

Attachment L – Title VI Program PPM 300.05

Title Title VI Program		Policy No. [Title]
Responsible Office Office of Employee Services	Related Policies and Procedures 230.03, 300.18	
Effective/Revision Dates 5-24-1976/4-20-2011	Approval(s) <i>NSJ Richardson</i>	

Authority: Director of Transportation.

Contents: This policy establishes responsibilities for monitoring and reporting compliance with

Title VI to ensure that no person is denied benefits of programs administered by the Department due to discrimination. Title VI also prohibits national origin discrimination as it affects limited English proficient persons. An appendix is included to provide guidance to Department staff in assisting persons with limited English proficiency.

Affected Offices: All districts and offices that provide any services or programs to the public.

Who to Contact for Policy Questions: Title VI Program Administrator in the Office of Employee Services, telephone 515-233-7970.

Definitions:

FHWA – Federal Highway Administration.

Limited English Proficiency (LEP) – Individuals are considered to have limited English proficiency if they do not speak English as their primary language and if they have limited ability to read, speak, write or understand English. Applicable regulations and executive orders include, but are not limited to, the following:

- Executive Order 13166 dated August 11, 2000 by President Clinton
- 23 CFR Part 200
- U.S. DOT LEP Policy Guidance, Federal Register, Volume 70, No. 239, Pages 74087-74100

Title VI – Title VI of the federal Civil Rights Act of 1964. The term includes related federal statutes and regulations that prohibit discrimination on the basis of race, color, sex or national origin in programs or activities receiving federal financial assistance. Applicable statutes and regulations include, but are not limited to, the following:

- 42 U.S.C. 2000d to 2000d-4 {Title VI of the Civil Rights Act of 1964}
- 42 U.S.C. 3601-3619 {Title VIII (Fair Housing) of the Civil Rights Act of 1968}

- 42 U.S.C. 4601 to 4655 {Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970}
- 23 U.S.C. 109(h) {Consideration of Adverse Economic, Social and Environmental Effects}
- 23 U.S.C. 324 {Prohibition of Discrimination of the Basis of Sex}
- 49 CFR Part 21 {Nondiscrimination in Federally Assisted Programs of the Department of Transportation}
- 23 CFR Part 200 {Title VI Program and Related Statutes—Implementation and Review Procedures}

Forms: None

Policy and Procedure:

I. Program Administrator

- A. The Civil Rights Coordinator in the Office of Employee Services shall serve as the Department's Title VI Program Administrator.
- B. The Title VI Program Administrator is responsible for the administration, coordination and control of Title VI compliance procedures throughout the Department and shall also:
 1. Initiate and monitor Title VI activities by establishing goals and objectives to be accomplished within specific time limits.
 2. Advise, consult and provide training for district engineers, office directors and their Title VI program area coordinators concerning the accomplishment of Title VI program objectives.
 3. Assist the district engineers, office directors and Title VI program area coordinators in investigating and resolving Title VI and related discrimination complaints.
 4. Prepare and submit to the FHWA the required annual report and the supporting documentation.

II. Implementation

Each district engineer or office director who administers federally-funded programs is responsible for the implementation of the Title VI commitments in those programs. The district engineer or office director shall also:

- A. Appoint a Title VI program area coordinator and inform the Title VI Program Administrator of any changes in the appointment.
- B. Monitor compliance in all programs and perform compliance reviews of Departmental districts or offices in cooperation with the FHWA. When deficiencies in compliance are found, the district engineer or office director shall, with the assistance of the Title VI program area coordinator, negotiate corrective actions. The district engineer or office director shall refer deficiencies that cannot be corrected through negotiation to the Title VI Program Administrator for resolution.
- C. Ensure that personnel and budgets are adequate to accomplish Title VI commitments.
- D. Ensure that disadvantaged businesses are given an opportunity to participate in programs, activities or services.

III. Monitoring

The Title VI program area coordinator is responsible for monitoring all Title VI activities of the district or office and shall also:

- A. Inform all recipients of federally funded programs administered by the district or office of prohibited discriminatory practices.
- B. Develop procedures for the collection of racial and ethnic data on participants to ensure compliance.
- C. Submit an annual report on district or office compliance and a program update to the Title VI Program Administrator.

