

assessment that balances the following four factors: (1) The number or proportion of LEP persons served or encountered in the eligible service population; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the recipient; and (4) the resources available to the recipient and costs. As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small non-profits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOL recipients should apply the four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps should be taken to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity, 29 CFR 37.35(a), are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a recipient serves a large LEP population, the appropriate service area is most likely determined by considering local service areas and not the entire population served by the recipient. This, for example, could

occur in a local workforce investment area (local area) that manages more than a single One-Stop Career Center. Instead of being guided by a population survey for the local area, each One-Stop Career Center may wish to assess its local service population.

We suggest that states operating statewide programs, such as the Unemployment Insurance program or Workforce Investment Act programs, assess statewide language groups to identify potentially significant LEP populations, and ensure that local offices conduct similar surveys of their local service populations. Small entities, such as Vermont, Delaware, and the District of Columbia, that operate only a single local workforce investment area, should assess their overall populations with an awareness of any "pockets" of LEP persons that may exist in certain areas (e.g., the Chinatown or Adams Morgan (largely Spanish-speaking) areas of Washington, DC). Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. For most workforce investment 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., out-of-school youth or migrant/seasonal farmworkers). The attached Appendix provides examples to assist in determining the eligible service population. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the workforce system, including youth employment and training programs and Job Corps.

In assessing the number or proportion of LEP persons eligible to be served or likely to be encountered, recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that have been needed. In conducting this analysis, it is important to include language minority populations that are eligible for programs or activities but may have been underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data

from state and local governments.⁷ Community agencies, school systems, faith-based organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from recipients' programs and activities where language services are provided.

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

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from potential language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves a LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If a LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if a LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups and therefore

⁷ The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English as well as the percentage of people who speak other languages and who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus on the languages spoken by those who are not proficient in English.