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Office of the Secretary

Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination as it Affects Persons With Limited English Proficiency; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of policy guidance with request for comment.

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

DATES: This guidance is effective immediately. Comments must be submitted on or before March 19, 2001. DOL will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Annabelle T. Lockhart, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210; Comments may also be submitted by e-mail at: lockhart-annabelle@dol.gov.

FOR FURTHER INFORMATION CONTACT: Annabelle Lockhart or Naomi Barry at the Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210. Telephone 202–219–7026; TDD: 202–693–6516. Arrangements to receive the policy guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance (''recipients'') from the U.S. Department of Labor (DOL), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates DOL's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons receive the language assistance necessary to afford them meaningful access to the programs, services, and information those recipients provide, free of charge. The text of the complete guidance document appears below.

Signed at Washington, D.C. this 11th of January 2001.

Alexis M. Herman,

Secretary of Labor.

Equal Opportunity Guidance Memorandum

January 3, 2001.

To: Recipients of Federal Financial Assistance from the United States Department of Labor

From: Annabelle T. Lockhart, Director, Civil Rights Center, Department of Labor

Subject: Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency

Purpose

Pursuant to Executive Order 13166, entitled ''Improving Access to Services for Persons with Limited English Proficiency,'' issued by President Clinton on August 11, 2000, the U.S. Department of Labor's Civil Rights Center (''CRC'') issues this memorandum, which addresses linguistic or language access, to offer guidance with respect to the responsibilities of recipients of federal financial assistance (''recipients'') from the Department of Labor (''DOL'') in serving persons of limited English proficiency (''LEP''), pursuant to the requirements of Title VI of the Civil Rights Act of 1964 (''Title VI'') and section 188 of the Workforce Investment Act of 1998 (''section 188''). This policy guidance does not create new obligations but, rather, clarifies standards consistent with case law and well-established legal principles developed under Title VI. The CRC provides substantial technical assistance to recipients, and will continue to be available to provide such assistance to any recipient seeking to ensure that it operates an effective language assistance program.

Background

English is the predominant language of the United States. According to the 1990 Census (the most recent data available), English is spoken by 95 percent of U.S. residents. Of those U.S. residents who speak languages other than English at home, the 1990 Census reports that 57 percent above the age of four speak English ''well to very well.''

The United States is also, however, home to millions of national origin minority individuals who are ''limited English proficient,'' including immigrants, some children of immigrants born in the United States, and other non-English speakers born in the United States, including some Native Americans. National statistics on the LEP population demonstrate that Spanish is the primary language for which assistance may be needed. Many recipients of DOL financial assistance have already implemented processes to improve services for Spanish speakers. However, other nationally significant language groups exist, including those that speak Chinese, French, Italian, German, Vietnamese, Laotian, and Khmer (Cambodian). Moreover, depending on the region of the country, countless other language groups may require assistance to access meaningful government assistance. Because of language differences and the inability to speak or understand English, LEP persons are often excluded from programs and activities, experience delays or denials of services, or receive assistance and services based on inaccurate or incomplete information. Such exclusions, delays or denials may constitute discrimination on the basis of national origin, in violation of Title VI and section 188.

In the course of its enforcement activities, CRC has found that persons who lack proficiency in English are unable to obtain basic knowledge on how to access various benefits and services for which they may be eligible, such as Unemployment Insurance, Job Corps, or other DOL funded employment programs and activities. For example, many intake interviewers and other front line employees who interact with LEP individuals are neither bilingual nor trained in how to properly serve LEP persons. As a result, LEP applicants are often either turned away, forced to wait for substantial periods of time, forced to find their own interpreter who is not often qualified to interpret, or forced to make repeated visits to the recipient's program offices until interpreters are available to provide assistance.

Some employment benefits, services, and job training providers have sought to bridge the language gap by encouraging language minority clients to provide their own interpreters as an alternative to the recipient's use of qualified bilingual employees or interpreters. Persons of limited English proficiency must sometimes rely on their minor children to interpret for them during visits to an employment services or job training facility. Alternatively, these clients may be required to call upon neighbors or even

strangers they encounter at the recipients' program offices to act as interpreters or translators.

These practices have severe drawbacks and may violate Title VI and Section 188. In each case, the impediments to effective communication and adequate service are formidable. The LEP client's untrained ''interpreter'' is often unable to understand the concepts or official terminology s/he is being asked to interpret or translate. Even if the interpreter possesses the necessary language and comprehension skills, his or her mere presence may obstruct the flow of confidential information to the recipient. This is because the LEP client would naturally be reluctant to disclose or discuss intimate details of personal and family life in front of his or her child or a complete stranger who has no formal training or obligation to observe confidentiality.

When these types of circumstances are encountered, the level and quality of employment benefits, services, and job training available to persons of limited English proficiency stand in stark conflict to Title VI and section 188's promise of equal access to federally assisted programs and activities. Services denied, delayed or provided under adverse circumstances have serious consequences for a LEP person and may constitute discrimination on the basis of national origin in violation of Title VI and section 188. Accommodation of these language differences through the provision of effective language assistance will promote compliance with Title VI and section 188.

Although CRC's enforcement authority derives from Title VI and section 188, the duty of recipients to ensure that LEP persons can meaningfully access programs and services flows from a host of additional sources, including federal and state laws and regulations. In addition, the duty to provide appropriate language assistance to LEP individuals is not limited to the employment benefits, services, and job training context. Numerous federal laws require the provision of language assistance to LEP individuals seeking to access critical services and activities. For instance, the Voting Rights Act bans English-only elections in certain circumstances and outlines specific measures that must be taken to ensure that language minorities can participate in elections. *See* 42 U.S.C. 1973 b(f)(1). Similarly, the Food Stamp Act of 1977 requires states to provide translation and interpretation assistance to LEP persons under certain circumstances. *See* 42 U.S.C. 2020(e) (1) and (2). These and other provisions reflect the sound judgment that providers of critical services and benefits bear the responsibility for ensuring that LEP individuals can meaningfully access their programs and services.

This policy guidance is consistent with the Department of Justice (''DOJ'') LEP Guidance, which addresses the application of Title VI's prohibition against national origin discrimination when information is provided in English to LEP persons.[1] It is also consistent with a government-wide Title VI regulation issued by DOJ in 1976, ''Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs,'' 28 CFR part 42, subpart F, that addresses the circumstances in which recipients must provide translation assistance to LEP persons.[2]

Legal Authority

Introduction

CRC has conducted investigations and reviews involving language differences that impede the access of LEP persons to employment benefits, services, and job training in programs and activities that are financially assisted by DOL. Where the failure to accommodate language differences discriminates on the basis of national origin, CRC has required recipients to provide appropriate language assistance to LEP persons. For instance, CRC has entered into voluntary compliance agreements that require recipients who operate employment benefits, services, and job training programs or activities to ensure that there are bilingual employees or language interpreters to meet the needs of LEP persons seeking services. CRC has also required these recipients to provide written materials and post notices in languages other than English. The legal authority for CRC's enforcement actions is Title VI and Section 188, the implementing regulations, and a consistent body of case law.

Statute and Regulations

Section 601 of Title VI, 42 U.S.C. 2000d *et seq.* states: ''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 subjected to discrimination under any program or activity receiving federal financial assistance.''

Department of Labor Regulations implementing Title VI, provide in part at 29 CFR 31.3 (b):

> (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color or national origin:
>
> (i) Deny an individual any service, financial aid, or other benefit provided under the program;
>
> (ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program * * *;
>
> (2) A recipient, in determining the types of services, financial aid or other benefits, or facilities that will be provided under any such program, or the class of individuals to whom, or the situations in which such services, financial aid or other benefits, or facilities will be provided * * * *may not directly, or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination, because of their race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color or national origin (emphasis added) * * *.*

Section 188 of the Workforce Investment Act adopts the same prohibition against national origin discrimination that is found in Title VI: ''No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any such program because of race, color, national origin, sex, religion, disability, political affiliation or belief, citizenship, or age.''

Regulations implementing the nondiscrimination and equal opportunity provisions of section 188 of the Workforce Investment Act of 1998, speak specifically to national origin discrimination and language access at 29 CFR 37.35:

> (a) A significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIA Title I-financially assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity. Where such a significant

[1] The DOJ LEP Guidance was issued August 11, 2000. (65 FR 50123, August 16, 2000.)

[2] The DOJ coordination regulations at 28 CFR 42.405(d)(1) provide that ''[w]here a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written materials of the type which is ordinarily distributed to the public.''

number or proportion exists, a recipient must take the following actions:

(1) Consider:

(i) The scope of the program or activity; and

(ii) The size and concentration of the population that needs services or information in a language other than English; and

(2) Based on those considerations, take reasonable steps to provide services and information in appropriate languages. This information must include the initial and continuing notice required under §§ 37.29 and 37.30, and all information that is communicated under § 37.34.

(b) In circumstances other than those describe in paragraph (a) of this section, a recipient should nonetheless make reasonable efforts to meet the particularized language needs of limited-English speaking individuals who seek services or information from the recipient.

Title VI and the Department of Labor regulations implementing Title VI published at 29 CFR part 31 apply to any program or activity receiving federal financial assistance from the Department of Labor. Some programs and activities receiving federal financial assistance from the Department of Labor are covered only under Title VI and the Department of Labor's Title VI regulations (*e.g.,* programs receiving assistance through the Mine Safety and Health Act and the Occupational Safety and Health Act).

Some programs and activities receiving Department of Labor financial assistance, i.e., those that receive financial assistance under Title I of WIA, are covered under both the DOL Title VI regulations and the section 188 implementing regulations. The regulation at 29 CFR 37.3 states that compliance with the regulations in 29 CFR part 37 will satisfy obligations of the recipient to comply with 29 CFR part 31.

The section 188 implementing regulations found in 29 CFR part 37 apply to any program or activity receiving financial assistance under Title I of WIA. In addition, the section 188 implementing regulations apply to programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of WIA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system. Some One-Stop programs and activities receive federal financial assistance from other federal agencies (*e.g.,* Department of Education and Department of Housing and Urban Development). For purposes of the regulations in 29 CFR Part 37, however, ''One-Stop partners,'' as defined in section 121(b) of WIA, are treated as ''recipients,'' and are subject to the nondiscrimination requirements to the extent that they participate in the One-Stop delivery system. Some programs and activities that are part of the One-Stop delivery system and that receive financial assistance from a federal grantmaking agency other than the Department of Labor are covered under the Section 188 implementing regulations, but not under DOL's Title VI regulations. However, these programs and activities are subject to the Title VI regulations of a federal grantmaking agency other than the Department of Labor.

