

DEPARTMENT OF HOMELAND SECURITY

Office for Civil Rights and Civil Liberties

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

DHS Docket No. DHS-2009-0032.

AGENCY: Office for Civil Rights and Civil Liberties, DHS.

ACTION: Notice; proposed policy guidance.

SUMMARY: The Department of Homeland Security is publishing for public comment proposed guidance to recipients of Federal financial assistance regarding Title VI's prohibition against national origin discrimination affecting persons with limited English proficient persons. This proposed guidance is issued pursuant to Executive Order 13166 and is consistent with government-wide guidance previously issued by the Department of Justice.

DATES: Written comments are invited from interested persons and organizations no later than July 11, 2010.

ADDRESSES: Comments should be sent to:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Officer for Civil Rights and Civil Liberties, U.S. Department of Homeland Security, 245 Murray Lane, SW, Building 410, Washington, D.C. 20528, Mail Stop 0190. To ensure proper handling, please reference DHS Docket No. DHS-

2009-0032 on the correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions. DHS will accept comments in alternate formats such as Braille, audiotape, etc. by mail.

- E-Mail: crcl@dhs.gov. The subject line should include “LEP Docket DHS-2009-0032.”
- TTY: 202-401-0470, Toll Free TTY: 1-866-644-8361. TTY callers may also contact us through the Federal Relay Service TTY at (800) 877-8339. Other Federal Relay Service options are available at www.gsa.gov/fedrelay
- Facsimile: (202) 401-4708 (not a toll-free number).

Instructions for filing comments: All submissions received must include the agency name and DHS docket number DHS-2009-0032. All comments received (including any personal information provided) will be posted without change to <http://www.regulations.gov>.

Reviewing comments: Public comments may be viewed online at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Rebekah Tosado, Senior Advisor to the Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties, Department of Homeland Security, 245 Murray Lane, SW, Building 410, Washington, DC 20528, Mail Stop 0190. Toll free: 1-866-644-8360 or TTY 1-866-644-8361. Local: 202-401-1474 or TTY: 202-401-0470.

SUPPLEMENTARY INFORMATION:

Executive Order 13166 directs each Federal agency that extends assistance subject to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., to

publish guidance for its respective recipients clarifying that obligation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 FR 50121 (August 16, 2000). Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed by the Department of Justice (DOJ). See Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency, 65 FR 50121 (August 16, 2000) (DOJ LEP Guidance).

In this document, the Department of Homeland Security (DHS) is proposing to adopt guidance that adheres to the Government-wide compliance standards and framework detailed in the model DOJ LEP Guidance, as modified. 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 Departments of Commerce, Education, Health and Human Services, Energy, Housing and Urban Development, Labor, Interior, State Transportation, Treasury, and Veterans Affairs, and the Environmental Protection Agency, have issued similar guidance. DHS specifically solicits comments on the nature, scope, and appropriateness of the DHS-specific examples set out in this guidance explaining and/or highlighting how those Federal-wide guidelines are applicable to recipients of DHS financial assistance.

This guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. This guidance is published in the **Federal Register** pursuant to the instructions in Executive Order 13166. DHS, however, is seeking public comment as a matter of discretion.

This Guidance is applicable to all LEP persons seeking services and shall be

interpreted to be consistent with Executive Order 13404, Task Force on New Americans (June 7, 2006).

I. Introduction.

Most individuals living in the United States read, write, speak, and understand English. Many individuals, however, do not read, write, speak, or understand English as their primary language. Based on the 2000 census, over 28 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. The 2000 census indicates that 28.1 percent of all Spanish-speakers, 28.2 percent of all Chinese-speakers, and 32.3 percent of all Vietnamese-speakers reported that they spoke English “not well” or “not at all.” More recent data from the 2008 American Community Survey estimates that 24.4 million individuals in America, or 8.6 percent of the population 5 years and older, speak English less than “very well.”

For LEP individuals, language can be a barrier to accessing important benefits or services, understanding and exercising important rights, providing timely and critical information to first responders in times of emergency, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. 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.¹

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 DHS Title VI regulations against national origin discrimination, 6 CFR part 21. 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.² These are the same criteria DHS uses in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

Consistency among agencies of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and

¹ DHS 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 population it encounters, and its prior experience in providing language services in the community it serves.

² 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.

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. 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 individuals 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, DHS plans to continue to work with the Department of Justice (DOJ) and recipients to explore how language assistance measures, resources, and activities can effectively be shared or otherwise made available to recipients. An interagency working group on LEP has developed a website, <http://www.lep.gov>, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

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.

DHS regulations promulgated pursuant to section 602 forbid recipients from “utiliz[ing] 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.” 6 CFR 21.5(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, 45 CFR 80.3(b)(2), which is similar to the DHS Title VI interim regulation, 6 CFR part 21, 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, the President signed Executive Order 13166, 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.”

