



Ensuring Access to Services for Survivors with Limited English Proficiency (LEP)

Ensuring meaningful access to services is critical to protecting the life or safety of Survivors with limited English proficiency (LEP). In response to numerous requests for information on the rights of access to services for LEP individuals, Casa de Esperanza has compiled the following list of answers to frequently asked questions:

Do organizations that receive federal funds have to ensure language access for LEP individuals?

- Recipients of Federal funding must ensure “Meaningful Access” to those with Limited English Proficiency (LEP) under Title VI of the Civil Rights Act.
- Title VI of the 1964 Civil Rights Act states the following:
“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.”
Section 601 of Title VI, 42 U.S.C. sec. 2000d
- The U.S. Supreme Court stated that one type of national origin discrimination is discrimination based on a person’s inability to speak, read, write or understand English (*Lau v. Nichols* (1974)).

Who is a Limited English Proficient Individual?

- LEP persons are those individuals who do not speak English as their primary language and have a limited ability to read, write, speak or understand English.
- The Census revealed that more than 24 million persons over the age of five living in the United States spoke a language other than English and did not speak English “very well”. Of those, 11 million did not speak English at all or spoke it poorly. (Source: U.S. Census Bureau, 2006-2008 American Community Survey)

How is this language access provision of Title VI implemented by Federal Agencies?

- President Clinton signed Executive Order 13166 in Aug. 2000: “*Improving Access to Services for Persons with Limited English Proficiency*” to further clarify the obligations of federal agencies and recipients of federal funds to comply with Title VI protections for LEP individuals.
- In 2002, DOJ issued final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 67 Fed. Reg. 41,455 (June 18, 2002) (*DOJ* Guidance).

What are the requirements of Executive Order 13166?

- 1- 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. Agencies are supposed to develop an LEP plan.

- 2- 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.

Who qualifies as a recipient of federal financial assistance?

- Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Sub-recipients are also covered, when federal funds are passed on from one recipient to another. Recipients of federal funds range from state and local agencies, to nonprofits and other organizations
- 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.
 - The following example is provided in the FAQ at LEP.gov: "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."

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

Recipients and federal agencies are required to take *reasonable steps* to ensure **meaningful access** to their programs and activities by LEP persons.

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.

See LEP Policy Guidance issued by different federal agencies:

http://www.lep.gov/guidance/guidance_index.html

If a non-profit organization has limited resources available is it exempt from this language access requirement?

See the published remarks of the Assistant Attorney General at a meeting of the Federal Interagency Working Group on Limited English Proficiency 4/20/09:

"I want to point out 2 key areas of guidance... that applies across all agencies and recipients: First, as time goes on, the bar of reasonableness is being raised. The need to show progress in providing all LEP persons with meaningful access increases over time... The second cross-cutting point is that, even in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide

language access. Language access is essential and is not to be treated as a “frill” when determining what to cut in a budget...”

http://www.lep.gov/Kingremarks4_20_09.pdf, p. 8.

What if my state or local jurisdiction has an “English-only” law?

- Despite a state's or local jurisdiction's official English-only law, Title VI and the Title VI regulations apply. Recipients continue to have a legal obligation under federal law to 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.

What elements are important to ensure the quality of Language Access:

- Accuracy and effective communication are critical in domestic violence situations.
- Do not rely on friends and family members to interpret for the LEP victim in important and sensitive interactions.
- It is very important to avoid using children as interpreters, especially in domestic violence cases.
- Being bilingual is not enough for someone to be able to interpret; interpreters should be trained, neutral, and abide by confidentiality and ethical standards.
- Important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group.
- The best practice for organizations that receive federal funds is to develop a language access plan.

What are the Elements of an Effective LEP Plan?

- Updated demographic profile of the community
- Process for identifying LEP persons who need language assistance when they first come into contact with the organization
- Identifying ways in which quality language assistance will be provided (for both oral and written information)
- Training staff and volunteers
- Outreach and Education accessible to LEP individuals
- Monitoring and updating LEP policy regularly

If a housing program serves some LEP individuals through a bilingual staff person but her caseload is full, can the organization turn away additional LEP individuals if other available staff are not bilingual?

- The HUD regulations on LEP access make it clear that a recipient of Federal funds cannot deny access to an individual based solely on the fact that they have Limited English Proficiency. (See HUD Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732, issued January 22, 2007)).
- HUD regulations state: “When bilingual staff cannot meet all the language service obligations of the recipient, the recipient would turn to other options” (72 FR 2742). In the HUD guidance it further states: “[R]efusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI” (72 FR 2751).

If the survivor seeking services does not have legal immigration status, does she still have a right to meaningful language access under Title VI?

HUD regulations state that "Title VI LEP obligations apply to every beneficiary who meets the program requirements, regardless of the beneficiary's citizenship status" (72 FR 2751).

Do Courts have to provide interpreters?

- The DOJ Guidance and subsequent technical assistance letters from the Civil Rights Division explain that court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI, the Safe Streets Act, and their implementing regulations.
- 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).
- 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)

How to file a Complaint:

- The Civil Rights Division's Coordination and Review Section of DOJ handles complaints. Investigations may result in the issuance of formal findings of compliance or non-compliance. If voluntary compliance cannot be achieved where non-compliance is found, the Section refers the case to the appropriate Division Section for litigation or, in cooperation with the appropriate funding component within the Department, seeks to terminate the federal financial assistance through an administrative hearing.
- See Resource list below for links to the complaint form.

List of Resources:

- Official government website of the Federal Interagency Working Group on Limited English Proficiency: www.LEP.gov
- Brochure with brief overview of Fed LEP requirements for recipients of federal funds: <http://www.lep.gov/resources/lepbrochure.pdf>
- Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance: <http://www.lep.gov/resources/selfassesstool.htm>
- Executive Order 13166
<http://www.justice.gov/crt/cor/Pubs/eolep.pdf>
- Resource Guide for Advocates and Attorneys on Interpretation Services for Domestic Violence Victims
http://www.apiahf.org/images/stories/Documents/publications_database/dv_InterpreterResourceGuide-APIIDV-2010.pdf
- Commonly Asked Questions and Answers Regarding Exec. Order 13166 – DOJ website
<http://www.justice.gov/crt/cor/Pubs/lepqa.php>
- Complaint Form for DOJ Civil Rights Division, Coordination and Review Section:
<http://www.justice.gov/crt/cor/complaint2011.pdf>
- Complaint form for HHS Office of Civil Rights:
<http://www.hhs.gov/ocr/civilrights/complaints/complaintformpackage.pdf>
- American Bar Association: State Statutes Requiring the Provision of Foreign Language Interpreters in Civil Proceedings:
<http://www.abanet.org/domviol/docs/ForeignLanguageInterpretersChartJune07.pdf>
- Language Access in State Courts:
http://www.brennancenter.org/content/resource/language_access_in_state_courts
- Tips and Tools Specific to Domestic Violence Service Providers and Specialists:
http://www.lep.gov/resources/tips_and_tools-9-21-04.htm#38
- Model Protocol on Services for LEP Immigrant and Refugee Victims of Domestic Violence (Washington State Coalition Against Domestic Violence)
http://www.wscadv.org/docs/protocol_LEP_victims.pdf
- DOJ letter on LEP access to Courts
http://www.lep.gov/whats_new/IndianaCourtsLetterfromMAF2009.pdf
- Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez – Aug. 17, 2010
http://www.lep.gov/final_courts_ltr_081610.pdf
- Census brief: Language Use and English-Speaking Ability (issued 10/2003)
<http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>

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