Although the regulatory language differs, the obligations of recipients to ensure accessibility by LEP persons to DOL financially assisted programs and activities are the same under Title VI and section 188. Accordingly, the CRC will apply the same standards in determining compliance with these obligations.

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local ''English-only'' laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in states and localities with ''English-only'' laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

Case Law

Extensive case law affirms the obligation of recipients of Federal financial assistance to ensure that LEP persons can meaningfully access Federally-assisted programs and activities.

The U.S. Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), recognized that recipients of federal financial assistance have an affirmative responsibility, pursuant to Title VI, to provide LEP persons with meaningful opportunities to participate in public programs and activities. In *Lau* v. *Nichols,* the Supreme Court ruled that a public school system's failure to provide English language instruction to students of Chinese ancestry who did not speak English denied the students meaningful opportunities to participate in a public educational program in violation of Title VI. In providing the same services to the LEP students as it did for English proficient students—an education provided solely in English—the Supreme Court observed that ''it seems obvious that the Chinese-speaking minority received fewer benefits than the English-speaking majority from respondent's school system which denies them a meaningful opportunity to participate in the educational program. * * *'' Courts have applied the doctrine articulated in *Lau* both inside and outside the education context, including in cases involving driver's license tests and material relating to unemployment benefits.

As early as 1926, the Supreme Court recognized that language rules were often discriminatory. In *Yu Cong Eng et al.* v. *Trinidad, Collector of Internal Revenue,* 271 U.S. 500 (1926), the Supreme Court found that a Philippine Bookkeeping Act that prohibited the keeping of accounts in languages other than English, Spanish and Philippine dialects violated the Philippine Bill of Rights that Congress had patterned after the U.S. Constitution. The Court found that the Act deprived Chinese merchants, who were unable to read, write or understand the required languages, of liberty and property without due process.

In *Gutierrez* v. *Municipal Court of S.E. Judicial District,* 838 F.2d 1031,1039 (9th Cir. 1988), vacated as moot, 490 U.S. 1016 (1989), the court recognized that requiring the use of English only is often used to mask national origin discrimination. Citing McArthur, ''Worried About Something Else,'' 60 Int'l J. Soc. Language, 87, 90–91 (1986), the court stated that because language and accents are identifying characteristics, rules that have a negative effect on bilingual persons, individuals with accents, or non-English speakers may be mere pretexts for intentional national origin discrimination.

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

Again, in the employment context, the Court in *Pabon* v. *Levine,* 70 FRD 674 (S.D.N.Y. 1976), found that the plaintiffs, who challenged the state's failure to provide unemployment insurance information in languages other than English, properly raised a claim under Title VI.

Most recently, the Eleventh Circuit in *Sandoval* v. *Hagan,* 197 F. 3d 484 (11th Cir. 1999), *cert. granted sub. Nom., Alexander* v. *Sandoval,* 147 L. Ed. 2d 1051 (U.S. Sept. 26, 2000) (No. 99–1908) (accepting case to address whether or not there is a private right of action under Title VI), held that the State of Alabama's policy of administering a driver's license examination in English only was a facially neutral practice that had an adverse effect on the basis of national origin, in violation of Title VI. The court specifically noted the nexus between language policies and potential discrimination based on national origin. That is, in *Sandoval,* the vast majority of individuals who were adversely affected by Alabama's English-only driver's license examination policy were national origin minorities.

In the employment benefits, services, and job training context, a recipient's failure to provide appropriate language assistance to LEP individuals parallels many of the fact situations discussed in the cases above and, as in those cases, may have an adverse effect on the basis of national origin, in violation of Title VI.

The Title VI regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI and section 188 if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services. Accordingly, it is useful for recipients to examine their policies and practices to determine whether they adversely affect LEP persons. This policy guidance provides a legal framework to assist recipients in conducting such assessments.

Policy Guidance

Who Is Covered

All entities that receive federal financial assistance from the Department of Labor, either directly or indirectly, through a grant, contract or subcontract, are covered by this policy guidance. For purposes of section 188, covered entities include, but are not limited to: state-level agencies that administer, or are financed in whole or in part with, WIA Title I funds; State Employment Security Agencies; State and local Workforce Investment Boards; local Workforce Investment Areas (''LWIA'') grant recipients; One-Stop operators; service providers, including eligible training providers; On-the-Job Training (OJT) employers; Job Corps contractors and center operators; Job Corps national training contractors; outreach and admissions agencies, including Job Corps contractors that perform these functions; and other national program recipients.[3] Entities may be receiving financial assistance through one or more of a number of DOL administered statutes, including, but not limited to, the Wagner-Peyser Act, the Workforce Investment Act, Welfare-to-Work, the Older Americans Act, the Social Security Act, the Mine Safety and Health Act, and the Occupational Safety and Health Act.

The term federal financial assistance to which Title VI applies includes, but is not limited to, grants and loans of federal funds, grants or donations of federal property, details of federal personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance (see, 45 CFR 80.13(f); Appendix A to the Title VI regulations, and 29 CFR 37.4, for additional discussion of what constitutes federal financial assistance).

Title VI prohibits discrimination in any program or activity that receives federal financial assistance. What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (''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. Thus, all parts of the recipient's operations would be covered by Title VI, even if the federal assistance is used only by one part. The definition of a WIA Title I-funded program or activity can be found at 29 CFR 37.4. Costs associated with providing meaningful access to LEP persons are considered allowable administrative costs.