At the same time, DOJ provided further guidance 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, the Supreme Court decided that Title VI does not create a private right of action to enforce regulations promulgated under Section 602. Alexander v. Sandoval, 532 U.S. 275, 293 (2001). Federal agencies raised questions regarding the requirements of the Executive Order, in light of the Supreme Court’s decision in Alexander v. Sandoval. On October 26, 2001, DOJ’s Assistant Attorney General for the Civil Rights Division advised agency General Counsels and civil rights directors, clarifying and reaffirming the DOJ LEP Guidance in light of Sandoval.³ The Assistant Attorney

³ The memorandum noted that some commenters 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 § 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 or, and inseparably intertwined with’ § 601 ... when § 601 permits the very behavior that the regulations forbid.”). The memorandum, however, made clear that DOJ

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.

This guidance document is published pursuant to Executive Order 13166 and reflects Assistant Attorney General’s October 26, 2001, clarifying memorandum.

III. Covered Recipients.

DHS regulations 6 CFR 21.5(b)(2) and 44 CFR 7.5(b) require all recipients of Federal financial assistance from DHS to provide meaningful access to LEP persons.⁴ Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DHS assistance include, but are not limited to:

- a. State and local fire departments;
- b. State and local police departments;
- c. State and local emergency management agencies;
- d. State and local governments, together with certain qualified private non-profit organizations, when they receive assistance pursuant to a Presidential declaration of disaster or emergency;

disagreed with the commenters’ interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. The court explicitly stated in Sandoval that it did not address the validity of those regulations or Executive Order 13166 or otherwise limits the authority and responsibility of Federal grant agencies to enforce their own implementing regulations. 532 U.S. at 279.

⁴ 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 DHS.

- e. Certain non-profit agencies that receive funding under the Emergency Food and Shelter Program;
- f. Urban areas and mass transit authorities that enhance local emergency, prevention and response agencies' ability to prepare for and respond to threats of terrorism or other emergencies;
- g. Community Emergency Response Teams (CERT), which conduct training and other activities to enhance individual, community, family, and workplace preparedness;
- h. Jails and detention facilities that house detainees of Immigration and Customs Enforcement;
- i. Coast Guard assisted boating safety programs;
- j. Entities that receive specialized training through the Federal Law Enforcement Training Center (FLETC);
- k. Intercity buses.

The Catalogue of Federal Domestic Assistance (CFDA) contains current information on DHS federal financial assistance and can be found at <http://www.cfda.gov/>. 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.⁵ For example, if DHS provides assistance to a particular division of a State emergency management agency to improve planning capabilities in that division, all

⁵ 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.

of the operations of the entire State emergency management agency – not just the particular division – are covered.

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

IV. Limited English Proficient Individual.

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

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

- a. Persons who require the aid of a local or State police or fire department, or other emergency services;
- b. Persons who seek assistance at airports that receive TSA funds;
- c. Persons who are applying for assistance under a FEMA or state disaster relief program;
- d. Persons who seek to enroll in a safe boating course that is offered by a state receiving funds;
- e. Persons who use mass transit services such as buses or subways that receive DHS financial assistance;

f. 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, agencies, and community members seeking to participate in crime prevention and awareness activities; or

g. Parents and family members of LEP individuals.

V. Recipient Determination of 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 non-profits.

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. DHS recipients should apply the 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 fire station serves a large LEP population, the appropriate service area is most likely the area served by that station, and not the entire population served by the agency. 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. 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 access or encounter the recipients' services.

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.⁶ 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 if language services were 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

⁶ 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.

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 a commercially available telephonic interpretation service 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 with individual disaster applicants or to provide fire safety information to residents of a predominantly LEP neighborhood differ, for example, from those to provide recreational programming on the part of a municipal parks department receiving disaster aid. 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 the requirement to complete an application to receive certain State disaster assistance benefits, 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 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 may, for example, help reduce costs.⁷ 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

⁷ Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

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 and written.

Oral interpretation either in person or via telephone interpretation service (hereinafter “interpretation”): 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 (hereinafter “translation”): 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 fire department in a largely Hispanic community may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many fire 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 firehouse, 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, namely, 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.

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;⁸ 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 a counselor, legal advisor, or other roles (particularly during the assistance application process, in administrative hearings, or public safety contexts).

Some recipients, such as certain private nonprofit organizations or administrative courts, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, such as in the context of application for disaster or food and shelter assistance or administrative

⁸ 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 disaster-specific, nautical or legal terms, for example, 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.

hearings, the use of certified interpreters is strongly encouraged.⁹ Where the process is 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 the 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 at a State-operated emergency assistance center, for example, must be extraordinarily high, while the quality and accuracy of language services in recreational programs sponsored by a DHS recipient 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 DHS recipients providing evacuation coordination, food and shelter medical care, and fire and rescue 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 services. 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

⁹ 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.

