

**SIDE-BY-SIDE: COMPARISON OF HHS AUG 2000/FEB 2002 LEP GUIDANCE TO DOJ JUNE 2002 AND HHS AUG 2003 GUIDANCE**

As required by a DOJ memorandum (July 8, 2002) to increase consistency across the federal government with regard to the existence of LEP policies, HHS has reissued its LEP guidance utilizing a template guidance developed by DOJ.<sup>1</sup> The DOJ guidance was designed to be the model, and “Any deviations from the standards presented in the guidance will require. . . a written justification for those modifications, and an explanation of why those modifications are consistent with the law and with the need to ensure that recipients are not subject to differing standards.”<sup>2</sup> In a number of situations, unfortunately, the new HHS’ Guidance differs from DOJ’s, in ways that may diminish language access, without providing a justification for the variance. The key points with regard to which this occurs include:

- States that some providers may not have to provide any language access – “After applying the above four-factor analysis, a recipient may conclude that different language measures are sufficient for the different types of programs or activities in which it engages, or, in fact, that in certain circumstances, recipient-provided language services are not necessary” (*see How Does Recipient Determine Extent of Obligation to Provide LEP Services*);
- Allows referral from one federal fund recipient to another “pursuant to an arrangement, where there is no discriminatory intent, the purpose is beneficial and will result in better access” (*see Applying the 4 Factors*);
- Fails to specify, despite its inclusion in DOJ’s guidance, that recipients should ensure competency of the language service provider, no matter which of the strategies of interpretation are used (*see Oral Interpretation*);
- Diminishes language from DOJ’s guidance regarding assessing appropriateness and competency when using family members and friends as interpreters (*see Use of Family Members or Friends as Interpreter*);
- Reduces expectations for development of a language access plan (*see Elements of an Effective Plan on Language Assistance – Training of Staff, Providing Notice to LEP Persons, Monitoring and Updating LEP Plan*);

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<b>Legal Background</b>	<p><b>Background</b> – examines long history of Title VI cases – <i>Lau v. Nichols</i>, <i>Yu Cong Eng et.al. v. Trinidad</i>, <i>Collector of Internal Revenue; Gutierrez v. Municipal Court of SE Judicial District; Garcia v. Gloor</i>; <i>US v. Uvalde Consolidated Independent School District</i></p> <p><i>Lau v. Nichols</i> – action required because school district failed to provide English lang. instruction to Chinese LEP students</p>	<p><b>Background</b> – shortens legal background discussion</p> <p><i>Lau v. Nichols</i> – a San Francisco school district that had a <i>significant number</i> of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs.</p>	Same as DOJ

<sup>1</sup> Both the HHS and DOJ guidances are available at [www.lep.gov/govt.html](http://www.lep.gov/govt.html). The HHS guidance was published in the Federal Register on August 8, 2003 and is also available at <http://www.hhs.gov/ocr/lep/>.

<sup>2</sup> Memorandum from Ralph F. Boyd Jr., Assistant Attorney General, to Heads of Federal Agencies, General Counsels, and Civil Rights Directors, July 8, 2002, *available at* <http://www.usdoj.gov/crt/cor/lep/BoydJul82002.htm>.

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<b>Who is Covered</b>	Covered entities include: <ul style="list-style-type: none"> <li>any state/local agency, private institution or organization, any public or private individual that</li> <li>operates, provides or engages in health or social service programs and activities and that</li> <li>receives federal financial assistance from HHS directly or through another recipient</li> </ul>	Department of Justice (DOJ) regulations require all recipients of Federal financial assistance from DOJ to provide meaningful access to LEP persons  Specifies DOJ covered entities  <b>English-only laws</b> – recipients continue to be subject to federal non-discrim req.	Specifically mentions exemption for Medicare Part B physicians  <b>English-only laws</b> – same as DOJ
<b>Who is LEP</b>	Individual who cannot speak, read, write or understand the English language at a level that permits them to interact effectively with health care providers and social service agencies	Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English <i>can</i> be limited English proficient, or “LEP,” entitled to language assistance with respect to a particular type of service, benefit, or encounter.  Lists examples of populations likely to include LEP persons who are encountered and/or served by DOJ recipients and should be considered when planning language services	Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English <i>may</i> be limited English proficient, or “LEP,” <i>may be</i> entitled to language assistance with respect to a particular type of service, benefit, or encounter.  Provides examples of populations likely to include LEP – <ul style="list-style-type: none"> <li>persons seeking TANF and other social services;</li> <li>persons seeking health and health-related services;</li> <li>community members seeking to participate in health promotion or awareness activities;</li> <li>persons who encounter the public health system;</li> <li>parents/legal guardians of minors eligible for coverage concerning such programs</li> </ul>
<b>How Does Recipient Determine Extent of Obligation to Provide LEP Services</b>	To ensure compliance with Title VI, recipients <i>must</i> take steps to ensure LEP persons eligible for their programs/services have meaningful access  Most important step – provide language assistance necessary to ensure access at no cost to LEP person  <b>7 factors:</b> <ul style="list-style-type: none"> <li>size of entity</li> <li>size of eligible LEP population it serves</li> <li>nature of program/service</li> <li>objectives of program</li> <li>total resources available to the recipient</li> <li>frequency with which particular languages</li> </ul>	As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance: <ul style="list-style-type: none"> <li>ensure that Federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in Federally-assisted programs;</li> <li>achieve this goal while finding constructive methods to reduce the costs of LEP</li> </ul>	<b>4 Factors</b> – same as DOJ  <i>After conducting 4 factor test, a recipient may conclude that different language measures are sufficient for the different types of programs or activities in which it engages, or, in fact, that in certain circumstances, recipient-provided language services are not necessary</i>

