

- Parents and legal guardians of minors eligible for coverage concerning such programs.

#### **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 suggest 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 the different types of programs or activities in which it engages, or, in fact, that, in certain circumstances, recipient-provided language services are not necessary. (As discussed below, recipients may want to consider documenting their application of the four-factor test to the services they provide.) 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. HHS 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, if any, 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 particular office of the county or city health department serves a large LEP population, the appropriate service area is most likely that office, and not the entire population served by the department. 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. When considering the number or proportion of LEP individuals in a service area, recipients should consider whether the minor children their programs serve have LEP parent(s) or guardian(s) with whom the recipient may need to interact.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In certain circumstances, it is important in conducting this analysis to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted when appropriate 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.<sup>6</sup> Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations which may be underserved because of existing language barriers and who would benefit from the

recipient's program, activity, or service, where language services provided.

##### *(2) The Frequency With Which LEP Individuals Come in Contact With the Recipient's Program, Activity or Service*

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different 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 an 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 an LEP individual accesses a recipient's program, activity, or service on a daily basis, a recipient has greater duties than if an LEP individual's contact with the recipient's program, activity, or service 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 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 telephonic interpretation services to obtain immediate interpreter services. For example, a drug treatment program that encounters LEP persons on a daily basis most likely may have a greater obligation than a drug treatment program that encounters LEP persons sporadically. The obligations of both programs are greater than that of a drug treatment program which has never encountered a LEP individual where the service area includes few or no LEP individuals.

In applying this standard, certain recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups. For example, in areas where a community health center serves a large LEP population, outreach may be appropriate. On the other hand, for most individual physicians or dentists, outreach may not be necessary.

<sup>6</sup> 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 and the percentage of people who speak that language 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 in on the languages spoken by those who are not proficient in English.