
INSTITUTE OF MUSEUM AND LIBRARY SERVICES

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

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or “LEP.”

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. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the Institute of Museum and Library Services (IMLS), 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 the IMLS implementing regulations. The policy guidance reiterates IMLS'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 have meaningful access to the programs, services, and information those recipients provide.

This policy guidance is modeled on and incorporates the legal analysis and compliance standards and framework set out in Section I through Section VIII of Department of Justice (DOJ) Policy Guidance titled “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” published at 67 FR 41455, 41457-41465 (June 18, 2002) (DOJ Recipient LEP Guidance). To the extent additional clarification is desired on the obligation under Title VI to ensure meaningful access by LEP persons and how recipients can satisfy that obligation, a recipient should consult the more detailed discussion of the applicable compliance standards and relevant factors set out in DOJ Recipient LEP Guidance. The DOJ Guidance may be viewed and

downloaded at <http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm> or at <http://www.lep.gov>. In addition, IMLS recipients also receiving federal financial assistance from other federal agencies, such as the National Endowment for the Humanities, should review those agencies' guidance documents at <http://www.lep.gov> for a more focused explanation of how they can comply with their Title VI and regulatory obligations in the context of similar federally assisted programs or activities.

Many commentators have noted that some have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. The IMLS and the Department of Justice have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Purpose and Application

This policy guidance provides a legal framework to assist recipients in developing appropriate and reasonable language assistance measures designed to address the needs of LEP individuals. The IMLS Title VI implementing regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient entity'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 if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services.

Recipient entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting and are not required to use the suggested methods and options that follow. However, recipient entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services.

III. Policy Guidance

1. Who is Covered

All entities that receive Federal financial assistance from IMLS, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, are covered by this policy guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards 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.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. 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 that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

2. Basic Requirement: All Recipients Must Take Reasonable Steps To Provide Meaningful Access to LEP Persons

Title VI and the IMLS implementing regulations require that recipients take reasonable steps to ensure meaningful access to the information, programs, and services they provide. Recipients of federal assistance have considerable flexibility in determining precisely how to fulfill this obligation.

It is also important to emphasize that museums and libraries are in the business of maintaining, sharing, and disseminating vast amounts of information and items, most of which are created or generated by third parties. In large measure, the common service provided by these recipients is access to information, whether maintained on-site or elsewhere, not the generation of the source information itself. This distinction is critical in properly applying Title VI to museums, libraries, and similar programs. For example, in the context of library services, recipients initially should focus on their procedures or services that directly impact access in three areas. First, applications for library or membership cards, instructions on card usage, and dissemination of information on where and how source material is maintained and indexed, should be available in appropriate languages other than English. Second, recipients should, consistent with the four factor analysis, determine what reasonable steps could be taken to enhance the value of their collections or services to LEP persons, including, for example, accessing language-appropriate books through inter-library loans, direct acquisitions, and/or on-line materials. Third, to the extent a recipient provides services beyond access to books, art, or cultural collections to include the generation of information about those collections, research aids, or community educational outreach such as reading or discovery programs, these additional or enhanced services should be separately evaluated under the four-factor analysis. A similar distinction can be employed with respect to a museum's exhibits versus a museum's procedures for meaningful access to those exhibits.

What constitute reasonable steps to ensure meaningful access in the context of federally-assisted programs and activities in the area of museums and library services will be contingent upon a balancing of four factors: (1) the number and proportion of eligible LEP constituents; (2) the frequency of LEP individuals' contact with the program; (3) the nature and importance of the program; and (4) the resources available, including costs. Each of these factors is summarized below. In addition, recipients should consult Section V of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR at 41459-41460 or <http://www.lep.gov>, for additional detail on the nature, scope, and application of these factors.

(1) Number or Proportion of LEP Individuals

The appropriateness of any action will depend on the size and proportion of the LEP population that the recipient serves and the prevalence of particular languages. Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. The first factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be effectively excluded from meaningful access to the benefits or services if efforts are not made to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day.

(2) Frequency of Contact with the Program

Frequency of contact between the program or activity and LEP individuals is another factor to be weighed. If LEP individuals must access the recipient's program or activity on a daily basis, a recipient has greater duties than if such contact is unpredictable and infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

(3) Nature and Importance of the Program

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have serious, or even life or death implications than in programs that are not crucial to one's day-to-day existence, economic livelihood, safety, or education. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted museum or library. This factor implies that the obligation to provide translation services will be highest in programs providing education, job training, medical/health services, social welfare services, and similar services. As a general matter, it is less likely that museums and libraries receiving assistance from the IMLS will provide services having a similar immediate and direct impact on a person's life or livelihood. Thus, in large measure, it is the first factor (number or proportion of LEP individuals) that will have the greatest impact in determining the initial need for language assistance services.

In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. Another aspect of this factor is the nature of the program itself. Some museum content may be extremely accessible regardless of language. In these instances, little translation might be required.

(4) Resources Available

IMLS is aware that its recipients may experience difficulties with resource allocation. Many of the organizations' overall budgets, and awards involved are quite small. The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipient must take to ensure meaningful access. 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 that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not providing an important service or benefit from, for instance, a health, education, economic, or safety perspective. Translation and interpretation costs are appropriately included in award budget requests.

This four-factor analysis necessarily implicates the "mix" of LEP services required. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Even those award recipients who serve very few LEP persons on an infrequent basis should use a balancing analysis to determine whether the importance of the service(s) provided and minimal costs make language assistance measures reasonable even in the case of limited and infrequent interactions with LEP persons. Recipients have substantial flexibility in determining the appropriate mix.

IV. Strategies for Ensuring Meaningful Access

Museums and libraries have a long history of interacting with people with varying language backgrounds and capabilities within the communities where they are located. The agency's goal is to continue to encourage these efforts and share practices so that other museums and libraries can benefit from other institutions' experiences.

The following are examples of language assistance strategies that are potentially useful for all recipients. These strategies incorporate a variety of options and methods for providing meaningful access to LEP beneficiaries and provide examples of how recipients should take each of the four factors discussed above into account when developing an LEP strategy. Not every option is necessary or appropriate for every recipient with respect to all of its programs and activities. Indeed, a language assistance plan need not be intricate; it may be as simple as being prepared to use a commercially available "language line" to obtain immediate interpreting services and/or having bilingual staff members available who are fluent in the most common non-English languages spoken in the area. Recipients should exercise the flexibility afforded under this Guidance to select those language assistance measures which have the greatest potential to address, at appropriate levels and in reasonable manners, the specific language needs of the LEP populations they serve.

Finally, the examples below are not intended to suggest that if services to LEP populations aren't legally required under Title VI and Title VI regulations, they should not be undertaken. Part of the way in which libraries and museums build communities is by cutting across barriers like language. A small investment in outreach to a linguistically diverse community may well result in a rich cultural exchange that benefits not only the LEP population, but also the library or museum and the community as a whole.

EXAMPLES:

- θ Identification of the languages that are likely to be encountered in, and the number of LEP persons that are likely to be affected by, the program. This information may be gathered through review of census and constituent data as well as data from school systems and community agencies and organizations;
- θ Posting signs in public areas in several languages, informing the public of its right to free interpreter services and inviting members of the public to identify themselves as persons needing language assistance;
- θ Use of "I speak" cards for public-contact personnel so that the public can easily identify staff language abilities;
- θ Employment of staff, bilingual in appropriate languages, in public contact positions;
- θ Contracts with interpreting services that can provide competent interpreters in a wide variety of languages in a timely manner;
- θ Formal arrangements with community groups for competent and timely interpreter services by community volunteers;
- θ An arrangement with a telephone language interpreter line for on-demand service;
- θ Translations of application forms, instructional, informational and other key documents into appropriate non-English languages and provide oral interpreter assistance with documents for those persons whose language does not exist in written form;
- θ 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 to or from LEP persons;
- θ Notice to and training of all staff, particularly public contact staff, with respect to the recipient's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner;
- θ Insertion of notices, in appropriate languages, about access to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff; and

θ Notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.

In identifying language assistance measures, recipients should avoid relying on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities. However, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. But where a balancing of the four factors indicate that recipient-provided language assistance is warranted, the recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

The use of family and friends as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided language assistance is not necessary. An example of this might be a bookstore or cafeteria associated with a library or archive. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for technical accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or other informal ad hoc interpreters may be appropriate.

As noted throughout this guidance, IMLS award recipients have a great deal of flexibility in addressing the needs of their constituents with limited English skills. That flexibility does not diminish, and should not be used to minimize, the obligation that those needs be addressed. IMLS recipients should apply the four factors outlined above to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons. By balancing the number or proportion of people with limited English skills served, the frequency of their contact with the program, the importance and nature of the program, and the resources available, IMLS awardees' Title VI obligations in many cases will be satisfied by making available oral language assistance or commissioning translations on an as-requested and as-needed basis. There are many circumstances where, after an application and balancing of the four factors noted above, Title VI would not require translation. For example, Title VI does not require a library to translate its collections, but it does require the implementation of appropriate language assistance measures to permit an otherwise eligible LEP person to apply for a library card and potentially to access appropriate-language materials through inter-library loans or other reasonable methods. The IMLS views this policy guidance as providing sufficient flexibility to allow the IMLS to continue to fund language-dependent programs in both English and other languages without requiring translation that would be inconsistent with the nature of the program. Recipients should consult Section VI of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR at 41461-41464 or <http://www.lep.gov>, for additional clarification on the standards applicable to

assessing interpreter and translator competence, and for determining when translations of documents vital to accessing program benefits should be undertaken.

The key to ensuring meaningful access for people with limited English skills is effective communication. A library or museum can ensure effective communication by developing and implementing a comprehensive language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP constituents. Such a program should also provide for a range of oral language assistance options, notice to LEP persons of the right to language assistance, periodic training of staff, monitoring of the program and, in certain circumstances, the translation of written materials.

Each recipient should, based on its own volume and frequency of contact with LEP clients and its own available resources, adopt a procedure for the resolution of complaints regarding the provision of language assistance and for notifying the public of their right to and how to file a complaint under Title VI. State recipients, who will frequently serve large numbers of LEP individuals, may consider appointing a senior level employee to coordinate the language assistance program and to ensure that there is regular monitoring of the program.

V. Compliance and Enforcement

Executive Order 13166 requires that each federal department or agency extending federal financial assistance subject to Title VI issue separate guidance implementing uniform Title VI compliance standards with respect to LEP persons. Where recipients of federal financial assistance from IMLS also receive assistance from one or more other federal departments or agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans for IMLS. IMLS, in discharging its compliance and enforcement obligations under Title VI, looks to analyses performed and plans developed in response to similar detailed LEP guidance issued by other federal agencies. Recipients may rely upon guidance issued by those agencies.

IMLS's regulations implementing Title VI contain compliance and enforcement provisions to ensure that a recipient's policies and practices overcome barriers resulting from language differences that would deny LEP persons an equal opportunity to participate in and access to programs, services and benefits offered by IMLS. See 45 CFR, Part 1110. The agency will ensure that its recipient entities fulfill their responsibilities to LEP persons through the procedures provided for in the Title VI regulations.

The Title VI regulations provide that IMLS will investigate (or contact its State recipient of funds to investigate, if appropriate) whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, IMLS will inform the recipient in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, IMLS must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If

the matter cannot be resolved informally, the IMLS will secure compliance through (a) the suspension or termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to the Department of Justice for injunctive relief or other enforcement proceedings, or (c) any other means authorized by federal, state, or local law.

Under the Title VI regulations, the IMLS 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. IMLS 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, IMLS will propose reasonable timetables for achieving compliance and will consult with and assist recipients in exploring cost effective ways of coming into compliance.

In determining a recipient's compliance with Title VI, the IMLS's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity 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 the IMLS as evidence of a recipient's willingness to comply voluntarily with its Title VI obligations. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a recipient/covered entity's program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services (such as timely effective oral interpretation of vital documents), IMLS will not find the recipient/covered entity in noncompliance.

If you have any questions related to this policy, please contact the IMLS Office of the General Counsel.