

DEPARTMENT OF LABOR**Office of the Secretary****Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of policy guidance with request for comment.

SUMMARY: The Department of Labor (DOL) publishes Revised Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Revised DOL Recipient LEP Guidance). This Revised DOL Recipient LEP Guidance is issued pursuant to Executive Order 13166.

DATES: This Guidance is effective immediately. Comments must be submitted on or before June 30, 2003. DOL 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 4596 (January 17, 2001).

ADDRESSES: Interested persons should submit written comments to Ms. Annabelle T. Lockhart, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N-4123, Washington, DC 20210. Commenters wishing acknowledgment of their comments must submit them by certified mail, return receipt requested. Please be advised that mail delivery to federal buildings in the Washington, DC metropolitan area may experience delays due to concerns about anthrax contamination. Comments may also be transmitted by facsimile to (202) 693-6505 or by e-mail to civilrightscenter@dol.gov.

FOR FURTHER INFORMATION CONTACT: Annabelle Lockhart or Naomi Barry-Pérez at the Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N-4123, Washington, DC 20210. Telephone: 202-693-6500; TTY: 202-693-6515. Arrangements to receive the Guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Under DOL regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of federal financial assistance have the responsibility to ensure meaningful

access to their programs and activities by persons with limited English proficiency (LEP). See 29 CFR part 31. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in the Department of Justice (DOJ) 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).

On January 17, 2001, DOL published Guidance on how Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*, and its implementing regulations apply to recipients of DOL financial assistance in their contact with persons who are limited English proficient ("LEP Guidance"). See 66 FR 4596. The LEP Guidance also addressed the responsibilities of recipients under Section 188 of the Workforce Investment Act, Public Law 105-220, 29 U.S.C. 2938, and its implementing regulations, which adopt the same prohibition against national origin discrimination that is found in Title VI. DOL received extensive comments following the January 17, 2001 publication of the LEP Guidance.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients, which was drafted and organized to also function as a model for similar guidance documents by other Federal grant agencies. See 67 FR 41455 (June 18, 2002).

This revised DOL Guidance reflects consideration of comments received and the additional guidance of DOJ. Following DOJ's direction, we will again accept public comment and will revise and republish, as appropriate. Because DOJ has indicated that this Guidance must adhere to the federal-wide compliance standards and framework

detailed in the model DOJ LEP Guidance issued on June 18, 2002, DOL specifically solicits comments on the nature, scope and appropriateness of the DOL-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 through DOL.

The model DOJ LEP guidance includes a section regarding "safe harbors" for written translations of vital material. That section states:

"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) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. 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 individuals through competent oral interpreters where oral language services are needed and are reasonable.

DOL has not included a similar safe harbor provision for translations in this revised Guidance. The absence of such language is not intended to detract from or otherwise minimize the underlying obligation to ensure that LEP persons can access all vital documents. DOL encourages comments which focus on the applicability of the above safe harbor to DOL recipients, suggestions of thresholds that may better reflect DOL's universe of program customers and recipients' responsibilities, the possible advantages or disadvantages of including language similar to the model DOJ Guidance, as well as any suggestions that would ensure the consistency that OMB has recommended while at the same time ensuring that the Guidance is appropriate for the types of recipients funded by DOL.

It has been determined that this revised Guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and is not subject to Executive Order 12866 (Regulatory Review and Planning, September 30, 1993).

Signed at Washington, DC this 19th of May 2003.

Elaine L. Chao,
Secretary of Labor.

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, according to the 2000 census, over 26 million individuals speak Spanish and almost seven 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." While detailed data has not yet been released,

the 2000 census estimates that over 6.6 million Spanish speakers (representing 3.28 percent of U.S. residents over the age of 18) do not speak English "well or at all." Over 1.2 million people (over the age of 18) who speak other "Indo-European" languages cannot speak English "well or at all." Over 1.4 million Asian or Pacific Islanders (over the age of 18) speak English "not well" or "not at all." In total, more than 10.5 million people claim to speak little or no English, demonstrating an increase of approximately four million since 1990.

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 assisted programs and activities. The federal government provides financial assistance to an array of services that can be made 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 should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.¹

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, Title VI regulations, and Section 188 of the Workforce Investment Act (WIA) against national origin

discrimination. The purpose of this 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 providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.² These are the same criteria DOL will use in evaluating whether recipients are in compliance with Title VI and its implementing regulations and Section 188 of WIA.

The Department of Justice (DOJ) has a unique role under Executive Order 13166. The Order charges DOJ with responsibility for providing guidance to other federal agencies on how to serve LEP individuals and for ensuring consistency among the agency-specific guidance documents. Consistency among departments of the federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance and other federal agency guidance documents are designed to address. As with most government initiatives, this requires balancing several principles. 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 aimed at the American public do not leave some 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 encountered in federally assisted programs. 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 non-profits that receive federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients

² This Guidance is not a regulation but rather a guide. Accordingly, the examples provided are illustrative and should not be construed as requirements. Title VI and its implementing regulations and Section 188 of WIA require that recipients take reasonable steps to ensure meaningful access by LEP persons. This Guidance provides an analytical framework that recipients may use 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 limited English proficient.

¹ DOL recognizes that many recipients had language assistance services in place to provide LEP individuals meaningful access to programs and activities prior to the issuance of Executive Order 13166. This Guidance provides a uniform framework for recipients to integrate, formalize, and assess the continued vitality of existing and possibly additional reasonable efforts based on the nature of the programs or activities, the current needs of the LEP populations encountered, and prior experience in providing language services in the communities served.

reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, DOL will continue to provide assistance and guidance in this important area and will work with recipients of DOL financial assistance, including state and local workforce agencies, advocacy groups, and LEP persons, to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOL intends to explore how language assistance measures, resources 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 non-profits. An interagency working group on LEP has developed a website, <http://www.lep.gov>, to assist in disseminating this information to recipients, federal agencies, and the communities being served.

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. DOJ has taken the position that this is not the case. Accordingly, DOL 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 Labor 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." 29 CFR 31.3(b)(2).

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 DOL, 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 the LEP students with a meaningful opportunity to participate in federally funded educational programs.

In the DOL context, Section 188 of the Workforce Investment Act (WIA) provides that no individual shall be excluded from participation in, denied the benefits of, be subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, political affiliation or belief, status as a qualified individual with disabilities or specified noncitizenship statuses (e.g., lawfully admitted resident aliens).

The regulations implementing the nondiscrimination and equal opportunity provisions of Section 188 specifically address national origin discrimination and language access. Where "a significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIA Title I-assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity," the Section 188 regulations require recipients "to take reasonable steps to provide services and information in appropriate languages." 29 CFR 37.35(a). Even where there is not a "significant" number or proportion of LEP persons in the community serviced by the recipient, recipients nonetheless are required to "make reasonable efforts to meet the particularized language needs of limited-English speaking individuals who seek services or information from the recipient." 29 CFR 37.35(b). This

means that, for instance, when the LEP population in the community serviced by a recipient does not comprise a "significant" number or proportion, recipients should still balance the four factors described herein to determine what steps are reasonable to meet the particularized language needs of those seeking services or information.

The regulations implementing Section 188 require the Governor of every state recipient of WIA-Title I financial assistance to establish and adhere to a Methods of Administration ("MOA"). Further, the regulations require that MOAs include a description of how the state programs and recipients have satisfied the specified requirements of the Section 188 implementing regulations, including the obligation to provide services and information in appropriate languages under the circumstances outlined in 29 CFR 37.35. Although the regulatory language differs, the obligations of recipients to provide accessibility by LEP persons to DOL financially assisted programs and activities are the same under Title VI and Section 188.

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 their recipients can provide meaningful access to LEP persons and thus comply with the Title VI regulations forbidding funding 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 broad 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 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, Ralph F. Boyd, Jr., Assistant Attorney General for DOJ's Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors," which clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*.³ 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 type 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.

Pursuant to Executive Order 13166, DOL developed its own guidance document for recipients, which was initially issued on January 17, 2001. "Guidance on Improving Access to Services for Persons with Limited English Proficiency," 66 FR 4596 (January 17, 2001) (DOL LEP Guidance). This Proposed Revised Guidance is thus published pursuant to Executive Order 13166 in light of the Assistant Attorney General Boyd's October 26, 2001 clarifying memorandum.

III. Who Is Covered?

Department of Labor regulations, 29 CFR part 31, require all recipients of federal financial assistance from DOL to provide meaningful access to LEP persons.⁴ Federal financial assistance includes grants, training, use of

equipment, donations of surplus property, and other assistance. Recipients of DOL assistance include, for example:

- State-level agencies that administer, or are financed in whole or in part with, WIA Title I funds;
- State Workforce Agencies;
- State and local Workforce Investment Boards;
- Local workforce investment areas ("local areas") grant recipients;
- One-Stop Career Center operators;
- Service providers, including eligible training providers and youth service providers;
- On-the-Job Training (OJT) employers;
- Job Corps contractors and center operators;
- Job Corps national training contractors;
- Outreach and admissions agencies, including Job Corps contractors that perform these functions; and
- Other national program recipients.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient. This Guidance does not create any new requirements for community colleges and other educational institutions that receive federal financial assistance under the Higher Education Act as these institutions must already comply with Title VI requirements.

Pursuant to the Civil Rights Restoration Act of 1987 (CRRRA), 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.⁵

Example: DOL provides assistance to a state department of labor to support the development of the state's One-Stop Career System. While the funds may be administered by one agency within the state department, Title VI applies to all of the operations of the entire state department of labor—not just the One-Stop Career delivery system.⁶

⁵ 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.

⁶ The nondiscrimination and equal opportunity provisions of WIA and its implementing regulations apply to programs and activities that are part of the One-Stop Career System and that are operated by the One-Stop Career System partners listed in section 121(b) of WIA (29 U.S.C. 2841(b)), to the extent that the programs and activities are being conducted as part of the One-Stop Career System. When a One-Stop Career System partner receives federal financial assistance from an Executive agency other than DOL, such as the Department of Education, Health and Human Services, Agriculture or Housing and Urban Development, the grant-making agency enforces the recipient's Title VI

Finally, some recipients operate in localities in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination 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 entitled to language assistance with respect to a particular type of service, benefit, or encounter.

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

- Unemployed and/or dislocated individuals seeking unemployment insurance (UI), job search and/or job training services.
- Workers, such as those doing construction or working in mines, who receive training from Occupational Safety and Health or Mine Safety and Health training providers.
- Youth looking for summer employment, academic and career exploration or vocational training and employment opportunities, such as participation in Job Corps, and their parents or family members.
- Migrant and seasonal agricultural workers seeking placement and/or information on protections afforded to them in this work.
- Workers seeking information or enforcement from a recipient regarding wage and hour and safety and health laws.

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

obligation. Therefore, when a One-Stop Career System partner receives federal financial assistance from an agency other than DOL, the partner should follow the LEP guidance issued by that agency, to the extent that such guidance exists. If LEP guidance has not been issued by the grant-making agency, or if that guidance does not address the activities of the One-Stop Career partner, the One-Stop Career partner should follow this Guidance until such time as the grant-making agency issues LEP guidance.

³ The DOJ 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 grant agencies to enforce their own implementing regulations.

⁴ Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of federal agencies, including the Department of Labor.

assessment that balances the following four factors: (1) The number or proportion of LEP persons served or encountered in the eligible service population; (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; and (4) the resources available to the recipient and costs. As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small non-profits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOL recipients should apply the four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps should be taken to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity, 29 CFR 37.35(a), are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a 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. This, for example, could

occur in a local workforce investment area (local area) that manages more than a single One-Stop Career Center. Instead of being guided by a population survey for the local area, each One-Stop Career Center may wish to assess its local service population.

We suggest that states operating statewide programs, such as the Unemployment Insurance program or Workforce Investment Act programs, assess statewide language groups to identify potentially significant LEP populations, and ensure that local offices conduct similar surveys of their local service populations. Small entities, such as Vermont, Delaware, and the District of Columbia, that operate only a single local workforce investment area, should assess their overall populations with an awareness of any "pockets" of LEP persons that may exist in certain areas (e.g., the Chinatown or Adams Morgan (largely Spanish-speaking) areas of Washington, DC). Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. For most workforce investment services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (e.g., out-of-school youth or migrant/seasonal farmworkers). The attached Appendix provides examples to assist in determining the eligible service population. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the workforce system, including youth employment and training programs and Job Corps.

In assessing the number or proportion of LEP persons eligible to be served or likely to be encountered, recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that have been needed. In conducting this analysis, it is important to include language minority populations that are eligible for programs or activities but may have been underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data

from state and local governments.⁷ Community agencies, school systems, faith-based organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from recipients' programs and activities where language services are provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from potential language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves a LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If a LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if a LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups and therefore

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 as well as the percentage of people who speak other languages and who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus on the languages spoken by those who are not proficient in English.

also increase the demand for language assistance from these LEP populations.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Recipient

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to LEP individuals, the more likely language services are needed. For example, the requirements for filing a claim for Unemployment Insurance or Trade Adjustment Assistance or safety and health information in the context of Occupational Safety and Health or Mine Safety and Health training programs must be effectively communicated. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for a LEP individual. Decisions by a federal, state, or local entity to make an activity compulsory, such as job training and/or job search certification in the Unemployment Insurance program, can also serve as strong evidence of the program's importance.

Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires a person to communicate in English, see *Frontera v. Sindell*, 522 F.2d 1215 (6th Cir. 1975)), or when there is another non-pretextual "substantial legitimate justification for the challenged practice" and there is no comparably effective alternative practice with less discriminatory affects. *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993); *New York City Environmental Alliance v. Giuliani*, 214 F.3d 65, 72 (2nd Cir. 2000) (plaintiffs failed to show less discriminatory options available to accomplish defendant city's legitimate goal of building new housing and fostering urban renewal). However, DOL recipients are providing a service to assist individuals in employment, and should consider that LEP individuals can be learning English and another skill at the same time.⁸ For example, a recipient may not need to make accessible certain health care practitioner courses to LEP persons if the ability to be fully proficient in English is a legitimate requirement of such training and the recipient has made a legitimate determination that a LEP person would not be eligible to

work in the field in the local job market and at the level for which the training is targeted. However, in order for such determinations to be legitimate, recipients should conduct an objective analysis and not rely on stereotypes or anecdotal evidence regarding level of English proficiency required for such employment, and should consider the impact that participation in English-as-a-Second-Language courses may have on the ability of the LEP person to utilize the training.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take in providing language services. Smaller recipients with more limited budgets are not expected to provide the same level of language services as are larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable when the costs imposed substantially exceed the benefits. DOL has determined that costs associated with providing meaningful access to LEP persons are considered allowable program costs. This is consistent with the discussion of administrative and program costs under Title I of WIA found in 20 CFR 667.220.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, 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; or, the formalized use of qualified community volunteers, for example, may help reduce costs.⁹ Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. 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, the process used 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 a 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 One-Stop Career Center in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many recipients have already made such arrangements.) 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.

VI. Selecting Language Assistance Services

Regardless of the type of language service provided, for both oral and written language services, quality and accuracy of the language service is critical in order to avoid 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).

⁸ Consistent with footnote 2, *supra*, a consideration of this factor should not be construed as requiring DOL recipients to create new programs under this Guidance.

⁹ Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

Where interpretation is needed and is reasonable, recipients should consider some or all of the options discussed below for providing competent interpreters in a timely manner.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service providers, no matter which of the following strategies 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 language other than English when communicating information directly in that language, but may not be competent to interpret in 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 interpreters:

- Demonstrate proficiency and ability to communicate information accurately in both English and in the other language and be able to identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);¹⁰
- 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;¹¹

¹⁰ Consecutive interpretation is interpretation of sentences/phrases immediately after they are spoken, where the original speaker interrupts the presentation to permit the interpretation. Simultaneous interpretation (sometimes referred to as UN-type translations) involves interpretation occurring at the same time as the original spoken text, where the original speaker does not stop or interrupt their presentation to permit the interpretation. Summarization involves an interpreter listening to the original speaker in another language and then summarizing the essence of what was said, not what was actually said. Summary interpretations are generally disfavored by professional interpreters or translators. Sight translation involves the translation of written text/documents into spoken text based on a visual review of the original form.

¹¹ 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 some programmatic or legal terms, the interpreter should be so aware and be able to provide the most effective interpretation. The interpreter should likely make the recipient aware of such an issue so that the interpreter and the recipient can then develop a consistent and appropriate set of descriptions of these terms in the target language that can be used in future encounters.

- Understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires; and

- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in administrative hearings, such as UI appeals hearings).

Some recipients, such as those that conduct administrative hearings, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the context of administrative hearings, the use of certified interpreters is strongly encouraged.¹² Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

The quality and accuracy of language services is part of the appropriate analysis of LEP services required. For example, the quality and accuracy of language services in a UI appeals hearing or safety and health training, for example, must be extraordinarily high, while the quality and accuracy of language services in providing optional career planning tools, such as "tests" that evaluate the type or style of work for which a person might be suited, need to be accurately translated, but may not need to meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" that is applicable to all types of interactions at all times by all recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial 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 with certain activities of DOL recipients providing income security, health, and safety services, and when important programmatic rights, such as eligibility for UI benefits, are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staff person available one day a week to provide the service. Such conduct

¹² For those languages in which no formal accreditation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter.

would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

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 One-Stop Career Center receptionists or UI claims examiners, with staff who are bilingual and competent to communicate directly with LEP persons in the appropriate language. If bilingual staff is 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. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual hearings examiner would probably not be able to perform effectively the role of an administrative hearing interpreter and hearings examiner at the same time, even if the hearings examiner were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When an analysis of the four factors leads to a conclusion that the provision of services through bilingual staff is not a reasonable step, the recipient still should consider other options for providing meaningful access to LEP persons.

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 communicate effectively with LEP persons.

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 provide interpretation services for particular languages. Contracting with 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 speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also occur 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 to the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video conferencing may sometimes help to resolve this issue. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the documents prior to the discussion. Any other logistical problems should also be anticipated.

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, working with, for instance, community-based organizations 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 to help ensure that services are available on a regular basis.

Use of Family Members, Friends, or Other Community Members as Interpreters. Although recipients should not plan to rely on a LEP person's

family members, friends, or other informal interpreters to provide language assistance services to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, interpreters of their own choosing (whether a professional interpreter, family member, friend, or other informal interpreter) 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, friend, or other community member 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 of these situations.

Recipients, however, should take special care to ensure that family, friends, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity. The recipients' own interests in accurate interpretation should also be considered when deciding whether family, friends, and other informal interpreters are appropriate. In many circumstances, family members (especially children), friends, or other informal interpreters 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, confidential, or potentially embarrassing family, employment history, or financial information to a family member, friend, or member of the local community. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or other informal interpreters often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is an optional "Dress for Success" workshop offered by a One-Stop Career Center where there is such a small number and/or proportion of LEP persons eligible to be served and there is no available bilingual staff,

volunteers, or interpreters available. 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, a LEP person's use of family, friends, or others may be appropriate.

If a 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 should be kept. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for adjudicatory or legal reasons, 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 a 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 to interpret. 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:

- Applications to participate in a recipient's program or activity or to receive recipient benefits or services;
- Written tests that do not assess English language competency, but test competency for a particular license, job,

or skill for which English language proficiency is not required;¹³

- Consent and complaint forms;
- List of partners at a One-Stop Career Center and services provided;
- Letters containing important information regarding participation in a program or activity;
- Notices pertaining to the reduction, denial or termination of services or benefits and of the right to appeal such actions;
- Notices that require a response from beneficiaries;
- Information on the right to file complaints of discrimination;
- Information on the provision of services to individuals with disabilities;
- State wage and hour and safety and health enforcement and information materials;
- Notices advising LEP persons of the availability of free language assistance; and
- Other outreach materials.

Whether or not a document (or the information it provides and/or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, a description of books contained in the resource room of a One-Stop Career Center would not generally be considered vital, whereas applications for Unemployment Insurance or information about safety and health requirements could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its 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." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals

meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its programs or services, it should regularly assess the needs of the populations frequently encountered or affected by the program or service to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, faith-based and other community organizations to spread the message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information 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, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country or operate web-based, self-service systems as an adjunct to their in-person delivery systems that also have a regional or national reach. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve a recipient of the obligation to translate those documents

into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of a 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 length of a document's lifespan and the volume of new documents requiring translation may also be a factor in this determination. For example, in transaction-based self-service websites, such as labor exchange/job matching, the lifespan of a typical document such as a job order may only be 30 days and the volume of such documents may easily number 1,000 or more each day. In such circumstances, depending on the four factors, recipients might consider translating only certain portions of such documents and/or providing information in appropriate languages on how to obtain free language assistance, if the technology allows.

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.

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.¹⁴ 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 translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have

¹³ Test translation raises technical testing issues and needs to be done in an appropriate manner if the test is to retain validity and reliability. Some tests are available in different languages. For example, the GED is available in Spanish and French, as well as English. So recipients may be able to check for the availability of tests in other languages from the test developer. Where no test is available in a language and translation is not immediately possible, it might be more appropriate to evaluate a LEP individual with another test or procedure that does not inappropriately implicate their limited English skills.

¹⁴ For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

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.¹⁵ Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts 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 the recipient, other recipients, or federal agencies may be helpful.

The quality and accuracy of language services is part of the appropriate analysis of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.*, information or documents of DOL recipients regarding the provision of income security benefits, such as UI, and health and safety training). 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 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 they serve.¹⁶ Recipients have considerable flexibility in developing this plan. A written plan, while not a requirement, can be an important tool for a recipient. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services and how staff and LEP persons can access those services. Despite these benefits, certain DOL recipients, such as recipients serving very few LEP persons and recipients 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. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, faith-based organizations, community groups, and groups working with new immigrants, can be very helpful in providing important input into this planning process from the beginning.

The following five elements may be helpful in designing a LEP plan and are typically part of an effective implementation plan.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires a recipient to

identify LEP persons with whom it has contact.

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 read "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak cards" 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 the availability of language assistance will encourage them to self-identify.

Recipients should also consider circumstances in which, although the participant and/or beneficiary can communicate effectively in English, assistance may be needed when interacting with other pertinent individuals. For example, if a youth under the age of eighteen needs a parent's signature to participate in a summer employment program, language assistance may be necessary to provide information and obtain the necessary permission. Recipients should also be aware of external circumstances that may impact the number of persons (LEP or otherwise) seeking government assistance. For example, recipients may experience an ebb and flow of persons working in agricultural jobs depending on the season, the success of harvest, and other factors such as weather (droughts or floods). Changes in the economy may disproportionately force low-income individuals (as LEPs tend to be) to turn to government programs for assistance.

(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 staff can obtain those services;
- How to respond to LEP callers;

¹⁵ For instance, there may be languages that do not have an appropriate direct translation of some programmatic or legal terms and 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 these terms in the language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. 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 translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

¹⁶ Certain recipients of DOL financial assistance are required, per 29 CFR 37.54, to establish and adhere to a Methods of Administration (MOA). Per the regulations, MOAs must be in writing, reviewed and updated every two years as required by Section 37.55, and, at a minimum, describe how the state programs and recipients have satisfied the requirements of regulations, including those found at Sections 37.35 and 37.42.

- How to respond to written communications from LEP persons;
- How to respond to LEP individuals who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures; and
- Staff having contact with the public are 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. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of the LEP plan. 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 a recipient has decided, based on the four factors, that it will provide certain language services, it is important for the recipient to let LEP persons know that those services are available and that they will be offered free of charge. Recipients should provide notice of the availability of language assistance services in language(s) that LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain workforce and income security programs, services or activities run by DOL recipients. For instance, signs in One-Stop Career Centers could state that free language assistance is available. The signs should be translated into the most common languages

encountered. They should explain how to obtain the language help.¹⁷

- Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in other 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' programs and activities, including the availability of language assistance services.

- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to access them.

- Including notices in local newspapers in languages other than English.

- Airing notices on non-English language radio and television stations about the availability of language assistance and how to access it.

- Making presentations and/or posting notices at schools, faith-based and other community 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 factors require annual reevaluation of LEP plans. 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 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;
- Legislation or program requirements governing the recipient's program or activity; and
- 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 Efforts

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DOL through the procedures identified in the Title VI and Section 188 regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

DOL's Civil Rights Center (CRC) enforces Title VI and Section 188 through the procedures identified in the regulations in 29 CFR parts 31 and 37. The regulations state that CRC will investigate any complaint, report or other information that alleges or indicates possible noncompliance with Title VI and Section 188. If the investigation results in a finding of compliance, CRC will inform the recipient in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, CRC will inform the recipient of the noncompliance in a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. At this stage, CRC will attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, compliance may be effectuated through (a) the termination of federal assistance after the recipient has been given an opportunity for an administrative hearing; (b) referral to DOJ for injunctive relief or other enforcement proceedings; or (c) any other means authorized by law. CRC has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily.

¹⁷ The Social Security Administration has made such signs available at: <http://www.ssa.gov/multilanguage/langlist1.htm>. These signs could be modified for recipient use.

CRC engages in voluntary compliance efforts and provides technical assistance to recipients at all stages. During efforts to secure voluntary compliance, CRC will propose reasonable timetables for achieving compliance and will consult with and assist recipients in exploring cost effective ways of coming into compliance by increasing awareness of emerging technologies and by sharing information on how other recipients have addressed the language needs of diverse populations. In determining a recipient's compliance with Title VI and Section 188, CRC's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons meaningful opportunities to participate in and access programs, services and benefits. A recipient's appropriate consideration of the methods and options discussed in this Guidance will be viewed by CRC as evidence of a recipient's willingness to comply with its Title VI and Section 188 obligations.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOL 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, DOL 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 systems 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, DOL 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.

Appendix—Application to Specific Types of Recipients

This Appendix provides examples of how the meaningful access requirement of the Title VI and Section 188 of WIA regulations applies to state workforce agencies and other recipients of DOL financial assistance. These examples highlight best practices and ideal approaches to serving LEP individuals in a variety of situations. It is important to note that not all recipients may find these approaches useful or necessary once they apply the four-factor analysis to their individual situation. This Appendix also suggests ways that DOL recipients can apply the four-factor analysis to a range of encounters with the public as the responsibility for providing language services differs depending on the program or activity. The four factors are:

- 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 provided by the program; and
- The resources available to the recipient and costs.

This Appendix is also designed to help DOL recipients identify the population to be considered when assessing the types of language services to provide. It then offers guidance and examples on how to apply the four-factor analysis to specific requirements of DOL-assisted programs and services, such as:

- Receiving and responding to requests for information and services;
- Applications for benefits such as trade and Unemployment Insurance benefits;
- Adjudications;
- Notifications of decisions;
- Intake, orientation and assessment;
- Training services; and
- Community outreach.

Appendix—Application of LEP Guidance for Specific Types of DOL Recipients

While a wide range of entities receive federal financial assistance through DOL, most of DOL's assistance is awarded to Governors or local chief elected officials in the form of formula or competitive grants for the provision of training, including job training, and income support programs. This Appendix provides examples to demonstrate how DOL recipients might apply the four-factor analysis. The examples in this Appendix are not meant to be exhaustive. The four-factor analysis requires a balancing, given all of the facts. Each different situation will present some unique aspects. The examples are intended only to show how the four-factor analysis may be applied in some situations.

The requirements of the Title VI and Section 188 regulations, as clarified by the LEP Guidance, supplement, but do not supplant, other statutory or regulatory provisions that may require LEP services. Rather, the LEP Guidance clarifies the

obligation under both the Title VI and Section 188 regulations to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals.

For the vast majority of the public, exposure to federally-assisted job training or income support programs includes applying for and receiving Unemployment Insurance (UI) benefits or conducting job search activities through the One-Stop Career System. For a smaller number, exposure includes participation in a job training program under WIA or the Trade Act of 1974 including Trade Adjustment Assistance (TAA). The common thread running through these and other interactions with the federally-assisted workforce system is the exchange of information and services. LEP individuals' encounters with One-Stop Career Centers, including UI Call Centers, are covered by Title VI because they are funded wholly or in part by DOL. This Guidance focuses on the requirement that DOL recipients communicate effectively with persons who are LEP to ensure that they have meaningful access to the workforce investment system, including, for example, understanding how to apply for job training and/or UI benefits.

Many DOL recipients already provide language services in a wide variety of circumstances. For example, in areas where significant LEP populations reside, One-Stop Career Center staff may utilize forms and notices in languages other than English and/or they may employ bilingual front-line staff. Recipients' current practices can form a strong basis for applying the four-factor analysis and complying with Title VI and WIA Section 188 regulations.

In general, when providing language services, DOL recipients may: (1) Make available the staff and materials necessary to supply required language services; (2) choose to require an entity with which they have contracted to provide the services; or (3) contract with another entity to provide those services. Recipients have a wide variety of options for providing interpreter and translation services appropriate to the particular situation. Using bilingual staff competent to interpret in person or over the phone is one option. Additionally, particular recipients may enter into agreements with local colleges and universities, interpreter services, and/or community organizations to provide competent paid or volunteer translators.

1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the DOL recipient and an appreciation of the nature and particular needs of the LEP population served. Accordingly, the four-factor analysis cannot provide a single uniform answer about how service to LEP persons must be provided in all programs or activities in all situations or to what extent such service need be provided.

Knowledge of local conditions and community needs is critical in determining the type and level of language services needed. The following general points should

assist DOL recipients in correctly applying the four-factor analysis to the wide range of services provided in their particular communities.

a. Permanent Versus Seasonal Populations

In assessing factor one, the number or proportion of LEP individuals, DOL recipients should consider any temporary but significant changes in a community's demographics. In many areas, resident populations change over time or according to season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents in the area. In other communities, primarily agricultural areas, transient populations of agricultural workers require increased workforce investment services during planting and harvest seasons. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community that is likely to come into contact with workforce entities. Thus, workforce entities may not want to limit their analysis to numbers and proportions of permanent residents.

Example: A rural community has a permanent population of 30,000, of which seven percent is Hispanic. Based on census data and on information from the contiguous school district, only 15 percent of the Hispanic population is estimated to be LEP. Thus, the total estimated permanent LEP population is 315 persons or approximately one percent of the total permanent population. Under the four-factor analysis, a workforce entity could reasonably conclude that the small number of LEP persons makes the translation of vital documents and/or employment of bilingual staff unnecessary. However, during the spring and summer planting and harvest seasons, the local population swells to 40,000 due to the influx of seasonal agricultural workers. Of this temporary population, about 75 percent is Hispanic and about 50 percent of that number is LEP. According to data supplied by the contiguous school district and a migrant worker community group, during the planting and harvest seasons, the community's LEP population increases to over ten percent of all residents. In this case, a DOL recipient should consider whether it is necessary to translate vital written documents into Spanish. In addition, the predictability of contact during those seasons makes it important for the community to review its interpretative services to ensure meaningful access for LEP individuals.

b. Target Audiences

For most workforce investment services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (e.g., out-of-school youth or migrant and seasonal farmworkers). Also, within the larger geographic area covered by a workforce entity, certain areas or neighborhoods may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the area is low, the frequency of contact may be higher for certain areas or

programs. Thus, the second factor, frequency of contact, should be considered in light of the specific program or the geographic area served.

Example: A community-based organization (CBO) is partnering with a local One-Stop Career Center to provide services to dislocated workers who have lost their jobs due to several recent textile plant closures. The LEP population of the community is estimated at only three percent. However, the LEP population of the workers dislocated by the closures is 35 percent, the vast majority of whom speak Vietnamese. As the target population for this CBO is confined to the dislocated workers, the number or proportion of LEP persons in the eligible service population would be calculated based on these workers. The applicable LEP factor would be the frequency with which LEP individuals come in contact with the program, which in this instance would involve a much higher percentage of LEP individuals than that of the general population. Further, because the Vietnamese LEP population is concentrated in one or two main areas of the town, the CBO should expect the frequency of contact with Vietnamese LEP individuals, in general, to be quite high in those areas, and it should apply the four-factor analysis accordingly with respect to the services it provides.

c. Importance of Service/Information

DOL recipients play a critical role in providing workforce services, income support, and health and safety training for many Americans. UI, health and safety services provided through the Occupational Safety and Health and Mine Safety and Health Administrations, information and enforcement of State and local wage and hour laws and other workers' rights enforcement issues taken on by recipients, and employment services rank high on the critical/non-critical continuum. However, this does not mean that information about all services and activities performed by workforce entities must be equally available in languages other than English. While clearly important to the ultimate success of the workforce investment system, certain activities do not have the same direct impact on the provision of core workforce investment services. The more important the program or activity or the greater the possible consequences of the contact for LEP individuals, the more likely language assistance services will be necessary.

Example: The Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration (MSHA) provide grants to recipients to conduct safety and health training to individuals employed in many dangerous occupations, such as construction and mining. Much of the training involves learning how to take precautions to avoid accidents or injuries while on the job. Where individuals could sustain bodily harm if training is not provided in an understandable language, the need for appropriate communication is extremely high.

There may be some instances in which the four-factor analysis of a particular portion of a recipient's program or activity leads to the

conclusion that language services are not currently required. For instance, the four-factor analysis may not necessarily require that an advanced level computer course be given in languages other than English, if the language-related requirements for such an employment path is such that few, if any, LEP persons would benefit from the particular course even if it were made accessible to them and even if they are in the process of learning English (see Section V(3) above regarding such determinations), and if the other three factors also weigh against providing the service. However, a recipient may decide to provide other computer courses in languages other than English given demographics of the area and the potential benefit to the LEP population. Because the analysis is fact-dependent, the same conclusion may not be appropriate with respect to all computer courses or to other courses.

2. Applying the Four-Factor Analysis to the Full Spectrum of Services

While all workforce investment activities are important, the four-factor analysis requires some prioritizing so that language services are targeted where they are most needed depending on the nature and importance of the particular service provided. Workforce entities have a great deal of flexibility in determining how to best address outreach to their LEP populations. In order to determine what is reasonable under the four-factor analysis, consider that the obligation to provide language services increases where the importance of the activity is greater. Under this framework, critical areas for language assistance would include applications for UI or trade-related benefits and adjudications of issues regarding benefits. Systems for receiving and addressing complaints from the public are also important. Employment services are of great importance for persons who are not currently employed. Community outreach activities are hard to categorize and generally less critical than other activities unless barriers to participation (such as limited availability of language services) exist. With the importance of community partnerships and involvement, the four-factor analysis should be considered when evaluating the need for language services with respect to these programs.

a. Receiving and Responding to Requests for Assistance

Taking reasonable steps to provide meaningful access to workforce investment services will entail different things in different communities. For instance, in areas with significant LEP communities, some intake workers and claims examiners may need to be bilingual and capable of accurately interpreting in high stress situations. Recipients in areas with small LEP populations should still have a plan for serving persons who are LEP, which may involve a telephone interpretation service or include some other accommodation short of hiring bilingual staff. Signs and telephone voicemail systems should also be appropriate for the populations served.

Example: A One-Stop Career Center in a large city has bilingual staff that can interpret

the most frequently encountered languages. When LEP clients request services in less frequently encountered languages, a commercial telephone interpretation service is provided. Ten percent of the city's population is LEP, and sixty percent of the LEP population speaks Spanish. The One-Stop Career Center has many Spanish-speaking staff and a few staff that speak other languages. Forms are translated into Spanish. The recipient provides services to other non-English-speaking clients using a language bank, comprised of volunteers and bilingual staff employed by other Government entities who are competent translators and/or interpreters. This example may be one appropriate way of providing meaningful access for LEP individuals.

Example: A small One-Stop Career Center is operated by a recipient of DOL funds and located in an area where 15 percent of the population speak Spanish and may be LEP. Seven percent of the population in the service area speak various Chinese dialects and may be LEP. The One-Stop Career Center uses competent community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The One-Stop Career Center telephone system has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by bilingual staff. The One-Stop Career Center has one counselor and several volunteers fluent in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The One-Stop Career Center works with community groups to access interpreters in the several Chinese dialects that they encounter. One-Stop Career Center staff train the community volunteers in the intake process and the specialized vocabulary needed to explain the services available. Volunteers sign confidentiality agreements. The One-Stop Career Center is looking for a grant to increase its language capabilities despite its limited resources. There have been no complaints of delayed or denied service on account of language barriers. This example may be one appropriate way of providing meaningful access for LEP individuals.

b. Delivering Labor Exchange Services

Currently, labor exchange services are being delivered through a wide variety of media, both electronic and paper-based. However, state and local workforce agencies are increasingly relying on Internet-based, self-help models of service delivery. While this method of service has the potential of benefiting the greatest number of job seekers while minimizing staff resources, key segments of the population are potentially excluded. Persons with limited language and literacy skills often have extra difficulty accessing services through the self-help, Internet-based systems. As such, a service plan is needed to develop alternative delivery systems. This can be done through incorporating one or more of the following strategies: (1) Having certain information translated; (2) incorporating a sufficient level of staff assistance to serve those persons that

need assistance in accessing services electronically; or (3) providing direct one-on-one sessions with LEP applicants who are unable to access electronic information.

Example: A One-Stop Career Center in a moderately large city includes significant LEP populations whose native languages are Spanish, Korean, and Tagalog. One-Stop Career Center management officials could reasonably consider creating a resource list of individuals competent to interpret and ready to assist front-line staff dealing with LEP customers. This could be combined with developing language-appropriate written materials, such as an explanation of basic labor exchange activities and other services available at the One-Stop Career Center for use by LEP individuals who are literate in those languages. In other circumstances, it may be necessary to provide access to a telephone interpretation service.

Example: Job placement staff at a One-Stop Career Center assist employers interested in hiring LEP individuals who have completed ESL vocational training. In some instances, employers may have bilingual supervisors who can assure that safety precautions and explanations are provided in the individuals' primary language(s). In other locations, "ethnic" community-based organizations maintain lists of employers who have openings and are able to place LEP individuals without providing ESL or vocational training with businesses where the LEP individuals' primary language(s) is spoken. This example may be one appropriate way of providing meaningful access for LEP individuals.

Example: A large state, with an ethnically diverse population, operates a website as part of its overall delivery system which offers access to labor market information and provides labor exchange self-service for job seekers and employers. Because of the scope and reach of the Internet, the population eligible to be served by that website may easily include LEP individuals representing over 100 different languages. In this instance, the state translates key documents and forms on its website into the most significant languages, e.g., representing five percent or more of the total eligible population to be served, and advertises its toll-free help line, which includes interpretation services, on the homepage of its website. Through the combination of its toll-free help line and its in-office delivery system, the state is able to provide information and services to LEPs in languages that are less commonly encountered. In this instance, the recipient takes into account, in conducting its four-factor analysis, its entire delivery system, not just one component. This example may be one appropriate way of providing meaningful access for LEP individuals.

c. Delivering Unemployment Insurance (UI) Services

The federal-state UI program created by the Social Security Act of 1935, offers the first line of defense against the ripple effects of unemployment. Payments made directly to eligible, unemployed workers ensure that at least a significant proportion of the necessities of life, most notably food, shelter and clothing, can be met on a week-to-week

basis while the claimant searches for work. UI benefits provide temporary wage replacement that helps claimants to maintain their purchasing power and stabilize the economy.

(1). Initial Claims and Follow-Up Notices

State agencies that serve LEP claimants should consider the inherent communication impediments to gathering information from LEP persons throughout the UI claims process. During the initial claim process, it is necessary to collect basic information, such as the LEP person's name, address, employment information, and reason for separation from employment. It is also necessary to communicate with claimants throughout the life of their claims, and workforce agencies should evaluate their ability to provide appropriate services at all stages of the UI claim. Where few bilingual staff are available or in situations where the LEP person speaks a language not frequently encountered in the local area, telephone interpretation services may provide the most cost effective and efficient method of communication during the initial claim. However, subsequent correspondence and communication frequently entail written notices and claim forms. Depending on the size of the LEP population, it may be necessary to translate vital forms into other languages or to include a multilingual tag-line on correspondence not appropriately translated to inform claimants that free language services are available.

Example: A state agency operates a statewide Call Center for UI initial claims taking that receives 100,000 calls per year. The majority of the calls are from English speakers. Fifteen percent of the callers (15,000) do not speak English: 6,500 callers speak Spanish; 4,000 speak Vietnamese; 3,500 speak Cambodian; and the rest speak other languages (500 Russian, 100 French, 80 Tagalog, 20 German, and 300 speak other languages). The Call Center employs four Spanish speakers, two Vietnamese speakers and two Cambodian speakers. A voice response system directs the calls as appropriate to the bilingual staff. Calls from LEP claimants speaking other languages are directed to a commercial interpretation (telephone interpretation) service. The Call Center's bilingual employees are able to handle most calls from the three significant LEP language groups that they serve. Callers who speak English and any of the three languages for which translation is provided generally wait no longer than five minutes to speak with the staff. The system is monitored for wait times and performance. Follow-up correspondence such as letters, notices, and forms contain a tag-line in the languages of the three significant LEP groups and three other commonly encountered languages. The tag-line advises individuals of the importance of the information and provides a phone number to call for assistance. This example may be one appropriate way of providing meaningful access for LEP individuals.

(2). UI Benefits Rights Information (BRI)

State agencies provide UI benefits rights information to all claimants. The information is necessary to ensure that claimants

understand their rights and responsibilities under the state UI law.

Example: A state agency takes its UI claims in-person. It prints a Benefits Rights Information (BRI) pamphlet in English and in three other languages to serve the three significant LEP population groups in the state. After the initial claim is taken, the state agency provides the BRI in a group setting for all claimants. LEP individuals who speak the three significant languages attend separate groups in which the information is conveyed in the appropriate languages. Claimants who speak languages that are less prevalent receive the information through a telephone translation service. The state agency has also produced a video of the BRI in the three primary LEP groups' languages. The BRI video is available for viewing at the local library or at the local office. Claimants are advised that the BRI is important and that it is necessary that they hear and understand the BRI before filing claims for benefits. This example may be one appropriate way of providing meaningful access for LEP individuals.

(3). UI Determinations/Adjudications/ Appeals

The purpose of the UI program is to provide temporary financial assistance to individuals who have lost their employment, who are able and available for work, and who meet other eligibility requirements of state law. As appropriate, claims adjudicators apply the legal test of the various requirements of the state law to the factual circumstances involved in each specific claim to issue a determination of eligibility. All state laws contain provisions permitting claimants to appeal determinations within a specified period of time. Because of the importance of accurate and timely information from UI claimants for eligibility determinations, formulating a successful policy for effectively communicating with LEP individuals is necessary.

Example: A workforce agency institutes a LEP plan that provides qualified interpreters, as necessary, for fact-finding at the initial determination stage and/or at an appeals hearing. Some of the interpretation is done using bilingual state agency staff, and some interpretation is handled by a number of individuals that are placed on a "list of interpreters" developed to assist when state staff is unavailable or when staff do not speak the particular language needed. The agency also has a contract with a telephone translation service, which is used as needed. The written determinations and decisions are printed in English and Spanish and "tag-lines" (an annotation) are included in four additional languages advising claimants of their appeal rights. Claimants are advised at the time of the initial claim that it is very important to read and understand correspondence they receive about UI, and they are encouraged to seek assistance by contacting the agency as necessary. The agency is able to handle telephonic inquiries languages other than English. These actions would constitute evidence of reasonable steps to ensure meaningful access to the UI benefits. This example may be one appropriate way of providing meaningful access for LEP individuals.

(4). UI Linkages to Reemployment Services

Facilitating reemployment of the UI claimant is a key objective of the UI system. Claimants therefore need to be aware of the types of services available and need to know how and where to access such services.

Example: A state agency profiles UI claimants to identify those most in need of reemployment services. Written notices to report for reemployment services are sent to those claimants who have been identified as needing these services and whom the agency has the capacity to serve. Claimants are given specific instructions to report to the agency or contact the agency through other means such as by telephone. Claimants must understand both the requirement that they contact the agency and their rights under state law because a failure to follow these instructions could result in the denial of UI benefits. A tag-line is included on all notices in the three primary languages advising the claimant of the importance of these services and of the fact that language assistance will be available free of charge. Translation and interpretation for LEP claimants is provided through telephone interpretation services, some bilingual staff, and community-based organizations as needed. One-Stop Career Centers that may subsequently refer claimants to other service providers ensure that the service providers are aware of the language needs of the LEP claimants. This example may be one appropriate way of providing meaningful access for LEP individuals.

d. Community Outreach

Community outreach activities are increasingly recognized as important to the ultimate success of a program that aims to serve the larger community. Thus, application of the four-factor analysis to community outreach activities can play an important role in ensuring that the purpose of these activities—to improve awareness of and participation in a program—is not thwarted due to lack of planned, reasonable steps to address the language needs of LEP persons.

Example: A state Employment Security Department (ESD) UI Division has implemented a many-faceted outreach program to inform Spanish-speaking LEP customers how to access UI benefits. Eight radio stations that reach the highest numbers of Hispanics are used to make public service announcements about ESD services. Inserts are placed in major Hispanic newspapers and magazines, and flyers on ESD services are distributed through community centers, faith-based organizations, and Hispanic businesses. Articles are printed in newspapers and magazines in Spanish and English on how to file UI claims by phone through the UI Telecenters. This example may be one appropriate way of providing meaningful access for LEP individuals.

Example: The Local Workforce Investment Board mobilizes faith and community-based organizations to spread the word about the upcoming public comment session on its five-year workforce investment plan in the six major languages spoken by LEP individuals in the area. Information about the upcoming meeting is delivered throughout

the community in written notices (in each target language) as well as through public service announcements on radio and tv in these six target languages. This example may be one appropriate way of providing meaningful access for LEP individuals.

e. ESL Classes

English-as-a-second-language (ESL) classes are often useful and appropriate for LEP populations. ESL courses can serve as an important part of a proper LEP plan. However, the fact that ESL classes are provided does not necessarily obviate the need to provide meaningful access for LEP persons in other programs and services that the One-Stop Career Center provides.

f. Intake, Orientation and Assessment

Intake, orientation and assessment play a critical role not merely in the system's identification of LEP persons, but also in providing those persons with fundamental information about how to utilize the system and participate in education and training opportunities available. All individuals should be given the opportunity to be informed of the program's rules, obligations, and opportunities in a manner designed effectively to communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf persons, which is most frequently accomplished through sign language interpreters or written materials. Not every One-Stop Career Center will use the same method for providing language assistance. One-Stop Career Centers with large numbers of Spanish-speaking LEP persons may choose to translate written materials, notices, and other important orientation material into Spanish with oral instructions, whereas One-Stop Career Centers with very few such persons may choose to rely upon a telephonic interpretation service or qualified community volunteers to assist. Each person's LEP status and the language spoken should be recorded in the person's file. Although the LEP Guidance and Title VI are not meant to address literacy levels, recipients should be aware of literacy problems so that the appropriate language services are provided.

Example: A One-Stop Career Center is located in an area that has a five percent Haitian Creole-speaking LEP population and an eight percent Spanish-speaking LEP population. The One-Stop Career Center has developed intake videos in Haitian Creole and Spanish for staff to use when conducting orientation for new LEP persons who speak these languages. In addition, the One-Stop Career Center provides LEP persons with the opportunity to ask questions and discuss orientation information with bilingual staff who are competent in interpreting and who are either present at the orientation or patched in by phone to act as interpreters. The One-Stop Career Center has also made arrangements for LEP persons who do not speak Haitian Creole or Spanish. For such situations, the One-Stop Career Center has created a list of sources for interpretation, including staff, contract interpreters, university resources, volunteers, and a telephone interpretation service. Each person receives at least an oral explanation of the

services available in the One-Stop Career Center. This example may be one appropriate way of providing meaningful access for LEP individuals.

g. Providing More Intensive Employment and Training Services

An effective LEP plan should envision how a LEP person will move from receipt of core services to intensive services and then to training services. An effective LEP plan will envision accommodations along each step of the service continuum. For example, customized programs that combine Vocational ESL and skills-based vocational training may be appropriate depending upon the size of the LEP population and the need of individual LEP persons. If there are a significant number of LEP persons speaking a particular language in a local area, the One-Stop Career System should consider outreach to training providers that could provide classes in appropriate languages in One-Stop Career Centers and at employer sites. If there are far fewer LEP persons speaking a particular language, the recipient might consider the use of bilingual teachers, contract interpreters, community volunteers to interpret during the class, reliance on videos or written explanations in appropriate languages.

Example: A rural One-Stop Career Center has made a number of accommodations to serve LEP job-seekers. Services are provided both directly to the applicants and through a partner organization that has the capability to mobilize comprehensive services to assist LEP clients. The partner organization runs a special service center, which is considered part of the One-Stop Career System and is located near its main offices. The special center offers core employment services such as job placement, job-seeking/job-retention skills, and individual counseling to LEP clients as well as providing access to many other services, such as housing, transportation, childcare, legal services, counseling, interpretive services, and assistance with completing immigration and naturalization forms. Emergency referrals for healthcare, housing/shelter, and food are also made. The local One-Stop Career Center also routinely provides specialized resources to serve LEP dislocated workers, including

bilingual assistance for UI and other financial aid, assessment of English language skills, and ESL career planning. The program utilizes the ESL capabilities available at the local community college and hires translators to assist the workers in developing individual plans, providing guidance, and in taking skill-building courses in new demand occupations. Customized ESL classes have been developed on specific work-related issues (for example, higher level ESL courses on job seeking and communicating in the workplace are offered). Students are also referred to both community-based ESL and an intensive for-credit immersion ESL course that runs five days a week, six hours a day, offered through the local community college. The local program has also developed a strong partnership with the State Bureau of Refugee Services to coordinate the provision of additional social services for LEP dislocated workers. This example may be one appropriate way of providing meaningful access for LEP individuals.

Example: A community college, which serves as a One-Stop Career Center, customizes its workforce services for LEP individuals. In particular, its dislocated worker program (of which eighteen percent of participants is LEP) has made accommodations in fourteen services that are now individualized to meet the specific needs of LEP participants. The services include: outreach and recruitment, rapid response, orientation, assessment, case management, self-sufficiency plan development, support services, vocational training, job search assistance, job development and placement, retention services, interagency coordination, basic skills training, and employer services. Changes in services have been developed through close collaboration between the workforce investment staff and the traditional ESL teachers at the community college. While ESL, adult basic education and GED courses are available to all participants; the LEP dislocated workers receive customized employment-related ESL training. The dislocated worker program also provides peer support training and counseling. This unique approach involves training peers—dislocated workers themselves—who are proficient in both the

LEP participant's primary language and English to serve as translators, information providers, and counselors to the other dislocated workers. Another unique component of the services to LEP dislocated workers is the targeted industry model, which includes pre-training job shadowing and industry-related classroom activities. The program also provides training to employers on cultural differences and on creating multicultural work teams. Finally, the program has developed close relationships with community-based organizations serving immigrant populations to provide other services to LEP individuals. The community-based organizations provide additional employment services as well as information on a variety of youth and family services, which may be useful to dislocated worker participants. This example may be one appropriate way of providing meaningful access for LEP individuals.

h. Youth Programs

DOL provides funds to many youth programs to which the LEP Guidance applies. Recipients should also consider LEP parents when designing programs targeted to youth.

Example: A local workforce program serving former gang members has significantly altered its services to accommodate a large number of immigrant youth who have limited English proficiency and are transitioning from the juvenile justice system. In order to make all program elements accessible to these youth, program staff is fluent in multiple languages including Vietnamese, Cambodian, Spanish, and Laotian. Upon entry into the program, each youth is assessed using a specially designed risk assessment tool to gauge such factors as educational and employment skill levels, need for home-based support (which can include culturally appropriate interventions), counseling, and identification of personal assets and interests. Each youth receives an individualized service strategy after assessment. This example may be one appropriate way of providing meaningful access for LEP individuals.

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