



## **Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**

As required by Executive Order 13166, “*Improving Access to Services for Persons with Limited English Proficiency*” (August 11, 2000), the Department of Homeland Security has drafted guidance to its recipients of federal financial assistance on providing meaningful access to applicants and beneficiaries who are limited English proficient (LEP). The Department guidance is modeled on similar guidance published by the Department of Justice in 2002; it will soon be published in the Federal Register with a 30-day comment period. The proposed guidance does not have the status of binding regulation, but rather offers agency explanation of regulatory requirements. This guidance explains that 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 against national origin discrimination under Title VI of the Civil Rights Act of 1964 (Title VI) and the Department’s implementing regulations.

The LEP Guidance is a guide for recipients on how they can meet their obligations to provide "meaningful access" to LEP persons they serve or encounter in their programs. To determine when language services should be provided, the recipient should examine four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered
2. The frequency with which LEP individuals are encountered
3. The nature and importance of the program, activity, or service provided
4. The resources available to the recipient and the costs of providing language services

Other agencies that have published guidance for their recipients of federal financial assistance include: Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of Labor, Department of Interior, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, the Environmental Protection Agency, as well as the Department of Justice.

The Department of Homeland Security LEP Guidance is being published in the Federal Register for a 30-day comment period. Once the Office of Civil and Civil Liberties (CRCL) receives comments, they will be reviewed and addressed in a final document published in the Federal Register. CRCL expects the publication of the guidance to receive some media and other public attention. CRCL will be available to answer questions and provide technical assistance on the guidance.

Publication of the report follows a recommendation made by the GAO in a report issued in April 2010, [GAO 10-91, \*Language Access: Selected Agencies Can Improve Services to Limited English Proficient Persons\*](#), that the Department finalize and issue the LEP Guidance.



## Outline of Department LEP Guidance

### 1. Introduction

Provides background on LEP persons in the U.S. and the need to provide them meaningful access to government services.

### 2. Legal Authority

Discusses Title VI of the Civil Rights Act of 1964, the *Lau v. Nichols* Supreme Court decision, and Executive Order 13166.

### 3. Who Is Covered?

Provides examples of Department of Homeland Security recipients:

- State and local fire departments
- State and local police departments
- State and local emergency management agencies
- State and local governments, together with certain qualified private non-profit organizations, when they receive assistance following a Presidential declaration of disaster or emergency
- Certain non-profit agencies that receive funding under the Emergency Food and Shelter Program
- Urban areas and mass transit authorities that enhance local emergency, prevention and response agencies' ability to prepare for and respond to threats of terrorism or other emergencies
- Community Emergency Response Teams (CERTs), which conduct training and other activities to enhance individual, community, family, and workplace preparedness
- Jails and detention facilities that house detainees of Immigration and Customs Enforcement (ICE)
- Coast Guard-assisted boating safety programs
- Entities that receive specialized training through the Federal Law Enforcement Training Center (FLETC); and Intercity buses.

### 4. Who Is a Limited English Proficient Individual?

Explains Limited English Proficiency and provides examples.

### 5. How Does a Recipient Determine the Extent of Its Obligation to Provide LEP Services?

Discusses the four-factor analysis that recipients may use to determine what language services are required:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee
2. The frequency with which LEP individuals come into contact with the program



3. The nature and importance of the program, activity, or service provided by the program to people's lives
4. The resources available to the grantee/recipient and costs
6. Selecting Language Assistance Services  
Explains that recipients have two main ways to provide language services - through oral or written language services - and includes factors to consider in the selection of services such as competency of interpreters.
7. Elements of Effective Plan on Language Assistance for LEP Persons  
Explains that after completing the four-factor analysis and deciding on appropriate language assistance services, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. This section also outlines areas that might be included in a recipient's LEP plan.
8. Voluntary Compliance Effort  
Explains the goal of achieving voluntary compliance and the enforcement mechanisms.
9. Application to Specific Types of Recipients  
Explains that all recipients of federal financial assistance from the Department must meet the obligation to take reasonable steps to ensure access to programs and activities by LEP persons. In addition, this section states that in the context of emergency planning and response, health and safety, immigration and other detention, and law enforcement operations - where there is a potential for greater consequences when language assistance is not provided - the Department will look for strong evidence that recipients have taken reasonable steps to ensure meaningful access to LEP persons.