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	<p>are encountered</p> <ul style="list-style-type: none"> <li>frequency with which LEP persons come into contact w/ program</li> </ul> <p>Steps taken by a recipient <i>must</i> ensure that LEP person is given adequate information, is able to understand the benefits/services available, and is able to receive those for which he/she is eligible</p> <p>Recipient must also ensure that LEP person can effectively communicate the relevant circumstances of his/her situation to service provider</p>	<p>requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.</p> <p><b>4 Factors</b> – recipients <i>are required</i> to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:</p> <ul style="list-style-type: none"> <li>the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;</li> <li>the frequency with which LEP individuals come in contact with the program;</li> <li>the nature and importance of the program, activity, or service provided by the program to people's lives; and</li> <li>the resources available to the grantee/recipient and costs.</li> </ul> <p><i>After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages.</i></p> <ul style="list-style-type: none"> <li>e.g. – some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance.</li> </ul>	
<ul style="list-style-type: none"> <li><b>Number of LEP</b></li> </ul>	<p>Persons likely to be served or likely to be directly affected by a recipient's program are those who are in the geo area that has been approved by a federal grant agency and who either are eligible for benefits/services or otherwise might be directly affected by an entity's contact</p> <p>Where no service area has been approved, OCR will consider the relevant service area for determining persons eligible to be served as that designated/approved by the state/local agency or designated by the recipient itself, provided that these designations do not discriminatorily exclude</p>	<p>Number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed.</p> <p>Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations.</p>	<p>Same as DOJ but specifies <i>where a particular office of the county/city health dept. serves a large LEP population, the appropriate service area is most likely that office, and not the entire population served by the department</i></p>

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<ul style="list-style-type: none"> <li><b>Frequency of Contact</b></li> </ul>	<p>certain populations</p>	<p>Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance.</p> <p>The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed.</p> <p>The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts.</p> <p>Even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question.</p> <ul style="list-style-type: none"> <li>plan need not be intricate; it may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services.</li> <li><i>in applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.</i></li> </ul>	<ul style="list-style-type: none"> <li>Same as DOJ</li> </ul>
<ul style="list-style-type: none"> <li><b>Nature and Importance of Recipient's Program, Activity, Service</b></li> </ul>		<p>The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ, for example, from those to provide bicycle safety courses or recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have</p>	<p>A recipient needs to determine whether the denial/delay of access to services/info could have serious or even life-threatening implications;</p> <ul style="list-style-type: none"> <li>recipient should consider the importance and urgency – such as communication of info re: emergency surgery and obtaining informed consent prior to it</li> <li>if service is important but not urgent – such as communication about and obtaining informed consent for elective surgery where delay will not have any adverse impact on patient's</li> </ul>

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		<p>serious or even life-threatening implications for the LEP individual.</p> <p><b>Mandatory Activities</b> – decisions by a Federal, State, or local entity to make an activity compulsory can serve as strong evidence of the program's importance.</p>	<p>health – it is more likely that language services are needed but can be delayed for a reasonable period of time</p> <ul style="list-style-type: none"> <li>if neither important nor urgent – such as general public tour of facility – more likely that language services would not be needed</li> </ul> <p>The obligation to communicate <i>rights</i> to a person whose benefits are being terminated or to provide medical services to an ill LEP patient differ, for example, from those to provide medical care for a healthy LEP person or to provide recreational programming</p> <p><b>Mandatory Activities</b> – same as DOJ</p>
<ul style="list-style-type: none"> <li><b>Resources Available and Costs</b></li> </ul>		<p><b>Resources and Costs</b> – a recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take</p> <ul style="list-style-type: none"> <li>smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets</li> <li><i>in addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits</i></li> <li>large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.</li> </ul>	<p><b>Resources and Costs</b> – same as DOJ</p>
<p><b>Applying the 4 Factors</b></p>	<p>No "one-size-fits-all" solution for compliance</p> <p>OCR makes its assessment of 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</p>	<p><b>Correct mix</b> – should be based on what is both necessary and reasonable in light of 4 factor analysis</p>	<p><i>In some cases language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient – or to another recipient – for language assistance. In certain circumstances, pursuant to an arrangement, where there is no discriminatory intent, the purpose is beneficial and will result in better access, it may be appropriate</i></p>

