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Irene Bueno

01/06/2000 02:31:27 PM

CIVIL RIGHTS —
LEP GUIDANCE

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc: Anna Richter/OPD/EOP@EOP
Subject: Guidance on Limited English Proficiency (LEP)

For the last few months, I have been working with Eddie Correia and DOJ on possible guidance to agencies on their requirements under Title VI of the Civil Rights Act to ensure LEP individuals access to programs that receive federal funding. We are trying to move this process along and would like to update you and get your guidance. The attached memo gives some background on this issue and proposed plan (attachment #1).

Briefly, DOJ has drafted guidance (see attachment #2) that will be circulated to federal agencies for review. We are considering recommending that an EO be issued to accompany the DOJ guidance directing the agencies to develop regulations consistent with the DOJ guidance and to direct federal agencies that directly provide or implement assistance and programs (eg. Social Security) to develop guidance. Attached is an outline of an EO (see attachment #3)

Please let me know if you would like to discuss or have any questions or concerns about this approach. Thanks.

Attachment #1= LEP background memo



LEPmemo010600.d

Attachment #2 = DOJ Draft Guidance



Lang1420.wpd

Attachment #3 = Draft Outline of the Executive Order



LEPExec. order -- Draft Outline-ibbcomments

- why now? what's the problem?
- what rules about this guidance?
- won't it be seen as a major new policy push, even if it's mostly codifying previous law (Laws)?
- do we want to be seen as doing something new?
- does an EO make this real?
- do we need an EO?
- ref of HHS memo?
- what documentation / complaint about the problem?

Initiative on Language Barriers

Attachment 1
Background on LEP
& Proposed Plan

Background

For the last several months, we have discussed a major initiative to break down language barriers for persons who are limited English proficient (LEP) and interact directly with the federal government or with organizations and institutions that receive federal funds. Taking steps to break down language barriers -- e.g., by providing interpreters, telephone language services, and translations of written documents -- would benefit millions of Americans who are not proficient in English. Moreover, there is clear legal precedent that recipients of federal funds are already required by Title VI of the Civil Rights Act to take steps to break down these barriers. DOJ issued guidance on written materials and HHS and ED have issued guidance documents in the past generally setting out guidance for complying with these requirements. The objective of our initiative is to provide guidance to clarify these requirements for all recipients of federal funds and to ensure that federal agencies themselves comply with the same standards.

While breaking down language barriers would provide a substantial benefit to many Americans, it also could present a significant burden for agencies and institutions. Thousands of entities receive federal funds, including health care providers, educational institutions, and state and local governments. The federal government itself serves thousands of persons every day who are limited English proficient. The question is how to formulate standards for breaking down language barriers that is in compliance current law and accomplishes the basic objective without making compliance impractical or overly burdensome.

Our Tentative Approach

Our tentative approach envisions three separate kinds of documents to be released simultaneously:

- 1) a DOJ guidance document that sets out the general requirements under Title VI;
- 2) an HHS guidance document that applies specifically to HHS grantees; and
- 2) an executive order that directs all other agencies to develop guidance documents for grantees as well as a plan for compliance by the agencies themselves.

This approach allows the DOJ guidance to be fairly general and provides an opportunity for each agency to evaluate the circumstances facing its grantee institutions. Agencies would also have the opportunity to consult with organizations and institutions that would be covered before issuing specific guidance. This approach has two potential disadvantages. First, individual agencies may be slow in developing their own guidance documents. Second, there will be some difficulty in ensuring that guidance documents issued by dozens of agencies are consistent. Nevertheless, we prefer a more general guidance document from DOJ in light of the difficulty of developing any single document that covers such a wide variety of situations.

DOJ Guidance

The draft DOJ guidance document sets out a “rule of reasonableness,” which takes into account a variety of considerations. The obligations of any entity covered by Title VI would vary depending on the number and proportion of persons served who are limited English proficient, the kinds of services that are furnished, the need for “on the spot” translation, the resources involved in providing certain language services, and other factors. Certain services, such as education and health care, are likely to trigger more demanding obligations than other less critical services. We anticipate some criticism of the DOJ guidance document on the grounds that the requirements are too burdensome, too vague or both. However, we believe we can respond to those objections by pointing to the process to be followed by each agency and the more specific guidance that will follow.

HHS Guidance

HHS has already drafted a specific guidance for its grantees and is nearing the completion of its consultation process. The HHS Guidance would establish standards for health care providers that receive federal funds, including public and private hospitals, clinics and in some cases individual providers. The guidance would also cover state and local governmental entities such as welfare offices, Head Start centers and other social service offices. HHS has already issued one guidance document on language barriers, which has prompted many health care institutions to hire interpreters and use a telephone language service. However, the new guidance is likely to receive more attention from the provider community because it would represent the first specific example of our language initiative.