[3] One-Stop participants that receive financial assistance from a federal grantmaking agency other than the Department of Labor are subject to the Title VI implementing regulations and guidance of that grantmaking agency.

Basic Requirements Under Title VI and Section 188

A recipient whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting, the participation of any LEP person in a federally assisted program or activity on the basis of national origin may be engaged in discrimination in violation of Title VI and Section 188. In order to ensure compliance with Title VI and section 188, recipients must take steps to ensure that LEP persons who are eligible have meaningful access during all hours of operation to the recipients' programs and services. The most important step in meeting this obligation is for recipients of federal financial assistance to provide the language assistance necessary to ensure such access, at no cost to the LEP person.

On August 11, 2000, the President issued Executive Order 13166 titled ''Improving Access to Services by Persons With Limited English Proficiency .'' 65 FR 50121 (August 16, 2000). On the same day, the Assistant Attorney General for Civil Rights issued a Policy Guidance Document titled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency'' (hereinafter referred to as ''DOJ LEP Guidance''), reprinted at 65 FR 50123 (August 16, 2000).

Executive Order 13166 requires Federal departments and agencies extending financial assistance to develop and make available guidance on how recipients should, consistent with the DOJ LEP Guidance and Title VI of the Civil Rights of 1964, as amended, assess and address the needs of otherwise eligible limited English proficient persons seeking access to federally assisted programs and activities. The DOJ LEP Guidance, in turn, provides general guidance on how recipients can ensure compliance with their Title VI obligation to ''take reasonable steps to ensure 'meaningful' access to the information and services they provide.'' DOJ LEP Guidance, 65 FR at 50124. The DOJ LEP Guidance goes on to provide that [w]hat constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the size of the recipient; the size of the eligible LEP population to serve; the nature of the program or service; the objectives of the program or service; the total resources available to the recipient; the frequency with which particular languages other than English are encountered; and, the

frequency with which LEP persons come into contact with the program or service. Of these factors, the following four are considered the most pivotal to determining the nature of the language assistance provided by a recipient: the number or proportion of LEP individuals eligible to participate or likely to be directly or significantly affected by the program or activity; the frequency of contact a participant or beneficiary is required to have with the program or activity; the nature and importance of the program or activity to the participant or beneficiary; and, the resources available to the recipient in carrying out the program or activity. These factors constitute what herein after will be referred to as the elements of the ''four-factor analysis.'' This Guidance for DOL is consistent with the compliance standards set out in the DOJ LEP Guidance.

The type of language assistance a recipient provides to ensure meaningful access will depend on a variety of factors, Programs and activities that serve a few or even one LEP person are still subject to the Title VI and section 188 obligation to take reasonable steps to provide meaningful opportunities for access. However, a factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be excluded from the program or activity absent efforts to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year will be different than those expected from a recipient who serves several LEP persons each day.

The importance of the recipient's program or activity to participants or beneficiaries will affect the determination of what is ''reasonable.'' More affirmative steps must be taken in programs and activities where the denial of access may have serious implications, such as the receipt of Unemployment Insurance benefits. In assessing the effect of denying access, recipients must consider the importance of the benefit to individuals both immediately and in the long-term.

The resources available to a recipient of federal financial assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs and activities that have a limited number of eligible LEP individuals, where contact is infrequent, and/or where the program or activity is not crucial to an individual's day-to-day existence. Claims of limited resources, especially from larger entities, will need to be well-substantiated.

Frequency of contacts between the program or activity and LEP individuals is another factor to be considered. For example, if a LEP individual must access a program or service on a daily basis, such as activities provided in a job training program, a recipient has greater duties than if program or activity contact is unpredictable or infrequent. LEP individuals must be able to access and participate in job training activities in a manner equally consistent and effective to that offered to non-LEP persons.

There is no ''one size fits all'' solution for Title VI and section 188 compliance with respect to LEP persons. CRC will make its assessment of the language assistance needed to ensure meaningful access on a case by case basis, and a recipient will have considerable flexibility in determining precisely how to fulfill this obligation. CRC will focus on the end result—whether the recipient has taken the necessary steps to ensure that LEP persons have meaningful access to programs and services.

The key to providing meaningful access for LEP persons, including LEP persons likely to be directly or significantly affected (*e.g.*, LEP parents of non-LEP students) is to ensure that the recipient and LEP person can communicate effectively. The steps taken by a recipient must ensure that the LEP person is given adequate information, is able to understand the services and benefits available, and is able to receive those for which he or she is eligible, free-of-charge. The recipient must also ensure that the LEP person can effectively communicate the relevant circumstances of his or her situation to the service provider.

Effective language assistance programs usually contain the four elements described in the following section. In reviewing complaints and conducting compliance reviews, CRC will consider a program or activity to be in compliance when the recipient effectively incorporates and implements these four elements. The failure to incorporate or implement one or more of these elements does not necessarily mean noncompliance with Title VI and Section 188, and CRC will review the totality of the circumstances to determine whether LEP persons can meaningfully access the services and benefits of the recipient.

Ensuring Meaningful Access to LEP Persons

Introduction—The Four Keys to Title VI and Section 188 Compliance in the LEP Context

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

I. Assessment. The recipient conducts a thorough annual assessment of the language needs of the population to be served;

II. Development and Implementation of a Written Policy on Language Access. The recipient develops and implements a comprehensive written policy that will ensure meaningful communication. This plan is amended on an annual basis, as needed, depending on the local service population;

III. Training of Staff. The recipient takes steps to ensure that staff understands the policy and is capable of carrying it out; and

IV. Vigilant Monitoring. The recipient conducts regular oversight of the language assistance program to ensure that LEP persons can meaningfully access the program or activity.

