

encourages recipients to review that Circular for ideas when developing their public engagement strategy. Some of those effective practices include:

- a. Scheduling meetings at times and locations that are convenient and accessible for minority and LEP communities.
- b. Employing different meeting sizes and formats.
- c. Coordinating with community- and faith-based organizations, educational institutions, and other organizations to implement public engagement strategies that reach out specifically to members of affected minority and/or LEP communities.
- d. Considering radio, television, or newspaper ads on stations and in publications that serve LEP populations. Outreach to LEP populations could also include audio programming available on podcasts.
- e. Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments.

Grant recipients are required to comply with the public participation requirements of 49 U.S.C. Sections 5307(b) (requires programs of projects to be developed with public participation) and 5307(c)(1)(I) (requires a locally developed process to consider public comment before raising a fare or carrying out a major reduction in transportation service). FTA/FHWA (Federal Highway Administration) joint planning regulations (23 CFR part 450) require States and MPOs engaged in planning activities to seek out and consider the needs and input of the general public, including interested parties and those traditionally underserved by existing transportation systems, such as minority and LEP persons, who may face challenges accessing employment and other services, as States and MPOs develop and conduct their public involvement activities. Recipients engaged in planning and other decision-making activities at the local level should consider the principles embodied in the planning regulations, and develop and use a documented public participation plan or process that provides adequate notice of public participation activities, as well as early and continuous opportunities for public review and comment at key decision points.

9. **REQUIREMENT TO PROVIDE MEANINGFUL ACCESS TO LEP PERSONS.** Consistent with Title VI of the Civil Rights Act of 1964, DOT's implementing regulations, and Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (65 FR 50121, Aug. 11, 2000), recipients shall take reasonable steps to ensure meaningful access to benefits, services, information, and other important portions of their programs and activities for individuals who are limited-English proficient (LEP). This Circular contains only a summary of the LEP requirements as they apply to FTA recipients; recipients are encouraged to review DOT's LEP guidance for additional information (70 FR 74087, Dec. 14, 2005) <http://www.gpo.gov/fdsys/pkg/FR-2005-12-14/pdf/05-23972.pdf>. Recipients are also encouraged to review DOJ's guidelines on self-assessment, Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs (May 2011), as well as other materials, available at [www.lep.gov](http://www.lep.gov).

- a. Four Factor Analysis. In order to ensure meaningful access to programs and activities, recipients shall use the information obtained in the Four Factor Analysis to determine the specific language services that are appropriate to provide. A careful analysis can help a recipient determine if it communicates effectively with LEP persons and will inform language access planning. The Four Factor Analysis is an individualized assessment that balances the following four factors:

(1) **The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or recipient.** This population will be program-specific. In addition to the number or proportion of LEP persons served, the recipient's analysis should, at a minimum, identify:

- (a) How LEP persons interact with the recipient's agency;
- (b) Identification of LEP communities, and assessing the number or proportion of LEP persons from each language group to determine the appropriate language services for each language group;
- (c) The literacy skills of LEP populations in their native languages, in order to determine whether translation of documents will be an effective practice; and
- (d) Whether LEP persons are underserved by the recipient due to language barriers.

(2) **The frequency with which LEP persons come into contact with the program.** Recipients should survey key program areas and assess major points of contact with the public, such as:

- (a) Use of bus and rail service;
- (b) Purchase of passes and tickets through vending machines, outlets, websites, and over the phone;
- (c) Participation in public meetings;
- (d) Customer service interactions;
- (e) Ridership surveys;
- (f) Operator surveys.

(3) **The nature and importance of the program, activity, or service provided by the program to people's lives.** Generally speaking, the more important the program, the more frequent the contact and the likelihood that language services will be needed. The provision of public transportation is a vital service, especially for people without access to personal vehicles. An MPO's regional planning activities will impact every person in a region. Development of a coordinated plan to meet the specific

transportation needs of seniors and people with disabilities will often also meet the needs of LEP persons. A person who is LEP may have a disability that prevents the person from using fixed route service, thus making the person eligible for ADA complementary paratransit. Transit providers, States, and MPOs must assess their programs, activities and services to ensure they are providing meaningful access to LEP persons. Facilitated meetings with LEP persons are one method to inform the recipient on what the local LEP population considers to be an essential service, as well as the most effective means to provide language assistance.

- (4) **The resources available to the recipient for LEP outreach, as well as the costs associated with that outreach.** Resource and cost issues can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services among and between recipients, advocacy groups, LEP populations and Federal agencies. Large entities and those entities serving a significant number of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance.
- b. Developing a Language Assistance Plan. After completing the Four Factor Analysis, the recipient shall use the results of the analyses to determine which language assistance services are appropriate. Additionally, the recipient shall develop an assistance plan to address the identified needs of the LEP population(s) it serves. The DOT LEP Guidance recognizes that certain recipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written plan. However, FTA has determined it is necessary to require its recipients to develop an assistance plan in order to ensure compliance. A recipient may formally request an exemption from this requirement if it believes it fits within the exception described.

Recipients have considerable flexibility in developing a Language Assistance Plan, or LEP Plan. An LEP Plan shall, at a minimum:

- (a) Include the results of the Four Factor Analysis, including a description of the LEP population(s) served;
- (b) Describe how the recipient provides language assistance services by language;
- (c) Describe how the recipient provides notice to LEP persons about the availability of language assistance;
- (d) Describe how the recipient monitors, evaluates and updates the language access plan; and
- (e) Describe how the recipient trains employees to provide timely and reasonable language assistance to LEP populations.

FTA will solely determine, at the time the recipient submits its Title VI Program or subsequent to a complaint investigation or compliance review, whether a recipient's plan is sufficient to ensure meaningful access and thus ensure the recipient is not engaging in discrimination on the basis of national origin.

After completing the Four Factor Analysis, a recipient may determine that an effective LEP plan for its community includes the translation of vital documents into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's programs and services. Vital written documents include, but are not limited to, consent and complaint forms; intake and application forms with the potential for important consequences; written notices of rights; notices of denials, losses, or decreases in benefits or services; and notices advising LEP individuals of free language assistance services. Examples of vital documents include an ADA complementary paratransit eligibility application, a Title VI complaint form, notice of a person's rights under Title VI, and other documents that provide access to essential services. Failure to translate these vital documents could result in a recipient denying an eligible LEP person access to services and discrimination on the basis of national origin.

- c. Safe Harbor Provision. DOT has adopted DOJ's Safe Harbor Provision, which outlines circumstances that can provide a "safe harbor" for recipients regarding translation of written materials for LEP populations. The Safe Harbor Provision stipulates that, if a recipient provides written translation of vital documents for each eligible LEP language group that constitutes five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered, then such action will be considered strong evidence of compliance with the recipient's written translation obligations. Translation of non-vital documents, if needed, can be provided orally. If there are fewer than 50 persons in a language group that reaches the five percent (5%) trigger, the recipient is not required to translate vital written materials but should provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. A recipient may determine, based on the Four Factor Analysis, that even though a language group meets the threshold specified by the Safe Harbor Provision, written translation may not be an effective means to provide language assistance measures. For example, a recipient may determine that a large number of persons in that language group have low literacy skills in their native language and therefore require oral interpretation. In such cases, background documentation regarding the determination shall be provided to FTA in the Title VI Program.

10. MINORITY REPRESENTATION ON PLANNING AND ADVISORY BODIES. Title 49 CFR Section 21.5(b)(1)(vii) states that a recipient may not, on the grounds of race, color, or national origin, "deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program." Recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar committees, the membership of which is selected by the recipient, must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees.