

# **ENSURING ACCESS TO FEDERALLY CONDUCTED PROGRAMS AND ACTIVITIES BY INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY (LEP) PLAN**

## **UNITED STATES DEPARTMENT OF ENERGY (DOE) OFFICE OF CIVIL RIGHTS AND DIVERSITY**

### **INTRODUCTION**

Executive Order 13166, “Improving Access To Services For Persons With Limited English Proficiency”, was issued on August 11, 2000 (65 FR 50121). The Order requires Federal agencies to develop and implement a plan to provide services to those persons with limited English proficiency (LEP) to ensure meaningful access to programs and activities conducted by those agencies.

Most activities performed by a Federal agency, including all contact with the public, may fall within the scope of federally conducted programs or activities. Aside from employment, there are two major categories of federally conducted programs or activities covered by this Executive Order: those involving general public contact as part of ongoing agency operations, and those directly administered by the agency for program beneficiaries and participants.

In addition to Executive Order 13166, the Department of Justice 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” (hereinafter referred to as “DOJ LEP Guidance”), reprinted at 65 FR 50123 (August 16, 2000). The DOJ LEP Guidance advises each Federal agency on the most appropriate steps agencies should take to ensure “meaningful” access by LEP individuals to information and services that the agency provides.

The identification of reasonable steps to provide oral and written services in languages other than English is to be determined on a case-by-case basis through a balancing of four factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the agency.

This document (hereinafter referred to as the “LEP Plan”) is issued to provide general guidance to Departmental elements on developing plans that will ensure meaningful access to DOE programs by LEP persons, as mandated by Executive Order 13166.

### **GOAL**

**DOE shall provide quality language assistance services to individuals with limited English proficiency, in a timely manner, to ensure meaningful access to programs, services, and activities.**

The purpose of Executive Order 13166, the DOJ LEP Guidance, and this LEP Plan is not to create new services, but to eliminate or reduce limited English proficiency as a barrier or impediment to accessing DOE's core services.

In identifying language assistance initiatives consistent with the goal of Executive Order 13166, the focus will be on DOE components with programs and activities having the most interactions with LEP individuals, and on programs that have vital information that affect the provision of a service, benefit, or the imposition of a burden. DOE components should assess the general nature, purpose, and consequence of their interactions with the general public or LEP populations using the following Category Definitions:

Category I -- Components whose mission or primary function is the provision of services, information, or assistance to the general public may have significant contact or interaction with LEP populations.

Category II -- Components whose mission or primary function is the provision of services, information, or assistance to the public may have predictable and periodic interactions with identifiable LEP populations.

Category III -- Components whose mission or primary function is to serve the internal management and administrative needs of DOE itself may have interactions with LEP individuals that are infrequent and secondary to the services performed by these components.

Category IV -- Components whose mission or primary function is to serve the legal, investigative, and policy needs of DOE, in a manner that is not dependent upon interactions with the public, may have no significant LEP involvement.

Category V -- Components whose mission or primary function is the provision of services, information, or assistance to third party entities that are not generally limited English proficient, may serve no significant LEP populations.

Components whose mission meets the definition of Categories I and II must develop written LEP plans. Categories I and II are defined to meet the two most significant factors of the DOJ LEP guidance - components that have a large number or proportion of LEP persons in the eligible service population and the importance of the service provided by the program.

Components whose mission meets the definition of Categories III, IV, and V are not required to develop written plans but must designate a LEP point of contact. These components must certify that: they do not operate or administer any program or activity that provides services, information, or assistance, to the general public; their programs or activities have no significant, predictable or periodic contact or interaction with identifiable LEP populations; and, their interactions with the public do not involve direct and immediate impact on the person's health, personal security, or other important interest.

In order to achieve the goal of meaningful access to programs and activities by LEP persons, each component, program and activity of DOE shall:

- a. perform a needs and capacity assessment;
- b. arrange for oral language assistance, as appropriate;
- c. translate vital documents in languages other than English;
- d. provide notification to customers of the availability of language assistance services;
- e. develop written policies and procedures;
- f. monitor access to language assistance; and
- g. train front-line and managerial staff.

## **PLAN IMPLEMENTATION**

### **1. Needs and capacity assessment**

*Each program or activity will identify direct public points of contact.* These could include information offices, telephone numbers regularly used by the public, including 800 numbers, outreach activities, clearinghouses and public service education announcements. These contacts may be face-to-face, telephonic, written or electronic in nature.

*Each program or activity will define its target audience.* This may include individuals of a region, a class or a status. For example, the target population for the Weatherization program would be low-income households. Each program or activity should determine the number or proportion of LEP persons within the target population.

*Each program or activity with interactions with the public will implement a process for data collection and recording.* Customers should be asked his or her language preference, and that information should be recorded for future contact and for statistical purposes. The number of LEP persons, by language, in the targeted population should be identified. The frequency with which LEP persons come into contact with the program should be determined. Demographic data sources could include the Census, state agencies, commercial marketing data, school systems, community organizations, national ethnic organizations, and the Internet.

*Each program or activity will assess on an ongoing basis the language assistance needs of its customers and the capacity of the program to meet these needs.* A biannual needs assessment is recommended.

## 2. Oral language assistance

***Each component, program or activity of DOE identified as warranting language measures will arrange for oral language assistance to LEP customers in face-to-face and telephone contact within a reasonable period of time.*** Such assistance may take the form of bilingual staff, oral interpreters, staff personnel, volunteers, or telephone language assistance services.

***Public points of contact-*** Translations of commonly requested documents, bilingual staff, and telephone interpreter services should be made available at locations that are readily accessible to the public, such as information desks, security checkpoints, and on public information telephone lines.

***Statistically significant interaction-*** Bilingual staff should be employed in programs and activities where the number or percentage of LEP customers or potential customers is statistically significant, or where the frequency of contact with such persons makes the employment of bilingual staff a more cost effective, efficient, and effective mode for communication. A decision to employ bilingual staff should be made after a needs assessment, with due consideration given to the budgetary constraints of the program. The four step process should be employed to determine whether bilingual staffing is the most efficient option. Specifically:

- a. determine the number or proportion of LEP persons to be served;
- b. determine the frequency of contact between LEP persons and the program;
- c. assess the nature and importance of the program; and
- d. assess available resources.

***Competency of bilingual staff or contractors-*** Bilingual staff or contractors must be assessed for bilingual proficiency, interpretation skills, and sensitivity to the special confidentiality issues raised by interpreting for others. Components should ensure that individuals providing interpretative services possess a level of fluency and comprehension appropriate to the specific nature, type, and purpose of information at issue.

***Unacceptable practices-*** Programs should not use family members or friends to translate or interpret for LEP persons. If the LEP customer insists upon using a friend or family member, it should be allowed only after language services have been offered and refused. Minor children should never be used to interpret, except in emergencies.

***Securing sufficient resources-*** Each DOE component, program or activity identified as warranting language assistance measures should budget for language services to ensure that adequate resources exist for interpreters, translation and review of documents, and

outreach. Notwithstanding any limitations of current budget, programs should include language assistance resources as items in their future budget requests. Programs should be prepared to justify any failure to request funding for language assistance where the data indicate a clear and evident need for such assistance.

*Use of contractors-* Contractual translation or interpreter services may be an option for some programs where the needs assessment suggest less frequent contact with LEP customers. The General Services Administration (GSA) has streamlined the procurement process for all of DOE's components, as well as for all other Federal agencies. Language Services Multiple Award Schedule (MAS) is a procurement device used to access language services from industry experts. The contracts awarded under the MAS schedule bring together top-quality companies in translation, interpretation and language training services. Additional information regarding this service may be obtained from the Internet at <http://www.gsa.gov/Portal/gsa/ep/program>.

### **3. Translation of written materials**

*Each component, program or activity shall translate its vital documents into languages other than English where a significant number or percentage of the customers served, or eligible to be served, are limited English proficient.* Written materials include electronic documents and web-sites.

*Every DOE component, program or activity shall develop criteria for deciding which documents are vital and subject to translation.* "Vital documents" are documents that convey information that critically affects the ability of the program recipient to make decisions about his or her participation in the program. Vital documents include applications, public notices, consent forms, letters containing important information regarding participation in a program, 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, outreach and community education materials. At a minimum, programs should translate client or consumer oriented documents that affect a person's ability to apply for, receive or otherwise have access to programs or services, including anything that affects the legal rights of the person. For lengthier and more technical documents that are targeted to the public, programs should provide an English language summary that is then translated into other languages. If the English-language version of a document is posted on a web-site because it is deemed vital information, then the translated document must also be posted. Entire web-sites do not need to be translated.

*Every DOE component, program or activity shall adopt procedures to ensure the quality of the documents that are translated.* All translations should involve a two-tier process of initial translation and independent review.

*Each program should be sensitive to the literacy levels of the LEP customers.* Some languages are historically unwritten and persons are illiterate in their native language, as

well as English. Focus groups or community based organizations can help to test messages and language appropriateness. Also, be mindful of other alternatives, such as the use of audio or video tapes to provide information.

It is a good business practice to develop procedures to ensure that the translation of documents is ongoing and that revisions take place as warranted.

