



At Sidebar

by James I. Briggs Jr.

Language Assistance Obligations for Recipients of DOT Federal Financial Assistance

By now, recipients of federal financial assistance

from the U.S. Department of Transportation (DOT) are well versed in federal programs for “disadvantaged business enterprises” and are becoming better acquainted with programs for accommodating individuals with disabilities. However, another initiative that may not have yet garnered the attention of Recipients is a DOT program operated under Title VI of the Civil Rights Act of 1964—persons with limited English proficiency (LEP). My legal practice involves the operation of U.S. commercial service airports, which receive federal financial assistance and are operated by local government entities. With the obvious likelihood that travelers who might have a limited ability to understand English utilize airports, the Federal Aviation Administration (FAA) has placed particular importance on addressing language assistance for passengers with LEP.

Who Is a Person With LEP?

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be “limited English proficient.” According to recent data from the U.S. Census Bureau, approximately 25 million people (or 8.7 percent of the U.S. population) do not speak English at all or do not speak English well. Among limited English speakers, Spanish is the language most frequently spoken, followed by Chinese (Cantonese or Mandarin), Vietnamese, and Korean. These individuals may be entitled to language assistance.

What Is the DOT/FAA Policy Regarding Recipients Providing Language Assistance to LEP Persons?

In accordance with Executive Order No. 13166, Improving Access to Services for Persons With Limited English Proficiency, signed on Aug. 11, 2000, the DOT issued its *Policy Guidance Concerning Recipient’s Responsibilities to Limited English Proficient (LEP) Persons* in December 2005. This DOT guidance explains that recipients of federal funding must take

reasonable steps to ensure that LEP persons have meaningful access to all their programs and activities, not just to the programs and activities that receive federal funds. This guidance provides that the DOT may consider a failure by a recipient to ensure that LEP persons can effectively access activities and services to be a violation of the prohibition against national origin discrimination under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and DOT’s Title VI regulations.¹

How Does a Recipient Determine the Language Assistance to Be Provided?

The DOT 2005 guidance outlines four factors for recipients to use in assessing the language needs of LEP persons and in determining the steps to take to ensure that LEP persons have meaningful access.

1. The recipient should determine the number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service that the recipient provides. Information on the LEP population can be obtained from the U.S. Census Bureau *American Community Survey* data, which includes information regarding language ability, from state and local governments and local schools and universities.
2. The recipient should determine the frequency with which LEP individuals come in contact with the program, activity, or service provided by the recipient. Because Census Bureau data will not capture non-local LEP individuals such as tourists and layover passengers, airport operators should conduct surveys of passengers and keep track of the contacts between LEP persons and airport tenants, such as restaurants and gift shops.
3. The recipient should rate the nature and importance of each of the programs, activities, or services available from the recipient. A particular service is probably important if a delay or denial of access could have serious implications. The more important the activity, service, or contact to the

James I. Briggs Jr. is a member of the Editorial Board of The Federal Lawyer and is the vice president of legal affairs at Airports Council International-North America, a nonprofit trade association for commercial service airports in the United States and Canada.

LEP person, the more likely language services are needed (e.g., evacuation signs or announcements, security procedures or announcements, police or medical assistance, and wayfinding).

4. The recipient should determine its available resources and the costs of steps to ensure meaningful access. The DOT guidance suggests that the DOT does not expect smaller recipients with more limited budgets to provide the same level of language services as larger recipients. Therefore, recipients should explore cost-effective means of providing language assistance.

DOT's guidance suggests a balanced approach to providing meaningful access by LEP persons to programs, activities, and services while not imposing an undue burden on recipients. Basically, the greater the proportion of LEP persons served by the recipient, the greater the frequency of contact with the recipient, and the greater the importance of the program, activity, or service provided by the recipient, then the more likely the recipient must provide some type of enhanced language service.

What Enhanced Language Services Should Recipients Provide to LEP Persons?

First, recipients have two basic ways to provide language services: (1) oral interpretation, either in person or remotely (e.g., via telephone); or (2) written translation, which includes universal symbols and pictograms. The proper mix of interpretation and translation services is determined by the DOT four-factor analysis as to what is both necessary and reasonable. For example, oral interpretation may be necessary during a high-risk emergency or where the frequency of contact is quite high. Whereas, for low-importance or low-frequency contacts, the use of written translations may be appropriate. Second, as to be expected, the languages spoken by the LEP persons with whom the recipient has frequent contact will determine the interpretation and translation languages. For the written translation obligation, a recipient generally should translate its vital documents for any LEP group that has over 1,000 persons or exceeds five percent of the population of persons eligible to be served or likely to be encountered by the recipient. Again, the DOT guidance suggests a balance of meaningful access by LEP persons while not imposing undue expense on Recipients.

What Is the Framework for a Recipient's LEP Plan?

Recipients should have a written plan, periodically updated, which identifies the LEP populations that have contact with the recipient and provides specific procedures on assisting these LEP persons. The recipient's staff should have access to the LEP plan and should be adequately trained on the plan's procedures. While drafting the LEP plan, the recipient should seek the input from local communities and from the local LEP populations. The plan also should require notice to LEP persons regarding the availability of language assistance services and that the services are provided free of charge.



What Additional Recipient Actions Are Needed to Meet the Obligations for Assisting LEP Persons?

Recipients should inform the public of the availability of LEP services and the processes for filing a complaint. Recipients also should establish a procedure for documenting any Title VI complaints, lawsuits, and past compliance reviews. For example, airport operators should post notices of such services and processes on the airport website and in high-volume passenger areas within the terminal building (e.g., screening checkpoints, information centers, baggage claim, etc.). In addition, the Title VI obligations should be included in the recipient's agreements with contractors, lessees, tenants, and permittees.

The FAA Office of Civil Rights has been conducting compliance audits of the LEP assistance programs of airport operators. Information regarding the DOT/FAA LEP programs, obligations, and requirements is available on a few websites.² ©

Endnotes

¹49 C.F.R. pt. 21.

²U.S. DOT & FAA, TITLE VI AIRPORT NONDISCRIMINATION COMPLIANCE PROGRAM: LIMITED ENGLISH PROFICIENCY OVERVIEW AND WORKSHOP (2012), available at [www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/training_conference_August_2012/media/Title_VI_-_Limited_English_Proficiency_\(LEP\)_Overview_and_Workshop_\(Janet_Long\).pdf](http://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/training_conference_August_2012/media/Title_VI_-_Limited_English_Proficiency_(LEP)_Overview_and_Workshop_(Janet_Long).pdf); U.S. DOT, *Limited English Proficiency: Frequently Asked Questions*, www.civilrights.dot.gov/page/limited-english-proficiency (last visited Jan. 12, 2013); and LEP.Gov, *Limited English Proficiency (LEP): A Federal Interagency Website*, www.lep.gov (last visited Jan. 12, 2013).