

Limited English Proficiency (LEP) Policy

References:

Section 601 of Title VI of the Civil Rights Act of 1964; Section 188 of the Workforce Investment Act (WIA) of 1998; 29 CFR Part 37; Executive Order 13166; Federal Register, Vol. 68, No. 103, May 29, 2003, pp. 32290 - 32305; TEGL 26-02.

Background:

Recipients of federal financial assistance must ensure meaningful access to their programs and activities by persons with Limited English Proficiency (LEP). This policy addresses entities that receive financial assistance under Title I of WIA, subrecipients of such funding, and programs and activities that are part of the American Job Center delivery system and that are operated by American Job Center partners listed in Section 121(b) of the WIA.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising rights, complying with applicable responsibilities, or understanding other information provided by federally assisted programs and activities.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964 and Section 188 of the Workforce Investment Act (WIA) against national origin discrimination.

Action:

After the 10 day review period, this policy is considered final. Questions and comments should be submitted in writing to Stan Odenthal, stan.odenthal@nebraska.gov.

Policy:

Each recipient or subrecipient of federal financial assistance described above must take reasonable steps to ensure LEP persons receive, free of charge, the language assistance necessary to afford them meaningful access to their programs, services, and information.

Limited English Proficient Individual Definition

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be Limited English Proficient, or "LEP," and entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Four-Factor Analysis for Assessing Reasonable Steps:

Recipients and subrecipients 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 DOL has stated that the starting point is an individualized assessment that balances the following four factors:

1. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients and subrecipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Recipients and subrecipients should begin by examining prior experiences to determine the breadth and scope of language services that have been needed. Recipients and subrecipients should also consider that language minority populations who may be eligible for programs may have been underserved because of existing language barriers. When assessing eligible service populations of local areas, each local office may wish to assess its own local service population. The existence of different LEP populations at different local offices may justify differing levels of LEP services at the Career Centers.

2. The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients and subrecipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from potential language groups seeking assistance at the various local offices. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. When recipients and subrecipients serve LEP persons on an unpredictable or infrequent basis, it is still necessary to analyze what to do if a LEP individual seeks services.

3. The Nature and Importance of the Program, Activity, or Service Provided by the Recipient

The importance of the activity, service, or program administered by the recipient or subrecipient, and the likelihood of contact of such activity, service, or program with LEP individuals should be considered when taking steps to ensure reasonable access.

4. The Resources Available to the Recipient and Costs

A recipient or subrecipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps reasonable in providing language services. Costs associated with providing meaningful access to LEP persons are considered allowable program costs. Smaller recipients or subrecipients with more limited budgets are not expected to provide the same level of language services as are larger recipients with larger budgets.

Language Service Considerations

Quality and accuracy of the language service is critical. In addition, language assistance should be provided in a timely manner.

Oral Language Services

When using interpreters, recipients should determine that the interpreter demonstrates proficiency and ability to communicate information accurately in both English and in the other language.

LEP individuals have the option of using, at their own expense, interpreters of their own choosing (whether a professional interpreter, family member, friend, or other informal interpreter) in place of or as a supplement to the free language services expressly offered by the recipient or subrecipient.

Recipients and subrecipients may use telephone interpreter lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages.

Written Language Services

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

A recipient or subrecipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of a frequently-encountered LEP group eligible to be served and/or likely to be affected by the programs administered by the recipient or subrecipient. Deciding whether or not a document (or the information it provides and/or solicits) is "vital" may depend upon the importance of the program, 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.

Recipients or subrecipients who operate web-based, self-service systems as an adjunct to their in-person delivery systems might consider using language software conversion packages or provide information in appropriate languages describing how to obtain free language assistance.

The extent of a recipient or subrecipient's obligation to provide written translations of documents should be determined by the recipient or subrecipient on a case-by-case basis after assessing the four factors. The length of a document's lifespan and the volume of new documents requiring translation may also be a factor in this determination.

Effective Language Assistance Plan (LAP) Development

After the assessment process is complete and after determining what language assistance services are appropriate, a recipient or subrecipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients and subrecipients have considerable flexibility in developing this plan.

A written plan, while not a requirement, can be an important tool for a recipient or subrecipient. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons for use by recipient or subrecipient staff serving the public can be an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans often provide additional benefits to a recipient or subrecipient's managers in the areas of training, administration, planning, and budgeting. A written LEP plan should document the language assistance services available and how staff and LEP persons can access those services.

