

Community Development Block Grant

Policies and Procedures



Limited English Proficiency – Four Factor Analysis for HUD-funded Programs

Introduction

Executive Order (EO) 13166 directed all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to Limited English Proficiency (LEP) persons. Further, EO13166 required that federal agencies issue LEP guidance to assist federally assisted recipients (such as the City) as they strive to formulate plans and improve LEP person's access to the HUD programs.

City of Greeley Policies

The City of Greeley's City Council adopted a Language Access Plan for Limited English Proficiency Administrative Rule in March, 2011. The Greeley Urban Renewal Authority (GURA), the administrator of the City's HUD grants, adopted the City's policy in June, 2011.

The City also adopted an "Americans with Disabilities Act/Section 504 Effective Communications Policy and Procedures", in November, 2014. While a broader policy in that it speaks specifically to assistance for persons with disabilities, it also provides additional support and information with regard to the Limited English Proficiency Administrative Rule noted earlier. While GURA, as a City Division, also uses this City Policy and its procedures, it also adopted the document formally on November 18, 2015.

Four-Factor Analysis

HUD has determined, through the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI-Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, that the City is required to take reasonable steps to ensure meaningful access to LEP persons while balancing that need with not imposing undue financial burdens on small businesses or small non-profit organizations. Because the "reasonableness" standard is intended by HUD to be flexible and fact-dependent, GURA conducted a (HUD-recommended) Four Factor Analysis (the Analysis) to determine the LEP populations that may want to access a federally-assisted program or federally-assisted housing within the grant programs administered by GURA [Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME), and Neighborhood Stabilization Programs 1 and 3 (NSP1, NSP3)] and determined that the City's policies were adequate in the event of an audit by HUD.

The Four Factor Analysis conducted was an individualized assessment that balanced the following four factors (as provided by HUD guidance):

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 recipient if the persons received adequate education and outreach and the recipient provided sufficient language services);
2. The **frequency** with which LEP persons come into contact with the program;
3. The **nature and importance** of the program, activity, or service provided by the program; and
4. The **resources available and costs** to the City.

Safe Harbor for Written Translations

Note: The "safe harbor" provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and reasonable.

Understanding that not all LEP persons can reasonably be expected to be served (too many languages are spoken to accommodate all of them), HUD adopted a “safe harbor” for translation of written materials, as noted in the table below. HUD would consider the actions in the table to be strong evidence of compliance with the recipient’s written-language obligations. Translation is relevant to vital documents only. A vital document is any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Whether or not a document (or the information it 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. For instance, applications for auxiliary activities, such as certain recreational programs in public housing, would not generally be considered a vital document, whereas applications for housing would be considered vital. However, if the major purpose for funding the recipient were its recreational program, documents related to those programs would be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.)

The "safe harbors" provide a starting point for the City 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.

	Size of Language Group	Recommended Provision of Written Language Assistance
1	1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents.
2	More than 5% of the eligible population or beneficiaries <i>and</i> more than 50 in number	Translated vital documents.
3	More than 5% of the eligible population or beneficiaries <i>and</i> 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
4	5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

Table 1: Safe Harbors

Note: Generally, the English language document prevails. The HUD-translated documents may carry the disclaimer, "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document."

The Analysis

Factor 1: The Proportion, Numbers and Distribution of LEP Persons

The threshold for triggering LEP compliance is at least 5% LEP population or more than 1,000 persons. For determining the LEP population in the city of Greeley, staff utilized the U.S. Census Bureau’s 2009-2013 American Community Survey (ACS) Five-Year Estimates, with the sub-category Languages Spoken At Home. The data is based on a population of 87,408 (age five and older). Based on that data, 24% of the population speaks a language other than English at home.

Table Two shows the number of persons in Greeley (8,547) and percent of the total population (9.8%) who identify as persons who speak English “less than very well”.

Population 5 years old and older	# of Limited English Proficient Persons	% of Limited English Proficient Persons
87,408	8,547	9.8%

Table 2: Limited English Proficient Persons in Greeley

Of the LEP persons within City of Greeley area, 21.6% percent speak Spanish, .9% speak other Indo-European languages, .9% speak Asian and Pacific Islander languages, and .6% speak other languages at home.

Table Three shows the actual number of language groups spoken by LEP persons (ages five and older) at home in the City of Greeley and the corresponding percentage of the total population.

Spanish Language Spoken at Home	Indo-European Language Spoken at Home	Asian and Pacific Islander Language Spoken at Home	Other Languages Spoken at Home
21,036 (21.6%)	817 (.9%)	830 (.9%)	528 (.6%)

Table 3: Languages Spoken at Home

Discussion: Based on the threshold for triggering LEP compliance (as noted above-a minimum of 5% or 1,000 persons), with 21.6% of the population identifying Spanish as the language spoken at home and 8.7% stating they speak English “less than very well”, the City should be prepared to provide translations, both written and oral, in Spanish. Other LEP populations do not meet any of the four thresholds identified in Table 1, Safe Harbors, and thus do not require written translation services. The City will, however, strive to meet the need of any LEP person who requests assistance with information on the federal grant process or to access a project or activity funded with federal grant funds, particularly through oral interpretation.

