

then periodically throughout the application process. When the agency receives additional information from its ongoing checks of applicants' motor vehicle records, this information is thoroughly considered and the determination to grant, or not grant, an exemption is based on *all* information received.

In a supplemental comment to the docket, the AHAS states additional concerns regarding agency reliance on self-reported information. We will not address these concerns again, but refer interested parties to the above discussions regarding Mr. Mazyck's application for an exemption and the agency's process for verification of information used to determine an applicant's acceptability for an exemption.

Notwithstanding the FMCSA's ongoing review of the vision standard, as evidenced by the medical panel's report dated October 16, 1998, and filed in this docket, the FMCSA must comply with *Rauenhorst v. United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 55 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce, because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

Conclusion

After considering the comments to the docket and based upon its evaluation of the 55 exemption applications in accordance with the Rauenhorst decision, the FMCSA exempts Henry Ammons Jr., Glenn A. Babcock Jr., Bobby J. Beall, Robert D. Bonner, James F. Bower, Ben T. Brown, Terry L. Burgess, David S. Carman, Dennis J. Christensen, David L. Davis, Darrell B. Dean, Edgar E. French, Glen T. Garrabrant, Doyle G. Gibson, Elias Gomez Jr., Jose E. Gonzalez, Joseph M. Graveline, Johnny C. Hall, William N. Hicks, Robert K. Hodge, William G. Holland, John R. Hughes, Frank Ingarida, Alan L. Johnston, David O. Kaiser Sr., Milena Kekerovic, Mark J. Koscinski, John N. Lanning, Robert C. Leathers, Richard L. Leonard, Calvin E. Lloyd, Roy E. Mathews, James T. McGraw Jr., Luther A. McKinney, Carl A. Michel Sr., Clarence M. Miles Jr., Robert A. Moss, Robert A. Murphy, Dennis I. Nelson, Martin D. Ortiz, Henry

C. Patton, Rance A. Powell, John W. Purcell, Shannon E. Rasmussen, Merlyn L. Rawson, James R. Rieck, Daniel J. Schaap, Dennis J. Smith, Garfield A. Smith, Gary L. Spelce, Frederick E. St. John, Daniel R. Viscaya, Michael P. Walsh, Jerry L. Whitefield, and Robert E. Wientjes from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: February 28, 2001.

Stephen E. Barber,

Acting Assistant Administrator and Chief Safety Officer.

[FR Doc. 01-5480 Filed 3-6-01; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

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

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Department of the Treasury is publishing policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance is effective immediately. Comments must be submitted on or before May 7, 2001. Treasury will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Marcia H. Coates, Director, Office of Equal Opportunity Program, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 6071 Metropolitan Square, Washington, D.C. 20220; Comments may also be submitted by e-mail to: OEOPWEB@do.treas.gov.

FOR FURTHER INFORMATION CONTACT: John Hanberry at the Office of Equal Opportunity Program, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 6071 Metropolitan Square, Washington, D.C. 20220; (202) 622-1170 voice, (202) 622-0321 TTY, (202) 622-0367 fax. Arrangements to receive the policy in an alternative format may be made by contacting Mr. Hanberry.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the U.S. Department of the Treasury ("recipients"), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates the Federal government's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

The text of the complete guidance document appears below.

Dated: February 22, 2001.

James J. Flyzik,

Acting Assistant Secretary for Management and Chief Information Officer, United States Department of the Treasury.

Policy Guidance

A. Background

On August 11, 2000, President Clinton signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." The purpose of this Executive Order is to eliminate to the maximum extent possible limited English proficiency (LEP) as an artificial barrier to full and meaningful participation in all federally assisted programs and activities.

The EO requires that federal agencies draft Title VI guidance specifically tailored to their recipients of federal financial assistance, taking into account the types of services provided, the individuals served, and the programs and activities assisted to ensure that recipients provide meaningful access to their LEP applicants and beneficiaries. To assist federal agencies in carrying out these responsibilities, the Department of Justice (DOJ) issued a Policy Guidance Document, "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance)". DOJ's LEP Guidance sets forth the compliance standards that recipients of federal financial assistance must follow to ensure that programs and activities normally provided in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI.

