

Memorandum

Date: March 9, 2015

CDBG Policy Guidance

Policy: 14-01

Nebraska Department of Economic Development, 301 Centennial Mall South, Lincoln, NE 68509
<http://www.neded.org/>

Effective: March 9, 2015

Subject: CDBG Limited English Proficiency Access Requirements

A. PURPOSE.

The purpose of this document is to provide guidance regarding the responsibility to provide Limited English Proficient (“LEP”) Persons access to federally conducted programs and activities. This guidance is prepared for Sub-recipients that receive Community Development Block Grant (“CDBG”) funding from the Nebraska Department of Economic Development.

B. HISTORY & APPLICABLE LAW.

Title VI of the Civil Rights Act of 1964 is a federal law which protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who have Limited English Proficiency can effectively participate in, or benefit from, federally assisted programs may violate Title VI’s prohibition against national origin discrimination.

Persons who, as a result of national origin, do not speak English as their primary language and who have limited ability to speak, read, write, or understand English may be entitled to language assistance under Title VI in order to receive a particular service, benefit, or encounter.

On August 11, 2000, Executive Order 13166, titled, “Improving Access to Services by Persons with Limited English Proficiency,” was issued. 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 LEP cannot fully and equally participate in or benefit from those programs and activities. Section 2 of the Executive Order 13166 directs each federal department or agency "to prepare a plan to improve access to...federally conducted programs and activities by eligible LEP persons...."

On August 16, 2000, the U.S. Department of Justice (“DOJ”) issued guidance setting forth principles for agencies to apply in response to Executive Order 13166. Based on this model guidance, the U.S. Department of Housing and Urban Development (“HUD”) published guidance for its grantees in the Federal Register on January 22, 2007 (72 Fed. Reg. 2732).
<http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>

C. DEFINITIONS

Beneficiary: The ultimate consumer of HUD programs who receives benefits from a HUD Recipient or Sub-recipient.

Limited English Proficient Person (LEP): Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English because of national origin.

Language Assistance Plan (LAP): A written implementation plan that addresses identified needs of the LEP persons served.

Sub-recipient: Any public or private agency, institution, organization, or other entity to whom Federal financial assistance is extended, through the Nebraska Department of Economic Development (“Department”), for any program or activity, or who otherwise participates in carrying out such program or activity but such term does not include any Beneficiary under any such program.

Vital Document: Any document that is critical for ensuring meaningful access to the Recipient’s major activities and programs by Beneficiaries generally and LEP persons specifically.

D. SUB-RECIPIENT RESPONSIBILITIES.

Pursuant to the requirements of Title VI, Sub-recipients are required to make reasonable efforts to provide timely, meaningful access for LEP persons to programs and activities. In order to do so, Sub-recipients should first conduct an assessment to determine the need for language assistance within their service area. This is accomplished by conducting what is referred to as completion of the Four Factor Analysis, which is described in Section E. of this guidance. After completion of the Four Factor Analysis, the Sub-recipient will understand the languages spoken by LEP persons in their service area, and can determine how to provide needed language assistance.

Based upon the findings of the Four Factor Analysis, and when deemed necessary, the Sub-recipient should prepare a Language Access Plan addressing the Sub-recipient’s plan for providing meaningful access to programs and activities for LEP persons. A Sub-Recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, a Sub-recipient may determine that certain activities are more important and/or have greater impact on or contact with LEP persons, and thus such programs or activities require more in the way of language assistance. Although the Department is providing Sub-recipients with a template from which to develop a LAP, Sub-recipients have flexibility in determining how to appropriately address the needs of the LEP populations they serve.

The Sub-recipient is also required to select an individual responsible for coordination of LEP compliance, train staff involved in programs and activities on LEP requirements, keep records of assistance provided and actions taken, and update the Four Factor Analysis and LAP as needed.

E. THE FOUR FACTOR ANALYSIS.

The Four Factor Analysis involves determining the following:

- 1) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the Sub-recipient if the persons received adequate education and outreach and the Sub-recipient provided sufficient language services);
- 2) The frequency with which LEP persons come into contact with the program or activity;
- 3) The nature and importance of the program, activity, or service provided by the program; and
- 4) The resources available and costs to the Sub-recipient.

In order to gather information on the number and proportion of LEP persons served or encountered in the eligible service area, Sub-recipients should use data from the U.S. Census Bureau American Community Survey ("ACS"). The ACS provides data that indicates the percentage and/or number of residents that speak English less than "very well." The Sub-recipient can use the ACS data on a county basis, or more in depth (political subdivision level), or if other data is available from a credible source that is representative of a more defined service area, the Sub-recipient may use that data. This data may include information from school systems, community organizations, or other credible sources of demographic information. If the Sub-recipient is unsure about the appropriateness of other data sources, it is recommended that the Sub-recipient use the ACS information.

In order to determine the frequency with which LEP persons come into contact with the program or activity, Sub-recipients 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. The more frequent the anticipated interaction, the more likely there will be a need for language access services. In anticipating interaction, the Sub-recipient should consider all possible forms of contact (e.g. phone inquiries, in-person interaction, written inquiries, etc.).

In regard to the nature and importance of the program, activity, or service provided, the Sub-recipient should examine the consequences of failure to be able to participate. The greater the consequences, the more important it is to provide language access services for participation in the program, activity, or service. As an example, but not necessarily a comparison to other activities, if the program involves housing assistance (e.g. down-payment assistance or owner-occupied rehabilitation), the Department would view this as an activity and/or service that would have significant consequences if there is a failure to provide needed language assistance (i.e. no ability to participate in process or no ability to apply for assistance = inability to receive a housing benefit).

Finally, in regard to assessing resources available, a Sub-recipient should determine what their overall level of resources is, and the costs that would be imposed on it in providing the various types of language assistance. Smaller Sub-recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets, but are still expected to provide meaningful access to programs and activities for LEP persons.

