



Sent by electronic mail to:

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Kenneth Baisden, Chief
Anna G. Stroman, Team Leader
Policy Division
United States Department of Agriculture
300 7th Street SW
Washington, DC 20250

Re: USDA LEP Guidance, 77 Federal Register 13980 (March 8, 2012)

Dear Mr. Baisden and Ms. Stroman:

The National Language Access Advocates Network is writing to comment upon the United States Department of Agriculture's proposed Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency ("LEP Guidance").

The National Language Access Advocates Network is a coalition of advocates who work to eradicate language discrimination and promote language rights. On behalf of our clients with limited English proficiency, N-LAAN members advocate for better policies and laws and for more effective enforcement of language rights. Many USDA programs serve the LEP community, and the USDA LEP Guidance will be a helpful guide for USDA funding recipients in how to most effectively and efficiently serve these individuals.

We are submitting some overarching comments that we feel would strengthen the Guidance and clarify the requirements for federal funding recipients (FFRs).

Interaction with federal regulation

The final Guidance should more specifically state that, where federal regulations impose language access obligations, the regulations must be followed. Although the Proposed Guidance refers to some of these rules in the Legal Authority section (pp. 13981-2), the legally mandated

thresholds for translation and interpretation found in many regulations must be specifically stated throughout the Guidance. If it does not make the continued applicability of these federal regulations clear, the LEP Guidance will fail to alert FFRs of when additional requirements apply, as well as running the risk that FFRs may view the Guidance as a retreat from the more specific legal mandates, or be confused about how the two interact. A prime example is the discussion of safe harbors: those provisions would not apply when regulations provide for specific requirements which, if not met, are a violation of law.

To help FFRs, we recommend that the Guidance include an Appendix that lists all the USDA programs' regulations with language access requirements. This will make the regulatory requirements more easily identified by USDA recipients as they examine their policies and practices for compliance and design their LEP Plans.

Clarification of No Threshold for Oral Interpretation

The Guidance should specify that FFRs are required to be able to communicate with LEP individuals who contact them orally (in person or by phone). Thus, at a minimum, all FFRs must have some capacity to identify the needed language and provide oral interpretation. As drafted, the Guidance suggests that a USDA FFR might not be required to provide access to a LEP. For example, several times, the Guidance discusses provision of language services when "reasonable." This implies that the FFR can decide oral access is not reasonable and fail to provide any such access. It must be clear that while the type of non-English services may vary, the FFR cannot fail to provide this baseline access.

Address Issues Related to Automation/Electronic Communication

The Guidance is silent on the issue of automation/on-line access. The use of automated services and internet access has increased significantly since the issuance of the DOJ LEP Guidance, which federal agencies were to use as their model. USDA must recognize the issues related to automation and electronic communication in its Guidance, as there are increased barriers that can occur in this area and provide specific guidance for FFRs on these issues. Access is not meaningful if it does not include electronic access in languages other than English. The Guidance should address issues such as equal availability of translated materials on-line that exist in paper; phone-centers and Interactive Voice Recognition Systems (IVR) related issues, notice of availability of interpreters, and alternative means of receiving services (other than through automation), etc.

Data Collection

Data collection of language needs and services is essential for planning and monitoring compliance by recipients and the USDA. The Guidance should include mandates for data collection on at least an annual basis to serve these purposes. Some USDA programs and recipients already are mandated to collect this data by regulation, and these obligations should be noted specifically so recipients are aware that those mandates continue.

Low-Literacy

The Guidance describes the necessity of readability in the discussion of "safe harbor" at 77 FR 13988, but this important feature should be emphasized throughout the Guidance. Readability of all written materials is an important access issue, and is particularly key for the LEP population.

The Guidance should require that written materials in any language be reviewed for readability with the goal of achieving a 6th grade reading level.

Sincerely,

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On behalf of the National Language Access Advocates Network (N-LAAN)