This document contains guidance to recipients of financial assistance from the Department and its constituent bureaus. It is consistent with DOJ's policy guidance and provides recipients of Treasury assistance the necessary tools to assure language assistance to LEP persons. It is also consistent with the government-wide Title VI regulation issued by DOJ in 1976, "Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs," 28 CFR Part 42, Subpart F, that addresses the circumstances in which recipients must provide written language assistance to LEP persons.¹ This guidance will be

provided to all recipients of Treasury assistance to ensure compliance with the nondiscrimination provisions of Title VI as it applies to language proficiency.

B. Introduction

English is the predominant language of the United States. According to the 1990 Census, English is spoken by 95% of its residents. Of those U.S. residents who speak languages other than English at home, the 1990 Census reports that 57% above the age of four speak English "well to very well."

The United States is also, however, home to millions of national origin minority individuals who are "limited English proficient" (LEP). That is, their primary language is not English, and they cannot speak, read, write or understand the English language at a level that permits them to interact effectively. Because of these language differences and their inability to speak or understand English, LEP persons may be excluded from participation, experience delays or denials of services, or receive services based on inaccurate or incomplete information in Treasury assisted programs.

Some recipients have sought to bridge the language gap by encouraging language minority clients to provide their own interpreters as an alternative to the agency's use of qualified bilingual employees or interpreters. Persons of limited English proficiency must sometimes rely on their minor children to interpret for them during visits to a service facility. Alternatively, these clients may be required to call upon neighbors or even strangers they encounter at the provider's office to act as interpreters or translators. These practices have severe drawbacks and may violate Title VI of the Civil Rights Act of 1964. (See Section D.6.(a) of this notice.)

In each case, the impediments to effective communication and adequate service are formidable. The client's untrained "interpreter" is often unable to understand the concepts or official terminology he or she is being asked to interpret or translate. Even if the interpreter possesses the necessary language and comprehension skills, his or her mere presence may obstruct the flow of confidential information to the provider. For example, clients of an IRS Taxpayer Clinic would naturally be reluctant to disclose or discuss personal details concerning their taxes, through

relatives, minor children, or friends, in this IRS assisted program.

When these types of circumstances are encountered, the level and quality of services available to persons of limited English proficiency stand in stark contrast to Title VI's promise of equal access to federally assisted programs and activities. Services denied, delayed or provided under adverse circumstances for an LEP person may constitute discrimination on the basis of national origin, in violation of Title VI. Numerous federal laws require the provision of language assistance to LEP individuals seeking to access critical services and activities. For instance, the Voting Rights Act bans English-only elections in certain circumstances and outlines specific measures that must be taken to ensure that language minorities can participate in elections. See 42 U.S.C. 1973 b(f)(1). Similarly, the Food Stamp Act of 1977 requires states to provide written and oral language assistance to LEP persons under certain circumstances. 42 U.S.C. 2020(e)(1) and (2). These and other provisions reflect the judgment that providers of critical services and benefits bear the responsibility for ensuring that LEP individuals can meaningfully access their programs and services.

C. Legal Authority

1. Introduction

Over the last 30 years, federal agencies have conducted thousands of investigations and reviews involving language differences that impede the access of LEP persons to services. Where the failure to accommodate language differences discriminates on the basis of national origin, federal law has required recipients to provide appropriate language assistance to LEP persons. For example, one of the largest providers of federal financial assistance, the Department of Health and Human Services (HHS) has entered into voluntary compliance agreements and consent decrees that require recipients who operate health and social service programs to ensure that there are bilingual employees or language interpreters to meet the needs of LEP persons seeking HHS services. HHS has also required these recipients to provide written materials and post notices in languages other than English. See *Mendoza v. Lavine*, 412 F.Supp. 1105 (S.D.N.Y. 1976); and *Asociacion Mixta Progresista v. H.E.W.*, Civil Number C72-882 (N.D. Cal. 1976). The legal authority for Treasury's enforcement actions is Title VI of the Civil Rights Act of 1964, DOJ's government-wide implementing regulation for Executive

¹ The DOJ coordination regulations at 28 CFR 42.405(d)(1) provide that "[w]here a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and

concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public."

Order 12250, the August 11, 2000 DOJ LEP Guidance, and a consistent body of case law, which are described below.

2. Statute and Regulation

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. section 2000d *et seq.* states: "No person in the United States 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."

