

**U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250**

DEPARTMENTAL REGULATION		Number: 4330-005
SUBJECT: Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA	DATE: June 4, 2013	
	OPI: Assistant Secretary for Civil Rights	

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1. PURPOSE

This Departmental Regulation (DR) establishes the policies and procedures for ensuring that persons with limited English proficiency (LEP) have meaningful access to programs and activities conducted by the U.S. Department of Agriculture (USDA) pursuant to Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." ("The Executive Order.")

The Executive Order requires that 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 Department of Justice's Policy Guidance Document entitled, "Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency" ("DOJ LEP Guidance"), reprinted at 65 FR 50123 (August 16, 2000). The DOJ LEP Guidance advises each Federal agency on the most appropriate steps agencies should take to ensure meaningful access by LEP individuals to information and services the agency provides.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

2. SPECIAL INSTRUCTIONS/CANCELLATION

- a. Agency actions taken to implement policies and procedures required by this DR shall be developed in a manner that complies with the provisions of related Executive Orders, regulations, and other policy listed in Section 5.
- b. This DR does not intend to create new core services, but instead intends to eliminate or reduce, to the maximum extent practicable, LEP as a barrier to accessing existing information, programs and activities.

3. SCOPE

This regulation applies to all programs and activities conducted in whole or in part by the USDA, its agencies and instrumentalities. (See definition in 6(b)(5) of “Federally conducted programs and activities.”)

4. POLICY

USDA is committed to providing meaningful access to its programs and services to persons who, as a result of national origin, are limited in English proficiency.

It is USDA policy to ensure no person is subject to prohibited discrimination in USDA conducted programs and activities based on national origin. Failure to provide meaningful access to LEP persons may be a violation of this policy.

5. AUTHORITIES

- a. Executive Order.

Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 FR 50121-50122.

- b. Regulations.

7 C.F.R. 15d, Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture.

- c. Other.

U.S. Department of Justice, Policy Guidance Document, “Enforcement of Title VI of the Civil Rights Act of 1964–National Origin Discrimination Against Persons With Limited English Proficiency” (65 FR 50123-50125).

6. ABBREVIATIONS AND DEFINITIONS

- a. Abbreviations.

- (1) ASCR –Assistant Secretary for Civil Rights
- (2) C.F.R. –Code of Federal Regulations
- (3) DR –Departmental Regulation
- (4) E.O. –Executive Order
- (5) LEP –Limited English Proficiency
- (6) OCPTCT –Office of Compliance, Policy, Training and Cultural Transformation
- (7) USDA –United States Department of Agriculture

b. Definitions.

- (1) Agency. A major program organizational unit of the Department with delegated authorities to deliver programs, activities, benefits, and services.
- (2) Agency Heads. Departmental Under Secretaries, Deputy Under Secretaries, Directors, Chiefs, and Administrators within the Office of the Secretary who receive delegated authority under 7 C.F.R. Agency Heads report to and receive their delegated authorities from Under or Assistant Secretaries as prescribed in 7 C.F.R. The term “agency” does not include Departmental Administration or Departmental Offices.
- (3) Departmental Office. A Departmental administrative (non-program) office, the head of which is a general officer or reports to an official within the Office of the Secretary and receives delegated authority under 7 C.F.R.
- (4) Federal Agency. Federal Agency is the Federal department, agency, commission, council, or instrumentality of the Government, or the primary organizational sub-unit (the administering office) that has direct operational responsibility for managing a program.
- (5) Federally Conducted Programs and Activities. Program services, benefits, resources or information delivered directly to the public by USDA.
- (6) Federally Assisted Programs and Activities. Programs and activities of an entity that receives Federal financial assistance.
- (7) Federal Financial Assistance. Grants and loans of Federal funds; the grant or donation of Federal property and interests in property; the detail of Federal personnel; the sale and lease of, and the permission to use Federal property or any interest in such property or the furnishing of services without consideration, or at a consideration which is reduced for the purpose of assisting the recipient; and any

Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

- (7) Interpretation. The process by which the spoken word is used when transferring meaning between languages.
- (8) Limited English Proficient (LEP) Persons. Persons who do not speak English as their primary language and have a limited ability to read, speak, write, or understand English are limited English proficient, or LEP.
- (9) OCPTCT. This office is responsible for the supervision and oversight of four divisions, compliance, policy, training and cultural transformation. The oversight responsibilities include the management of all work products, collaboration with USDA agencies, quarterly and annual reports and liaison with other federal agencies.
- (10) Qualified Interpreter: An individual who is competent to provide interpretation services at a level of fluency, comprehension, impartiality and confidentiality appropriate to the specific nature, type, and purpose of the information at issue.
- (11) Secretary. The Secretary of Agriculture or any officer or employee of the Department whom the Secretary has heretofore delegated, or whom the Secretary may hereafter delegate, the authority to act in his stead under the regulations in this part.
- (12) Translation. The process of transferring ideas expressed in writing from one language to another language.
- (13) Vital Document. Paper or electronic written material that contains information that is critical for accessing a program or activity, or is required by law, such as consent forms, applications, and notices of rights.

7. ORGANIZATION AND ASSIGNMENT

a. Agencies and Departmental Offices Covered.

The Executive Order applies to all USDA agencies and Departmental offices.

b. Requirement for an Agency or Departmental Office LEP Plan.

Agencies and Departmental offices must develop a written LEP plan to provide a framework for the provision of timely and reasonable language assistance and for eliminating or reducing LEP as a barrier to accessing USDA programs and activities.

