

IV. Limited English Proficiency (LEP)

Most individuals living in the U.S. read, write, speak and understand English. There are many, however, for whom English is not their primary language. For people in this situation, their opportunities to obtain housing, financial assistance, recreation, community activities or other important life benefits can be cut off by their inability to speak, read or understand the language. It is the responsibility of DCED, its grantees, sub-grantees and vendors to guarantee that any eligible resident/applicant seeking assistance from a program that has been funded with federal funds is given the necessary information by the municipality/agency administering said funded program in a language in which they are accustomed to communicating.

Federally assisted grantees are required to make reasonable efforts to provide language assistance to ensure meaningful access for Limited English Proficient (LEP) persons to the grantee's programs and activities. To do this, the grantee must:

- (1) Conduct the Four Factor Analysis;
- (2) Develop a Language Access Plan (LAP) if the Four Factor Analysis dictates they must; and
- (3) Provide appropriate language assistance.

A Limited English Proficient person is someone “who does not speak English as their primary language and who has a limited ability to read, write, speak, or understand English.”¹ As a result of their limited ability with the English language, they are less able to fully engage in the services and benefits that the federal programs offer.

It is important to remember that United States citizenship does not determine whether a person is LEP. A U.S. citizen can be considered a person of LEP, and in turn, a person who is not a U.S. citizen can be fluent in English. The requirements of Title VI are interpreted to apply to citizens, documented non-citizens, and undocumented non-citizens. While some federal programs require recipients to document citizenship or eligible immigrant status of beneficiaries, other programs do not.

¹ Department of Interior, Office of Civil Rights, <https://www.doi.gov/pmb/eeo/LEP-Guidance>

DCED is required to meet the LEP requirements on a Commonwealth-wide basis. This is achieved through DCED's Language Access Plan (LAP). As part of the LAP, DCED's grantees are required to complete a Four Factor Analysis and determine if their municipality meets any of the factors or if the service area of their activities will meet any of the factors. All grantees are required to provide equal access and opportunity to HUD funded programs to residents of their jurisdiction. If demographic data pertaining to the grantee's geography demonstrate that its population exceeds 5% of any given language with limited English proficiency; it is determined that LEP persons have frequent interaction with the programs; and/or the programs are of sufficient importance to the community; then the grantee is required to develop its own LAP. These determinations are made by undertaking the Four Factor Analysis described later in this section.

If found to meet any of the factors, grantees must take affirmative actions to ensure that the information provided, the forms required, the community meetings and announcements, and any other relevant programmatic resources are made available and understood by people of limited English proficiency. Actions could include but are not limited to:

- Translation of online and hard copy materials,
- Provision of translation and interpretation services, and
- Availability of program support in different languages.

DCED expects grantees to extend reasonable efforts to afford persons with limited English proficiency meaningful access to its programs and services. Under the "reasonableness" standard laid out in the Four Factor Analysis, a grantee should ask itself if a reasonable person would conclude that the grantee is providing language assistance and meaningful access to its programs. DCED will monitor compliance with this requirement under the FHEO monitoring component, no less than every three years as a part of its obligation to HUD for federal funds.

A. Regulatory Basis

The grantee's responsibilities are to ensure that Limited English Proficiency persons will be able to participate and benefit from programs that are funded by federal sources. The basis for the requirements are found under Sections 601 and 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, Executive

Order 13166, and the HUD Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.

- Section 601 of Title VI provides that “no person shall on the ground 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.”
- Section 602 of Title VI gives authorization to federal agencies “to effectuate the provisions of Section 601 by issuing rules, regulations, or orders of general applicability.”
- Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency (2000) states that recipients of federal financial assistance “must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.”
- HUD Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons clarifies recipients’ obligations to LEP persons. It provides guidance to recipients on how to take reasonable steps to meet their “regulatory and statutory obligations to ensure that LEP persons have meaningful access to HUD programs and activities.”

