programs, services, and information those entities provide.**
- **This will require agencies to think "outside the box" for creative solutions to address the needs of this ever-growing population of individuals, for whom English is not their primary language.**

## **Who is a Limited English Proficient (LEP) Person?**

- **Persons 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."**
- **These individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.**

## **Who Must Comply?**

### **Who Can be Found in Violation?**

- **All programs and operations of entities that receive assistance from the federal government (i.e. recipients), including:**
  - **State agencies**
  - **Local agencies**
  - **Private and nonprofit entities**
  - **Sub-recipients (entities that receive federal funding from one of the recipients listed above).**
- **All programs and operations of the federal government.**

## **Legal Authority**

- **Title VI of the 1964 Civil Rights Act: "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." 42 U.S.C. § 2000d.**
- **The United States Supreme Court in Lau v. Nichols (1974) stated that one type of national origin discrimination is discrimination based on a person's inability to speak, read, write, or understand English.**

## **Executive Order 13166**

- **In August 2000, this Order was issued and directed federal agencies to:**
  - **Publish guidance on how their recipients can provide access to LEP persons**
  - **Improve the language accessibility of their own programs**
  - **Break down language barriers by implementing consistent standards of language assistance across federal agencies and amongst all recipients of federal financial assistance.**
- **The Order covers all federal and federally assisted programs and activities including Recipients**

## **Obligations**

- **Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.**
- **The starting point is an individualized assessment that balances the four factors of the DOJ's Four-Factor Analysis**

## Meaningful Access

- **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**
- **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**

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.

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



## **Four-Factor Analysis**

- **The number or proportion of LEP persons eligible to be served or likely to be encountered by the program, grantee or recipient;**
- **The frequency with which LEP individuals come in contact with the program;**
- **The nature and importance of the program, activity, or service provided by the program to people's lives; and**
- **The resources available to the grantee/recipient and costs.**

## Factor 1

- **The number or proportion of LEP persons eligible to be served or likely to be encountered by the program, grantee or recipient**
- **The greater the number or proportion of these LEP persons, the more likely language services are needed**
- **The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language**

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 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. 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 where language services provided.

## Factor 1

- **Demographic data may indicate the most frequently spoken languages other than English and the people who speak that language who speak or understand English less than well**
- **When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English**

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## **Factor 2**

- **The frequency with which LEP individuals come in contact with the program**
- **The more frequent the contact, the more likely that enhanced language services in that language are needed (one time vs. daily)**

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 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

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

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

## Factor 2

- **Consider the frequency of different types of language contacts.**
- **The plan need not be intricate - it may be as simple as being prepared to use a commercially-available telephonic interpreter service for immediate interpreter services.**

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## **Factor 3**

- **The nature and importance of the program, activity, or service provided by the program to people's lives**
- **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.

## **Factor 3**

- **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 educational programs in a correctional facility or the communication of Miranda rights, can serve as strong evidence of the program's importance**

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.

## **Factor 4**

- **The resources available to the recipient and costs**
- **Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets**
- **“Reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits**

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.

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, or the formalized use of qualified community volunteers, for example, may help reduce costs.

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



## Factor 4

- **Resource and cost issues can often be reduced by technological advances; sharing language assistance materials and services between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices**
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## **The “mix” of LEP Services Required**

- **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**

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”).

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

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 prearranged 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

## Safe Harbor

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

- (a) 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

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

## **Safe Harbor**

- **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.

*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.

## **Elements of an effective LEP Plan**

- **Identifying LEP persons who need language assistance**
- **Identifying ways in which language assistance will be provided**
- **Training staff**
- **Providing notice to LEP persons**
- **Monitoring and updating LEP policy**

## **Language Assistance Services**

- **Oral interpretation services**
- **Bilingual staff**
- **Telephone interpreter lines**
- **Written language services**
- **Community volunteers**

# References

- [www.lep.gov](http://www.lep.gov) Limited English Proficiency web site
  - [http://www.lep.gov/guidance/guidance\\_index.html](http://www.lep.gov/guidance/guidance_index.html)  
U.S. Dept. of Justice LEP Guidance Documents
- [www.census.gov](http://www.census.gov) U.S. Census Bureau
  - <http://www.census.gov/population/www/popclockus.html>  
US Population Clock
  - <http://www.census.gov/acs/www/>  
American Community Survey
- <http://www.mitinweb.org/>  
Michigan Translators/Interpreters Network (MiTiN)
- <http://www.lep.gov/resources/recipbroch.html>  
Information in this presentation

## **For More Information**

- **US. Department of Justice  
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- **<http://www.usdoj.gov/crt/cor/>**
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1-888-848-5306 (Voice / TDD)**