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			<p><i>for a recipient to refer the LEP beneficiary to another recipient</i></p> <p><b>Correct mix</b> – same as DOJ</p> <ul style="list-style-type: none"> <li>• general examples – <ul style="list-style-type: none"> <li>○ high need/low cost – it may be appropriate to hire bilingual staff/staff interpreters;</li> <li>○ low importance/high costs – may not need to provide services;</li> <li>○ somewhere in between – may be appropriate to use contract interpreters or telephone language lines</li> </ul> </li> <li>• example – dentist in almost exclusively English-speaking neighborhood who has rarely encountered LEP patient and has never encountered a Hmong-speaking patient may not need, pursuant to T.VI to provide language services for an LEP Hmong patient who comes in for a dental cleaning</li> </ul>
<p><b>Competency of Interpreters</b></p>	<p>In order to provide effective services to LEP persons, a recipient must ensure that it uses persons who are competent to provide interpreter services. Competence does not necessarily mean formal certification though it is helpful. On the other hand, competency requires more than self-identification as bilingual. The competency requirement 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 specialized terms, or concepts peculiar to the recipient’s program, sensitivity to the LEP persons’ 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 demonstrate competency as interpreters.</p>	<p>Regardless of the type of language service provided, quality and accuracy of those services <i>can be</i> critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.</p> <p><b>Language abilities</b> – being bilingual does not necessarily mean that a person has the ability to interpret.</p> <p><b>Certification</b> – competency does not necessarily mean formal certification</p> <p><i>When using interpreters, recipients should ensure that they:</i></p> <ul style="list-style-type: none"> <li>• demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting;</li> <li>• have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of</li> </ul>	<p>Regardless of the type of language service provided, quality and accuracy of those services <i>is</i> critical to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.</p> <p><b>Language abilities</b> – recipients should be aware that competency requires more than self-identification as bilingual</p> <p><b>Certification</b> – same as DOJ</p> <p><i>Recipients should take reasonable steps, given the circumstances, to assess whether the interpreters:</i></p> <ul style="list-style-type: none"> <li>• demonstrate proficiently in and ability to communicate info accurately in both languages and identify/employ the appropriate mode of interpreting</li> <li>• <i>to the extent necessary</i>, have knowledge in both languages of any specialized terms or concepts and of any particularized vocabulary/phraseology used by LEP person</li> <li>• understand and follow confidentiality and</li> </ul>

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		<p>any particularized vocabulary and phraseology used by the LEP person;</p> <ul style="list-style-type: none"> <li>○ <b>regionalisms</b> – many languages have “regionalisms,” or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. <i>In addition, because there may be languages which do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation.</i> The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.</li> <li>• understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.</li> <li>• understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).</li> </ul> <p>Some recipients, such as courts, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms and custodial or other police interrogations, the use of certified interpreters is strongly encouraged. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.</p> <ul style="list-style-type: none"> <li>• for a language in which no formal</li> </ul>	<p>impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to extent their position requires</p> <ul style="list-style-type: none"> <li>• <b>regionalisms</b> – included in footnote 8, deletes reference to courtroom and legal terms</li> <li>• understand and adhere to their role as interpreters without deviating into other roles (i.e. counselor or legal advisor) where such deviation would be inappropriate</li> </ul>

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		<p>accreditation or certification currently exists, courts and law enforcement agencies should consider a formal process for establishing the credentials of the interpreter.</p> <p><b>Quality and Accuracy</b> – while quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required.</p> <ul style="list-style-type: none"> <li>the quality and accuracy of language services in a prison hospital emergency room, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.</li> </ul> <p><b>Timeliness</b> – when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for “timely” applicable to all types of interactions at all times by all types of recipients,</p> <ul style="list-style-type: none"> <li>one clear guide – language assistance should be provided at a time and place that avoids the effective denial of the service at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person.</li> <li>for example, when the timeliness of services is important, such as with certain activities of DOJ recipients providing law enforcement, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP</li> </ul>	<p><b>Quality and Accuracy</b> – same as DOJ but with different example:</p> <ul style="list-style-type: none"> <li>quality/accuracy in hospital ER, e.g. should be as high as possible but quality/accuracy in other circumstances need not meet the same exacting standards</li> </ul> <p><b>Timeliness</b> – same as DOJ with different example</p> <ul style="list-style-type: none"> <li>e.g. – language assistance could likely not be delayed in medical emergency or when time period in which an individual has to exercise certain rights is about to expire</li> <li>but – when LEP seeking “routine medical exam” or seeks to apply for certain benefits and has an ample period of time to apply, a recipient could likely delay the provision of language services by requesting LEP person to schedule an appt. at a time when recipient would be able to have an appropriate interpreter available</li> </ul>

