

also increase the demand for language assistance from these LEP populations.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Recipient

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to LEP individuals, the more likely language services are needed. For example, the requirements for filing a claim for Unemployment Insurance or Trade Adjustment Assistance or safety and health information in the context of Occupational Safety and Health or Mine Safety and Health training programs must be effectively communicated. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for a LEP individual. Decisions by a federal, state, or local entity to make an activity compulsory, such as job training and/or job search certification in the Unemployment Insurance program, can also serve as strong evidence of the program's importance.

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 a person to communicate in English, *see Frontera v. Sindell*, 522 F.2d 1215 (6th Cir. 1975)), or when there is another non-pretextual "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). However, DOL recipients are providing a service to assist individuals in employment, and should consider that LEP individuals can be learning English and another skill at the same time.⁸ For example, a recipient may not need to make accessible certain health care practitioner courses to LEP persons if the ability to be fully proficient in English is a legitimate requirement of such training and the recipient has made a legitimate determination that a LEP person would not be eligible to

work in the field in the local job market and at the level for which the training is targeted. However, in order for such determinations to be legitimate, recipients should conduct an objective analysis and not rely on stereotypes or anecdotal evidence regarding level of English proficiency required for such employment, and should consider the impact that participation in English-as-a-Second-Language courses may have on the ability of the LEP person to utilize the training.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take in providing language services. Smaller recipients with more limited budgets are not expected to provide the same level of language services as are larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable when the costs imposed substantially exceed the benefits. DOL has determined that costs associated with providing meaningful access to LEP persons are considered allowable program costs. This is consistent with the discussion of administrative and program costs under Title I of WIA found in 20 CFR 667.220.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale; or, the formalized use of qualified community volunteers, for example, may help reduce costs.⁹ Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those

entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, the process used for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via a telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a One-Stop Career Center in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many recipients have already made such arrangements.) There may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high.

VI. Selecting Language Assistance Services

Regardless of the type of language service provided, for both oral and written language services, quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language).

⁸ Consistent with footnote 2, *supra*, a consideration of this factor should not be construed as requiring DOL recipients to create new programs under this Guidance.

⁹ Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.