Factor 2: Frequency of Contact with LEP Individuals

Greeley’s population according to the ACS 2010 Demographic Profile Data, numbered approximately 92,889 persons. Racially, the Greeley census data reflects limited diversity, as noted in the data table that follows.

Total Population	Number of Persons	Percentage of Total
Greeley	92,889	100%
White	73,485	79.1
Black or African American	1,543	1.7%
American Indian or Native Alaskan	1,096	1.2%
Asian	1,245	1.3%
Native Hawaiian or Other Pacific Islander	111	.1%
Some Other Race	12,251	13.2%
Hispanic or Latino Ethnicity (of any race)	33,440	36%

Table 4: Racial, Ethnic Diversity

Table four, below, shows CDBG grant beneficiaries from HUD’s Integrated Disbursement and Information System’s (IDIS) Report PR23 for the recently completed Consolidated Plan years (2010-2014). IDIS is the vehicle through which the City reports its accomplishments to the federal government. (HH=Households)

Race	2010 People	2010 HH	2011 People	2011 HH	2012 People	2012 HH	2013 People	2013 HH	2014 People	2014 HH
Total	8,192	82	7,886	114	2,181	63	10,765	118	8,551	71
White	7,637	82	7,332		2,031	63	10,047	118	7,535	
Black/Afr. American	3		2		2		311		177	
Asian			1		1		101		1	
American Indian/ Alaskan Native									290	
Other/Multi-Racial	552		551		147		306		548	
Hispanic Ethnicity	4,151	32	3,897	46	877	24	5,429	52	66	30
Hispanic Ethnicity %	51%	39%	49%	40%	40%	38%	54%	44%	.8%	42%

Table 4: Beneficiaries by Race/Ethnicity from IDIS

Discussion: With the exception of 2014 (which may still have unreported beneficiaries for open activities), CDBG was used annually to benefit persons of Hispanic ethnicity in a percentage more than 38%. The City, based on this data, is doing a good job of ensuring its highest minority group is receiving support with federal funding and is on-target with the presumption that vial documents should be available in Spanish.

Factor 3: Nature and Importance of the Program

The City's 2015-2019 priorities for use of federal funds placed the highest priorities as follows:

1. Acquisition of property to clear blight or for neighborhood improvements
2. Affordable housing, to include new construction, reconstruction, housing rehab, etc.
3. Infrastructure improvements in low- moderate-income neighborhoods

A mid-range of priorities cited in the five-year plan, which can reasonably be expected to receive federal funds during the noted five-year timeframe, includes:

1. Public facilities and public services that assist with an essential need (food, clothing, shelter, transportation)
2. Events and activities that support neighborhood clean-up efforts and improvement to property conditions in low-moderate-income neighborhoods
3. Economic development

Also cited as priorities, but least likely to receive funding are, are the following:

1. Public facilities and public services that assist with a non-essential need (for example education or recreation)
2. Rent, utility, and/or deposit assistance for housing

Discussion: Activities receiving the City's federal funds must meet one of these priorities. Because the high majority of activities associated with the priorities occur in neighborhoods/census tracts with high minority (particularly Hispanic) populations, it is important that information relating to these programs be available to all citizens, particularly those with Limited English Proficiency.

The activities that provide a direct benefit and are most frequently accessed by LEP persons are housing rehabilitation (loans and grants) and Habitat for Humanity's homeownership program, which see high usage by households of Hispanic ethnicity. Other activities that have historically had a high frequency of usage by persons of Hispanic ethnicity, and potentially LEP-households, include housing and homeless programs administered either by GURA (Homes Again Purchase Program) or a subrecipient (Greeley Transitional House, Guadalupe Community Center, HOME rental projects). Because of this, documents utilized within these programs should be considered "vital" and available in Spanish, as well as English.

Home care, a public service provided by the Rehabilitation and Visiting Nurse Association (RVNA), noted in the fall of 2015 that the language barrier had become an important issue with home care services and that they'd seen up to 20 different languages in the Greeley area. While the numbers aren't significant enough to warrant written translations, the City will monitor their activity closely.

Factor 4: The Resources Available to the City, GURA as administrator, and Overall Cost

Successful application for HUD funding depends entirely on the coordination of the City's Five-Year HUD Consolidated Planning and Strategic Plan Development submission process, as well as the City's Annual Action Plans, which implement the priorities developed under the Consolidated Plan. Administration of the grants (CDBG, HOME, NSP1, and NSP3) is the responsibility of GURA. In addition to the coordination, development, and submission of the City's Five-Year Consolidated Plan and subsequent Annual Action Plans to the HUD, it also manages several of the projects which typically receive funding: acquisition, demolition, clearance, and disposition; housing rehabilitation loans and grants, and housing reconstruction through Homes Again Purchase Program. Administrative tasks completed by the City's Finance Department are supported with the City's General Fund, rather than from either the 20% administrative allowance for CDBG or the 10% administrative allowance for HOME. GURA is expected to operate within the noted percentages for staffing and other administrative costs, including the costs associated with translation and/or interpretation. Because of the cost and time associated with written translations of multi-page documents, an oral interpretation of documents may be all that is provided.