Treasury is in the process of drafting its own Title VI regulations consistent with the model regulations provided by DOJ, which require that:

(a) A recipient under any program to which these regulations apply, may not, directly or through contractual or other arrangements, on grounds of race, color, or national origin:

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

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

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program or the class of individuals to whom, or the situations in which such services, financial aid or other benefits, or facilities will be provided * * * *may not directly, or through contractual or other arrangements, utilize 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 with respect to individuals of a particular, race, color or national origin.*" (Emphasis added.)

3. Case Law

Extensive case law affirms the obligation of recipients of federal financial assistance to ensure that LEP persons can meaningfully access federally assisted programs.

The U.S. Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), recognized that recipients of federal financial assistance have an affirmative responsibility, pursuant to Title VI, to provide LEP persons with a meaningful opportunity to participate in public programs. In *Lau*, the Supreme Court ruled that a public school system's failure to provide English language instruction to students of Chinese

ancestry who do not speak English denied the students a meaningful opportunity to participate in a public educational program in violation of Title VI of the Civil Rights Act of 1964.

As early as 1926, the Supreme Court recognized that language rules were often discriminatory. In *Yu Cong Eng et al. v. Trinidad, Collector of Internal Revenue*, 271 U.S. 500 (1926), the Supreme Court found that a Philippine Bookkeeping Act that prohibited the keeping of accounts in languages other than English, Spanish and Philippine dialects violated the Philippine Bill of Rights that Congress had patterned after the U.S. Constitution. The Court found that the Act deprived Chinese merchants, who were unable to read, write or understand the required languages, of liberty and property without due process. In *Gutierrez v. Municipal Court of S.E. Judicial District*, 838 F.2d 1031, 1039 (9th Cir. 1988), *vacated as moot*, 490 U.S. 1016 (1989), the court recognized that requiring the use of English only is often used to mask national origin discrimination. Citing *McArthur, Worried About Something Else*, 60 Int'l J. Soc. Language, 87, 90-91 (1986), the court stated that because language and accents are identifying characteristics, rules that have a negative effect on bilingual persons, individuals with accents, or non-English speakers may be mere pretexts for intentional national origin discrimination.

Another case that noted the link between language and national origin discrimination is *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980) *cert. denied*, 449 U.S. 1113 (1981). The court found that on the facts before it a workplace English-only rule did not discriminate on the basis of national origin since the complaining employees were bilingual. However, the court stated that "to a person who speaks only one tongue or to a person who has difficulty using another language other than the one spoken in his home, language might well be an immutable characteristic like skin color, sex or place of birth." *Id.* at 269.

The Fifth Circuit addressed language as an impermissible barrier to participation in society in *U.S. v. Uvalde Consolidated Independent School District*, 625 F.2d 547 (5th Cir. 1980). The court upheld an amendment to the Voting Rights Act which addressed concerns about language minorities, the protections they were to receive, and eliminated discrimination against them by prohibiting English-only elections.

Most recently, in *Sandoval v. Hagan*, 7 F. Supp. 2d 1234 (M.D. Ala. 1998),

affirmed, 197 F.3d 484, (11th Cir. 1999), *petition for certiorari granted*, *Alexander v. Sandoval* 121 S. Ct. 28 (Sept. 26, 2000)(No. 99-1908), the Eleventh Circuit held that the State of Alabama's policy of administering a driver's license examination in English only was a facially neutral practice that had an adverse effect on the basis of national origin, in violation of Title VI. The court specifically noted the nexus between language policies and potential discrimination based on national origin. That is, in *Sandoval*, the vast majority of individuals who were adversely affected by Alabama's English-only driver's license examination policy were national origin minorities.

4. Department of Justice August 11, 2000 LEP Guidance

This Guidance is issued in compliance with EO 13166 and its requirement that agencies providing federal financial assistance provide guidance to recipients that is consistent with DOJ's August 11, 2000 LEP Guidance. That Guidance sets forth the compliance standards that recipients of federal financial assistance must follow to ensure that programs and activities are meaningfully accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI. A recipient's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services. Accordingly, it is important for recipients to examine their policies and practices to determine whether they adversely affect LEP persons. This policy guidance provides a legal framework to assist recipients in conducting such assessments.

D. Policy Guidance

1. Coverage

All entities that receive federal financial assistance from Treasury either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance. The term "federal financial assistance" to which Title VI applies includes but is not limited to grants and loans of federal funds, grants or donations of federal property, details of federal personnel, or any agreement, arrangement or other contract which has as one of its purposes the provision of assistance.

