



LIMITED ENGLISH PROFICIENCY GUIDELINES



Civil Rights

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I. Limited English Proficiency Statement of Commitment

The Commonwealth of Virginia, Department of Transportation, (VDOT) will effectuate the provisions of Title VI of the Civil Rights Act of 1964, 49 Code of Federal Regulations (CFR) Part 21, 23 CFR Part 200, Executive Orders (EO) and other applicable directives. These authorities provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, disability, or income, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in VDOT programs and activities.

As a recipient of federal-aid funding, VDOT is committed to nondiscrimination in all its programs and activities whether or not those programs and activities are federally funded. This guidance clarifies VDOT's fulfillment of responsibilities to limited English proficient (LEP) persons, pursuant to Executive Order 13166, entitled "Improving Access to services for persons with Limited English Proficiency" and other USDOT and FHWA Orders and directives effectuating EO 13166. VDOT will take reasonable steps to ensure meaningful access to the agency's programs, activities, services and information that are normally provided in English are accessible to LEP persons. VDOT is cognizant of the fact that failure to ensure that LEP persons can effectively participate in federally assisted programs and activities may violate the prohibition against national origin discrimination under Title VI of the Civil Rights Act of 1964.

The key to providing meaningful access to LEP persons is to ensure that LEP beneficiaries can communicate effectively and act appropriately based on that communication. The Department will ensure that every manager, supervisor, employee, and sub-recipient of federal-aid funds administered by VDOT takes reasonable steps to ensure meaningful access to VDOT recipients' programs and activities. Districts and divisions will collect and maintain demographic statistics on persons who participate in their programs and services. In addition, every district and division will post written notices in a public area regarding the right to free language assistance for persons conducting business with the Department in the most frequently encountered or likely to be encountered languages.

Allegations of discrimination will be brought to the immediate attention of the Civil Rights Division Administrator or a District Civil Rights Manager.

II. Introduction

VDOT is a recipient of federal financial assistance. As a recipient, VDOT is required to comply with Title VI of the Civil Rights Act of 1964, as amended (Title VI), and all nondiscrimination laws and authorities. Title VI and other authorities prohibit agencies receiving Federal funds from discriminating against anyone or any group in the United States on the grounds of race, color, national origin, sex, age, disability and low income. The Civil Rights Restoration Act of 1987 defined the word “program” to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives federal financial assistance, rather than just the particular programs or activities that receive the funds.

English is the predominant language of the United States. The United States is, however, home to millions of national origin minority individuals who are “limited English proficient” (LEP). That is, they cannot speak, read, write or understand the English language at a level that permits them to interact effectively. Because of these language differences and their inability to speak or understand English, LEP persons are often excluded from programs, benefits and/or activities of agencies receiving Federal financial assistance.

Presidential Executive Order (EO) 13166 entitled “Improving Access to Services for Persons with Limited English Proficiency” was intended to improve access to federally conducted and assisted programs for persons who are LEP. The USDOT issued its “Policy Guidance Concerning Recipients Responsibilities to Limited English Proficient (LEP) Persons” to effectuate EO 13166. The policy guidance requires recipients of Federal financial assistance to develop and implement guidance on how the recipient will assess and address the needs of otherwise eligible limited English proficient persons seeking access to the programs and activities of recipients of federal financial assistance.

VDOT’s LEP guidance provides procedures that will assist VDOT in complying with Title VI responsibilities to ensure meaningful access to all programs, activities and/or benefits for LEP persons.

III. Guidance Statement for Interpreter Services

The ability of individuals to communicate with and understand LEP persons is essential to the ability to participate in VDOT's programs, services and activities. To ensure that every Virginian, regardless of his or her native language, has access to and may participate in agency programs, VDOT is committed to providing appropriate interpreter services to individuals with limited English proficiency (LEP), to the extent possible.

The provision of appropriate interpreter services is central to the integrity of all programs, services and activities, ensuring that those with limited English proficiency can understand and participate in a meaningful manner. A stakeholder's ability to access VDOT's services and programs requires that the individual's language needs be met to ensure clear communication, access and input.

VDOT's procedures for the provision of interpreter services and translated documents are intended to ensure meaningful access for LEP persons. The procedures also promote the autonomy of district and residency offices to determine the mix of resources available for their use such as local governments, non-profit organizations, libraries, staff and other resources.

IV. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity “to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. 2000d-1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from “utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.” 28 CFR 42.104(b)(2). DOT’s Title VI regulations include almost identical language in this regard. *See* 49 CFR 21.5(b)(vii)(2) (portions of these regulations are provided in Appendix A).

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. “Improving Access to Services for Persons With Limited English Proficiency,” 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how its recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding recipients from “restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program” or from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”

On that same day, DOJ issued a general guidance document addressed to “Executive Agency Civil Rights Officers” setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. “Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency,” 65 FR 50123 (August 16, 2000) (DOJ’s General LEP Guidance).

Pursuant to Executive Order 13166, DOT developed its own guidance document for recipients and initially issued it on January 22, 2001, “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries.” However, in light of the public

comments received and the Assistant Attorney General's October 26, 2001, clarifying memorandum, DOT has revised its LEP guidance to ensure greater consistency with DOJ's revised LEP guidance, published June 18, 2002, and other agencies' revised LEP guidance. 67 FR 117 (June 18, 2002).

V. Agency Guidelines for Full Participation by LEP Persons

1. Implementation

The Title VI Specialist is responsible for monitoring agency programs and activities to ensure meaningful access for LEP persons. The VDOT has designated the Title VI Specialist as the agency's Language Access Coordinator (LAC).

2. Inventory of VDOT Resources for Language Assistance Services (LAS).

The LAC will maintain an inventory of LAS available to all VDOT personnel. The inventory will include, but is not limited to, the following:

A. Contract language services providers (LSP) based on the following qualification factors:

1. The interpretation skill level of the LSP and its agents;
2. The length of time the LSP has been in business;
3. Any previous experience the agency may have had with the LSP, and
4. The LSP's experience in providing LEP services in similar contexts.

B. Language Services Provider's contract overview and scope

Contract Overview

The Civil Rights Division has established a contract to provide statewide translation and interpreter services to the Virginia Department of Transportation. The Department wants to ensure meaningful access to persons with limited English proficiency. Language translation and interpretation services are available through the Civil Rights Division and District Civil Rights Managers.

Contract Scope

The item code available under this contract provides for services across the full spectrum of all language services including document translation, oral interpretation, and in-person interpretation. Languages that will be interpreted include but are not limited to: Spanish, Chinese (Mandarin and Cantonese), French, Japanese, Korean, Russian, Vietnamese, Armenian, Cambodian, German, Haitian Creole, Italian, Polish, Portuguese, and Thai. The Contractor shall make interpretation and documentary translation services available to VDOT during the hours of 7:00 AM to 6:00 PM, Monday through Friday.

C. Language Services Provider ordering procedure

District personnel will coordinate requests for translation/interpreter services through their District Civil Rights Manager. In some situations, cost codes may be set up **for**

district staff to contact the Contractor directly. If not, the District Civil Rights Managers will contact the Title VI Specialist at 804-786-2730. Divisions in the Central Office will coordinate requests for translation/interpreter services through their Title VI Designee. The Designee will contact the Title VI Specialist at 804-786-2730. Divisions that have not assigned a Title VI Designee will contact the Title VI Specialist directly.

Requests for services will include the name of the person requesting translation services, and the district name and number. The Title VI Specialist will maintain a database for LEP requests, by division and district. The database will include the name of the person requesting translation services, the district name, the name of the document or the name of the LEP person, the date of the request, the number of hours or words that was translated, the language translated from and to and any other pertinent information for tracking language services.

Each requestor will fill out an evaluation form to evaluate the services performed by the Contractor. The evaluation forms will be sent directly to the Title VI Specialist.

Written translation will be translated and sent back to the requestor and copied to the Title VI Specialist.

Cost for Services

The Civil Rights Division contracts out language access services. The Civil Rights Division's budget covers reasonable translation services. It does not cover the cost for printing materials. In general there is no cost the district or division for posting translated documents on VDOT's website. If at any time in the future the Civil Rights Division budget does not include funds for a language contract then each division will be responsible for providing language services out of their own budget. Regardless of which budget funds language access services, each division and district will take into consideration the resources available and the costs when determining the need for services. It is very important to keep in mind that costs will not be used to deny all language translation requests.

D. All Language Assistance Services will be made available to LEP persons at the expense of VDOT, where the circumstances indicate the provision of LEP services is appropriate or required.

E. Monitoring, Evaluating and Training

The Coordinator along with management, District Civil Rights Managers, the Title VI Specialist and Title VI Designees will identify language service needs and strategies for responding to those needs. The Title VI Specialist in the Civil Rights Division is responsible for monitoring agency programs and activities to ensure meaningful access for LEP persons. The Title VI Specialist may be contacted by calling (804) 786-2730 or by email at corina.herrera@vdot.virginia.gov.

The Civil Rights Division Administrator has designated the Title VI Specialist as the

agency's Language Access Coordinator (LAC). The Coordinator's duties include:

- Ensuring identification and securing of existing and needed resources (in-house, new hires contract, resource sharing with other agencies, volunteers, or other) to provide oral and written language services.
- Identifying and developing or recommending guidelines to implement the Plan.
- Identifying criteria for designation of languages for initial round of translation, based on demographic data;
- Creating systems to distribute translated documents, post electronically, and maintain supply;
- Identifying training needs and provide for training to LEP Monitors, staff, and managers needing to use language services, as well as language service providers on staff.
- Establishing protocols for ensuring quality, timeliness, cost-effectiveness, and appropriate levels of confidentiality in translations, interpretation, and bilingual staff communications.
- Identifying and implement a system for receiving and responding to complaints.
- Exchanging promising practices information with divisions, districts and residencies
- Reviewing the progress of VDOT on an annual basis in providing meaningful access to LEP persons, develop reports, and modify [recommend modification to] LEP Guidelines as appropriate.

Limited English Proficiency Monitors

Civil Rights Managers and Title VI Interdisciplinary Designees will serve as LEP Monitors for divisions and districts. LEP Monitor duties include:

- Working with the LEP Coordinator to identify needs and strategies for meeting those needs so that staff will have access to appropriate language services.
- Ensuring the facility's compliance with the LEP Guidelines, including any implementation.
- Providing training to facility staff on implementation of LEP Guidelines.
- Establishing and maintaining the facility's language assistance resource list, ensuring competency; revise the list as needed.
- Maintaining data on requests from LEP persons and provide reports to management and the LEP Coordinator, as appropriate.

District Civil Rights Managers:

DISTRICT	District Civil Rights Managers	PHONE #
Bristol	Mary Ann Altum	276-645-1677
Culpeper	Reginald Moseley	540-829-7391
Fredericksburg	Valerie Wilson	540-899-4562
Hampton Roads	Queen Crittendon	757-925-2519
Lynchburg	Phyllis A. Brice	434-856-8169
Northern VA	Leslie Martin Title VI Coordinator: Leonard Lewis	703-259-1775 703-259-1764
Richmond	Ferrell Solomon	804-524-6091
Salem	Chris Crain	540-387-5552
Staunton	Donna Brown	540-332-7888

Title VI Interdisciplinary Designees:

DIVISION	DESIGNEE	PHONE #
Planning	Sam Curling	804-786-4216
Location & Design	Shannon Edwards	804-786-1803
Virginia Center for Transportation Innovation & Research (VCTIR)	Cindy Perfater & Donna Cognata	434-293-1992 434-293-1957
Right of Way	Vicky Campbell	804-786-2910
Structure & Bridge	Russell Martin	804-786-4460
Traffic Engineering	E. B. "Betty" Newsome	804-786-5274
Consultant Procurement Office	Wazirah Wallace Tracy Wood	804-786-2561 804-786-9691
Environmental	Patrick M. Hughes	804-371-6839
Materials Division	Shirley Perrin	804-786-3926
Administrative Services	Lamar Williams	804-786-3568
Maintenance	Clint Simpson	804-786-0895
Local Assistance	Cynthia Clark	804-371-6289

VDOT will conduct a survey to determine the level of internal resources available for language services. This survey will seek to find out what languages are spoken by staff in addition to English; whether the individual can read, write and/or speak the language; and the level of fluency. The results of this assessment will be made available to all VDOT division and district offices.

Training

VDOT staff members and sub-recipients should know their obligations to provide meaningful access to information and services for LEP persons, and all persons in

public contact positions should be properly trained. An effective training objective would likely include training to ensure that:

- VDOT staff and sub-recipients know about LEP policies and procedures.
- VDOT staff and sub-recipients who have contact with the public (or those in a recipient's custody) are trained to utilize interpreter services effectively.
- VDOT and sub-recipients may want to include this training as part of the orientation provided for new employees.

Management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff. As mentioned above, training will be provided by the Title VI Specialist, District Civil Rights Managers and Title VI Designees.

- F. To ensure consistent standards, translation services will be provided by professional providers based on the factors listed in 2A. Bilingual staff may be utilized on a limited basis when LAS are not anticipated or available.

3. Situational Needs Assessment

The agency will, on a continuing basis, assess the need for language services on a district and/or statewide basis and make LAS available as deemed appropriate. Prior to the development of its LEP Plan of Action, VDOT examined the prevalence of LEP stakeholders statewide, by district and/or by service area of program using the following four factors:

- The number or proportion of LEP persons served or encountered in the eligible service population
- The frequency with which LEP individuals come in contact with the program
- The nature and importance of the program, activity, or service to people's lives
- The resources available to VDOT and costs to provide LEP services

In making this assessment, the agency considered the following among other data sources:

- United States census results
- Data maintained by the agency
- The agency's past experience in providing services to LEP stakeholders
- Data maintained by other agencies including the Virginia Department of Education and the Virginia Department of Health
- Information sources maintained by private and public local entities, including community-based organizations and local social services departments

The need for LEP services will be identified based upon the type of contact:

In-person Contact

Contact the District Civil Rights Manager, the Title VI Designee or the Title VI Specialist for a translator. The translator will identify the language need of the LEP person and provide them with an interpreter. If one of these persons cannot be reached, use the “I speak...cards” to attempt to identify the language spoken and show them the public notice for language services. Obtain the LEP person’s name and contact information in the event the language service contractor is not immediately available.

Telephone Contact

Due to telephone contacts being a time sensitive issue and the risk of losing a caller going through too many transfers, we recommend contacting Central Office Civil Rights Division at (804) 786-2730 and a Civil Rights staff person will contact the language service contractor. The contractor will identify the language need of the LEP person and transfer the person to that language division.

Written Documents

Contact the District Civil Rights Manager, the Title VI Designee or the Title VI Specialist for written documents translations. Electronic capability will result in the efficient return of written translated documents. The division or district can scan the document and email it to their District Civil Rights Manager, their Title VI Designee or the Title VI Specialist. If they do not have scanning capability and the document was not received by them electronically, then they can use inter-office mail to send the document. The document will be forwarded to the contractor and sent back within the time frame mentioned before.

Guidelines for responding to individual requests from LEP persons:

- All requests will be logged into a database whether the language spoken can be determined or not.
- Requests for under \$25.00 per request will be granted – This decision will be a subjective decision based on staff’s experience and the knowledge of the costs listed above. (For Spanish, a phone call that might last up to 20 minutes or a document that is 3 typed pages in English is likely to fit this criterion.)
- Requests for over \$25.00 - \$50.00 will be reviewed by supervisors based on the four factor analysis and granted if deemed vital.
- Requests for over \$50 including all in-person interpretation requests will be considered by management in the district or division.
- Note: depending on the budget, these figures may change and all districts and divisions will be notified.

4. District Offices

- a. The Title VI Specialist and Civil Rights Managers will create a mix of language assistance resources appropriate to the demographics of each district.
- b. All LAS will be available to district and residency office staff based on need.
- c. The Title VI Specialist and Civil Rights Managers will evaluate language resources available in their service area including community colleges, state and private universities, and community-based organizations. Civil Rights Managers may, with the approval of the Civil Rights Division Administrator, enter into agreements for the provision of such services with community resources.
- d. Districts with a lower need for language services may coordinate with other districts that maintain a larger resource pool to utilize their language resource services to any extent practicable.
- e. The Title VI Specialist and Civil Rights Managers will maintain a database tracking LEP contacts. District offices shall make the data available to the Title VI Specialist as requested.
- f. Civil Rights Managers and the Title VI Specialist will communicate to staff that the use of a family member or friend may only take place after informing an LEP person of his/her right to free interpreter services and will only be used as a last result because family members may not have the subject knowledge necessary to communicate the information accurately and in the best manner possible.

5. Central Office

- a. The Title VI Specialist with the assistance of Title VI Designees will institute an LEP protocol appropriate to Central Office.
- b. Central office protocol will be designed using the agency resources described in section 2 of these guidelines.
- c. Central office protocols will be designed using the general guidelines set out in section 4 relating to district offices.

6. Other Covered Entities:

Contractors, sub-contractors, Metropolitan Planning Organizations (MPOs), Planning District Commissions (PDCs) and other entities that receive funds from VDOT for federal projects are covered under Title VI and Executive Order 13166. VDOT will include language in any contract or Memorandum of Understanding stating that the recipient or sub-recipients is responsible for monitoring access for limited English proficiency.

