

the Department of Justice in Washington, DC, by regular, first-class mail through the U.S. Postal Service, but not sent by additional means such as overnight or facsimile transmission, have not been received. This notice, therefore, is intended to advise any such commenters that their comments on the Proposed Consent Decree have not been received to date. Any previously submitted comments thus should be re-submitted by January 31, 2002, addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Howard Bunch, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th St., Kansas City, Kansas 66101 and/or (2) by facsimile to (202) 353-0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States v. IBP*, DOJ Ref. #90-11-3-06517/1. Any such re-submitted comments will be evaluated and responded to prior to any final decision by the United States to move to enter the Consent Decree.

**Robert E. Maher,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## DEPARTMENT OF JUSTICE

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

**AGENCY:** United States Department of Justice.

**ACTION:** Policy guidance document.

**SUMMARY:** The United States Department of Justice (DOJ) is republishing for additional public comment policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

**DATES:** This guidance was effective January 19, 2001. Comments must be submitted on or before February 19, 2002. DOJ will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

**ADDRESSES:** Interested persons should submit written comments to Ms. Merrily

Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530; Comments may also be submitted by facsimile at 202-307-0595.

**FOR FURTHER INFORMATION CONTACT:**

Christine Stoneman or Sebastian Aloat at the Civil Rights Division, 950 Pennsylvania Avenue, N.W., Washington, DC 20530. Telephone 202-307-2222; TDD: 202-307-2678. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

**SUPPLEMENTARY INFORMATION:** Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the U.S. Department of Justice (DOJ) ("recipients"), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates DOJ's longstanding position that in order to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

This document was originally published on January 16, 2001. See 66 FR 3834. The document was based on the policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." 65 FR 50123 (August 16, 2000).

On October 26, 2001 and January 11, 2002, the Assistant Attorney General for the Civil Rights Division issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. The Department of Justice is presently reviewing its original January 16, 2001 publication in light of these clarifications to determine whether there is a need to clarify or modify the January 16th guidance. In furtherance of

those memoranda, the Department of Justice is republishing its guidance for the purpose of obtaining additional public comment.

The policy guidance includes appendices. Appendix A provides examples of how this guidance would apply to DOJ recipients. Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance. The text of the complete guidance document, including appendices, appears below.

Dated: January 15, 2002.

**Ralph F. Boyd, Jr.,**

*Assistant Attorney General, Civil Rights Division.*

## I. Introduction

For most people living in the United States, English is their native language or they have learned to read, speak, and understand English. There are others for whom English is not their primary language. If they also have limited ability to read, speak, or understand English, then these people are limited English proficient, or "LEP." For them, language can be a barrier to accessing benefits or services, understanding and exercising important rights, or understanding other information provided by federally funded programs and activities.

This guidance ("Guidance") is based on Title VI of the Civil Rights Act of 1964 and regulations that implement Title VI. Title VI was intended to eliminate barriers based on race, color, and national origin in federally assisted programs or activities. In certain circumstances, failing to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities or imposing additional burdens on LEP persons is national origin discrimination. Therefore, recipients must take reasonable steps to ensure meaningful access for LEP persons.

In August, 2000, the President signed Executive Order 13166. Under that order, every federal agency that provides financial assistance to non-federal entities must create guidance on how their recipients can provide meaningful access to LEP persons and therefore comply with the longstanding Title VI law and its regulations. DOJ is issuing this Guidance to comply with the Executive Order. The guidance document is new, but Title VI's meaningful access requirement is not.

This Guidance should help recipients of Department of Justice (DOJ) financial assistance understand how to comply with the law. Recipients have a great

deal of flexibility in determining how to comply with the meaningful access requirement, and are not required to use all of the suggested methods and options listed. As always, recipients also have the freedom to and are encouraged to go beyond mere compliance and create model programs for LEP access.

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOJ assistance include, for example:

- police and sheriffs' departments
- departments of corrections
- courts
- certain nonprofit agencies with law enforcement missions

When federal funds are passed through from one recipient to a subrecipient, the subrecipient is also covered by Title VI.

The LEP persons that are eligible to be served or encountered by these recipients include, but are not limited to:

- LEP persons who are in the custody of the recipient, including juveniles, detainees, wards, and inmates.
- LEP persons subject to or serviced by law enforcement activities, including, for example, suspects, violators, witnesses, victims, and community members.
- LEP persons who are not in custody but are under conditions of parole or probation.
- LEP persons who encounter the court system.
- Parents and family members of the above.

Title VI applies to the entire program or activity of a recipient of DOJ assistance. That means that Title VI covers all parts of a recipient's operations. This is true even if only one part of the agency uses the federal assistance.

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

#### *Technical Assistance*

DOJ plans to continue to provide assistance and guidance in this important area. For example, DOJ plans to work with representatives of law enforcement, corrections, courts, and LEP persons to identify model plans and examples of best practices and share those with recipients.

#### *DOJ Programs and Activities*

At the same time as federal agencies are creating recipient guidance,

Executive Order 13166 requires that they create LEP plans for their own agencies that are consistent with the standards for recipients. Therefore, DOJ will apply the standards in this guidance to its own activities.<sup>1</sup>

#### *Appendices*

There are two appendices to this guidance. Appendix A provides examples of how this guidance would apply to DOJ recipients.

Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance.

Both of these appendices should be considered part of this guidance.

#### *State or Local "English-Only" Laws*

State or local "English-only" laws do not change the fact that recipients cannot discriminate in violation of Title VI. Entities in states and localities with "English-only" laws do not have to accept federal funding. However, if they do, they still have to comply with Title VI, including its prohibition against national origin discrimination by recipients.

