



FEDERAL ELECTION COMMISSION

Washington, DC 20463

December 14, 2011

Ms. Deena Jang, Chief
U.S. Department of Justice
Civil Rights Division
Federal Coordination and Compliance Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Ms. Jang:

This responds to your June 16, 2011, memorandum, which references an earlier correspondence from Attorney General Eric Holder, regarding the Federal Government's Renewed Commitment to Language Access Obligations under Executive Order 13166.

In accordance with Executive Order 13166, I am pleased to present the Federal Election Commission's (FEC) *revised* Limited English Proficiency (LEP) Access Plan for your information. The initial plan (filed in January 2002) described the FEC's then-current efforts to make its programs accessible to members of the LEP community. This document updates that original plan and reiterates our commitment to improve accessibility to all of our program materials. Please do not hesitate to contact me should you have any questions about the plan.

Sincerely,

A handwritten signature in black ink that reads "Kevin R. Salley". The signature is written in a cursive, flowing style.

Kevin R. Salley
LEP Coordinator/Director of Equal Employment Opportunity
Federal Election Commission

cc: Alec Palmer, Staff Director

Enclosure

Federal Election Commission Limited English Proficiency (LEP) Access Plan

Summary

Executive Order 13166, and subsequent guidance from the Department of Justice (DOJ), requires all agencies that provide federal financial assistance to issue guidance on how Title VI of the Civil Rights Act of 1964 applies to recipients of that assistance in their contact with persons with Limited English Proficiency (LEP). If an agency does not grant any federal financial assistance, it is not required to issue a recipient guidance document. It must, however, still design and implement a plan to ensure that the agency takes reasonable steps to comply with the intent of Title VI by providing meaningful access to all of its federally conducted programs and activities for individuals with Limited English Proficiency (LEP).

The Federal Election Commission (FEC) was created in 1975 as an independent regulatory agency to strengthen the integrity of the federal campaign finance process under the *Federal Election Campaign Act of 1971*, as amended (“FECA” or “the Act”). The Commission is also responsible for administering the public funding program for Presidential campaigns and nominating conventions under the *Presidential Election Campaign Fund Act* and the *Presidential Primary Matching Payment Account Act*.

The FEC has jurisdiction over the financing of campaigns for the U.S. House, the U.S. Senate, the Presidency and the Vice Presidency. Since most individuals who run for Federal office, and the political committees that support them, are English-proficient, the LEP population seeking FEC services is very small. In fact, the FEC has handled very few matters involving LEP individuals. On those rare occasions, bilingual staff have interpreted or translated the pertinent information.

Please note that the FEC does not grant federal financial assistance within the meaning of Title VI of the Civil Rights Act of 1964. We are, however, taking steps to ensure that our programs are accessible to members of the LEP community and will continue to improve access to services for these persons.

Introduction

Since the issuance of EO 13166, “Improving Access to Services for Persons with Limited English Proficiency,” (dated August 11, 2000 - 65 Fed. Reg. 50121, Aug. 16, 2000), federal agencies have been required to assess and address the needs of those (otherwise eligible) individuals, who, due to limited English proficiency, cannot fully and equally participate in federally conducted programs and activities. Guidance from the EO, supplemented by DOJ over the years, has advised each federal agency to “take reasonable steps to ensure meaningful access to the information and services they provide.” One of the first measures provided by the DOJ guidance instructed agencies to consider four factors in developing LEP guidance for their own recipients:

- the number of LEP persons in the eligible service population or likely to be encountered in recipient activities and programs;
- the frequency with which LEP individuals come into contact with the program;

- the importance of the service or information provided by the program; and
- the resources available to the recipient of the federal funds.

Analysis of Factors at the FEC

Factor 1: Number or Proportion of LEP Individuals in the Eligible Population [1]

The primary objectives of the FEC are: 1) to facilitate transparency through public disclosure of campaign finance activity; 2) to encourage voluntary compliance with the *Act* by providing information and policy guidance to the public, media, political committees and election officials on the FECA and Commission regulations, and to enforce the statute through audits, investigations and civil litigation; and 3) to develop the law by administering and interpreting the FECA as well as the *Presidential Election Campaign Fund Act* and the *Presidential Primary Matching Payment Account Act*.

In the Commission's experience, the vast majority of the population with which we do business (individuals running for federal office and the committees that support them) is proficient in English, so that LEP services are not normally required. In FY 2011, the FEC received approximately 54,658 calls to its Reports Analysis Division, Information Division, Disclosure Division and Press Office. These calls came in from just over 7,700 filers, as well as from the general public.