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 and other positions involving potential contact with LEP individuals, such as 911 operators, law enforcement officers, fire safety educators, or application takers, 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. 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.
- 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 such on-site interpreters in order to assure 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 interpreters in a particular language. 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 conferencing 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 crucial 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, or Other Applicants, Detainees, or Inmates 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, acquaintance, or other applicant), 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, fellow inmate or detainee, or other applicant 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 mission-related interests in accurate interpretation. In many circumstances, family members (especially children), friends, inmates, detainees, or other applicants, 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, acquaintance, or member of the local community.¹⁰ 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 greater assistance than the LEP person from a locally administered mitigation program. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For some

¹⁰ 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.

DHS recipients, such as those providing disaster assistance, performing law enforcement functions, this is particularly true in processing applications; conducting administrative hearings, managing 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 fire service officers investigate an alleged case of arson. 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, inmates, detainees, or other applicants 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 firehouse offered to the general 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, 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 the recipient at no cost would provide a competent interpreter.

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:

- Complaint forms.
- Intake forms with the potential for important consequences.

- Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings.
- Notices of disciplinary action.
- Notices advising LEP persons of free language assistance.
- Procedural guidebooks.
- 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 recreational programs should not generally be considered vital, whereas applications for disaster assistance 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 costs 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 provided by a fact-intensive, four-factor analysis.

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.

Pursuant to the safe harbor provisions, the following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

a. The DHS 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 the above, 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, homeless shelters, correctional facilities and detention centers should, where appropriate, ensure that rules have been explained to LEP persons in the

language(s) they understand prior to taking action against them that would deprive them of certain rights.

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.¹¹ 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.”

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 material results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.¹² Community organizations may be able to help consider

¹¹ 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.

¹² For instance, there may be languages which do not have an appropriate direct translation of some legal or program-specific 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.

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 no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., information or documents of DHS recipients regarding certain law enforcement, health, and safety services and certain legal rights). 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 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 DHS 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. 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 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.lep.gov>. 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; and
- 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 knows about LEP policies and procedures; and
- Staff having contact with the public, or with individuals in the 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. It is important to ensure that all employees in public contact positions, as well as employees who potentially interact with individuals in the 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 need 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 at 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 assistance, such as disaster, medical, or other critical assistance from DHS 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.¹³
- 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.

¹³ The Social Security Administration has made such signs available at <http://www.ssa.gov/multilanguage/langlist1.htm>. These signs could, for example, be modified for recipient use.

- 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 the following:

- 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.

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 DHS 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 DHS will investigate when 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, DHS will inform the recipient in writing of this determination, including the basis for the determination. DHS uses voluntary mediation to resolve most complaints. However, if a complaint is fully investigated and results in a finding of noncompliance, DHS 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, DHS must secure compliance through the termination of Federal assistance after the DHS recipients have been given an opportunity for an administrative hearing and/or by referring the matter to the Department of Justice Civil Rights Division to seek injunctive relief or other enforcement proceedings. DHS engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DHS 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, DHS'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, DHS 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, DHS 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, DHS 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.

This Guidance is issued for recipients that receive federal funds from the Department of Homeland Security. There may be cases in which entities receive federal funds from other federal agencies as well as from DHS. Entities that receive funding from other federal agencies may also look to the LEP guidance issued by those agencies, which are consistent with the DHS Guidance. Other federal agencies that have issued similar guidance with regard to limited English proficient persons include the Departments of Commerce, Education, Health and Human Services, Energy, Housing and Urban Development, Labor, Interior, State Transportation, Treasury, and Veterans Affairs, and the Environmental Protection Agency. An up-to-date listing of federal agencies that have published LEP Guidance can be found at <http://www.lep.gov/>. The Department of Justice LEP Recipient Guidance in particular provides many helpful examples of how to apply the four-factor analysis when making decisions about the need for translating documents, obtaining interpreter, and hiring bilingual staff. See 65 FR 50123 Part IX (August 16, 2000). These examples are incorporated by reference herein.

As explained in this Guidance, all recipients of federal financial assistance from DHS must meet the obligation to take reasonable steps to ensure access to programs and activities by LEP persons. This Guidance clarifies the Title VI regulatory obligation to address the language needs of LEP persons, in appropriate circumstances and in a reasonable manner by applying the four-factor analysis. In the context of emergency planning and response, health and safety, immigration and other detention, and law enforcement operations, where the potential for greater consequences are at issue, DHS will look for strong evidence that recipients have taken reasonable steps to ensure access

to services to LEP persons. The lessons learned from natural disasters, for example, underscore the need to provide meaningful access to LEP persons who are otherwise eligible in all aspects of federally assisted programs that serve the public.

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