Executive Order

We do not believe that we can ask recipients of federal funds to break down language barriers unless federal agencies that interact directly with the public meet the same standards. Federal Agencies that fall under this category include the Social Security Administration and the Immigration and Naturalization Service. Consequently, we envision an executive order that sets out general standards for agencies to meet and direct them to develop a plan for compliance. The order would also require agencies to develop their own Title VI guidance for grant recipients within 6 months of the issue of the general DOJ guidance. We are in the process of consulting with executive branch agencies in order to formulate an executive order that is realistic and achieves our basic goal.

Timing

DOJ has already circulated a number of drafts of a guidance document to agencies. We hope to have the DOJ and HHS guidance documents as well as the executive order ready for release by February 2000. The agencies would be directed to develop compliance plans within six months, or by August 2000.

DRAFT 1/04/2000 with ED comments redlined

Attachment 2

TO: Executive Agency Civil Rights Officers

FROM: Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

SUBJECT: Policy Guidance Document:
Enforcement of Title VI of the Civil Rights Act of 1964
❖ Discrimination Against National Origin Minority
Group Individuals Who Have Limited English Proficiency

This policy directive concerning the enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, et seq., is being issued pursuant to the authority granted by Executive Order No. 12250^{1/} and Department of Justice regulations.^{1/} It addresses the application to recipients of Federal financial assistance of Title VI's prohibition on national origin discrimination when information is provided only in English to persons who do not understand English.

^{1/} 42 U.S.C. § 2000d-1 note.

^{2/} 28 C.F.R. § 0.51.

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A federal aid recipient's failure to assure that people who are not proficient in English nonetheless can effectively participate in and benefit from programs and activities may constitute national origin discrimination prohibited by Title VI.

In order to assist Federal fund-granting agencies in ensuring that recipients of Federal financial assistance are complying with their responsibilities, this policy directive addresses the appropriate compliance standards. Agencies should utilize the standards set forth in this Policy Guidance Document to develop specific criteria applicable to review the programs and activities for which they offer financial assistance. The Department of Education^{1/} and the Department of Health and Human Services^{1/} already have established policies that govern some of the specific programs they administer in a manner consistent with Title VI and this Document.

BACKGROUND

Title VI of the Civil Rights Act of 1964 prohibits recipients of Federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. § 2000d, provides:

^{2/} Department of Education policies regarding limited English proficiency (LEP) children are reflected in three OCR policy documents: (1) the May 1970 memorandum to school districts, ❖ Identification of Discrimination and Denial of Services on the Basis of National Origin, ❖ (2) the December 3, 1985, guidance document, ❖ The Office for Civil Rights' Title VI Language Minority Compliance Procedures, ❖ and (3) the September 1991 memorandum, ❖ Policy Update on Schools Obligations Toward National Origin Minority Students with Limited-English Proficiency. ❖ ~~The Department of Education's positions concerning the provision of language assistance to LEP students were endorsed by Congress. See 20 U.S.C. § 7402(a)(15) (❖ the Federal Government, as exemplified by title VI of the Civil Rights Act of 1964 * * *, has a special and continuing obligation to ensure that States and local school districts take appropriate action to provide equal educational opportunities to children and youth of limited English proficiency❖).~~

^{4/} The January 29, 1998, Department of Health and Human Services (HHS) Guidance Memorandum entitled ❖ Title VI Prohibition Against National Origin Discrimination - Persons with Limited-English Proficiency❖ sets forth factors that should be considered in providing oral non-English services. This document can be found at the HHS website at www.hhs.gov/progorg/ocr/lepfinal.htm.

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No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The term "program or activity" is broadly defined. 42 U.S.C. § 2000d-4a.

Consistent with the model Title VI regulations drafted by a Presidential taskforce in 1964, virtually every executive agency has promulgated regulations to implement Title VI. These regulations prohibit recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" and "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin."