B. Minimum Requirements

While the language of these laws and regulations are generally directed at Federal Agencies and their recipients, like DCED, it is important to understand that any entity “that receives financial assistance from the federal government, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements.”² While completing its Four Factor Analysis, DCED took into consideration how it interacts with Commonwealth residents through its federally funded programs and has taken steps to provide meaningful access to LEP constituents. That said, much of the interaction with residents takes place at the local and non-profit grantee level, and LAP requirements necessarily will apply directly to those municipalities, agencies and organizations. Because of the unique

² HUD LEP Frequently Asked Questions, https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq#top

method of distribution of federal grant funds, Pennsylvania requires its grantees to analyze their own needs in addressing the LEP persons of their communities, where the actions are best served. This means that any municipality that receives federal funding from DCED, its subrecipients and/or vendors, is bound by the requirements of the above stated regulations.

For the Commonwealth of Pennsylvania, 2015 American Community Survey (ACS) data show that the languages most represented in municipalities at percentages of 5% or higher are German/West Germanic (Pennsylvania Dutch), Spanish, Chinese, and Korean. These languages have been used to develop templates for grantees, since they are the most common. If a grantee has a LEP population that would qualify for language assistance for other than these four, the grantee must translate the vital documents on its own but may use program administrative funds to do so.

All applicants for federal funding must undertake a Four Factor Analysis, and certify that the Four Factor Analysis either concluded that they do not need to develop an LAP or that they do need one. If they do need one, DCED requires specific minimum actions to be included in addition to any other actions the grantee deems necessary based on their population's needs.

In addition, to ensure there are no findings in the FHEO Monitoring regarding Limited English Proficiency, a grantee must do the following:

- Develop a Citizen Participation Plan that includes a process to address notification of residents with limited English proficiency [and disabilities] of its yearly planning process for application submission and availability of services;
- Complete a Four Factor Analysis regarding Limited English Proficiency;
- If factors are identified that require it, complete a Language Access Plan (LAP); and
- Provide documentation of notices, publications, application documents, and intake forms that comply with the LAP.

It is important to note that attention to LEP needs is critical to the Citizen Participation Plan – to ensure that LEP persons are fully informed about what is taking place in their community and can provide input into the planning of the activities – AND that it is equally important in the implementation phase of

projects. Again, to ensure that LEP persons understand what activities are taking place and that they can avail themselves to the assistance if they qualify.

The following sections will assist DCED grantees in determining the LEP needs of their communities in terms of providing alternate language access to information about programs and conducting citizen participation. They also help grantees determine if they will need to develop and implement an LAP that identifies the actions needed to be taken to meet the needs of their LEP residents. The sections also describe the tools available for grantees in making a determination of a need for a LAP, and provide guidance on how to develop a viable plan if they fall within the threshold requirements for those plans. Finally, the tools necessary to implement the approved LAP will be provided along with the necessary templates for proper recording of efforts by grantees.

A graphic titled "ACTION ALERT" in white text on a blue background. Below the title are two blue rectangular boxes, each containing a white checkmark icon on the left and text on the right. The first box contains the text "Undertake Four Factor Analysis". The second box contains the text "Develop Citizen Participation Plan that includes notification for those with LEP".

Four Factor Analysis

A Four Factor Analysis is the first step a grantee must take to determine whether an LAP is warranted and what actions are appropriate to be carried out under the plan. The analysis determines what minority population(s) a grantee needs to provide reasonable communication about the programs and activities on which it will be utilizing its federal dollars. In addition, the analysis will determine what actions are warranted by the grantee, its sub-grantees, and/or its vendors, so that its federally-funded programs can provide the necessary assistance the municipality is trying to address.

A threshold consideration in a Four Factor Analysis is that a recipient of federal funds takes “reasonable” steps to ensure “meaningful” access to the planning processes, services, and written materials provided through various federally-funded programs. As outlined in official HUD guidance:

“This ‘reasonableness’ standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical

services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations.”

A Four Factor Analysis asks the grantee to determine:

- (1) The number or proportion of LEP persons served or encountered in the eligible service population;
- (2) The frequency with which LEP persons encounter 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 recipient.

