

**EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES
LANGUAGE ASSISTANCE PLAN FOR
IMPLEMENTATION OF EXECUTIVE ORDER 13166**

August 2008

1.0 PURPOSE

In compliance with Section 2 of Executive Order 13166, this Language Assistance Plan (LAP) details the initiatives and plans of the Executive Office for United States Trustees (EOUST) to improve access to the United States Trustee Program's (USTP) federally-conducted programs and activities by eligible individuals of limited English proficiency (LEP). For purposes of EOUST's Language Assistance Plan, the definition of "federally-conducted programs and activities" is identical to that used under the regulations implementing Section 504 of the Rehabilitation Act of 1973. 28 C.F.R., Part 39, Editorial Note; *Section 39.102 Application*. Neither Executive Order 13166 nor this updated Language Assistance Plan create any new right(s), including the right to seek administrative or judicial enforcement, on the part of any person, including a person with limited English proficiency. This is an update to the EOUST's prior LAP dated August 31, 2004.

2.0 BACKGROUND

On August 11, 2000, the President issued Executive Order 13166 titled "Improving Access to Services for Persons With Limited English Proficiency." 65 FR 50121 (August 16, 2000). On the same day, the Assistant Attorney General for Civil Rights issued a Policy Guidance Document, titled "Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency" (DOJ LEP Guidance), reprinted at 65 FR 50123 (August 16, 2000). Subsequently, the Department of Justice (Department or DOJ) adopted final LEP guidance for recipients of federal financial assistance titled "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (LEP Guidance for DOJ Recipients), reprinted at 67 FR 41455 (June 12, 2002).

Executive Order 13166 requires federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally-conducted programs and activities who, due to limited English proficiency, cannot fully and equally participate in or benefit from those programs and activities. The DOJ LEP Guidance in turn advises each federal department or agency to "take reasonable steps to ensure 'meaningful' access [to LEP individuals] to the information and services they provide." DOJ LEP Guidance, 65 FR at 50124. This standard is achieved by balancing the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program; (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 and costs. 65 FR at 50124; 67 FR at 41459.

3.0 LEP STAKEHOLDER CONSULTATIONS

The Department has provided for a Stakeholder Consultation process to the DOJ Plan for Implementation of Executive Order 13166, which was incorporated in the guidance provided to agencies for ensuring equal access to federal government services by LEP populations. Entities or persons having a direct and substantial interest in the provisions of the DOJ Plan (stakeholders) include both the individual components of the Department (entities responsible for implementing DOJ's Plan), as well as LEP communities (the intended beneficiaries of the language assistance initiatives set out in the DOJ Plan). The EOUST has conducted, and will continue to conduct stakeholder consultations in implementing its updated Language Assistance Plan.

4.0 DOJ PLAN FOR IMPLEMENTATION OF EXECUTIVE ORDER 13166

In an effort to implement Executive Order 13166, the Department identified five important elements of an acceptable Language Assistance Plan. The elements are:

- Assessment of LEP populations and language needs;
- Publication of a written Language Assistance Plan;
- Provision for appropriate staff training about the Language Assistance Plan;
- Public outreach and notice of the availability of language assistance; and
- Periodic self-assessment and self-monitoring.

4.1 EOUST Assessment Overview

The USTP's mission is to act in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases to promote and defend the integrity of the federal bankruptcy system. To that end, the EOUST, under the leadership of a Director reporting to the Associate Attorney General, directs policy and legal matters, oversees the Program's substantive operations, and handles administrative functions.

While the EOUST generally does not itself engage in activities having a direct and substantial impact on significant LEP populations, the local United States Trustee offices (USTO), and the standing trustee's offices (STOs) and panel trustees (collectively, "private trustees") appointed and supervised by the United States Trustee, do perform services and collect information from and provide information to members of the general public. Depending on the geographic location, the population served can include significant LEP populations. Accordingly, the USTP has been identified by the Department's Civil Rights Division, Coordination and Review Section (CRT/COR), as a component with a mission or primary function to serve the legal, investigative, and policy needs of the Department or the Executive

Branch in a manner that involves (and in some cases is dependent upon) interactions with the public, including predictable and periodic interactions with identifiable LEP populations in the performance of its duties.

