

environmental hazards, and other health and safety-related information;

- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required; and

- Applications to participate in a recipient's program or activity or to receive recipient benefits, services, licenses, permits, *etc.*

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for bicycle safety courses generally should not be considered vital, whereas applications for drug and alcohol counseling in prison should be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other general information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach materials may be made more effective when done in tandem with other outreach methods, including utilizing the appropriate non-English language speaking media, schools, religious and community organizations to spread a message.

*Sometimes a document includes both vital and non-vital information.* This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information concerning the contents of the document in frequently-encountered languages other than English is critical, but the

document is sent out to the general public and reasonably cannot be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain language assistance services to interpret or translate a document.

*Into What Languages Should Documents Be Translated?* The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak numerous different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the recipient should determine its obligation to provide written translations of documents on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

*Safe Harbor.* Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b), (see the next section of this document entitled *Safe Harbor Guidelines*), outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of

compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in the Department's *Safe Harbor Guidelines* at paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that are interested in specific examples of safe harbor guidelines. However, even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

*Safe Harbor Guidelines.* The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOI recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five-percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, even where the safe harbor numbers are not met for a particular language, a LEP person speaking that language should be given appropriate oral interpretation of important information.

*Competence of Translators.* As with oral interpreters, translators of written