7. Agency Documents

- a. The Title VI Specialist, District Civil Rights Managers, Designees and management will, on a continuing basis, identify vital documents that are routinely provided to stakeholders that will be translated into languages other than English. The translation of vital documents into languages other than English is particularly important where a significant number or percentage of the customers served and/or eligible to be served have limited English proficiency. Whether or not a document is vital depends on how significant the impact on the health, safety, legal rights, or livelihood of an LEP person may be. Written documents include electronic documents and web-sites. Vital documents may include materials such as:
 - Emergency transportation information;
 - Notices of public hearings and proposed transportation plans;
 - Community education materials;
 - Notices notifying LEP persons of language assistance at no cost to the LEP person;
 - Written tests in a classroom; and
 - Markings, signs and packaging for hazardous materials and substances;
 - Signs in bus and train stations, and in airports;
 - Signs in waiting rooms, reception areas, and other initial points of entry;
 - Instructions on how to participate in a recipient's program.
- b. The Title VI Specialist will coordinate with the Language Service Provider (LSP) to have identified documents translated accordingly.
- c. Translated documents will be made available on the VDOT portal for divisions and districts access.

8. Adjudication of Complaints

- a. Any LEP individual has a [right to file a complaint](#) against the agency where he or she believes that the agency did not provide necessary LEP services as appropriate. These complaints include those available under Title VI of the Civil rights Act of 1964.
- b. All complaints, alleging a violation under Title VI will be referred to the Title VI Specialist or Civil Rights Managers.
- c. The Title VI Specialist and Civil Rights Managers will take appropriate steps to resolve all complaints in accordance with the agency's discrimination complaint procedures.
- d. The Title VI Specialist will maintain a database tracking requests for language services, all complaints and their resolution. The database will include the following items:
 1. Source of complaint
 2. LEP request including relevant contact information

3. Nature of complaint request
 4. Date complaint/request received
 5. Date complaint/request resolved
 6. Manner of resolution
 7. Comments
- e. Fact-finding procedures by Title VI Specialist and Civil Rights Managers will follow the investigation protocol in the Title VI Manual.
 - f. Mediation and hearings
 - g. Interpreters will be made available to hearing participants upon request or where CRD staff identifies a need for an interpreter.

9. Questions and Answers

Q. Who is a Limited English Proficient (LEP) individual?

A. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP." These individuals may be entitled to language assistance with respect to a particular type or service, benefit, or encounter.

Q. Does a recipient have to provide translation services in every language?

A. No. Recipients and federal agencies are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. What is "reasonable" is based on the four factor analysis. Recipient research of demographics and available resources may determine that language services are provided to the largest number of LEP persons served or encountered by a program or service.

Q. Will providing language services increase the risk of litigation and liability for recipients as a result of LEP Guidance?

A. No. *Alexander v. Sandoval* holds principally that there is no private right of action to enforce Title VI disparate regulations. The LEP Guidelines are based on Title VI and DOT's Title VI regulations at 49 CFR part 21 and does not provide any private right of action beyond that which exists in those laws. Thus LEP Guidance does not increase the risk of recipient's legal liability to private plaintiffs. DOT does not dismiss the fact that although there is no legal grounds this does not prevent persons from initiating legal actions.

Q. What is a "safe harbor?"

A "safe harbor means that if a recipient provides written translations under certain circumstances, such action will be considered strong evidence of compliance with the recipient's WRITTEN translation obligations under Title VI. The following actions

will be considered strong evidence of compliance with the recipient's written translation obligations: (a) the DOT recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served; (b) if there are fewer than 40 persons in a language group that reaches the 5% 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.

Q. Does the Executive Order apply to federally conducted activities overseas or to foreign recipients of federal financial assistance?

A. No. The Department of Justice (DOJ) has determined that Executive Order (EO) 13166 applies only within the United States and its territories and does not apply extraterritorially.

However, agencies that conduct activities overseas must still submit a plan for making their domestic activities accessible to people who are limited English proficient. That plan will indicate that the agency conducts federal activities abroad, but that DOJ has determined that the EO does not apply to those activities.

Similarly, agencies that provide federal financial assistance abroad and domestically must still create guidance for their domestic recipients, and may include a statement in the guidance indicating that the guidance does not apply extraterritorially.

Q. What are recipients of federal funds and federal agencies required to do to meet LEP requirements?

A. Recipients and federal agencies 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 or agency, 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, or small nonprofits.

**LEP Guidelines – Appendix A
Executive Order 13166**

FEDERAL REGISTER

Vol. 65, No. 159

Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 13166 of August 11, 2000

Title 3 -

The President

Improving Access to Services for Persons with Limited English Proficiency

Part IV

65 FR 50121

DATE: Wednesday, August 16, 2000

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[*50121]

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. Goals.

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and

beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Sec. 2. Federally Conducted Programs and Activities.

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Sec. 3. Federally Assisted Programs and Activities.

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, [*50122] each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

Sec. 4. Consultations.

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Sec. 5. Judicial Review.

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

S WILLIAM J. CLINTON

THE WHITE HOUSE,

August 11, 2000.

[FR Doc. 00-20938 Filed 8-15-00; 8:45 am]

Billing code 3195-01-P

LEP Guidelines -- Appendix B
U.S. DOT LEP Guidance

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DEPARTMENT OF TRANSPORTATION LEP GUIDANCE

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST-2001-8696]

Policy Guidance Concerning Recipients' Responsibilities to
Limited English Proficient (LEP) Persons

AGENCY: Office of the Secretary (OST), U.S. Department of
Transportation (DOT).

ACTION: Notice of guidance with request for comments.

SUMMARY: The United States Department of Transportation (DOT) is publishing guidance concerning services and policies by recipients of Federal financial assistance from the Department of Transportation related to persons with limited English proficiency. The guidance is based on the prohibition against national origin discrimination in Title VI of the Civil Rights Act of 1964, as it affects limited English proficient persons.

DATES: This guidance is effective immediately. Comments must be received on or before January 13, 2006. Late-filed comments will be considered to the extent practicable. DOT will review all comments and will determine what modifications to the guidance, if any, are necessary. This guidance supplants existing guidance on the same subject originally published at 66 FR 6733 (January 22, 2001).

ADDRESSES: You may submit comments, identified by the docket number [OST-2001-8696], by any of the following methods:
Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: (202) 493-2251.

Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

Hand Delivery: To the Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number [OST-2001-8696] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Docket: You may view the public docket through the Internet at <http://dms.dot.gov> or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph Austin, Chief, External Policy and Program Development Division, Departmental Office of Civil Rights, Telephone: (202) 366-5992, TTY: (202) 366-9696, E-mail: joseph.austin@dot.gov; or Bonnie Angermann, Attorney-Advisor, Office of General Law, Office of the General Counsel, Telephone: (202) 366-9166, E-mail: bonnie.angermann@dot.gov. Arrangements to receive the policy guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance. The purpose of this limited English proficiency policy guidance is to clarify the responsibilities of recipients of Federal financial assistance from the U.S. Department of Transportation (DOT) ('`recipients''), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.

Executive Order 13166, ``Improving Access to Services for Persons With Limited English Proficiency,' ' reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that is subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation.

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Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in the Department of Justice's (DOJ's) Policy Guidance entitled ``Enforcement of Title VI of the Civil Rights Act of 1964--National

Origin Discrimination Against Persons With Limited English Proficiency.' See 65 FR 50123 (August 16, 2000) (DOJ's General LEP Guidance).

DOT published its initial guidance regarding its recipients' obligations to take reasonable steps to ensure access by LEP persons on January 22, 2001, and requested public comment on the guidance. See 66 FR 6733. DOT received 21 comments in response to its January 22, 2001, policy guidance. The comments reflected the views of individuals, organizations serving LEP populations, organizations favoring the use of the English language, and recipient agencies. While many comments identified areas for improvement and/or revision, the majority of the comments on the DOT LEP Guidance expressed agreement with its overall goal of ensuring access of LEP individuals to recipients' services. DOT worked closely with DOJ to ensure that recipients' comments were addressed in a consistent fashion.

In the order most often raised, the common areas of comment regarded: cost considerations, especially for smaller recipients serving few LEP persons; increased litigation risk and liability for recipients as a result of the guidance; and use of interpreters and the definition of "qualified interpreter."

A large number of comments focused on cost considerations and suggested that the Department address them as part of its evaluation of the language assistance needs of LEP persons. Particularly, this concern was expressed by state agencies that at the time received Coast Guard grants to administer safe boating courses.\1\ But this policy guidance does not require DOT recipients to translate all courses or materials in every circumstance or to take unreasonable or burdensome steps in providing LEP persons access. We have clarified the guidance to better convey its flexibility, based on the four-factor analysis set forth in DOJ's General LEP Guidance.

\1\ This guidance does not address the extent to which Executive Order 13166 requires language access services in the provision of boating safety courses funded by the Coast Guard, because that agency is no longer a component of the Department of Transportation.

Several recipients commented that they serve few if any LEP persons and that the cost of interpreting all of their courses and materials would be excessive and unnecessary. While none urged that costs be excluded from consideration altogether, at least one comment expressed concern that a recipient could use cost as a basis for avoiding otherwise reasonable and necessary language assistance to LEP persons. In contrast, a few comments suggested that the flexible fact-dependent compliance standard set forth in the guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large recipients to incur unnecessary or inappropriate fiscal burdens in the face of already strained program budgets. The Department is mindful that cost considerations could be inappropriately used to avoid providing otherwise reasonable and necessary language assistance. Similarly, cost considerations could be ignored or minimized to justify the provision of a particular level or type of language service even though effective alternatives exist at a minimal cost. The Department also is aware of the possibility that satisfying the need for language services might be quite costly for certain types of recipients, particularly if they have not updated their programs and activities to

the changing needs of the populations they serve.