The EOUST developed and conducted a LEP survey, titled “Survey Regarding Language Assistance Services,” of the EOUST and its 95 USTOs to identify predominant LEP populations and languages, and to evaluate the extent to which the USTP has contact with LEP individuals, the need to provide language assistance to LEP persons nationwide, the resources available, and the current language assistance services being provided by the USTP. The EOUST subsequently issued a report titled “Executive Office for United States Trustees’ Limited English Proficiency (LEP) Assessment Report” which provides an evaluation and analysis of the survey data. In addition, the EOUST issued a Language Assistance Plan dated August 31, 2004.

4.2 EOUST Language Assistance Plan

In an effort to take reasonable steps to ensure “meaningful access,” the EOUST implemented its Language Assistance Plan by establishing a LEP Pilot Project which focused on language assistance at the meetings of creditors in bankruptcy cases mandated by 11 U.S.C. § 341(a). The pilot project involved seven USTOs that serve and/or interact with significant LEP communities, and it was conducted over a one-year period from October 1, 2004, through September 30, 2005. Based upon the results of that project, the EOUST has updated its Language Assistance Plan. The updated LAP includes a phased-in installation of conference-quality speaker phones at all locations utilized by the USTOs and private trustees to conduct meetings of creditors pursuant to 11 U.S.C. § 341(a), and establishment of contracts with one or more interpreter services to provide telephone interpreters. In fiscal year 2007, the EOUST issued the initial purchase order for 394 speaker phones. The phase-in of tele-interpreter services will continue as budget resources permit over fiscal years 2008 through 2010, although tele-interpreter services continue to be provided in the pilot project districts. The phase-in is necessary to permit immediate delivery of the speaker phones to those USTOs where meeting rooms are under the control of the USTP and where there is the necessary technology to operate the phones. The initial phase of installation will address the needs of a significant majority of the debtor population. The USTP is in the process of developing a protocol for securing equipment in locations where the meeting rooms are not controlled by the USTP and upgrading the technology in those locations where necessary for the proper operation of the speaker phones.

4.2.1 Language Assistance Principles

As an initial matter, the EOUST adopts the following language assistance principles for situations in which a LEP individual is seeking language assistance in order to participate in a meeting of creditors conducted by the USTO or private trustees; is seeking to obtain a direct service or benefit; or where there is potential for the direct imposition of a burden on the individual by the USTP.

- LEP persons should be advised of free telephone interpreter services offered by the USTP for participation at § 341(a) meetings of creditors or of their ability to choose to secure the assistance of a qualified interpreter of their choice, at their expense. The receipt of this notice and the LEP person’s election should be

documented. The use of relatives of the LEP person, debtor's counsel, or employees of debtor's counsel as interpreters is not appropriate.

- The EOUST, the USTOs, and the private trustees should take reasonable steps appropriate to each circumstance to ensure that they provide interpretation and translation services only through individuals who are competent to provide such services at a level of fluency, comprehension, and confidentiality appropriate to the specific nature, type, and purpose of information at issue.
- The EOUST and the USTOs should endeavor to expand the range or nature of language assistance measures (including the provision of services in languages other than those specified in the LAP of August 31, 2004) whenever experience, change in target or service population demographics, or new program-specific data indicates that the failure to do so may result in a denial of substantially equal and meaningfully effective services to a significant LEP population served by the USTP.
- To the maximum extent practicable, limited English proficiency shall not act as a barrier or otherwise limit access to vital information, i.e., information publicly available in English as to when, where, or how to access benefits or services from the EOUST or the USTOs.

These principles will guide the phased-in implementation of this Language Assistance Plan.

4.2.2 *Uniform Language Assistance Initiatives*

The EOUST, through its Office of General Counsel, shall provide oversight of all oral and written guidance provided to USTO staff, private trustees, and LEP populations. To assist the EOUST in implementing its language assistance initiatives, USTO's will provide the following:

1. *Oral and Written Information*

Each USTO will have in place personnel or language assistance resources capable of providing, within a reasonable period of time, information and/or instructions in appropriate languages other than English, which will include:

- Procedures to access telephonic interpretation services for use by USTO personnel, or bilingual or multilingual staff, or appropriate translations of frequently requested information in commonly encountered languages (e.g., Bankruptcy Information Sheet¹).

