United States Department of Agriculture

Agricultural Marketing Service

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Limited English Proficiency Implementation Strategy for AMS' Federally-Assisted Programs

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Purpose

This Implementation Strategy sets forth the recommended strategy and step-by-step procedures for ensuring that persons with limited English proficiency (LEP) have meaningful access to programs and activities receiving Federal financial assistance from the Agricultural Marketing Service of the U.S. Department of Agriculture (USDA). It provides help to recipients to implement USDA's Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency and to come into and maintain compliance with LEP requirements. By following the recommendations and using the resources contained herein, recipients will be better able to prepare and implement language assistance plans and to effectively communicate with LEP individuals who interact with their organizations and participate in the Agricultural Marketing Service (AMS) awarded project.

Policy

USDA is committed to providing meaningful access to its programs and services to persons who, as a result of national origin, are limited in English proficiency. It is USDA policy to ensure no person is subject to prohibited discrimination in programs receiving Federal financial assistance from USDA or its agencies based on national origin.

Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq*., and its implementing regulations provide that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity that receives Federal financial assistance. The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted Title VI regulations promulgated by the former Department of Health, Education, and Welfare to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination.

Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services. The Executive Order states that recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. Federal agencies were instructed to publish guidance for their respective recipients in order to assist them with their obligations to LEP persons under Title VI. The Executive Order recommended uniform guidance to recipients on the preparation of a plan to improve access to its Federally assisted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the Department of Justice's Policy Guidance Document entitled, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" ("DOJ LEP Guidance"), reprinted at 67 FR 41455 (June 18, 2002). The DOJ LEP Guidance was drafted and organized to function as a model for similar guidance by other Federal agencies.

Consistent with the DOJ LEP Guidance, USDA published its Final Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency on November 28, 2014. The Guidance does not create new obligations for recipients, but provides guidance to recipients in meeting their existing LEP obligations. It clarifies the responsibilities of recipients and will assist them with fulfilling their responsibilities to LEP persons under Title VI and its regulations.

Key Terms

1. **Award/Awarded Project.** A project, activity, or service that receives AMS Federal financial assistance (funding, reimbursements, or services) for its completion.

2. **Awardee/Recipient.** Entity or organization that receives, directly or indirectly, Federal financial assistance from AMS.

3. **Federally Assisted Programs and Activities.** Programs and activities of an entity that receives Federal financial assistance. "Assistance" refers to money, services, expert information, technical assistance, property, or anything of value, the principle purpose of, which is to accomplish a public purpose or support or stimulation authorized by Federal statute.

4. **Interpretation.** The process by which the spoken word is used when transferring meaning between languages.

5. **Limited English Proficient (LEP) Persons.** Persons who do not speak English as their primary language and have a limited ability to read, speak, write, or understand English are limited English proficient, or LEP.

6. **OCPTCT – USDA's Office of the Compliance, Policy, Training and Cultural Transformation.** This office is responsible for the supervision and oversight of four divisions, compliance, policy, training and cultural transformation. The oversight responsibilities include the management of all work products, collaboration with USDA agencies, quarterly and annual reports and liaison with other federal agencies.

7. **Qualified Interpreter:** An individual who is competent to provide interpretation services at a level of fluency, comprehension, impartiality and confidentiality appropriate to the specific nature, type, and purpose of the information at issue.

8. **Translation.** The process of transferring ideas expressed in writing from one language to another language.

9. **Vital Document.** Paper or electronic written material that contains information that is critical for accessing a program or activity, or is required by law, such as consent forms, applications, and notices of rights.

Scope

This LEP Implementation Strategy applies to all programs and activities receiving Federal financial assistance from AMS.

Agency Mission

The USDA's Agricultural Marketing Service administers programs that facilitate the efficient, fair marketing of U.S. agricultural products, including food, fiber, and specialty crops.

AMS is committed to ensuring entities that receive Federal financial assistance from the Agency are providing meaningful access to its programs and services to persons who, as a result of national origin, are limited in English proficiency and to individuals whose first language is not English.

Assisted Programs
Appendix 1 provides a list of AMS' assisted programs, as well as a synopsis for each program in Appendix 2.

Four-Factor Analysis
Any organization receiving Federal financial assistance (recipient and subrecipient) must evaluate the project or activity being funded, the participants, and beneficiaries to develop a plan for "reasonable steps" to provide limited English proficient persons with a meaningful opportunity to participate. The *four-factor analysis* is a requirement of each project awarded and is an important step in fulfilling the USDA's LEP requirements and regulations.

The Agency requires that the recipient utilize the following four factors to evaluate and determine a language assistance service and plan for LEP customers:

1) The number or proportion of LEP persons served in the (service or) project population,
2) The frequency with which LEP persons come in contact with the awarded project,
3) The nature and importance of the project or service to people's lives, and
4) The resources available to the recipient and costs.

Factor 1. The Number/Proportion of LEP Persons Served in the Project Population.

1. ***Evaluate how many LEP individuals that are expected to come in contact with the awarded project activity:***

   Utilize known language concentrations, past surveyed, and known demographic LEP data for the project area's location (address, city or county):

   - The *LEP Mapping Tool* provides the concentration of and languages spoken by LEP individuals in a community within a state or county: http://www.lep.gov/maps/
   - The *U.S. Census Bureau* through its *American Community Survey* (ACS) maintains statistic on linguistic composition of LEP individuals in a geographic area at: www.census.gov/hhes/socdemo/language/data/index.html
   - The U.S. Department of Education maintains a Civil Rights Data Collection, at http://ocrdata.ed.gov, which has information from the Nation's school districts.
   - The Department of Labor has sponsored a special tabulation of Census data on Limited English proficient (LEP) populations as a resource for One Stop Career Centers and other providers of employment and training services. Information is broken out for 39 Census languages and language clusters, and the tabulations are designed to match the service areas of states and local Workforce Investment Areas. (Local Workforce Investment Areas are jurisdictions comprised of one or more county within a state and these jurisdictions may match or overlap with your agency's transit service area). This data can be found at http://www.doleta.gov/reports/CensusData/.
   - National maps of LEP individuals who speak Asian languages can be found at: Description of Maps (Word), State-level, number of LEP individuals (PDF), State-level, percent of LEP individuals (PDF)

2. ***Record the estimated LEP individuals*** *(An example is provided in Appendix 3) and at minimum, the top three languages that are spoken.*

Factor 2. The Frequency an LEP Person Comes in Contact with the Awarded Project.

1. ***Identify the estimated frequency the project will come in contact with non-English speaking LEP individuals and their specific languages*** **(daily, weekly, occasionally, never).**

To determine the frequency of contact, at minimum:

a) Review previously awarded programs that are provided by your or similar organizations.
b) Survey employees to determine interactions with LEP individuals.
c) Consult directly with LEP persons to determine the programs and services they frequently utilize.

2. ***Record the estimated frequency of contact.*** An example is provided in Appendix 3, along with the organization's LEP point of contact (POC) for the (example) project.

Factor 3. The Nature and Importance of the Project to People's Lives.
A determination of the nature and importance of the awarded project on the LEP person's lives is very important.

- The nature and type of documents that will need language assistance resources is helpful to staff and the project's implementation.
- Projects involving emergency evacuation instructions, life-threatening preparedness, and public food safety and security awareness have a greater impact and effect on people's lives. If the project information is not accessible to people with limited English proficiency, or if language services in areas are delayed, the consequences to these individuals could be life threatening.
- Likewise, projects that deal with non-life threatening activities have less of an effect on an LEP person's life.

1. ***Determine a list of all documents and verbal communication efforts required under the awarded project.*** Documents include any vital documents that are critical for LEP persons to access for the project being implemented. An example of these documents and communications are provided below.

Example TO DO LIST #1 - List of Awarded Project Documents and Translation Services and Importance to LEP Individuals: ***August 18, 2015***

Awarded Project Name: (Insert Name Here) *Example[1]: New Market Start-Up*	**Project LEP Needs: List of Documents, Communications, Training(s) for Staff**	**LEP Language(s) Translations - Other**	**Nature/Importance to the Public** (life-threatening/emergency, mild threat, non-threatening)
Example[1]: Documents *8 am, Opening Day Ceremony*	*1. Farmers Market Opening Day Advertising and Brochure – Need Spanish (and English) versions* *2. Ceremony Hand-out(s) – Need (Spanish) translations* *3. Ceremony Speech – Need (Spanish) translator / translations*	*Spanish*	*Non-threatening*

[1] All examples are mock data and not intended for use or submission.

2. ***Make a determination of the importance of the project*** (life-threatening/ emergency, mild threat, non-threatening). Based on the determination, cautiously eliminate over-exaggerating the effect and impact to the public. See the example above, and in Appendix 3, #1.

The nature/importance determination will dictate the extent of required translations and other language assistance needs for LEP individuals.

Factor 4. The Resources Available to the Recipient and Costs.

1. ***Determine the (what) project resources that are required for LEP individuals.*** Going back to **Factor 3** (To Do List #1), create and update the list of required documents, translators, and communication needs.

   Language assistance services may include, but are not limited to:
   a) Written translation services for materials
   b) Oral interpretation (and telephone) services for spoken words
   c) Production services for audiovisual material
   d) Pictorial (picture) word graphics and "I Speak" cards
   e) Bilingual staff for project interactions
   f) Community Service contacts for written materials, meetings, and other verbal interactions

2. ***Determine the resources that are available within the organization (what, where & costs).*** Note these should be cost-effective resources that also provide qualified, accurate, and competent individuals and translation services.

   Whenever possible, recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important AMS programs and activities.

   The recipient should utilize sound judgement and consideration in assuring the competency of the individuals and services provided in the delivery of language assistance. Qualified/certified credentials of individuals, a clear understanding of the content and its impact and accuracy, and a strong knowledge of cultural sensitivity are required when selecting any language assistance providers.

3. ***Research services that are available outside of the organization but in the area***, from the city and state, and via the Internet ***(what, where & costs)***.

4. If no resources are readily available ***research the costs to acquire required services.*** These may include, but are not limited to, the costs related to: the translation of documents, contracting language interpreters, producing picture word lists and pictographs, and creating multilingual advertising brochures and flyers. Record the estimated costs.

5. ***NOTE: An adjustment to the awarded budget*** may be allowable to cover the costs. With the completed researched list in hand, contact the AMS representative to determine if the costs are allowable under the award.

6. In accordance with 7 CFR Part 15, Guidance to Federal Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency, ***implementation of the LEP services for customers should be provided*** to applicable customers **free of charge**.

7. Recipients are required to ***notify*** (applicants with disabilities and) ***LEP persons of their right to free language access*** and accommodations, and provide free language assistance and accommodations upon request (DR 4300-003, USDA Equal Opportunity Public Notification Policy, June 2, 2015).

As a reminder, the *four-factor analysis* is a "starting point" in helping the organization determine required "reasonable steps" for providing meaningful access for LEP individuals. Depending on the awarded project and its impact and population affected, additional evaluations and implementation steps may be required.

After completion of the *four-factor analysis*, recipients will determine the most reasonable method of language assistance for the awarded project. The recipient should ensure that a plan is appropriate and provided *free of charge* to LEP individuals based on the analysis results, regardless of the project's duration, frequency of contact with LEP individuals, organization size, and award amount.

Under the acceptance of the award, if only one person will require aid or help, an LEP language assistance plan must be developed and provided to AMS upon request.

Completed LEP Plan

A well, thought-out LEP plan outlines how the organization and its staff will provide assistance, gathers data about its LEP customers to determine how the assistance is received, and tracks customers to determine how often changes are required in the type and level of assistance being provided. Answering the following questions should help the delivery of language assistance services:

- How will the organization procure interpretation services; will the project require in-person, video, written, or video translation and interpretation services?
- How will the organization train its employees (and subawardees, as applicable) about interacting with LEP individuals?
- How will the organization respond to telephone calls from LEP individuals?
- How will organization track and record customer's language preferences?
- How will the organization inform LEP individuals about the language assistance services provided by the project?
- If a new or existing marketing project, how will the organization respond to questions and assist LEP customers at a (direct producer-to-consumer) market?
- How will the organization track and respond to LEP complaints?

Using the researched information, utilize this information to create your required written LEP plan for the Agency. See the example in Appendix 3. The completed LEP plan for the awarded project should, at minimum, include the following components:

1. (Recorded) ***Four-Factor Analysis results***, including how and when language assistance services will be provided

2. ***Written Translations and Interpretation Services*** - including a list of provided documents, translated materials, vital documents, language assistance services/resources, and online communication and services, as applicable

3. ***Qualified Translators*** - the list of qualified interpreters and translators that will be used for LEP assistance, as applicable

4. ***Notification Plan*** - the plan and timelines for notifying LEP persons that the awarded project will affect, involve, or benefit

5. ***Training*** - the recipient's LEP training for staff and subrecipient(s)

6. ***Monitoring and Evaluation*** - the organization's monitoring, tracking, evaluation, and reporting procedures, including the monitoring of subrecipients, as applicable

Recipients with existing LEP plans need only to review the plan (particularly the identification of beneficiaries/participants) to ensure it conforms and is in accordance with the requirements within this AMS LEP Implementation Strategy.

Receipt Notification to LEP Persons
The recipient's LEP Plan will include a timeline for notification to LEP individuals, as well as assistance implementation, which should coincide with the date of the award. See 7 CFR Part 15 for additional guidance. Communicating the LEP Plan may include:

1. Posting the availability of LEP assistance within organization's offices and on the website

2. Providing LEP assistance details as part of the awarded project's advertisement and promotional campaigns

3. Advertising, incorporating, and distributing language assistance tools, such as pictorial (picture) word graphics and "I Speak" cards during the project's implementation (event(s))

4. Distributing or posting LEP assistance information, fliers, and posters before, during, and after the project's (implementation) event(s)

Monitoring and Evaluation

AMS will:

1. Provide the requirements for the LEP plan, as outlined within this AMS LEP Implementation Strategy document, with the terms and conditions of award, cooperative agreement, reimbursable agreement, or other award document.

2. Review and report LEP accomplishments received from awardee's final performance reports.

   Compliance with LEP requirements will be monitored in accordance with the Agency's Civil Rights compliance reviews. The compliance reviews selection factors will consist of: (1) the number of complaints filed, (2) multiple complaints filed under a program, (3) problems identified by stakeholders, and (4) the number or lack of reviews completed in past years. The review process will entail interviews, document and file reviews, and a review of the language assistance made available to LEP individuals. The reviews will access the awarded organization's participant (four-factor) analysis, customer service, public notification/outreach, data collection, notification, and accommodation policy and practices.

3. Hold the awardee/recipient responsible for LEP complaints and concerns.

4. Notify the OCPTCT when there are instances of recipient LEP non-compliance.

Upon receipt of award, the ***AMS recipient should***:

1. Develop a written LEP Plan, as applicable, to address LEP population the project/service serves.

   The absence of a written LEP Plan does not remove the obligation to ensure meaningful access to LEP persons. The awardee is required to notify AMS about how they will:
   a) Implement a *four-factor analysis* for the awarded project.
   b) Provide training to awardee staff so that each should know and understand their obligations to provide meaningful access to LEP individuals.
   c) Provide a notice to LEP individuals about the awarded project's available services.

d) Ensure online automation services (communications and services).
e) Monitor and update the LEP Plan.
f) Establish clear goals, management accountability, and community input throughout the LEP Plan process.
g) Consider and implement alternative ways to articulate in some other reasonable manner a plan for meaningful access to LEP individuals.

2. Provide the LEP plan to AMS upon request. The Plan may be forwarded as part of the first interim performance report. The details summarizing the LEP activities should be provided as part of the final performance report.

3. Monitor complaints or suggestions from LEP individuals, and agree to corrective actions, should the organization or AMS receive a complaint and find the organization's LEP Plan is not being implemented.

Training
The Agency will provide AMS staff LEP training annually as part of the development of awardee LEP training.

AMS grants, cooperative agreements, and other award agreements are usually 1 to 3 years in length. As such AMS will provide recipients LEP training during the (grant and agreement) awardee orientation/webinars/training/discussions.

In accordance with 7 CFR Part 15 regulations for "Training Staff," recipients should ensure that their staff know their obligations to provide meaningful access to information and services for LEP persons. Recipients should ensure that their staff is trained and understands the plan's LEP policies, procedures, and implementation, as well as how staff, in person and telephone interpreters, will work effectively when in contact with LEP persons.

Depending on the project length, a reevaluation of LEP Plan including a reassessed *four-factor analysis* should be completed on an ongoing basis, which is no less than 3 years after the year of award.

Recording LEP Activities and State and Federal Requirements
Recipients are strongly encouraged to document their efforts to provide LEP persons with meaningful access to Federal assisted programs and services. Such efforts may be recorded within performance or other activity reports.

Compliance with some State and local laws may identify language access obligations. Recipients may meet these obligations, so long as they do not conflict with or set a lower standard than required under Title VI and Title VI regulations. Further, State laws may operate under a jurisdiction in which English has been declared the official language. Nonetheless, AMS recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of Federally assisted benefits and services to persons with limited English proficiency.

References and Resources
1. www.lep.gov, the Federal website and clearinghouse, which provides information, tools, and technical assistance regarding limited English proficiency and language services for Federal agencies, recipients of federal funds, users of federal programs and Federally assisted programs, and other stakeholders.

2. Accessing and Using Language Data from the Census Bureau (PDF), September 3, 2008

3. Department of Justice, "Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance" (webpage) assists in the development of an LEP plan

4. Choosing a Language Access Provider (PDF), Federal Interagency Working Group on LEP

5. 7 CFR Part 15, Guidance to Federal Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency (79 FR 70771), effective November 28, 2014, in Appendix 4

6. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP)

7. Title VI of the Civil Rights Act of 1964, as amended

Recipient LEP Plan Implementation

The recipient's LEP Plan should be prepared and implemented after award. The plan should be made available to AMS under the terms of acceptance of the award (Federal financial assistance).

The recipient will implement the developed LEP plan as part of the awarded AMS project:

1. Complete the *four-factor analysis and create or update the LEP plan*, utilizing this information and the researched LEP individuals participating in the project
2. *Provide LEP plan to AMS*, upon request
3. Provide *recipient staff training* about how to interact with and assist LEP individuals
4. *Notify LEP individuals* that translated vital documents and interpretation services, resources, and tools are available as part of the awarded project
5. *Implement free language assistance services*, including ensuring online (communication and services) automation, during the life of the AMS awarded project
6. *Monitor and update LEP plan* utilizing or updating the four-factor analysis, as needed, to provide meaningful access
7. *Record and track LEP plan implementation*, keeping AMS notified in performance report(s)

Questions regarding this guidance should be directed to the Civil Rights Staff at (202) 720-0583; via fax at (202) 690-0476; or in writing to USDA, AMS, Civil Rights Staff, Room 3521-South Building, Mail Stop 0206, 1400 Independence Ave, SW, Washington, DC 20250-0206.

Clifton J. Gilchrist
Director, AMS Civil Rights Program

12-8-15
Date

Anne Alonzo
for AMS Administrator

12/31/15
Date

Appendix 1. AMS Assisted Programs List

Grant(s)

1. Specialty Crops Block Grant Program – #10.170

Appendix 2. AMS Programs Synopses

Specialty Crops Block Grant Program and Specialty Crops Multi-State Program

- **Purpose of the program:**
  The Specialty Crops Block Grant Program provides grants for projects that solely enhance the competitiveness of specialty crops defined as fruits and vegetables, dried fruit, tree nuts, horticulture, and nursery crops (including floriculture).

  The Specialty Crop Multi-State Program provides grants, on a competitive basis, for projects that solely enhance the competitiveness of specialty crops by funding collaborative, multi-state projects that address the following regional or national level specialty crop issues: food safety, plant pests and disease, research, crop-specific projects addressing common issues, and marketing and promotion.

  Under the Specialty Crops Block Grant Program (SCBGP):
  - Approximately $72.5 million will be made available, annually until FY 2017, and $85 million in FY 2018
  - SCBGP grants are for non-construction projects that are up to 3 calendar years in length.
  - Each eligible State department of agriculture that submits an application that the SCBGP reviews and accepts is eligible to receive an amount that is at least equal to the higher of $100,000 or 1/3 of 1% of the total amount of funding made available each fiscal year. The remainder of funding is allocated based on the average of the most recent available value of State specialty crop production and each State's specialty crop acreage as demonstrated in the most recent Census of Agriculture data.
  - Eligible State department of agriculture applicants who do not apply for or do not request all available funding during the specified grant application period will forfeit all or that portion of available funding not requested. SCBGP will allocate funds not applied for, by a date as determined by SCBGP, pro rata to the remaining State department of agriculture applicants who applied during the specified grant application period.
  - Requests for Applications are provided to States in English and Spanish (beginning in FY 2016).

  Under the Specialty Crop Multi-State Program (SCMP):
  - Approximately $3 million has been allocated for FY 2016; $4 million for FY 2017; and $5 million for FY 2018.
  - The minimum award is $250,000 and a maximum award is $1,000,000.
  - SCMP grants are for non-construction projects that are for 3 years in length, and will include projects that address the following regional or national level specialty crop issues:
    - Food safety
    - Plant pests and disease
    - Research
    - Crop-specific projects addressing common issues
    - Marketing and promotion.

  Awarded projects benefit specialty crop producers, processors, growers, state agencies, and general public.

  It is difficult to identify what access awards may have to limited English proficiency (LEP) resources. It is estimated SCBGP and SCMP recipients may have limited State-based, as well as Internet-based LEP resources.

FY-2016 will be the first year of SCMP grant application submissions and awards, so it is also difficult to identify (the level of involvement) or determine whether LEP persons will interact with the State recipients. SCMP awards will be announced on or before end of FY 2016.

- **How it operates (how does the agency communicate with the recipient):**
  The SCBGP and SCMP consist of 7-person staff located in Washington, D.C. All communication with recipients is made via telephone; teleconferences; webinar; direct interaction; site visits; and electronic mechanisms including email, video conferencing, desk audit, and website.

- **Identify the recipients:**
  Recipients under AMS' Specialty Crop Grants (SCBGP and SCMP) include: the State department of agriculture, agency, commission, or department of a State government (State government recipients) responsible for agriculture within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

  Only those States that have agreed to "participate" in the SCMP are eligible to apply for and receive funds. A participating State agrees to accept SCMP applications from any source; screen the applications against the Request for Applications (RFA); submit applications to AMS; and if awarded, sign an agreement with AMS and assume administrative responsibility for the project.

  AMS awards funds to State government recipients, which in turn disburse/award grant funds to eligible for- and non-profit organizations and businesses for project implementation. In the case of the SCMP, State recipients subcontract with project partners to carry out the project. Project partners can be producer associations, universities, non-profits, and other entities as outlined in the RFA.

- **Language assistance plan/resources:**
  Materials are provided to States in English (Spanish RFA under SCBGP) and any translations and interpretations will be done at the State level. The recipient's LEP plan will be the result of a State-recipient implemented four-factor evaluation for the awarded project, determining the:
  a) (Factor 1) Number of LEP persons affected,
  b) (Factor 2) Frequency of interaction, and
  c) (Factor 3) Nature and importance of the project to LEP individuals.
  d) (Factor 4) Research the costs of implementing the identified LEP Plan (implementation activities), ensuring that there is no cost to customers or LEP individuals.

  State recipients will share their translation and LEP plan with AMS, upon request within established timelines.

- **Barriers the recipient may experience in establishing and implementing LEP Assisted Plans:**
  Translation of forms and requirements into other languages may be a cost burden that is difficult for States to incur; however, AMS does allow for an administrative fee under SCBGP that States could use for this purpose.

Appendix 3. Awardee LEP Plan Example

Example 2016 thru 2018
AMS Awardee Limited English Proficiency (LEP) Plan for LEP Individuals

The following information details all awarded activities that require LEP translations and language assistance:

1. **Four-Factor Analysis-Results: Factors 1, 2, & 3. Number of LEP Individuals, Frequency Served by the Project, Languages, and Nature of Importance:**

Project Name	**Project Location** (county/address/ city/state)	**Estimated Number LEP Persons**	***Known Demographic Data – Number LEP Individuals***	***Known Demographic Data – Source***	**Language(s)**	**Frequency** (daily, infrequently, never)	**Nature / Importance** (life-threatening/ emergency, mild threat, non-threatening)
Example[1]: New Market Start-Up	*Guilford Co./Greensboro/North Carolina*	*8-12 (4 out of every 100)*	*NC - Approx. 4% speak English "Less than Very Well" Language Use and English-Speaking Ability: 2000 (C2KBR-29)*	*www.census.gov/hhes/socdemo/language/data/index.html*	1. *Spanish* 2. 3. 4. 5.	*Weekly*	*Non-threatening*

[1] All examples are mock data and not intended for use or submission.