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		<p>persons that would be significantly greater than those for English proficient persons.</p> <ul style="list-style-type: none"> <li>conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.</li> </ul>	
<p><b>Oral Interpretation</b></p>	<p>Recipients should consider some or all of the following options: bilingual staff, staff interpreters, contracting for interpreters, using telephone interpreter lines, and arranging formally for the services of volunteer interpreters.</p> <p>Telephone interpreter lines – may be useful as a supplemental system or when encountering a language it cannot otherwise accommodate; <i>it is important that this not be offered as the only language assistance option except where other language assistance options are unavailable (e.g. in a rural clinic visited by an LEP patient who speaks a language that is not usually encountered in the area)</i></p>	<p><i>When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used.</i> Competency requires more than self-identification as bilingual.</p> <p>Lists various methods and descriptions of providing interpretation –bilingual staff, staff interpreters, contracting for interpreters, using telephone interpreter lines, and using community volunteers.</p> <p><b>Bilingual staff</b> – may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of a courtroom or administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter); effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.</p>	<p>Competency requires more than self-identification as bilingual</p> <p>Recipients should consider some or all of the following options – bilingual staff, staff interpreters, contracting for interpreters, using telephone interpreter lines, and using community volunteers (includes descriptions)</p> <p><b>Bilingual staff</b> – same as DOJ</p>
<p><b>Use of Family Members or Friends as Interpreters</b></p>	<p>A recipient may expose itself to liability under T.VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters as this could compromise the effectiveness of the service; use could result in breach of confidentiality or reluctance to reveal personal info critical to the situation</p> <p>In a medical setting, this reluctance can have serious, even life threatening consequences</p>	<p>Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, other inmate, other detainee) in place of or as a supplement to the free language services expressly offered by the</p>	<p>Some LEP may feel more comfortable when a trusted family member/friend acts as interpreter</p> <p>Recipient should make sure person is aware that he/she has the <i>option</i> of having the recipient provide an interpreter w/out charge</p> <p>Although recipients should not plan to rely on family members/friends or other informal interpreters, to provide meaningful access, the</p>

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	<p>In addition, family members/friends are usually not competent to act as interpreters since they are often insufficiently proficient in both languages, unskilled in interpretation and unfamiliar with specialized terminology</p> <p>If after a recipient informs an LEP person of the <i>right</i> to free interpretation and the person declines and requests to use a family member/friend, the recipient may use the family member/friend if it would not compromise the effectiveness of the service or violate the LEP person's confidentiality</p> <ul style="list-style-type: none"> <li>• <i>the recipient should document the offer and declination in the person's file</i></li> <li>• <i>even if person elects to use family member/friend, the recipient should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation</i></li> </ul>	<p>recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other inmate acts as an interpreter.</p> <ul style="list-style-type: none"> <li>• <b>emergency situations</b> – in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary; however, with proper planning and implementation, recipients should be able to avoid most such situations</li> <li>• <b>appropriateness</b> – recipients, however, <i>should take special care</i> to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation;</li> <li>• <b>competency</b> – in <i>many</i> circumstances, family members (especially children), friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise;</li> <li>• <b>record keeping</b> – if the LEP person voluntarily chooses to provide his or her own interpreter, a recipient <i>should consider</i> whether a record of that choice and of the recipient's offer of assistance is appropriate</li> <li>• <b>children</b> – <i>extra caution should be exercised when the LEP person chooses to use a minor as the interpreter; while the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters; 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.</i></li> </ul>	<p>recipient should, except as noted below, respect an LEP person's desire to use interpreter of his/her own choosing</p> <ul style="list-style-type: none"> <li>• <b>threshold</b> – a recipient may not require an LEP person to use a family member/friend</li> <li>• <b>emergency situations</b> – emergency circumstances which are not reasonably foreseeable – recipient may not be able to offer free language services and temporary use of family members/friends may be necessary; however, with proper planning and implementation, recipients should be able to avoid most such situations</li> <li>• <b>appropriateness</b> – recipient <i>may need to consider</i> issues of competences, appropriateness, conflicts of interest, and confidentiality in determining whether it should respect LEP person's desire to use own interpreter</li> <li>• <b>reasonable steps</b> – recipients <i>should take reasonable steps</i> to ascertain not only competency but also whether family member/friend is appropriate in light of circumstances and subject matter of the program including protection of recipient's own admission or enforcement interest in accurate interpretation</li> <li>• <b>competency</b> – in <i>some</i> circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations</li> <li>• <b>record keeping</b> – same as DOJ</li> <li>• <b>children</b> – same as DOJ</li> </ul>
Competency of	Quality and Accuracy – it is important to ensure	Quality and Accuracy – while quality and	Quality and Accuracy – same as DOJ with

