

Providing Meaningful Language Assistance

WSDOT 2009

I. LEP Plan Purpose

The Washington State Department of Transportation (WSDOT), as a recipient of funding from the United States Department of Transportation (USDOT), must assure that Limited English Proficient (LEP) people have meaningful language assistance by reasonable means when using WSDOT services, or services provided by WSDOT federal funding recipients. Funding assistance from the USDOT agencies, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) require a plan for providing this meaningful access in accordance with Title VI of the Civil Rights Act of 1964 and implementing regulations.

The WSDOT LEP plan presents the sources of authority for LEP plan requirements and instructions for determining if the threshold to show the need for languages assistance is present. The plan will provide guidelines for WSDOT divisions and organizations receiving federal funds from WSDOT to meet these needs and define the role of the WSDOT Title VI program in that process. Specifically, this plan will outline how to collect LEP information, and how to analyze that information. Part of the ongoing process for serving LEP people at WSDOT will be the creation of an LEP Implementation Guide, which will include service goals and a data collection plan to be integrated with other Title VI service requirements and reports.

Finally, this plan contains recommendations and resource material including our own best practices, to hone our future focus and acknowledge the excellent work WSDOT has already done in serving LEP people.

A. Who is an LEP person?

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP."

In other words, an individual with a primary language other than English who must, due to limited fluency in English, communicate in that primary language in order to have an equal opportunity to participate effectively in, or benefit from any aid, service, or benefit provided by WSDOT or transportation providers receiving federal funding from WSDOT.

B. What are reasonable steps to meaningful access?

Because the needs of LEP populations vary throughout Washington, the definition of meaningful access to WSDOT services is also varied. As such, each division within WSDOT or recipient of federal funds through WSDOT will determine the extent of obligation a project or federal funding recipients has to LEP people by using this plan as a guide.

II. Source of Authority and Guidance

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color or national origin under any program or activity that receives Federal financial assistance. Code of Federal Regulations Title 49 Part 21 specifically effectuates the provisions of Title VI rights to entities receiving Federal funds from the USDOT.

Links:

Title VI of the Civil Rights Act of 1964:

<http://www.justice.gov/crt/cor/coord/titlevistat.php>

49 CFR Part 21:

<http://www.fhwa.dot.gov/hep/49cfr21.htm>

A. Policy: Executive Order 13166

On August 11, 2000, President Clinton signed Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency". Accordingly, it prohibits recipients of Federal financial assistance from discriminating based on national origin by failing to provide meaningful access to services to individuals who are LEP. This protection requires that LEP persons be provided an equal opportunity to benefit from or have access to serves that are normally provided in English.

EXECUTIVE ORDER 13166

IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to Federally conducted and Federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. Goals.

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Sec. 2. Federally Conducted Programs and Activities.

Each Federal agency shall prepare a plan to improve access to its Federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Sec. 3. Federally Assisted Programs and Activities.

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

Sec. 4. Consultations.

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Sec. 5. Judicial Review.

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON
THE WHITE HOUSE,
August 11, 2000.

III. Determining the Need for Language Assistance

As stated in Section 1.B above, under the United States Department of Justice guidance, WSDOT is obligated to determine what reasonable steps to take to provide LEP individuals with meaningful access to its programs, activities, and services. WSDOT uses the following criteria, known as the four factors, to make this assessment.

a. Four Factor Analysis

1. Portion of LEP people

◇ **Who are the LEP persons serviced or likely to be encountered by WSDOT, or directly affected by WSDOT projects?**

Each division or project, in coordination with the Title VI Program, will continually assess the language assistance needs of the population to be served as necessary using the following guidance.

- Any previous contact with LEP populations by the division or project should be examined. This information can then be analyzed to set a baseline of need.
- Use census tract and other current demographic information to research the percentage of people speaking a language other than English in the affected project area. The Title VI Program can assist in this process. Keep in mind, population information changes faster than census data can be reported, for instance, refugee populations can have a sudden and large presence. Compare what the census says to past experience.
- Contact members of community associations (such as schools systems, community organizations, religious organizations, etc.) or project focus groups early in the project initiation. This will assist in determining whether there are any existing language barriers of which the project team should be aware. These associations are likely to be actively working LEP populations and may be the best source to learn about current LEP needs.