Factor 2: Frequency of Contact with the Program [2]

All contacts with the FEC are made to its office headquarters in Washington, DC. The FEC has no field offices. These contacts are made through telephone calls (via an FEC toll free line as well as direct lines to specific offices), traditional mail, e-mail, onsite meetings and interaction with the agency's website. . The Commission places a high emphasis on providing educational materials about campaign finance laws and their requirements. Toward this end, the FEC has begun to look for ways to leverage available technologies to create and disseminate dynamic, up-to-date educational materials through its website, which has become one of its most important sources of instantly accessible information. During FY 2011, the website received approximately 117 million hits.

Additionally (in regard to the regulated community), the FEC closed 145 enforcement cases, issued twenty-eight (28) advisory opinions and responded to over 800 email inquiries regarding federal campaign finance laws. Taking all of these various types of contacts into consideration, it is estimated that fewer than fifteen (15) LEP contact situations have occurred at the agency during the past several years.

Factor 3: Nature and Importance of the Program [3]

The FEC discloses the flow of money in political campaigns for federal office, enforces limitations on the amounts and sources of that money, and administers the public financing of Presidential campaigns. The agency provides important services to the public through these programs, which also serve to dispel the appearance of corruption in our political process and thus aids in holding some measure of confidence in the Government. While our programs serve a necessary and meaningful public purpose, they do not rise to the level of matters having life or death implications (e.g., the provision of services to children, medical care, food, housing, etc.).

Factor 4: Resources Available [4]

Recognizing the occasional need to handle contacts in languages other than English, the FEC maintains a list of staff volunteers with fluency in languages other than English. Through the efforts of these volunteers, we are able to assist callers who are better served by speaking with staff in languages other than English. Volunteers fluent in the languages of callers or correspondents are asked to deal directly with LEP persons in responding to inquiries. Subject matter experts are called upon as necessary in order to assist volunteers in providing technical information. Since the assistance we ask for from volunteers occurs on such an infrequent basis (less than once a year) the FEC's policy of using bilingual staff volunteers is currently a more efficient and effective use of resources than contracting services for this purpose.

In past years, the FEC has made several of the publications on its website available in Spanish at <http://www.fec.gov/info/espanol.shtml>. Some more recent examples have included:

- “The FEC and the Federal Election Campaign Finance Law”
- “Contributions” and
- “Volunteer Activities”

Looking ahead, the agency's LEP (and EEO) goal is to support individual webpages that are either fully translated into languages other than English (as they are posted) or offer that capability as an interactive option for website users.

Plan for Individuals with Limited English Proficiency who contact the FEC

When our last plan was filed (2002), the FEC's in-house language capabilities included Spanish, French, German, Latin, Slovak, Russian, Czech, Greek, Hindi, Punjabi, Urdu, and Haitian Creole. At that time, experienced staff that were fluent in these languages agreed to serve as interpreters on an “as needed basis” for those infrequent occasions when an LEP individual contacted the FEC. In those instances, the appropriate subject matter expert coordinated with the volunteer interpreter to address the LEP individual's particular concern or request. To date, the only language other than English that has been utilized to accomplish this goal is Spanish. However, we are currently in the process of re-surveying the staff to determine the level of “Non-English language proficiency” that exists in the agency to better facilitate this process going forward.

The FEC is committed to the integrity and openness of the federal election campaign finance process; a fair and inclusive system, accessible to the entire elections community, the academia, the public, and the media; and staff training and development so that we can provide our client groups with the highest possible level of service. To that end, FEC managers will be reminded of those staff available to interpret or translate various languages and will refer LEP contacts as appropriate. Further, FEC will obtain interpreter and translator services, as needed, through the General Services Administration or other contracted sources, as applicable.

Additionally, the FEC has established an LEP Work Group, for the purpose of monitoring contacts with the LEP community, suggesting appropriate changes to the LEP plan or its implementation and reporting any other related issues or concerns regarding the effectiveness of the LEP program. The LEP Work Group consists of the LEP Coordinator (Director of the Office of Equal Employment Opportunity) and a total of five (5) senior management officials from offices that maintain public or extra-agency contacts on a regular basis. The LEP Coordinator reports to the FEC's Staff Director, who serves as the administrative head of the agency. The other LEP Work Group members hold the following positions within the agency:

Office of Communications - responsible for the Commission's public outreach, public education, public disclosure, media relations, Congressional and legislative affairs functions.

- Disclosure Division - Assistant Staff Director (1)
- Congressional Affairs Office - Deputy Director of Congressional, Legislative and Intergovernmental Affairs (1)
- Information Division - Deputy Assistant Staff Director for Outreach (1)
- Press Office – Assistant Staff Director (1)

Office of Compliance - provides leadership to the Commission's disclosure and compliance programs. The Office is responsible for monitoring and overseeing the operations of the Audit Division, Reports Analysis Division, Office of Administrative Review, and Alternate Dispute Resolution Office.