### **II. How Recipients Should Decide What Language Services They Should Provide**

As mentioned in Executive Order 13166 and the DOJ Guidance issued in August, 2000, recipients should apply a four-factor test to decide what steps to take to provide meaningful access to their programs and activities for LEP persons. Once the recipient has chosen the services it will provide, the recipient should prepare a written policy on language assistance for LEP persons (an "LEP policy").

#### *A. The Four-Factor Analysis*

Recipients must take reasonable steps to ensure meaningful access to their services, programs, and activities. What "reasonable steps to ensure meaningful access" means depends on a number of factors. DOJ recipients should apply the following four factors to the various kinds of contacts that they have with the public to decide what reasonable steps they should take to ensure meaningful access for LEP persons. The results of this balancing test allow a recipient to decide what documents to translate, when oral translation is necessary, and whether language services must be made immediately available.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures

are needed for its different types of programs or activities. 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 require more in the way of language assistance.

#### **(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 eligible to be served or encountered by the recipient in carrying out its operations. Recipients should look to available data, such as the latest census data for the area served, data from school systems and from community organizations, and data collected by the recipient.<sup>2</sup> The greater the number or proportion of LEP persons, the more likely language services are needed.

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

Recipients should assess, as accurately as they can, the frequency with which they have or should have contact with LEP language groups. The more frequent the contact, the more likely that language services are needed. The steps that are reasonable for a recipient that serves one LEP person a year may be very different than those expected from a recipient that serves several LEP persons each day. But even those that serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available language lines 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.

<sup>2</sup> The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that census data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who do not speak or understand English very 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 census data, it is important to focus in on the languages spoken by those who are not proficient in English.

<sup>1</sup> DOJ has created, pursuant to the Executive Order, a separate plan for providing meaningful access to LEP persons in DOJ conducted activities.

### (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. For example, the obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ from those to provide bicycle safety courses or recreational programming. A recipient needs to determine if a denial or delay of access to services or information could have serious implications for the LEP individual. In addition, a decision by a federal, state, or local entity to make an activity compulsory, such as particular educational programs in a correctional facility or the communication of *Miranda* rights, serves as strong evidence of the program's importance.

### (4) The Resources Available to the Recipient

A recipient's level of resources 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. Resource issues can sometimes be minimized by technological advances and sharing of resources and translations. Large entities should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance.

Applying the four factors, for example, a small police department with limited resources encountering very few LEP people has far fewer language assistance responsibilities than larger departments with more resources and large populations of LEP individuals.<sup>3</sup>

<sup>3</sup> As another example, under the four-part analysis, Title VI does not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all official state statutes or notices of rulemaking. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of official documents. These criteria, however, may result in translation obligations where, for instance, laws are otherwise posted or summarized in waiting rooms, summarized or set forth in forms, applications, or vital outreach material, or special populations are provided with rules and regulations they must follow (e.g., in prisons, see Appendix A).

### B. Selecting Language Assistance Services

After applying the four-factor analysis, recipients have two main ways to provide language services, where needed: oral interpretation and written translation. In deciding how to provide these services, recipients should consider the following information.

#### (1) Oral Language Services

Where oral interpretation is needed, recipients should develop procedures for providing competent interpreters in a timely manner. To do so, the recipient should consider some or all of the following options:

*Hiring Bilingual Staff for public contact positions.* When particular languages are encountered often, hiring bilingual staff offers one of the best options. Recipients can, for example, fill public contact positions 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 translate documents, they must be competent in the skill of interpreting. 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.

*Contracting for Interpreters.* Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill.

*Using Community Volunteers.* Recipient-coordinated use of community volunteers may provide a cost-effective way to provide language services. It is often best to use community volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, must be competent in the skill of interpreting. It is best to make formal arrangements with volunteers. That way, the service is available more regularly and volunteers understand applicable confidentiality and impartiality rules.

*Using Telephone Interpreter Lines.* Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. Although they are useful in many situations, it is important to ensure that such services have interpreters who are able to

interpret any legal terms or terms that are specific to a particular program when such terms may come up in the conversation. Also, sometimes it may be necessary to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

*Competence of Interpreters.* When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the above options they use. 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.

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

- demonstrate proficiency in both English and in the other language;
- are bound to confidentiality and impartiality to the same extent the recipient employee they are interpreting for is so bound and/or to the extent their position requires;
- have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity; and
- demonstrate the ability to convey information in both languages, accurately;

Some recipients, such as courts, may have additional self-imposed requirements for interpreters.

*Inappropriate Use of Family Members, Friends, Other Inmates, or Detainees.* As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.<sup>4</sup> If the LEP

<sup>4</sup> While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community.

person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. In emergency situations that are not reasonably foreseeable, use of interpreters not provided by the recipient may be necessary. Proper recipient planning and implementation can help avoid such situations.

## (2) Translation of Written Materials

An effective LEP policy ensures that vital written materials are translated into the language of each regularly encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

The term "vital documents" includes, for example:

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

Whether or not a document is "vital" also depends upon the importance of the program, information, encounter, or service involved. For instance, applications for bicycle safety courses would not generally be considered vital, whereas applications for drug and alcohol counseling in prison would generally be considered vital.

Many large documents have both vital and non-vital information in them. Written translation of only the vital information is usually sufficient.

It sometimes may be hard to tell the difference between vital and non-vital documents. This may be especially true for outreach materials like brochures or other information on rights and services. In order to have meaningful access, LEP persons need to be aware of those rights and services. Of course, it would be

Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

impossible to translate every piece of outreach material into every language. However, sometimes lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, recipients 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.

Recent technological advances have made it easier for recipients to store and share translated documents. At the same time, DOJ recognizes that recipients in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens and sometimes over 100 different languages. It would be too burdensome to demand that recipients in these circumstances translate all written materials into all of those languages. 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 most frequently encountered languages, and to set benchmarks for continued translations over time. As a result, the extent of the recipient's obligation to provide written translations of documents will be determined on a case-by-case basis, looking at the totality of the circumstances.