2. Frequency of Contact

◇ **What is the frequency with which LEP individuals come in contact with the program?**

A particular division or project may be located near a large LEP population but have little contact with that population. If a lack of contact exists, it is critical to determine if this lack of contact is due to language barriers. Consideration of the

languages spoken by the LEP people should also be noted. The more frequent the contact the more likely enhanced languages services are necessary.

3. Nature and Importance of Service Provided

- ◇ **What is the nature and importance of the program, activity, or service provided by the WSDOT division or project?**

The mission of WSDOT is to keep people and business moving by operating and improving the state's transportation systems vital to our taxpayers and communities. The result is an expansive range of services and projects, from innovative design and complex construction of major roadways to maintaining the largest public ferry system the United States. In addition to these significant projects are the equally important provision of assisting rural communities with public transportation and the prevention of avalanches. Each area of our transportation system will have a different importance and affect on LEP people.

From each region, division or project prospective, the importance of the activity, or the greater likelihood of consequences to LEP people has to be reviewed and balanced against the other three factors.

4. Cost

- ◇ **What resources are needed to provide effective language assistance, including location, availability, and arrangements necessary for timely use?**

Costs must be factored into this balancing test as part of the consideration of "resources available." Reasonable steps may cease to be reasonable where the costs imposed substantially exceed the benefits in light of the factors outlined in the U.S. Department of Justice (USDOJ) LEP Guidance. A suggestion might be to prioritize the needs so that the language services are targeted where most needed because of the nature and importance of the activity involved. Note LEP persons have the right to language assistance at no cost to them in their spoken language.

IV. Meaningful Language Assistance Measures

The key to providing meaningful access for LEP persons is to ensure that effective communication exists between the project, activity or service and the LEP person. To accomplish effective communication, the following actions might be necessary as determined by a needs assessment as outlined under Factor 1:

- Provide for oral language assistance
- Notify LEP customers of the availability of language assistance services

- Translate vital documents in languages other than English according to the safe harbor provision described below
- Train staff
- Develop written procedures
- Monitor and evaluate access to language assistance

A. Oral

Each division or project is to provide LEP persons with oral language assistance in a timely manner at reception desks or when telephone contact is appropriate. Such assistance may take the form of qualified bilingual staff, contracting with a qualified outside interpreter service (see the State of Washington General Administration contracts website at <https://fortress.wa.gov/ga/apps/ContractSearch/>) or the use of voluntary community interpreters who are skilled, competent and objective in interpreting.

Employment of bilingual staff in divisions and projects is recommended, when feasible, where the percentage of LEP customers or potential customers is statistically significant or where the frequency of contact with such persons will provide for efficient and effective communication. A decision to employ bilingual staff should be based on a needs assessment with due consideration given to budget constraints and department policy. The Human Resources Division can provide additional information on bilingual staff recruitment, bilingual pay procedures, departmental positions requiring bilingual skills and names and locations of staff that speak an alternative language and the language spoken.

Oral translation competency should be considered when using a translator. In some cases, a family member or volunteer without formal certification might be a good choice for instance when teaching an LEP person how to use the bus. In other circumstances, especially those that have the potential to affect a person's rights, such as purchasing a property from an LEP person, a certified interpreter is necessary.

B. Written

Written materials that are routinely provided in English to applicants, customers and the general public should be translated into languages that are regularly encountered. The extent of the obligation to provide written translations of documents should be determined on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Written materials include electronic documents and web sites.

A "safe harbor" provision regarding the translations of documents is provided by the Department of Justice. The DOJ suggests providing written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. The safe harbor provision applies to the translation of written documents only and does not affect the requirement to

provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

Note that some LEP people might have low literacy in their language. Written translations would not be effective or useful in those cases. When evaluating the need for written translation, the literacy level in the LEP population should be determined.

1. Vital Documents

Vital documents are documents that convey information that critically affects the ability of the service customer to make decisions. Whether or not a document (or the information it solicits) is “vital” depends upon the importance of the project, information, encounter, or service involved and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

Examples of vital documents include, but are not limited to: applications, public notices, consent forms, letters containing important information regarding participation in a project, eligibility rules, notices pertaining to the reduction, denial or termination of services or benefits, right to appeal, notices advising of the availability of language assistance, complaint forms and outreach and community education materials. WSDOT divisions, and projects will develop criteria for determining which documents are vital and subject to translation.