In Lau v. Nichols, 414 U.S. 563 (1974), the Supreme Court interpreted these provisions as requiring that a fund recipient take steps to ensure that language barriers did not exclude limited-English proficient (LEP) persons from effective participation in its programs. Lau involved a group of students of Chinese origin who did not speak English to whom the recipient provided the same services -- an education provided solely in English -- that it provided students who did speak English. The Court held that, under these circumstances, the school's practice violated the Title VI prohibition against discrimination on the basis of national origin. The Court observed that [i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program -- all earmarks of the discrimination banned by the Title VI regulations.^{5/} Courts have applied Lau both inside and outside the education context.^{6/}

^{5/} 414 U.S. at 568. Congress manifested its approval of the Lau decision requirements concerning the provision of meaningful education services by enacting provisions in the Education Amendments of 1974, Pub. L. No. 93-380, §§ 105, 204, 88 Stat. 503-512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401 et seq., which provided funds to assist school districts in providing language services. ~~to comply with Title VI and its regulations as interpreted in Lau.~~

^{6/} For cases outside the educational context, see, e.g.,

Link Between National Origin And Language

For the majority of people living in the United States, English is their native language or they have learned to speak and read enough English to function in day-to-day life. They are able to fully participate in federally assisted programs and activities even if written and oral communications are exclusively in the English language.

The same cannot be said for the remaining minority who have limited English proficiency. This group includes persons born in foreign countries, some children of immigrants born in the United States, and other non-English speakers born in the United States, including some Native Americans. Despite efforts to learn and master English, their English language proficiency may be limited for some time. Unless grant recipients take steps to respond to this difficulty, recipients effectively may deny those who do not speak, read, or understand English access to the benefits and services for which they qualify.

Many recipients of Federal financial assistance recognize that the failure to provide language assistance to such persons may deny them vital access to services and benefits. In some instances, a recipient's failure to remove language barriers is attributable to ignorance of the fact that some members of the community are unable to communicate in English, to a general attachment to the status quo, or to a lack of awareness of the obligation to address this obstacle.

Sandoval v. Hagan, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), affirmed, ___ F.3d ___, 1999 WL 1075102 (11th Cir. 1999); Pabon v. Levine, 70 F.R.D. 674 (S.D.N.Y. 1976); Mendoza v. Lavine, 412 F. Supp. 1105 (S.D.N.Y. 1976).

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In some cases, however, the failure to address language barriers may not be simply an oversight, but rather may be attributable, at least in part, to invidious discrimination on the basis of national origin and race. While there is not always a direct relationship between an individual's language and national origin, often language does serve as an identifier of national origin.^{1/} The same sort of prejudice and xenophobia that may be at the root of discrimination against persons from other nations may be triggered when a person speaks a language other than English.

Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility. . . . It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.^{2/}

^{1/} As the Supreme Court observed, "[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond. ❧ Hernandez v. New York, 500 U.S. 352, 370 (1991) (plurality opinion).

^{2/} Id. at 371 (plurality opinion).

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Title VI itself prohibits only intentional discrimination on the basis of national origin.^{9/} But Congress intended that the agencies charged with promulgating regulations to effectuate Title VI would have authority to extend the prohibition to those actions and inactions that were most likely to be rooted in invidious discrimination.^{10/} The legislative history of Title VI refers to the provision's broader prophylactic purposes ~~is~~ not just to prohibit discrimination, but to "prevent," "preclude," "end," or "get away from" discrimination; to "insure" or "make sure" that discrimination does not occur; to avoid the use of funds to "perpetuate" or "cause" discrimination; and to prevent the use of funds in a way that has the unjustified effect of excluding persons, or denying them benefits, based on their race, color, or national origin.^{11/} For this reason, the Supreme Court

^{9/} Alexander v. Choate, 469 U.S. 387, 293 (1985).

^{10/} Id. at 293-294.

^{11/} See, e.g., Civil Rights: Hearings before the House Comm. On the Judiciary, 88th Cong., 1st Sess. 2683-2684, 2774 (1963);

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Civil Rights: Hearings before the House Comm. On Rules, 88th
Cong., 2d Sess. 94, 321, 330, 336, 343, 346-348, 422 (1964);
Civil Rights - the President's Program, 1963: Hearings before the

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has consistently upheld agency regulations prohibiting unjustified discriminatory effects.^{12/}

Senate Comm. on the Judiciary, 88th Cong., 1st Sess. 328, 330, 397-403, 413 (1963); 110 Cong. Rec. 1519-1520, 1527-1528 (Rep. Celler), 1542 (Rep. Lindsay), 1599 (Rep. Minish), 1613 (Rep. Celler), 1629 (Rep. Halpern), 1677 (Rep. Celler), 2595 (Rep. Donahue), 6562 (Sen. Kuchel), 7065.

^{12/} Alexander v. Choate, 469 U.S. at 293-294; Guardians Ass'n v.

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Civil Serv. Comm'n, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642-645 (Stevens, Brennan, Blackmun, JJ.); Lau v. Nichols, 414 U.S. at 568; id. at 571 (Stewart, J., concurring in result). In a July 24, 1994, memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning "Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964," the Attorney General stated that each agency "should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs."