One way for a recipient to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the DOJ recipient to meet the guidelines outlined in paragraphs (a) and (b) below.

Paragraphs (a) and (b) outline the circumstances that 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, this will be considered strong evidence of compliance, in the area of written translations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) will not necessarily mean non-compliance with Title VI. In such circumstances, DOJ reviews the totality of the circumstances to determine the recipient's obligation to provide written

materials in languages other than English.

*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, DOJ will not find the translation of written materials necessary for compliance with Title VI. Other ways of providing meaningful access, such as effective oral interpretation of vital documents, would be acceptable under such circumstances.

*Safe Harbor.* DOJ will consider a recipient to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

(a) The DOJ recipient provides written translations of, at a minimum, 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 vital 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 translation 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. For example, correctional facilities should ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

The term "persons eligible to be served or likely to be affected or encountered" as used in paragraph (a) relates to the issue of identifying the DOJ recipient's service area for purposes of meeting its Title VI obligation. Because of the wide variety of recipient programs and activities, there is no "one size fits all" definition of what constitutes "persons eligible to be served or likely to be affected or encountered." Generally, the term means those persons who are in the geographic area that has been approved by a federal grant agency as the service area and who are either eligible for the recipient's services or otherwise might be affected or encountered by the recipient.

Where no service area has been approved, DOJ will consider the relevant service area as that 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 of determining the relevant service area. When considering the number or proportion of LEP individuals in a service area, recipients need to consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Just as with oral interpreters, translators of written documents must be competent. It is a good idea to build in a "check" on the translation. For instance, an independent translator could check the first translation. Or, one translator could translate the document, and a second, independent translator could translate it back into English. This is called "back translation."

Translators should understand the expected reading level of the audience. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version. Community organizations may be able to help consider whether a document is written at a good level for the audience.

Finally, 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, 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.

### *C. Elements of Effective Written Policy on Language Assistance for LEP Persons ("LEP Policy")*

After completing the four-factor analysis and deciding what language assistance services are needed, the recipient should include those in a written LEP policy. The key to providing meaningful access is accurate and effective communication between the DOJ recipient and the LEP individual.

Although DOJ recipients have a great deal of flexibility in designing their policies, effective programs usually have five elements, discussed below. Failure to take all of the steps outlined in this section does not necessarily mean that a recipient has violated the law. Just as with all Title VI complaints, DOJ assesses each complaint on a case-by-case basis. DOJ applies the four

factors in deciding whether the steps taken by a recipient provide meaningful access.

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

As noted above, the first two parts of the four-factor analysis of need include an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. In addition, when developing a plan, recipients should develop a process for employees to identify the language of LEP persons encountered so that language services can be provided.

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. When records are normally kept of past interactions with members of the public, the language of the LEP person should 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 application of the first two factors of the four-factor analysis.

#### (2) Language Assistance Measures

The LEP policy should include information about the ways in which language assistance will be provided. For instance, it should include information on at least the following:

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

#### (3) Training Staff

Staff need to know that they must provide meaningful access to information and services for LEP persons. Recipients should provide training to ensure that:

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

It is important that this training be part of the orientation for new employees and that all employees in

public contact positions (or having contact with those in a recipient's custody) be properly trained. Recipients have flexibility in deciding the way the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP policy.

#### (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 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, the signs could state that LEP persons have a right to free language assistance. The signs should be translated into the most common languages encountered. They should explain how to get the language help.
- 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 right to language services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio stations about the available language assistance services and how to get them.

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

Recipients should always consider whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they should make any needed changes. They should then provide notice of any changes in services to the LEP public and to employees. In addition, DOJ

recipients should evaluate their entire language policy at least every three years. One way to evaluate the LEP policy is to seek feedback from the community.

In their reviews, recipients should assess changes in:

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

### III. Application to Specific Types of Recipients

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

#### A. State and Local Law Enforcement

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

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

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

#### B. Departments of Corrections

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

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

#### C. Other Types of Recipients

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

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

#### Title VI Compliance Procedures

DOJ recipients have a great deal of flexibility in deciding how to comply with these obligations. DOJ will continue to use the same process for handling complaints based on LEP as it uses in any other Title VI complaint. That process emphasizes voluntary compliance. (See Appendix B for further information). In addition, DOJ will use this Guidance, including the appendices, in conducting investigations or reviews of a recipient's language services.

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

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

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

#### A. State and Local Law Enforcement

For the vast majority of the public, exposure to law enforcement begins and ends with interactions with law enforcement personnel discharging their duties while on patrol, responding to a

request for services, talking to witnesses, or conducting community outreach activities. For a much smaller number, that exposure includes a visit to a station house. And for an important but even smaller number, that visit to the station house results in entry into the criminal justice, judicial, or juvenile justice systems.

The common thread running through these and other interactions between the public and law enforcement is the exchange of information. LEP individuals' encounters with police and sheriffs' departments are covered by Title VI if those departments receive federal financial assistance. This Guidance focuses on the requirements under Title VI to communicate effectively with persons who are LEP to ensure that they have meaningful access to the system, including, for example, understanding rights and accessing police assistance.

Many police and sheriffs' departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments have available printed *Miranda* rights in languages other than English.<sup>1</sup> In areas where significant LEP populations reside, law enforcement officials already may have forms and notices in languages other than English or they may employ bilingual law enforcement officers, intake personnel, counselors, and support staff. These experiences can form a strong basis for assessing need and implementing a plan in compliance with Title VI and its implementing regulations.

