

Date of Issue: July 25, 2006

Office of Issue: AWI FG 06-055

Reference: USDOL

FINAL GUIDANCE

Language Assistance to Limited English Proficient (LEP) Persons

OF INTEREST TO:

Workforce Florida, Inc. and Regional Workforce Boards

SUBJECT:

Providing Language Assistance to Limited English Proficient (LEP) Persons

PURPOSE:

To provide guidance regarding the obligation to provide language assistance to limited English proficient (LEP) persons

SCOPE:

These guidelines apply to any Workforce service provider (whether a person, a business entity, a profit or nonprofit organization, governmental agency or subdivision or other) that delivers federal financially assisted programs (hereinafter referred to simply as "provider"). These guidelines apply to programs and services provided by the one-stop system partners only if their respective federal grant-making agencies have not issued LEP guidelines or the guidelines do not address the partner's one-stop activities.

I. SUMMARY

As recipients of federal financial assistance, workforce boards, one-stop operators, and other service providers have a responsibility to assure nondiscrimination in service delivery to persons who are limited-English proficient. Effective plans include clear goals, management accountability and opportunities for community input and planning throughout the process. The obligation to provide LEP language assistance remains even if no plan is developed. A written plan is not required, but can be very helpful.

A. Assessment

Every provider shall make periodic assessments (but no period shall be longer than one year) of the languages spoken by LEP persons within the provider's service area and the number of LEP persons who are eligible for the provider's services, and then supply appropriate language assistance according to these guidelines.

B. Language Assistance

Providers must take reasonable steps to assure that LEP persons receive the language assistance necessary to afford them meaningful access to the provider's programs and services.

1. Every provider shall identify the initial point of contact, as well as any subsequent points of contact, with LEP persons where language assistance is likely to be needed.
2. Every provider shall provide a method or methods at the initial point of contact to notify LEP persons that:
 - a. upon request, they are offered language assistance;
 - b. language assistance will be provided at no cost to them; and,
 - c. vital documents will be translated at no cost.¹
3. Based on its assessments, every provider shall make arrangements, based on these guidelines, for appropriate interpreter and translation services.
4. The language needs, the resources to provide effective language assistance to the applicant, claimant or participant (hereinafter

¹ See page 5 for discussion about "vital documents."

referred to as “client”)², and the arrangements to access these resources in a timely fashion shall be promptly determined and prominently displayed in the client’s file for future reference.

C. Training

All employees who are likely to have contact with LEP persons shall be trained to assure that they know LEP policies and procedures, that they work effectively with in-person and telephone interpreters, and that they understand the dynamics of interpretation among LEP persons, providers and interpreters. LEP training shall be part of the orientation for all new employees who work with LEP persons.

D. Monitoring

Periodically (but no period shall be longer than one year), every provider shall monitor its language assistance program to assess its effectiveness. Monitoring shall include, but is not limited to:

1. determining whether existing language assistance is meeting LEP person’s needs;
2. determining whether staff is trained in current LEP policies; and,
3. determining whether resources and arrangements for LEP assistance are still current and viable.

II. DISCUSSION

Who is-an LEP person?

A person who, due to national origin, has no ability or a limited ability to read, write, speak, or understand English to the extent that he or she cannot have meaningful access to a provider’s services might be limited English proficient and might be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

² For LEP definition purposes only, an “applicant” or “claimant” for whom services are ultimately denied or rejected shall be considered a “client” (for LEP services) from the point of initial contact until such time as notice of denial or rejection is effectively received and understood by the applicant or claimant. Such notice, and the communication of certain rights arising from such notice, may require appropriate translation or interpretation. All other applicants or claimants who are eligible for providers’ services become “participants” and are, therefore, included within the definition of “client.”

A. Assessment

Assessment involves estimating the number of LEP persons in each language group that are likely to be encountered within the provider's service area, identifying the LEP language needs within the service area, identifying the language resources available to meet the LEP language needs and making arrangements to supply effective and timely language assistance.³

Determining the Extent of the Obligation to Provide LEP Services

The intent is to achieve a balance that assures meaningful access to critical services while not imposing undue burdens on small businesses, small local governments or small non-profit agencies and firms. The starting point is an analysis that considers four factors:⁴

1. The number or proportion of LEP persons served or encountered in the provider's eligible service population;
2. The frequency with which LEP persons come in contact with the program;
3. The nature and importance of the provider's program, activity or services; and,
4. The translation and interpreter resources available to the provider, and the costs to the provider for such services.

Providing Meaningful Access to Services

The key to assuring "meaningful access" to services and benefits for LEP persons is to provide language assistance that results in accurate and effective communication between the provider and the client about:

1. the types of services and/or benefits and
2. the person's circumstances.

³ If a recipient serves a large LEP population, the appropriate service area is most likely determined by considering local service areas and not the entire population served by the recipient. Thus, in a situation where more than one One-Stop Center is managed in a particular area, each One-Stop Center may want to assess its local service population instead of relying upon a population survey of the region as a whole. The focus of the analysis is on the lack of English proficiency, not the ability to speak more than one language.

⁴ This analysis is referred to as the "four-factor analysis" in the federal guidelines.

Effective programs for LEP services usually consist of the following:

1. Annual assessment of the language needs of the population to be served through, for example:
 - a. identification of the languages other than English that are likely to be encountered in the provider's service area and by estimating the number of LEP persons in each language group who are eligible for services and or benefits, and who are likely to be directly affected by the provider's program or activity;
 - b. review of census and state labor-market data;
 - c. review of statistics from school systems, community agencies and organizations; and,
 - d. comparison to demographic data.
2. Recording LEP status in clients' files to assure consistent communication in the appropriate language.
3. Identifying the stages or contact points in the program or services where language assistance is likely to be needed.
4. Reviewing delivery systems to determine whether any program system denies or limits participation by LEP persons.
5. Understanding circumstances in which there may be a need for third-party communication (for example, communicating with the limited-English-proficient parent of a student under the age of 18).
6. Identifying and locating the translation and interpreter resources that are needed to provide the language assistance.

B. Language Assistance

At a minimum, LEP persons shall be notified that:

1. upon request, they are offered language assistance;
2. language assistance will be provided at no cost to the person; and,
3. vital documents will be translated at no cost.

"Vital documents" are documents written with the primary purpose of:

1. describing LEP client's rights, responsibilities, or benefits;
2. requesting information or a response from LEP clients;
3. notifying LEP clients of a provider's action which may adversely affect them;

4. requiring LEP client's informed consent or acknowledgement; and,
5. notifying LEP clients of the opportunity for free language assistance.

There are two major components to a language-assistance program:

1. oral language interpretation and
2. translation of written materials.

Oral Language Interpretation

An effective language-assistance program may include some or all of the following steps:

1. hiring bilingual staff who are competent in interpreting;
2. hiring staff interpreters who are trained and competent in interpreting;
3. contracting with an outside interpreter service for qualified interpreters;
4. arranging formally for the services of volunteers who are qualified interpreters; and,
5. arranging/contracting for the use of a telephone language-interpreter service.

The Agency for Workforce Innovation has a contract for telephone language-interpreter service with Certified Languages International for Unemployment Compensation Program services. It is the responsibility of each workforce board to arrange for language interpreter services to be provided in the one-stop centers and providers.

In selecting an interpreter, a provider should be aware that effective interpretation should include an understanding of terminology that may be peculiar to or specialized in a particular program (for example, medical terminology) as well as an awareness of the need for confidentiality in the interpretation process. A provider should determine whether telephone interpreter services would be adequate in light of the need for familiarity with program terminology and content, and also when there is a need to review documents.

Cautions about Interpreter Services

- **No provider may require, suggest, encourage or expect LEP clients to use friends, minor children or family members as interpreters.**
- **No provider may require, suggest, encourage or expect LEP clients to provide their own interpreters.**
- **No provider may require LEP clients to pay for interpreter services provided by the provider.**

Use of Family, Friends or Minor Children as Interpreters

A provider may expose itself to liability under Title VI and Section 188 if it requires, suggests, or encourages the use of friends, family members, or minor children as interpreters. Use of such persons could result, due to the close personal relationship, in a breach of confidentiality or a client's reluctance to disclose personal information critical to the client's situation. In addition, there may be a concern about the relative's, particularly a minor's, competency in communication.

If, after a provider informs an LEP client of the right to free interpreter services, the person declines such services and requests the use of family or a friend, the provider may use the designated individual *if* the use of such a person would not compromise the effectiveness of services or violate the client's confidentiality. The provider should document the offer and declination in the client's file and should suggest that a trained interpreter sit in on the meeting to assure accurate interpretation.

Level of Language Ability

Some LEP clients may not have the ability to read and understand written materials; therefore, oral interpretation of written materials may be necessary. Interpreters should be aware of variances within a language and should be able to communicate with clients using the appropriate colloquial speech.

Qualified Interpreters

Being qualified as an interpreter does not necessarily require formal certification. However, the requirement to be qualified contemplates:

1. demonstrated proficiency in both English and the other language;
2. orientation and training that include the skills and ethics of interpreting (for example, issues of confidentiality);
3. fundamental knowledge, in both languages, of specialized terms or concepts peculiar to the provider's program or activity;
4. demonstrated ability to convey information in both languages, accurately; and,
5. sensitivity to the client's culture.

Use of Language-Identification ("I speak") Cards

A two-sheet, letter-size language-identification aid that states:

Mark this box if you read or speak (language)

in 37 languages besides English, is a suggested resource for use by front-desk and other staff who may assist LEP persons. This desk aid is available at:

www.floridajobs.org/civilrights/docs/Language%20Identification%20Cards%20-%20September%202005.doc.

Translation of Written Materials

Services can range from translation of an entire document to translation into a short description of the document. After conducting the four-factor analysis discussed on page 4, a recipient may determine that translation of vital written materials is necessary.

1. Vital Written Materials. Federal guidelines suggest that the importance of the program, information, encounter, or service involved may control whether or not a document is vital. Consequences to a LEP person if the information is not provided accurately and in a timely manner should also be taken into consideration. Recipients are encouraged to create a plan for consistently determining, over time and across various activities, what documents are vital to the meaningful access to services by the LEP populations they serve. Awareness of rights or services is an important part of "meaningful access."

The guidelines suggest that written materials provided to LEP persons may include:

- a. Applications to participate in a program or activity or to receive benefits or services;
- b. Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which English proficiency is not required;
- c. Consent and complaint forms;
- d. List of partners at a One-Stop Career Center and the services they provide;
- e. Letters containing important information regarding participation in a program or activity;
- f. Notices pertaining to the reduction, denial, or termination of services or benefits and of the right to appeal such actions;
- g. Information on the right to file complaints of discrimination;
- h. Information on the provision of services to individuals with disabilities;
- i. State wage and hour and safety and health enforcement and information materials;
- j. Notices advising LEP persons of the availability of free language assistance; and,
- k. Other outreach materials. Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, recipients should determine whether certain outreach materials should be translated.

2. Determining into what language documents should be translated. The languages spoken by LEP persons with whom recipients come into contact determine the language into which documents should be translated. Some languages are frequently encountered while others are not. However, even if a recipient documents a well substantiated claim that translation into every language would require substantial costs and resources, this may not relieve the recipient of the obligation to translate documents into at least several of the more frequently encountered languages. Given this fact, federal guidelines suggest that recipients set benchmarks for completing translations into remaining languages over time.

Verbatim translation may not accurately or appropriately convey the substance of what is contained in the written materials. Moreover, written materials should be translated to serve the average reading level of the LEP population served.

The extent of a recipient's obligation to translate documents should be determined by the recipient on a case-by-case basis while considering the totality of the circumstances in light of the four-factor analysis discussed on page 4. Recipients may find utilization of the USDOL's special Census tabulations helpful; data for Florida, by workforce region, are available at:

www.doleta.gov/reports/CensusData/LWIA_by_State.cfm?state=FL.

Translation of a document is a one time expense and federal guidelines suggest that this be taken into account in the analysis as well as the possibility of amortizing the up-front costs over the lifetime of the document. The volume and life span of new documents is also a consideration. When the volume is great and the life span is short, depending upon the four-factor analysis, federal guidelines suggest that one option may be to translate portions of such a document and/or provide information in appropriate languages as to how to obtain free language assistance, if technology permits.

Note: Safe Harbors. The U.S. Department of Justice (DOJ) LEP guidance upon which the other federal agencies base their guidance includes a section on safe harbors for the provision of translations. The safe-harbor provision was included to help recipients that wanted more-certain measures to gauge compliance.

The revised U.S. Department of Labor (USDOL) guidance, however, does not include a safe-harbor provision, although it is discussed. USDOL has solicited comments on the applicability of the DOJ safe-harbor provisions as they apply to USDOL's universe of program customers. The U.S. Department of Health and Human Services (HHS) includes this safe-harbor provision in its guidance and adds that oral interpretation of documents may not substitute for written translation of vital written documents.

The DOJ guidance on safe harbor states:

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

- (a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- (b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only: they do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable.

The failure to provide written translations under the circumstances outlined above will not necessarily mean noncompliance with Title VI and Section 188. If the written translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of the provider's program or activity, and there is an alternative means to provide the LEP persons with meaningful access to the information, such as timely, oral interpretation of vital documents, this may suffice when reviewing the program or activity in its totality.

Recipients should give careful consideration to the safe-harbor guidance when deciding which documents to provide in written form in languages other than English.

C. Training

An effective language-assistance program should have competent staff trained in working effectively with LEP clients. To assure effective delivery of services to LEP clients, the provider should educate its staff through training programs that include, but are not limited to:

1. appropriate training during new employee orientation in serving LEP clients including, but not limited to, educating the new employees in LEP policies and procedures;
2. additional training for employees in client-contact positions, especially initial-contact positions, educating them to work effectively with: LEP clients, in-person interpreters, telephone interpreters, and translators; and methods of noticing LEP clients of their opportunity for free language assistance services;
3. periodic review of LEP language-assistance practices and procedures, updating staff on more effective ways to serve LEP clients and the laws, rules and regulations pertaining to LEP clients; and
4. maintaining a "training registry" that records the names, dates and type of LEP program-related employee training.

D. Monitoring

To assure the success of its language assistance program, the provider should monitor its program periodically, but not less than annually, to assess the effectiveness and efficiency of its program. This monitoring may include, but need not be limited to:

1. systematic feedback from LEP clients;
2. systematic feedback from staff;
3. periodic in-house reviews of the current communications needs of LEP clients; and,
4. periodic contact with community-based organizations that provide services to LEP clients.

E. Discrimination-Complaint Procedures

For regularly encountered LEP language groups, LEP persons should be provided notice of their opportunity to file a discrimination complaint in accordance with applicable federal regulations. For infrequently encountered LEP language groups, LEP persons should be advised orally of the opportunity to file a discrimination complaint pursuant to the regulations. The interpreter should advise that free, oral translation of the procedures' vital information will be provided upon request. Information about the Agency for Workforce Innovation's discrimination-complaint procedures is available on line at:

www.floridajobs.org/civilrights/ocr_complaint.html.

REFERENCES:

- Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.
- Section 188 of the Workforce Investment Act of 1998.
- Executive Order 13166 (August 11, 2000).

AUTHORITY:

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) et seq.; Section 188 of the Workforce Investment Act of 1988; 29 CFR parts 31 and 37; Executive Order 13166; U.S. Department of Labor Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons, 68 F.R. 103 (May 29, 2003); U.S. Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (August 4, 2003).

SUPERCESSION: FG 03-034: Guidelines to Language Assistance for Limited English Proficiency (LEP) Clients.