

2011
Lawrence-Douglas County MPO
Limited English Proficiency
(LEP) Plan

Prepared for the Lawrence-Douglas County Metropolitan Planning Organization

**Prepared by the Lawrence-Douglas County Planning & Development Services
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INTRODUCTION

Most persons living in the United States read, write, speak, and understand English. There are many persons, however, for whom English is not their primary language. If those persons have a limited ability to read, write, speak or understand English, they are limited English proficient, or “LEP.”¹ Language barriers often inhibit, or prohibit, LEP persons from accessing benefits and services, from understanding and exercising rights, from fulfilling responsibilities and obligations, and from understanding information provided to them regarding federally funded programs, activities, and services.

The Lawrence-Douglas County Metropolitan Planning Organization (L-DC MPO), as a mandate of the Federal-Aid Highway Act of 1973, provides a continuing, cooperative, and comprehensive transportation planning and decision-making process for the residents of Douglas County, Kansas. The process includes both short-range and long-range planning and encompasses all modes of transportation. As part of its mandate, the L-DC MPO directs how federal funds will be spent on existing and future transportation projects and programs in Douglas County, Kansas. Those decisions have a significant impact on the day-to-day lives of residents of Douglas County, Kansas.

For that reason, the L-DC MPO is committed to engaging all residents of Douglas County, Kansas, including LEP persons, in the transportation planning and decision-making process. Therefore, in accordance with the best practice standards for public involvement, together with assistance from the City of Lawrence, Kansas, Douglas County, Kansas, the Kansas Department of Transportation, the Federal Transit Administration, the Federal Highway Administration, and the United States Department of Transportation, the L-DC MPO has developed this *Limited English Proficiency (LEP) Plan*. The LEP Plan outlines how to identify persons who may need language assistance, the ways in which assistance may be provided, staff training that may be required, and how to notify LEP persons that assistance is available. The goal of the LEP Plan is to ensure that all residents of Douglas County, Kansas, can, to the fullest extent practicable, participate in the L-DC MPO transportation planning and decision-making process.

TITLE VI AND EXECUTIVE ORDER 13166

Section 601 of Title VI of the Civil Rights Act of 1964, codified as amended at 42 U.S.C. § 2000d, provides that no person in the United States shall “on the grounds 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 receiving Federal financial assistance.” Consistent therewith, and in accordance with section 602 of Title VI, codified as amended at 42 U.S.C. § 2000d-1, the Department of Justice promulgated regulations prohibiting recipients of federal funds from “utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national

¹ In 2000, more than ten million persons reported to the United States Census Bureau that they were LEP. According to the 2000 United States Census, the number of LEP persons living in the United States had increased by more than 65 percent since the 1990 Census and by more than 150 percent since the 1980 Census.

origin.” 28 C.F.R. § 42.104(b)(2). The United States Department of Transportation later promulgated nearly identical regulations - See 49 C.F.R. § 21.5(b) (vii) (2). In 1974, the United States Supreme Court held, in *Lau v. Nichols*, 414 U.S. 563 (1974), that Title VI prohibits conduct that has a disproportionate effect on LEP persons, because such conduct is tantamount to national origin discrimination. In *Lau*, a San Francisco school district, with a significant number of non-English speaking students of Chinese origin, was required to take reasonable steps to provide its non-English speaking students with a meaningful opportunity to participate in federally funded educational programs.

To further clarify rights protected by Title VI, President William J. Clinton, on August 11, 2000, issued Executive Order 13166, *Improving Access to Service for Person with Limited English Proficiency*. Executive Order 13166 requires each federal agency to examine its programs and activities and to develop and to implement plans by which LEP persons can meaningfully access those programs and activities. That Executive Order includes the statement below.

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.

On that same date, in conjunction with Executive Order 13166, the Department of Justice issued a general guidance document setting forth various principles for agencies to consider in developing guidance documents for recipients of federal funds. See *Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination against Persons with Limited English Proficiency*, 65 Fed. Reg. 50123 (Aug. 16, 2000).

United States Department of Transportation and KDOT Guidance

In accordance with Executive Order 13166, the United States Department of Transportation, on December 14, 2005, issued its *Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient Persons*. Adopting the framework established by the Department of Justice in its August 11, 2000 Guidance, the United States Department of Transportation identifies four factors that should be considered by a recipient of federal funds in assessing the needs of LEP persons and for implementing a plan to address those needs.

On August 27, 2010, the Kansas Department of Transportation (KDOT) revised its *KDOT Guidance on Limited English Proficiency (LEP) Plan*. Therein, KDOT references the same four factors identified by the United States Department of Transportation, recognizing that the cornerstone for an individualized assessment of the needs of LEP persons in any LEP Plan is a consideration and a balancing of those four factors.

The four factors are:

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

(4) The resources available to the grantee/recipient and the costs associated therewith.

The greater the number or proportion of eligible LEP persons, the greater the frequency with which they will have contact with a program, activity, or service and the more likely that enhanced language services will be needed. Smaller recipients with limited budgets are not expected to provide the same level of language services as larger recipients with sizeable budgets. The intent is to strike a balance that ensures that LEP persons have meaningful access to critical services without unduly burdening the local agency.

LEP ASSESSMENT FOR THE L-DC MPO PLANNING AREA

Factor 1: The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the L-DC MPO.

The planning area of the L-DC MPO consists of the incorporated cities of Baldwin City, Eudora, Lawrence, and Lecompton, and the unincorporated areas within Douglas County (i.e., all of Douglas County). It is essential, before understanding the profile of persons that may participate in the L-DC MPO transportation planning and decision-making process, to review the latest United States Census data for the L-DC MPO planning area. For the purposes of this LEP Plan, persons that identified themselves during the 2000 United States Census as speaking English “not well” or “not at all” are considered LEP persons. This LEP Plan addresses only LEP persons and identifies specifically only the three most common languages spoken in the L-DC MPO planning area. Tables 1 and 2, below, encapsulate the relevant information derived from the 2000 United States Census.

Table 1 shows the number and the proportion of persons who are five years of age or older and who are identified as being LEP. As Table 1 discloses, only 0.88% -- or less than 1 % -- of persons residing within the L-DC MPO planning area are identified as being LEP. The data also discloses that the City of Lawrence, at 1.03%, has a greater proportion of LEP persons than the L-DC MPO planning area as a whole.

Table 1: Identifying Limited English Proficient Individuals

Jurisdiction	Total Population: 5 years and over	Speak English less than well	%
Kansas	2,500,360	52,873	2.11%
Douglas County*	94,411	835	0.88%
Baldwin City	3,207	11	0.34%
Eudora	3,870	22	0.57%
Lawrence	75,752	782	1.03%
Lecompton	564	-	0.00%

Source: 2000 U.S. Census

*Note: Douglas County data includes the entire county, including the four cities and rural unincorporated areas.

Table 2, also derived from the 2000 United States Census, shows the number of LEP persons and the three most common languages spoken by LEP persons, who are five years of age or older, within the L-DC MPO planning area. Within the L-DC MPO planning area,

Spanish is spoken by 0.33% of the population. The second-most common language within the L-DC MPO planning area are, collectively, Asian and Pacific Islander languages, which includes Chinese, Vietnamese, Thai, Laotian, Korean, and Japanese. Those languages are spoken by 0.29% of the population. The third most common language includes Indo-European languages, such as Dutch, Italian, Russian, Portuguese, French, or German, representing .02% of the population. Finally, 0.12% of the population in the L-DC MPO planning area speaks a language other than those specifically identified.

Table 2: Language Spoken by LEP Persons

	LEP Individuals	Speak Spanish	%	Speak other Indo-European languages	%	Speak Asian and Pacific Island languages	%	Speak other languages	%
Kansas	52,873	41,150	1.65%	3,608	0.14%	7,161	0.29%	703	0.03%
Douglas County*	835	307	0.33%	21	0.02%	273	0.29%	117	0.12%
Baldwin City	11	8	0.25%	-	0.00%	-	0.00%	-	0.00%
Eudora	22	-	0.00%	-	0.00%	13	0.34%	-	0.00%
Lawrence	782	288	0.38%	12	0.02%	260	0.34%	117	0.15%
Lecompton	-	-	0.00%	-	0.00%	-	0.00%	-	0.00%

Source: 2000 U.S. Census

*Note: Douglas County data includes the entire county, including the four cities and rural unincorporated areas.

In sum, less than one percent of the population within the L-DC MPO planning area is identified as being LEP. The large majority of LEP persons within the L-DC MPO planning area speak either Spanish or an Asian and Pacific Islander language.

Factor 2: The frequency with which LEP individuals come in contact with the L-DC MPO programs, activities, or services.

While relatively small, the LEP population in the L-DC MPO planning area is growing, increasing the probability that the L-DC MPO will interact with LEP persons in the future. However, to date, the L-DC MPO has received no requests, formal or otherwise, by LEP persons seeking the translation of documents or interpreters at public meetings.

Factor 3: The nature and importance of the program, activity, or service provided by the L-DC MPO to the LEP Community.

