

Accessing Social Security Administration Services for LEP Individuals

CHAPTER SUMMARY • December 2019

Denny Chan, Justice in Aging

Tracey Gronniger, Justice in Aging

Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

Key Lessons

1. **LEP individuals defined**—Limited English Proficiency or Limited English Proficient (LEP) refers to people who do not speak English as their primary language and have a limited ability to speak, read, write, or understand English.
2. **LEP individuals must have reasonable access to government programs and services.** Under Title VI of the 1964 Civil Rights Act, the federal government, and those receiving federal financial assistance, must take reasonable steps to ensure that LEP persons have meaningful access to the programs, services, and information they provide. Entities covered by this law can include state and local agencies, as well as private and nonprofit entities.
3. **Language assistance includes multiple services.** Language assistance services are not limited only to in-person oral interpretation. Instead, language assistance can include such things as having bilingual staff providing program services, telephone interpreter lines, written language translation, and community volunteers.
4. **LEP Services are available through the Social Security Administration (SSA).** SSA has a Language Access Plan meant to provide access to benefits and services for LEP individuals.
5. **You may need to advocate for clients who need LEP services.** Despite the rules requiring LEP individuals to have reasonable access to government programs and services, there are times when you may need to advocate on behalf of your clients in order for those services to be adequately provided.

Language Access is a Protected Civil Right

Limited English Proficient (LEP) individuals are those whose primary language is not English. They have a limited ability to speak, read, write, or understand English. Federal civil law prevents discrimination under any program or activity receiving federal funding on the basis of race, color, or national origin.¹ It is considered a form of national origin discrimination to discriminate based on a person's inability to speak, read, write, or understand English.² Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," issued by President Clinton in 2000, further strengthened the rights of LEP individuals by directing federal agencies to improve language accessibility in their own programs and the programs they fund, and to implement language assistance standards across federal agencies and among recipients of federal financial

1 42 U.S.C. § 2000d

2 *Lau v. Nichols*, 414 U.S. 563 (1974).

assistance.³ Many states and localities have also enacted additional language services requirements for LEP individuals.⁴

The right to language assistance, while enshrined in federal law, was weakened in 2001 in *Alexander v. Sandoval*. There, the Supreme Court held that Title VI does not include a private right of action to enforce claims based on a disparate impact theory of discrimination. The decision essentially barred individuals from bringing lawsuits to enforce Title VI's language access protections without alleging a theory of intentional discrimination or racial animus.

PRACTICE TIP

Despite the ruling in *Alexander v. Sandoval*, LEP older adults can still seek to enforce their language access rights by filing complaints with the SSA.⁵

LEP Populations

The variety of languages spoken in U.S. homes is quite vast, with at least 350 languages counted by the Census Bureau.⁶ In 2013, approximately 25 million individuals living in the U.S. were considered LEP. Compared to the English-proficient population, LEP individuals are more likely to live in poverty and have less education.⁷ Approximately 15% of the LEP population is age 65 or older, while approximately 10% are between the ages of 5 and 17. LEP individuals are more likely to be Latino or Asian as compared to the English-proficient immigrant population. In 2013, the poverty rate of LEP individuals was 25% or almost twice the rate of poverty of English-proficient individuals. Of those older adults filing initial claims for Supplemental Security Income (SSI) at the Social Security Administration (SSA) between 2016 and 2019, over 40% spoke a primary language other than English.⁸

Language Access Services Provided Through Various Federal Agencies and Federally-Funded Programs

Federal agencies and federally-funded programs are required to provide language assistance services for LEP individuals. Executive Order 13166 specifically directed federal agencies to develop and implement a system to provide LEP individuals meaningful access to their services. The Order also requires agencies to assist federally-funded programs in providing language assistance services as well. The Department of Justice, concurrently with the issuance of the Order, published an LEP Guidance document which set forth the standards for compliance to ensure that programs and services do not discriminate on the basis of national origin.⁹ Accordingly, while each agency is able to create its own LEP policy, there are certain standards every agency must meet to comply with the law.

3 Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 16, 2000, available at [govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf](https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf).

4 E.g., Maryland's Equal Access to Public Services Act of 2002 requires state agencies to translate vital documents into the languages spoken by LEP populations that constitute over 3 percent of the overall population within the geographic area served by a local office. Md. Code Ann., State Gov't § 10-1103.

5 Social Security Administration Program Operations Manual Systems (POMS) GN 00903.400.

6 Census Bureau, "Census Bureau Reports at Least 350 Languages Spoken in U.S. Homes," Nov. 3, 2015, available at [census.gov/newsroom/press-releases/2015/cb15-185.html](https://www.census.gov/newsroom/press-releases/2015/cb15-185.html).

7 Jie Zong and Jeanne Batalova, "The Limited English Proficient Population in the United States," Migration Policy Institute, July 8, 2015, available at [migrationpolicy.org/article/limited-english-proficient-population-united-states](https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states).

