

# Obligations to Provide Language Access Services

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# Civil Rights Center

The mission of the Civil Rights Center is to promote justice and equal opportunity by acting with impartiality and integrity in administering and enforcing various civil rights laws. These laws protect:

- \* Department of Labor employees and applicants for employment, and
- \* Individuals who apply to, participate in, work for, or come into contact with programs and activities that are conducted by or receive financial assistance from DOL, or, under certain circumstances, from other Federal agencies.

We carry out this mission by investigating and adjudicating discrimination complaints, conducting compliance reviews, providing technical assistance and training, and developing and publishing civil rights regulations, policies, and guidance.

# Plan for Today

- \* Review civil rights laws – national origin
- \* LEP definitions
- \* Discuss LEP Requirements
- \* LEP Planning
- \* Open discussion

# Important Terms

- \* **Limited English proficient (LEP) individual** means an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

# Important Terms (part 2)

- \* **Vital information** means information, whether written, oral or electronic, that is necessary for an individual to understand how to obtain any aid, benefit, service, and/or training; necessary for an individual to obtain any aid, benefit, service, and/or training; or required by law. Examples include, but are not limited to:
  - \* Applications, consent and complaint forms
  - \* Notices of rights and responsibilities (EO is the Law)
  - \* Notices advising LEP individuals of their rights under this part, including the availability of free language assistance; rulebooks
  - \* Letters or notices that require a response from the beneficiary or applicant, participant, or employee.

# Important Terms (part 3)

- \* **Babel notice** means a short notice included in a document or electronic medium (e.g., website, “app,” email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages.
- \* **Qualified interpreter** for an individual who is limited English proficient means an individual who demonstrates expertise and ability to communicate information effectively, accurately, and impartially, in both English and the other language, and identifies and employs the appropriate mode of interpreting (e.g., consecutive, simultaneous, or sight translation).

# Civil Rights Act of 1964

## Title VI

- \* 42 U.S.C. § 2000d
  - \* “No person in the United States shall, on the ground of race, color, or national origin, be... subjected to discrimination under any program or activity receiving Federal financial assistance.”

# National Origin and LEP

- \* National origin discrimination includes failing to provide LEP individuals “meaningful access” to recipient programs.
- \* *Lau v. Nichols*, 414 U.S. 563 (1974)
  - \* <http://go.usa.gov/4KVd>



# Section 188 of WIOA

- \* Prohibits the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA.
- \* Implementing regulations 29 CFR part 38

# Section 188 Regulation

## 29 CFR 38.9

- \* § 38.9 Discrimination prohibited based on national origin, including limited English proficiency.
- \* (a) In providing any aid, benefit, service, or training under a WIOA Title I–financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin, including limited English proficiency...

# Section 188 Regulation

## 29 CFR 38.9 (b)

- \* (b) A recipient must take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity.

# Reasonable Steps

- \* Reasonable steps generally may include, but are not limited to:
  - \* an assessment of an LEP individual to determine language assistance needs;
  - \* providing oral interpretation or written translation of both hard copy and electronic materials, in the appropriate non-English languages, to LEP individuals;
  - \* and outreach to LEP communities to improve service delivery in needed languages.

# Reasonable Steps (Continued)

- \* Reasonable steps to provide meaningful access to training programs may include, but are not limited to, providing:
  - \* (i) Written training materials in appropriate non-English languages by written translation or by oral interpretation or summarization; and
  - \* (ii) Oral training content in appropriate non-English languages through in-person interpretation or telephone interpretation.

# Section 188 Regulation

## 29 CFR 38.9 (c)

- \* (c) A recipient should ensure that every program delivery avenue (e.g., electronic, in person, telephonic) conveys in the appropriate languages how an individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides...

# Section 188 Regulation

## 29 CFR 38.9 (d)

- \* (d) Any language assistance services, whether oral interpretation or written translation, must be accurate, provided in a timely manner and free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training at issue.