The L-DC MPO uses federal funds to plan transportation projects. While those projects are important, the L-DC MPO does not provide any programs, activities, or services involving vital, immediate, or emergency assistance, such as medical treatment, or any programs, activities, or services involving basic needs, such as food or shelter. And, while it is encouraged, involvement in the L-DC MPO planning and decision-making process by residents is entirely voluntary. Anyone can participate in the planning and decision-making process simply by contacting L-DC MPO staff. Furthermore, the L-DC MPO does not require residents to complete application forms or to submit to interviews prior to their participation in the L-DC MPO transportation planning and decision-making process.

Currently, the L-DC MPO seeks to include all segments of the population, including LEP persons, in the transportation planning and decision-making process. Not only is that the best practice, but it is consistent with the goal of the Federal Environmental Justice program and policy. In fact, the L-DC MPO actively measures the impact of proposed transportation

investments on underserved and underrepresented population groups, including LEP persons, as part of its evaluation process in three major areas:

- The annual Unified Planning Work Program (UPWP)
- The multi-year Transportation Improvement Program (TIP)
- The Metropolitan Transportation Plan (MTP)

Inclusive public participation is a priority of the L-DC MPO in other plans, studies, and programs, as well. Because its planning and decision-making process impacts all residents within the planning area, the L-DC MPO encourages input and involvement from all residents and makes every effort to make the planning and decision-making process as inclusive as practicable. The L-DC MPO currently posts agendas for all meetings, which are open to the public. The L-DC MPO staff is available to address community organizations as requested. The L-DC MPO staff fields inquiries from the public regarding transportation projects. The L-DC MPO updates its website to make it easier for residents to follow L-DC MPO activities. Finally, the L-DC MPO outlines ways in which the public can become involved in the L-DC MPO planning and decision-making process in its Public Participation Plan (PPP), which is posted online and copies of which are available at the L-DC MPO staff offices.

Additionally, in the course of the long range transportation planning process, selected projects receive approval for federal funding and then progress toward project planning and construction under the responsibility of local jurisdiction or state transportation agencies. Many of those local jurisdictions and state agencies have their own policies to ensure that LEP persons can participate in the process that shapes where, how, and when a specific transportation project is implemented.

Factor 4: The resources available to the L-DC MPO and overall cost.

The fourth and final factor of the analysis weighs the preceding three factors to assess the needs of LEP persons within the L-DC MPO planning area against the resources available to the L-DC MPO and the costs of providing access. As shown above, there is a very small population of LEP persons within the L-DC MPO planning area. Given the small size of the LEP population, there does not appear to be a need to produce planning documents, programs, and general information in languages other than English at the L-DC MPO level. Moreover, based on the L-DC MPO budget, such a plan would, at the present time, be cost prohibitive. However, as shown in the LEP Implementation Plan below, the L-DC MPO is committed to including all residents in the transportation planning and decision-making process. To that end, this LEP Plan will be reviewed on an ongoing basis to assess whether there are any significant changes in need and to ensure that language barriers are not preventing LEP persons from participating meaningfully in the transportation planning and decision-making process.

LEP Implementation Plan

Safe Harbor and the L-DC MPO

Federal law provides a “Safe Harbor” so that a recipient of federal funds, like the L-DC MPO, can ensure with greater certainty that it is in compliance with its Title VI obligation to provide written translations of its documents to LEP persons. A “Safe Harbor” means that if the recipient provides written translations in certain circumstances, then such action will be

deemed strong evidence of compliance with the recipient's written-translation obligations under Title VI.

The failure to provide written translations, however, does not necessarily mean that there is noncompliance. Even if the "Safe Harbor" is not used and if, for example, the written translation of certain documents would be so burdensome as to defeat the legitimate objectives of the program, then written translation will not be required. In such cases, other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, may suffice to meet the requirements of Title VI.

Strong evidence of compliance with Title VI under the "Safe Harbor" provision involves providing written translations of vital documents for each language group of LEP persons that constitutes 5% of the population or 1,000 persons, whichever is less, eligible to be served or likely to be affected or encountered by the recipient. If that 5% is composed of less than 50 persons, then translation of vital documents can be provided orally. Also, under the "Safe Harbor" provision, oral translation of non-vital documents is deemed sufficient to meet the requirements of Title VI.

As shown above, within the L-DC MPO planning area, no LEP language group meets either the 5% of the population or the 1,000-person threshold for which written translation of vital documents must be provided. Moreover, given the small number of LEP language group members within the planning area, the limited budget of the L-DC MPO, and the number of L-DC MPO staff, it is determined that written translations of core documents would be so burdensome as to defeat the legitimate objectives of the L-DC MPO programs. Accordingly, the L-DC MPO finds that it is more appropriate for it to use oral interpretation options to provide LEP persons access to its core documents.

