

CAPLAW FAQ



A series of common legal questions and answers for the CAA network

Serving Individuals with Limited English Proficiency

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1 Is a CAA required to accommodate individuals with limited English proficiency (LEP)?

Generally, organizations that receive federal funding directly or indirectly are required by Title VI of the Civil Rights Act of 1964 (Title VI) to take reasonable steps to ensure meaningful access to its programs and activities by individuals who have limited English proficiency (LEP).¹

2 Who is an LEP individual?

LEP individuals are those who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English.²

3

How does Title VI apply to LEP individuals?

Title VI is a federal law that protects individuals from discrimination on the basis of race, color, or national origin in participating in or receiving benefits from any federally-funded program or activity.³ The fact that a CAA's policies and practices do not intentionally discriminate against LEP individuals is not enough to comply with Title VI. Rather, CAAs must take reasonable steps to make sure that LEP individuals can access the CAA's programs and activities in a meaningful way.⁴ In certain circumstances, the failure to ensure that LEP individuals can effectively participate in or benefit from federally-funded programs constitutes national origin discrimination under Title VI.

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Regulations issued by the U.S. Department of Health and Human Services (HHS) also outline the application of Title VI to HHS grantees.⁵ Under the regulations, a recipient of HHS funding must take steps to provide LEP individuals with a meaningful opportunity to participate in its federally funded programs. HHS has also published its [Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons](#) (HHS Guidance).

The HHS Guidance was issued pursuant to Executive Order 13,166, “Improving Access to Services for Persons with Limited English Proficiency,” which required all federal awarding agencies to develop LEP guidance for their recipients on the obligation to provide meaningful access to LEP individuals.⁶

Each federal agency has issued its own LEP guidance documents (LEP Guidance) based on policy guidance published by the U.S. Department of Justice (DOJ Guidance), which sets forth underlying Title VI compliance standards. While each agency tailors its LEP Guidance to that agency's specific programs and activities, all LEP Guidance must remain consistent with the DOJ Guidance, and many of the standards described in this FAQ are applicable to other federal agencies' LEP Guidance. Federal grantees are urged to read the LEP Guidance issued by each of its federal awarding agencies. LEP Guidance for all federal agencies are available on the federal interagency website dedicated to providing LEP resources, www.lep.gov.

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What is expected of CAAs with respect to LEP individuals?

As a subrecipient of Community Services Block Grant (CSBG) funding from HHS, a CAA is required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP individuals to the recipients' CSBG-funded programs and activities.⁷ Unfortunately, no bright-line rule exists for determining

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whether a CAA is providing meaningful access to LEP individuals, and there is no explicit requirement under Title VI that a CAA provide translation or interpretation for all of its services. The actions that a CAA may be expected to take to meet its LEP obligations will depend on the results of a four-factor individualized assessment set forth in the DOJ Guidance, which has been republished in LEP Guidance issued by other federal agencies, including HHS, the U.S. Department of Agriculture (USDA), the Corporation for National Community Service (CNCS), the U.S. Department of Energy (DOE), the U.S. Department of

Housing and Urban Development (HUD), and the U.S. Department of Labor (DOL). This four-factor analysis, described in Question 5 below, will enable a CAA to determine the need and urgency of providing language assistance in light of the populations it serves and the nature of the programs and activities offered. CAAs must conduct this analysis under each federal agency's LEP Guidance to ensure that LEP individuals can meaningfully access services funded under each award.

How does a CAA assess what language assistance services to provide?

A CAA must apply the following four-factor assessment to each of its federally-funded programs to determine what type of assistance measures it must take, if any, to ensure meaningful access for LEP individuals in that program:

1. Number or proportion of LEP individuals served or likely to be encountered in the program's service area;
2. Frequency with which LEP individuals come into contact with the program;
3. Nature and importance of the program, activity or service; and
4. Resources available to the CAA and costs of providing language assistance services.⁸

As to the first factor, the greater the number or proportion of LEP individuals in the CAA program's service area, the more likely language services will be needed. For this evaluation, a CAA will look specifically at the area it serves and perform an internal review of its past experiences with LEP individuals in each federally-funded program to determine the breadth and scope of language services that were needed. CAAs should review the latest available census data for the program's service area and/or other data from community organizations and schools. It is important for a CAA to identify LEP individuals who may have been underserved due to the language barrier. This inquiry should focus specifically on an individual's lack of English proficiency, and not simply on the ability to speak more than one language.⁹

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The second factor requires CAAs to look at the frequency with which a CAA has (or would have had, with the appropriate language assistance services) contact with an LEP individual from different language groups seeking assistance. The more frequently an LEP individual contacts the CAA, the more likely language services may be needed. Specific programs and activities that encounter LEP persons on a regular basis have a greater obligation to provide language assistance than programs and activities that only encounter LEP persons sporadically. A CAA may also develop different language assistance plans for different languages based on how frequently and predictably it interacts with LEP individuals speaking each such language. In applying this factor, a CAA should consider whether performing outreach would increase LEP participation in its programs.¹⁰