Any exceptions to this policy must be approved by the Director of Transportation.

Appendix to Policy No. 300.05, Title VI Program Limited English Proficiency (LEP)

A. General

President Clinton signed Executive Order 13166 "Improving Access to Services for Persons with Limited English Proficiency" (LEP) on August 11, 2000. For LEP individuals, language 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 the Iowa Department of Transportation's (Iowa DOT) programs and activities. Programs and services normally provided in English must be accessible to persons with LEP in order to avoid national origin discrimination that is prohibited by Title VI. As a result, recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access to important government services by LEP persons.

The central goal of Executive Order 13166 is to provide meaningful access for LEP persons to programs and services offered by recipients of federal financial assistance. The Iowa DOT continues to be subject to these federal non-discrimination requirements even though Iowa has statutes requiring use of the English language (see Iowa Code sections 1.18, 618.1, and 618.2) because federal requirements supersede state and local ones. Additionally, Iowa Code section 307.44 provides that if "funds are allotted or appropriated by the government of the United States for the improvement of transportation facilities and services in this state, the department...may comply with the federal statutes and rules..." This authorizes the Iowa DOT to carry out its LEP responsibilities under Federal law.

B. Guidance

As a recipient of federal financial assistance, the Iowa DOT is required to take reasonable steps to ensure meaningful access to its programs and activities by LEP persons. It is important to note that because of the Civil Rights Restoration Act of 1987 (P.L. 100-259) this applies to all activities and programs, not just those that involve federal assistance. It is, therefore, necessary to determine what level of effort is reasonable to ensure meaningful access. That determination is based on a case-by-case assessment that balances four factors:

1. The number or proportion of LEP persons served or encountered in the eligible service population.

The more LEP persons who are served or directly affected by a particular project or service, the more likely it is that language services will be needed. Prior experience with LEP persons should be considered when determining the scope of services that are needed. It is important to note that eligible recipients may currently be underserved or unrecognized because of existing language barriers. Valuable data resources that may need to be considered include the census, school systems, community and religious organizations and legal aid entities.

2. The frequency in which LEP individuals come in contact with the program, activity or service.

The more frequently that LEP individuals have contact with the Iowa DOT over an issue, the more likely it is that language services will be needed. What is reasonable for a service needed only once will be significantly different for something that is needed repeatedly. The frequency of contact with any particular language should also be considered. For example, meaningful access efforts for a document issued multiple

times in one language may be much different than for the same document needed only once in another. If access is needed on a daily basis, the effort required may be much more significant than for something needed infrequently. On the other hand, infrequent need does not mean that no effort is required, but suggests that a reduced effort may be satisfactory.

3. The nature and importance of the program, activity or service.

As the information being exchanged becomes more important, the consequences to the user increase. As a result, the likelihood that an increased level of language services is necessary increases as well. It should be determined how serious the implications are to the LEP person due to a delay or denial of the information in question. As an example, the U.S. DOT LEP Policy Guidance indicates that the obligation to provide information about public transportation would be different than the obligation to provide information about recreational programming. U.S. DOT and U.S. Department of Justice Policy Guidance suggest that the importance of the activity is heightened when denial or delay of access to services could have serious or life-threatening implications for the LEP individual. Additionally, the fact that a federal, state or local entity has made an activity compulsory, such as the requirement that a person must have a license before driving, is strong evidence of the importance of the activity.

4. The resources available.

The level of resources needed and the costs imposed may have an impact on the nature of the steps taken in providing meaningful access for LEP persons. Reasonable steps may cease to be reasonable if the costs imposed substantially exceed the benefits. U.S. DOT LEP Policy Guidance cautions; however, that larger entities and entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using a claimed lack of resources or excessive cost as a reason to limit language assistance.

C. Language Assistance Services

The four factor analysis applied on a case-by-case basis results in a "mix" of language services. These services are provided in two main ways: interpretation and translation.

1. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language).

An effort should be made to ensure the competency of interpreters. This involves more than interpreters identifying themselves as bilingual. However, it does not necessarily mean formal certification, although that is beneficial.

Interpreters should demonstrate proficiency and the ability to communicate information accurately in both English and the other language, and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization or sight translation). Interpreters should have knowledge in both languages of any specialized terms or concepts peculiar to the program or activity and of any particularized vocabulary and phraseology used by the LEP person and understand and follow confidentiality and impartiality rules to the same extent as the Iowa DOT employee for whom they are interpreting and/or to the extent their position requires. They should understand and

adhere to their role as interpreters without deviating into other roles such as counselor or legal advisor.

Quality and accuracy of the language service provided and relative to the information being provided are critical. For example, accuracy in a right-of-way transaction would need to be extremely high, while the accuracy for bicycle trail information may not need to meet the same standard.

There are many options available for interpretation services.

- Bilingual staff.
- Hiring staff interpreters.
- Contracting for interpreters.
- Telephone interpreter lines.
- Community volunteers.
- Family members.

U.S. DOT LEP Policy Guidance indicates the Iowa DOT should not plan to rely on family members, friends and other service participants, and should use them as interpreters only in exigent circumstances that are not reasonably foreseeable, and then only when appropriate in light of the circumstances existing. Care should be taken to ensure that the interpreter is competent to interpret, that the interpreter does not have either a personal or business interest in the matter being interpreted and that use of that person as an interpreter will not violate any duty of confidentiality or privacy to the LEP person.

An LEP person may desire to use an interpreter of his or her own choice (whether professional interpreter, family member or friend) in place of or as a supplement to the free language services offered by the Iowa DOT. This is generally permissible when done at the LEP person's own expense, but again care should be taken to ensure that the person is competent to interpret and does not have either a personal or business interest in the matter being interpreted and that use of the person as an interpreter will not violate any duty of confidentiality or privacy to the LEP person.

2. Written Language Services (Translation)

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

Vital documents must be translated when reaching the safe harbor threshold for the number or percentage of the population eligible to be served or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively.

A document will be considered vital if it contains information that is critical for obtaining the program's services and/or benefits, or if it is required by law. An overview of documents that may be considered vital can be found in the U.S. DOT

LEP Policy Guidance, Federal Register, Volume 70, No. 239, pages 74094 to 74095.

The "safe harbor" provisions of the U.S. DOT LEP Policy Guidance (see page 74095) shall be followed when determining whether to translate a vital document. Following the "safe harbor" provisions, the Iowa DOT shall:

- a. Provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- b. If there is a language group for which fewer than 50 persons reaches the 5 percent trigger in paragraph "a" above, translation of vital written materials is not necessary as long as written notice in the primary language of the LEP language group is provided stating the right to receive competent oral interpretation of those written materials at no cost.

3. Published Notices

Compliance with Title VI and LEP guidelines may require oral interpretation or written translation of notices required by law to be published. Iowa Code section 618.1 provides that "[a]ll notices, proceedings, and other matter whatsoever, required by law or ordinance to be published in a newspaper, shall be published only in the English language and in newspapers published primarily in the English language." Iowa Code section 618.2 provides that a public official that violates Code section 618.1 is guilty of a simple misdemeanor. Again, the Iowa DOT continues to be subject to the federal non-discrimination requirements despite Iowa's English language requirements because federal requirements supersede state and local ones and Iowa Code section 307.44 permits the Iowa DOT to comply with federal statutes and rules when it has received federal funding. This allowance includes the use of non-English language newspapers when deemed necessary to reach an affected LEP language group. In the interest, however, of minimizing conflict with Iowa Code section 618.1, notices required by law to be published in a newspaper should be translated to a language other than English only when required by careful application of the four-part balancing test and the safe harbor provisions described above.

D. References

Iowa Code sections 1.18, 307.44, 618.1 and 618.2

FHWA LEP Desk Reference (*available from the Iowa DOT's Offices of Contracts and Employee Services, and the Iowa DOT Library*)

Iowa DOT "I Speak" language identification tool (*available on DOTNET*)

Iowa DOT list of interpreters (*available on DOTNET*)

www.census.gov

www.doleta.gov/reports/CensusDatawww.lep.gov

