NATIONAL ASSOCIATION OF

STATE WORK FORCE AGENCIES

Checklist for Developing a Limited English Proficiency (LEP) Plan

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  Victoria Lodge, Louisiana Department of Labor
  Juanita Davis, Missouri Department of Economic Development
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DISCLAIMER:

While the United States Department of Labor and its Civil Rights Center are supportive of the National Association of State Workforce Agencies' efforts to devise this checklist, it has not approved the checklist nor sanctioned its use as a means to demonstrate compliance with Title VI or Section 188 of WIA.

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INTRODUCTION

The United States Department of Labor (USDOL) guidance regarding persons with limited English proficiency requires recipients of federal financial assistance to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP) pursuant to Title VI of the Civil Rights Act of 1964, its implementing regulations, and Section 188 of the Workforce Investment Act of 1998. The guidance does not create new legal requirements or change existing requirements. It clarifies what the law already requires with respect to ensuring that information and services are accessible to LEP persons. Eligible LEP individuals must be able to access the full spectrum of services provided by recipients. The purpose, as stated in the revised guidance, is “to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law.” The USDOL advises that recipients are required by Title VI to take reasonable steps to provide meaningful access to federally assisted programs and activities by LEP persons through language assistance that is reasonable, timely, and effective.

This checklist was developed for the purpose of assisting states in ensuring that LEP persons receive meaningful access to federally assisted programs and services. It provides basic steps for the development and implementation of a LEP Plan. However, adherence to this checklist alone may not allow a recipient to demonstrate compliance with Title VI or Section 188 of WIA. This checklist is not a substitute for the USDOL guidance, which addresses in much greater detail the elements discussed below.

Consider forming a team or committee that includes both internal and external representatives to develop a comprehensive plan. The plan should include, but not be limited to, an assessment of the needs of the LEP population, timeframes, vital documents, resources, etc. This plan will serve as a "tool" that will provide guidance in providing services to LEP persons.

PREPARATION

Determine the Extent of Your Obligation to Provide LEP Services

The USDOL guidance sets out four factors that you should consider when deciding what reasonable steps should be taken to ensure meaningful access for LEP persons.

The objective of the four-factor analysis is to suggest a reasonable balance that ensures meaningful access by LEP customers to critical services while not imposing undue burdens on small businesses, small local governments or small non-profits. The correct mix of language assistance services should be based on what is both necessary and reasonable in light of the four-factor analysis.

The number or proportion of LEP persons from a particular language group served or encountered in the eligible service population determines what language services should be provided. The greater the number or proportion of LEP persons, the more likely language services are needed.

✧ **Determine the number or proportion of LEP persons eligible to be served or likely to be encountered by the program.**

- ❑ Examine your prior experience with LEP encounters; identify the breadth and scope of language services that were needed.
- ❑ Identify and include language minority populations that are eligible for program services or activities, but may be under-served because of existing language barriers within the program or activity.
- ❑ Collect and analyze these additional data to refine or validate your prior experience:
  - ○ Latest census data for the area served;
  - ○ Data from school systems;
  - ○ Data from community organizations that serve LEP customers; and
  - ○ Data from local and state governments.

✧ **Determine the frequency with which LEP persons come in contact with the program.**

- ❑ Assess as accurately as possible the frequency with which you have, or should have, contact with LEP individuals from different language groups seeking assistance.

The more frequent the contact with a particular language the more likely enhanced language services in that language are needed.

- ❑ Consider the frequency of different types of language contacts.
- ❑ Consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

Frequent contact with LEP individuals may indicate a special need for language assistance. Less frequent contact with different language groups may suggest different and less intensified language assistance services.

✧ **Determine the nature and importance of the program, activity, or service provided by the program to LEP persons**.

The more important the activity, information, services, or program, or the greater possible consequences of the contact to LEP individuals, the more likely language services are needed.

- ❑ Determine whether denial or delay of access to services or information could have serious implications to the LEP customer.

Activities that are compulsory, such as job training and/or job search certification in the Unemployment Insurance program, can also serve as strong evidence of the program's importance.

