

**ATTACHMENT 8:
LIMITED ENGLISH PROFICIENCY NEEDS ASSESSMENT GUIDANCE**

The County of Orange / OC Public Works (hereinafter referred to as “Recipient”), as a sub-recipient of Federal-aid funds from the United States Department of Transportation, is required to take reasonable steps to ensure meaningful access to its programs and activities by Limited English Proficiency (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:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the Recipient;
2. The frequency with which LEP individuals come in contact with the program, activity, or service;
3. The nature and importance of the program, activity, or service to people's lives; and
4. The resources available to the Recipient and costs.

The intent of this guidance is to suggest a balance that ensures meaningful access of LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofit organizations. After applying the above four-factor analysis to the various kinds of contacts a recipient has with the public, the Recipient may conclude that different language assistance measures are sufficient to ensure meaningful access to the programs, activities, and services it offers. For instance, some of the Recipient’s activities will have a greater impact or contact with LEP persons than others, and thus may require more in the way of language assistance. The flexibility that the Recipient has in addressing the needs of the LEP populations it serves does not diminish, and should not be used to minimize the obligation that those needs be addressed. Sub-recipients of Federal-aid funds from the United States Department of Transportation should apply the following four factors 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.

1. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

The greater the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected by" a recipient's programs or activities are those who are in fact, served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that is part of the recipient's service area. However; where, for instance, a motor vehicle office serves a large LEP population, the appropriate service area is that served by the office, and not the entire population served by the recipient. 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. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) whose English proficient or LEP minor children and dependents encounter the services of DOT recipients.

Recipients should first examine their prior experiences with LEP individuals and determine the breadth and scope of language services that are needed. In conducting this analysis, it is important to: Include language minority populations that are eligible beneficiaries of recipient’s

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programs, activities, or services but may be underserved because of existing language barriers; and consult additional data, for example, from the census, school systems and community organizations, and data from state and local governments, community agencies, school systems, religious organizations, and legal aid entities.

2. The Frequency With Which LEP Individuals Come in Contact With the Program Activity, or Service

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance, as the more frequent the contact, the more likely enhanced language services will be needed. 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. Recipients should also consider the frequency of different types of language contacts, as frequent contacts with Spanish and Vietnamese-speaking people who are LEP may require certain assistance in Spanish and Vietnamese, while less frequent contact with different language groups may suggest a different and/or less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. However, 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. This plan need not be intricate. It may be as simple as being prepared to use a commercial telephonic interpretation service to obtain immediate interpreter services. Additionally, in applying this standard, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

3. The Nature and Importance of the Program, Activity, or Service Provided by the Program

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 an LEP person who needs public transportation differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, state, or local entity to make an activity compulsory, such as requiring a driver to have a license, can serve as strong evidence of the importance of the program or activity.

4. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs imposed may have an impact on the nature of the steps it should take in providing meaningful access for LEP persons. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns.

Resource and cost issues, however, can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services

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among and between recipients, advocacy groups, affected populations, and Federal agencies. For example, the following practices may reduce resource and cost issues where appropriate:

- Training bilingual staff to act as interpreters and translators.
- Information sharing through industry groups.
- Telephonic and video conferencing interpretation services.
- Translating vital documents posted on Web sites.
- Pooling resources and standardizing documents to reduce translation needs.
- Using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs.
- Centralizing interpreter and translator services to achieve economies of scale.
- Formalized use of qualified community volunteers.

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.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. 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 for language assistance. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a motor vehicle department or an emergency hazardous material cleanup team in a largely Hispanic and Vietnamese neighborhoods may need immediate oral interpreters available and should give serious consideration to hiring bilingual staff (of course, many such departments have already made these arrangements). Additionally, providing public transportation access to LEP persons is crucial. An LEP person's inability to utilize effectively public transportation may adversely affect his or her ability to obtain health care, or education, or access to employment. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of an airport or train station, in which prearranged language services for the particular service may not be necessary. Regardless of the of language services provided, quality and accuracy of those services can be critical. Recipients have substantial flexibility in determining the appropriate mix.