



## **New Jersey Department of Transportation Division of Civil Rights and Affirmative Action**

### **Limited English Proficiency (LEP) Guidelines**

#### ***USDOT Limited English Proficiency (LEP) Definition:***

Individuals with a primary or home language other than English who must, due to limited fluency in English, communicate in that primary or home language if the individuals are to have an equal opportunity to participate effectively in or benefit from any aid, service or benefit provided by the transportation provider or other DOT recipient.

#### ***Background and Authority:***

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.

The purpose of this limited English proficiency guideline is to clarify the responsibilities of the New Jersey Department of Transportation (NJDOT), a recipient of Federal financial assistance from the U.S. Department of Transportation (DOT), in fulfilling its responsibilities to limited English proficient (LEP) persons, in accordance with Title VI of the Civil Rights Act of 1964 and implementing regulations.

On August 11, 2000, **Executive Order 13166**, “*Improving Access to Service for Persons With Limited English Proficiency*,” was signed by President Bill Clinton. It directs federal agencies to ensure people who are LEP have meaningful access to services.

#### ***Who is a LEP Person?***

Individuals 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 language assistance with respect to a particular type or service, benefit, or encounter.

#### ***Linguistically Isolated***

A person in households in which no one over the age of 14 speaks English well is used as a direct measure of those persons with a severe language barrier.

***LEP and the New Jersey Department of Transportation***

The below matrix illustrates legal and policy considerations that require NJDOT to provide LEP persons with meaningful access to programs, activities, and services.

Title VI of the Civil Rights Act of 1964	Executive Order 13166 Limited English Proficiency
<ul style="list-style-type: none"> <li>• Federal Law</li> </ul>	<ul style="list-style-type: none"> <li>• Federal Policy</li> </ul>
<ul style="list-style-type: none"> <li>• Enacted July 2, 1964</li> </ul>	<ul style="list-style-type: none"> <li>• Signed August 11, 2000</li> </ul>
<ul style="list-style-type: none"> <li>• Considers all persons</li> </ul>	<ul style="list-style-type: none"> <li>• Considers eligible populations</li> </ul>
<ul style="list-style-type: none"> <li>• Contains monitoring and oversight compliance review requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Contains monitoring and oversight requirements</li> </ul>
<ul style="list-style-type: none"> <li>• Provides protection on the basis of race, color, and national origin</li> </ul>	<ul style="list-style-type: none"> <li>• Provides protection on the basis of national origin</li> </ul>
<ul style="list-style-type: none"> <li>• Focuses on eliminating discrimination in federally funded programs</li> </ul>	<ul style="list-style-type: none"> <li>• Focuses on providing LEP persons with meaningful access to services using Four- Factor criteria</li> </ul>
<ul style="list-style-type: none"> <li>• Annual Accomplishment and Upcoming Goals Report to FHWA</li> </ul>	<ul style="list-style-type: none"> <li>• Annual Accomplishment and Upcoming Goals Report to FHWA</li> </ul>

***Assessment: The Four-Factor Analysis to Meaningful Access***

Failure to provide access to anyone that is a LEP individual in federally assisted programs and activities is national origin discrimination under Title VI of the Civil Rights Act of 1964. Title VI and its regulations require that the NJDOT take reasonable steps to ensure “meaningful” access to the information and services it provides. The following is the four-factor analysis guiding the implementation of the LEP access requirement:

***1. The number or proportion of LEP persons served or likely to be encountered on NJDOT projects:***

The greater the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population, the more likely language services are needed.

Divisions within NJDOT should first examine prior experience with LEP individual and determine the breadth and scope of language services that are needed. In conducting this analysis, it is important to include language minority populations that are eligible beneficiaries of NJDOT programs, activities, or services but may be underserved because of existing language barriers; and consult additional data, for example, from the census, school systems, and community organizations, and data from state and local governments, community agencies, school systems, religious organizations and legal aid entities.

***2. The frequency with which LEP individuals come in contact with the program, activity or service:***

NJDOT Divisions should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance, as the more frequent the contact, the more likely enhanced language services will be needed. The steps that are reasonable for servicing a LEP person on a one-time basis will be very different than those expected for servicing LEP persons daily.

3. ***The nature and importance of the program, activity, or service provided by the program:***

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The department needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implication for the LEP individual.

4. ***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 the US Department of Justice (DOJ) Guidance. A suggestion might be to prioritize so that the language services are targeted where most needed because of the nature and importance of activity involved.

This four-factor analysis necessarily implicates the “mix” of LEP services required. NJDOT has two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service and written translation. Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a construction project occurring in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person (s) and to the department.

***Division of Civil Rights and Affirmative Action Title VI Responsibility***

The Title VI Coordinator is responsible for monitoring NJDOT’s divisions’ activities to ensure meaningful access for LEP persons. This includes advising divisions of LEP requirements, implementing and assisting in developing individual program plans.

***Compliance and Enforcement***

NJDOT Division Directors are responsible for ensuring that meaningful services to LEP persons are provided in their respective divisions. The Title VI Coordinator will continuously monitor their respective divisions to ensure LEP requirements are fulfilled and report annually on the accomplishments and upcoming goals relating to LEP activities to the NJDOT Civil Rights and Affirmative Action Division.

## ***NJDOT Division Responsibility***

The key to providing meaningful access to benefits and services for LEP persons is to ensure that the language assistance provided results in accurate and effective communication between the department and LEP person about the types of services and/or benefits available. To accomplish effective communication, the following five elements should be considered at a division level:

### **Five Elements of a LEP Plan**

1. Identification of LEP persons
2. Develop language assistance measure
3. Ensure staff is trained
4. Provide outreach and notices in LEP languages
5. Monitor and evaluation of efforts

#### ***1. Identification of LEP persons***

- Use the first two Four-Factors:
  - The number or proportion of LEP persons served or likely to be encountered on NJDOT projects
  - The frequency with which LEP individuals come in contact with the program, activity or service
- Use language identification cards or “I speak” cards
- Post notices in LEP languages of assistance available to encourage self-identification
- Perform language census data analysis at statewide, county and municipal levels

#### ***2. Develop language assistance measures***

- DOT Headquarters and regional offices to provide LEP persons with oral language assistance at reception desks and when contacted by telephone. Assistance may come through bilingual staff or voluntary community interpreters who are experienced and competent in interpreting.

#### ***3. Ensure staff is trained***

- Ensure staff knows LEP policies and procedures
- Linguistic diversity and sophistication
- Cultural sensitivity and communication skills
- Staff trained to effectively communicate with LEP and telephone interpreters

#### ***4. Provide outreach and notices in LEP languages***

- Important to let LEPs know services are available and free of charge
- Notices in languages LEPs will understand
  - Written at the 4<sup>th</sup> – 6<sup>th</sup> grade reading level
- Website in multiple languages
- Ways to accomplish:
  - Post signs in most common places visited
  - Work with community organizations
  - Telephone Voice Mail in common languages
  - Notices in local newspapers in other languages
  - Presentations/notices at schools and churches

**5. Monitor and Evaluation of Efforts**

- Regular oversight and Plan modification of:
  - Current LEPs in service area encountered or affected
  - Current communication needs of LEP communities
  - Frequency LEP groups are encountered
  - Nature and importance of activities of LEPs
  - Whether existing assistance meets the needs of LEPs
  - Whether staff is knowledgeable of policy, procedures and plan implementation
  - Whether identified sources of assistance are still current and viable
  - Number and type of grievances/complaints received

***What Languages Should NJDOT Translate Documents?***

The following charts show a.) The top ten (10) languages listed per rank as of 1990 Census spoken at home by persons five years old and over in New Jersey; and b.) The top ten (10) languages spoken throughout the three NJDOT regions compared to the overall State. NJDOT has broken New Jersey’s 21 counties into three regions in order to do business effectively across the State. The three regions are North, Central and South. North region includes: Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union and Warren counties. Central region: Hunterdon, Mercer, Middlesex, Monmouth, and Somerset counties. Region South: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem counties.

**a.) 19.5% language minorities in 1990, 25.5% in 2000**

LANGUAGE	1990 CENSUS	2000 CENSUS	% INCREASE
Spanish	621,416	967,741	+42%
Italian	154,160	116,365	-25%
Polish	69,145	74,663	+8%
German	56,877	41,025	-28%
Portuguese	55,285	72,870	+32%
French/French Creole	52,351	76,008	+45%
Chinese	47,334	84,345	+78%
Tagalog	38,107	66,851	+75%
Korean	30,712	55,340	+80%
Arabic	24,384	47,052	+93%

**b.) Top 10 languages by NJDOT region compared to overall State**

Languages NJDOT North Region		State Totals	Languages NJDOT Central Region		State Totals	Languages NJDOT South Region		State Totals
Spanish	662,340	967,741	Spanish	190,070	967,741	Spanish	115,300	967,710
Italian	67,205	116,365	Italian	29,535	116,365	Italian	8,885	116,365
Polish	53,038	72,870	Polish	23,910	74,665	Chinese	3,030	66,415
Portuguese	34,515	74,663	Portuguese	18,965	72,835	Tagalog	2,740	66,850
Tagalog	32,805	55,340	Russian	17,390	38,565	French	2,120	45,675
Chinese	6,435	66,415	Chinese	29,535	66,415	German	2,970	41,005
Korean	32,805	55,340	Gujarathi	17,390	47,325	Vietnamese	2,965	13,310
Gujarathi	6,555	47,325	Hindi	10,285	31,395	Polish	1,845	74,665
Arabic	19,190	47,050	French	2,320	45,675	Korean	1,700	55,340
French	10,610	45,675	German	3,485	41,005	Greek	1,415	26,565

The above charts indicate languages of LEP individuals department personnel in the three regions may encounter when conducting business. They may prove helpful in determining what languages vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by the department and less commonly-encountered languages.

NJDOT comes in contact with many communities on a daily basis through numerous activities (i.e. construction projects, Emergency Service Patrol (ESP), etc.). They regularly serve persons residing in New Jersey alone who speak over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources.

Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve NJDOT of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the department's obligation to provide written translations of documents should be determined by the department on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

### **Vital Documents**

**Definition:** considered vital if it contains information that is critical for obtaining federal services and/or is required by law.

**Examples:**

- Applications
- Consent & Compliant forms
- Notices of rights
- Advertisement Notices of free language services
- Written test
- Letter/Notices that require response
- Publication (Newsletters, Posters, Videos, etc.)
- Website

### ***Language Assistance: Translation vs. Interpretation***

**Translation:** The process of transferring ideas expressed in writing from one language to another language.

**Interpretation:** The process by which the spoken word is used when transferring meaning between languages.

### **Language Assistance Services**

The Division of Civil Rights and Affirmative Action Title VI Program is working with CTS LanguageLink to provide services on the following:

- Translation
  - Vital documents
  - Multilingual Voiceover Work
  - Desktop Publishing
  - Web Information- text translation, downloadable PDF files in targeted languages
  
- Oral Language interpretation:
  - On-site
  - Telephonic (where needed)
  
- Alternative Communication Methods & Devices
  - Symbol signs, diagrams, color-coded warnings, illustration, graphics, pictures, etc.

### ***Tracking of LEP Persons***

A central database will be created and maintained by the Title VI Coordinator.

A departmental linguistic list has been created and is maintained by the Title VI Coordinator.

## ***Frequently Asked Questions***

### **Q. Who is a Limited English Proficient (LEP) individual?**

A. Individuals 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 language assistance with respect to a particular type or service, benefit, or encounter.

### **Q. What are the relevant laws concerning language access for LEP individuals?**

A. Federal laws particularly applicable to language access include Title VI of the Civil Rights Act of 1964, and the Title VI regulations, prohibiting discrimination based on national origin, and Executive Order 13166 issued in 2000. Many individual federal programs, states, and localities also have provisions requiring language services for LEP individuals.

### **Q. What is Executive Order 13166?**

A. An Executive Order is an order given by the President to federal agencies. The LEP Executive Order (Executive Order 13166) says that people who are LEP should have meaningful access to federally conducted and federally funded programs and activities.

Executive Order 13166 requires all agencies that provide federal financial assistance to issue guidance on how recipients of that assistance can take reasonable steps to provide meaningful access consistent with Title VI and the Title VI regulations. The Order also requires that federal agencies create plans for ensuring that their own activities also provide meaningful access for persons who are LEP.

More information on Executive Order 13166 can be found at [Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency](#).

### **Q. What is a recipient of federal financial assistance?**

A. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Subrecipients are also covered, when federal funds are passed from one recipient to a subrecipient. Recipients of federal funds range from state and local agencies, to nonprofits and other organizations. A list of the types of recipients and the agencies funding them can be found at [Executive Order 12250 Coordination of Grant-Related Civil Rights Statutes](#).

Title VI covers a recipient's entire program or activity. This means all parts of a recipient's operations are covered. This is true even if only one part of the recipient receives the federal assistance.

Example: DOJ provides assistance to a state department of corrections to improve a particular prison facility. All of the operations of the entire state department of corrections--not just the particular prison--are covered.



More information on Title VI, generally, can be found at [Title VI of the Civil Rights Act of 1964 42 U.S.C. § 2000d et seq.](#)

**Q. What is a federally conducted activity?**

A. All federal agencies subject to Executive Order 13166 must design and implement a federally conducted plan to ensure access for LEP individuals to all of its federally conducted programs and activities (basically, everything that it does). For instance, the Civil Rights Division of the U.S. Department of Justice has a plan for ensuring meaningful access to its programs and activities for LEP persons. Other agencies and parts of agencies must do the same.

**Q. Who will enforce the LEP rules?**

A. Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act. To the extent that a recipient's actions are inconsistent with their obligations under Title VI, then such agencies will take the necessary corrective steps. For DOTs the federal agency responsible for enforcing Title VI is the Federal Highway Administration.

[The Coordination and Review Section of the Civil Rights Division of DOJ](#) has taken the lead in coordinating and implementing this Executive Order.

**Q. What are recipients of federal funds and federal agencies required to do to meet LEP requirements?**

A. Recipients and federal agencies are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
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 or agency, and costs. As indicated above, the intent of this guidance is to find a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, or small nonprofits.

**Q. Do recipients of federal funds have to submit written language access plans to the Department of Justice or to their federal funding agency each year?**

A. No. While planning is an important part of ensuring that reasonable steps are taken to provide meaningful access to LEP individuals seeking services, benefits, information, or assertion of rights, there is no blanket requirement that the plans themselves be submitted to federal agencies providing federal financial assistance. In certain circumstances, such as in complaint investigations or compliance reviews, recipients may be required to provide to federal agencies a copy of any plan created by the recipient.

November 2014

THE WHITE HOUSE

Office of the Press Secretary  
(Aboard Air Force One)

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For Immediate Release

August 11, 2000

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.

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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.

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