✧ **Determine the resources available to you and the costs.**

- ❑ Consider that your level of resources available and the costs imposed on you may have an impact on the nature of the steps that should be taken.
- ❑ Consider reducing your use of resources and costs by:
  - ○ Utilizing advances in technology;

Smaller entities with more limited budgets are not expected to provide the same level of language services as larger entities with larger budgets. "Reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. However, large entities and those serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance.

- Sharing language assistance materials and services among and between other recipients, advocacy groups or Federal grant agencies; and
- Using reasonable business practices.

These possibilities should be explored thoroughly before deciding that the cost of providing services to LEP customers exceeds the benefits.

❑ Consider reducing costs by:

- Training bilingual staff to act as interpreters and translators;
- Sharing information through industry groups, telephonic and video conferencing interpretation services;
- Pooling resources and standardizing documents to reduce translation needs;
- Using qualified translators and interpreters to ensure that documents need not be “fixed” later and that inaccurate interpretations do not cause delay or other costs;
- Centralizing interpreter and translator services to achieve economies of scale; or
- Using qualified community volunteers in a formalized manner.

Carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource and cost concerns. It may be useful to articulate, through documentation or in some other reasonable manner, the process you used for determining that language services would be limited because of limited resources and costs.

Determine Your Use of the Two Predominant Ways to Provide Language Services—Oral Interpretation and Written Translation

✧ **Using Oral Language Services (Interpretation)**

Consider some or all of the following options for providing competent interpreters in a timely manner:

Interpretation is listening to something in one language and orally translating it into another language.

❑ **Ensuring Competence of the Interpreters**
When using interpreters, ensure that they:

Competency requires more than self-identification as bilingual, although it does not necessarily mean formal certification.

- Demonstrate proficiency and the ability to communicate information accurately in both English and in the other language and are able to identify and employ the appropriate mode of interpreting (e.g., consecutive, summarization, or sight translation);
- Have knowledge in both languages of specialized terms or concepts of the program or activity;
- Have knowledge of any particularized vocabulary and phraseology used by the LEP person;
- Understand and follow confidentiality and impartiality rules to the same extent the employee for whom they are interpreting and/or to the extent the employee's position requires;

- Understand and adhere to their role as interpreters without deviating into a role as a counselor, legal advisor, etc.; and
- Allow you to provide service in a timely manner.

One clear guide for timeliness is that you should provide language assistance at a time and place that does not cause a denial, delay, or the imposition of an undue burden in the receipt of important rights, benefits or services to the LEP person.

- ❑ **Hiring Bilingual Staff**
  Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized.

Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter.

- ❑ **Hiring Staff Interpreters**
  Most helpful when there is a frequent need for interpreting in one or more languages.

- ❑ **Contracting for Interpreters**
  May be cost-effective when there is a no regular need for a particular language skill. Contracting with one of the many community-based organizations and mutual assistance associations who provide interpretation services for particular language groups can be a cost-effective option.

- ❑ **Using Telephone Interpreter Lines**
  Offer speedy interpreting assistance in many different languages. Particularly appropriate where the mode of communicating with a customer, regardless of language proficiency, occurs over the phone.

It is important to ensure that telephonic interpreters are competent to interpret any technical or legal terms specific to a particular program that may be important to the conversation. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the documents prior to the discussion. Any other logistical problems should also be anticipated.

- ❑ **Using Community Volunteers**
  May be particularly useful in providing language access for your less critical programs and activities. It is often best to use volunteers who are trained in the information or services of the program and can communicate directly with the LEP persons in their language.

Just as with all interpreters, community volunteers should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules.

- ❑ **Using Family Members or Friends**
  You should not plan to rely on a LEP person's family members, friends, or other informal interpreters to provide language assistance services to important programs and activities. However, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing in place of, or as a supplement to, the free language services you offer.

You should take special care to ensure that LEP persons are notified that their choice to work with an informal interpreter is voluntary, and that a competent interpreter could be provided by you at no cost. Consider whether you want to document the person's choice and your offer.