8 Author analysis of Social Security Administration (SSA) Quarterly Data for Spoken Language Preferences Supplemental Security Income (SSI) Aged Initial Claims, available at [ssa.gov/open/data/LEP-Quarterly-Spoken-Language-SSI-Aged-Applicants.html#dataCollectionDescription](https://www.ssa.gov/open/data/LEP-Quarterly-Spoken-Language-SSI-Aged-Applicants.html#dataCollectionDescription).

9 Department of Justice, "Enforcement of Title VI of the Civil Rights Act of 1964 'National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance),' Federal Register, Vol. 65, No. 159, August 16, 2000, available at [govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20867.pdf](https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20867.pdf).

Federal programs must take reasonable steps to ensure “meaningful” access to their information and services. To determine what constitutes “reasonable steps” the programs must consider four factors:

1. The number or proportion of LEP individuals it serves;
2. The frequency of contact between LEP individuals and the program;
3. The nature and importance of the program; and
4. The resources available to the program.

The guidance also includes what’s known as a “safe harbor” provision for the requirements around written translations. The provision triggers translation of “vital documents” when the LEP language group reaches 5 percent or 1,000—whichever is less—of the population of people eligible to be served or affected. Documents are considered vital if they contain information critical for obtaining federal services or benefits, or if the documents are required by law. Examples include applications, notices pertaining to rights or disciplinary actions, and letters or notices that require a response from the beneficiary. The safe harbor means that if a recipient of federal financial assistance provides written translations under these circumstances, it is considered strong evidence of Title VI compliance.

In addition to this guidance, the Department of Justice is also authorized to issue guidance and technical assistance to those subject to these rules. An interagency working group [developed a website](#) to provide information, tools, and technical assistance regarding LEP and language services for “federal agencies, recipients of federal funds, users of federal programs and federally assisted programs, and other stakeholders.”

Understanding the Social Security Administration’s Language Assistance Services and How to Utilize Them to Access Your Clients’ Benefits

The SSA has a language access plan available online.¹⁰ The agency provides LEP services through a nationwide network of over 1,500 offices, including regional offices, field offices, teleservice centers, and hearing offices. As noted above, the safe harbor provision for written translation can show that a federal program or service is Title VI compliant. However, it does not *mandate* written translation if a program can meet its obligation in other ways. The LEP guidance states that, “instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translation on reasonable request.”

SSA does not provide written translation of all its documents in every language spoken by at least 5 percent or 1,000 beneficiaries. Instead, SSA’s Multilanguage Gateway provides information about SSA’s programs in 18 languages, and also includes instructions on how to request free interpreter services.¹¹ Various SSA written publications may be translated into some of those languages as well. SSA also provides language access services to LEP customers in more than 150 languages through bilingual and multilingual employees and their national Telephone Interpreter Services (TIS). These services may be accessed in person, by telephone, online, or via video service delivery. Not all offices have their own bilingual and multilingual staff on site.

¹⁰ Fiscal Year 2018-19 Social Security Administration Language Access Plan, available at <https://www.ssa.gov/pubs/LAP2018-19.pdf>.

¹¹ Social Security Information in Other Languages, available at <https://www.ssa.gov/site/languages/en/>. Current languages are American Sign Language, Arabic, Armenian, Chinese (Traditional/Long Form) Farsi, French, Greek, Haitian Creole, Hmong, Italian, Korean, Polish, Portuguese, Russian, Somali, Spanish, Tagalog, and Vietnamese.

PRACTICE TIP: INTERPRETER SERVICES

SSA has a toll-free number people can call to receive free interpreter services telephonically. If the services are not able to be completed by phone, the caller can make an in-person appointment at a local SSA office where an interpreter will be available at the time of the visit. This interpreter may attend the in-person meeting via phone or video conference.

A translator is an individual who can read and write two or more languages and accurately translate written material from one language to the other. An interpreter is an individual who speaks two or more languages fluently and can facilitate oral communication between people who speak different languages.

Access SSA's Free Interpreter Services

To access SSA's free interpreter services, call their toll-free number: 1-800-772-1213. If the relevant language is Spanish, press 7, otherwise wait silently on the line during the automated prompts until a representative answers who will assist in connecting you with an interpreter who speaks the relevant language. The LEP individual should say in English which language they need help in.

Addressing issues with SSA's LEP services

If you have an LEP client who experiences a problem with SSA related to language access, there are a few different ways you can advocate on their behalf. The primary way is through direct communication with SSA staff, by citing SSA's Program Operations Manual Systems (POMS).¹² The POMS documents the rules and procedures SSA staff must follow in processing Social Security and Supplemental Security Income claims. The POMS is a key resource in understanding how SSA implements its language access services, and the standards they adhere to in providing language access services. The POMS should be one of your primary sources of information when advocating on behalf of your client. It is also important to not only reference the POMS, but also to cite specific sections of the POMS when communicating with SSA staff. Staff is much more likely to be persuaded by your argument when they can see the specific guidance in the POMS.