For the third factor, a CAA should evaluate the importance of its service, program, activity or information and how urgently an LEP individual may need access to it. It is more likely that immediate language services are needed if delaying or denying access to a program would be serious or life-threatening, whereas services that are important but not urgent may still require the CAA to provide language assistance, but such assistance may be delayed for a reasonable period of time. Activities or programs required by a federal, state or local entity to access a particular benefit, such as job search activities in welfare-to-work programs, are more likely to be considered important.¹¹

The fourth and final factor looks at a CAA's resources and the cost of implementing language services. Smaller organizations with more limited budgets are not expected to provide the same level of language services as larger organizations with larger budgets. Reasonable steps may no longer be "reasonable" when the costs of language services substantially exceed the benefits. As discussed in Question 6 below, the HHS Guidance includes a number of recommendations to reduce the cost of providing language services, including hiring bilingual staff or interpreters, using contract interpreters or telephone language lines,

and developing a base of community volunteers to provide language assistance. Large entities and those servicing a significant number or proportion of LEP individuals may need “well-substantiated” evidence of resource limitations before it can use this factor to limit language assistance.¹²

6 What types of language assistance services should a CAA provide?

A CAA may provide language services to LEP clients in two main ways: Oral interpretation and written translation. Depending on the importance and urgency of the program or service, oral interpretation may range from providing on-site interpreters to using telephonic interpretation via a commercial service. Likewise, written translation may range from translations of an entire document to a short description of the document. In certain situations, language services should be promptly provided, while in other situations it may be permissible—assuming no discriminatory intent—to refer the LEP individual to another federal grant recipient. A referral should result in better access for the LEP individual. Regardless of the type of language service provided, the quality and accuracy of those services are critical to avoid serious consequences to the LEP individual and to the CAA. CAAs have substantial flexibility in determining the appropriate mix of services to provide. The HHS Guidance lists a number of options for oral interpretation and written translation, some of which are listed below, as well as criteria by which to assess the quality and accuracy of the services provided:¹³

- a. Hiring bilingual staff;
- b. Hiring staff interpreters;
- c. Contracting for interpreters;
- d. Using telephone interpreter lines;
- e. Using community volunteers;
- f. Relying on a client’s family members or friends; or
- g. Written translation services.

7 Our clients bring their own interpreters—does that mean we’re off the hook?

A CAA should take reasonable steps to ascertain that family, legal guardians, caretakers, and other informal interpreters are not only competent and demonstrate proficiency in their ability to communicate information accurately, but are also appropriate in light of the circumstances and subject matter of the

program, service or activity, including protection of the CAA’s own administrative or enforcement interest in accurate interpretation. While formal certification as an interpreter is not required, a CAA should consider the extent to which any specialized terms or concepts specific to its programs are necessary in the communication. A CAA should also ensure that interpreters adhere to their role as interpreters without deviating into other roles (for example, as counselor or legal advisor). Finally, a CAA should consider issues of confidentiality, privacy, and

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potential conflicts of interest when family members (especially children), friends, or other individuals who may have a personal connection to the LEP individual act as interpreters.¹⁴ A CAA may not require an LEP person to use a family member or a friend as his or her interpreter.¹⁵

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Can our CAA use members of our staff to provide language translation services?

Using staff members as interpreters can be a cost-effective way of providing language services to LEP clients. However, the CAA must ensure that any such staff member is qualified to act as an interpreter.¹⁶

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Is there anything our CAA can do to guarantee that we are in compliance with Title VI?

No guarantees exist; however, the HHS Guidance contains two “safe harbor” options, which only apply to written translation services. This means that if a CAA provides written translation services under the circumstances described in the two options below, such actions will be considered strong evidence of compliance with its written translation obligations under Title VI. Failure to take such actions does not equate to noncompliance; rather, the actions provide for greater certainty of compliance than can be provided by the fact-intensive, four-factor analysis discussed above in Question 5.

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The first option is for a recipient to provide written translations of vital documents for each eligible LEP language group that equals 5%, or 1,000 individuals, whichever is less, of the service population eligible to be served or likely to be affected or encountered. The second option is available if there are fewer than 50 individuals in a language group that constitutes 5% of the service population and the recipient provides written notice in the primary language of the LEP language group of the group’s right to receive a free oral interpretation of vital written materials. Either option will constitute strong evidence of compliance.¹⁷

Because the safe harbor options only apply to written translations, a recipient will need to use the four-factor analysis discussed above in Question 5 to determine the sufficiency of its oral interpretation services.

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Do CAAs need to create a written language implementation plan?

While maintaining a written language assistance implementation plan is not required, HHS encourages recipients to adopt one as a cost-effective way to document compliance with Title VI. A written plan helps a CAA train employees in LEP assistance and enables staff to provide LEP individuals with prompt and reasonable language services. If a CAA chooses not to implement a written plan, it should consider alternative and reasonable ways to articulate how it is providing meaningful access in compliance with Title VI.

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What information do we include in a written language implementation plan?

The HHS Guidance describes five steps for designing a plan and addresses elements that are typically in effective implementation plans. The following information should be included in a written plan:

- a. How LEP clients who need language assistance will be identified (i.e., using language identification cards).