- Reports Analysis Division – responsible for assisting committee officials in complying with reporting requirements and conducting detailed examinations of the campaign finance reports filed by political committees. - Assistant Staff Director (1)

The FEC's LEP Work Group will monitor the number of LEP contacts on a monthly basis and report results to the Coordinator on at least a quarterly basis. Specifically, the group will make qualitative determinations regarding the types and frequency of contacts, the language(s) most often used and how the contacts were handled. This information will be used to further determine whether any additional program efforts are needed.

While the season of service at the FEC is continuous, it typically reaches its peak near the end of the election cycle (during even-numbered years). Therefore, any major revisions of the LEP plan

will be evaluated on a biennial basis, after that time - - *beginning* in mid-November of the election year. Major updates to this plan will be submitted to the Federal Coordination and Compliance Section as they are made.

[1] According to the Policy Guidance Document issued by the U.S. Department of Justice entitled “Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency, issued August 16, 2000, “[T]hose 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] According to the DOJ Policy Guidance, “... if LEP individuals must access the [agency’s] program or activity on a daily basis ... [an agency] has greater duties than if such contact is unpredictable or infrequent. [Agencies] ... should have the flexibility to tailor their services to those needs.”

[3] “More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one’s day-to-day existence. ... A decision by a Federal, state, or local entity to make an activity compulsory ... serves as strong evidence of the program’s importance.” *Ibid.*

[4] “[A] small [agency] with limited resources may not have to take the same steps as a larger [agency] to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual’s day-to-day existence.” *Ibid.*

Limited English Proficiency - Overview

Affirming

The Federal Government and those receiving assistance from the Federal Government must take reasonable steps to ensure that LEP persons have meaningful access to the programs, services, and information those entities provide. This will require agencies to develop creative solutions to address the needs of this ever-growing population of individuals whose primary language is not English.

Limited English Proficiency - LEP

Who is a Limited English Proficient Person?

Persons 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, or "LEP." These

individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Who Must Comply and Who Can be Found in Violation?

All programs and operations of entities that receive assistance from the Federal Government (i.e. recipients), including:

- ✓ State agencies;
- ✓ Local agencies;
- ✓ Private and nonprofit entities; and
- ✓ Sub-recipients (entities that receive federal funding from one of the recipients listed above) also must comply.

All programs and operations of the Federal Government also must comply.

Legal Authority

Recipients

Title VI of the 1964 Civil Rights Act

“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.” 42 U.S.C. § 2000d.

The United States Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974) stated that one type of national origin discrimination is discrimination based on a person’s inability to speak, read, write, or understand English.

Recipients and Federal Government

Executive Order 13166

On August 2000, this Order "Improving Access to Services for Persons with Limited English Proficiency" was issued and directed federal agencies to:

- ✓ Publish guidance on how their recipients can provide access to LEP persons
- ✓ Improve the language accessibility of their own programs
- ✓ Break down language barriers by implementing consistent standards of language assistance across federal agencies and amongst all recipients of federal financial assistance.

The Order covers all federal and federally assisted programs and activities.

Obligations

Four-Factor-Analysis

Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services. (The Federal Government has the same obligations as a result of Executive Order 13166.) The starting point is an individualized assessment that balances the following four factors:

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

Elements of an Effective LEP Policy

Elements which may be helpful in designing an LEP policy or plan:

- Identifying LEP individuals who need language assistance
- Identifying ways in which language assistance will be provided
- Training staff
- Providing notice to LEP individuals
- Monitoring and updating LEP policy

Language Assistance Services

- Oral interpretation services
- Bilingual staff
- Telephone interpreter lines
- Written language services
- Community volunteers

For more information and detailed agency-specific guidance, go to <http://www.LEP.gov/>

Interagency Working Group on LEP and www.LEP.gov

Mission:

To build awareness of the need and methods to ensure that limited English proficient (LEP) persons have meaningful access to important federal and federally assisted programs, and to ensure implementation of language access, requirements under Title VI, the Title VI regulations, and Executive Order 13166 in a consistent and effective manner across agencies.

Focus:

- Creation and expansion of a one-stop website on LEP issues
- Creation of tools to assist recipients and beneficiaries in understanding and applying recipient guidance documents

Collaboration amongst agencies in making federally conducted activities meaningfully accessible to LEP individuals

For more information:

U.S. Department of Justice (<http://www.usdoj.gov/crt/cor>)

Civil Rights Division

Federal Coordination and Compliance Section - NWB

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Title VI Hotline: 1-888-TITLE-06 (1-888-848-5306) (Voice / TDD)