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<b>Translators</b>	<p>that the translators be well qualified</p> <p>It is important to note that in some circumstances verbatim translation may not accurately or appropriately convey the substance of what is contained in the materials</p> <ul style="list-style-type: none"> <li>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</li> </ul>	<p>accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required</p> <ul style="list-style-type: none"> <li><b>example</b> – documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., information or documents of DOJ recipients regarding certain law enforcement, health, and safety services and certain legal rights).</li> <li><b>permanency</b> – the permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.</li> </ul> <p><b>Back Translation</b> – Competence can often be ensured by having a second, independent translator “check” the work of the primary translator; alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed; this is called “back translation.”</p> <p><b>Literacy Level</b> – Translators should understand the expected reading level of the audience, and where appropriate, have fundamental knowledge about the target language group’s vocabulary and phraseology</p>	<p>slightly different example</p> <ul style="list-style-type: none"> <li><b>example</b> – for nonvital docs w/ no legal or other consequence for LEP persons who rely on them, a recipient may use translators that are less skilled than those it uses to translate vital docs w/ legal or other info upon which reliance has important consequences</li> <li><b>permanency</b> – the permanent nature of written translations, however, imposes additional responsibility on the recipient to <i>take reasonable steps to determine</i> that the quality and accuracy of the translations permit meaningful access by LEP persons.</li> </ul> <p><b>Back Translation</b> – same as DOJ</p> <p><b>Literacy Level</b> – same as DOJ</p>
<b>What Documents Should be Translated</b>	<p><b>Translation plan</b> – recipients <i>must</i> 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 affected by the program needs services or information in a language other than English</p> <p><b>Vital documents</b> – it is particularly important to ensure that vital docs (such as cover letter</p>	<p><b>Translation plan</b> – after 4 factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.</p> <p><b>Vital documents</b> – may depend upon the importance of the program,</p>	<p><b>Translation plan</b> – same as DOJ</p> <p><b>Vital documents</b> – Same as DOJ</p> <ul style="list-style-type: none"> <li>e.g. – adds written notices of eligibility criteria, actions affecting parental custody or child support</li> <li><i>nonvital docs could include – hospital menus; third party documents, forms, pamphlets distributed by recipient as a public service;</i></li> </ul>

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	<p>outlining conditions of participation in Medicaid managed care program), notices pertaining to reduction/denial or termination of services, of right to appeal such actions or that require response from beneficiaries, notices advising LEP persons of availability of free language assistance, and other outreach materials be translated into the non-English languages of each regularly encountered LEP group eligible to be served or likely to be directly affected</p> <ul style="list-style-type: none"> <li>OCR recognizes unique characteristics of each program and will collaborate w/ each HHS agency in determining which documents/information are deemed to be vital</li> <li>extent of obligation to provide translated materials will be on case-by-case basis taking into account all relevant circumstances</li> </ul> <p><b>Languages for translation</b> – OCR recognizes that recipients in a number of areas, particularly many large cities, regularly serve LEP persons from many different areas who speak dozens and sometimes over 100 different languages; it would be unduly burdensome to demand that recipients in these circumstances translate all written materials into dozens if not more than 100 languages; as a result, OCR will determine the extent of the recipient’s obligation to provide written translations of documents on a case-by-case basis, looking at the totality of the circumstances</p>	<p>information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.</p> <ul style="list-style-type: none"> <li>e.g. – consent and complaint forms; intake forms with the potential for important consequences; written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings; notices of disciplinary action; notices advising LEP persons of free language assistance; written tests that do not assess English language competency but test competency for a particular license, job, or skill for which knowing English is not required; applications to participate in a recipient's program or activity or to receive recipient benefits or services.</li> </ul> <p><b>Languages for translation</b> – distinction should be made b/t languages that are frequently encountered by a recipient and less commonly-encountered languages.</p> <ul style="list-style-type: none"> <li>well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time.</li> </ul>	<p><i>for a non-governmental recipient, gov't docs and forms; large docs such as enrollment handbooks (although vital info contained within may need to be translated); general info about the program intended for informational purposes only</i></p> <p><b>Languages for Translation</b> – same as DOJ</p>
<p><b>Safe Harbors</b></p>	<p>Translation of written materials, including vital documents, for each eligible LEP language group that constitutes 10 percent or 3,000, whichever is less, of the eligible population to be served;</p> <p>For LEP language groups that did not meet the above threshold, but constituted five percent or 1,000, whichever is less, of the population to be served, the recipient ensured that, at a minimum, vital documents are translated, with oral translation of other documents, if needed; and</p> <p>Notwithstanding the above, a recipient with fewer</p>	<p>The DOJ recipient provides written translations of “vital” documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.</p> <p>Translation of other documents, if needed, can be provided orally; or</p> <p>If there are fewer than 50 persons in a language group that reaches the five percent trigger above, the recipient does not translate vital written materials but provides written notice in</p>	<p>Same as DOJ</p> <p><i>Oral interpretation of documents may not substitute for translation of vital written documents</i></p>

