

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 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. Treasury's 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 precinct in the case of a law enforcement entity or a school in the case of an educational system serves a large LEP population, the appropriate service area is most likely the precinct or school, and not the entire population served by the recipient. 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 providing educational services to minor LEP students should also include the students' LEP parent(s) or primary caretakers among those likely to be encountered.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of

language services that were needed. In conducting this analysis, it is important 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 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 for whom outreach is needed and who would benefit from the recipients' programs and activities where language services 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 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 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 an LEP individual seeks services under the program in question. This plan need not be intricate. It may

<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.

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.

(3) *The Nature and Importance of the Program, Activity, or Service Provided by the Program.* The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, the obligations of a federally assisted school or hospital to LEP constituents are generally far greater than those of a federally assisted zoo or theater. A recipient needs to determine whether denial or delay of access to service or information could have serious or even life-threatening implications for the LEP individual. Decisions by a federal, state, or local entity to make an activity compulsory, such as a particular educational program, can serve as strong evidence of the program's importance. While all situations must of course be analyzed on a case-by-case basis, the following general observations may be helpful to Treasury's recipients considering the implications of applying this factor of the four-factor test to their respective programs:

**Examples**

- An assisted financial institution in a city with a large Hispanic population including a significant number of LEP members should consider translating account and loan applications into Spanish (or implementing a procedure through which Spanish-speaking LEP persons could be served by Spanish-speaking officers).

With respect to the importance of a program, activity, or service provided by one of the Agency's recipients, the obligation to provide translation services will most likely be greatest in educational/training situations or in connection with the provision of law enforcement services. As an aid in applying this guidance to their own programs or activities, entities that receive federal financial assistance from either the Department of Education or Department of Justice and Treasury may rely on the more particularized LEP Guidance of the Department of Education (in the case of a school-based educational program) or the Department of Justice (in the case of a law enforcement entity) to ensure compliance with the obligation to provide meaningful access in those respective contexts.