¹ The Bankruptcy Information Sheet contains general information on chapters 7, 11, 12, and 13 of the Bankruptcy Code, describes how a bankruptcy discharge operates, and explains the criteria for reaffirmation agreements. This document is currently available in English, Arabic, French, Hmong, Korean, Spanish, Tagalog, Traditional Chinese, and Vietnamese. Translations

- Quality speaker telephones in the § 341(a) meeting rooms, where possible; language identification cards; and, a resource list for telephone language assistance services and in-person interpreter services for use by USTO personnel.
- Written procedures for accessing telephone language assistance resources and in-person interpreter services. These procedures will be: (1) inserted into every office telephone book (both written and electronic); (2) posted or otherwise made readily available (e.g., through an Intranet system) at every point of public contact; and (3) distributed to every employee whose duties routinely include contact with members of the public.
- A listing of staff members assigned to each duty station, facility, or work group who have volunteered to provide temporary language assistance services for walk-ins, telephone calls, and correspondence to the USTO. This list will be distributed to each duty station, facility, or work group. Staff members who are designated should be identified by name, office, physical location, business telephone number, work hours, language, and level of fluency. Bilingual and multilingual staff may assist with contacts made by LEP persons to the USTO. Because of a conflict of interest, however, USTO staff will not act as interpreters for LEP debtors at meetings of creditors where the debtors are questioned under oath.
- Telephone interpreters and in-person interpreters who provide language assistance services at § 341(a) meetings of creditors will be placed under oath, as will the LEP debtor(s).

2. *Electronic Information*

Each USTO that maintains a web page accessible to members of the general public should include information on it regarding the availability of language assistance resources. Where documents in languages other than English are placed on or accessible through the web page, information on their availability should be included in the appropriate languages on the web home page or other initial point of access.

3. *Signage*

Where signage within a publicly-accessible duty station or facility maintained or administered by the USTO is provided in English, signage or notices will also be provided, at a minimum and as soon as reasonably practicable, in the most common non-English language spoken in the area served by the duty station or facility. Based on currently available data, this will be required where more than five percent of the population indicate they speak English less than well. Available data includes, but is not limited to, language and demographic census information pertaining to the area or region served. Currently, U.S. Census 2000 data is available concerning LEP populations broken down by state and locality. Each USTO will

in additional languages will be made available as needed.

develop and submit to EOUST, no later than December 15, 2008, a signage implementation report. The report should meet the parameters of the LAP as outlined above and include a list of the current signs that require translation, the list of languages for which signage is required, the number and location of meeting rooms or other facilities that will require the signage, and the size of each of the meeting rooms (x ft. by x ft.). Once this report is received, EOUST will contract for translations and distribute to the regions, with the goal of having all signage in place no later than March 31, 2009.

4.2.3 Component-Specific Language Assistance Initiatives

In the discharge of its legal and civil enforcement activities, EOUST will complete and submit to CRT/COR a report of its language assistance services to ensure that its LEP practices are consistent with the compliance standards for entities receiving federal financial assistance as set forth in the LEP Guidance for DOJ Recipients, reprinted at 67 FR 41455. This will be accomplished by the end of June 2010.

4.3 Staff Training

Employees expected to implement the language assistance initiatives set out in this Language Assistance Plan should be knowledgeable about: (1) the nature and scope of language assistance services and the resources available through their region or office; and (2) the procedures through which they may access those services to assist in the discharge of their respective duties. All employees identified by USTOs as being critical to the implementation of the LAP shall be provided with written information on the scope and nature of available or planned language assistance services and the specific procedures through which such services can be accessed at the employee's work location.

The EOUST shall develop and incorporate into existing new employee orientation and/or training programs a module on the nature and scope of language assistance services and the specific procedures through which each employee can access those services. In addition, a training component on language assistance services will be developed by the National Bankruptcy Training Institute and made available to all USTP employees.

4.4 Outreach

LEP individuals in need of language assistance services should have reasonable notice of the availability of such services. USTOs with significant LEP contacts will undertake appropriate written and oral outreach efforts to alert LEP communities and individuals to the nature, scope, and availability of the language assistance services. In the area of outreach, the EOUST will take the following actions:

1. Where documents are available in languages other than English (e.g., Bankruptcy Information Sheet), the English version will include a notice of such availability in all languages in which the document is available.