C. Alternative Communication Methods

To reduce costs and difficulty, WSDOT encourages staff to explore use of methods and devices that do not use language. For example, use of pictograms, symbol signs, standard symbolic signs (SMS's), diagrams, color-coded warnings, illustrations, graphics, and pictures can be considered information using very few words in any language. Schematic maps can similarly quickly communicate large amounts of information without words. Symbol signs and pictograms also benefit globalization of trade and travel.

D. Monitoring

Monitoring and evaluating the accessibility and quality of language assistance needs of LEP persons ensures that LEP persons can meaningfully access projects and activities and is the responsibility of the respective divisions or projects. At a minimum, divisions or projects should conduct an annual assessment to determine:

- The current LEP composition of its service area
- The current communication needs of LEP persons
- Whether existing assistance meets LEP needs

- Whether staff is knowledgeable about policies and procedures and how to implement them
- Whether sources of and arrangements for assistance are still current and viable

1. Implementation Guide

The LEP Plan Implementation Guide will outline how this data will be captured and reported in WSDOT's Title VI Annual Accomplishment and Goal Report. Data collection criteria will include:

- Primary language of the population in the project service area
- Primary language of customers served
- Data upon which the division based language needs assessment
- Number of LEP persons, by language group, who received language services
- Number and type of grievances and complaints received by WSDOT or against WSDOT sub-recipients alleging lack of provision of services due to limited English proficiency.

The Title VI program will analyze the LEP data and report on how the implementation policies are working as well as highlighting best practices.

E. Training

Training staff on policies and procedures of language assistance and how to determine whether a customer needs language assistance services is essential to bridging the gap between policies and actual practices. Training will include how to obtain language assistance services and communication with interpreters and translators.

Specialized training may be required of certain front-line staff that are likely to have considerable interaction with people with LEP, similar to the training offered by the WSDOT's Construction Office to teach construction inspectors the critical on-the-job phrases and instructions. Staff should be trained on how to recognize potential Title VI issues and to properly respond to Title VI complaints, including those from LEP people on the basis of national origin. Staff should also be familiar with the process the Office of Equal Opportunity uses to investigate Title VI complaints.

V. Compliance and Enforcement with LEP Requirements

A. Who must comply?

Executive Order 13166 directs recipients of Federal financial assistance to take reasonable steps to provide LEP individuals with meaningful access to their projects, activities and services.

All WSDOT Division and Project Directors, and Title VI Program Liaisons are responsible for ensuring that meaningful services to LEP persons are provided in their respective divisions or projects. Additionally, the designated WSDOT Title VI Coordinator will continuously monitor these divisions and projects to ensure LEP requirements are met and report annually to the Federal Highway Administration and tri-annually to the Federal Transit Administration on the accomplishments and upcoming goals relating to LEP activities.

B. Roles and Responsibilities

1. OEO Title VI Program

In determining whether LEP compliance is met, the Title VI Program is responsible for assessing whether the division's or project's procedures allow LEP persons to overcome language barriers and participate in a meaningful way in the division's or project's activities and projects. The appropriate use of methods and options detailed in this LEP Plan will be viewed as evidence of intent to comply with the LEP requirements and Title VI of the Civil Rights Act of 1964.

a) Responding to Complaints

The appropriate senior manager will be notified of any complaint arising from LEP issues. The senior manager's first responsibility is to attempt to provide the requested service as soon as possible, resolve the specific complaint to the customer's satisfaction and take steps addressing these policies/procedures which generate such complaints.

WSDOT's Title VI program staff shall be apprised of the issue and take appropriate action on the complaint. Failure to comply and make good faith efforts may be a violation of Federal and State law and can result in sanctions being imposed.

b) Technical Assistance

The WSDOT Title VI program is responsible for providing WSDOT divisions and projects with technical assistance. This includes advising of LEP requirements, implementing those requirements and assisting in developing individual project plans

and processes. The creation of the LEP Plan Implementation Guide and the maintenance of that guide is the responsibility of WSDOT Title VI Program.

