

Memorandum

City of Lawrence

Planning & Development Services

TO: Planning & Development Services Staff

FROM: Scott McCullough, Director of Planning & Development Services

CC: Scott McCullough, Director of Planning & Development Services

Date: October 19, 2016

RE: Planning & Development Services Limited English Proficiency and Limited English Proficiency Policy and Plan

The Federal Department of Housing and Urban Development (HUD) regulations in 24 CFR, Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development— Effectuation of Title VI of the Civil Rights Act of 1964," requires all recipients of federal financial assistance from HUD, which includes the Planning & Development Services Department (PDS), to provide meaningful access to Limited English Proficiency (LEP) persons. Because PDS receives federal funding from HUD, PDS is required to have a policy and/or plan in place that outlines the steps PDS will take to ensure that eligible LEP persons can meaningfully access PDS programs, services and activities.

Community Development Division (CDD) Staff of DSD have recently drafted a Limited English Proficiency Plan for CDD and PDS. This Plan has been developed in consultation with several other City Departments that receive federal funding and Law Department representatives.

By this Planning & Development Services Limited English Proficiency and Limited English Proficiency Policy, PDS is adopting the attached Planning & Development Services Department Limited English Proficiency Plan (Plan), effective immediately.

Every PDS employee should read the Plan and become familiar with steps required and the resources available to help ensure meaningful access by LEP persons to PDS programs, services and activities (particularly the Language Access Plan on pages 6 and 7). An LEP "Tool Kit" with language flash cards, interpretation service contacts and other relevant information is being developed, and will be provided to PDS Administrative Support Staff to have available for LEP speakers and PDS Staff, as needed.

CDD Staff will provide an overview of the Plan and resources currently available during the next regularly-scheduled monthly Planning and Development Services Staff meetings. In the interim, questions regarding the Plan may be directed to Dani Dresslar or Brad Karr.

Thanks in advance for your cooperation and assistance in Plan implementation and execution.

CITY OF LAWRENCE PLANNING & DEVELOPMENT SERVICES DEPARTMENT LIMITED ENGLISH PROFICIENCY PLAN

This City of Lawrence, Kansas, Planning & Development Services Department (PDS) Limited English Proficiency (LEP) Plan is established pursuant to and in accordance with Title VI of the Civil Right Act of 1964, Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency," and the Department of Housing and Urban Development's (HUD) Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, dated January 22, 2007, and effective February 21, 2007.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.¹

EXECUTIVE ORDER 13166

Executive Order 13166 is titled Improving Access to Services for Persons with Limited English Proficiency. It was issued by President Clinton in 2000 to direct federal agencies to evaluate services provided and implement a system that ensures that Limited English Proficiency persons are able to meaningfully access the services provided consistent with and without unduly burdening the fundamental mission of each federal agency. The Executive Order includes the statement below.

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.²

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FINAL GUIDANCE

The Department of Housing and Urban Development (HUD) provided Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, dated January 22, 2007, and effective February 21, 2007.³

¹ 42 U.S. Code § 2000d – <https://www.gpo.gov/fdsys/pkg/USCODE-2008-title42/pdf/USCODE-2008-title42-chap21-subchapV.pdf>

² 65 FR 50121 – <https://www.gpo.gov/fdsys/pkg/FR-2000-08-16/pdf/00-20938.pdf>

³ 72 FR 2731 – <https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>

WHAT IS LIMITED ENGLISH PROFICIENCY?

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. If these individuals have a limited ability to read, write, speak or understand English, they are limited English proficient, or "LEP."⁴

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

HUD's regulation, 24 CFR Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development— Effectuation of Title VI of the Civil Rights Act of 1964," requires all recipients of federal financial assistance from HUD to provide meaningful access to LEP persons.⁵ Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in this LEP Guidance are to additionally apply to the programs and activities of federal agencies, including HUD.

LEP FOUR-FACTOR ANALYSIS

Recipients of Federal financial assistance are required to take reasonable steps to ensure meaningful access to their programs, activities and services 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 recipient's programs, activities or services, or other grantees;
- (2) The frequency with which LEP persons come into contact with the recipient's programs, activities or services;
- (3) The nature and importance of the programs, activities or services provided by the recipient to people's lives; and
- (4) The resources available to the recipient/grantee and costs.

The intent of the HUD guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments or small nonprofit entities.