Title VI prohibits discrimination in any program or activity that receives federal financial assistance. What

constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRRA) was enacted. The CRRRA provides that, in most cases, when a recipient receives federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the federal assistance is used only by one part.

2. Basic Requirements Under Title VI

A recipient whose policies, practices, or procedures exclude, limit, or have the effect of excluding or limiting, the participation of any LEP person in a federally assisted program on the basis of national origin may be engaged in discrimination in violation of Title VI. In order to ensure compliance with Title VI, recipients must take steps to ensure that LEP persons who are eligible for their programs or services have meaningful access to the services, information, and benefits that they provide. The most important step in meeting this obligation is for recipients of Treasury financial assistance to provide the language assistance necessary to ensure such access, at no cost to the LEP person.

The type of language assistance a recipient/covered entity provides to ensure meaningful access will depend on a variety of factors, including the total resources and size of the recipient/covered entity, the number or proportion of the eligible LEP population it serves, the nature and importance of the program or service, including the objectives of the program, the frequency with which particular languages are encountered, and the frequency with which LEP persons come into contact with the program. These factors are consistent with and incorporate the standards set forth in the Department of Justice "Policy Guidance Document: on Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance)," reprinted at 65 FR 50123 (August 16, 2000). There is no "one size fits all" solution for Title VI compliance with respect to LEP persons. Treasury will make its assessment of the language assistance needed to ensure meaningful access on a case by case basis, and a recipient will have considerable flexibility in determining precisely how to fulfill this obligation. Treasury will focus on the end result—whether the recipient has

taken the necessary steps to ensure that LEP persons have meaningful access to its programs and services.

The key to providing meaningful access for LEP persons is to ensure that the recipient and LEP person can communicate effectively. The steps taken by a covered entity must ensure that the LEP person is given adequate information, is able to understand the services and benefits available, and is able to receive those for which he or she is eligible. The covered entity must also ensure that the LEP person can effectively communicate the relevant circumstances of his or her situation to the service provider.

Experience has shown that effective language assistance programs usually contain the four measures described in Section 4 below. In reviewing complaints and conducting compliance reviews, Treasury will consider a program to be in compliance when the recipient effectively incorporates and implements these four elements. The failure to incorporate or implement one or more of these elements does not necessarily mean noncompliance with Title VI, and Treasury will review the totality of the circumstances to determine whether LEP persons can meaningfully access the services and benefits of the recipient.

3. State or Local "English-Only" Laws

State or local "English-only" laws do not change the fact that recipients cannot discriminate in violation of Title VI. Entities in states and localities with "English-only" laws do not have to accept federal funding. However, if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients.

4. Ensuring Meaningful Access to LEP Persons

(a) The Four Keys to Title VI Compliance in the LEP Context

The key to providing meaningful access to benefits and services for LEP persons is to ensure that the language assistance provided results in accurate and effective communication between the provider and LEP applicant/client about the types of services and/or benefits available and about the applicant's or client's circumstances. Although Treasury recipients have considerable flexibility in fulfilling this obligation, effective programs usually have the following four elements:

- **Assessment**—The recipient conducts a thorough assessment of the language needs of the population to be served;

- **Development of Comprehensive Written Policy on Language Access**—The recipient develops and implements a comprehensive written policy that will ensure meaningful communication;

- **Training of Staff**—The recipient takes steps to ensure that staff understand the policy and are capable of carrying it out; and

- **Vigilant Monitoring**—The recipient conducts regular oversight of the language assistance program to ensure that LEP persons meaningfully access the program.

If implementation of one or more of these measures would be so financially burdensome as to defeat the legitimate objectives of a recipient's program, or if the recipient utilizes an equally effective alternative for ensuring that LEP persons have meaningful access to programs and services, Treasury will not find the recipient in noncompliance. However, recipients should gather and maintain documentation to substantiate any assertion of financial burden.

(b) Assessment

The first key to ensuring meaningful access is for the recipient to assess the language needs of the eligible population. A recipient assesses language needs by identifying:

- the number and proportion of LEP persons eligible to be served or encountered by the recipient, the frequency of contact with LEP language groups, the nature or importance of the activity, benefit, or service, and the resources of the recipient.
- the points of contact in the program or activity where language assistance is likely to be needed.
- the resources that will be needed to provide effective language assistance.
- the location and availability of these resources.
- the arrangements that must be made to access these resources in a timely fashion.