In addition, the Title VI Program will provide training to appropriate staff regarding LEP policies and good practice. The LEP Plan Implementation Guide will include the plan for this training.

c) Resource Sharing

The WSDOT Title VI Program will maintain and update the Title VI website in order to assure current agency wide information is available.

2. Special LEP Emphasis Divisions and Projects

The following is a list of WSDOT Divisions and Projects whose work may include a particular LEP emphasis. Included under some areas are links to specific projects and programs already providing LEP focused service.

◇ Communications

Public communication and involvement, as exercised by WSDOT, is the process that helps to infuse transportation goals with the goals of the community. Link to the Public Communications and Involvement Chapter 4 of the Communications Manual <http://wwwi.wsdot.wa.gov/ppsc/planning/08Chp4PubCommInvol.pdf>

◇ Construction

The Construction Office is responsible for the administration of new construction projects. The Maintenance Office is responsible for the preservation and upkeep of the state transportation system. The offices are located within the Maintenance and Operations Programs.

Link to Chapter 1 of Construction Manual, see section 1-2.7:

<http://www.wsdot.wa.gov/publications/manuals/fulltext/M41-01/Chapter1.pdf>

◇ Consultant Services

The Consultant Services Office is responsible for consultant selection, negotiation, and the administration of consultant contracts. The office is located within the Environmental and Engineering Service Center.

Link to Consultant Services Procedural Manual see Appendix 5:

<http://www.wsdot.wa.gov/publications/manuals/fulltext/M2750/ConsultantServiceProceduresManual.pdf>

◇ Design/Location

The Design Management Office performs studies to assess various environmental factors as they relate to project development, which include social and economic elements. The office also provides technical support to the regions during project development process. The Design Management Office is located within Environmental and Engineering Programs.

◇ **Education/Training**

The Staff Development Office is under WSDOT's Office of Human Resources, Administration and Support Division. The Staff Development Office provides overall training program administration within the department, including training provided by the National Highway Institute (NHI). Staff Development is located within the Office of Human Resources.

◇ **Environmental**

Explains what Environmental Justice (EJ) is, how it is linked to the work we do, and how WSDOT assures our projects analyze impacts of that work, and changes that the work causes, on low income and/or minority populations.

<http://www.wsdot.wa.gov/Environment/EJ/EnviroJustice.htm>

Project-level tools and guidance on how to assess whether or not an EJ issue exists for a specific project. The page includes tools and guidance for assessing project impacts on particular populations. Although the page on social effects is broader than the LEP issue, this is the link to the tools a project team needs to ensure EJ and LEP issues are addressed.

<http://www.wsdot.wa.gov/NR/rdonlyres/5EFE5360-C3F3-4D41-A2E0-5E77D506C65F/0/SocialDecisionMatrix.pdf>

The Environmental Procedures Manual provides guidance on environmental procedures for WSDOT and its environmental consultants. The manual outlines the department's legal requirements related to natural and man-made environmental resources and is a keystone of the department's Environmental Management System (EMS). Chapter 458 of the EPM specifically addresses the environmental issues related to LEP and EJ. The chapter identifies all relevant rules, laws, Executive Orders, and other policy guidance on the subject, and provides links to tools and resources (including those listed above).

<http://www.wsdot.wa.gov/publications/manuals/fulltext/M31-11/458.pdf>

◇ **Highways and Local Programs**

The Highways and Local Programs Division has oversight responsibilities to ensure that cities, counties, and MPOs comply with the administrative requirements of Title VI. Highways and Local Programs will perform project management reviews to ensure local agencies' adherence to Title VI administrative requirements and will advise and assist local agencies in the management of Title VI complaints.

Link to Local Agency Guidelines Chapter 27

<http://www.wsdot.wa.gov/publications/manuals/fulltext/M36-63/Lag27.pdf>

◇ **Maintenance and Traffic Operations**

The Maintenance Office is responsible for the preservation and upkeep of the state transportation system. The Maintenance Office is located within the Maintenance and Operations Programs.

◇ **Planning**

The Planning Office has the responsibility to develop long- and short range plans for WSDOT to provide efficient transportation services to the citizens of the state of Washington. The Transportation Planning Office is located within the Planning and Programming Service Center.