#### 1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the law enforcement service under review and an appreciation of the nature and particularized needs of the LEP population served. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations. Knowledge of local conditions and community needs becomes critical in determining the type and level of language services needed. The more predictable the need for language

<sup>1</sup> DOJ's own Federal Bureau of Investigation makes written versions of those rights available in several different languages.

services, the greater the responsibility under the four-factor analysis.

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

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

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

*b. Target Audiences.* For most law enforcement services, the target audience is defined in geographic rather than programmatic terms. However,

some services may be targeted to reach a particular audience (e.g., elementary school children, elderly, residents of high crime areas, minority communities, small business owners/operators, etc.). Also, within the larger geographic area covered by a police department, certain precincts or portions of precincts may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the district is low, the frequency of contact may be foreseeably higher for certain areas or programs. Thus, the second factor—frequency of contact—should be considered in light of the specific program or the geographic area being served. The police department could then focus language services where they are most likely to be needed.

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

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

of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in such activities as well.

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

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

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Proper recipient planning and implementation can help avoid such situations.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters in custodial interrogations



be highly competent to translate legal and other law enforcement concepts, as well as be extremely accurate in their interpretation. It may be sufficient, however, for a desk clerk who is bilingual but not skilled at interpreting to help an LEP person figure out to whom he or she needs to talk about setting up a neighborhood watch.

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

While all police activities are important, the Title VI analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular law enforcement activity involved. In addition, because of the "reasonableness" standard, and frequency of contact and resources factors, the obligation to provide language services increases where the importance of the activity is greater, the law enforcement activity is more focused, and/or the provision of language services is more "within the control" of the police department.

Under this framework, then, critical areas for language assistance include: 911 calls, custodial interrogation, and health and safety issues for persons within the control of the police. These activities should be considered the most important under the four-factor analysis. Systems for receiving and investigating complaints from the public are important; further, complaint forms and investigations/hearings are directly within the control of the department. Thus, forms, hearings, and other complaint procedures should be made accessible to LEP individuals. Often very important, but less focused and controlled are: routine patrol activities, receiving non-emergency information regarding potential crimes, and ticketing. In these situations, the LEP plan should provide for a great deal of flexibility while at the same time ensuring that, wherever reasonable, language resources are available to officers and the LEP persons they encounter and that, when not available, the consequences to the LEP individuals are minimized. Community outreach activities are hard to categorize, but generally they do not rise to the same level of importance as the other activities listed. However, with the importance of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in these activities as well. Police departments have a great deal of flexibility in determining how to best address their outreach to LEP populations.

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

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

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

*b. Enforcement Stops Short of Arrest and Field Investigations.* Field enforcement includes, for example, traffic stops, pedestrian stops, serving warrants and restraining orders, Terry stops, and crowd/traffic control. Because of the diffuse nature of these activities, the reasonableness standard allows for great flexibility in providing meaningful access, for example, in routine field investigations and traffic stops. Nevertheless, the ability of law enforcement personnel to discharge fully and effectively its enforcement and

crime interdiction mission requires the ability to communicate instructions, commands, and notices. For example, a routine traffic stop can become a difficult situation if an officer is unable to communicate effectively the reason for the stop, the need for identifying or other information, and the meaning of any written citation. Requests for consent to search are meaningless if the request is not understood. Similarly, crowd control commands will be wholly ineffective where significant numbers of people in a crowd cannot understand the meaning of law enforcement commands.

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

*Example:* A police department serves a jurisdiction with a significant number of LEP individuals residing in one or more precincts, and it is routinely asked to provide crowd control services at community events or demonstrations in those precincts. Consistent with the requirements of the four-factor analysis, the police department should assess how it will discharge its crowd control duties in a language-appropriate manner. Among the possible approaches are plans to assign bilingual officers, basic language training of all officers in common law enforcement commands, the use of devices that provide audio commands in the predictable languages, or the distribution of translated written materials for use by officers.

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

*Example:* A police department in a moderately large city includes a precinct that serves an area which includes significant LEP populations whose native languages are Spanish, Korean, and Tagalog. Law



enforcement officials could reasonably consider the adoption of a policy assigning bilingual investigative officers to the precinct and/or creating a resource list of department employees competent to interpret and ready to assist officers by phone or radio. This could be combined with developing language-appropriate written materials, such as consents to searches or statements of rights, for use by its officers where LEP individuals are literate in their languages. In certain circumstances, it may also be helpful to have telephone language line access where other options are not successful and safety and availability of phone access permit.

*c. Custodial Interrogations.* Custodial interrogations of unrepresented LEP individuals trigger constitutional rights that this Guidance is not designed to address. Given the importance of being able to communicate effectively under such circumstances, recipients' ability to anticipate and plan for a need for language services, and the control over LEP and other individuals asserted by recipients in custodial interrogation situations, law enforcement recipients must ensure competent and free language services for LEP individuals in such situations. A clear written policy, understood and easily accessible by all officers, will assist the law enforcement agency in complying with this obligation. In formulating a written policy for effectively communicating with LEP individuals, agencies should consider whether law enforcement personnel themselves ought to serve as interpreters during custodial interrogation, or whether a qualified independent interpreter would be more appropriate.<sup>2</sup>

*Example:* A large city police department institutes an LEP plan that requires arresting officers to procure a qualified interpreter for any custodial interrogation, notification of rights, or taking of a statement, and any communication by an LEP individual in response to a law enforcement officer. When considering whether an interpreter is qualified, the LEP policy discourages use of police officers as interpreters in interrogations except under circumstances in which the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview. In determining whether an interpreter is qualified, the jurisdiction uses the analysis noted above. Such a plan is consistent with Title VI responsibilities.