2. Where documents are available for viewing or downloading through a component web page in languages other than English, an indication of the availability of the documents in each of the relevant foreign languages will be included on each web page.
3. To the maximum extent possible, the EOUST will strive to inform stakeholder organizations of the nature and scope of available language assistance services through appropriate oral and written means.
4. USTOs will inform all private trustees about LEP resources and available translation services and materials. Guidance and training will be provided to all private trustees about the EOUST's LAP, and the importance of facilitating access by LEP individuals. In addition, the EOUST will provide updated guidance in the handbooks provided to private trustees.

4.5 Assessment and Monitoring

Language Assistance Plans should be periodically reassessed to ensure that the scope and nature of language assistance services provided under the Plan reflect updated information on relevant LEP populations, their language assistance needs, and the USTOs' experience under the Plan. Over the next 36 months, the EOUST will take the following actions to monitor the effectiveness of its language assistance initiative and to assess the possible need for enhancements or modifications.

1. By August 2008, the EOUST will assemble a working group to implement the provisions of this Language Assistance Plan.
2. By September 2008, the EOUST will assess the status of its procurement of the conference-quality telephones needed for the § 341(a) meeting rooms.
3. By September 2008, the EOUST will determine those § 341(a) meeting rooms with the largest LEP populations and where the need for telephone interpreters is greatest, and will begin to distribute the conference-quality telephones.
4. By November 2008, each USTO will submit to EOUST a signage implementation report.
5. By July 2009, the EOUST will assess the status of the implementation efforts required by this LAP and will submit a purchase order for the next installment of conference-quality telephones , budget permitting.
6. By August 2009, each USTO in consultation with the EOUST shall report to EOUST on the demographic changes, if any, in their district.

7. By January 2010, the EOUST will conduct a review of the LEP Program and the EOUSTs' Language Assistance Plan.
8. By June 2010, the EOUST will review and submit an updated Language Assistance Plan to the CRT/COR.

5.0 Supplemental Language Assistance Initiatives to Address Access to Credit Counseling and Personal Financial Management Instructional Courses

Under section 109(h) of title 11, United States Code, every individual debtor is required to receive counseling from an approved nonprofit budget and credit counseling agency within 180 days before the date of filing for bankruptcy relief. In addition, before receiving a discharge of their debts in bankruptcy, every individual debtor must complete an approved instructional course concerning personal financial management. Section 111(b) of title 11, United States Code, governs the approval by United States Trustees of nonprofit budget and credit counseling agencies and personal financial management courses for inclusion under 11 U.S.C. 111(a)(1) on publicly available lists in one or more United States district courts.

In addition to its obligations under Executive Order 13166, the EOUST has taken, or plans to take, the following steps to increase access by LEP individuals to approved providers of private credit counseling and financial management instruction:

1. The EOUST has provided written guidance on its web site instructing approved agencies to make every reasonable effort to accommodate clients with limited or no proficiency in the English language.
2. The EOUST has designed its web site so that individuals can identify approved providers that offer services in languages other than English.
3. On February 1, 2008, the EOUST issued a notice of proposed rulemaking, *73 Fed. Reg.* 6062, setting forth the proposed procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved nonprofit budget and credit counseling agencies satisfy all prerequisites of the United States Code. Section 58.20(j) requires that applicants provide written and oral communication in the languages of the major population groups served by the agency. Providers are required to provide or arrange for bilingual staff, interpreters, or technology, as necessary, to comply with this requirement, and if unable to do so, the provider must use its best efforts to direct the client to one or more approved agencies that can assist the client.
4. In addition, the EOUST proposed a modification of the Application for Approval as a Nonprofit Budget and Credit Counseling Agency and the Application for Approval as a Provider of a Personal Financial Management Instructional Course

to solicit information regarding the mode and availability of language assistance services offered by approved providers. Currently, approved providers offer services by telephone in over 150 languages. Approved providers with in-person locations provide services in over 30 different languages.

6.0 Public Comment Regarding the Language Assistance Plan

The EOUST will continue to update its official web site, as appropriate, with information regarding its language assistance initiatives. Those who would like to provide comment regarding the EOUST's LAP may do so either by sending an email to ust.lap@usdoj.gov or by writing to the Office of General Counsel at the following address:

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