

HELPFUL HINTS ON LEP ACCESS INFORMATION: FHWA PERSPECTIVE

Tuesday, September 17, 2013

The Sheraton Pentagon City Hotel

10:15AM To 11:45AM

SESSION TOPICS

- How FHWA Addresses Title VI: General Overview
- How FHWA Recipients Are Affected By LEP
- How FHWA Recipients Address LEP Issues: Tools Available
- Documents FHWA Requires Printed In Multiple Languages
- How FHWA Recipients Ensure LEP Persons Are Included In Public Outreach
- How FHWA Recipients Identify LEP Populations
- LEP Trends Observed By FHWA
- Questions

HOW FHWA ADDRESSES TITLE VI: GENERAL OVERVIEW

- Title VI Program Compliance Review Approach
- Title VI Plan Development Guide/Template
- Draft FHWA-Version Standard Title VI Assurance & Non-discrimination Provisions
- Update Of 23 CFR Part 200 Effort

HOW FHWA ADDRESSES TITLE VI: GENERAL OVERVIEW (Cont'd)

- Title VI Program Compliance Review Approach
 - 1) 23 CFR 200.11 defines a requirement for FHWA to conduct Title VI compliance reviews;
 - 2) When the regulation was issued in 1976, the initiative for compliance reviews was with the FHWA Division and Regional Offices;
 - 3) FHWA Regional Offices closed in 1998-1999 and the FHWA Office of Civil Rights conducts the compliance reviews;
 - 4) The FHWA Title VI/Nondiscrimination Program Manager conducts approximately three reviews annually (52 recipients);
 - 5) There is an LEP component to the compliance reviews*.

HOW FHWA ADDRESSES TITLE VI: GENERAL OVERVIEW (Cont'd)

- Title VI Plan Development Guide/Template
 - 1) References US Department of Justice's Policy Guidance Document dated August 16, 2000 (Federal Register Vol. 65, No. 159, Page #50123);
 - 2) References US Department of Transportation's "*Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons*" dated December 14, 2005 (Federal Register Vol. 70, No. 239, Pages 74087 to 74100)
 - 3) Requires Four-Factor Analysis;
 - 4) Recommends appropriate mix of written and oral language assistance;
 - 5) Recommends LEP procedures be included in the recipient's Public Participation Plan.

HOW FHWA ADDRESSES TITLE VI: GENERAL OVERVIEW (Cont'd)

- Draft FHWA-Version Standard Title VI Assurance & Non-discrimination Provisions

1) Includes the following language:

Additionally, Executive Order 13166, 3 C.F.R. 289 (2001) on Limited English Proficiency, according to the U.S. Department of Justice in its Policy Guidance Document dated August 16, 2000 (65 Fed. Reg. at 50123), clarifies the responsibilities associated with the “*application of Title VI’s prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency.*”

HOW FHWA ADDRESSES TITLE VI: GENERAL OVERVIEW (Cont'd)

When receiving Federal funds Recipients are expected to conduct a Four-Factor Analysis to prevent discrimination based on National Origin. (See also U.S. DOT's "*Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons*," dated December 14, 2005, (70 Fed. Reg. at 74087 to 74100); the Guidance is a useful resource when performing a Four-Factor Analysis).

HOW FHWA ADDRESSES TITLE VI: GENERAL OVERVIEW (Cont'd)

- Draft Update Of 23 CFR Part 200 Effort

- 1) FHWA is seeking to more broadly define a Title VI/ Nondiscrimination Program, which includes LEP as a Nondiscrimination requirement;

- 2) The present draft language is as follows:

Limited English Proficiency: Executive Order #13166 is entitled “*Improving Access to Services for Persons With Limited English Proficiency*”. Recipients of FHWA funding shall conduct the Four-Factor Analysis to prevent discrimination on the basis of National Origin and shall develop a Language Access Plan. In addition, Recipients shall ensure that all Sub-Recipients have conducted a Four-Factor Analysis and developed a Language Access Plan.*