HUD has determined that grantees have access to sufficient resources to be able to carry out language access. Factor #4 cannot be used as the sole reason for not completing a Language Access Plan.

Four Factor Analysis Requirements for Grantees

The Four Factor Analysis serves as the guide for determining which language assistance measures the grantee will be required to undertake to guarantee access to its federally funded programs by LEP persons. This section provides grantees with guidance on how to complete the Four Factor Analysis for their communities. Grantees should refer to the *Certification of Completion of a Four Factor Analysis for LEP Persons and Certification of the Activities to be Included in the LAP* in **Appendix 2** as a reference for how to complete a Four Factor Analysis.

For each program that DCED manages, there are specific mandatory requirements outlined in each application kit that provide instruction on how a potential grantee is expected to comply with the LEP access requirements. DCED’s contracts and agreements also include compliance requirements for ensuring that grantees follow the guidelines in the LAP, if necessary. In addition, grantees are required to record and report their fair housing and language access efforts to DCED. DCED will monitor grantees for compliance with these requirements on a regular basis.

For the CDBG program, the grantee is expected to conduct the Four Factor Analysis as outlined below. For the HOME and ESG programs, DCED has determined that all the activities and programs funded with

HOME or ESG dollars meet the LEP Factor 3 related to the “frequency with which LEP persons encounter the program,” and therefore, all applicants must complete an LAP.


FACTOR 1: IDENTIFY THE NUMBER OR PROPORTION OF LEP PERSONS SERVED OR ENCOUNTERED IN THE ELIGIBLE SERVICE POPULATION.


To determine whether a grantee meets the 5% thresholds for providing written language assistance, DCED provides census data for all municipalities throughout the Commonwealth. The most current American Community Survey and minority population information that is used for applications will be made available for the annual submission of applications on DCED’s website <http://dced.pa.gov/library> at the Federal Program Resource link.

The term "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. It is important to remember that citizenship status does not determine whether a person is of LEP.

If other languages are represented, and depending on the local population, individual grantees will need to determine the language translation and interpretation needed for their programs in their communities. Grantees should again refer to the data sheet on the DCED website to determine the percentages of Limited English Proficiency individuals in their communities.

Decision Point

-  If the grantee determines it does meet the lesser of 1,000 people or 5% threshold of LEP, then the grantee will move on to developing the LAP and does not need to go through Factors 2-4.

-  If it does not meet the threshold, then it will move on to Factor 2.

FACTOR 2: DETERMINE THE FREQUENCY WITH WHICH LEP PERSONS ENCOUNTER THE PROGRAM.

Projects proposed by DCED’s grantees often offer direct assistance to project area beneficiaries related to housing and other services; therefore, the nature of the activity or service may be significant to the proposed project area(s) residents. As a result, LEP persons may frequently encounter programs funded by DCED through its grantees. Additionally, all citizen participation activities are open to the public. Grantees must assess the frequency of resident contact based on their chosen activities.

Decision Point:



If the grantee determines that the program or activities provide direct assistance to residents, then the residents are likely to have considerable direct contact, and the grantee will move on to developing the LAP and does not need to go through Factors 3 and 4.



If it does not, then it will move on to Factor 3 in its analysis.

FACTOR 3: CONSIDER THE NATURE AND IMPORTANCE OF THE PROGRAM, ACTIVITY, OR SERVICE PROVIDED BY THE PROGRAM.

Projects funded by DCED may include acquisition, relocation, housing rehabilitation, services, and/or infrastructure projects. In some of these programs, residents are likely to have considerable direct contact with grantees and their staff. Further, all citizen participation activities are open to the public and, therefore, LEP persons may be in contact with grantees to provide feedback. Grantees must assess their chosen activities to determine the frequency with which LEP persons may encounter their programs.

Decision Point



If the grantee’s project provides direct assistance to program and activity service area beneficiaries, then the grantee will move on to developing the LAP and does not need to go through Factors 4.



If it does not, then it will move on to Factor 4 in the analysis.