(c) Development of Comprehensive Written Policy on Language Access

A recipient can ensure effective communication by developing and implementing a comprehensive written language assistance program. This program should include: policies and procedures for identifying and assessing the language needs of its LEP applicants/clients; a range of oral language assistance options; notice to LEP persons in a language they can understand of the right to free language assistance; periodic training of staff; monitoring of the program; and

translation of written materials in certain circumstances.²

(1) *Oral Language Interpretation*—In designing an effective language assistance program, a recipient should develop procedures for obtaining and providing trained and competent interpreters and other oral language assistance services, in a timely manner, by taking some or all of the following steps:

- hiring bilingual staff who are trained and competent in the skill of interpreting;
 - hiring staff interpreters who are trained and competent in the skill of interpreting;
 - contracting with an outside interpreter service for trained and competent interpreters;
 - arranging formally for the services of voluntary community interpreters who are trained and competent in the skill of interpreting;
 - arranging/contracting for the use of a telephone language interpreter service.
- See Section D.6.(b) of this notice for a discussion on “Competence of Interpreters.”

The following provides guidance to recipients in determining which language assistance options will be of sufficient quantity and quality to meet the needs of their LEP beneficiaries:

• **Bilingual Staff**—Hiring bilingual staff for client contact positions facilitates participation by LEP persons. However, where there are a variety of LEP language groups in a recipient's service area, this option may be insufficient to meet the needs of all LEP applicants and clients. Where this option is insufficient to meet the needs, the recipient must provide additional and timely language assistance.

Bilingual staff must be trained and must demonstrate competence as interpreters.

• **Staff Interpreters**—Paid staff interpreters are especially appropriate where there is a frequent and/or regular need for interpreting services. These persons must be competent and readily available.

• **Contract Interpreters**—The use of contract interpreters may be an option for recipients that have an infrequent need for interpreting services, have less

common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as-needed basis. Such contract interpreters must be readily available and competent.

• **Community Volunteers**—Use of community volunteers may provide recipients with a cost-effective method for providing interpreter services. However, experience has shown that to use community volunteers effectively, recipients must ensure that formal arrangements for interpreting services are made with community organizations so that these organizations are not subjected to *ad hoc* requests for assistance. In addition, recipients must ensure that these volunteers are competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service.

• **Telephone Interpreter Lines**—A telephone interpreter service line may be a useful option as a supplemental system, or may be useful when a recipient encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many different languages and usually can provide the service in quick response to a request. However, recipients should be aware that such services may not always have readily available interpreters who are familiar with the terminology peculiar to the particular program or service. It is important that a recipient not offer this as the only language assistance option except where other language assistance options are unavailable.

(2) *Translation of Written Materials*—An effective language assistance program ensures that written materials that are routinely provided in English to applicants, clients and the public are available in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated. A document will be considered vital if it contains information that is critical for accessing the services, rights, and/or benefits, or is required by law. Thus, vital documents include, for example, applications; consent forms; letters and notices pertaining to the reduction, denial or termination of services or benefits; and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital information. Non-vital information includes documents that

are not critical to access such benefits and services.

As part of its overall language assistance program, a recipient must develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served or likely to be directly affected by the program needs services or information in a language other than English to communicate effectively. (See 28 CFR 42.405(d)(1)). Treasury will determine the extent of the recipient's obligation to provide written translation of documents on a case by case basis, taking into account all relevant circumstances, including: (1) The nature, importance, and objective of the particular activity, program, or service; (2) the number or proportion of LEP persons eligible to be served or encountered by the recipient; (3) the frequency with which translated documents are needed; and (4) the total resources available to the recipient as compared to the length of the document and cost of translation.

One way for a recipient to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the recipient to meet the guidelines outlined in paragraphs (A) and (B) below, which outline the circumstances that provide a “safe harbor” for recipients. A recipient that provides written translations under these circumstances can be confident that it will be found in compliance with its obligation under Title VI regarding written translations.³ However, the failure to provide written translations under these circumstances outlined in paragraphs (A) and (B) will not necessarily mean noncompliance with Title VI.

In such situations, Treasury will review the totality of the circumstances to determine the precise nature of a recipient's obligation to provide written materials in languages other than English as indicated earlier.

Treasury will consider a recipient to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

(A) The recipient provides translated written materials, including vital

² The Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 both provide similar prohibitions against discrimination on the basis of disability and require entities to provide language assistance such as sign language interpreters for hearing impaired individuals or alternative formats such as Braille, large print or tape for vision impaired individuals. In developing a comprehensive language assistance program, recipients should be mindful of their responsibilities under the ADA and Section 504 to ensure access to programs for individuals with disabilities.

³ The “safe harbor” provisions are not intended to establish numerical thresholds for when a recipient must translate documents. The numbers and percentages included in these provisions are based on the balancing of a number of factors, including experience in enforcing Title VI in the context of Treasury programs, and Treasury's discussions with other agencies about experiences of their grant recipients with language access issues.

documents, for each eligible LEP language group that constitutes ten percent or 3,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected by the recipient's program;⁴

(B) Regarding LEP language groups that do not fall within paragraph (A) above, but constitute five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected, the recipient ensures that, at a minimum, vital documents are translated into the appropriate non-English languages of such LEP persons. Translation of other documents, if needed, can be provided orally; and

(C) Notwithstanding paragraphs (A) and (B) above, a recipient with fewer than 100 persons in a language group eligible to be served or likely to be directly affected by the recipient's program, does not translate written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of written materials.

The term "persons eligible to be served or likely to be directly affected" relates to the issue of what is the recipient's service area for purposes of meeting its Title VI obligation. There is no "one size fits all" definition of what constitutes "persons eligible to be served or likely to be directly affected" and Treasury will address this issue on a case by case basis. Ordinarily, these persons are those who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. Thus, for language groups that do not fall within paragraphs (A) and (B), above, a recipient can ensure access by providing written notice in the LEP person's primary language of the right to receive free language assistance.

Recent technological advances have made it easier for recipients to store translated documents readily. At the same time, Treasury recognizes that recipients in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens of different languages. It would be unduly burdensome to demand that recipients in these circumstances translate all written materials into these languages. As a result, Treasury will determine the extent of the recipient's obligation to

provide written translations of documents on a case by case basis, looking at the totality of the circumstances.

It is also important to ensure that the person translating the materials is well qualified. In addition, in some circumstances verbatim translation of materials may not accurately or appropriately convey the substance of what is contained in the written materials. An effective way to address this potential problem is to reach out to community-based organizations to review translated materials to ensure that they are accurate and easily understood by LEP persons.

(3) *Methods for Providing Notice to LEP Persons*—A vital part of a well-functioning compliance program includes having effective methods for notifying LEP persons of their right to language assistance and the availability of such assistance free of charge. These methods include but are not limited to:

- Use of language identification cards that allow LEP persons to identify their language needs to staff. To be effective, the cards (e.g., "I speak" cards) must invite the LEP person to identify the language he/she speaks.

- Posting and maintaining signs in regularly encountered languages other than English in waiting rooms, reception areas and other initial points of entry. To be effective, these signs must inform LEP persons of their right to free language assistance services and invite them to identify themselves as persons needing such services.

- Translation of application forms and instructional, informational and other written materials into appropriate non-English languages by competent translators. For LEP persons whose language does not exist in written form, assistance from an interpreter to explain the contents of the document.

- Uniform procedures for timely and effective telephone communication between staff and LEP persons. This must include instructions for English-speaking employees to obtain assistance from interpreters or bilingual staff when receiving calls from or initiating calls to LEP persons.

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

(d) Training of Staff

Another vital element in ensuring that its policies are followed is a recipient's dissemination of its policy to all

employees likely to have contact with LEP persons, and periodic training of these employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between clients, providers and interpreters. It is important that this training be part of the orientation for new employees and that all employees in client contact positions be properly trained. Recipients may find it useful to maintain a training registry that records the names and dates of employees' training. Effective training is one means of ensuring that there is not a gap between a recipient's written policies and procedures, and the actual practices of employees who are in the front lines interacting with LEP persons.

(e) Monitoring and Updating the LEP policy

Recipients should always consider whether new documents, programs, services, and activities need to be made accessible for LEP individuals. They should then provide needed language services and notice of those services to the LEP public and to employees. In addition, Treasury recipients should evaluate their entire language policy at least every three years. One way to evaluate the LEP policy is to seek feedback from the community. Recipients should assess:

- Current LEP populations in service area.
- Current communication needs of LEP individuals encountered by the program.
- Whether existing assistance is meeting the needs of such persons.
- Whether staff knows and understands the LEP policy and how to implement it.
- Whether identified sources for assistance are still available and viable.

5. Treasury's Assessment of Meaningful Access

The failure to take all of the steps outlined in Section D (4), above, will not necessarily mean that a recipient has failed to provide meaningful access to LEP clients. The following are examples of how meaningful access will be assessed by Treasury:

- A small recipient has about 50 LEP Hispanic clients and a small number of employees, and asserts that he cannot afford to hire bilingual staff, contract with a professional interpreter service, or translate written documents. To accommodate the language needs of LEP clients, the recipient has made

⁴ See Section D.4.(c)(2) above for a description of vital documents. Large documents, such as enrollment handbooks, may not need to be translated in their entirety. However, vital information contained in large documents must be translated.

arrangements with a Hispanic community organization for trained and competent volunteer interpreters, and with a telephone interpreter language line, to interpret during consultations and to orally translate written documents. There have been no client complaints of inordinate delays or other service related problems with respect to LEP clients. Given the resources, the size of the staff, and the size of the LEP population, Treasury would find this recipient in compliance with Title VI.

- A recipient with a large budget serves 500,000 beneficiaries. Of the beneficiaries eligible for services, 3,500 are LEP Chinese persons, 4,000 are LEP Hispanic persons, 2,000 are LEP Vietnamese persons and about 400 are LEP Laotian persons. The recipient has no policy regarding language assistance to LEP persons, and LEP clients are told to bring their own interpreters, are provided with application and consent forms in English and if unaccompanied by their own interpreters, must solicit the help of other clients or must return at a later date with an interpreter. Given the size of this program, its resources, the size of the eligible LEP population, and the nature of the program, Treasury would likely find this recipient in violation of Title VI and would likely require it to develop a comprehensive language assistance program that includes all of the options discussed in Section D.4. above.

6. Interpreters

Two recurring issues in the area of interpreter services involve (a) the use of friends, family, or minor children as interpreters, and (b) the need to ensure that interpreters are competent.

(a) Use of Friends, Family and Minor Children as Interpreters

A recipient may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology.

If after a recipient informs an LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the recipient may use

the family member or friend, if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The recipient should document the offer and decline in the LEP person's file. Even if an LEP person elects to use a family member or friend, the recipient should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

(b) Competence of Interpreters

In order to provide effective services to LEP persons, a recipient must ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter, though certification is helpful. On the other hand, competency requires more than self-identification as bilingual. The competency requirement contemplates demonstrated proficiency in both English and the other language, orientation and training that includes the skills and ethics of interpreting (e.g., issues of confidentiality), fundamental knowledge in both languages of any specialized terms, or concepts peculiar to the recipient's program or activity, sensitivity to the LEP person's culture and a demonstrated ability to convey information in both languages, accurately. A recipient must ensure that those persons it provides as interpreters are trained and demonstrate competency as interpreters.

7. Examples of Prohibited Practices

Listed below are examples of practices which may violate Title VI:

- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons, or placing greater burdens on LEP than on non-LEP persons;
- Subjecting LEP persons to unreasonable delays in the delivery of services, or the provision of information on rights;
- Limiting participation in a program or activity on the basis of English proficiency;
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter.

E. Promising Practices

In meeting the needs of their LEP clients, some recipients have found unique ways of providing interpreter services and reaching out to the LEP community. Examples of promising practices include the following:

Language Banks—In several parts of the country, both urban and rural,

community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates.

Pamphlets—A recipient has created pamphlets in several languages, entitled "While Awaiting the Arrival of an Interpreter." The pamphlets are intended to facilitate basic communication between clients and staff. They are not intended to replace interpreters but may aid in increasing the comfort level of LEP persons as they wait for services.

Use of Technology—Some recipients use their internet and/or intranet capabilities to store translated documents online. These documents can be retrieved as needed.

Telephone Information Lines—Recipients have established telephone information lines in languages spoken by frequently encountered language groups to instruct callers, in the non-English languages, on how to leave a recorded message that will be answered by someone who speaks the caller's language.

Signage and Other Outreach—Other recipients have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by (a) posting signs and placards with this information in public places such as grocery stores, bus shelters and subway stations; (b) putting notices in newspapers, and on radio and television stations that serve LEP groups; (c) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; and (d) establishing information lines in appropriate languages.

F. Model Plan

The following example of a model language assistance program may be useful for recipients in developing their plans. The plan incorporates a variety of options and methods for providing meaningful access to LEP individuals:

- A formal written language assistance program.
- Identification and assessment of the languages that are likely to be encountered and estimating the number of LEP persons that are eligible for services and that are likely to be affected by its program through a review of census and client utilization data and data from school systems and community agencies and organizations.

- Posting of signs in lobbies and in other waiting areas, in several languages, informing applicants and clients of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance.

- Use of "I speak" cards by intake workers and other contact personnel so that they can identify their primary languages.

- Keeping the language of the LEP person in his/her record if such a record would normally be kept for non-LEP persons so that all staff can identify the language assistance needs of the client.

- Employment of a sufficient number of staff, bilingual in appropriate languages, in client contact positions. These persons must be trained and competent as interpreters.

- Contracts with interpreting services that can provide competent interpreters in a wide variety of languages, in a timely manner.

- Formal arrangements with community groups for competent and timely interpreter services by community volunteers.

- An arrangement with a telephone language interpreter line.

- Translation of application forms, instructional, informational and other key documents into appropriate non-English languages. Provision of oral interpreter assistance with documents, for those persons whose language does not exist in written form.

- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons.

- Notice to and training of all staff, particularly client contact staff, with respect to the recipient's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner.

- Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff.

- Notice to the public regarding the language assistance policies and procedures, and notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.

- Adoption of a procedure for the resolution of complaints regarding the provision of language assistance; and for notifying clients of their right to and how to file a complaint under Title VI with Treasury.

- Appointment of a senior level employee to coordinate the language assistance program, and assurance that there is regular monitoring of the program.

G. Compliance and Enforcement

Treasury will enforce recipients' responsibilities to LEP beneficiaries through procedures provided for in Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. Treasury will always provide recipients with the opportunity to come into voluntary compliance prior to initiating formal enforcement proceedings.

In determining compliance with Title VI, Treasury's concern will be whether the recipient's policies and procedures allow LEP persons to overcome language barriers and participate meaningfully in programs, services and benefits. A recipient's appropriate use of the methods and options discussed in this guidance will be viewed by Treasury as evidence of a recipient's intent to comply with Title VI.

H. Complaint Process

Anyone who believes that he/she has been discriminated against because of race, color or national origin in violation of Title VI may file a complaint with Treasury within 180 days of the date on which the discrimination took place. The following information should be included:

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required);

- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s);

- The name and location of the organization or institution that committed the alleged discriminatory act(s);

- A description of the alleged discriminatory act(s) in sufficient detail to enable the Office of Equal Opportunity Program (OEOP) to understand what occurred, when it occurred, and the basis for the alleged discrimination.

- The letter or form must be signed and dated by the complainant or by someone authorized to do so on his or her behalf.

A recipient may not retaliate against any person who has made a complaint, testified, assisted or participated in any manner in an investigation or proceeding under the statutes governing federal financial assistance programs.

Civil rights complaints should be filed with: Department of the Treasury, Office of Equal Opportunity Program 1500 Pennsylvania Avenue, NW, Room 6071 Metropolitan Square, Washington, DC 20220.

I. Technical Assistance

Treasury and its bureaus will provide technical assistance to recipients, and will continue to be available to provide such assistance to any recipient seeking to ensure that it operates an effective language assistance program. In addition, during its investigative process, Treasury is available to provide technical assistance to enable recipients to come into voluntary compliance.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[BPG-132413-00]

Dealers in Securities Futures Contracts; Request for Comments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of solicitation of comments.

SUMMARY: The IRS and Treasury Department are soliciting comments on the criteria that should be used to determine whether a taxpayer is a dealer in securities futures contracts (or options on such contracts) for purposes of section 1256 of the Internal Revenue Code.

DATES: Written and electronic comments are requested on or before May 7, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (BPG-132413-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (BPG-132413-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Concerning the notice, Patrick E. White