2. **Four-Factor Analysis-Results: Factor 4. Project's Required LEP Documentation, Resources, and Costs:**

Awarded Project Activity:	**Project LEP Needs: List of Documents, Communications, Training(s) for Staff, as Applicable**	**Language(s) - Other**	**Estimated Costs**
Example Activities[1]: *A. Activity #1 details -- Farmers Market Opening Day Advertising and Brochure*	*1. Hire contractor for advertisements and brochure Spanish translations*	*Spanish*	*1. $250*
Example Activities[1]: *B. Activity #2 details -- Opening Day Ceremony Hand-out(s*	*2. Hire contractor for handout translations into Spanish*	*Spanish*	*2. $100*
		Total Costs:	*$350*

3. **Project LEP Cost Recovery Plan:**

Awarded Project Costs[1]:	**Project LEP Cost Recovery Plan[1], If Applicable**	**Final Costs**
*A. Example Cost #1 details[1]-- $250 – **Cost:** The Peoples Translation contractor: Spanish advertisements and brochure*	***Recovery Plan:** Request AMS to allow for an advertising budget adjustment (re-allocation of funds for a new contractual cost) to cover $250 for this translation service.* ***Final Cost to Organization:** $0*	1. $0
*B. Example Cost #2 details[1]-- $100 – **Cost:** Hire contractor for handout translations into Spanish – NC Community Service Center volunteer to translate the handouts.*	***Recovery Plan:** The translations will be completed free of charge, and each will be reviewed and approved by the Executive Director, who speaks and writes Spanish fluently and is certified by Translator World, Inc.* ***Final Cost to Organization:** $0*	2. $0
	Total Costs to the Recipient:	*$0*

Example 2016 thru 2018
AMS Awardee LEP Plan for LEP Individuals, Cont'd.

4. **LEP Implementation:**

AMS Recipient LEP Implementation:	
A. **Interpreters/Translators**	*Certified Translator Services, Inc., headquarters in Houston TX, will serve as the qualified/certified interpreter/translation services for all written or oral translations.*
B. **LEP Notification and Timelines**	*Notification of LEP services will be provided to the public and LEP persons within the farmers market by radio and print advertisements (for the Opening Day Ceremonies).* *All LEP activities will be implemented in April 2016-September 2018 (starting 6 months after the receipt of the AMS award).*
C. **LEP Training: Organization's Staff and Subrecipient(s)**	*There are no subrecipients under the awarded project.* *All initial staff LEP training will be held as part of the program's implementation session(s) in December 2015. Additional training sessions will be repeated when there are staff vacancies LEP Plan reviews, as well as any complaints.*
D. **Monitoring, Evaluation, and AMS Reporting**	*During the awarded project implementation, the organization agrees to review and update the plan, as well as explore and begin corrective actions that provide meaningful access to LEP participants and beneficiaries.* *The organization will record the LEP activities; interactions; and documents created, in including any vital documents, and report them as part of the final performance report to AMS.*

Rules and Regulations

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Friday, November 28, 2014

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

7 CFR Part 15

[OES–2014–0002]

RIN 051–AA70

Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency

AGENCY: Office of the Assistant Secretary for Civil Rights, USDA.

ACTION: Significant final guidance.

SUMMARY: The U.S. Department of Agriculture (USDA) is publishing the final guidance on the Title VI prohibition against national origin discrimination as it affects limited English proficient persons. Consistent with Title VI of the Civil Rights Act of 1964, as amended, Title VI regulations, and Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency (LEP),'' the guidance clarifies the obligations of entities that receive Federal financial assistance from USDA. The guidance does not create new obligations, but, rather, provides guidance for USDA recipients in meeting their existing obligations to provide meaningful access for LEP persons.

DATES: This final guidance is effective November 28, 2014.

FOR FURTHER INFORMATION CONTACT: For further information contact Anna G. Stroman, Chief, Policy Division, Telephone (202) 205–5953; Fax (202) 690–2345.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–2000d–6 and the USDA implementing regulations at 7 CFR part 15, subpart A, ''Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture Effectuation of Title VI of the Civil Rights Act of 1964,'' provide that no person shall be discriminated against on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture or any Agency thereof. The purpose of this guidance is to clarify the responsibilities of recipients and subrecipients (recipients) who receive financial assistance from USDA and to assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act of 1964, as amended, and the implementing regulations. This guidance does not impose any new requirements, but reiterates longstanding Title VI and regulatory principles and clarifies USDA's position that, in order to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge.

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

This guidance sets out the policies, procedures, and steps that USDA recipients may take to ensure that LEP persons have meaningful access to Federally assisted programs and activities and provides examples of policies and practices that USDA may find violative of Title VI and Title VI regulations.

It also sets out the general parameters for recipients in providing translations of written materials, provides examples that illustrate the importance of such translations, and describes the flexibility that recipients have in meeting this obligation. For recipients who desire greater specificity regarding *written* translations for LEP persons, the guidance contains population thresholds. Use of these population thresholds is not mandatory. The guidance explicitly states that the failure to meet these population thresholds will not result in a finding of noncompliance, but that USDA will review a number of other factors in determining compliance.

The guidance also describes some of the methods recipients may use to meet their obligation to provide, under certain circumstances, competent oral interpretative services to LEP persons. It has been determined that this guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act.

Comments on Proposed Guidance

On March 8, 2012, USDA published a proposed final Guidance in the **Federal Register** which resulted in 18 public interest groups/firms responding with over 160 comments and recommendations. The comments and/or the recommendations are addressed as follows:

1. Recipient LEP Plan

We received five comments recommending that the Guidance should require recipients to develop an LEP plan. USDA is cognizant of the value of written LEP plans in documenting a recipient's compliance with its obligation to ensure meaningful access by LEP persons, and in providing a framework for the provision of reasonable and necessary language assistance to LEP persons. USDA is also aware of the related training, operational, and planning benefits most recipients would derive from the generation and maintenance of an updated written language assistance plan for use by its employees. In the large majority of cases, the benefits flowing from a written language assistance plan have caused or will likely cause recipients to develop, with

varying degrees of detail, such written plans. Even small recipients with limited contact with LEP persons would likely benefit from having a plan in place to assure that, when the need arises, staff have a written plan to turn to even if it addresses only how to access a telephonic or community-based interpretation service when determining what language services to provide and how to provide them.

However, the fact that the vast majority of USDA's recipients already have or will likely develop a written LEP plan to reap its many benefits does not necessarily mean that every recipient, however small its staff, limited its resources, or focused its services, will realize the same benefits and thus must follow an identical path. Without clear evidence suggesting that the absence of written plans for every recipient is impeding accomplishment of the goal of meaningful access, USDA elects at this juncture to strongly recommend but not require written language assistance plans. USDA stresses in this regard that neither the absence of a requirement of written LEP plans in all cases nor the election by an individual recipient against drafting a plan obviates the underlying obligation on the part of each recipient to provide, consistent with Title VI, the Title VI regulations, and this Guidance, reasonable, timely, and appropriate language assistance to the LEP populations each serves.

One commentator recommended that the Guidance should require community involvement in developing the recipients' written LEP plans. The Guidance currently contains language to encourage recipients to involve the community in developing their written LEP plans. No additional language is being added to address this recommendation.

2. USDA LEP Plan for Conducted Programs

We received 10 comments recommending that USDA develop its own LEP Plan for Federally conducted programs to ensure that it is accessible in USDA operations. USDA issued its Departmental Regulation 4330–005, Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by U.S. Department of Agriculture effective June 4, 2013. This Departmental Regulation functions as USDA's LEP Plan and is publicly available at *http://www.ocio.usda.gov/document/departmental-regulation-4330–005.*

3. Updating Automated Online Services

We received seven comments recommending the expansion of online language assistance services. Some of the commenters specifically identified programs providing essential services like food and shelter to consumers, and cited the Social Security Web site as an example. In response to this comment, USDA added a new subparagraph under Section VI in the Guidance that recommends USDA recipients who provide online communications and services to customers include in their LEP plans their strategies for addressing language access needs. (See Section VI, No. 5 Ensuring Online Automation Services).