The failure to implement one or more of these measures does not necessarily mean noncompliance with Title VI and section 188, and CRC will review the totality of the circumstances in each case. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a recipient's program or activity, and if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services, CRC will not find the recipient in noncompliance. However, in reviewing recipients' compliance, the CRC will seek documentation and evidence that the recipient considered and, when appropriate, incorporated these elements into their language assistance programs.

I. Assessment

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

• Identifying the languages other than English that are likely to be encountered in its program or activity and by estimating the number of LEP persons that are eligible for services and/or benefits and that are likely to be directly affected by its program or activity. This can be done by reviewing data from a combination of sources, including the census and state labor market information systems, client utilization data from client files, and statistics from school systems and community agencies and organizations. When a recipient believes that the provision of aid, services, benefits, or training to LEP persons has not been effective in the past, the primary source of data from which estimates of the eligible LEP population is made should not stem from client utilization data from client files;

• Determining the language needs of LEP clients, keeping in mind that some LEP individuals will not self-identify as LEP out of fear that their level of participation will be curtailed by their inability to communicate in the English language;

• Recording LEP status in clients' files to ensure that LEP individuals are consistently communicated with in the appropriate language as they navigate all stages of the recipient's program;

• Locating the points of contact of all stages of the program or activity where language assistance is likely to be needed;

• Reviewing delivery systems to determine whether any program system denies or limits participation by LEP individuals. For example, many states have implemented telephone certification systems for Unemployment Insurance programs. Telephone systems often only provide instructions in English, or in some cases, Spanish. Some states require UI applicants to request a waiver from participation in this system even if they are LEP. Programs offering computer-based technologies may encounter circumstances that similarly limit meaningful participation;

• Understanding circumstances in which, although the participant and/or beneficiary can communicate effectively in English, assistance may be needed when interacting with other pertinent individuals. For example, if a student under the age of eighteen needs his/her parents' signature to participate in a summer employment program, both written and oral language assistance may be necessary to provide information and obtain the necessary permission;

• Assessing the resources that will be needed to provide effective language assistance and the location and availability of these resources; and,

II. Development and Implementation of a Written Policy on Language Access

All recipients are required to ensure effective communication by developing and implementing a comprehensive written language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP applicants/clients and that provides for a range of interpreter assistance, notification to LEP persons in appropriate languages of the right to free language assistance, periodic training of staff, monitoring of the program, and translation of written materials in certain circumstances.[4] Certain recipients of DOL financial assistance are required, per 29 CFR 37.54, to establish and adhere to a Methods of Administration (''MOA''). Per the regulations, MOAs must be in writing, reviewed and updated every two years as required by Section 37.55, and, at a minimum, describe how the state programs and recipients have satisfied the requirements of regulations, including those found at Sections 37.35 and 37.42 (Section 37.35 can be found on pages 5–6 of this document).

Oral Language Interpretation

In designing an effective language assistance program, a recipient should develop procedures for obtaining and providing trained and competent interpreters and other interpretation services, in a timely manner, by taking some or all of the following steps:

• Hiring bilingual staff who are trained and competent in the skill of interpreting;

• Hiring staff interpreters who are trained and competent in the skill of interpreting;

• Contracting with an outside interpreter service for qualified interpreters;

• Arranging formally for the services of volunteers who are qualified interpreters;

• Arranging/contracting for the use of a telephone language interpreter service.

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

Bilingual Staff: Hiring bilingual staff for applicant and client contact positions facilitates participation by LEP persons. The ability of staff members to communicate directly with LEP clients, without third-party interpretation and translation assistance, maximizes agency resources and permits LEP clients to more fully engage in programs and services. However, where there are a variety of LEP language groups in a recipient's service area, this option may be insufficient to meet the needs of all LEP applicants and clients. Where this option is insufficient to meet the needs, the recipient must provide additional and timely language assistance. The qualifications of both current and future bilingual staff must be reviewed to ensure demonstrated proficiency in English and the second language, orientation and training on the skills and ethics of interpretation, and fundamental knowledge in both languages of any specialized terms or concepts.

Staff Interpreters: Paid staff interpreters are especially appropriate where there is a frequent and/or regular need for interpreting services. The qualifications of both current and future staff interpreters must be reviewed to ensure demonstrated proficiency in English and the second language, orientation and training on the skills and ethics of interpretation, and fundamental knowledge in both languages of any specialized terms or concepts. Staff interpreters must be readily available.

Contract Interpreters: The use of contract interpreters may be an option for recipients that have infrequent needs for interpreting services, have less common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as-needed basis. Where non-staff interpreters are used, appropriate training must be provided. Training should include orientation and training on the skills and ethics of interpretation and fundamental knowledge in both languages of any specialized terms or concepts. Contract interpreters must also be readily available.

Community Volunteers: Use of community volunteers may provide recipients with a cost-effective method for providing interpreter services. However, experience has shown that to use community volunteers effectively, recipients must ensure that formal arrangements for interpreting services are made with community organizations so that these organizations are not

[4] Both the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973 prohibit discrimination on the basis of disability and require entities to provide language assistance such as sign language interpreters for hearing impaired individuals or alternative formats such as braille, large print or tape for vision impaired individuals. In developing a comprehensive language assistance program, recipients should be mindful of their responsibilities under the ADA and section 504 to ensure access to programs and activities for persons with disabilities.

subjected to *ad hoc* requests for assistance. In addition, recipients must ensure that these volunteers are qualified to interpret and understand their obligation to maintain client confidentiality. Where community volunteers are used, appropriate training must be provided. Training should include orientation and training on the skills and ethics of interpretation and fundamental knowledge in both languages of any specialized terms or concepts. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service.

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

Three recurring issues in the area of interpreter services involve (a) the use of friends, family, or minor children as interpreters; (b) the level of language ability; and, (c) the need to ensure that interpreters are qualified.

(a) *Use of Friends, Family, or Minor Children as Interpreters:* A recipient may expose itself to liability under Title VI and section 188 if it requires, suggests, or encourages a LEP person to use friends, family members, or minor children, as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology.

If after a recipient informs a LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the recipient may use the family member or friend, if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The recipient should make efforts to document the offer and declination in the LEP person's file. Even if a LEP person elects to use a family member or friend, the recipient should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

(b) *Level of Language Ability:* As with English speakers, the ability of LEP individuals to read and comprehend written materials even in their native languages will vary. If persons are illiterate even in their native languages, oral interpretation of written materials may be necessary. As a general rule, interpreters should be aware of variances within a language, i.e. different words are used throughout the Spanish-speaking world to describe the same thing. Interpreters should be able to communicate with LEP individuals utilizing the appropriate colloquial speech.

(c) *Qualified Interpreters:* In order to provide effective services to LEP persons, a recipient must ensure that it uses persons who are qualified to provide interpreter services. Being qualified does not necessarily mean formal certification as an interpreter, though certification is helpful. On the other hand, being qualified requires more than self-identification as bilingual. The requirement to be qualified contemplates:

- Demonstrated proficiency in both English and the other language;
- Orientation and training that includes the skills and ethics of interpreting (e.g., issues of confidentiality);
- Fundamental knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity;
- Sensitivity to the LEP person's culture; and,
- A demonstrated ability to convey information in both languages, accurately.

A recipient must ensure that those persons it provides as interpreters are trained and qualified to act in this role.

Translation of Written Materials

An effective language assistance program ensures that written materials that are routinely provided in English to applicants, clients and the public are available in regularly encountered languages other than English. It is particularly important to ensure that vital documents, such as applications; consent forms; letters containing important information regarding participation in a program or activity; notices pertaining to the reduction, denial or termination of services or benefits and of the right to appeal such actions; notices that require a response from beneficiaries; information on the right to file complaints of discrimination; notices advising LEP persons of the availability of free language assistance; and, other outreach materials be translated into the languages other than English of each regularly encountered LEP group eligible to be served or likely to be directly or significantly affected by the recipient's program or activity.[5] Further, in some instances, translation of written materials is required as a reasonable step to ensure that LEP persons are effectively informed about, or able to participate in, a DOL financially assisted program or activity.

The CRC acknowledges the concern that translating documents may delay communication between the program or activity and the LEP client. It is expected that all vital documents, or all portions of documents that utilize ''vital'' language, be translated in preparation for assisting persons in language groups that are significantly represented in the service delivery area. Translation of non-vital language must occur on a timely basis so as not to delay the participation in and/or receipt of benefits to LEP clients.

As part of its overall language assistance program, a recipient should assess annually its local service population and develop and implement a plan to provide written materials in languages other than English where a significant number or percentage of the population eligible to be served or likely to be directly or significantly affected by the program or activity needs services or information in a language other than English to communicate effectively.

One way for a recipient to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the

[5] The requirements outlined in this guidance memorandum also apply to materials posted on web sites. However, the placement of materials on a web site need not change the recipients' original assessment regarding the number or proportion of LEP persons that comprise the intended audience for that document. The four-factor analysis applies to each individual ''document'' on a web site. Generally, entire web sites need not be translated; usually only the vital documents or vital information posted would require translation. If, in applying the four-factor analysis, the recipient determines that a particular document or piece of information should be translated, then, provided that the English version can be found on the web site, translations into appropriate languages other than English should also be posted. If documents are translated on a web site, the web site homepage should direct browsers to such information.

recipient to meet the guidelines outlined in paragraphs (A), (B) and (C) below.

Paragraphs (A) and (B) outline the circumstances that provide a ''safe harbor'' for recipients. A recipient that provides written translations under these circumstances will most likely be found in compliance with its obligation under Title VI and section 188 regarding written translations.[6] However, the failure to provide written translations under circumstances outlined in paragraphs (A), (B) and (C) will not necessarily mean noncompliance with Title VI and section 188.

In such circumstances, CRC will review the totality of the circumstances to determine the precise nature of a recipient's obligation to provide written materials in languages other than English. If written translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of its program or activity, and if there is an alternative means of ensuring that LEP persons have meaningful access to the information provided in the document (such as timely, effective oral interpretation of vital documents), CRC will not find the translation of written materials necessary for compliance with Title VI and section 188.