#### **4. Training**

***Each DOE component, program or activity shall train front-line and managerial staff on the policies and procedures of its language assistance activities.*** Front-line staff will be employees whose routine duties include interactions with the public.

Staff should receive training on the policies and procedures of language assistance and on how to determine whether language assistance services are needed by a customer. In addition, staff should receive training on securing language assistance services for a customer, and on how to work with interpreters and translators.

#### **5. Notification of availability of language assistance services and outreach**

***Each DOE component, program or activity identified as warranting language assistance measures, shall inform LEP customers of the availability of free language assistance services.*** The notification shall be made orally or in writing, and should be given at the first point of contact. The notification of free language assistance should be given in the language of the LEP customer. LEP persons should also be advised that they may choose to secure the assistance of an interpreter of their own choosing at their own expense.

Programs should engage in comprehensive outreach to ensure awareness by LEP persons of its programs and activities. Outreach should include the use of ethnic media, such as radio, television, newspapers, magazines, web-sites, faith-based organizations, community based organizations at local levels that provide social services, healthcare, and classes. Each component that maintains a webpage accessible to members of the general public should include information on the availability of language assistance.

#### **6. Develop written policies and procedures**

***Each DOE component, program or activity identified as warranting language assistance services, should develop specific written policies and procedures related to language assistance services applicable to its program activities.***

Written policies and procedures should address the following areas:

- a. provision of language services generally;

- b. identification and assessment of language needs;
- c. oral language assistance services;
- d. written translations;
- e. oral and written notification of the availability of language services;
- f. staff training on language service provision; and
- g. monitoring access to language assistance.

**7. Monitor access to language assistance**

***Each affected DOE component shall institute procedures to monitor the accessibility and quality of language assistance activities for LEP customers.***

Language assistance activities should be reassessed periodically to ensure that the services provided by the component address the actual needs of the customers based on actual experiences of the component.

Data collection and record keeping are key to an effective monitoring and compliance system. In order to determine the validity of any language assistance complaints, it may be necessary to analyze and review data that reflects how the program provides services to LEP persons. Data collection also allows the program to obtain an overview of how their services are provided.

***Each DOE component, program or activity subject to this plan should develop and maintain a data collection system that assures the availability of data that includes race, ethnicity, and the primary language of customers and clients served in its programs and the primary language of those persons.*** Such data should include the data upon which the program has based language needs assessment; the number of LEP persons, by language group, who received language services; names and categories of staff receiving training, and dates of training.

**TECHNICAL ASSISTANCE**

The Office of Civil Rights and Diversity will provide technical assistance to each DOE program office that administers DOE programs or activities. Technical assistance will consist of advising programs on the requirements of this plan and its implementation, including assistance in developing individual program plans, availability of technical and professional translating and interpreter resources, web-site development and modifications, and telephone translation services.

## COMPLIANCE AND ENFORCEMENT

EEO/Diversity Managers for field operations shall have primary responsibility for ensuring compliance with the LEP Plan. In determining compliance with the plan, the Managers and the Office of Civil Rights and Diversity will assess whether the programs' policies and procedures allow LEP persons to overcome language barriers and participate in a meaningful way in programs, services and benefits. The program's appropriate use of methods and options detailed in this LEP Plan will be viewed as evidence of an intent to comply. Conversely, certain practices may constitute a violation of the program's responsibility under the LEP Plan. Examples of prohibited practices include:

Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons;

Subjecting LEP persons to unreasonable delays in the delivery of services;

Limiting participation in a program or activity on the basis of English proficiency;

Providing services to LEP persons that are not as effective as those provided to those who are proficient in English; or

Failing to inform LEP persons of the rights to receive free interpreter services and/or requiring LEP persons to provide their own interpreter.

***Each DOE field office shall institute a process for handling complaints from customers about language assistance, and data reporting.*** EEO/Diversity field offices shall be primarily responsible for processing complaints filed by LEP persons, and shall develop a process for the filing of complaints. The complaint process should inform customers and clients on how to file a complaint, and provide a means of recording and resolving complaints. In addition, complaints data should be included in each component's Annual Workload and Performance data report (Executive Order 12250 Information and Reporting Requirements).

Complaints by LEP persons will be investigated in the manner prescribed by the *Code of Federal Regulations*, Title 10 Part 1040.89-5, governing federally assisted programs and activities. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. Anyone who believes that he or she has been discriminated against because of their national origin may file a complaint with the Office of Civil Rights and Diversity at 1000 Independence Ave., S.W., Room 5B-168, Washington, D.C. 20585, or with any of the EEO/Diversity field operations offices.