You should also take special care to ensure that the use of family, friends and other informal interpreters are appropriate in light of the subject matter of the program, service or activity.

Issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends or other informal interpreters often make their use inappropriate. However, their use may be an appropriate option where proper application of the four-factor analysis would lead you to the conclusion that the provision of interpretation services is not necessary.

(As you consider your selection of language assistance services, now is a good time to think about your sign language assistance for the disabled, if you haven't already done so.)

✧ Using Written Translation Services

Translation is the replacement of a written text form one language into an equivalent written text in another language.

- ❑ **Determine documents to be translated**
  Determine which documents are "vital," such as:
  - ○ Applications, consent forms and complaint forms;
  - ○ Written tests (those that do not assess English competency);
  - ○ Letters containing important information regarding participation in a program or activity;
  - ○ List of partners and services provided at a One-Stop;
  - ○ Notices pertaining to reduction, denial or termination of services or benefits and of the right to appeal such actions;
  - ○ Notices that require a response from beneficiaries;
  - ○ Information on the right to file complaints of discrimination;
  - ○ Information on the provision of services to individuals with disabilities;
  - ○ Notices advising LEP persons of the availability of free language assistance;
  - ○ Explanation of how to file complaint and complaint process; and
  - ○ Other outreach materials.

After an analysis of the four factors, a recipient may determine that an effective LEP plan includes the translation of certain vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the program.

Whether or not a document or the information it provides and/or solicits is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

- ❑ **Determine the languages the documents are to be translated to.**
  - ○ Translate vital documents into at least several of the more frequently encountered languages.
  - ○ Set benchmarks for continued translations into the remaining languages over time.
- ❑ **Ensure the competence of translators**
  - ○ Consider using certified translators.
  - ○ Consider using a second, independent translator to check the work of the primary translator.
  - ○ Consider “back translating” where one person can translate the document and a second, independent translator, can translate it back into English to check that the appropriate meaning has been conveyed.
  - ○ Ensure translators understand the expected reading level of the audience.
  - ○ Ensure translators, where appropriate, have fundamental knowledge about the target language group’s vocabulary and phraseology.

The languages spoken by the LEP individuals with whom you have contact determine the languages into which vital documents should be translated.

You should determine the extent of your obligation to provide written translation of documents on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis.

(As you consider the languages that documents are to be translated into, now is a good time to think about translation of vital documents for persons with disabilities—for instance into Braille— if you haven't already done so.)

As with oral interpreters, translators should be competent. Many of the same considerations apply. However, a person who is a competent interpreter may or may not be a competent translator.

DEVELOP YOUR LEP PLAN

Once the analysis of the four factors has been completed and a determination has been made on what language assistance services are appropriate, an LEP implementation plan should be developed to address the needs of the LEP populations you serve.

If you serve very few LEP persons in your service area or have very limited resources, you may not need a written plan. If so, you might find it useful to articulate in some other reasonable manner a plan for providing meaningful access to LEP persons that are encountered.

I. Identify LEP Individuals Who Need Language Assistance

- ❑ Consider using "Language Communication Cards" or " I speak cards" which invite the LEP person to identify his or her language needs to staff. These cards can be downloaded at http://www.usdoj.gov/crt/cor/13166.htm.
- ❑ If available, use language information in records of past interactions with members of the public. If not, consider the inclusion of language information in records for future use.
- ❑ Consider posting notices in commonly encountered languages notifying LEP persons of language assistance available. This will encourage them to self identify.

The first two factors of the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of the encounters. This requires you to identify LEP persons with whom you have contact.

Also consider those circumstances in which, although the participant and/or beneficiary can communicate effectively in English, assistance may be needed when interacting with other pertinent individuals—such as when a youth under age eighteen needs a parent's signature to participate in a summer employment program.

II. Identify Language Assistance Measures

The following information should be included:

- ❑ Types of language services available;

An effective LEP policy includes information about the ways in which language assistance will be provided.