In recent years, administrative support came through the NSP grants; however, those grants are finalizing and administrative support will become unavailable in the near future.

Discussion: The City relies on federal funding for administration of the programs and activities noted, including oversight of all cross-cutting responsibilities (environmental review, Davis Bacon management, Section 3 management, fair housing reporting, etc.). Cuts in formula allocation translate to decreased staffing levels and less ability to meet the substantial administrative requirements of the grant programs. The City will strive to have the vital documents noted below available on request in Spanish and require Subrecipients serving a high LEP Hispanic population to have their vital forms available in Spanish.

Vital Documents

The following documents for activities noted in Factor Three are considered "vital". The City will have those noted translated into Spanish within 48 hours of request (if not immediately available) with the exception of legal documents (contracts, promissory notes, deeds of trust, homeownership agreements). Due to cost and time, the GURA manager (or another interpreter) will provide an oral interpretation of those only. (Historically, GURA staff has also found that many persons accessing the CDBG and HOME activities may speak Spanish, they do not read/write it.) Notice of the availability of translation and interpretation in Spanish will be displayed in GURA's reception area. GURA will provide the same signage to the Subrecipients noted below and ask that they, too, display it.

Housing Rehabilitation (loans and grants)

- Application
- Contract
- Promissory Note and Deed of Trust (oral interpretation only)

Homes Again Purchase Program

- Documents for this program will be orally interpreted for Spanish-speakers

Habitat for Humanity Home Ownership (other documents may be available in Spanish, but are not considered "vital")

Provided by Habitat

- Application
- Selection criteria process
- Letter of approval/denial
- Partnership agreement
- Guidelines to the work site
- Homeownership lessons

- Mortgage payment policy
- Habitat North covenant
- Warranty policy for after closing

Provided by GURA (for affordability mortgage)

- Homeownership agreement (oral translation only)
- Promissory Note and Deed of Trust (oral translation only)

Greeley Transitional House

- Application to the shelter
- Application to Camfield Corner (housing)
- Lease and associated documents
- Eviction notices

Rehabilitation and Visiting Nurse Association (RVNA)

- RVNA noted in the fall of 2015 that there is no formalized application process to access the services provided through the CDBG grant. Materials in Spanish are being created and they access a list of volunteer interpreters when assistance is needed. Because home care companies expect to soon be mandated to supply written translation and oral interpretive services in the near future, they are investigating a phone system that offers oral interpretation in more than 200 languages. Because of the low number of persons accessing the services provided by the City's CDBG grant (less than 25 annually), it is determined that their process is adequate for the time being.

HOME Rental Projects

- Application
- Lease and associated documents
- Eviction notices

Four-Part Analysis Conclusion

The City has adopted policies that sufficiently meet the requirements of EO 13166-Improving Access to Services for Persons with Limited English Proficiency. Those policies were referenced at the beginning of this document. Additionally, GURA has formally adopted those policies for use with the federal grants programs it administers (CDBG, HOME, and NSP).

Through this four-part analysis, the City identified the Hispanic ethnicity as the population that exceeds safe harbor provisions. No other racial or ethnic group has sufficient numbers (or percentages of the population) to meet the threshold for triggering LEP compliance (at least 5% LEP population or more than 1,000 persons). Therefore, the City should provide adequate and reasonable notice to its Spanish-speaking residents, both in written and oral translation, of the availability of vital and operational documents, used in the administration of the federal grant programs. How to access information, the time frame under which it will be provided, and a process for complaint are defined in the City's policies.

GURA's manager is bi-lingual and is the primary contact for persons accessing the City's housing rehabilitation activity, particularly when working with LEP clients. Habitat for Humanity also has a bi-lingual staff person who works with the families accessing its homeownership program. GURA's manager processes the City's part of the Habitat for Humanity activity's documents (affordability mortgage).

The High Plains Library District (which includes the four Greeley/Evans libraries) has a comprehensive webpage with information for LEP persons, including a list of English as a Second Language (ESL) classes. There are a variety of classes, from an "English Hour" for new learners that includes conversation, new vocabulary, and grammar practice to an Intensive English Language Program offered through Aims Community College.

The City has sufficiently conducted this four-part analysis and identified the LEP population for which translation of vital documents is necessary and has implemented procedures to assist the LEP as they access the HUD programs.

Appendix A -Executive Order 13166

THE WHITE HOUSE

Office of the Press Secretary (Aboard Air Force One)

For Immediate Release August 11, 2000

EXECUTIVE ORDER 13166 – IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1: Goals

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Section 2: Federally Conducted Programs and Activities

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. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Section 3: Federally Assisted Programs and Activities

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

Section 4: Consultations

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Section 5: Judicial Review

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE, August 11, 2000.

<http://www.usdoj.gov/crt/cor/Pubs/eolep.htm>