Each LEP Plan will include the following elements:

Element 1. Needs and capacity assessment

Each Agency or Departmental office will have in place mechanisms to assess, on a regular and consistent basis, the LEP status and language assistance needs of current and potential customers and contacts, as well as mechanisms to assess the agency or office's capacity to meet these needs according to the elements of this plan. These mechanisms should employ the four-factor analysis described in the DOJ LEP Guidance Document. The four-factor analysis is a flexible and fact-dependent standard that is used to determine the appropriate language assistance services to ensure an LEP individual has meaningful access to that agency's programs and activities. The four-factor analysis considers:

- (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program;
- (2) The frequency with which LEP individuals come in contact with the program;
- (3) The nature and importance of the program, activity, or service provided by the program to people's lives; and,
- (4) The resources available to the program and costs.

Element 2. Oral language assistance services

Each Agency or Departmental office will arrange for the provision of oral language assistance, including interpretation assistance by qualified interpreters, in response to the needs of LEP customers, in both face-to face and telephone encounters.

Element 3. Written translations

Each Agency or Departmental office will produce vital documents, including website information, in languages other than English where a significant number or percentage of the customers served or eligible to be served has LEP. Given the disparate activities and areas of focus within the Department, it will be incumbent upon each agency to determine a threshold for its programs and activities, to determine what constitutes vital documents, such as applications, and implement a translation strategy. These written materials may include paper and electronic documents such as publications, notices, correspondence, and signs. Because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access to that program, it is important for Agencies and Department offices to continually survey and assess the needs of eligible service populations in order to determine whether certain critical outreach materials should be translated into other languages.

Recognizing that translations can be resource and time intensive, Agencies and Departmental offices are encouraged to seek stakeholder input in determining which documents should be prioritized for translation. Agencies and Departmental offices are

also encouraged to pursue resource-sharing and cost-saving initiatives across the Department when translating documents.

A quality control mechanism should be put in place for reviewing the content of translated documents for accuracy and with respect to style, technical word choice, phrasing, or reading level depending on the context or target audience.

Element 4. Policies and procedures

Each Agency or Departmental office will have in place specific written policies and procedures related to each of the plan elements and designated staff that will be responsible for implementing activities related to these policies. Given the disparate activities and areas of focus within the Department, it will be incumbent upon each agency to determine the threshold needed for its programs and activities and implement a translation strategy.

Element 5. Notification of the availability of free language services

Each Agency or Departmental office will proactively inform LEP customers of the availability of free language assistance services through both oral and written notice, in the primary languages spoken by a significant number of customers and potential customers.

Element 6. Staff training

Each Agency or Departmental office will train front-line and managerial staff on the policies and procedures of its language assistance activities.

Element 7. Assessing accessibility and quality

Each Agency or Departmental office will institute procedures to assess the accessibility and quality of language assistance services, including translation of vital documents, interpretation and contractual services for LEP customers. Based on the results of this assessment, the LEP Plan, Agency procedures and directives will be revised on an annual basis.

8. ROLES AND RESPONSIBILITIES

- a. The Secretary shall set the tone and direction, provide leadership, prescribe regulations, set overall LEP and civil rights policy, and ensure compliance and enforcement throughout the Department.

The Secretary will:

- (1) Accomplish his/her responsibilities directly and through the broad delegation of authority for LEP policy to the ASCR and other agencies, officers, and employees.

- b. The ASCR shall provide the oversight of all LEP policy functions within USDA.

The ASCR will:

- (1) Provide overall leadership, coordination and direction for the USDA LEP compliance program;
- (2) Ensure that agencies and their instrumentalities actively support and adhere to requirements of the Executive Order and to 7 C.F.R. 15d, Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture, which prohibits discrimination, including on the ground of national origin, by any agency, officer, or employee under any program or activity conducted by the United States Department of Agriculture.
- (3) Provide training and disseminate information on best practices for LEP access to agencies;
- (4) Provide technical assistance on LEP and national origin discrimination matters to Department's employees and managers so that USDA demonstrates and maintains the highest level of current technical competence, skills, knowledge, and abilities;
- (5) Provide leadership and proactively promote meaningful access for LEP individuals at USDA, and provide guidance and oversight to USDA agencies and recipients;
- (6) Serve as a clearinghouse for information dissemination and exchange with USDA agencies, governmental and non-governmental civil rights communities.
- (7) Systematically review, evaluate, and hold to a high accountability standard the civil rights performance of agency heads and administrators;
- (8) Ensure the investigation, adjudication, and resolution of program discrimination complaints, to include the full authority and sole responsibility for determining whether discrimination has occurred in USDA-conducted and assisted programs and activities, and ordering appropriate relief;
- (9) Issue policies, directives, procedures, rules, and regulations as necessary to ensure that the Department fully achieves its LEP compliance and monitoring obligations;
- (10) Recommend disciplinary action as appropriate and where necessary to ensure agency LEP compliance with applicable laws, executive orders and regulations.

- c. OCPTCT under the direction of the ASCR shall:

- (1) Have the responsibility for the implementation and oversight of the requirements of E.O. 13166.

(2) Represent USDA on the Federal Interagency LEP Working Group.

d. Agency and Departmental Office Heads shall:

(1) Ensure that an LEP Plan is developed and submitted to OCPT for each Agency and Departmental Office according to Section 7.b. of this DR within 180 days of the issuance of this DR.

(2) Submit a copy of the updated written plan annually to OCPT.

e. Agency and Departmental Office employees shall:

(1) Complete required LEP training in a timely manner.

(2) Adhere to LEP Plans to ensure that LEP persons are provided meaningful access to USDA conducted programs and activities.

(3) Refer to Final Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition against National Origin Discrimination Affecting Persons with Limited English Proficiency for policy and implementation by USDA Federally Assisted Programs on the ASCR website.

-END-