- ❑ How staff can obtain those services;
- ❑ How to respond to LEP callers;
- ❑ How to respond to written communications from LEP persons;
- ❑ How to respond to LEP individuals who have in-person contact with your staff; and
- ❑ How to ensure competency of interpreters and translation services.

III. Identify Staff Training to be Provided

An effective plan would include training to ensure that:

- ❑ Staff know about LEP policies and procedures; and
- ❑ Staff that have contact with the public are trained to work effectively with in-person and telephone interpreters.

It is your responsibility to ensure that staff know their obligations to provide meaningful access to information and services for LEP customers.

IV. Provide Notice to LEP persons

Consider:

- ❑ Posting signs in appropriate languages in intake areas and other entry points;
- ❑ Stating in outreach documents such as brochures, booklets, and other outreach and recruitment information that language services are available;
- ❑ Working with community based organizations and other stakeholders to inform LEP individuals of your programs and activities;

Once a determination has been made on the language services that will be provided, you should let LEP customers know that these services will be available and will be free of charge.

- ❑ Using a telephone voice mail menu in the most common languages encountered.
- ❑ Including notices in local newspapers in languages other than English;
- ❑ Airing notices on non-English language radio and television stations; and
- ❑ Giving presentations at schools and religious organizations.

Notices on telephone voice mail menus, in newspapers, and on radio and television stations should provide information about available language assistance services and how to access them. The messages should be provided in the most common languages encountered.

V. Monitor and Update Your LEP Plan

To determine if the LEP policy needs updating, consider assessing changes in the following areas:

- ❑ Current LEP populations in the service area or population affected or encountered;
- ❑ Frequency of encounters with LEP language groups;
- ❑ Nature and importance of activities to LEP persons;
- ❑ Availability of resources, including technological advances and sources of additional resources, as well as the costs imposed;
- ❑ Whether existing service assistance is meeting needs of LEP customers;
- ❑ Whether staff knows and understands the LEP plan and how to implement it; and
- ❑ Whether identified sources for assistance are still available.

You should have a process for determining, on an ongoing basis, whether new documents, programs, services and activities need to be made accessible for LEP individuals. When changes in services occur, you may want to provide notice of these changes to LEP individuals and employees. In addition, you should consider whether changes in demographics, types of services or other factors require annual reevaluation of your LEP plan.

MONITORING YOUR LEP PLAN

Consider Monitoring For The Following Activities:

- ❑ Is there a LEP coordinator identified?
- ❑ Are you working with community-based organizations familiar with the language needs of individuals participating in or eligible to participate in your programs and services?
- ❑ Is there a process in place for surveying, collecting and/or recording primary language data of participants?
- ❑ Have resources needed to provide meaningful access for LEP persons been identified?
- ❑ Is language assistance available at all identified points of contact?
- ❑ Have employees who fluently speak a language other than English, and the languages they speak, been identified?
- ❑ Have employees who are qualified as interpreters been identified?
- ❑ Have interpreter services for the area been identified?
- ❑ Have costs of additional resources been identified?
- ❑ Is there a policy, plan or procedure in place for language interpreter and translation services?

- ❑ Have employees been informed of your policies regarding LEP persons?
- ❑ Have employees been trained on your policies and procedures regarding LEP persons?
- ❑ Have your subcontractors been informed of your policies regarding LEP persons?
- ❑ Have your subcontractors been informed of their obligation to provide language assistance to LEP individuals?
- ❑ Do your subcontractors have written policies on the provision of interpreter and translator services?
- ❑ Is there a tool being used to collect data on participant satisfaction with interpreter/translation services?
- ❑ Have there been any complaints filed because of language access problems?

In addition to the preceding elements, ensure your plan is an effective plan by including:

- ❑ Clear goals;
- ❑ Management accountability; and
- ❑ Opportunities for community input and planning throughout the whole process.

Also ensure that:

- ❑ Complaint procedures are in place; and
- ❑ An EO monitoring tool has been developed.

NASWA

444 North Capitol Street, NW, Suite 142
Washington, DC 20001
202-434-8020, fax 202-434-8033

www.WorkforceATM.org