- b. The ways in which language assistance will be provided, such as:
 - i. Types of language services available;
 - ii. How staff can obtain those services;
 - iii. How to respond to LEP callers;
 - iv. How to respond to written communications from LEP persons;
 - v. How to respond to LEP individuals who have in-person contact with staff; or
 - vi. How to ensure competency of interpreters and translation services.
- c. How staff members will be trained. Training may include ensuring staff members know about LEP policies and procedures and that those who have contact with the public are trained on how to work effectively with interpreters.
- d. A description of the process by which notice of available language services (e.g. posting signs in multiple languages) will be provided to LEP individuals.
- e. The process that will be used to monitor and update the LEP plan as needed.¹⁸

12

Our state has an “English only” law—does this exempt us from Title VI compliance?

A CAA is still subject to Title VI even if it operates in a state that declares English as the official language or otherwise has an “English-only” law on the books.¹⁹

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Is a CAA subject to Title VI if it receives both federal and non-federal funding?

The HHS Guidance explains that coverage under Title VI extends to a recipient’s entire program or activity (i.e., to all parts of a recipient’s operations), even if only one part of the recipient receives federal assistance.²⁰ However, if a federal agency were to terminate an award on the basis that the recipient failed to comply with Title VI, it could only terminate funds directed to the non-compliant program or activity.²¹ For example, a CAA that receives CSBG funding from HHS as well as state child care funding must conduct the four-factor analysis for all of its programs and activities, including the state-funded programs. If, however, HHS determines that the CAA’s CSBG-funded programs and activities violate Title VI’s requirement to ensure meaningful access to LEP individuals, it may only terminate CSBG funding directed to the programs and activities that are out of compliance.

“...coverage under Title VI extends to a recipient’s entire program or activity... even if only one part of the recipient receives federal assistance.”

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Who enforces Title VI?

For organizations receiving funding from HHS, such as CAAs, the HHS Office for Civil Rights (OCR) implements and enforces the requirement to provide meaningful access to LEP persons through the

procedures identified in the Title VI regulations.²² These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance.²³ Other federal agencies have their own designated offices and procedures for enforcing Title VI compliance, as described in that agency's LEP Guidance.

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What happens if HHS finds that we are out of compliance with Title VI requirements?

In general, HHS must attempt to secure voluntary compliance with Title VI requirements through informal means. HHS must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. If the matter cannot be resolved informally, HHS may suspend or terminate federal assistance or refuse to continue the grant after the HHS recipient has been given an opportunity for an administrative hearing.²⁴ HHS may also refer the matter to the DOJ, which may seek injunctive relief or pursue other enforcement proceedings.²⁵ HHS engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation.

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Are there any other LEP resources available to help CAAs and other federal grant recipients comply with Title VI?

OCR provides technical assistance and outreach to HHS recipients to assist them in understanding and complying with their obligations under Title VI. A summary of selected HHS enforcement actions involving agencies serving LEP individuals is available on the HHS website (<http://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/examples/limited-english-proficiency/index.html>) and provides insight into the various approaches HHS award recipients have taken to ensure compliance with Title VI. Additionally, a federal interagency working group on LEP has developed a website, <http://www.lep.gov>, to assist in disseminating information about language assistance measures, resources and cost-containment approaches to recipients, federal agencies, and the communities being served. HHS also provides information to its recipients through its website at <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/>.

Endnotes

¹ 45 C.F.R. § 80.3; *Lau v. Nichols*, 414 U.S. 563 (1974).

² HHS LEP Guidance, p. 6.

³ Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

⁴ 28 C.F.R. § 42.104(b)(2). See also 45 C.F.R. § 80.3(b)(2) (prohibiting HHS award recipients from using “criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin”).

⁵ 45 C.F.R. Part 80; see Section 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1.

⁶ Exec. Order No. 13,166, “Improving Access to Services for Persons with Limited English Proficiency” (Aug. 11, 2000).

⁷ 42 U.S.C. § 9918(c).

⁸ HHS LEP Guidance, p. 7.

⁹ HHS LEP Guidance, pp. 7-8.

¹⁰ HHS LEP Guidance, pp. 8-9.

¹¹ HHS LEP Guidance, pp. 9.

¹² HHS LEP Guidance, pp. 9-10.

¹³ HHS LEP Guidance, pp. 10-18.

¹⁴ HHS LEP Guidance, pp. 15-16.

¹⁵ HHS LEP Guidance, p. 27.

¹⁶ HHS LEP Guidance, pp. 11-13.

¹⁷ HHS LEP Guidance, pp. 18-19.

¹⁸ HHS LEP Guidance, pp. 19-23.

¹⁹ HHS LEP Guidance, p. 6.

²⁰ HHS LEP Guidance, pp. 5-6; see also 42 U.S.C. § 9918(c).

²¹ 42 U.S.C. § 2000d-1.

²² 45 C.F.R. §§ 80.6-80.11.

²³ HHS LEP Guidance, p. 23; 45 C.F.R. § 80.8.

²⁴ 45 C.F.R. § 80.8.

²⁵ 45 C.F.R. § 80.8.

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