Finally, the L-DC MPO is mindful of the fact that the "Safe Harbor" provision applies only to the translation of written documents. It does not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and reasonable to provide on an advance request basis.

Identifying Person Who May Need Language Assistance

When encountering a LEP person, L-DC MPO staff will use *Language Identification Flashcards* to identify that person's primary language. *Language Identification Flashcards*, as developed by the United States Census Bureau, bear the phrase "Mark this box if you read or speak [name of language]" translated into 38 different languages. The flashcards are used by the Census Bureau and other federal agencies to identify the primary language of LEP persons during face-to-face encounters. The *Language Identification Flashcards* may be downloaded at no cost at www.usdoj.gov/crt/cor/Pubs/ISpeakCards2004.pdf. The L-DC MPO will also make *Language Identification Flashcards* available to the public through its website, so that LEP persons contacting the L-DC MPO online can communicate their primary language to L-DC MPO staff. The L-DC MPO staff can then use that information to provide language assistance to the LEP person.

The L-DC MPO will also make the *Language Identification Flashcards* available at all public meetings. Once a LEP person's primary language is identified using the flashcards, the L-DC MPO staff will assess the feasibility of providing written translation service and/or oral interpretation assistance for the LEP person.

Language Assistance Measures

In the event that the L-DC MPO should receive a request for assistance in a language other than English, staff members will take the name and contact information of the person. If the person speaks Spanish, the L-DC MPO may be able to use City of Lawrence employees who speak Spanish as interpreters. Otherwise, and for languages other than Spanish, the L-DC MPO will use a free online written translator website or may contact a local volunteer, if one is available. The University of Kansas, through its various language departments, may also provide assistance. Finally, if the required language is not available and formal interpretation is required, staff shall use the telephone interpreter service, Language Line at 1-800-752-6096.

The L-DC MPO website may be translated into a number of different language using free online translation services such as *Google Translate*. Similarly, agendas, minutes, and other documents posted online, can be translated as well. Also, L-DC MPO meeting notices and agendas will be modified to contain a note to direct persons, who may need translation services for themselves or others, to contact the L-DC MPO staff, who can then assist them in locating translation or interpretation services.

Outside of those services, because the L-DC MPO staff is small and does not possess in-house translation capabilities or expertise, the L-DC MPO staff can only assist LEP persons, but cannot accurately assess or guarantee the accuracy of translation services provided by others. Within its limited budget and capabilities, the L-DC MPO pledges that it will, to the best of its abilities, ensure that LEP persons have a meaningful opportunity to participate in the transportation planning and decision-making process.

L-DC MPO Staff Training

Current staff members and incoming staff members will be briefed on the L-DC MPO LEP Plan and how to assist LEP persons. They will also be instructed to keep a record of language assistance requests so that needs may be accurately assessed in the future.

Monitoring and Updating the LEP Plan

This LEP Plan is designed to be flexible and one that easily can be updated. At a minimum, the L-DC MPO will follow the Title VI program update schedule. It is likely that this LEP Plan, along with other public involvement L-DC MPO documents (Public Participation Plan-PPP and Title VI Program Manual) will be reviewed and updated as needed on a five-year (or four-year if the area is designated as non-attainment in air quality) schedule similar to the updates of the Metropolitan Transportation Plan (MTP).

Each update should consider the following components:

- How many LEP persons were encountered? Were their needs met?
- What is the current LEP population in the L-DC MPO planning area?
- Has there been a change in the types of languages where translation services are needed?
- Has the L-DC MPO's available resources, such as technology, staff, and financial costs, changed?
- Has the L-DC MPO fulfilled the goals of the LEP Plan?
- Were there any complaints received?

- Have new federal or state regulations concerning LEP Plans been approved that necessitate the changes to the current LEP Plan or the L-DC MPO's process for addressing LEP persons?

Dissemination

The L-DC MPO will post this LEP Plan on its website: **<http://www.lawrenceks.org/pds/tr-public>**. Copies of this LEP Plan will also be available at the L-DC MPO offices. Any person or agency requesting a copy of the LEP Plan will be provided a copy.

Complaints

If you have been discriminated against or have been excluded from a federally funded program, activity, or service on the basis of LEP, you may file a complaint using the following form: **<http://www.lawrenceplanning.org/documents/ComplaintForm.pdf>**. Should a LEP complaint be filed, the L-DC MPO's Title VI complaint review process will be followed.

More information on filing a LEP complaint with the Department of Justice can be found at **<http://www.usdoj.gov/crt/cor/complaint.php>**.