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Because the effect of a language barrier on a person is the same regardless of the intent of the fund recipient, the Supreme Court determined in Lau that a recipient's failure to take affirmative steps to provide "meaningful opportunity" for LEP individuals to participate in its programs and activities violates the recipient's obligations under Title VI and its regulations. The Department of Justice has consistently adhered to that view.^{13/}

ALL RECIPIENTS MUST TAKE REASONABLE STEPS TO PROVIDE MEANINGFUL ACCESS

Recipients who fail to provide services to LEP applicants and beneficiaries in their federally assisted programs and activities may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its regulations require recipients to take reasonable steps to ensure "meaningful" access to the information and services they provide. What constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the recipient.

^{13/} The Department's position with regard to written language assistance is articulated in 28 C.F.R. § 42.402(d)(1), as part of our "Coordination of Enforcement of Non-discrimination in Federally Assisted Programs," 28 C.F.R. Subpt. F, issued in 1976, which, by its terms, "govern[s] the respective obligations of Federal agencies regarding enforcement of title VI." 28 C.F.R. § 42.401. It implements the basic prohibitions on discriminatory conduct first set forth in the model Title VI regulations and then incorporated in each agency's Title VI regulations, in particular the prohibitions cited by the Supreme Court in Lau.

1) Number of LEP Individuals

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. However, a factor in determining the reasonableness of a recipient's efforts is the number of people who will be excluded from the program or activity absent efforts to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year will be different than those expected from a recipient that serves several LEP persons each day. But even those who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are possible and if so, have a plan of what to do if a LEP individual seeks service under the program in question. This plan need not be intricate; it may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

2) Frequency of Contact with the Program

Frequency of contacts between the program or activity and LEP individuals is another factor to be weighed. For example, if LEP individuals must access the assisted program on a daily basis, e.g., as they must in attending elementary or secondary school, a recipient has greater duties than if program contact is unpredictable or infrequent.

3) Importance and Nature of the Program

The importance of the recipient's program to beneficiaries will affect the determination of what is reasonable. More affirmative steps must be taken in programs where the denial of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted zoo or theater. In assessing the effect of denying access, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. That the government makes an activity compulsory, such as elementary and secondary school attendance or medical inoculations, is strong evidence of the program's importance.

4) Resources Available

The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources

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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, and/or where the program is not crucial to an individual's day-to-day existence. Claims of limited resources from large entities will need to be well-substantiated.^{14/}

^{14/} Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, see Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1975)), or there is another "substantial legitimate justification for the challenged practice." Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1407 (11th Cir. 1993). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are "consistent with business necessity" and there is no "alternative employment practice" that is equally effective. 42 U.S.C. § 2000e-2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. Alexander v. Choate, 469 U.S. at 301. Thus, in situations where all of the factors identified in the text are at their nadir, it may be "reasonable" to take no affirmative steps

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to provide further access.

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Written vs. Oral Language Services

In balancing the factors discussed above to determine what reasonable steps must be taken by fund recipients to provide meaningful access to each LEP individual, agencies should particularly address the appropriate mix of written and oral language assistance. Which documents must be translated, when oral translation is necessary, and whether such services must be immediately available will depend upon the factors previously mentioned. Recipients often communicate with the public in writing, either on paper or over the Internet, and written translations are a highly effective way of communicating with large numbers of people who do not speak, read or understand English. While the Department of Justice's Coordination Regulation, 28 C.F.R. § 42.405(d)(1), expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations. Oral communication between recipients and program beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program" in the same manner as persons who speak English.

In some cases, "meaningful opportunity" to benefit from the service requires the recipient to take steps to assure that translation services are promptly available. In some circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. It is the responsibility of Federal assistance-granting agencies, in conducting their Title VI compliance activities, to make more specific judgments by applying their program expertise to concrete cases.

CONCLUSION

This document provides a general framework by which agencies can determine when LEP assistance is required in their federally assisted programs and activities and what the nature of that assistance should be. We expect agencies to implement this document by issuing guidance documents specific to their own assistance programs as HHS and the Department of Education already have done. The Coordination and Review Section is available to assist you in preparing your agency-specific guidance. In addition, agencies should provide technical assistance to their recipients concerning the provision of appropriate LEP services.

Attachment 3
EO Draft

Draft Outline, Jan. 5, 2000

**EXECUTIVE ORDER ON IMPROVING ACCESSIBILITY
TO FEDERAL SERVICES FOR
LIMITED ENGLISH PROFICIENT (LEP) INDIVIDUALS**

Federal Services

1. With regard to federal services not subject to Title VI but that administers its federal programs, those federal agencies would be required to prepare a plan for improving the accessibility of persons who are limited in their English proficiency (LEP individuals) to federal services. Agencies would be required to develop these plans by July 1, 2000, and to implement them as fully as possible by the end of 2000.
2. The plan would include steps each agency intends to take to minimize language barriers that prevent LEP individuals from using agency services. Possible steps include providing full-time or part-time interpreters, making language line services available, translating documents, or revising ways services are delivered to minimize language barriers. Agencies would be expected to develop plans that are consistent with the standards applied to recipients of federal funds under Title VI regulations (see Department of Justice guidance dated...).

Federal Funded Grantees that Provide Services

Agencies would be required to draft Title VI regulations that are consistent with the guidance issued by the Department of Justice (DOJ) and submit these to DOJ for review and approval by July 1, 2000. These regulations would specify how the general standards established in DOJ's guidance would be applied to the agency's grantees. They would take into account the types of services provided by grantees, the individuals served by grantees, and other factors set out in DOJ's guidance document. These regulations would become effective by end of 2000.

Consultations

In preparing the plan and regulations described above, agencies shall conduct extensive consultations with stakeholder including appropriate agency field offices and management staff, LEP individuals and organizations representing them, organizations and state and local governmental entities that receive federal funds, and other appropriate individuals and governmental officials. Agencies will evaluate the particular needs of the individuals they and their grantees serve and the burdens on the agency itself and their grantees. This consultation will assist the agency in developing an approach that carries out the objectives of the order to break down language barriers, that is practical and effective, responsive to the particular circumstances of each agency, and that can be implemented by the end of 2000.



Anna Richter
01/31/2000 04:42:15 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc:
Subject: Re: Guidance on Limited English Proficiency (LEP)

----- Forwarded by Anna Richter/OPD/EOP on 01/31/2000 04:42 PM -----

Irene Bueno



01/13/2000 03:17:28 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc: anna richter/opd/eop@eop
bcc:
Subject: Re: Guidance on Limited English Proficiency (LEP) 

See below answers to your questions. Please let me know if you have additional questions. Thanks.

Why now?

A few years ago (around 1994) DOJ considered issuing this guidance but the timing was not ideal.

What's prompting action?

There have been tragic cases particularly in the area of health where someone is misdiagnosed b/c of language barriers and there has been confusion about what is required under Title VI. Also, there has been a recent Federal Court 8th Circuit Case involving the state of GA providing drivers license tests only in English. The court found that since the state of GA's Dept of Motor Vehicles receives federal funding from the Dept. of Transportation it must comply with Title VI as it relates to people who are LEP. In this case, by only providing the test in English, GA was denying access of LEP individuals. This case has been appealed. Furthermore, the Federal agencies' Civil Rights offices suggested and advocacy organizations have urged the WH to address this issue.

It seems like the DOJ guidance merely restates the current state of the law with Lau -- what would the situation be absent any new guidance?

Absent any guidance, enforcement actions could be taken against grantees and the grantees would not know what is expected of them. For example, HHS has told us that hospitals and social services offices have asked for more guidance on what kinds of language services they must provide so they do not violate Title VI or could be subject to malpractice in cases involving hospitals that misdiagnose cases. In fact, HHS has taken action against some social services and hospitals recently. If you are interested I

can fax you some articles and press releases on their activities.

How is this a "major initiative"?

This is major in that it would require that every federal agencies to develop LEP regulations on what is required of its grantee that receives federal funding including states and local governments, hospitals, etc. In addition, federal agencies that provide direct services (Social Security, INS, Medicare, etc.) would be required to comply with the regulations. The concern is that this could be an undue burden on these grantees. However, as the EO and DOJ guidance makes clear, the burden, nature of the services and number of LEP individuals served will be taken in consideration in determining what services are required.

Is it that current law allows agencies to do more, but they simply aren't acting, and so need the prod of guidance and an EO?

Current law requires the agencies to do more but only a few agencies are acting (e.g. SSA, HHS, HUD) but some are not. This EO would do two things: (1) prod other agencies along and (2) direct federal agencies - that are not covered until Title VI b/c they do not have any grantees but administer direct service and programs - to develop regs that follow the DOJ guidance.

Eric P. Liu

 Eric P. Liu
01/12/2000 08:17:17 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP
cc: anna richter/opd/eop@eop
bcc:
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Some questions: Why now? What's prompting action? It seems like the DOJ guidance merely restates the current state of the law with Lau -- what would the situation be absent any new guidance? How is this a "major initiative"? Is it that current law allows agencies to do more, but they simply aren't acting, and so need the prod of guidance and an EO?
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