HOW FHWA RECIPIENTS ARE AFFECTED BY LEP

- Requirement to collect LEP population data;
- Requirement to conduct a Four-Factor analysis;
- Requirement to identify vital documents requiring translation;
- Requirement to ensure that recipient employees that interact with members of the Public are aware of LEP-related needs and services available;
- Requirement to offer interpretation services to members of the Public for public hearings/meetings upon request;
- Requirement to provide telephonic interpretation services on-call as needed;

HOW FHWA RECIPIENTS ARE AFFECTED BY LEP (Cont'd)

- Requirement to provide reasonable accommodation to walk-in LEP persons (i.e., I-Speak cards, telephonic interpretation service, etc.);
- Requirement to analyze impacts to LEP populations during the Planning and Environment phases;
- Requirement to evaluate effectiveness of Public Participation outreach efforts during the Planning and Environment phases;
- Requirement to evaluate 511 Architecture to the end of offering information in more than one language as per the Four-Factor analysis*.

HOW FHWA RECIPIENTS ADDRESS LEP ISSUES: TOOLS AVAILABLE

- Geographic Information System (GIS) Mapping of LEP populations available to recipient employees via intra-net;
- Identification of vital documents needed to be translated: Identify on-call translation services;
- Identify recipient employees that speak languages other than English: Develop of list of employees and make the list available with the recipient's organization;
- Identify interpreter services and make them available on an on-call basis;
- Coordinate with Metropolitan Planning Organizations (MPOs) to coordinate Four-Factor analysis, identification of LEP populations, develop GIS mapping, on-call services, etc.

DOCUMENTS FHWA REQUIRES PRINTED IN MULTIPLE LANGUAGES

- FHWA does not require any documents to be printed in multiple languages;
- FHWA does expect recipients to identify vital documents to be printed in multiple languages;
- Vital documents may include:
 - 1) Public Hearing/Meeting Notices
 - 2) Environmental Impact Statements/Environmental Assessments
 - 3) Notifications to Beneficiaries
 - 4) Right-of-Way Brochures, Offer Letters, etc.

HOW FHWA RECIPIENTS ENSURE LEP PERSONS ARE INCLUDED IN PUBLIC OUTREACH

- Recipients are required to collect LEP data (i.e., Census, American Community Survey, etc.);
- Recipients are required to conduct Four-Factor analyses;
- Recipients are required to provide notices for Public Hearings/ Meetings in alternate languages as per the results of the Four-Factor analysis;
- Recipients are required to provide reasonable accommodation for LEP persons at Public Hearings/Meetings as needed;
- Recipients are required to evaluate effectiveness of outreach efforts (i.e., ask hearing/meeting participants

HOW FHWA RECIPIENTS IDENTIFY LEP POPULATIONS

- Census data and American Community Survey annual data;
- Conduct Four-Factor analysis;
- Develop LEP GIS mapping for internal use and/or coordinate with MPOs to use already prepared LEP GIS mapping (useful for Local Public Agencies receiving FHWA funds as sub-recipients as well);
- Instruct recipient project engineers, planners, environmental specialists, Right-of-Way agents, etc. regarding the existence of the GIS maps and how to use them;
- Update the GIS maps periodically to reflect changing demographics and language needs.

LEP TRENDS OBSERVED BY FHWA

- Recipients are becoming more aware of LEP requirements and how to satisfy these requirements;
- Data collection and analysis is a challenge (i.e., what data to collect, who collects the data, who analyzes the data, how to analyze the data, etc.);
- Reasonable Accommodation: Recipients are becoming more aware as to what constitutes reasonable accommodation and how to accomplish reasonable accommodation;
- Statutory connection to National Origin protection under Title VI: Recipients are becoming aware of the connection to the statute;
- Use resources already developed and/or available.

QUESTIONS?