CRC will consider a recipient to be in compliance with the Title VI and section 188 obligation to provide written materials in languages other than English if:[7]

(A) The recipient provides translated written materials for each LEP language group that constitutes ten percent or 3,000, whichever is less, of the population of persons eligible to be served or likely to be directly or significantly affected by the recipient's program or activity;

(B) Regarding LEP language groups that constitute five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly or significantly affected by the recipient's program or activity, the recipient ensures that, at a minimum, vital documents are translated into the appropriate languages other than English of such LEP persons. Translation of other documents, if needed, can be provided orally; and,

(C) Notwithstanding paragraphs (A) and (B) above, a recipient with fewer than five percent or 1,000 persons in a language group eligible to be served or likely to be directly or significantly affected by the recipient's program or activity, need not translate written materials but rather may provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of written materials.

The term ''persons eligible to be served or likely to be directly or significantly affected'' relates to the issue of what is the recipient's service area for purposes of meeting the Title VI and section 188 obligation. There is no ''one size fits all'' definition of what constitutes ''persons eligible to be served or likely to be directly or significantly affected.''

Ordinarily, persons eligible to be served or likely to be directly or significantly affected by a recipient's program or activity are those persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area, and who are either eligible for the recipient's services or benefits, or otherwise might be directly or significantly affected by such a recipient's conduct. CRC may also determine the service area to be the geographic areas from which the recipient draws, or can be expected to draw, clients. This, for example, could occur in a local workforce investment area (LWIA) that manages more than a single One-Stop Center. Instead of being guided by a population survey for the LWIA, each One-Stop Center should assess its own local service population. States operating programs, such as the Unemployment Insurance program, should assess both statewide language groups that are represented significantly and require all local offices to conduct surveys of local service populations. Small entities, such as Vermont, Delaware, and the District of Columbia, that operate only a single One-Stop Center, should assess their overall populations and also be aware of ''pockets'' of LEP persons that may exist in certain areas (e.g., the Chinatown or Adams Morgan (largely Spanish-speaking) areas of Washington, D.C.).

As this guidance notes, Title VI and section 188 provide that no person may be denied meaningful access to a recipient's services and benefits, on the basis of national origin. To comply with Title VI and section 188, a recipient must ensure that LEP persons have meaningful access to and can understand information contained in program/activity-related written documents. Thus, for language groups that do not fall within paragraphs (A) and (B) above, a recipient can ensure such access by, at a minimum, providing notice, in writing, in the LEP person's primary language, of the right to receive free language assistance, including the right to competent oral interpretation of written materials, free of cost.

Recent technological advances have made it easier for recipients to store translated documents readily. At the same time, CRC recognizes that recipients in a number of areas, such as many large cities, regularly serve populations of people in which dozens and sometimes hundreds of different languages are spoken. It would be unduly burdensome to demand that recipients in these circumstances translate all written materials into all languages.

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

The ''safe harbor'' provisions apply to the translation of written documents only. They do not change the requirement to provide meaningful access to LEP individuals through competent oral interpreters.

Methods for Providing Notice to LEP Persons

A vital part of a well-functioning compliance program includes having effective methods for notifying LEP persons of their rights to receive or participate in the employment benefits, services, and job training programs to which they may be eligible. Outreach materials should notify LEP persons of their rights to language assistance and the availability of such assistance free of charge. These methods include but are not limited to:

- Advertising and outreach to communicate the rights of individuals to employment benefits, services, and job training programs to which they may be eligible, which could include public service announcements in appropriate languages on television or radio, newspaper advertisements, or

[6] The ''safe harbor'' provisions are not intended to establish numerical thresholds for when a recipient must translate documents. Because the numbers and percentages included in these provisions are based on the balancing of a number of factors, the Civil Rights Center will undertake additional assessment of the numerical thresholds, which may be revised as a result.

[7] The Civil Rights Center will undertake additional assessment of the numerical thresholds, which may be revised as a result.

distributing materials to organizations that serve LEP persons;

• Use of language identification cards that allow LEP beneficiaries to identify their language needs to staff and for staff to identify the language needs of applicants and clients. To be effective, the cards (e.g., ''I speak cards'') must invite the LEP person to identify the language s/he speaks. This identification must be recorded in the LEP person's file;

• Posting and maintaining signs in regularly encountered languages in waiting rooms, reception areas and other initial points of entry. In order to be effective, these signs must inform LEP applicants/clients of their right to free language assistance services and invite them to identify themselves as persons needing such services;

• Translation of application forms and instructional, informational and other written materials into appropriate languages other than English by competent translators. Oral interpretation of documents for persons who speak languages not regularly encountered.

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

III. Training of Staff

Another vital element in ensuring that its policies are followed is a recipient's dissemination of its policy to all employees likely to have contact with LEP persons and periodic training of these employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures; are trained to work effectively with in-person and telephone interpreters; and, understand the dynamics of interpretation between LEP clients, the recipient's staff and interpreters. It is important that this training be part of the orientation for new employees and that all employees in client contact positions be properly trained. Given the high turnover rate among some employees, recipients may find it useful to maintain a training registry that records the names and dates of employees' training. Over the years, CRC has observed that recipients often develop effective language assistance policies and procedures but that employees are unaware of the policies, or do not know how to, or otherwise fail to, provide available assistance. Effective training is one means of ensuring that there is not a gap between a recipient's written policies and procedures, and that the actual practices of employees who are in the front lines interacting with LEP persons are being followed.

