

Commonly Asked Questions and Answers Regarding Limited English Proficient (LEP) Individuals

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

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

2. Q. What are the relevant laws concerning language access for LEP individuals?

A. Federal laws particularly applicable to language access include Title VI of the Civil Rights Act of 1964, and the Title VI regulations, prohibiting discrimination based on national origin, and Executive Order 13166 issued in 2000. Many individual federal programs, states, and localities also have provisions requiring language services for LEP individuals.

3. Q. What is Executive Order 13166?

A. An Executive Order is an order given by the President to federal agencies. The LEP Executive Order ([Executive Order 13166](#)) says that people who are LEP should have meaningful access to federally conducted and federally funded programs and activities.

On August 11, 2000, the President signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. It is expected that agency plans will provide for such meaningful access consistent with, and without unduly burdening, the fundamental mission of the agency. The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

To assist Federal agencies in carrying out these responsibilities, the U.S. Department of Justice has 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). This LEP Guidance sets forth the compliance standards that recipients of Federal financial assistance must follow to ensure that their 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's prohibition against national origin discrimination.

The Federal Coordination and Compliance Section (FCS) is responsible for government-wide coordination with respect to Executive Order 13166. FCS serves as the federal repository for the internal implementation plans that each federal agency is required to develop, to ensure meaningful access to its own federally conducted programs and activities, and it also reviews

and approves each funding agency's external LEP guidance for its recipients. As the Department of Justice prepared its own plan, FCS staff reviewed and approved each component's submission. Further, FCS staff developed the Department's external guidance for its own recipients.

FCS has initiated an aggressive program of intra- and inter-agency consultations and actively solicits comments and suggestions from representatives of recipient and LEP individuals on how to identify and address the needs of LEP individuals under Executive Order 13166 in an effective and cost-effective manner.

4. Q. What is a recipient of federal financial assistance?

A. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Subrecipients are also covered, when federal funds are passed from one recipient to a subrecipient. Recipients of federal funds range from state and local agencies, to nonprofits and other organizations. A list of the types of recipients and the agencies funding them can be found at [Executive Order 12250 Coordination of Grant-Related Civil Rights Statutes](#).

Title VI covers a recipient's entire program or activity. This means all parts of a recipient's operations are covered. This is true even if only one part of the recipient receives the federal assistance.

Example: DOJ provides assistance to a state department of corrections to improve a particular prison facility. All of the operations of the entire state department of corrections--not just the particular prison--are covered.

More information on Title VI, generally, can be found at [Title VI of the Civil Rights Act of 1964 42 U.S.C. § 2000d et seq.](#)

5. Q. What is a federally conducted activity?

A. All federal agencies subject to Executive Order 13166 must design and implement a federally conducted plan to ensure access for LEP individuals to all of its federally conducted programs and activities (basically, everything that it does). For instance, the Civil Rights Division of the U.S. Department of Justice has a plan for ensuring meaningful access to its programs and activities for LEP persons. Other agencies and parts of agencies must do the same.

6. Q. Who will enforce the LEP rules?

A. Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act. To the extent that a recipient's actions are inconsistent with their obligations under Title VI, then such agencies will take the necessary corrective steps.

[The Federal Coordination and Compliance Section \(FCS\) of the Civil Rights Division of DOJ](#) has taken the lead in coordinating and implementing this Executive Order.

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

A. Recipients and federal agencies are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
2. the frequency with which LEP individuals come in contact with the program;
3. the nature and importance of the program, activity, or service provided by the program to people's lives; and
4. the resources available to the grantee/recipient or agency, and costs. As indicated above, the intent of this guidance is to find a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, or small nonprofits.

8. Q. Do recipients of federal funds have to submit written language access plans to the Department of Justice or to their federal funding agency each year?

A. No. While planning is an important part of ensuring that reasonable steps are taken to provide meaningful access to LEP individuals seeking services, benefits, information, or assertion of rights, there is no blanket requirement that the plans themselves be submitted to federal agencies providing federal financial assistance. In certain circumstances, such as in complaint investigations or compliance reviews, recipients may be required to provide to federal agencies a copy of any plan created by the recipient.

9. Q. When developing plans and guidance regarding translation of documents, how do we determine which documents must be translated?

A. It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits, or is required by law. Vital documents include, for example: applications, consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; prison rulebooks; written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; 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. Non-vital information includes documents that are not critical to access such benefits and services. Advertisements of federal agency tours and copies of testimony presented to Congress that are available for information purposes would be considered non-vital information.

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, we recognize that it would be impossible, from a practical and cost-based perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients of federal financial assistance, and EO 13166 does not require it of federal agencies. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important for federal agencies to continually survey/assess the needs of eligible service populations in order to determine whether certain critical outreach materials should be translated into other languages.

10. Q. What do recipients of federal financial assistance do if they are operating in a state or locality that has an English-only or official English law that requires the use of English in communications?

A. All recipients of federal funds and all federal agencies are required by law to take reasonable steps to provide meaningful access to limited English proficient persons. This means that, even if recipients operate in jurisdictions in which English has been declared the official language under state or local law, these recipients continue to be subject to federal nondiscrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

All recipients should be aware that despite the state's or local jurisdiction's official English law, Title VI and the Title VI regulations apply. Thus, recipients must provide meaningful access for LEP persons. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel recipients of federal financial assistance to violate Title VI.

For instance, given our constitutional structure, state or local "English-only" or official English laws do not relieve an entity that receives federal funding from its responsibilities under federal nondiscrimination laws. Entities in states and localities with "English-only" or official English laws are certainly not required to accept federal funding – but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP may violate Title VI and the Title VI regulations.

Sources: 67 Fed Reg 41455 at 41459 and 41468 (June 18, 2002); Commonly Asked Questions and Answers About Executive Order 13166, Answer 8.

11. Q. What is the difference between a bilingual staff person and an interpreter or translator?

A. People who are completely bilingual are fluent in two languages. They are able to conduct the business of the workplace in either of those languages. Bilingual staff can assist in meeting the Title VI and Executive Order 13166 requirement for federally conducted and federally assisted programs and activities to ensure meaningful access to LEP persons.

One of the primary ways that bilingual staff can be used as part of a broader effort to ensure meaningful access is to have them conduct business with the agencies' LEP clients directly in the clients' primary language. For instance, 911 call centers and a variety of hotlines frequently employ bilingual operators who can communicate directly with LEP callers in a particular language.

Social service workers, police, corrections, and probation officers, and others frequently are also called upon to communicate directly with the public in languages other than English. This is sometimes called "monolingual communication in a language other than English." It does not involve interpretation or the translation between languages. However, it does require fluency in the non-English language, including fluency in agency terminology. Such fluency should be assessed prior to relying on the bilingual employee for the provision of services.

Many individuals have some proficiency in more than one language, but are not completely bilingual. They may be able to greet a limited English proficient individual in his or her language, but not conduct agency business, for instance, in that language. The distinction is critical in order to ensure meaningful communication and appropriate allocation of resources. As valuable as bilingualism and ability to conduct monolingual communication in a language other than English can be, interpretation and translation require additional specific skills in addition to being fully fluent in two or more languages.

Interpretation

Interpretation involves the immediate communication of meaning from one language (the source language) into another (the target language). An interpreter conveys meaning orally, while a translator conveys meaning from written text to written text. As a result, interpretation requires skills different from those needed for translation.

Interpreting is a complex task that combines several abilities beyond language competence in order to enable delivery of an effective professional interpretation in a given setting. Consequently, extreme care must be exercised in hiring interpreters and interpreting duties should be assigned to individuals within their performance level. Command of at least two languages is prerequisite to any interpreting task. The interpreter must be able to (1) comprehend two languages as spoken and written (if the language has a script), (2) speak

both of these languages, and (3) choose an expression in the target language that fully conveys and best matches the meaning of the source language.

From the standpoint of the user, a successful interpretation is one that faithfully and accurately conveys the meaning of the source language orally, reflecting the style, register, and cultural context of the source message, without omissions, additions or embellishments on the part of the interpreter.

Professional interpreters and translators are subject to specific codes of conduct and should be well-trained in the skills, ethics, and subject-matter language. Those utilizing the services of interpreters and translators should request information about certification, assessments taken, qualifications, experience, and training. Quality of interpretation should be a focus of concern for all recipients.

Many court systems have adopted assessments, certification or other qualification procedures to ensure quality, so when hiring an interpreter, whether for courtroom or other assignments, such competency measures should be taken into consideration. Interpreters can be physically present, or, if appropriate, may appear via videoconferencing or telephonically. When videoconferencing or telephonic interpretation are used, options include connecting directly to a specific professional interpreter with known qualifications, or opting to use a company providing telephonic interpretation services, preferably one with quality control safeguards in place.

In many circumstances, using a professional interpreter or translator will be both necessary and preferred. However, if bilingual staff are asked to interpret or translate, they should be qualified to do so. Assessment of ability, training on interpreter ethics and standards, and clear policies that delineate appropriate use of bilingual staff, staff or contract interpreters and translators, will help ensure quality and effective use of resources.

Several resources are available on this topic, just a few of which include: [DOJ Guidance \(PDF\)](#) 67 FR 41455, 41461 - 41464 (June 18, 2002).
[DOJ Tips and Tools document](#):Chapter 1B.
[Interpretation and Translation](#) page on www.lep.gov.

12. Q. What impact does Title VI have on court interpretation?

A. Many state and local court systems receive direct or indirect financial assistance from the Department of Justice or another federal agency. Recipients of such federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000, et seq, and its implementing regulations, which prohibit discrimination on the basis of race, color, and national origin in programs that receive federal financial assistance.

Under Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), each federal agency that extends federal financial assistance is required to issue guidance explaining the obligations of their recipients to ensure meaningful access by LEP persons to their federally assisted programs and activities.

On June 18, 2002, the Department of Justice issued final guidance to its recipients regarding the requirement to take reasonable steps to provide meaningful access to LEP individuals. (67 FR 41455). The DOJ Guidance outlines four factors that should be considered to determine when language assistance might be required to ensure such meaningful access, and it identifies cost effective measures to address those language needs. Those factors are: 1. The number or proportion of LEP persons in the eligible service population; 2. The frequency with which LEP individuals come into contact with the program; 3. The importance of the program or activity to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and 4. The resources available to the recipient and the costs.

DOJ's Guidance focuses on a huge range of types of recipients. The consequences of lack of access to some of these programs is much greater than others. The Guidance was written for, and intended to apply flexibly to, everything from bicycle safety courses to criminal trials, and even to serve as a model for the enormous variety of recipients of funds from other federal agencies. In this context, nearly every encounter an LEP person has with a court is of great importance or consequence to the LEP person. Thus, the guidance emphasizes the need for courts to provide language services free of cost to LEP persons. Court interactions are amongst the most important interactions an LEP person may have.

While we recognize that resources are a concern across every court system, and that increasing access can be a process that takes some time, we note that the LEP Guidance was issued in 2002. Moreover, the Supreme Court articulated the need to provide meaningful access to LEP persons twenty-eight years earlier in *Lau v. Nichols*. With the passing of time, the need to show progress in providing all LEP persons with meaningful access is amplified. The DOJ Guidance states: ... *[W]hen oral language services are necessary, recipients [of any federal funds] should generally offer competent interpreter services free of cost to the LEP person.*

For DOJ recipient programs and activities, this is particularly true in a courtroom, administrative hearing, pre- and post-trial proceedings, situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services (67 FR 41455, 41462). Charging LEP persons for interpreter costs or failing to provide interpreters can implicate national origin discrimination concerns.

DOJ's Guidance goes on to note: ...*At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present.* (67 FR 41455, 41471) Examples of Title VI compliance can be found in states in which courts are providing interpretation free of cost to all LEP persons encountering the system (including parents of non-LEP minors), whether it be in a criminal or civil setting, and in important interactions with court personnel, as well as providing translations of vital documents and signage.

Many states are moving in this direction. The Federal Coordination and Compliance Section (FCS) of the Civil Rights Division works with court systems and consortia to provide

outreach on compliance and best practices to all state courts, and to provide technical assistance. FCS also conducts investigations into allegations of national origin discrimination in courts.

13. Q. What are the pros and cons of giving non-bilingual police officers cards with pictures and bilingual descriptors to help get a description of a fleeing suspect from witnesses and suspects on the scene?

A. The Civil Rights Division of the Justice Department is encouraged by efforts to ensure that effective, timely, and quality communication can take place between law enforcement and LEP individuals. There are several ways that law enforcement agencies across the country are working to ensure such communication. One example is the use of pictures and symbols to elicit descriptions of suspects. This is not a required action under Title VI or the regulations, but pictures and symbols may be helpful no matter what language the witness or victim speaks.

While not a substitute for a live interpreter, using universal signs/symbols can help enormously in temporarily bridging communication gaps in a cost-effective fashion while awaiting the arrival of an interpreter or competent bilingual staffer. However, over-reliance on pictures in complex, sensitive, or critical information exchanges can lead to a breakdown in communication. Thus, cards that depict objects such as glasses, caps, and types of cars, for example, can help elicit descriptions immediately while awaiting bilingual officers or interpreters.

Typically, these cards also contain some descriptive words and instructions in English and the target language(s). They can be useful tools, so long as they are high quality translations, offer a breadth of options, and are used appropriately and in a limited fashion. Critically, the investigation should include use of bilingual staff or interpreters to elicit full information from witnesses and victims as soon as possible. Of course, officers using such cards should ensure that they are not leading or limiting the witness or victim to make choices that are not actually what they would communicate if language were not a barrier. All translations should be thoroughly reviewed to ensure that they properly and fully convey the intended meaning in English. Errors in translation could hinder investigations, put prosecutions at risk, and create confusion and misidentification.

Additional Resources: U.S. Department of Justice, Civil Rights Division, Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field, pp. 10-11, (September 21, 2004). http://www.lep.gov/resources/tips_and_tools-9-21-04.htm