*d. Intake/Detention.* State or local law enforcement agencies that arrest LEP persons should consider the inherent communication impediments to gathering information from the LEP arrestee through an intake or booking

process. Aside from the basic information, such as the LEP arrestee's name and address, law enforcement agencies should evaluate their ability to communicate with the LEP arrestee about his or her medical condition. Because medical screening questions are commonly used to elicit information on the arrestee's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, it is essential that law enforcement agencies have the ability to communicate effectively with an LEP arrestee. In jurisdictions with few bilingual officers or in situations where the LEP person speaks a language not encountered very frequently, language lines may provide the most cost effective and efficient method of communication.

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

*Example:* A police department initiates a program of domestic counseling in an effort to reduce the number or intensity of domestic violence interactions. A review of domestic violence records in the city reveals that 25% of all domestic violence responses are to minority areas and 30% of those responses involve interactions with one or more LEP persons, most of whom speak the same language. The department should take reasonable steps to make the counseling accessible to LEP individuals. In this case, the department successfully sought bilingual counselors (for whom they provided training in translation) for some of the counseling positions. In addition, the department has an agreement with a local university in which bilingual social work majors who are competent in interpreting, as well as language majors who are trained by the department in basic domestic violence sensitivity and counseling, are used as interpreters when the in-house bilingual staff cannot cover the need. Interpreters must sign a confidentiality agreement with the department. This would be consistent with Title VI responsibilities.

*Example:* A large city has initiated an outreach program designed to address a problem of robberies of Vietnamese homes by Vietnamese gangs. One strategy is to work with community groups and banks and others to help allay traditional fears in the community of putting money and other valuables in banks. Because a large portion

of the target audience is Vietnamese speaking and LEP, the department contracts with a bilingual community liaison competent in the skill of translating to help with outreach activities. This would be consistent with Title VI responsibilities.

## B. Departments of Corrections

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

### 1. General Principles

Departments of corrections also have a wide variety of options in providing translation services appropriate to the particular situation. Bilingual staff competent in translating, in person or by phone, pose one option. Additionally, particular prisons may have agreements with local colleges and universities, interpreter services, and/or community organizations to provide paid or volunteer competent translators under agreements of confidentiality and impartiality. Language lines may offer a prudent oral interpreting option for prisons with very few and/or infrequent prisoners in a particular language group. Reliance on fellow prisoners is generally not appropriate. Reliance on fellow prisoners should only be an option in unforeseeable emergency circumstances; when the LEP inmate signs a waiver that is in his/her language and in a form designed for him/her to understand; or where the topic of communication is not sensitive, confidential, important, or technical in nature and the prisoner is competent in the skill of interpreting.

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

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

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

entity with which it contracted to provide the services itself.

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

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

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

*b. Intake/Orientation.* Intake/Orientation plays a critical role not merely in the system's identification of LEP prisoners, but in providing those prisoners with fundamental information about their obligations to comply with system regulations, participate in education and training, receive appropriate medical treatment, and enjoy recreation. Even if only one prisoner doesn't understand English, that prisoner should be given the opportunity to be informed of the rules, obligations, and opportunities in a manner designed effectively to communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf prisoners, which is most frequently accomplished through sign language interpreters or written materials. Not every prison will use the same method for providing language assistance. Prisons with large numbers of Spanish-speaking LEP prisoners, for example, will likely need to translate written rules, notices, and other important orientation material into Spanish, with oral instructions, whereas prisons with very few such inmates may choose to

rely upon a language line or qualified community volunteers to assist.

*Example:* The department of corrections in a state with a 5% Haitian Creole-speaking LEP corrections population and an 8% Spanish-speaking LEP population receives federal financial assistance to expand one of its prisons. The department of corrections has developed an intake video in Haitian Creole and another in Spanish for all of the prisons within the department to use when orienting new prisoners who are LEP and speak one of those languages. In addition, the department provides inmates with an opportunity to ask questions and discuss intake information through either bilingual staff who are competent in interpreting who are present at the orientation or who are patched in by phone to act as interpreters. The department also has an agreement whereby some of its prisons house a small number of INS detainees. For those detainees or other inmates who are LEP and do not speak Haitian Creole or Spanish, the department has created a list of sources for interpretation, including department staff, contract interpreters, university resources, and a language line. Each person receives at least an oral explanation of the rights, rules, and opportunities. This orientation plan would be considered consistent with Title VI.

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

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

Health care services are obviously extremely important. LEP individuals must be provided with access to those services. How that access is provided depends upon the number or proportion of LEP individuals, the frequency of contact with those LEP individuals, and the resources available to the recipient. If, for instance, a prison serves a high proportion of LEP individuals who speak Spanish, then the prison health care provider should have available qualified bilingual medical staff or interpreters versed in medical terms. If the population of LEP individuals is low, then the prison may choose instead, for example, to rely on a local community volunteer program that

provides qualified interpreters through a university. Due to the private nature of medical situations, only in unpredictable emergency situations or in non-emergency cases where the inmate has waived rights to a non-inmate interpreter would the use of other bilingual inmates be appropriate.

*e. Participation Affecting Length of Sentence.* If a prisoner's LEP status makes him/her unable to participate in a particular program, such a failure to participate cannot be used to adversely impact the length of stay or significantly affect the conditions of imprisonment. Prisons have options in how to apply this standard. For instance, prisons could: (1) make the program accessible to the LEP inmate; or (2) waive the requirement.

*Example:* State law provides that otherwise eligible prisoners may receive early release if they take and pass an alcohol counseling program. Given the importance of early release, LEP prisoners must be provided access to this prerequisite in some fashion. How that access is provided depends on the three factors other than importance. If, for example, there are many LEP prisoners speaking a particular language in the prison system, the class could be provided in that language for those inmates. If there were far fewer LEP prisoners speaking a particular language, the prison will still need to ensure access to this prerequisite because of the importance of early release opportunities. Options include, for example, use of bilingual teachers, contract interpreters, or community volunteers to interpret during the class, reliance on videos or written explanations in a language the inmate understands, and/or modification of the requirements of the class to meet the LEP individual's ability to understand and communicate. Another possible option would be to waive the requirement for the LEP prisoners and allow early release without this prerequisite.

*f. ESL Classes.* States often mandate English-as-a-Second language (ESL) classes for LEP inmates. Nothing in this Guidance prohibits or requires such mandates. ESL courses often serve as an important part of a proper LEP plan in prisons because, as prisoners gain proficiency in English, fewer language services are needed. However, the fact that ESL classes are provided does not obviate the need to provide meaningful access for prisoners who are not yet English proficient.

*g. Community Corrections.* This guidance also applies to community corrections programs that receive, directly or indirectly, federal financial assistance. For them, the most frequent contact with LEP individuals will be with an offender, a victim, or the family members of either, but may also include witnesses and community members in

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

the area in which a crime was committed.

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

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

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

### C. Other Types of Recipients

DOJ provides federal financial assistance to many other types of entities and programs, including, for example, courts, juvenile justice programs, shelters for victims of domestic violence, and domestic violence prevention programs. Title VI and this Guidance apply to those entities. Examples involving some of those recipients follow:

#### 1. Courts.

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services. At a

minimum, every effort should be taken to ensure translations for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person.

Many states have created certification procedures for interpreters. This is one way of meeting the Title VI requirement that recipients ensure competency of interpreters. Courts will not, however, always be able to find a certified interpreter, particularly for less frequently encountered languages.

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

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

*Example:* Judges in a county court receiving federal financial assistance have adopted a *voir dire* for determining a witness' need for an interpreter. The *voir dire* avoids questions that could be answered with "yes" or "no." It includes questions about comfort level in English, and questions that require active responses, such as: "How did you

come to court today?" etc. The judges also ask the witness more complicated conceptual questions to determine the extent of the person's proficiency in English. Such a procedure is consistent with Title VI principles.

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

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

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

*Example:* Judges in a recipient court administer a standard oath to each interpreter and make a statement to the jury that the role of the interpreter is to interpret, verbatim, the questions posed to the witness and the witness' response. The jury should focus on the words, not the non-verbals, of the interpreter. The judges also clarify the role of the interpreter to the witness and the attorneys. These are important steps in providing meaningful access to the court for LEP individuals.

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

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

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

*Example:* Only twenty thousand people live in a rural county. The county superior court receives DOJ funds but does not have a budget comparable to that of a more-populous urbanized county in the state. Over 1000 LEP Hispanic immigrants have settled in the rural county. The urbanized county also has more than 1000 LEP Hispanic immigrants. Both counties have "how to" materials in English helping unrepresented individuals negotiate the family court processes. The urban county has taken the lead in developing Spanish-language translations of materials that would explain the process. The rural county modifies these slightly and thereby benefits from the work of the urban county. Because this type of outreach material can be vital for an unrepresented person seeking access to a vital service of the court, such a translation is consistent with Title VI obligations and falls within the safe harbor. Creative solutions, such as sharing resources across jurisdictions, can help overcome serious financial concerns in areas with few resources.

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

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

interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a language line service suffices.

## 2. Juvenile Justice Programs

DOJ provides funds to many juvenile justice programs to whom this Guidance applies.

*Example:* A county coordinator for an anti-gang program operated by a DOJ recipient has noticed that increasing numbers of gangs have formed comprised primarily of LEP individuals speaking a particular foreign language. The coordinator should assess the number of LEP youths at risk of involvement in these gangs, so that she can determine whether the program should hire a counselor who is bilingual in the particular language and English, or provide other types of language services to the LEP youths.

## 3. Domestic Violence Prevention/ Treatment Programs

Several domestic violence prevention and treatment programs receive DOJ financial assistance and thus must apply this Guidance to their programs and activities.

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

### D. Framework for Creating a Model Plan

The following is an example of a framework for a model LEP policy that is potentially useful for all recipients, but is particularly appropriate for

recipients serving and encountering significant and diverse LEP populations. The framework for a model plan incorporates a variety of options and methods for providing meaningful access to LEP persons. Recipients should consider some or all of these options for their plans:

- A formal written LEP policy;
- Identification and assessment of the number or proportion of LEP persons likely to be encountered through a review of census, school district, community agency, recipient and/or other data. The data will clearly be more within the control of some recipients than others. For instance, corrections facilities will likely be able to obtain accurate data more easily than police departments. Nevertheless, police departments should take reasonable steps to identify the language needs of the population they serve.
- Identification of the frequency of contact with LEP language groups.
- Identification of important information, services, and encounters that may require language services.
- Identification of resources available to provide services.
- Posting of signs in waiting areas and public entry points, in several languages, informing people what interpreter services are available and inviting them to identify themselves as needing language assistance.
- Informing LEP suspects, detainees, inmates and others potentially subject to criminal or disciplinary action of their right to language assistance.
- Use of "I speak" cards by those who encounter the public in-person, in order to identify the language an LEP person speaks.
- If a record is normally kept on encounters with individuals, noting the language of the LEP person in his or her record.
- Employing bilingual staff in public contact positions such as police officers, 911 operators, guards, etc.
- Contracting with interpreting services that can provide competent interpreters in a variety of languages in a timely manner.
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers.
- An arrangement with a telephone language interpreter line (these can be arranged by, for instance, contacting major telephone services and asking if they have language line services).
- Where certain LEP populations make up a significant number of the population in the recipient's target

area and are frequently encountered by the recipient, translation of vital documents into the languages of those LEP populations.