IV. Monitoring

It is also crucial for a recipient to monitor its language assistance program at least biennially to assess the current LEP makeup of its service area, the current communication needs of LEP applicants and clients, whether existing assistance is meeting the needs of such persons, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are still current and viable. One element of such an assessment is for a recipient to seek feedback from clients and advocates. Recipients should consider involving community groups in their monitoring processes, which can aid in assessing local demographics, as well as obtaining feedback on the effectiveness of policies and practices to serve LEP individuals. CRC believes that compliance with the Title VI and Section 188 language assistance obligation is most likely when a recipient continuously monitors its program, makes modifications where necessary, and periodically trains employees in implementation of the policies and procedures.

CRC's Assessment of Meaningful Access

The failure to take all of the steps outlined will not necessarily mean that a recipient has failed to provide meaningful access to LEP clients. As noted above, CRC will make assessments on a case by case basis and will consider several factors in assessing whether the steps taken by a recipient provide meaningful access. Those factors include the number or proportion of LEP individuals eligible to participate or likely to be directly or significantly affected by the program or activity; the frequency of contact a participant or beneficiary is required to have with the program or activity; the nature and importance of the program or activity to the participant or beneficiary; and, the resources available to the recipient in carrying out the program or activity.

Promising Practices

In meeting the needs of their LEP applicants and clients, some recipients have found unique ways of providing translation and interpretation services and reaching out to the LEP community. As part of its technical assistance, CRC has frequently assisted, and will continue to assist, recipients who are interested in learning about promising practices in the area of service to LEP populations. Examples of promising practices include the following:

Language Banks. In several parts of the country, both urban and rural, community organizations have created community language banks that train, hire and dispatch qualified interpreters, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services, or where there is a large variety of language needs.

Language Support Office. An ''Office for Language Assistance Services'' could be created to test and certify all in-house and contract interpreters and to provide agency-wide support for translation of forms, client mailings, publications and other written materials into languages other than English.

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

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

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

Model Plan

The following is an example of a model language assistance program that is potentially useful for all recipients, but is particularly appropriate for recipients that serve a significant and diverse LEP population. This model plan incorporates a variety of options and methods for providing meaningful access to LEP beneficiaries:

• A formal written language assistance program, reviewed annually;

• Identification and biennial assessment of the languages that are likely to be encountered and estimating the number of LEP persons that are eligible for services and that are likely to be affected by its program or activity through a review of census, client utilization data and statistics from school systems, community agencies and organizations;

• Outreach to LEP communities, advertising program eligibility and the availability of free language assistance;

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

• Use of ''I speak cards'' by intake workers and other client contact personnel so that applicants/clients can identify their primary languages;

• Requiring intake workers to note the language of the LEP person in his/her record so that all subsequent interaction will be conducted in the appropriate language;

• Employment of a sufficient number of staff, bilingual in appropriate languages, in applicant and client contact positions. These persons must be qualified interpreters;

• Contracts with interpreting services that can provide qualified interpreters in a wide variety of languages, in a timely manner;

• Formal arrangements with community groups for qualified and timely interpreter services by community volunteers;

• An arrangement with a telephone language interpreter line;

• Translation of application forms, instructional, informational and other key documents into appropriate languages other than English. Oral interpretation of documents for persons who speak languages not regularly encountered;

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

• Notice to and training of all staff, particularly applicant and client contact staff, with respect to the recipient's Title VI and Section 188 obligation to provide language assistance to LEP persons, and on the language assistance policies and procedures to be followed in securing such assistance in a timely manner;

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

• Notice to the public regarding the language assistance policies and procedures, plus notice to and consultation with community organizations that serve LEP persons regarding problems and solutions, including standards and procedures for using their members as volunteer interpreters;

• Adoption of a procedure for the resolution of complaints regarding the provision of language assistance, and for notifying and educating clients of the right to file a complaint of discrimination under Title VI and Section 188 with DOL; and,

• Appointment of a senior level employee to coordinate the language assistance program and ensure that there is regular monitoring of the program.

• Consideration of LEP needs when implementing new programs or activities, publishing new forms or notices, etc.

Compliance and Enforcement

The recommendations outlined above are not intended to be exhaustive. Recipients have considerable flexibility in determining how to meet their legal obligations in the LEP setting, and are not required to use all of the suggested methods and options listed. However, recipients must establish and implement policies and procedures to provide language assistance sufficient to fulfill their Title VI and section 188 responsibilities and that give LEP persons meaningful access to services.

CRC will enforce Title VI and section 188 as they apply to recipients' responsibilities to LEP persons through the procedures provided for in 29 CFR Parts 31 and 37. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

CRC regulations state that CRC will investigate any complaint, report or other information that alleges or indicates possible noncompliance with Title VI and section 188. If the investigation results in a finding of compliance, CRC will inform the recipient in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, CRC will inform the recipient of the noncompliance in a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. At this stage, the CRC will attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, CRC must secure compliance through (a) the termination of federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to DOJ for injunctive relief or other enforcement proceedings; or, (c) any other means authorized by law.

As the regulations set forth above indicate, CRC has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. CRC will engage in voluntary compliance efforts, and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, CRC will propose reasonable timetables for achieving compliance and will consult with and assist recipients in exploring cost effective ways of coming into compliance, by increasing awareness of emerging technologies, and by sharing information on how other recipients have addressed the language needs of diverse populations.

In determining a recipient's compliance with Title VI and section 188, CRC's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons meaningful opportunities to participate in and access programs, services and benefits. A recipient's appropriate use of the methods and options discussed in this policy guidance will be viewed by CRC as evidence of a recipient's willingness to comply with its Title VI and section 188 obligations.

Technical Assistance

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

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