FACTOR 4: ASSESS THE RESOURCES AVAILABLE AND COSTS TO THE RECIPIENT.

There are many best practices that have been established in making resources available to people with limited English proficiency. DCED has determined that with the available translation websites, translated documents available from HUD and DOL, and the eligible use of administrative and delivery dollars from certain programs, grantees can deliver language access at a reasonable cost. DCED has made available to grantees templates of vital documents translated into the most common languages spoken in the Commonwealth – Spanish, German/West German (Pennsylvania Dutch), Chinese, and Korean. Grantees may use these templates as they apply, but may need to create their own translations into other languages based on their community needs.

DCED has determined that grantees may not use this factor as the only factor to determine the need for an LAP.

Decision Point



If the grantee determines that none of the factors apply to it and its program, then it will need to certify that it does not need to develop an LAP, however, it is expected that the grantee will make reasonable attempts to accommodate language access needs of residents requesting oral translation during citizen participation and for other materials.

Language Access Plan for Grantees

If in the course of answering the questions in a Four Factor Analysis, the result is that the grantee must develop an LAP, then it should follow the guidelines below for what to include to meet its community's needs. The LAP is the guiding document that ensures not only that access to programs is provided to individuals that may have limited English proficiency, but that the resources to do so are available.

Although DCED has established that Factor 4, cost, cannot alone determine the need for an LAP, HUD has established certain “safe harbor” guidelines for written materials. They are as follows:

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	Translate vital documents.
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translate vital documents.
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translate 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.

There is no “safe harbor” for oral interpretation services. Grantees must use the Four Factor Analysis to determine what is a reasonable provision of these services.

Once the Four Factor Analysis is complete, the LAP needs to articulate what actions the grantee will take to meet the Title VI requirement of providing access to LEP persons. An LAP is essentially an implementation document. The implementing actions can take many different forms, but some best practices for consideration include:

- Identifying the language assistance that is most needed in the community;
- Developing relationships with organizations that work with or represent LEP persons to outreach effectively to the LEP community;
- Training staff;
- Identifying vital documents that need to be translated;
- Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries;
- Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
- Providing interpreters for large, medium, small, and one-on-one meetings;
- Developing community resources, partnerships, and other relationships to help with the provision of language services; and

- Making provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.³

Determinations for special population groups in the Commonwealth of Pennsylvania:

(1) Amish/Pennsylvania Dutch/West Germanic

For the Commonwealth of Pennsylvania, the fact that there are many Amish people who speak Pennsylvania Dutch has raised questions about the need for LAPs to serve them. It is DCED's position that the grantee must be prepared to provide access to information for all the residents in its communities. This includes Amish speakers that may not always be needing of translations services but need to be informed and given the opportunity to participate.

(2) LEP populations in prisons

In addition, in cases where the ACS and minority data shows more than 5% of the jurisdiction population of LEP in a certain language group, and there is a large LEP population in a prison in the jurisdiction, then the grantee should reach out to the prison and determine LEP prison population data, deduct the prison population from their calculation, and determine if the outside population is still above 5%. This calculation must be maintained in the LEP files for documentation during monitoring.

Vital Documents to Be Made Accessible

There are many public documents that are developed throughout the course of a grantee's interaction with its constituency. Some of those documents are considered vital documents. As defined by the Department of Justice:

"A document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits, or is required by law. Vital documents include, for example: applications, consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; prison rulebooks; written tests that do not

³ HUD Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice 72 FR 12628

assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client.”⁴

HUD’s “safe harbor” guidelines for written materials stated above gives a grantee guidance on how to determine whether the vital documents need to be translated. In addition, HUD recommends that recipients use the four-factor analysis to determine whether to provide these persons with oral interpretation of vital documents if requested. The list below is a starting point to determine which documents should be considered vital.