If a recipient or subrecipient chooses to not develop a written LEP plan, it should be able to articulate in some other reasonable manner a plan for providing meaningful access.

Five Elements to Address in the LEP Plan

1. Identifying LEP Individuals Who Need Language Assistance

The plan should identify the estimated number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters.

2. **Language Assistance Measures**

An effective LEP plan should contain information about the ways in which language assistance will be provided including these items:

- types of language services available;
- how staff can obtain those services;
- how to respond to LEP callers;
- how to respond to written communications from LEP persons;
- how to respond to LEP individuals who have in-person contact with recipient staff;
- how to ensure competency of interpreters and/or translation services; and
- such other information as the recipient deems necessary.

3. **Training Staff**

It is important that staff is aware of their obligations to provide meaningful access to information and services for LEP persons. Staff should be trained to know about LEP policies and procedures and staff having contact with the public should be able to work effectively with in-person and telephone interpreters.

4. **Providing Notice to LEP Persons**

Notices announcing the availability of language assistance services need to be provided in language(s) that LEP persons will understand. Some places where this notification may be helpful include: signage within the Career Center; statements in outreach documents; presentations and targeted communication efforts with community-based organizations and other stakeholders; telephone voice mail menus; local newspapers; and non-English language radio and television stations.

5. **Monitoring and Updating the LEP Plan**

A process should be in place for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals. Recipients and subrecipients should consider whether changes in demographics, types of services, or other factors require reevaluation of LEP plans.

Technical Assistance

Self-Assessment Tool

A "Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance" is available at the LEP website at <http://www.lep.gov/selfassesstool.htm>.

Resources

The website of the Federal Interagency Working Group on Limited English Proficiency is located at: <http://www.lep.gov>. This site acts as a clearinghouse, providing and linking to information, tools, and technical assistance regarding Limited English Proficiency and language services.

The DOL has created a webpage entitled "LEP Toolkit" which provides numerous resources for recipient agencies to utilize as they create LEP Plans. This webpage is accessible at <http://www.dol.gov/oasam/programs/crc/lepcnt.htm>.

The Nebraska Department of Labor is the WIA Title I Grant Recipient Agency and Jose Santos is the Equal Opportunity Officer for State issues related to the grant.

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The Office of Employment and Training of the Nebraska Department of Labor has posted their most recent "Limited English Proficiency Plan" online. This plan is accessible at <http://www.dol.nebraska.gov/center.cfm?PRICAT=3&SUBCAT=8F>.

Enforcement

The requirement to provide meaningful access to LEP persons is enforced and implemented by the U.S. Department of Labor through the procedures identified in the Title VI and Section 188 regulations. The Nebraska WIA Equal Opportunity and Nondiscrimination policy provides information on the definition of recipients, the role of the Equal Opportunity Officer, procedures for filing complaints, and instructions related to data/information collection and maintenance. The procedures discussed in the Equal Opportunity and Nondiscrimination policy are all applicable to this policy.

On Aug. 11, 2000, President Clinton issued Executive Order No. 13166, entitled "Improving Access to Service for Persons with Limited English Proficiency" (available electronically at <http://www.dol.gov/oasam/regs/statutes/Eo13166.pdf>). This executive order was meant to clarify Title VI of the Civil Rights Act of 1964. The executive order was issued to ensure equal accessibility to federally funded programs and services to otherwise eligible individuals not proficient in the English language. The executive order states that:

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.

Executive Order No. 13166 ensures that in addition to federal agencies, recipients of federal financial assistance funds must also comply with Title VI and the LEP guidelines of the agency from which the funds are received. In addition, each agency subject to the requirements of Title VI must publish guidance to its respective recipients clarifying its obligation. As a recipient of federal funding, this requirement applies to all programs and services offered by OET.

The U.S. Department of Labor (DOL) has acknowledged that the implementation of a comprehensive system to serve LEP individuals is an evolving process that will improve over time, as it is developed, implemented and periodically reevaluated.

In developing any phased implementation schedule, recipients and subrecipients should ensure that:

- the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first; and
- documentation of their efforts to provide LEP persons with meaningful access to federally assisted programs and activities is kept on file.