FACTOR 1: THE NUMBER OR PROPORTION OF LEP PERSONS ELIGIBLE TO BE SERVED OR LIKELY TO BE ENCOUNTERED BY THE PROGRAM OR GRANTEE

The PDS program area consists of those individuals residing within the city limits of Lawrence, Kansas. To identify the number or proportion of LEP persons who may be served or encountered, 2010-2014 American Community Survey 5-Year Estimates were used.

Individuals who self-identified as "Speak English Not Well or Not At All" were utilized in this analysis.

⁴ According to the 2010-2014 American Community Survey, more than 25 million persons living in the United States reported that they were LEP.

⁵ 24 CFR part 1 – <http://www.ecfr.gov/cgi-bin/text-idx?SID=f9f9c637d99813f2c854a38a4f2852f8&mc=true&node=pt24.1.1&rgn=div5>

Table 1 shows the number and the proportion of persons who are five years of age or older and who are identified as being LEP. As Table 1 discloses, only 1.7% of persons residing within the City of Lawrence are identified as being LEP.

Table 1: Identifying Limited English Proficient Individuals

Jurisdiction	Total Population: 5 Years & Over	Speak English Less Than Well	%
Kansas	2,882,946	61,330	2.1%
Douglas County	113,703	1,655	1.5%
Lawrence	90,194	1,559	1.7%

Data Source: 2010-2014 American Community Survey 5-Year Estimates (Tables B01003 and B16005). ACS data is an estimate so these numbers have a certain level of margin of error associated with them.

Table 2, also derived from the 2010-2014 American Community Survey 5-Year Estimates, shows the number of LEP persons living in Lawrence and the three most common languages families spoken by LEP persons living in Lawrence (five years of age or older). Table 2 shows the following:

- 0.8% of the entire Lawrence population are Spanish speakers who speak “Speak English Less Than Well”;
- 0.7% of the entire Lawrence population are Asian & Pacific Island Language speakers (including Chinese, Vietnamese, Thai, Laotian, Korean and Japanese) who “Speak English Less Than Well”;
- 0.14% of the entire Lawrence population are Indo-European Language speakers (including Dutch, Italian, Russian, Portuguese, French or German) who “Speak English Less Than Well”; and
- Just under 0.1% of the entire Lawrence population are speakers of languages other than those otherwise identified who “Speak English Less Than Well”.

Table 2: Language Spoken by LEP Persons

Jurisdiction	Total Population: 5 Years & Over	Speak English Less Than Well							
		Speak Spanish	% Spanish	Speak Other Indo-European Languages	% Other Indo-Euro	Speak Asian & Pacific Island Languages	% Asian & Pacific Island	Speak Other Languages	% Other
Kansas	2,882,946	46,814	1.6%	2,637	0.1%	10,027	0.3%	1,852	0.1%
Douglas County	113,703	710	0.6%	122	0.1%	734	0.6%	89	0.1%
Lawrence	90,194	708	0.8%	122	0.14%	649	0.7%	80	0.09%

Data Source: 2010-2014 American Community Survey 5-Year Estimates (Tables B01003 and B16005). ACS data is an estimate so these numbers have a certain level of margin of error associated with them.

HUD has adopted a “safe harbor” for translation of *written* materials. The Guidance identifies actions that will be considered strong evidence of compliance with Title VI obligations. The table below sets forth “safe harbors” for written translations. Failure to provide written translations under these cited circumstances does not mean that the recipient is in noncompliance. Rather, the “safe harbors” provide a starting point for recipients to consider:

- Whether and at what point the importance of the service, benefit or activity involved warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the nature of the information sought warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the number or proportion of LEP persons served warrants written translations of commonly used forms into frequently encountered languages other than English; and
- Whether the demographics of the eligible population are specific to the situations for which the need for language services is being evaluated. In many cases, use of the “safe harbor” would mean provision of written language services when marketing to the eligible LEP population within the market area. However, when the actual population served (e.g., occupants of, or applicants to, the housing project) is used to determine the need for written translation services, written translations may not be necessary.

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 market 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

In sum, no LEP language group has more than 1,000 in number in the program area, and only 1.7% of the total population within the program area is identified as being LEP. The largest majority of LEP persons within the program area speak either Spanish or an Asian and Pacific Islander language.

FACTOR 2: THE FREQUENCY WITH WHICH LEP PERSONS COME IN CONTACT WITH THE PROGRAM

While relatively small, the LEP population in the Lawrence program area is growing, increasing the probability that PDS will interact with LEP persons in the future. However, to date, PDS has received no requests, formal or otherwise, by LEP persons seeking the translation of documents or interpreters at public meetings.