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	<p>than 100 persons in a language group does not translate written materials but provides written notice in the primary language of the patient of the right to receive competent oral interpretation of written materials.</p>	<p>the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.</p>	
<p><b>Elements of an Effective Plan on Language Assistance</b></p>	<p><b>Elements of a plan</b> – the key to ensuring meaningful access for LEP persons is effective communication. In most cases, an agency or provider can assure effective communication by developing and implementing a language assistance program that addresses the following four elements:</p> <ul style="list-style-type: none"> <li>• <b>assessment</b> – of the language needs of the population to be served, as well as the needs of each LEP individual. This includes identifying the languages likely to be encountered, identifying and recording the language needs of each LEP patient, and identifying resources that will be needed.</li> <li>• <b>development of a comprehensive policy on language access</b> – to include the range of competent interpreter services and translated written materials available and to be used, notice to LEP persons, training of staff, and monitoring.</li> <li>• <b>training of staff</b> – to ensure an understanding of the policies and the ability to carry it out. This includes new employees and all employees in client contact positions.</li> <li>• <b>vigilant monitoring</b> – to provide regular oversight of the language assistance program. This should occur at least annually.</li> </ul>	<p>After completing the 4 factor analysis and <i>deciding what language assistance services are appropriate</i>, a recipient <i>should develop</i> an implementation plan to address the identified needs of the LEP populations they serve.</p> <ul style="list-style-type: none"> <li>• the development and maintenance of a periodically-updated written plan on language assistance for LEP persons (“LEP plan”) for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient’s managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services <ul style="list-style-type: none"> <li>○ despite these benefits, certain DOJ recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient’s program or activities.</li> <li>○ accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access.</li> <li>○ entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and</li> </ul> </li> </ul>	<p>If, after completing 4 factor analysis, a recipient determines it should provide language assistance services, a recipient <i>may</i> develop an implementation plan to address the identified needs of the LEP population it serves</p> <p><b>Elements of a Plan</b> – same as DOJ</p> <p>In addition to the 5 elements, effective plans set clear goals and establish management accountability</p> <ul style="list-style-type: none"> <li>• some recipients <i>may</i> also want to consider whether they should provide opportunities for community input and planning throughout the process</li> </ul>

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		<p>groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.</p> <p><b>Elements of a Plan</b> – the following 5 steps may be helpful in designing an LEP plan and are typically part of effective implementation plans:</p> <ul style="list-style-type: none"> <li>• identifying LEP individuals who need language assistance, using for example, language identification cards.</li> <li>• describing language assistance measures, such as the types of language services available, how staff can obtain these services; <i>how to respond to LEP callers; how to respond to written communications from LEP persons; how to respond to LEP individuals who have in-person contact with recipient staff; how to ensure competency of interpreters and translation services.</i></li> <li>• training staff to know about LEP policies and procedures and how to work effectively with in-person and telephone interpreters.</li> <li>• providing notice to LEP person about available language assistance services free of charge and how to obtain such services through, for example, posting signs in intake areas and other entry points, providing information in outreach brochures, working with community groups, using a telephone voice mail menu, providing notices in local non-English media sources, and making presentations in community settings.</li> <li>• monitoring and updating the LEP plan, considering changes in demographics, types of services, needs, and other factors.</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>Training of Staff</b></li> </ul>	<p>Another vital element in ensuring that its policies are following is a dissemination of policy to all employees likely to have contact w/ LEP persons and periodic training</p> <p><b>Training</b> – effective training ensures that employees are:</p>	<p>Staff should know their obligations to provide meaningful access to information and services for LEP persons.</p> <p><b>Training</b> – an effective LEP plan would likely include training to ensure that:</p> <ul style="list-style-type: none"> <li>• staff know about LEP policies and procedures.</li> </ul>	<p>An effective plan would <i>likely include</i> a process for identifying staff who need to be trained regarding the recipient’s LEP plan, a process for training them, and the identification of outcomes of the training.</p> <p><b>Training</b> – same as DOJ</p>

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	<ul style="list-style-type: none"> <li>knowledgeable and aware of LEP policies and procedures;</li> <li>are trained to work effectively with in-person and telephone interpreters; and</li> <li>understand the dynamics of interpretation b/t clients, providers and interpreters</li> </ul> <p><b>Orientation</b> – 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</p> <p>Effective training is one means of ensuring that there is not a gap b/t a recipient’s written policies and procedures and the actual practices of employees who are in the front lines interacting with LEP persons</p>	<ul style="list-style-type: none"> <li>staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.</li> </ul> <p><b>Orientation</b> – recipients <i>may</i> want to include this training as part of the orientation for new employees.</p> <p><b>Public Contact Positions</b> – it is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided.</p> <p>The more frequent the contact with LEP persons, the greater the need will be for in-depth training</p> <ul style="list-style-type: none"> <li>staff with little or no contact with LEP persons may only have to be aware of an LEP plan</li> <li>management staff, however, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.</li> </ul>	<p><b>Orientation</b> – same as DOJ</p> <p><b>Public Contact Positions</b> – it <i>may</i> be important to take reasonable steps to see to it that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided.</p> <p>The more frequent the contact w/ LEP persons, the greater the need will be for in-depth training</p> <ul style="list-style-type: none"> <li>staff with little or no contact may only have to be aware of an LEP plan</li> <li>management staff, however, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff</li> </ul>
<ul style="list-style-type: none"> <li><b>Providing Notice to LEP Persons</b></li> </ul>	<p>A vital part of a well-functioning compliance program includes having effective methods for notifying LEP persons regarding their <i>right</i> to language assistance and the availability of such assistance free of charge</p> <p><b>Examples of notification</b> – these methods include but are not limited to:</p> <ul style="list-style-type: none"> <li>use of language identification cards which allow LEP beneficiaries to identify their language needs to staff and for staff to identify the language needs of applicants/clients; to be effective, the cards must invite the LEP person to identify the language he/she speaks; this identification <i>must</i> be recorded in the LEP person’s file</li> <li>posting and maintaining signs in regularly encountered languages in waiting rooms, reception areas, and other initial points of</li> </ul>	<p>Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand.</p> <p><b>Examples of notification</b> – recipients may want to consider include:</p> <ul style="list-style-type: none"> <li>posting signs in intake areas and other entry points</li> <li>stating in outreach documents that language services are available</li> <li>working w/ community based organizations and other stakeholders to inform LEP individuals of the recipients’ services, including the availability of language services</li> </ul>	<p>It <i>may</i> be important for the recipient to let LEP persons know that services are available and free of charge. Recipients should provide this notice in a language LEP persons will understand.</p> <p><b>Examples of notification</b> – same as DOJ</p>

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	<p>entry</p> <ul style="list-style-type: none"> <li>translation of application forms and instructional, informational and other written materials; for LEP persons whose language does not exist in written form, assistance from an interpreter to explain the contents of the document;</li> <li>uniform procedures for timely and effective telephone communication b/t 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;</li> <li>inclusion of statements about the services available and the right to free language assistance services, in brochures, booklets outreach and recruitment information and other materials that are routinely disseminated to the public.</li> </ul>	<ul style="list-style-type: none"> <li>using a telephone voice mail menu</li> <li>including notices in local newspapers in languages other than English</li> <li>providing notices on non-English radio and television stations about the available language services and how to get them</li> <li>presentations and/or notices at schools and religious organizations</li> </ul>	
<ul style="list-style-type: none"> <li><b>Monitoring and Updating LEP Plan</b></li> </ul>	<p>It is also crucial for a recipient to monitor its language assistance program <i>at least annually</i> to assess:</p> <ul style="list-style-type: none"> <li>the current LEP makeup of its service area;</li> <li>the current communication needs of LEP applicants and clients;</li> <li>whether existing assistance is meeting the needs of such persons;</li> <li>whether staff is knowledgeable about policies and procedures and how to implement them; and</li> <li>whether sources of and arrangements for assistance are still current and viable.</li> </ul> <p>One element of an assessment is for a recipient to seek feedback from clients and advocates</p>	<p>Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees.</p> <p><b>Review</b> – recipients <i>may</i> want to consider assessing changes to:</p> <ul style="list-style-type: none"> <li>current LEP populations in the service area or affected/encountered</li> <li>frequency of encounters</li> <li>nature and importance of activities</li> <li>availability of resources, including technological advances and sources of additional resources, and the costs imposed</li> <li>whether existing assistance is meeting the needs of LEP persons</li> <li>whether staff knows and understands the LEP plan and how to implement it</li> <li>whether identified sources for assistance are still available and viable</li> </ul>	<p>An effective LEP plan <i>would likely include</i> a process for a recipient to monitor its implementation of its plan and for updating as necessary</p> <p><b>Review</b> – same as DOJ</p> <p><b>Goals</b> – in addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.</p>

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		<p><b>Goals</b> – in addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.</p>	
<p><b>Voluntary Compliance Effort</b></p>	<p>The recommendations outlined above are not intended to be exhaustive. Recipients have considerable flexibility in determining how to comply with their legal obligation and are not required to use all of the suggested methods and options listed</p> <ul style="list-style-type: none"> <li>• however, <i>recipients must establish and implement policies and procedures for providing language assistance sufficient to fulfill their T.VI obligations and provide LEP persons with meaningful access to services</i></li> </ul> <p>OCR will focus its compliance review efforts primarily on larger recipients such as hospitals, managed care organizations, state agencies, and social service organizations that have a significant number of percentage of LEP persons eligible to be served or likely to be directly affected</p> <ul style="list-style-type: none"> <li>• the fact that this is OCR’s focus does not mean that other recipients are relieved of their obligation under T.VI or will not be subject to review; in fact, OCR has a legal obligation to promptly investigate all complaints; however, smaller recipients – such as sole practitioners, those w/ more limited resources and those who serve small numbers of LEP persons on an infrequent basis – will have more flexibility in meeting their obligations to ensure meaningful access</li> </ul> <p>OCR’s primary concern in determining compliance is to ensure that a recipient’s policies/procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs; a recipient’s appropriate use of the methods and options discussed in this guidance will be viewed by OCR as evidence of its willingness to comply voluntarily w/ its T.VI</p>	<p>The goal is to achieve voluntary compliance.</p> <p>T.VI regs provide that DOJ will investigate whenever it receives a complaint, report, or other info that alleges or indicates possible noncompliance with T.VI</p> <p>While all recipients must work toward building systems that will ensure access for LEP individuals, DOJ acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally assisted programs and activities for LEP persons, DOJ will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOJ recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.</p>	<p>Same as DOJ with following additions</p> <p><i>OCR and HHS are committed to assisting recipients in complying with their obligations under T.VI</i></p> <p><i>HHS believes that on the whole, recipients genuinely desire to comply with their obligations but may lack knowledge of what is required of them or the resources that are available to them that would assist in meeting T.VI obligations</i></p>

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<b>Technical Assistance</b>	<p>obligation</p> <p>OCR has provided substantial technical assistance and will continue to be available to provide to any seeking to ensure that it operates an effective language assistance program</p> <p>In addition, during the investigation process, OCR is available to provide technical assistance to enable recipients to come into voluntary compliance</p>		<p>HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons; includes translated forms and vital documents, training and information about best practices, and grants and model demonstration funds for LEP services.</p> <p>HHS is committed to working with representatives of state and local health and social service agencies, organizations of such agencies, hospital associations, medial and dental associations and managed care organizations to identify and share model plans, examples of best practices, cost-saving approaches, and information on other available resources, and to mobilize these organizations, to educate their members on these matters</p> <p>HHS continues to explore how it can share with its recipients language assistance measures, resources, cost-containment approaches, and other information and knowledge developed with respect to its own federally conducted programs and activities, and welcomes suggestions and comments in this regard.</p>
<b>Promising Practices</b>	<p>Some recipients have found unique ways of providing interpreter services and reaching out to the community; examples include the following:</p> <ul style="list-style-type: none"> <li>• simultaneous translation;</li> <li>• language banks;</li> <li>• language support office – a state social services agency has established an “Office for Language Interpreter Services and Translation;”</li> <li>• multicultural delivery project – a county agency has established a “Multicultural Delivery Project” that is designed to find interpreters to help immigrants and other LEP persons to navigate the county health and social service systems.</li> <li>• pamphlets – a hospital has created pamphlets in several languages, entitled “While Awaiting</li> </ul>		N/A

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	<p>the Arrival of an Interpreter;” intended to facilitate basic communication between inpatients/outpatients and staff;</p> <ul style="list-style-type: none"> <li>• use of technology – some recipient/covered entities use their internet and/or intranet capabilities to store translated documents online;</li> <li>• telephone information lines – recipients have established telephone information lines in languages spoken by frequently encountered language groups to instruct callers, in the non-English languages, on how to leave a recorded message that will be answered by someone who speaks the caller's language;</li> <li>• signage and other outreach – recipients have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by posting signs and placards with this information in public places such as grocery stores, bus shelters and subway stations; putting notices in newspapers, and on radio and television stations that serve LEP groups; placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; and establishing information lines in appropriate languages.</li> </ul>		