If your client is discriminated against because of their LEP status, you can file a complaint with SSA using form [SSA-437-BK](#).¹³ However, filing this form should not be your only course of action. Instead, you should engage actively with SSA staff, using the POMS to support your advocacy efforts. Often, this is the fastest and most efficient way to get results.

Using interpreters other than those provided by SSA

SSA provides free interpreters to LEP individuals who request language assistance or are evidently in need of language assistance in order to ensure the individual is not disadvantaged. However, some individuals may feel more comfortable having a friend or family member serve as their interpreter rather than an interpreter provided by SSA. In such cases, however, interpreters must meet SSA's criteria as a "qualified interpreter."¹⁴ A qualified interpreter is not only someone who is able to read and speak fluently in English and the language of the person needing language assistance. The qualified interpreter must also meet the following criteria:

1. Agrees to provide an accurate interpretation of the questions and responses by SSA staff and the LEP individual without assuming or inferring facts not actually provided by the customer;

¹² secure.ssa.gov/apps10/poms.nsf/partlist!OpenView

¹³ Complaint Form for Allegations of Program Discrimination by the Social Security Administration, available at ssa.gov/forms/ssa-437.pdf.

¹⁴ POMS GN 00203.011(B)(2), July 24, 2018 (secure.ssa.gov/apps10/poms.nsf/lnx/0200203011).

2. Demonstrates familiarity with basic SSA terminology;
3. Agrees to comply with SSA's disclosure and confidentiality of information requirements; and
4. Has no personal stake in the outcome of the case that would create a conflict of interest. However, an individual who is a claimant or beneficiary on the same record as the individual needing language assistance can act as a qualified interpreter as long as there is no other conflict of interest.

Minor children cannot serve as qualified interpreters as a general rule because of the nature and complexity of the cases.

PRACTICE TIP

While we strongly recommend against it, if an individual insists on having a minor child interpret for them, they may do so, but SSA **must** also provide a qualified interpreter as well.¹⁵ The individual must also be informed that SSA cannot use the minor child as a qualified interpreter and that a qualified interpreter chosen by SSA will be provided.

Case Example

Tam lives in California. She is 68 years old and an LEP Vietnamese speaker. Earlier in the month, she received several letters from the Social Security Administration in English, and she has no idea what they say. She goes to the local SSA office where, after waiting for over an hour, she is turned away and told to come back later because the one Vietnamese-speaking staff member at the office is out on vacation for the rest of the month. She comes to your office for help. You return with her to the SSA field office with a copy of the relevant SSA guidance in the POMS, which indicates that SSA has a nation-wide agreement with a private company to provide telephone interpreter services, that SSA authorizes all SSA public contact employees to use this service, and that interpreters are available immediately, with no appointment necessary, 24 hours a day and 7 days a week. Tam is able to speak to SSA staff through an interpreter to get answers to her questions. You may also decide to file a complaint using form [SSA-437-BK](#) to document the problems Tam initially had seeking interpreter services.

Conclusion

LEP Individuals have the right to access information and services provided by the federal government and/or through federally-funded programs. You can advocate on their behalf to ensure that they receive the language access services necessary for them to have reasonable access to these programs and benefits. While these services should be provided automatically, it will sometimes take direct advocacy to make it happen. By knowing the law governing language access for LEP individuals you can get your clients the services they need.

Glossary:

Interpreter

Someone who speaks two languages fluently and can act as an intermediary between those who speak different languages

Limited English Proficient/Proficiency (LEP)

Those whose primary language is not English, and who have a limited ability to speak, read, write, or understand English.

¹⁵ Social Security Administration Program Operations Manual Systems (POMS) GN 00203.011 (secure.ssa.gov/apps10/poms.nsf/lnx/0200203011)

Multilanguage Gateway

SSA's public internet site with information in multiple languages concerning their programs and services

Telephone Interpreter Services (TIS)

A contracted SSA service providing interpretation via telephone in more than 150 languages and dialects

Translation

Conversion of written text from one language to another

Additional Resources

- [Executive Order 13166](#): "Improving Access to Services for Persons with Limited English Proficiency," August 16, 2000
- [Limited English Proficiency \(LEP\) Federal Interagency Website](#)
- [Social Security Administration Language Access Plan](#)
- [The Social Security Administration's Multilanguage Gateway](#)
- [Social Security Administration Program Operations Manual System \(POMS\)](#)
- POMS GN 00203.011
- POMS DI 23040.001

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

This Chapter Summary was supported by a contract with the National Center on Law and Elder Rights, contract number HHSP233201650076A, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.