The potential for some recipients to assert adverse cost impacts in order to avoid Title VI obligations does not, in the Department's view, justify eliminating cost as a factor in all cases when determining the necessary scope of reasonable language assistance services under DOT's guidance. The Department continues to believe that costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures, and the DOJ Recipient LEP Guidance identifies the appropriate framework through which costs are to be considered. See Department of Justice Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41455 (June 18, 2002).

The second most common category of comments DOT received expressed concern over increased litigation risk and liability for recipients as a result of the LEP Guidance. As is addressed below in the Introduction, *Alexander v. Sandoval*, 532 U.S. 275 (2001), holds principally that there is no private right of action to enforce Title VI disparate impact regulations. The LEP Guidance is based on Title VI and DOT's Title VI regulations at 49 CFR part 21 and does not provide any private right of action beyond that which exists in those laws. Thus, the LEP Guidance does not increase the risk of recipients' legal liability to private plaintiffs. However, the Department does not dismiss the possibility that individuals may continue to initiate such legal actions.

The third most numerous category of comments DOT received regarded the definition of "qualified interpreter" and expressed commentators' concern with recipients' responsibility to make interpreters available, especially for recipients who serve populations with extremely diverse language needs. Set forth below in section VI are practices to help recipients ascertain that their interpreters are both competent and effective. This section should enable recipients to assess the qualifications of the interpreters they use and identify any improvements that need to be addressed.

Three of the comments urged withdrawal of the guidance, arguing it is unsupported by law. In response, the Department notes that its commitment to implementing Title VI and its regulations to address language barriers is longstanding and is unaffected by recent judicial action precluding individuals from successfully maintaining suits to enforce agencies' Title VI disparate impact regulations. This guidance clarifies existing statutory and regulatory provisions by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons.

The remaining 18 comments were generally supportive of the guidance and DOT's leadership in this area. One recipient commented that constraining LEP persons' access to services may actually hinder their ability to become more proficient in the English language, therefore justifying increased programs for LEP persons. Several comments received addressed areas unique to the provision of transportation services to LEP persons. One recipient discussed the inconsistency between the Federal Motor Carrier Safety Administration's (FMCSA's) regulations requiring all drivers to speak and understand a certain amount of English, and the guidance's requirement that the FMCSA division offices provide information and services in other languages to accommodate LEP persons. Pursuant to 49 CFR 391.11(b)(2), a person is qualified to drive a motor vehicle if he or she "[c]an read and speak the English language sufficiently to converse with the general public,

to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.'" In 1997, following an

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American Civil Liberties Union (ACLU) legal challenge to this requirement, DOT issued an advance notice of proposed rulemaking (ANPRM) to address this issue. On July 24, 2003, FMCSA withdrew this ANPRM, concluding that the information introduced in response to the notice ``does not establish that the current regulation requires an unnecessarily high level of English fluency that has resulted in a discriminatory impact or effect based upon national origin, color, or ethnicity.'" FMCSA determined the regulation ``as written and properly enforced effectively balances issues of civil rights and highway safety.'" 68 FR 43890.

Another recipient, who works with community-based organizations concerned with transportation practices and policies, suggested mandatory LEP Access Assessments be attached to the standard financial assistance Assurance Forms that recipients must execute, to serve as a basis for disqualifying recipients submitting inaccurate or substantially incomplete assessments from Federal grant funding. While providing LEP persons with meaningful access is the law and should be given high priority, DOT advocates a flexible approach in ensuring such access, as outlined below in section V, in order to suit the varying needs of its recipients, and therefore has not adopted this suggestion. As discussed in section VIII, DOT seeks to promote voluntary compliance to meet Title VI's goal of ensuring that Federal funds are not used in a manner that discriminates on the basis of race, color, or national origin. DOT will work with recipients to meet this goal, and will resort to more intrusive administrative remedies only if voluntary compliance cannot be secured and stronger measures become necessary to ensure LEP persons have meaningful access to services from recipients of DOT financial assistance.

This document has been modified based on careful consideration of public comments received by DOT, and the approach DOJ adopted after analyzing the public comments it received following its initial guidance published at 66 FR 3834 (January 16, 2001). This guidance is consistent with: Title VI, implementing regulations, Executive Order 13166, the DOJ General LEP Guidance, and the model DOJ Recipient Guidance issued on June 18, 2002.

With particular emphasis on the concerns mentioned above, the Department proposes this ``Limited English Proficiency Guidance for Department of Transportation Recipients.'" The text of this guidance document appears below.

Because this guidance must adhere to the Federal-wide compliance standards and framework detailed in the model DOJ Recipient Guidance issued on June 18, 2002, DOT specifically solicits comments on the nature, scope, and appropriateness of the DOT-specific examples set out in this guidance explaining and/or highlighting how those consistent Federal-wide compliance standards are applicable to recipients of Federal financial assistance from DOT. This guidance supplants the existing guidance on the same subject published at 66 FR 6733 (January 22, 2001). This guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Dated: December 7, 2005.
J. Michael Trujillo,
Director, Departmental Office of Civil Rights.

Guidance to Federal Financial Assistance Recipients Regarding Title VI
Prohibition Against National Origin Discrimination Affecting Limited
English Proficient Persons

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, regarding individuals older than age 5, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP."

In a 2001 Supplementary Survey by the U.S. Census Bureau, 33% of Spanish speakers and 22.4% of all Asian and Pacific Island language speakers aged 18-64 reported that they spoke English either "not well" or "not at all."

\2\ P035. Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over. Cens. Summ. File 3, 2001 Supp. Survey Summ. Tables (SF 3) (based on 12 monthly samples during 2001) Washington: U.S. Dep't of Comm., Bur. of the Census. Viewed 14 September 2004, available at:
http://factfinder.census.gov/servlet/DTTable?_lang=en&-redoLog=false&-mt name=DSS 2001 EST G2000 P035

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made meaningfully accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.\3\

\3\ DOT recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its programs and activities, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This guidance clarifies existing legal requirements for LEP persons by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons.\4\ These are the same criteria DOT will use in evaluating whether recipients are complying with Title VI and Title VI regulations.

\4\ This policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. Recipients should use the guidance to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are LEP.

Executive Order 13166 charges DOJ with the responsibility for providing LEP Guidance to other Federal agencies, such as DOT, and for ensuring consistency among each agency-specific guidance. Consistency among Federal Government agencies is particularly important. Inconsistent or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without facilitating the meaningful access for LEP persons that this policy guidance is designed to address. As with most government initiatives, this requires balancing several principles.

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While this guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs and activities aimed at the American public do not leave individuals behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those who particularly benefit from federally assisted programs and activities. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small nonprofit organizations that receive Federal financial assistance. There are many productive steps that the Federal Government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller recipients may choose not to participate in federally assisted programs or activities, threatening the critical functions that the programs or activities strive to assist. To that end, DOT plans to continue to work with DOJ and other Federal agencies to provide ongoing assistance and guidance in this important area. In addition, DOT plans to work with recipients of Federal financial assistance--for example, with motor vehicle

departments, transit authorities, state departments of transportation, and other transportation service providers--and LEP persons, to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOT intends to explore how language assistance measures and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small nonprofit organizations. An interagency working group on LEP has developed a Web site, <http://www.lep.gov>, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d-1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." 28 CFR 42.104(b)(2). DOT's Title VI regulations include almost identical language in this regard. See 49 CFR 21.5(b)(vii)(2) (portions of these regulations are provided in Appendix A).

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English-speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. "Improving Access to Services for Persons With Limited English Proficiency," 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish

guidance on how its recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding recipients from ``restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ``utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ``Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ``Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (DOJ's General LEP Guidance).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, the Assistant Attorney General for Civil Rights issued a memorandum for ``Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*. The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups--the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities--the Executive Order remains in force.\5\

\5\ The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. See, e.g., *Sandoval*, 532 U.S. at 286, 286 n.6 (``[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are `inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal agencies to enforce their own Title VI regulations.

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Pursuant to Executive Order 13166, DOT developed its own guidance

document for recipients and initially issued it on January 22, 2001. ``DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries.' ' However, in light of the public comments received and the Assistant Attorney General's October 26, 2001, clarifying memorandum, DOT has revised its LEP guidance to ensure greater consistency with DOJ's revised LEP guidance, published June 18, 2002, and other agencies' revised LEP guidance. 67 FR 117 (June 18, 2002).

III. Who Is Covered?

Pursuant to Executive Order 13166, the meaningful access requirement of Title VI, the Title VI regulations, and the four-factor analysis set forth in the DOJ's revised LEP Guidance, 67 FR 117 (June 18, 2002), apply to the programs and activities of Federal agencies, including DOT. Federal financial assistance includes grants, cooperative agreements, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOT assistance include, for example:

- State departments of transportation.
- State motor vehicle administrations.
- Airport operators.
- State highway safety programs.
- Metropolitan planning organizations.
- Regional transportation agencies.
- Regional, state, and local transit operators.
- Public safety agencies.\6\

\6\ Recipients should review DOJ's LEP Guidance for specific examples of how the four-factor analysis applies to interactions between funded law enforcement authorities and first responders.

Hazardous materials transporters and other first responders.

State and local agencies with emergency transportation responsibilities, for example, the transportation of supplies for natural disasters, planning for evacuations, quarantines, and other similar action.

Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipients.

Coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.

Example: DOT provides assistance to a state department of transportation to rehabilitate a particular highway on the National Highway System. All of the operations of the entire state department of transportation--not just the particular highway program--are covered by the DOT guidance.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP," and, therefore, are entitled to language assistance under Title VI of the Civil Rights Act of 1964 with respect to a particular type of service, benefit, or encounter. However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d-1.

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

Public transportation passengers.

Persons who apply for a driver's license at a state department of motor vehicles.

Persons subject to the control of state or local transportation enforcement authorities, including, for example, commercial motor vehicle drivers.

Persons served by emergency transportation response programs.

Persons living in areas affected or potentially affected by transportation projects.

Business owners who apply to participate in DOT's Disadvantaged Business Enterprise program.

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 a program, activity, or service of the recipient 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 recipient to people's lives; and (4) the resources available to the recipient and costs. As indicated above, the intent of this policy guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofit organizations.

After applying the above four-factor analysis to the various kinds of contacts a recipient has with the public, the recipient may conclude that different language assistance measures are sufficient to ensure meaningful access to the different types of programs or activities in which it engages. For instance, some of a recipient's activities will have a greater impact on or contact with LEP persons than others, 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. DOT 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

The greater the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population, the more likely language services are needed. Ordinarily, persons eligible to be served, or likely to be directly affected, by a recipient's programs or activities are those who are in fact, served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that is part of the recipient's service area. However, where, for instance, a motor vehicle office serves a large LEP population, the appropriate service area is that served by the 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,

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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 LEP parent(s) whose English proficient or LEP minor children and dependents encounter the services of DOT recipients.

Recipients should first examine their prior experiences with LEP individuals and determine the breadth and scope of language services that are needed. In conducting this analysis, it is important to: Include language minority populations that are eligible beneficiaries of recipients' programs, activities, or services but may be underserved because of existing language barriers; and consult additional data, for example, from the census, school systems and community organizations, and data from state and local governments, community agencies, school systems, religious organizations, and legal aid entities.\7\

\7\ 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 but speak or understand English less than well. People who are also proficient in English may speak some of the most commonly spoken languages other than English.

(2) The Frequency with Which LEP Individuals Come in Contact With the Program, Activity, or Service

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance, as the more frequent the contact, the more likely enhanced language services will be 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. Recipients should also

consider the frequency of different types of language contacts, as frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish, while less frequent contact with different language groups may suggest a different and/or 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. However, 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 a commercial telephonic interpretation service to obtain immediate interpreter services. Additionally, in applying this standard, recipients should 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. The obligations to communicate rights to an LEP person who needs public transportation differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services 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 requiring a driver to have a license, can serve as strong evidence of the importance of the program or activity.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs imposed may have an impact on the nature of the steps it should take in providing meaningful access for LEP persons. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns.

Resource and cost issues, however, can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services among and between recipients, advocacy groups, affected populations, and Federal agencies. For example, the following practices may reduce resource and cost issues where appropriate:

- Training bilingual staff to act as interpreters and translators.

- Information sharing through industry groups.

- Telephonic and video conferencing interpretation services.

- Translating vital documents posted on Web sites.

- 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.\8\

\8\ Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

Formalized use of qualified community volunteers.

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, their process 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 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 motor vehicle department or an emergency hazardous material clean-up team in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring bilingual staff (of course, many such departments have already made these arrangements). Additionally, providing public

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transportation access to LEP persons is crucial. An LEP person's inability to utilize effectively public transportation may adversely affect his or her ability to obtain health care, or education, or access to employment. In contrast, 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--such as in the case of a voluntary general public tour of an airport or train station--in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language services provided, quality and accuracy of those services can be critical. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients may provide language services in either oral or written form. Quality and accuracy of the language service is critical in order to avoid potential 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). Where interpretation is needed and is reasonable, recipients should consider some or all of the options below for providing competent interpreters in a timely manner.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret into and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation).

Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person;\9\ and understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.

\9\ Many languages have ``regionalisms,' ' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of certain legal terms, the interpreter should be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Additionally, some recipients may have their own requirements for interpreters, as individual rights may depend on precise, complete, and accurate interpretations or translations. In some cases, interpreters may be required to demonstrate that their involvement in a matter would not create a conflict of interest.

While quality and accuracy of language services are critical, they are nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services as part of disaster relief programs, or in the provision of emergency supplies and services, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety course need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner in order to be effective. Generally, to be ``timely,`` the recipient should provide language assistance at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as when an LEP person needs access to public transportation, a DOT recipient does not provide meaningful LEP access when it has only one bilingual staff member available one day a week to provide the service.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as transit station managers, department of motor vehicle service representatives, security guards, or program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff members are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting, as discussed above. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff members are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to facilitate accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with interpreters and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer prompt interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an

interpreter and cannot be recognized over the phone. The issues discussed above regarding interpreter competency are also relevant to telephonic interpreters. Video teleconferencing and allowing interpreters to review relevant documents in advance may also be helpful.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and help ensure that services are available more regularly.

Use of Family Members, Friends, Other Customers/Passengers as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use an interpreter of their choice at their own expense (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family members, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative, mission-related, or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive or confidential information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to obtain an LEP person's personal identification information, for example, in the case of an LEP person attempting to apply for a driver's license. Thus, DOT recipients should generally offer free interpreter services to the LEP person. This is particularly true in situations in which health, safety, or access to important

benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when no interpreters, or bilingual or symbolic signs are available in a state department of motor vehicles. In an effort to apply for a driver's license, vehicle registration, or parking permit, an LEP person may be forced to enlist the help of a stranger for translation. This practice may raise serious issues of competency or confidentiality and may compromise the personal security of the LEP person, as the stranger could have access to the LEP person's personal identification information, such as his or her name, phone number, address, social security number, driver's license number (if different from the social security number), and medical information. However, there are situations where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of an airport, or a train or bus station. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others to interpret may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. Such written materials could include, for example:

Driver's license, automobile registration, and parking permit forms.

Parking tickets, citation forms, and violation or deficiency notices, or pertinent portions thereof.

Emergency transportation information.

Markings, signs, and packaging for hazardous materials and substances.

Signs in bus and train stations, and in airports.

Notices of public hearings regarding recipients' proposed transportation plans, projects, or changes, and reduction, denial, or termination of services or benefits.

Signs in waiting rooms, reception areas, and other initial points of entry.

Notices advising LEP persons of free language assistance and language identification cards for staff (i.e., ``I speak'' cards).

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Statements about the services available and the right to free language assistance services in appropriate non-English languages, in brochures, booklets, outreach and recruitment information, and other materials routinely disseminated to the public.

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.

Applications, or instructions on how to participate in a recipient's program or activity or to receive recipient benefits or services.

Consent forms.

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 accurate or timely. For instance, applications for bicycle safety courses should not generally be considered vital, whereas access to safe driving handbooks could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their 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 information on rights and services. Awareness of rights or services is an important part of ``meaningful access,'' as lack of awareness may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach efforts in furtherance of its programs and 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, and some such translations may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious and community organizations to spread a message.

Sometimes a very large document may include both vital and non-vital information. This may also be the case when the title and a phone number for obtaining more information on 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 cannot reasonably be translated into many languages. Thus, vital information may include, for instance, providing information in appropriate languages regarding where an LEP person might obtain an interpretation or translation of

the document.

Into What Languages Should Documents be Translated? The extent of the recipient's obligation to provide written translations of documents should be determined by the recipient 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.

The languages spoken by the LEP individuals with whom the recipient has frequent contact determine the languages into which vital documents should be translated. However, because many DOT recipients serve communities in large cities or across an entire state and regularly serve areas with LEP populations that speak dozens and sometimes more than 100 languages, it would be unrealistic to translate all written materials into each language. 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. However, well-substantiated claims of lack of resources to translate all such documents into dozens or more than 100 languages do not necessarily relieve the recipient of the obligation to translate vital documents into at least several of the more frequently encountered languages. The recipient should then set benchmarks for continued translations into the remaining languages over time.

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) below 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 under Title VI.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is noncompliance. Rather these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis. For example, even if a safe harbor is not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, it 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. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOT recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5% 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 5% 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.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate, and vice versa.

Particularly where vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.\10\ Competence can often be ensured by having a second, independent translator check the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent

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translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ``back translation.''

\10\ For those languages in which no formal accreditation exists, a particular level of membership in a professional translation association can provide some indicator of professional competence.

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English-language version or has no relevant equivalent meaning.\11\ Community organizations may be able to help consider whether a document is written at an appropriate level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical or programmatic terms helps avoid confusion by LEP individuals and may reduce costs. Creating or using already created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by other recipients or Federal agencies may also be helpful.

\11\ For instance, although there may be languages that do not have a direct translation of some legal, technical, or program-related terms, the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of those terms in that language that can be used again, when appropriate.

While quality and accuracy of translation services are critical, they are nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no important consequences for LEP persons who rely on them may be translated by translators who are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., driver's license written exams and documents regarding important benefits or services, or health, safety, or legal information). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of an Effective Implementation Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations it serves. Although recipients have considerable flexibility in developing such a plan, maintaining a periodically updated written plan on language assistance for LEP persons ('`LEP plan'') for use by recipient employees serving the public would be an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans may also provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. Thus, recipients may choose to document the language assistance services in their plan, and how staff and LEP persons can access those services. Certain DOT recipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. In that event, a recipient should consider alternative ways to reasonably articulate a plan for providing meaningful access. Early input from entities such as schools, religious organizations, community groups, and groups working with new immigrants can be helpful in forming this planning process. The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

There should be an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters pursuant to the first two factors in the four-factor analysis.

One way to determine the language of communication is to use language identification cards (or ``I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say, ``I speak Spanish'' in both Spanish and English, or ``I speak Vietnamese'' in both English and Vietnamese. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau's ``I speak card'' can be found and downloaded at <http://www.usdoj.gov/crt/cor/13166.htm>.

When records are normally kept of past interactions with members of

the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.

- How recipient staff can obtain those services.

- How to respond to LEP callers.

- How to respond to written communications from LEP persons.

- How to respond to LEP individuals who have in-person contact with recipient staff.

- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff members should know their obligations to provide meaningful access to information and services for LEP persons, and all employees in public contact positions should be properly trained. An effective LEP plan would likely include training to ensure that:

- Staff knows about LEP policies and procedures.

- Staff having contact with the public (or those in a recipient's custody) is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. Recipients have flexibility in deciding the manner in which the training is provided, and the more frequent the contact with LEP persons, the greater the need will be for in-depth training. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors that it will provide language services, it is important that the recipient notify LEP persons of services available free of charge. Recipients should provide this notice in languages LEP persons would understand. Examples of notification that recipients should consider include:

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Posting signs in intake areas and other entry points. This is important so that LEP persons can learn how to access those language services at initial points of contact. This is particularly true in areas with high volumes of LEP persons seeking access to certain transportation safety information, or other services and activities run by DOT recipients.\12\

\12\ For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the necessary language assistance. The Social Security Administration has made such signs available at <http://www.ssa.gov/multilanguage/langlist1.htm>. DOT recipients could, for example, modify these signs for use in programs, activities, and services.

Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ``tagged'' onto the front of common documents.

Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

Using an automated telephone voice mail attendant or menu system. The system could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

Including notices in local newspapers in languages other than English.

Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

Providing presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees.

In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

Current LEP populations in the service area or population affected or encountered.

Frequency of encounters with LEP language groups.

Nature and importance of activities to LEP persons.

Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

Whether existing assistance is meeting the needs of LEP persons.

Whether staff knows and understands the LEP plan and how to implement it.

Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. DOT enforces Title VI as it applies to recipients' responsibilities to LEP persons through the procedures provided for in DOT's Title VI regulations (49 CFR part 21, portions of which are provided in Appendix A).

The Title VI regulations provide that DOT will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOT will inform the recipient in writing of this determination, including the basis for the determination. DOT uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOT must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOT must secure compliance through the termination of Federal assistance after the DOT recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ with a recommendation that appropriate proceedings be brought to enforce the laws of the United States. In engaging in voluntary compliance efforts, DOT proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOT's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs, activities, and services.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOT acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, DOT will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOT recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

IX. Promising Practices

The following examples are provided as illustrations of the responses of some recipients to the need to provide services to LEP persons, and are meant to be interesting and useful examples of ways in which LEP recipients can provide language services. Recipients are responsible for ensuring meaningful access to all portions of their program or activity, not just the portions to which DOT assistance is targeted. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in moving toward

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meeting the meaningful access requirements of Title VI and the Title VI regulations. These examples do not, however, constitute an endorsement by DOT, which will evaluate recipients' situations on a case-by-case basis using the factors described elsewhere in this guidance.

Language Banks. In several parts of the country, both urban and rural, community organizations and providers have created language banks that dispatch competent interpreters, at reasonable rates, to participating organizations, reducing the need to have on-staff interpreters for low-demand languages. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs but limited demand for any particular language.

Language Support Offices. A state social services agency has established an "Office for Language Interpreter Services and Translation." This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications, and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

Some recipients have established working liaisons with local community colleges to educate the LEP community in transportation matters. One city formed a multilingual/multi-agency task force to address language barriers and the concerns of the affected communities. The task force completed a survey of city staff with multilingual skills in order to identify employees willing to serve as interpreters and is preparing lists of community and cultural organizations.

Use of Technology. Some recipients use their Internet and/or intranet capabilities to store translated documents online, which can be retrieved as needed and easily shared with other offices. For example, a multilanguage gateway on a Web page could be developed for LEP persons and the public to access documents translated into other languages.

Telephone Information Lines and Hotlines. Recipients have subscribed to telephone-based interpretation services and established telephone information lines in common languages to instruct callers on how to leave a recorded message that will be answered by someone who speaks the caller's language. For example, a recipient may choose to adopt a program similar to the National Highway Traffic Safety Administration's (NHTSA's) Auto Safety Hotline, which has four representatives who speak Spanish and are available during normal hotline business hours (Mon.-Fri., 8 a.m.-10 p.m. eastern time).\13\

\13\ The evening hours permit people from the West Coast (where a significant number of LEP persons reside) to call after work, providing an option for instructions in Spanish, a separate queue, and Spanish-speaking operators.

Signage and Other Outreach. Recipients have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by (a) posting signs and placards with this information in public places such as grocery stores, bus shelters, and subway stations; (b) putting notices in print media and on radio and television stations that serve LEP groups or broadcasting in languages other than English;\14\ (c) airing videos and public service announcements for non-English-speaking residents; (d) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; (e) distributing information at places of worship, ethnic shopping areas, and other gathering places for LEP groups; (f) using posters with appropriate languages designed to reach potential beneficiaries; and (g) developing pictures, images, figures, or icons that could be understandable alternatives to written words.

\14\ Notifications should be delivered in advance of scheduled meetings or events to allow time for persons to request accommodation and participate.

DOT agencies and recipients have implemented numerous language access services:

DOT's Pipeline and Hazardous Materials Safety Administration (formerly known as the Research and Special Programs Administration), at 49 CFR Sec. Sec. 192.616 and 195.440, requires pipeline officers to establish a program for effective reporting by the public of gas pipeline emergencies to the operator or public officials, also providing that the program must be conducted in English and other common languages.\15\ We recommend that recipients consider the appropriateness of such an approach to meet their individual service provision needs.

\15\ ``Each [pipeline] operator shall establish a continuing educational program to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The program and the media used should be as comprehensive as necessary to reach all areas in which the operator transports gas. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.' 49 CFR Sec. 192.616. Section 195.440 of title 49, Code of Federal Regulations, imposes similar requirements in the case of hazardous liquid or carbon dioxide pipeline emergencies.

DOT's National Highway Traffic Safety Administration (NHTSA) has translated the National Standardized Child Passenger Safety Training Program curriculum into Spanish. The course, designed to help communities work with parents and caregivers on the proper installation of child safety seats, has been pilot tested and is scheduled to be available to the public by early 2006 through many national Latino organizations and State Highway Safety Offices.

DOT's Federal Motor Carrier Safety Administration (FMCSA) division offices in California, Arizona, New Mexico, Texas, and Puerto Rico employ personnel conversant in Spanish to communicate the agency's critical safety regulations.

The Del Rio, Texas, Police Department implemented the El Protector program in Del Rio and developed public service broadcasts in Spanish about traffic safety issues such as loading and unloading school buses, drinking and driving, and pedestrian safety.

Emergency Medical Services (EMS) staff in Los Angeles reported that their system is equipped to receive calls in more than 150 languages, although Spanish is the most frequent language used by 911 callers who do not speak English.

District of Columbia DMV information, forms, and support material are available in German, Spanish, French, Russian, Dutch, and Portuguese and can be downloaded from the division's Web site. The DC DMV also provides a "City Services Guide" in Chinese, Korean, Spanish, and Vietnamese. DC's "Click It or Ticket" program material and information on child safety seat loaner programs and fitting station locations are available in Spanish.

The New Jersey Department of Motor Vehicles administers driver's license tests in more than 15 languages, including Arabic, French, Greek, Korean, Portuguese, and Turkish.\16\

\16\ DOT recommends that state agencies share such information, to avoid the necessity of each agency performing every translation.

