

any state or local agency, private institution or organization, or (2) any public or private individual that operates, provides, or engages in health, or social service programs and activities, and that receives Federal financial assistance from VA directly or through another recipient/covered entity.

Examples of covered entities include, but are not limited to hospitals; nursing homes; home health agencies; managed care organizations; universities and other entities with health or social service research programs; state, county, and local health agencies; state Medicaid agencies; state, county, and local welfare agencies; programs for families, youth and children; Head Start programs; physicians; and other providers who receive Federal financial assistance from VA.

VBA is responsible for ensuring compliance in proprietary, non-college degree granting educational institutions approved to train veterans and/or their beneficiaries. In 1968, the Attorney General ruled that recipients of tuition or other payments from veterans for education programs are receiving Federal financial assistance. The U.S. District Court upheld this principle in *Bob Jones University, et al. v. Donald E. Johnson*, 396 F. Supp. 597 (D.S.C. 1974), aff'd 529 F.2d 514 (4th Cir. 1975).

VBA is also responsible for ensuring Title VI compliance in certain education and training programs funded by the U.S. Department of Education (ED). Under a delegation agreement, VA has Title VI compliance responsibilities for ED-funded proprietary educational institutions, except those operated by a hospital. VA is also delegated Title VI responsibility for post-secondary, nonprofit educational institutions, other than colleges and universities, except if operated by a college, university, hospital, or a unit of State or local government. VA's LEP guidance applies only to recipients for whom VA has compliance responsibility.

VBA's Title VI compliance responsibility also applies to recognized national service organizations whose representatives assist veterans in the preparation, presentation and prosecution of claims for VA benefits. In December 1975, DOJ's "Interagency Report: Evaluation of Title VI Enforcement at the Veterans Administration," concluded that representatives of recognized service organizations afforded the use of Federally-owned property provided by VA without charge are recipients of Federal assistance. These service organizations are considered recipients within the meaning of Title VI. Recognized national veterans' service

organizations and State employment services both use VA office space and, therefore, VA's LEP guidance applies to those entities.

VBA recipients receiving Federal financial assistance, and covered by the LEP policy guidance include but are:

- Educational institutions whose programs are approved for training under 38 U.S.C., chapters 30, 31, 32, 35 and 10 U.S.C., chapter 1613.
- Representatives of recognized national veterans service organizations who utilize VBA space and office facilities (38 U.S.C. 5902(a)(2)).
- Representatives of State employment services who utilize VBA space and office facilities (38 U.S.C. 7725(1)).

NCA administers the State Cemetery Grants Program (SCGP). Examples of covered entities include, but are not limited to: Cemeteries; state, county and local agencies; and other providers who receive Federal financial assistance from VA.

#### IV. Who Is a Limited English Proficient Individual?

Individuals who do not read, write, speak, or understand English can be limited English proficient, or "LEP" entitled to language assistance with respect to a particular type of service, benefit, or encounter.

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

- Persons seeking healthcare services or benefits;
- Persons seeking access to veterans cemeteries, including family members and friends of deceased veterans and others who are eligible for burial in such cemeteries;
- Persons seeking educational, training, including spouses and children;
- Persons seeking assistance in the preparation, presentation, and prosecution of claims for VA benefits;
- Other persons who encounter or seek services, benefits, or information from entities receiving Federal financial assistance from VA.

#### V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following

four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to find a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for 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 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. VA recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

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

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a VA facility serves a large LEP population, the appropriate service area is most likely the area serviced by the facility, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may