HUD has developed examples of applying the Four Factor Analysis to HUD-specific programs. These examples can be accessed in Appendix “A” of HUD’s LEP Final Guidance.

F. THE LANGUAGE ACCESS PLAN.

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient would develop an implementation plan to address the identified needs of the LEP populations they serve. This plan is referred to as a Language Access Plan (“LAP”), and is a plan and a policy combined into one. It represents that a Sub-recipient has a policy of providing LEP persons meaningful access to programs and activities, and also lays out the plan for providing such access. Sub-recipients are strongly encouraged to develop a LAP.

The development and maintenance of a periodically updated LAP on language assistance for LEP persons, or a LAP will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. However, certain Sub-recipients, such as those serving very few LEP persons and those with very limited resources, may choose not to develop a written LAP.

A Sub-recipient that does not develop a LAP must be able to provide information to the Department that demonstrates sufficient reasoning for not doing so, and must document alternative ways to articulate, in some other reasonable manner, a plan for providing LEP persons meaningful access to programs and activities.

An effective LAP would include the following:

- 1) An explanation of the procedures the Sub-recipient will use to identify LEP persons with whom they have contact, the size of the LEP populations, and the languages of LEP populations;
- 2) Points and types of contact the Sub-recipient may have with LEP persons;
- 3) Ways in which language assistance will be provided;
- 4) The Sub-recipient’s plan for outreach to LEP persons;
- 5) The Sub-recipient’s plan for training staff members on the LEP Guidance and the LAP, including specific provisions for training of staff who are responsible for completion and oversight of projects;
- 6) A list of Vital Documents to be translated, the languages into which they will be translated and the timetable for translations;
- 7) The plan for translating informational materials that detail services and activities to be provided to Beneficiaries;
- 8) The plan for providing appropriately translated notices to LEP persons;
- 9) The plan for providing interpreters for large, medium, small, and one-on-one meetings, and ensuring the competency of interpreters;
- 10) The plan for developing community resources, partnerships, and other relationships to help with the provision of language services;
- 11) The provisions for updating the Four Factor Analysis and LAP;
- 12) Identification of the Sub-recipient’s LEP contact person; and
- 13) References to applicable LEP resources.

G. SAFE HARBOR.

After conducting a Four Factor Analysis, and in determining what types of written translations are necessary, Sub-recipients should keep in mind that HUD has adopted a “safe harbor” for the translation of written materials. A “safe harbor” means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient’s written translation obligations.

The table below sets forth safe harbors for written translations.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population in the service area or among current Beneficiaries	Translated Vital Documents
More than 5% of the eligible population or Beneficiaries and more than 50 in number	Translated Vital Documents
More than 5% of the eligible population or Beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or Beneficiaries and less than 1,000 in number	No written translation is required.

There are no "safe harbors" for oral interpretation services. Recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP (depending on the circumstances, reasonable oral language assistance might be an in-person interpreter or telephone interpreter line).

H. RECORD KEEPING REQUIREMENTS.

Sub-recipients must maintain records of their efforts to comply with LEP obligations. This includes documentation of preparation of a Four Factor Analysis and LAP, in addition to documentation of provision of translation or interpretation services. Such records must be kept in accordance with regular CDBG Program recordkeeping requirements, which are outlined in Chapter 2 – Administrative Overview of the CDBG Program Administration Manual: http://www.neded.org/files/crd/cdbg_admin_manual/CDBGAdminMan14_All.pdf.

I. SUB-RECIPIENT COMPLIANCE.

The requirement to provide meaningful access to LEP persons is enforced and implemented by HUD through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, and technical assistance.

The Department intends to meet its responsibilities to ensure Sub-recipient compliance with Title VI and the Title VI regulations through the process of Sub-recipient monitoring, provision of technical assistance, and referral of complaints to HUD for further investigation.

The Department will include as part of a regular CDBG project monitoring, an evaluation of a Sub-recipient's compliance with LEP requirements. This will include the following:

- 1) Determining whether the Sub-recipient has identified a LEP contact person;
- 2) Determining whether the Sub-recipient completed a Four Factor Analysis;
- 3) Determining whether the Sub-recipient has a LAP;
- 4) Determining whether and how LEP persons are being provided meaningful access to programs and activities; and
- 5) Whether the Sub-recipient is maintaining records regarding their efforts to comply with Title VI LEP obligations.

The Department will inform Sub-recipients of any findings of compliance or noncompliance in writing. The Department will attempt to resolve the findings by informal means such as seeking corrective action. If the Department determines that compliance cannot be secured by voluntary means, the Department may require repayment of CDBG funding received, refer the matter to HUD, or use any other appropriate enforcement mechanism.

J. ADDITIONAL RESOURCES.

HUD Frequently Asked Questions on the Final LEP Guidance:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq

HUD's LEP Website:

<http://www.hud.gov/offices/fheo/lep.xml>

Federal LEP Website:

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

LEP and Title VI Videos:

<http://www.lep.gov/video/video.html>

"I Speak" Card:

<http://www.lep.gov/ISpeakCards2004.pdf>

Nebraska Department of Economic Development LAP
Housing & Community Development Division
PO Box 94666
Lincoln, NE 68509

K. COMPLAINTS.

Any person that feels that the Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and Executive Order 13166 regulations were not complied with may file a complaint directly to the Assistant Secretary for Fair Housing and Equal Opportunity at the following address (or as otherwise directed by HUD):

Betty J. Bottiger
Director, Region VII Office of Fair Housing and Equal Opportunity
U. S. Department of Housing and Urban Development
400 State Avenue
Kansas City, Kansas 66101-2406
Betty.Bottiger@hud.gov