FACTOR 3: THE NATURE AND IMPORTANCE OF THE PROGRAM, ACTIVITY, OR SERVICE PROVIDED BY THE PROGRAM TO PEOPLE'S LIVES

CDBG, HOME, ESG, and NSP funded activities positively impact the lives of all of the City of Lawrence residents. A number of the federally funded activities are for operating expenses or capital improvement infrastructure projects with no participatory contact with LEP persons. Other activities, including direct client services or housing related benefits, are important to people's lives and these programs could have interaction with LEP individuals.

Administration funding provides administrative oversight, and as such is responsible for the citizen participation process and is directly linked to all federally funded projects and activities.

FACTOR 4: THE RESOURCES AVAILABLE TO THE GRANTEE/RECIPIENT AND COSTS

The fourth and final factor of the analysis weighs the preceding three factors to assess the needs of LEP persons within the program area against the resources available to PDS and the costs of providing access. As shown above, there is a very small population of LEP persons within the City of Lawrence. Given the small size of the LEP population, there does not appear to be a need to produce documents, programs, and general information in languages other than English. Moreover, based on the PDS budget, such a plan would, at the present time, be cost prohibitive. This LEP Plan will be reviewed on an ongoing basis to assess whether there are any significant changes in need to provide meaningful access to LEP persons.

LANGUAGE ACCESS PLAN

IDENTIFYING LEP INDIVIDUALS WHO MAY NEED ASSISTANCE

When encountering a LEP person, PDS staff will use the *Language Identification Flashcard* to identify that person's primary language. The Census Bureau developed the flashcard, which can be accessed at www.lep.gov/ISpeakCards2004.pdf.

PDS will also make the *Language Identification Flashcard* available to the public through its website, at all public meetings, and in the offices of PDS (City Hall and 1 Riverfront Plaza).

Once an LEP person's primary language is identified using the flashcard, PDS staff will assess the feasibility of providing written translation service and/or oral interpretation assistance for the LEP person.

LANGUAGE ASSISTANCE MEASURES

In the event PDS should receive a request for assistance in a language other than English, staff members will take the name and contact information of the person. If the person speaks Spanish, PDS may be able to utilize the services of City of Lawrence employees who speak Spanish as interpreters. For languages other than Spanish, PDS will use a free online written translator website or may contact a local volunteer, if one is available. The University of Kansas, through its various language departments, may also provide assistance. Finally, if the required language is not available and formal interpretation is required, staff shall use the telephone interpreter service, Language Line at 1-800-752-6096.

The PDS website may be translated into a number of different languages using a free online translation services such as *Google Translate*. Similarly, agendas, minutes, and other documents posted online, can be translated as well.

Outside of the above-identified services, because PDS staff is relatively small and does not possess in-house translation capabilities or expertise, PDS staff can only assist LEP persons, but cannot accurately assess or guarantee the accuracy of translation services provided by others. If there is an expressed need for other translation methods such as Sign Language or Braille materials, PDS will determine the feasibility and possibilities of providing these services as well. Within its limited budget and capabilities, PDS pledges that it will, to the best of its abilities, provide meaningful access to LEP persons.

PDS STAFF TRAINING

Current staff members and incoming staff members will be briefed on the PDS LEP Plan and how to assist LEP persons. They will also be instructed to keep a record of language assistance requests so that needs may be accurately assessed in the future.

DISSEMINATION

PDS will post this LEP Plan on its website: <http://www.lawrenceks.org/pds>. Copies of this LEP Plan will also be available at the offices of Planning and Development Services. Any person or agency requesting a copy of the LEP Plan will be provided a copy.

COMPLAINTS

Individuals may file administrative complaints with HUD alleging violations of Title VI because the HUD recipient failed to take reasonable steps to provide meaningful access to LEP persons. The local HUD office will intake the complaint, in writing, by date and time, detailing the complainant's allegation as to how the HUD recipient failed to provide meaningful access to LEP persons. HUD will determine jurisdiction and follow up with an investigation of the complaint.

If a person believes that a HUD federally assisted recipient is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD's local Office of Fair Housing and Equal Opportunity (FHEO). For contact information of the local HUD office, go to <http://www.hud.gov> or call the housing discrimination toll free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY).