

of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

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

DOL has not included a similar safe harbor provision for translations in this revised Guidance. The absence of such language is not intended to detract from or otherwise minimize the underlying obligation to ensure that LEP persons can access all vital documents. DOL encourages comments which focus on the applicability of the above safe harbor to DOL recipients, suggestions of thresholds that may better reflect DOL's universe of program customers and recipients' responsibilities, the possible advantages or disadvantages of including language similar to the model DOJ Guidance, as well as any suggestions that would ensure the consistency that OMB has recommended while at the same time ensuring that the Guidance is appropriate for the types of recipients funded by DOL.

It has been determined that this revised Guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and is not subject to Executive Order 12866 (Regulatory Review and Planning, September 30, 1993).

Signed at Washington, DC this 19th of May 2003.

Elaine L. Chao,
Secretary of Labor.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, according to the 2000 census, over 26 million individuals speak Spanish and almost seven million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data has not yet been released,

the 2000 census estimates that over 6.6 million Spanish speakers (representing 3.28 percent of U.S. residents over the age of 18) do not speak English "well or at all." Over 1.2 million people (over the age of 18) who speak other "Indo-European" languages cannot speak English "well or at all." Over 1.4 million Asian or Pacific Islanders (over the age of 18) speak English "not well" or "not at all." In total, more than 10.5 million people claim to speak little or no English, demonstrating an increase of approximately four million since 1990.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally assisted programs and activities. The federal government provides financial assistance to an array of services that can be made accessible to otherwise eligible LEP persons. The federal government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.¹

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, Title VI regulations, and Section 188 of the Workforce Investment Act (WIA) against national origin

discrimination. The purpose of this Guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This Guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.² These are the same criteria DOL will use in evaluating whether recipients are in compliance with Title VI and its implementing regulations and Section 188 of WIA.

The Department of Justice (DOJ) has a unique role under Executive Order 13166. The Order charges DOJ with responsibility for providing guidance to other federal agencies on how to serve LEP individuals and for ensuring consistency among the agency-specific guidance documents. Consistency among departments of the federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance and other federal agency guidance documents are designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients

¹ DOL recognizes that many recipients had language assistance services in place to provide LEP individuals meaningful access to programs and activities prior to the issuance of Executive Order 13166. This Guidance provides a uniform framework for recipients to integrate, formalize, and assess the continued vitality of existing and possibly additional reasonable efforts based on the nature of the programs or activities, the current needs of the LEP populations encountered, and prior experience in providing language services in the communities served.

² This Guidance is not a regulation but rather a guide. Accordingly, the examples provided are illustrative and should not be construed as requirements. Title VI and its implementing regulations and Section 188 of WIA require that recipients take reasonable steps to ensure meaningful access by LEP persons. This Guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.