◇ **Public Transportation**

The Public Transportation Division provides state and federally funded grants and intercity bus services to rural and small urban areas of Washington State. To view information on the grant program administration, including information on Title VI oversight, please click on the following link to WSDOT's "Guide to Managing Your Public Transportation Grant":

<http://www.wsdot.wa.gov/Transit/Library/Guidebook.htm>.

◇ **Purchasing and Materials Management**

The Purchasing and Materials Management team regulates, manages, and improves the procurement of purchased goods and services, and information technology hardware and software. PMM maintains accountability of consumable, capital, and IT assets of the department and ensures data integrity for WSDOT procurement and inventory systems. PMM also ensures WSDOT adherence to public procurement and supply management principals, procedures and ethical standards and supports stores and inventory operations in the regions, WSF, and HQ.

◇ **Research & Library Services**

The Research Office is responsible for the development of research projects that include not only engineering-related projects, but other areas such as transit, transportation and environmental studies, and socioeconomic analysis. The Research Office is located within the Planning and Programming Service Center.

◇ **Real Estate Services**

Real Estate Services manages and coordinates the appraisal and acquisition of real property for transportation needs, the management of excess properties, and Relocation Assistance Services. The office is a part of Environmental and Engineering Programs.

Link to Real Estate Services Spanish Translations:

Property Needs and You Brochure

Residential Relocation Brochure

Non-Residential Brochure

PPO Brochure

http://www.wsdot.wa.gov/RealEstate/Translated_Brochures.htm

RES-504, General Notice of Relocation Rights – Residential

RES-507, Notice of Eligibility, Entitlements, & 90-Day Assurance – Residential Owner

RES-508, Notice of Eligibility, Entitlements, & 90-Day Assurance – Residential Tenant

RES-540, Moving Expense Agreement - Residential

<http://www.wsdot.wa.gov/RealEstate/forms/Relocation/Translated/Spanish.htm>

◇ **Transit Mobility**

The Regional Mobility Grant Program supports local efforts to improve transit mobility and reduce congestion on our most heavily traveled roadways. The program provides money to local governments to deliver transit mobility projects that are cost-effective, reduce travel delay for people and goods, improve connectivity between counties and regional population centers, and are consistent with local and regional transportation and land use plans.

◇ **Ferries Division**

The Washington State Ferries provides marine transportation services to state residents and visitors seeking mobility within the Puget Sound waters. Washington State Ferries is the largest ferry system in the United States, serving eight counties within Washington and the Province of British Columbia in Canada. Our existing system has 10 routes and 20 terminals that are served by 28 vessels.

Link to WSDOT Title VI Plan see Pg. 27 for Washington State Ferries Title VI Requirements for Programs and Activities:

<http://www.wsdot.wa.gov/NR/rdonlyres/66E36A90-B067-45C7-BA18-FC5502FF7E59/0/2001TitleVIPlan.pdf>

a) General Responsibilities

WSDOT will make every effort to provide services, either through translation or interpreter, available prior to scheduled meetings, such as public hearings or project meetings.

When a need has been identified by WSDOT or WSDOT receives a request, WSDOT shall make every effort to provide services requested in a timely manner.

WSDOT will pay for the translation of vital documents and interpreter services.

LEP Plan Implementation Guide will provide the framework for all of WSDOT including a reporting system, training plan and other technical assistance.

VI. Resources and References

The U.S. Department of Transportation Guidance to Recipients on Special Language Services to Limited English Proficient Beneficiaries,

<http://www.fta.dot.gov/documents/Newlepguidance.doc>

The U.S. DOJ Policy Guidance, Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency, Federal Register/Vol. 65, No. 159/Wednesday, August 16, 2000.

<http://www.usdoj.gov/crt/cor/>

Website of the Federal Interagency Working Group on Limited English Proficiency

<http://www.lep.gov/index.htm>

U.S. Department of Justice Clarifying Memorandum, dated October 26, 2001.

<http://www.usdoj.gov/crt/cor/lep/Oct26BackgroundQ&A.htm>

United States Census 2000 Language Identification Flashcard

<http://www.dol.gov/oasam/programs/crc/ISpeakCards.pdf>

Western States Uniform Data Collection Standards

<http://www.wsdot.wa.gov/NR/rdonlyres/8ADA6A7C-2FCD-43C7-8F68-5956A3C140DA/0/DataCollectionStandards.pdf>