# Section 188 Regulation

## 29 CFR 38.9 (e)

- \* (e) A recipient must provide adequate notice to LEP individuals of the existence of interpretation and translation services and that these language assistance services are available free of charge.



# Section 188 Regulation

## 29 CFR 38.9 (f)(1)

- \* (1) A recipient shall not require an LEP individual to provide their own interpreter.

# Section 188 Regulation

## 29 CFR 38.9 (f)(2)

- \* (2) A recipient also shall not rely on an LEP individual's minor child or adult family or friend(s) to interpret or facilitate communication, except:
  - \* (i) An LEP individual's minor child or adult family or friend(s) may interpret or facilitate communication in emergency situations while awaiting a qualified interpreter; or

# Section 188 Regulation

## 29 CFR 38.9 (f)(2) Continued

- \* (ii) The accompanying adult (but not minor child) may interpret or facilitate communication when the information conveyed is of minimal importance to the services to be provided or when the LEP individual specifically requests that the accompanying adult provide language assistance, the accompanying adult agrees to provide assistance, and reliance on that adult for such assistance is appropriate under the circumstances. When the recipient permits the accompanying adult to provide such assistance, it must make and retain a record of the LEP individual's decision to use their own interpreter.

# Section 188 Regulation

## 29 CFR 38.9 (f)(3)

- \* (3) Where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, or where the competency of the interpreter requested by the LEP individual is not established, a recipient may decide to provide its own, independent interpreter, even if an LEP individual wants to use their own interpreter as well.

# Section 188 Regulation

## 29 CFR 38.9 (g)(1)

- \* (g) With regard to vital information:
  - \* (1) For languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a website.

# Section 188 Regulation

## 29 CFR 38.9 (g)(1) Continued

- \* Written training materials offered or used within employment-related training programs as defined under § 38.4(t) are excluded from these translation requirements. However, recipients must take reasonable steps to ensure meaningful access as stated in § 38.9(b).

# Section 188 Regulation

## 29 CFR 38.9 (g)(2)

- \* (2) For languages not spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service, or training that the recipient provides. Vital information may be conveyed orally if not translated.

# Section 188 Regulation

## 29 CFR 38.9 (g)(3)

- \* (3) Recipients must include a “Babel notice,” indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on websites.

*IMPORTANT! This document contains important information about your rights, responsibilities and/or benefits. It is critical that you understand the information in this document, and we will provide the information in your preferred language at no cost to you. Call (xxx) xxx-xxxx for assistance in the translation and understanding of the information in this document.*



# Section 188 Regulation

## 29 CFR 38.9 (h)

- \* (h) To the extent otherwise required by this part, once a recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant, or applicant for aid, benefit, service, or training, the recipient must convey vital information in that language.

# Section 188 Regulation

## 29 CFR 38.9 (i)

- \* (i) Recipients are required to take reasonable steps to provide language assistance and should develop a written language access plan to ensure that LEP individuals have meaningful access...

# LEP Planning

- \* A written language assistance plan seeks to ensure access to programs and activities by LEP individuals.
- \* Provides a roadmap for establishing and documenting compliance with nondiscrimination obligations
- \* Helps to ensure that LEP beneficiaries receive the necessary assistance to participate in the recipient's programs and activities.

# LEP Planning Tool

## *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs*

- \* Prepared by the U.S. Department of Justice
- \* Available online at [lep.gov](http://lep.gov)

# LEP Planning Steps

1. Understanding how LEP Individuals Interact with Your Agency
2. Identification and Assessment of LEP Communities
3. Providing Language Assistance Services
4. Training of Staff on Policies and Procedures
5. Providing Notice of Language Assistance Services
6. Monitoring, Evaluating, and Updating the Language Access Policy Directives, Plans and Procedures

# 1 - Understanding how LEP Individuals Interact with Your Agency

- \* How do you interact with the public
  - \* How do people learn about your programs
  - \* How do people apply
  - \* How do people participate
- \* How that interaction occurs
  - \* In-person
  - \* Electronic (internet, phone)
  - \* Written material (brochures, handbooks, applications)
  - \* Public meetings and hearings
- \* This will dictate the type of LEP services needed

## 2 - Identification and Assessment of LEP Communities

- \* Assess the number or proportion of LEP individuals in the service area
- \* This includes both people who you come in contact with and people that are eligible for your services or likely directly affected by programs or services
- \* Use the best data available from federal, state, local government agencies and from community and faith based organizations.
- \* Consider both existing and emerging LEP communities
- \* Links to language data can be found at [www.lep.gov](http://www.lep.gov)
- \* Collect and use data about LEP individuals coming in

# 3 -Providing Language Assistance Services

- \* Effective communications requires language assistance services in place
- \* Can be either oral or written
- \* Oral interpreters must be competent, have knowledge of both languages, and have knowledge of the terms/concepts for the specific program
- \* Written translations include making vital information translated and available. This includes intake and applications forms, notices of rights, and denial notices
- \* Also include public notice that free language services are available



# 4 - Training of Staff on Policies and Procedures

- \* Training should be mandatory for staff that have the potential to interact or communicate with LEP individuals
- \* Training should cover:
  - \* How to identify language needs
  - \* How to access and provide the language services
  - \* How to work with interpreters
  - \* How to have documents translated
  - \* How to track language needs of LEP individuals
- \* Bilingual staff should be regularly assessed and trained

# 5 -Providing Notice of Language Assistance Services

- \* Inform LEP individuals of their eligibility for benefits, programs, and services in a language they understand.
- \* Assess all points of contact, telephone, in-person, mail, and electronic communication to determine the best method of providing notice of language assistance services.
- \* Not only translate outreach materials, but also explain how to access language assistance services by:
  - \* Translating outreach materials into other languages
  - \* Incorporating other languages into websites, and
  - \* Using non-English media for public service messages that describe your programs.

# 5 -Providing Notice of Language Assistance Services (continued)

- \* Notify current applicants or beneficiaries about available language assistance services.
  - \* Provide the notice in forms, brochures, language access posters placed in conspicuous locations describing in multiple languages the availability of language assistance services
  - \* Use the “I Speak” language identification cards
  - \* Include instructions in non-English languages on telephone menus

# 6 - Monitoring, Evaluating, and Updating the LEP Plan

To be effective, an agency must periodically monitor, evaluate, and update the plan, policies and procedures which may include:

- \* Surveying staff on how often they use language assistance services, if there should be changes in the way services are provided or the providers that are used, and if the language assistance services are meeting the needs of the LEP communities
- \* Customer satisfaction surveys of LEP applicants and beneficiaries based on their actual experience of accessing the agency's benefits, programs, information, or services

# 6 - Monitoring, Evaluating, and Updating the LEP Plan (Part 2)

- \* Observing and evaluating agency interactions with LEP individuals.
- \* Soliciting feedback from community-based organizations and other stakeholders about the effectiveness and performance in providing meaningful access
- \* Keeping current on community demographics and needs by engaging school districts, faith communities, refugee resettlement agencies, and other local resources.

# 6 - Monitoring, Evaluating, and Updating the LEP Plan (part 3)

- \* Considering new resources including funding, collaborations with other agencies, human resources, emerging technology, and other mechanisms for ensuring improved access for LEP individuals.
- \* Monitoring your agency's response rate to complaints or suggestions by LEP individuals, community members, and employees regarding language assistance services provided.
- \* The monitoring and review of current policies and the types of language assistance services provided should occur on an annual basis

# Ultimate Goal

- \* It is important to keep in mind that the goal is to prevent national origin discrimination by taking reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity.

# Open Discussion



# Where to get help

- \* Guidance documents including the planning guide and data sources – [lep.gov](http://lep.gov)
- \* Copies of laws, regulations and technical assistance material – [dol.gov/crc](http://dol.gov/crc)
- \* Email questions and training requests to [civilrightscenter@dol.gov](mailto:civilrightscenter@dol.gov)