Administration of Programs

1. Notice of Free Language Assistance
2. Fair Housing Resolution
3. Notice of Fair Housing Officer
4. Notice of Section 504 and Grievance Procedures
5. Notice of Public Hearing (1 & 2)
6. Notice of Availability of Funds
7. Notice of Intention to Submit Application
8. Request for Release of Funds (ERR)

Intake and Application for Assistance

1. Application for Services
2. Fair Housing Posters
3. Leases
4. Tenant Rules
5. Notice of Denial, Loss or Decrease in Benefits or Services
6. Recertification Documentation
7. Eviction Notices
8. Outreach Materials

⁴ Department of Justice, <https://www.justice.gov/crt/eo-13166>

It is worth noting that because recent ACS data show that the languages most represented in municipalities across the Commonwealth at percentages of 5% or higher are German/West Germanic (Pennsylvania Dutch), Spanish, Chinese, and Korean, DCED has already translated many of these documents into these language as a resource for subrecipients.

Templates for Four Factor Analysis and LAP

There are templates for the completion of a Four Factor Analysis and an LAP in each application kit for use by the applicant. For examples of all three programs templates, please see **Appendix 2**. The essence of the required submission consists of the following:

- Policy Statement (Describes why the Four Factor Analysis and LAP are necessary.)
- History (Provides the legal basis for the Four Factor Analysis and LAP.)
- Definitions (Provides basic terms found in the Four Factor Analysis and LAP.)
- Four Factor Analysis (Reiterates the four requirements, and how the program or project will have an impact on LEP persons in terms of frequency of contact and importance of the benefit or service provided.)
- LAP (States the actions the grantee will take to address the items resulting from the Four Factor Analysis, starting with, at the minimum, DCED required actions as outlined in the program application kits, and expanded as appropriate.)
- Complaints (Details steps for filing complaints pertaining to lack of language access.)

C. Documenting Compliance

Grantees must maintain a record of their Four Factor Analyses and completed Language Access Plans. Because grantees must take affirmative actions to ensure that general information, required forms, community meetings announcements, and any other relevant programmatic resources are made available and understood by people of limited English proficiency, grantees should also include related documentation in their master files. Examples include translations of online and hard copy materials, evidence of translation and interpretation services, and records that show the availability of program support in different languages. This documentation will be required submittals to DCED as per FHEO Remote Monitoring.

D. Reports

Grantees are required to not only record but to report their fair housing and language access efforts to DCED. In Section I of this manual, the introduction explained that the Commonwealth conducted an Analysis of Impediments to Fair Housing Choice (2015), and it requires its grantees that receive federal funding to cooperate in carrying out recommendations and actions from the analysis. One of those actions is the preparation of a Language Access Plan, when required. Grantees are expected to submit completed Language Access Plans to DCED when a remote monitoring is conducted. As a recipient of HUD funds itself, the Commonwealth will utilize the actions of the grantees to show due diligence and annually report to HUD all related actions to affirmatively further fair housing.

As noted previously, DCED will monitor compliance with this requirement as a part of its obligation to HUD for federal funds. Part of the FHEO Remote Monitoring Submission (**Appendix 3**) is documentation of LEP actions the grantee has taken to comply with the applicable laws and regulations. This is a required submission when requested by DCED remote monitoring at no more than three year intervals. The FHEO Remote Monitoring Submission checklist includes the following:

- The grantee must submit a written Citizen Participation Plan approved by the governing body within the last 5 years which demonstrates how LEP residents [or residents with disabilities] will be assisted.
- If a Four Factor Analysis indicated the need for a Language Access Plan, the grantee must submit the LAP, approved by the governing body including approval signatures.
- The grantee must submit items that document the utilization of the recommendations of the LAP, for example, citizen participation items, fair housing items, posters, ERR notices, income survey including public notice, service intake items including public notice of project(s), intake forms, handout material, outreach materials, etc.

E. Appendices

1. DCED's Four Factor Analysis and LAP
2. Certification of Completion of a Four Factor Analysis for LEP Persons and Certification of the Activities to be Included in the LAP (Template for Grantees)

- a. CDBG
 - b. HOME
 - c. ESG
3. FHEO Remote Monitoring Submission Checklist (refer to Citizen Participation and Limited English Proficiency section)