4. Expansion of Language Beyond Spanish

We received 10 comments recommending that recipients translate outreach material in non-English languages in addition to Spanish. We agree that recipients must take into account the language or languages of their LEP customers within their programs and specific locations. Part V (B) of the Guidance indicates that considering the four-factor analysis can be helpful for determining when to provide language services, including translating vital written materials into additional languages. Moreover, the Safe Harbor Provision in Part V (B) also supports translation into non-Spanish languages when the "LEP language group constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered." Nevertheless, we have added additional recommendations that recipients post notices/links regarding the availability of language assistance services in the most commonly encountered languages for their programs and/or areas (See Section VI, Elements of Effective Plan on Language Assistance for LEP Persons, No. 4, Notice to LEP Persons).

5. "Reasonable" Steps

We received six comments stating that the Guidance standard that requires recipients to take "reasonable" steps in providing LEP persons with a meaningful opportunity to participate in Federally funded educational programs is vague. Rather than have recipients consider how to apply this standard, commenters recommended that the standard should clarify that if an individual is LEP, interpretation should always be deemed reasonable.

The Guidance provides criteria for recipients to consider when deciding to provide language assistance services to LEP individuals. Specifically, the Guidance provides specific steps that recipients may take to ensure that LEP persons have meaningful access by utilizing a balancing test as a starting point (See Section IV, "How Does a Recipient Determine the Extent of Its Obligation to Provide LEP Services?"). The Guidance further defines the balancing test as an individualized assessment that balances the following four factors:

a. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;

b. The frequency with which LEP persons come in contact with the program or activity;

c. The nature and importance of the program, activity, or service to people's lives; and

d. The resources available to the recipient and costs.

The Guidance states that the four-factor analysis is a "starting point" to help a recipient determine when the recipient is "required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons." Given the flexibility of this standard and its context-specific nature, it is inherently flexible to adjust for the various populations, languages, programs, and activities served. Consequently, we recognize that there are some instances when interpreters constitute reasonable steps but we also acknowledge that different scenarios may yield different results, based on the four-factor analysis.

6. Interpreter and Translation Services

We received five comments on the use of interpreter and translation services. Specifically, the comments received indicated that the language in the Guidance should be changed or strengthened to clearly state that USDA-funded recipients must use qualified interpreters and provide free interpreter services to all LEP persons. The commenters also noted that vital documents must also be translated by qualified translators. We believe that the Guidance addresses the issue of qualifications adequately under "Competence of Interpreters (See Section A "Oral Language Services") and that stronger language is not needed nor added. However, to guarantee that recipients ensure the competency of the language service provider, Office of the Assistant Secretary for Civil Rights (OASCR) shall recommend that all recipients include their strategy for utilizing competent and impartial interpreters and translators in the LEP plans.

Two commenters focused on the use of children as interpreters. Both commenters indicated that the use of children should not be allowed. The Guidance, in accordance with DOJ requirements, cautions that "in many circumstances, family members, especially children, are not competent to provide quality and accurate interpretations, as issues of confidentiality, privacy, or conflict of interest may arise." This language makes clear that children may only be used under the most exigent of circumstances and only as a last-resort alternative. To provide further clarity on this issue, we have modified the Guidance's language to note that reliance on children is discouraged unless it is an emergency situation that is not reasonably foreseeable. (See Section V "Selecting Language Assistance Services, Subsection, Use of Family Members, Friends or Others as Interpreters.")

7. Considering Low Literacy

We received six comments recommending that written communication by the recipient (such as online translations and program applications) be written so as to be understood by individuals with low literacy (such as language directed to a 6th grade level). No change was made as USDA's current policy follows the Federal plain written language standards, which includes taking the audience's current level of knowledge into account. (See section V, "Language Assistance Services and Competence of Translators") to ensure that individuals with low literacy level can understand written material.

8. Using Other Regulations To Set Minimum Thresholds for Translations and Interpretations

We received nine comments recommending that the Department consider using regulations or sub-regulatory guidance to set specific minimum thresholds for translation and interpretation in particular programs such as the Supplemental Nutrition Assistance Program; the Special Supplemental Nutrition Program for Women, Infants, and Children; and the Child Nutrition Program. No changes were made since the Guidance offers a fact-dependent four-factor assessment to determine the extent of a recipient's obligation to provide LEP services. Moreover, with respect to translation, the Guidance outlines Safe Harbor Provisions, actions that are considered strong evidence of compliance with the recipient's written-translation obligation. (See section IV, "How Does a Recipient Determine the Extent of Its Obligation to Provide LEP Services" and section V "Selecting Language Assistance Services.") However, to ensure that this issue is taken into further consideration, OASCR will encourage USDA agencies to consider this recommendation in their work with recipients, since the recipient's LEP plan would be the proper vehicle to set specifics on the thresholds for translation and interpretation stated in the Guidance.

9. Require Data Collection

We received 10 comments from various organizations on the need for data collection, as well as the need to track and monitor receipt of translation requests. The commenters specifically recommended that recipients be required to collect language preference data on their LEP beneficiaries and report this data to USDA on at least an annual basis.

In response to the comments received, while language preference data is collected in connection with some assisted programs, making language preference data collection an assisted program requirement across-the-board would involve a mandatory requirement under a review process beyond the Agency. However, we do note that effective recipient LEP plans often incorporate a system for tracking and monitoring the number of LEP persons served, language preferences, translations provided, and other data points. But not mandating data collection for all programs does not mean that such data cannot be required as necessary. Federal regulations, such as 28 CFR 42.406, make clear that data collection requests made during the course of compliance reviews can be broad and provide "for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of title VI."

10. "Summarization" as Appropriate Mode of Interpretation

We received one comment on the use of "summarization" as an appropriate mode of interpretation. The commenter expressed concern for the competence of interpreters and their ability to summarize when performing interpretations. The commenter indicated that interpreters should refrain from summarizing because it allowed for the interpreter to decide or evaluate on what is and what is not relevant. After careful consideration of the comment received, no change will be made. However, we recognize that summarization may not always be the ideal mode of interpretation when complete and accurate renditions of the communication are necessary. In keeping with the DOJ LEP Guidance, we place summarization within the context of assessing the competency of an interpreter. The DOJ Guidance states that recipients should ensure that interpreters "demonstrate[s] proficiency in an ability to communicate information accurately in both English and in the other languages and identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation)." In situations where complete and accurate interpretation is necessary, a competent interpreter will assist the recipient in selecting the most appropriate mode of interpreting that will yield the most accurate information.

11. Definition of LEP

We received three comments recommending that we provide a clearer definition of LEP in the Guidance because the language contained in the 'Background' section of the Guidance states "If these people have a limited ability to read, write, speak, or understand English, they 'are' limited English proficient or 'LEP.'" The commenters believed that this language appears to contradict the definition of LEP in Section III, which states "Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English 'can be' limited English proficient, or 'LEP' (Who Is a Limited English Proficient Person?)." In order to have consistent and valid language throughout both sections, the language in Section III, which defines LEP, has been revised to delete "can be" and inserted with 'are' limited English proficient, or 'LEP'.

12. Require Meaningful Notice of Rights to Language Services

We received three comments recommending that USDA and sub-agencies strengthen the Guidance's language in regards to informing LEP persons of their right to language services. Commenters recommended that using multilingual telephone voice mail prompts or menus would be one easy way of informing LEP persons of their right to language services.

The Guidance addresses this issue by recommending telephone voice mail menus, among other approaches, when providing notice to LEP persons about the availability of language assistance services (See Section VI, part 4 "Providing Notice to LEP Persons"). Therefore, no change was made.

13. Include Existing LEP Regulations in Legal Authority

We received one comment recommending that the Guidance include existing regulations that establish mandatory legal requirements.

In response to this comment, no change was made as the Guidance includes reference to existing regulations. USDA makes its programs and subprograms aware of their obligations and requirements to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, Title VI regulations, and program-specific regulations as noted in the Guidance in the Background on page 9 and in the Legal Authority on pages 11–15e.

14. Require Adequate Signs Regarding Critical LEP Services

We received one comment, which notes that the language in the guidance is inconsistent regarding posting notices in places that LEP individuals commonly encounter. According to the commenter, the current language should be made consistent with 7 CFR 272.6(f) and 7 CFR 272.4(b), which require adequate signs in the offices with respect to information critical to LEP services.

No change was made to the Guidance in reference to this comment. Both 7 CFR 272.6(f) and 7 CFR 272.4(b) regulations refer to requirements set forth for participating agencies in the Food and Nutrition Service Agency's programs, such as the Supplemental Nutrition Assistance Program (SNAP). Specifically, 7 CFR 272.6, paragraph (f) "Public Notification" requires State agencies to ensure that all offices involved in administering the SNAP program must publicly display the nondiscrimination poster. 7 CFR 272.4, paragraph (b) "Bilingual Requirements" requires State agencies to provide bilingual program information, certification materials, and staff or interpreters to households that speak the same non-English language and that do not have an adult(s) fluent in English as a second language. Both of these issues are adequately addressed in the Guidance. The Guidance specifically recommends that recipients (which, in this case, would be State agencies) ensure that adequate signage is posted in the offices and all information for the public be translated. The Guidance further defines the importance of these issues as stated in the following language contained in Section VI, Elements of an Effective Language Assistance Plan for LEP Persons: Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors that it will provide language services, it is important to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include posting signs in intake areas and other entry points and noting the availability of language assistance services on recipient Web sites. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact (including Web sites) so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to important programs, activities, services, or benefits provided by USDA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the language help.[1]

15. Outreach to LEP Persons

We received two comments recommending that in addition to developing procedures to serve LEP individuals, it is equally important that LEP community members be made aware of the policies that are in place to serve the LEP population through radio programs, ethnic media, and other news outlets.

USDA agrees with the importance of finding effective methods of disseminating this information and we believe this has been adequately addressed in the Guidance. The Guidance notes that an effective language access plan includes information about notifying LEP individuals about the availability of language assistance services. This can include "providing notices on non-English language radio and television stations about the available language assistance services and benefits and how to get them." (See Section VI, Part 4.) Therefore, no change was made to the Guidance and USDA agencies are encouraged to work with recipients to ensure that this issue is addressed in recipient LEP plans.

[1] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use.

16. Conduct Roundtable and Follow-up

We received one comment recommending follow-up roundtable discussions to solicit further recommendations. USDA acknowledges the importance of gathering feedback and following up on recommendations gathered from roundtable discussions. However, no further roundtable discussions are warranted in advance of issuing this final Guidance. Instead, OASCR will encourage USDA agencies to conduct roundtable discussions with the community as a strategy to inform LEP individuals of the resources available to them, as a means to determine the most critical outreach material to translate, as well as a mechanism to obtain feedback on an LEP plan from the community. This is in keeping with our Guidance's emphasis on relying on community-based organizations to provide important feedback to ensure LEP individuals have meaningful access.

17. Appoint a Language Access Coordinator

We received one comment recommending that each recipient appoint a person to handle LEP issues as they arise, review the LEP plan annually, work toward a more effective implementation of the policy, organize necessary trainings, etc. We believe that an LEP Coordinator would be useful for recipients in ensuring that all aspects of the LEP Guidance are being carried out. However, the appointment of this position is based on the funding and hiring responsibilities of the recipients and not USDA. USDA is committed to ensuring that all aspects of the Guidance are carried out effectively and efficiently, and will, therefore, recommend to recipients the usefulness of designating a Language Access Coordinator; but we do not have the authority to require that they designate one. Therefore, no change was made. Nonetheless, the importance of designating a Language Access Coordinator cannot be emphasized enough, and such an appointment will greatly increase the likelihood of effective implementation and maintenance of a language access plan.

18. Broaden Monitoring and Enforcement Activities

We received three comments asking that USDA broaden its monitoring and enforcement activities to ensure that funding recipients meet their Title VI language access obligations. We agree that USDA should closely monitor the performance of recipients it funds and, where appropriate, take enforcement

action against those entities that fail to meet their language assistance obligations. This oversight responsibility is addressed in the LEP Guidance under Section VII, which states that "the requirement to provide meaningful access to LEP persons is enforced and implemented by USDA through its regulations at 7 CFR" In addition, USDA will monitor the effectiveness of recipients LEP programs through its compliance reviews. Therefore, no change was made.

Background

Most people living in the United States read, write, speak and understand English. There are many people, however, for whom English is not their primary language. For instance, based on the 2000 Census, over 26 million individuals speak Spanish, over 10 million speak another Indo-European language,[2] and almost 7 million speak an Asian or Pacific Island language at home. If these people have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." According to the 2000 Census data, 28.3 percent of all Spanish speakers, 27.2 percent of all Russian speakers, 28.2 percent of all Chinese speakers, and 32.4 percent of all Vietnamese speakers reported that they spoke English "not well" or "not at all" in response to the 2000 Census.[3]

Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally funded programs and activities. The Federal Government funds an array of services that are available to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help people learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. The fact that ESL classes are made available, however, does not obviate the statutory and regulatory requirements to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[4]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and the USDA Title VI regulations against national origin discrimination, 7 CFR part 15. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[5] These are the same criteria USDA has been using and will continue to use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

Under Executive Order 13166, DOJ is responsible for providing LEP guidance to all Federal agencies and for ensuring consistency among the agency-specific guidance documents issued by Federal agencies. Consistency among the agency-specific guidance documents issued by Federal agencies is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally assisted programs aimed at the American public do not leave some behind simply because those individuals face challenges communicating in English. This is of particular importance because, in many cases, LEP persons form a substantial portion of those encountered in Federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small nonprofits that receive Federal financial assistance.

There are many productive steps the Federal Government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller potential recipients may well choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, USDA plans to continue to provide assistance and guidance in this important area. In addition, USDA plans to work with potential and actual recipients, other Federal agencies, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches.

Moreover, USDA intends to explore how language assistance measures, resources, and cost-containment approaches developed with respect to its own Federally-conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, local governments, and small nonprofit organizations. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, other Federal agencies, and the communities being served.

Some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally-assisted programs and activities. We do not believe this is an accurate reading of the decision as the Supreme Court, in *Sandoval,* addressed whether a private right of action existed to enforce a DOJ regulation promulgated pursuant to Title VI, not the validity of those regulations themselves. The

[2] Other Indo-European languages include most languages of Europe and the Indic languages of India, such as German, Yiddish, Dutch, Swedish, Norwegian, French, Italian, Portuguese, Russian, Polish, Serbo-Croatian, Hindi, Gujarathi, Punjabi, Urdu, Greek, Baltic and Iranian languages.

[3] Other languages include Hungarian, Arabic, Hebrew, languages of Africa, native North American languages, including the American Indian and Alaska native languages; and some indigenous languages of Central and South America.

[4] USDA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[5] The policy guidance is not a regulation but rather a guide. Title VI and implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for persons who are limited English proficient.

regulation at issue, 28 CFR 42.104(b)(2), prohibited recipients of federal funding from utilizing criteria which had a discriminatory effect. The plaintiffs, who were non-English speakers, challenged a State policy of administering driver's license examinations exclusively in English on the ground that the policy had a discriminatory effect on non-English speakers and, consequently, violated 28 CFR 42.104(b)(2). The Court concluded that the regulation was not enforceable through a private right of action and, thus, held that the disparate-impact regulation at issue, promulgated under Title VI, did not give rise to private rights of action. *See Sandoval,* 532 U.S. at 293. The Court, however, did not undermine the substance of other regulatory requirements and we will continue to follow the Court's approach. Accordingly, we will strive to ensure that Federally-assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

I. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, states that 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 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d–1.

In addition to Title VI, some USDA recipients must implement a statutory provision of the Food Stamp Act of 1977, 7 U.S.C. 2011 *et seq.*, which requires them to use appropriate bilingual personnel and printed materials in the administration of SNAP, formerly the Food Stamp Program, in areas where a substantial number of potentially eligible households speak a language other than English. The Food Stamp Act also requires recipients to establish procedures governing the operation of SNAP offices that best serve households in each State, including households in areas where a substantial number of potentially eligible households speak a language other than English.

USDA regulations prohibit discrimination in all of its federally assisted and conducted programs. Recipients may not, on the grounds of race, color, or national origin, deny an individual any service, financial aid or other benefit provided under the program, deny an opportunity to participate in the program through the provisions of services, or subject or restrict an individual to segregation or separate treatment in any matter related to their receipt of service, financial aid, or other benefit under the program. Please see 7 CFR 15.3(b)(1)–(2) for additional information.

In addition, USDA regulations implementing the Food Stamp Act of 1977 require that the State agency shall provide bilingual program information and certification materials, and staff or interpreters. See 7 CFR 15.3(b)(6)(i)–(ii), for additional information.

In *Lau* v. *Nichols,* 414 U.S. 563 (1974), the Supreme Court concluded that Title VI and its implementing regulations required a federally funded school district to ensure that LEP students were provided with meaningful access to the district's educational programs. That case involved a group of approximately 1,800 public school students of Chinese origin who did not speak English, and to whom the school system provided the same services—an education solely in English—that it provided to students who spoke English. The Court held that by failing to provide LEP Chinese-speaking students meaningful access to educational programs, the school's practices violated Title VI's prohibition against national origin discrimination.

On August 11, 2000, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," was issued; 65 FR 50121 (August 16, 2000). Under that Order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utilize[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for their recipients pursuant to the Executive Order, "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination against Persons with Limited English Proficiency" 65 FR 50123 (August 16, 2000), (DOJ LEP Guidance).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval.*[6] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

This guidance clarifies the responsibilities of recipients and will assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act of 1964, as amended, and Title VI regulations. It is consistent with Executive Order 13166, and DOJ LEP guidance. To avoid discrimination against LEP persons on the ground of national origin, USDA recipients should take reasonable steps to ensure that such persons receive the language assistance necessary to afford them meaningful access to recipient programs or activities, free of charge.

[6] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. See, *e.g., Sandoval,* 532 U.S. at 286, 286 n.6 ("[We] assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; **** We cannot help observing, however, how strange it is to say that disparate-impact regulations are inspired by, at the service of, and inseparably intertwined with Sec. 601, when Sec. 601 permits the very behavior that the regulations forbid.") The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal agencies to enforce their own implementing regulations.

II. Who is covered?

USDA regulations require all recipients of Federal financial assistance from USDA to provide meaningful access to LEP persons.[7] Federal financial assistance includes grants, below-market loans, training, and use of equipment, donations of surplus property, and other assistance. Covered entities include, but are not limited to:

—State and County agencies, offices, and their subdivisions;
—Private vendors, agents, contractors, associations, and corporations;
—Colleges, universities, and elementary and secondary schools;
—County, district, and regional committees/councils;
—Nursing homes, summer camps, food banks, and housing authorities;
—Research and promotion boards; and
—Other entities receiving, directly or indirectly, Federal financial assistance provided by USDA.

Subrecipients likewise are covered when Federal funds are passed through from a recipient to a subrecipient.

Coverage extends to a recipient's entire program or activity, *i.e.,* to all parts of a recipient's operations.[8] This is true even if only one part of the recipient receives the Federal financial assistance.[9] For example, USDA provides assistance to a University's outreach department to provide business development services to local farmers and ranchers. In such a case, all operations of the University, not just those of the University's outreach department are covered.

Some recipients operate in jurisdictions in which English has been declared the official language. These recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of Federally assisted services and benefits to persons with limited English proficiency.[10]

III. Who is a limited English proficient person?

Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English are limited English proficient or "LEP" and entitled to language assistance with respect to a particular type of benefit, service, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by USDA recipients and should be considered when planning language services include, but are not limited to, for example:

—Persons seeking access to or needing assistance to obtain food stamps or other food assistance from a recipient;
—Persons seeking information, seeking to enforce rights, or seeking benefits or services from recipient State and County agencies, offices, and their subdivision;
—Persons encountering recipient private vendors, agents, contractors, associations, and corporations;
—Students, community members, and others encountering recipient extension programs, colleges, universities, and elementary and secondary schools;
—Persons seeking to participate in public meetings or otherwise participate in the activities of county, district, and regional committees/councils;
—Persons seeking access to, or services or information from nursing homes, summer camps, food banks, and housing authorities;
—Persons subject to the work of research and promotion boards;
—Persons encountering other entities or persons who receive, directly or indirectly, Federal financial assistance provided by USDA; and
—Parents and family members of the above.

IV. How does a recipient determine the extent of its obligation to provide LEP services?

In order to ensure compliance with Title VI and Title VI regulations, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs and activities. 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 within the area serviced by the recipient;
(2) The frequency with which LEP persons come in contact with the program or activity;
(3) The nature and importance of the program, activity, or service to people's lives; and
(4) The resources available to the recipient and costs.

As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while avoiding undue burdens on small business, small local governments, or small nonprofits.

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

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

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of LEP persons within the eligible service population, the more likely language services are needed.

Ordinarily, persons "eligible to be served or likely to be directly affected by" a recipient's program or activity are those who are served or encountered in the eligible service population. The eligible service population is program/activity-specific, and includes persons who are in the recipient's geographic service area as established by USDA, State or local authorities, or the recipient, as appropriate, provided that those designations do not themselves discriminatorily exclude certain populations. For instance, if a statewide

[7] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to USDA federally conducted programs and activities.

[8] What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRA) was enacted. The CRRA 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 or activity that uses the Federal assistance.

[9] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

[10] Recipients should also be mindful of their responsibilities under the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973 in meeting their obligation to ensure access to LEP individuals with disabilities.

conservation district serves a large LEP population within a particular county, the appropriate service area will be the county, and not the entire population eligible to participate in the program or activity within the State. Below are additional examples of how USDA would determine the relevant service areas when assessing who is eligible to be served or likely to be directly affected.

Example A: A complaint filed with USDA alleges that a local food stamp certification office discriminates against Hispanic and Chinese LEP applicants by failing to provide such persons with language assistance in connection with its programs and activities, including written translations. The certification office identifies its service area as the geographic area identified in its plan of operations. USDA determines that a substantial number of the recipient's food stamp applicants and beneficiaries are drawn from the area identified in the plan of operations and that no area with concentrations of racial, ethnic, or other minorities is discriminatorily excluded from the plan. USDA is likely to accept the area identified in the plan of operations as the relevant service area.

Example B: A privately owned limited-profit housing corporation enters into an agreement with USDA to provide low-income rural rental housing that will serve beneficiaries in three counties. The agreement is reviewed and approved by USDA. In determining the persons eligible to be served or likely to be affected, the relevant service area would generally be that designated in the agreement. However, if one of the counties has a significant population of LEP persons, and the others do not, consideration of that particular county as a service population for purposes of determining the proportion of LEP persons in the population served by that portion of the recipient's program or activity would be appropriate.

When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter or participate in a portion of a recipient's program or activity.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers.

Other data should be consulted to refine or validate a recipient's prior experience, including the latest Census data for the area served, data from school and from community organizations, and data from State and local governments.[11] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) *The Frequency With Which LEP Persons Come Into Contact With the Program or Activity.*

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

(3) *The Nature and Importance of the Program or Activity or Service by the Program.*

The more important the information, service, or benefit provided in a program or activity, or the greater the possible consequences of the contact to LEP persons, the more likely language services are needed. For instance, in determining importance, the obligation to communicate information on the availability of emergency food assistance in a designated disaster area may differ significantly from the obligation to communicate information on the opportunity to attend a one-time free luncheon at a community recreation center. A recipient needs to determine whether denial or delay of access to services, benefits or information could have serious or even life-threatening implications for an LEP person. For example, the failure to translate consent forms and applications for important benefits or services could have serious or life-threatening implications for LEP persons in need of food, shelter, emergency services, and many other important benefits. In the same vein, to avoid serious, negative consequences to an LEP person, a recipient must also determine the appropriate media or format that will reach the target LEP population and does not result in a delay in providing information on a program, service, or benefit. Further, decisions by a Federal, State, or local entity, or by the recipient, to make an activity compulsory, such as educational programs and notifications of the right to a hearing or appeal, can serve as strong evidence of the program's importance.

(4) *The Resources Available to the Recipient and Costs.*

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as those with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the

[11] The focus of the analysis is on the lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient persons. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

formalized use of qualified community volunteers, for example, may help reduce costs.[12] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs. This is not to suggest that smaller entities are immune from the requirement to provide meaningful access. Any recipient of federal financial assistance must be sure that any claim of resource limitations is well substantiated.

The four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP person may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a social service recipient having a service area with a significant Hispanic LEP population may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many social services have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a recreational facility in which pre-arranged language services for the particular service may not be necessary. All recipients must provide meaningful access to all their programs. However, the four-factor analysis recognizes that there may be gradations of import concerning certain activities that will lessen the burden on a recipient in certain unique situations. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to LEP persons and to recipients. Recipients have substantial flexibility in determining the appropriate mix.

V. Selecting Language Assistance Services

Recipients have two main ways to provide language assistance to LEP persons—oral interpretation and written translations. Quality and accuracy of the language service is critical in order to avoid serious consequences to LEP persons and to recipients.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- —Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);
- —Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person who is being assisted; [13]
- —Understand and follow confidentiality and impartiality rules to the same extent as the recipient for whom he or she is interpreting; and
- —Understand and adhere to their role as interpreters, without deviating into a role as counselor, advisor, or other inappropriate roles.

Some recipients may have additional self-imposed requirements for interpreters.

Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly where ambiguous, incomplete, or inaccurate information may result in the denial or reduction of services or benefits, the use of certified interpreters is strongly encouraged.[14] Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a hearing regarding the reduction of benefits, for example, must be extraordinarily high, while the quality and accuracy of language services in a voluntary recreational program may not need to meet the same exacting standards.

Finally, when interpretation is needed, it should be provided in a timely manner. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be

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

[13] Many languages have "regionalisms," or differences in usage: For instance a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of some programmatic terms, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

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

provided at a time and place that avoids the effective denial of the service or benefit at issue or the imposition of an undue burden on or delay in the provision of important information rights, benefits, or services to the LEP person. For example, when the timelines of information, benefits, or services is important, such as with certain activities related to various types of emergency assistance by way of nutrition or housing services, or emergency loans, grants, etc., a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide language assistance. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to information, service, or benefit is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as receptionists, secretaries, program specialists, and/or program aides, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual program specialist would probably not be able to perform effectively the role of an interpreter in a benefits hearing and also carry out his or her duties to administer requirements of the program or activity at the same time, even if the program specialist were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program or activity that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the documents prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information, services, or benefits of the program or activity and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are readily available.

Use of Family Members, Friends, or Others as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, or other person of their choosing) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other person acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family members, friends, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service, or activity, including protection of the recipient's own administrative or regulatory interest in accurate interpretation.

In many circumstances, family members (especially children), friends, or others identified by LEP persons, are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP persons may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing family, medical, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.

For USDA recipient programs and activities, this is particularly true in an administrative hearing or in situations in which health, safety, or access to sustenance or important benefits and services are at stake, or when credibility and accuracy are important to protect an LEP person's rights or access to important benefits and services. An example of such a case is when an LEP recipient applies for food stamps or a low-interest farm loan. The recipient should not rely on friends or family members of the LEP recipient or other informal interpreters.

While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or other informal interpreters often make their use inappropriate, their use as interpreters may be an appropriate option where proper application of the four factors would lead to a rare conclusion that recipient-provided services are not necessary. An example of this is a voluntary tour of a recipient's farmland offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information are critical for adjudicatory or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, using children/minors as interpreters may create additional issues of competency, confidentiality, or conflict of interest. Reliance on children is especially discouraged unless there is an extreme emergency and no preferable qualified interpreters are available.

The recipient should ensure that the LEP person's choice is voluntary, the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that the recipient could provide a competent interpreter at no cost (to the LEP person).

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should Be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, but are not limited to:

—Applications to participate in a recipient's program or activity or to receive recipient benefits or services;
—Consent forms, complaint forms, intake forms, letters containing important information related to participation (such as cover letters outlining conditions of participation in a loan program or committee election);
—Written notices pertaining to eligibility requirements, rights, losses, denials, decreases in benefits or services, foreclosures, or terminations of services or benefits and/or the right to appeal such actions;
—Notices advising LEP persons of the availability of free language assistance;
—Written tests that do not assess English language proficiency, but test competency for a particular license, job, or skill for which knowing English is not required;
—Outreach materials; and
—Any documents that require a response from applicants, beneficiaries, and other participants.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program or activity, information, encounter, service, or benefit involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for voluntary credit management courses are not necessarily vital (so long as they are not a prerequisite to obtaining or maintaining better credit), whereas, applications for rural rental housing would be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve. Note, however, that even when a document is not vital, the recipient still must provide meaningful access, which may require sight translation or other language assistance services.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP persons meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious or community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or more information about the document.

Into What Languages Should Documents Be Translated? The languages spoken by the LEP persons with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all

written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the up-front costs of translating a document (as opposed to oral interpretation) should be amortized over the likely life span of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that can provide a "safe harbor," which means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

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

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

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

a. The USDA recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents if needed, can be provided orally; or

b. If there are fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These Safe Harbor Provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable. The four factor analysis must always be used in evaluating the need for, and extent of use of, oral interpreters.

For example, recipients should, where appropriate, ensure that program rules have been explained to LEP program participants prior to taking adverse action against them.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators, though certification or accreditation may not always be possible or necessary.[15] Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Recipients should ensure that translators understand the expected reading level of their audiences and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[16] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, or technical concepts helps avoid confusion by LEP persons and may reduce costs. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of assessing the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other negative consequence for LEP persons may be translated by individuals who are less skilled than those who translate documents with legal or other important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VI. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations it serves. Recipients have considerable

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

[16] For instance, there may be languages that do not have an appropriate direct translation of some program-specific terms of art or technical concepts and the translator should be able to provide an appropriate translation. The translator also should likely make the recipient aware of this. Recipients can work with translators to develop a consistent and appropriate set of descriptions of these terms. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost-effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

flexibility in developing this plan. The development and maintenance of a periodically updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain USDA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following six steps may be helpful in designing an LEP plan and are typically part of effective implementation plans:

(1) Identifying LEP Persons Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number of proportion of LEP persons eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom they have contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at *www.justice.gov/crt/about/cor/Pubs/ISpeakCards.pdf.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- —Types of language services available;
- —How staff can obtain those services;
- —How to respond to LEP callers;
- —How to respond to written communications from LEP persons;
- —How to respond to LEP persons who have in-person contact with recipient staff; and
- —How to ensure competency of interpreters and translation services.

(3) Training Staff

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

- —Staff know about LEP policies and procedures; and
- —Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors, that it will provide language services, it is important to let LEP persons know that those services are available and they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include:

- —Posting signs in intake areas and other entry points and adequate posting on Web sites. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact (including Web sites) so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to important programs, activities, services, or benefits provided by USDA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the language help; [17]
- —Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and "tagged" onto the front of common documents;
- —Working with community-based organizations and other stakeholders to inform LEP persons of the recipients' services, including the availability of language assistance services;
- —Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them;
- —Including notices in local newspapers in languages other than English. Providing notices on non-English-language radio and television stations about the available language assistance services and benefits and how to get them;
- —Presentations and/or notices at schools and religious organizations; and
- —Posting notices/links for language assistance on recipient agency Web sites. These should be translated into the most commonly encountered

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

languages and tagged on the agency home pages.

(5) Ensuring Online Automation Services

USDA recipients who provide online communications and services to customers, including but not limited to online applications, forms and brochures, must include in their LEP plan their strategy for ensuring that LEP individuals have meaningful access to online automation services.

(6) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, activities, services, and benefits need to be made accessible for LEP persons, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

—Current LEP populations in service area or population affected or encountered;
—Frequency of encounters with LEP language groups;
—Nature and importance of activities to LEP persons;
—Availability of resources, including technological advances and sources of additional resources, and the costs imposed;
—Whether existing assistance is meeting the needs of LEP persons;
—Whether staff know and understand the LEP plan and how to implement it; and
—Whether identified sources for assistance are still available and viable.

In addition to these six elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by USDA through its regulations at 7 CFR part 15, Departmental Regulation 4330–2, "Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance From USDA," and Departmental Manual 4330–2, "Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Assisted Programs and Activities." These documents contain USDA requirements and procedures for discrimination complaints processing, complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

USDA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, USDA will inform the recipient in writing of this determination, including the basis for the determination. USDA uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, USDA must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means, if necessary. If the matter cannot be resolved informally, USDA must secure compliance either through the termination of Federal assistance after the USDA recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ to seek injunctive relief or pursue other enforcement proceedings. USDA engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, USDA proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, USDA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP persons, USDA acknowledges that the implementation of a comprehensive system to serve LEP persons is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally-assisted programs and activities for LEP persons, USDA will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, USDA recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to programs or activities having a significant impact on important benefits, and services, are addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

VIII. Effect on State and Local Laws

Some State and local laws may identify language access obligations/requirements. Recipients may meet these obligations, so long as they do not conflict with or set a lower standard than is required under Title VI and Title VI regulations. Moreover, recipients must also comply as a matter of state law with higher requirements if those requirements exist under state laws. Finally, as noted above, some recipients operate in a jurisdiction in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted benefits and services to persons with limited English proficiency.

Dated: November 17, 2014.

Thomas J. Vilsack,

Secretary.

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