- Notice and training to staff, particularly those with public contact, of the LEP policy and how to access language services.
- Outreach to the LEP population on available language services.
- Appointing a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

As noted, these suggestions for a model plan are particularly appropriate for larger recipients encountering significant LEP populations. However, several of these steps will help smaller recipients prepare for and provide meaningful access when LEP individuals are encountered.

For smaller recipients with few LEP encounters, identifying the most important activities is critical, and determining how to provide language services in those critical areas should be a priority. This may be as simple as accessing a commercially available language line. Plans for such recipients should include monitoring and expanding services as needed.

## Appendix B—Coverage and Legal Background

### A. Who Is Covered?

Title VI applies to every entity that manages or administers a program or activity receiving direct or indirect federal financial assistance from DOJ. The term “recipients,” as used in this guidance, includes all covered entities. “Covered entities” include any state or local agency, private institution or organization, or any public or private individual that receives federal financial assistance from DOJ directly or through another DOJ recipient. Examples of covered entities include but are not limited to: police departments; sheriffs’ departments; state departments of corrections; courts; shelters for victims of domestic violence; community corrections programs; juvenile justice programs; and nonprofit organizations with law enforcement missions. DOJ operates over eighty different grant programs that provide funding to these and other different types of non-federal entities. Many of those grants are disbursed to subrecipients, which are also covered entities.

Grants are not the only type of “federal financial assistance” to which Title VI applies. Federal financial assistance includes, but is not limited to: grants and loans of federal funds; grants or donations of federal surplus or

real property; details of federal personnel; use of federal facilities; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. See 28 CFR 42.102(c). Training, equitable sharing of federally forfeited property, and use of FBI computers can also be considered federal financial assistance.<sup>1</sup>

In 1988, Congress clarified what constitutes a “program or activity” covered by Title VI when it enacted the Civil Rights Restoration Act of 1987 (CRRRA). The CRRRA provides that, in most cases, when a recipient receives federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the federal assistance. Thus, Title VI covers all parts of the recipient’s operations, even if only one part of the agency uses the federal assistance. For example, when DOJ provides federal financial assistance to a state department of corrections to improve a particular prison facility, all of the operations of the entire department of corrections—not just the particular prison—are covered by Title VI.<sup>2</sup>

The Department of Justice also has jurisdiction over enforcement of the antidiscrimination provisions of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3789d(c) (Safe Streets Act). The standards for compliance with Title VI’s prohibition against national origin discrimination also apply to the prohibition against national origin discrimination by recipients of Safe Streets Act funds.

### B. Legal Background and Authority

The Title VI requirement to provide meaningful access to LEP persons is not new. The Department’s position with regard to written language assistance is articulated in 28 CFR 42.405(d)(1), which is contained in the DOJ Coordination Regulations, 28 CFR part 42, subpart F, issued in 1976. These regulations “govern the respective obligations of Federal agencies regarding enforcement of Title VI.” 28 CFR 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974). Thus, this Guidance

<sup>1</sup> See Appendix A to Subpart C of the Department of Justice’s regulations implementing Title VI of the Civil Rights Act of 1964 (Subpart C, 28 CFR 42.101–112).

<sup>2</sup> However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI, only funds directed to the specific entity that is out of compliance—e.g., a particular prison—would be terminated. 42 U.S.C. 2000d-1.

draws its authority from Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; 28 CFR part 42, subpart C (DOJ Title VI Regulations) and the Title VI regulations of other federal agencies; 28 CFR part 42, subpart F. Further, this Guidance is issued pursuant to Executive Order 12250, reprinted at 42 U.S.C. 2000d, note; Executive Order 13166, 65 FR 50121 (August 16, 2000); and is consistent with the DOJ “Policy Guidance Document: on Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance),” reprinted at 65 FR 50123 (August 16, 2000).

For additional background on Title VI and its methods of enforcement, see the DOJ *Title VI Legal Manual* (September, 1998); DOJ’s Investigation Procedures Manual for the *Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (September 1998); DOJ Guidelines for the Enforcement of Title VI, 28 CFR 50.3; the Attorney General’s “Memorandum for Heads of Departments and Agencies that Provide Federal Financial Assistance Regarding the Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964” (July 14, 1994); and the Assistant Attorney General for Civil Rights’ “Policy Guidance Document: Enforcement of Title VI and Related Statutes in Block Grant-Type Programs” (January 28, 1999).<sup>3</sup>

### 1. Existing State and Local Laws

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local “English-only” laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in states and localities with “English-only” laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

<sup>3</sup> The documents referenced in this section are available for viewing or downloading at <http://www.usdoj.gov/crt/cor>.

## 2. Basic Requirements Under Title VI

Title VI prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. 2000d, provides:

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.

The term "program or activity" is broadly defined. 42 U.S.C. 2000d-4a.

On its face, Title VI prohibits only intentional discrimination.<sup>4</sup> However, virtually every federal agency, including DOJ, that grants federal financial assistance has promulgated regulations implementing Title VI. Those regulations prohibit 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" and "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." 28 CFR 42.04(b)(2). The Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.<sup>5</sup>

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted similar U.S. Department of Education regulations to require recipients of federal financial assistance to ensure, in appropriate circumstances, that language barriers did not exclude LEP persons from effective participation in federally assisted programs or activities. In *Lau*, a recipient provided the same services—an education provided solely in English—for a group of students who did not speak English as it did for students who did speak English. In finding for the Chinese-American

students, the Court held that, under these circumstances, the school's practice violated the Title VI regulations' prohibition against discrimination on the basis of national origin. The Court observed that "[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by" the Title VI implementing regulations.<sup>6</sup>

While *Lau* arose in the educational context, its core holding—that the failure to address limited English proficiency among beneficiary classes could constitute national origin discrimination in violation of Title VI—has equal vitality with respect to any federally assisted program or activity providing services to the public.<sup>7</sup>

The failure to provide language assistance has significant discriminatory effects on the basis of national origin. The Department of Justice has consistently adhered to the view that these effects place the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations.<sup>8</sup> Also, existing language barriers may reflect underlying intentional or invidious discrimination of the type prohibited directly by Title VI itself.

Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, see *Frontera v. Sindell*, 522 F.2d 1215 (6th Cir. 1975)), or there is another non-pretexual "substantial legitimate justification for the challenged practice" and there is no comparably effective alternative practice with less discriminatory affects. *Elston v. Talladega County Bd. of Educ.*, 997

F.2d 1394, 1407 (11th Cir. 1993); *New York City Environmental Alliance v. Giuliani*, 214 F.3d 65, 72 (2nd Cir. 2000) (plaintiffs failed to show less discriminatory options available to accomplish defendant city's legitimate goal of building new housing and fostering urban renewal). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are job-related and "consistent with business necessity" and there is no equally effective "alternative employment practice" that is less discriminatory. 42 U.S.C. 2000e-2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. *Alexander v. Choate*, 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be "reasonable" not to take affirmative steps to provide further access.

Executive Order 13166 reaffirms and clarifies the obligation to eliminate limited English proficiency as a barrier to full and meaningful participation in federally assisted programs and activities. 65 FR 50121 (August 16, 2000). That order states, in part:

The Federal Government is committed to improving the accessibility of \* \* \* services to eligible [limited English proficiency] persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English\* \* \* [E]ach Federal agency shall\* \* \* work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries\* \* \* . [R]ecipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.<sup>9</sup>

The Executive Order requires each federal agency to develop agency-specific LEP guidance for recipients of federal financial assistance. As an aid in developing this Guidance, the Executive Order incorporates the Department of Justice's Policy Guidance Document: "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency ("LEP Guidance")" issued contemporaneously with the Executive Order.<sup>10</sup> That general LEP Guidance "sets forth the

<sup>4</sup> *Alexander v. Choate*, 469 U.S. 287, 293 (1985).

<sup>5</sup> *Id.* at 293-294; *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642-645 (Stevens, Brennan, Blackmun, JJ.); *Lau v. Nichols*, 414 U.S. at 568; *id.* at 571 (Stewart, J., concurring in result). Further, in a July 24, 1994, Memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964, the Attorney General stated that each agency "should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs."

<sup>6</sup> 414 U.S. at 568. Congress manifested its approval of the *Lau* decision by enacting provisions in the Education Amendments of 1974, Pub. L. 93-380, secs. 105, 204, 88 Stat. 503-512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401, *et seq.*, which provided federal financial assistance to school districts to provide language services to LEP students.

<sup>7</sup> For cases outside the educational context, see, e.g., *Sandoval v. Hagan*, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *affirmed*, 197 F.3d 484, (11th Cir. 1999), *rehearing and suggestion for rehearing en banc denied*, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98-6598-II), *petition for certiorari granted*, *Alexander v. Sandoval* 121 S. Ct. 28 (Sept. 26, 2000) (No. 99-1908) (giving drivers' license tests only in English violates Title VI); and *Pabon v. Levine*, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

<sup>8</sup> See, e.g., 28 CFR 42.405(d)(1).

<sup>9</sup> Section 1, Executive Order 13166.

<sup>10</sup> LEP Guidance, 65 FR 50123.

compliance standards that recipients must follow to ensure that programs and activities they normally provide in English are accessible to LEP persons.”<sup>11</sup> This LEP Guidance for DOJ Recipients represents the application of DOJ’s general LEP Guidance to recipients of DOJ’s federal financial assistance.

While the Department of Justice’s Coordination Regulation, 28 CFR 42.405(d)(1),<sup>12</sup> expressly addresses requirements for provision of written language assistance, a recipient’s obligation to provide meaningful opportunity is not limited to written translations.

Oral communication between recipients and beneficiaries, clients, customers, wards, or other members of the public often is a necessary part of the exchange of information. In some cases, “meaningful opportunity” to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In other circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons “effectively to be informed of or to participate in the program.” This Guidance provides information to recipients on how to comply with the meaningful access requirement.

#### *D. Explanation of Title VI Compliance Procedures*

This Guidance, including appendices, is not intended to be exhaustive. DOJ recipients have considerable flexibility in determining how to comply with their legal obligations in the LEP setting, and are not required to use all of the suggested methods and options listed. However, DOJ recipients must establish and implement policies and procedures

for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. DOJ encourages recipients to document efforts to comply with the provisions of this Guidance. DOJ will make assessments on a case-by-case basis and will consider the four factors in assessing whether the steps taken by a DOJ recipient provide meaningful access.

DOJ enforces Title VI through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. In addition, aggrieved individuals may seek judicial relief.

The Title VI regulations provide that DOJ will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, DOJ will inform the recipient in writing of this determination, including the basis for the determination. DOJ uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOJ must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOJ must secure compliance through the termination of federal assistance after the DOJ recipient has been given an opportunity for an administrative hearing, and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings.

DOJ engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOJ proposes reasonable timetables for achieving compliance and consults with and assist recipients in exploring cost-effective ways of coming into compliance by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other recipient/covered entities have addressed the language needs of diverse populations.

In determining a recipient’s compliance with Title VI, DOJ’s primary concern is to ensure that the recipient’s policies and procedures overcome barriers resulting from language

differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits.

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## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

#### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. The specify the basis hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1994, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in the section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and

<sup>11</sup> See Executive Order 13166 at Section 1.

<sup>12</sup> Section 42.405(d)(1) states: “Where a significant number or proportion of the population eligible to be served or likely to be affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.” This LEP Guidance for DOJ Recipients is intended to clarify obligations under this regulation and further obligations under Title VI to provide language services outside of the context of such written documents.