In North Dakota, while the Traffic Safety Office acknowledges a limited minority population requiring assistance with translation, the Driver Licensing Unit offers the option of an oral test in Spanish.

The Iowa Department of Transportation (IDOT) provides a Spanish version of the Commercial

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Driver's License knowledge test using a touch screen computer, and study guides of the Iowa Driver's Manual in Albanian, Bosnian, Russian, Vietnamese, and Korean. IDOT established a liaison with a local community college to provide education for Bosnian refugees concerning the Commercial Motor Vehicle driving course.\17\

\17\ DOT especially recommends the idea of working with local community colleges to educate the LEP community in transportation matters.

The Wisconsin DOT created a 3rd grade level study guide,

the Motorist Study Manual Easy Reader, which was translated by the Janesville Literacy Council into Spanish. Wisconsin DOT also provides the regular 6th grade level version of the Reader in English, Spanish, and Hmong; a Motorcycle Study Manual in English and Spanish; and a CDL (Commercial Driver's License) Study Manual in English and Spanish. In addition, Knowledge and Highway Sign Tests are written in 13 languages other than English, recorded on audiocassette tapes in English and Spanish, or orally interpreted by bilingual staffers obtained from a roster of Wisconsin DOT employees who speak, read, or write foreign languages.

The Idaho Office of Traffic and Highway Safety implemented a Spanish-language safety belt media campaign to educate its Hispanic community on the statewide ``Click It, Don't Risk It!'' program to boost seat belt use. Information appears in *Unido*, Idaho's largest Spanish-language newspaper, and warns all motorists to buckle up or risk receiving a safety belt citation.

The New Mexico State Highway and Transportation Department, with Federal Highway Administration (FHWA) support, provides Spanish-language translations of its Right-of-Way Acquisition and Relocation brochures and also employs bilingual right-of-way agents to discuss project impacts in Spanish.

The State of Oregon developed a report on multilingual services provided by state agencies. State agencies will use the final document to enhance their existing programs, including expanding communication efforts to serve and protect all Oregonians.

The Texas DOT utilizes bilingual employees in its permit office to provide instruction and assistance to LEP Spanish-speaking truck drivers when providing permits to route overweight trucks through Texas. In its ``On the Job Training Supportive Services Program'' Texas DOT has used Spanish-language television to inform people who have difficulty reading English of opportunities in the construction industry.

When the Virginia DOT (VDOT) became aware that several Disadvantaged Business Enterprise (DBE) firms were about to be removed from construction projects in Northern Virginia because they required certified concrete inspectors, and that they could not comply because the concrete inspection test was only offered in English, it used supportive services funding from the Federal Highway Administration to translate the training manual and test material into Spanish. VDOT also provides tutoring for the DBE firms. The Virginia State Police maintains a written list of interpreters available statewide to troopers through the Red Cross Language Bank, as well as universities and local police departments.

The Colorado State Patrol produced safety brochures in Spanish for farmers and ranchers. It has also printed brochures in Spanish pertaining to regulatory requirements for trucking firms.

In preparation of its 20-year planning document, the Transportation Concept Report, the California DOT (Caltrans) held a public meeting titled ``Planning the Future of Highway 1'' in the largely Hispanic city of Guadalupe, through which Highway 1 runs. The meeting was broadcast on the local public access channel since many of the Spanish-speaking residents potentially affected by Highway 1 projects rely on the channel to receive public affairs information. Caltrans provided a Spanish-language interpreter during the meeting and also made its Spanish-speaking public affairs officer available to meet with participants individually.

During project planning for interstate improvements along

Interstate 710 in California, engineers presented ``good'' alternatives to the affected communities; however, the proposed highway expansion would have removed low-income homes in communities that are 98% Spanish speaking. To ensure that their concerns were heard, California identified the affected communities and facilitated the establishment of Community Advisory Committees that held bilingual workshops between engineers and the public.

The Minnesota DOT authored a manual detailing its requirements to provide access to all residents of Minnesota under environmental justice standards, which included ideas such as publishing notices in non-English newspapers, printing notices in appropriate languages, and providing interpreters at public meetings.

In New Mexico, the Zuni Entrepreneurial Enterprises, Inc. (ZEE) Public Transportation Program designed the Zuni JOBLINKS program to develop, implement, and maintain a transportation system to link Native Americans and other traditionally unserved/underserved persons in the service area to needed vocational training and employment opportunities. Outreach for the program included radio announcements and posting of signs in English and Zuni that described ZEE's services and provided ZEE's phone number.

Washington, DC's Metropolitan Area Transit Authority (WMATA) publishes pocket guides regarding its system in French, Spanish, German, and Japanese, and has a multilanguage website link.

In North Dakota, Souris Basin Transportation (SBT) started using visual logos on the sides of the vehicles to help illiterate passengers identify the bus on which they were riding. Although the illiteracy rate has dropped among seniors, SBT kept the logos on its vehicles for use by the growing LEP population and also added volunteers who speak languages other than English (such as Spanish, German, Norwegian, Swedish, and French) available by phone to drivers and staff.

New York City Transit MetroCard vending machines are located in every station and contain software that allows them to be programmed in three languages in addition to English, based upon area demographics. Currently, these machines are capable of providing information in Spanish, French, French Creole, Russian, Chinese, Japanese, Italian, Korean, Greek, and Polish.

The Metropolitan Atlanta Rapid Transit Authority (MARTA) advertises upcoming service and fare changes in Spanish, Korean, Vietnamese, and Chinese language newspapers. MARTA also produces a bilingual (Spanish/English) service modifications booklet.

The Fort-Worth Transportation Authority communicates information about service and fare changes in Spanish and English. It recruits Spanish-speaking customer service representatives and bus operators and has a community outreach liaison who is bilingual. The transit provider also provides a Spanish-language interpreter at all public meetings.

The Salt Lake City International Airport maintains a list of 35 bilingual and multilingual employees who speak one of 19 languages (including three dialects of Chinese) and their contact information. The list is published in the

[[Page 74100]]

Airport Information Handbook and provided to all airport employees. The airport also contracts with a telephonic interpretation service to provide on-demand telephone interpretation services to beneficiaries.

The Port of Seattle has 16 "Pathfinders" on staff who act as guides and information sources throughout the Seattle Tacoma International Airport. A key selection criterion for Pathfinders is multilingual ability. The Pathfinders collectively speak 15 languages and are often called on to act as interpreters for travelers who do not speak English. Pathfinders greet all international flights and are assigned to do so based on language skills.

Seattle Tacoma International Airport's trains carry announcements in English, Japanese, and Korean. The Port of Seattle contributed \$5,000 to the creation of the City of Tukwila's "Newcomers Guide," which is published in six languages and includes information about the airport and Airport Jobs, a referral service for employment at the airport.

The following is a sample notice that would be useful for recipients to add to the publications or signs for their programs, services, or activities, in order to notify LEP individuals of the availability of materials and services in other languages.

Sample Notice of Availability of Materials and Services

FOR FURTHER INFORMATION CONTACT: For hearing-impaired individuals or non-English-speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax [name] of [organization] at Phone: xxx-yyy-zzzz, TTY: xxx-yyy-zzzz, or Fax: xxx-yyy-zzzz." \18\

\18\ If there is a known and substantial LEP population that may be served by the program discussed in the notice, the notice should be in the appropriate non-English language.

Appendix A to DOT Guidance

DOT's Title VI regulation (49 CFR part 21) states the following, in relevant part:

Sec. 21.5 Discrimination prohibited.

(a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(vi) Deny a person an opportunity to participate in the program

through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

* * * * *

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

* * * * *

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.

[FR Doc. 05-23972 Filed 12-13-05; 8:45 am]

BILLING CODE 4910-62-P

Please explain your relationship to this person(s):

6. Which of the following best describes the reason you believe the discrimination took place?
Was it because of your:

Race/Color National Origin Sex Age Disability Other

7. What date did the alleged discrimination take place?
8. In your own words, describe the alleged discrimination. Explain what happened and whom you believe was responsible.
9. Have you filed this complaint with any other federal, state, or local agency; or with any federal or state court? Yes No
If yes, provide the date the complaint was filed _____.
10. Please provide information about a contact person at the agency/court where the complaint was filed.

Name:

Address:

City, State, and Zip Code:

11. Please sign below. You may attach any written materials or other information that you think is relevant to your complaint.

Complainant's Signature

Date

LEP Guidelines -- Appendix D
Language Flashcards

LANGUAGE
IDENTIFICATION
CARD

2004
Census
Test

United States
Census
2010

LANGUAGE IDENTIFICATION FLASHCARD

<input type="checkbox"/>	ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.	1. Arabic
<input type="checkbox"/>	Խնդրում ենք նշում կատարել այս քառակուսում, եթե խոսում կամ կարդում եք հայերեն:	2. Armenian
<input type="checkbox"/>	যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।	3. Bengali
<input type="checkbox"/>	ឈ្លូមបញ្ជាក់ក្នុងប្រអប់នេះ បើអ្នកអាន ឬនិយាយភាសា ខ្មែរ ។	4. Cambodian
<input type="checkbox"/>	Motka i kahhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.	5. Chamorro
<input type="checkbox"/>	如果你能读中文或讲中文，请选择此框。	6. Simplified Chinese
<input type="checkbox"/>	如果你能讀中文或講中文，請選擇此框。	7. Traditional Chinese
<input type="checkbox"/>	Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.	8. Croatian
<input type="checkbox"/>	Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.	9. Czech
<input type="checkbox"/>	Kruis dit vakje aan als u Nederlands kunt lezen of spreken.	10. Dutch
<input type="checkbox"/>	Mark this box if you read or speak English.	11. English
<input type="checkbox"/>	اگر خواندن و نوشتن فارسی بلد هستید، این مربع را علامت بزنید.	12. Farsi

LANGUAGE
IDENTIFICATION
FLASHCARD

- | | | |
|--------------------------|--|-----------------------|
| <input type="checkbox"/> | Cocher ici si vous lisez ou parlez le français. | 13. French |
| <input type="checkbox"/> | Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen. | 14. German |
| <input type="checkbox"/> | Σημειώστε αυτό το πλαίσιο αν διαβάσετε ή μιλάτε Ελληνικά. | 15. Greek |
| <input type="checkbox"/> | Make kazyè sa a si ou li oswa ou pale kreyòl ayisyen. | 16. Haitian
Creole |
| <input type="checkbox"/> | अगर आप हिन्दी बोलते या पढ़ सकते हैं तो इस बक्स पर चिह्न लगाएँ। | 17. Hindi |
| <input type="checkbox"/> | Kos lub voj no yog koj paub twm thiab hais lus Hmoob. | 18. Hmong |
| <input type="checkbox"/> | Jelölje meg ezt a kockát, ha megérta vagy beszélta a magyar nyelvet. | 19. Hungariar |
| <input type="checkbox"/> | Markaam daytoy nga kahon no makabasa wenno makasaoka iti Ilocano. | 20. Ilocano |
| <input type="checkbox"/> | Marchi questa casella se legge o parla italiano. | 21. Italian |
| <input type="checkbox"/> | 日本語を読んだり、話せる場合はここに印を付けてください。 | 22. Japanese |
| <input type="checkbox"/> | 한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오. | 23. Korean |
| <input type="checkbox"/> | ໃຫ້ໝາຍໃສ່ຊ່ອງນີ້ ຖ້າທ່ານອ່ານຫຼືປາກພາສາລາວ. | 24. Laotian |
| <input type="checkbox"/> | Prosimy o zaznaczenie tego kwadratu, jeżeli posługuje się Pan/Pani językiem polskim. | 25. Polish |

LANGUAGE
IDENTIFICATION
FLASHCARD

- | | | |
|--------------------------|--|----------------|
| <input type="checkbox"/> | Assinale este quadrado se você lê ou fala português. | 26. Portuguese |
| <input type="checkbox"/> | Însemnați această căsuță dacă citiți sau vorbiți românește. | 27. Romanian |
| <input type="checkbox"/> | Пометьте этот квадратик, если вы читаете или говорите по-русски. | 28. Russian |
| <input type="checkbox"/> | Обележите овај квадратик уколико читате или говорите српски језик. | 29. Serbian |
| <input type="checkbox"/> | Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky. | 30. Slovak |
| <input type="checkbox"/> | Marque esta casilla si lee o habla español. | 31. Spanish |
| <input type="checkbox"/> | Markahan itong kuwadrado kung kayo ay marunong magbasa o magsalita ng Tagalog. | 32. Tagalog |
| <input type="checkbox"/> | ให้ทำเครื่องหมายลงในช่องสี่เหลี่ยมหรือทุกภาษาไทย. | 33. Thai |
| <input type="checkbox"/> | Maaka 'i he puha ni kapau 'oku ke lau pe lea fakatonga. | 34. Tongan |
| <input type="checkbox"/> | Відмітьте цю клітинку, якщо ви читаете або говорите українською мовою. | 35. Ukrainian |
| <input type="checkbox"/> | اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانے میں نشان لگائیں۔ | 36. Urdu |
| <input type="checkbox"/> | Xin đánh dấu vào ô này nếu quý vị biết đọc và nói được Việt Ngữ. | 37. Vietnamese |
| <input type="checkbox"/> | באצייכנט דעם קעסטל אויב איר לייענט אדער רעדט אידיש. | 38. Yiddish |

DB-3309

U.S. DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. CENSUS BUREAU

LEP Guidelines -- Appendix E
FHWA Memorandum Dated April 7, 2006

Memorandum

U.S. Department of Transportation

Federal Highway Administration

Subject: **ACTION:** Implementation of Executive Order 13166 –
Improving Access to Services for People With Limited
English Proficiency

Date: April 7, 2006

From: Frederick D. Isler
Associate Administrator for Civil Rights

Reply to Attn of: HCR-10



To: Division Administrators
Directors of Resource Centers
Directors of Field Services

On August 11, 2000, President Clinton issued Executive Order (EO) 13166 directing Federal agencies to ensure that their program and activities are accessible to persons with Limited English Proficiency (LEP). The EO requires each Federal agency to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each agency must prepare a plan to improve access to its Federally conducted programs and activities (i.e., the services it provides directly to the public) by eligible LEP persons.

In accordance with the EO, the U.S. Department of Transportation (DOT) published revised LEP guidelines concerning service and policies by recipients of Federal financial assistance in the Federal Register (70 FR 74087) on December 14, 2005 (see attached). This guidance supersedes existing guidance on the same subject originally published in the 66 FR 6733 (January 22, 2001). The purpose of this LEP policy guidance is to clarify the responsibilities of recipients of Federal financial assistance from the USDOT recipients and assist them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The guidance applies to all DOT funding recipients, which include State departments of transportation, State motor vehicle administrations, airport operators, metropolitan planning organizations (MPO), and regional, State, and local transit operators, among many others. Additional information regarding DOT's LEP guidance can also be found at <http://www.dotcr.ost.dot.gov/lep.asp>

The DOT guidance outlines four factors recipients should apply to the various kinds of contacts 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 eligible to be served or likely to be encountered by a program, activity, or service of the recipient 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 recipient to people's lives.
4. The resources available to the recipient and costs.

In accordance with the requirements, the FHWA's Office of Civil Rights is available to assist with the implementation of the EO 13166. Please distribute this information to your State partners, local government, MPOs, etc. and work with them in the implementation of the LEP requirements.

Should you have any questions, please contact either Ms. Rosemarie Morales at 410-779-7150, Ms. Linda J. Williams at 202-366-1604, or Ms. Ann Wicks at 202-366-2213. Thank you for your assistance in this important matter.

Attachment

LEP Guidelines, Federal Register (70 FR 74087)

[TEXT](#) [PDF](#)

cc: Joseph Austin



LEP Guidelines -- Appendix F Language Survey Form

Pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," The Virginia Department of Transportation (VDOT) is conducting a survey of VDOT to determine the level of potential resources available for possible language translation and interpretation. The Civil Rights Division has a language service contract that will be the primary source for translations. We anticipate using employees as a back-up resource from time to time. Disclosure of this information is strictly voluntary.

Name:	District:	Division:
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Please indicate languages you speak in addition to English:

<input type="checkbox"/> Spanish	<input type="checkbox"/> Polish
<input type="checkbox"/> Chinese (Mandarin)	<input type="checkbox"/> Portuguese
<input type="checkbox"/> Chinese (Cantonese)	<input type="checkbox"/> Thai
<input type="checkbox"/> Japanese	<input type="checkbox"/> Arabic
<input type="checkbox"/> Korean	<input type="checkbox"/> Hebrew
<input type="checkbox"/> Russian	<input type="checkbox"/> Hindi
<input type="checkbox"/> Vietnamese	<input type="checkbox"/> Bosnian
<input type="checkbox"/> Armenian	<input type="checkbox"/> Punjabi
<input type="checkbox"/> Cambodian (Khmer)	<input type="checkbox"/> Urdu
<input type="checkbox"/> German	<input type="checkbox"/> Tagalog
<input type="checkbox"/> Haitian Creole	<input type="checkbox"/> African Dialects
<input type="checkbox"/> Italian	<input type="checkbox"/> Other

Language #1:

<input type="checkbox"/> Read	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited
<input type="checkbox"/> Write	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited
<input type="checkbox"/> Speak	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited

Language #2:

<input type="checkbox"/> Read	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited
<input type="checkbox"/> Write	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited
<input type="checkbox"/> Speak	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited

Language #3:

<input type="checkbox"/> Read	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited
<input type="checkbox"/> Write	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited
<input type="checkbox"/> Speak	<input type="checkbox"/> Fluent	<input type="checkbox"/> Passable	<input type="checkbox"/> Limited

Please indicate whether you would be willing to provide language assistance.

<input type="checkbox"/> Yes
<input type="checkbox"/> No

If you have any questions or need assistance, please contact VDOT's Civil Rights Division at 804-786-2730. Please return form by 2/15/12 to corina.herrera@vdot.virginia.gov.