

# LIMITED ENGLISH PROFICIENCY PLAN

**Approved by the BMTS Policy Committee  
Resolution 2011-11, December 15, 2011**

## LIMITED ENGLISH PROFICIENCY PLAN

On August 11, 2000, the President issued Executive Order 13166, entitled “Improving Access to Services by Persons with Limited English Proficiency.” [See Appendix 1 for complete text] In 2005, the U.S. Department of Transportation (USDOT) issued a policy Guidance Document, titled “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons.”

Taken together, these actions are intended to address the needs of otherwise eligible persons seeking access to federally conducted programs and activities who, due to limited English proficiency, cannot fully and equally participate in or benefit from those programs and activities. Because the Binghamton Metropolitan Transportation Study (BMTS) both receives and directs the expenditures of federal transportation funds, compliance with LEP guidelines is required. It is also good planning practice. As expressed in the current Participation Plan, BMTS relies on public outreach to inform our transportation planning and programming work. Excluding people on the basis of their ability to communicate in English would violate the spirit of the Participation Plan.

### BACKGROUND

In order to develop this plan, it is necessary to understand a number of definitional issues that result from the Executive Order and the USDOT guidance. Important references include the Federal Highway Administration’s *Desk Reference on Limited English Proficiency*, and the New York State Department of Transportation (NYSDOT) Office of Civil Rights *Limited English Proficiency Tool Kit*.

LEP is defined as “an individual who does not speak English and has a limited ability to read, speak, write, or understand English”. The U.S. Census Bureau, which collects the data on which the LEP analysis is based, uses a simple determination that the person speaks English “less than very well”. Because of the manner in which the data is collected, languages are grouped for LEP purposes:

- ♦ Spanish
- ♦ Indo-European, including Romance, Germanic, Scandinavian, Slavic, Baltic, Indic, Celtic, Greek, and Iranian
- ♦ Asian and Pacific Island, including Chinese, Japanese, Korean, Vietnamese, Lao, Thai, Hmong, Polynesian, and Micronesian
- ♦ All others, including Uralic, Semitic, languages of Africa, and indigenous languages of native populations of North, Central, and South America.

Language access rights means that all individuals must receive meaningful access to federally funded programs. Denial of such access on the basis of language proficiency is considered “national origin based discrimination”. The basis is found in Title VI of the Civil Rights Act of 1964:

“No person in the United States shall, on the grounds of race, color, or *national origin* [emphasis added] be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Meaningful access is based on an analysis included in the U.S. Department of Justice LEP Guidance, which uses these four factors to help define the obligation to provide services:

- ♦ *The number or proportion of LEP persons eligible to be served or likely to be encountered by a program.* This is sorted by language group. While no specific threshold is provided, it is expected that a balance will be struck in considering all factors.
- ♦ *The frequency with which an LEP person may come in contact with a program or service.* A person who frequently uses a transit system has needs that are different from a one-time or infrequent contact. For example, BMTS updates the regional transportation plan on a five year cycle. While public outreach for that activity is important, it is infrequent.
- ♦ *The nature and importance of the program or service.* Communication about a proposed transit fare increase or service change is very important to a transit dependent LEP individual. Understanding the implications of investment priorities in BMTS' Transportation Plan is not unimportant, but will be less direct and less immediate.
- ♦ *The available resources and the cost associated with providing language access.* The guidance recognizes that "reasonable steps" to serve LEP individuals must also be balanced against agency resources; and that reasonableness is measured in terms of the agency's size and budget, and the benefit to be gained.

### The Role of BMTS

BMTS is a metropolitan planning organization (MPO), designated by the Governor, and with responsibility for transportation planning in the Binghamton Metropolitan Planning Area (see Map 1). BMTS is a subrecipient of federal transportation planning funds. These funds, from programs of the Federal Highway Administration and Federal Transit Administration, are apportioned to the New York State Department of Transportation. On the basis of an approved formula, they are sub-allocated to the thirteen MPOs in the state.

The funds are used to perform a variety of transportation planning tasks, defined primarily in 23 CFR §450. While BMTS does not directly deliver program services to the public, the Transportation Plan and the Transportation Improvement Program have an impact by determining what transportation actions and projects will be funded with FHWA and FTA funds.

Public participation is an important element of the planning process. One of BMTS' guiding principles is "We plan better when we plan WITH the community, not FOR the community". It is well established that technical planning activities must be grounded in public understanding. The BMTS Policy Committee adopted a new Participation Plan in 2007 in order to conform to the requirements of 23 CFR §450.316. The plan includes this summary of BMTS' approach:

- ♦ BMTS sees effective public participation in terms of a number of steps.
  - ♦ The first is characterized as "getting in touch with the public". How can we make sure that our public outreach efforts are effective in educating the public about what BMTS does, and how their input can influence our plans and programs?

- ♦ The second is opportunity for public participation. What can we do to make it easy for members of the public to provide meaningful input to our plans and program?
- ♦ The third is opportunity for stakeholder participation. What should we do to make sure the stakeholders identified in SAFETEA-LU, and others identified by BMTS, have clear access to the process?
- ♦ The final step is response and documentation. What actions should we take to make sure that the public and stakeholders know that their input was in fact considered and their participation meaningful?”

*BMTS Participation Plan, pp 2-3*

That means that BMTS must be committed to not only creating but implementing an LEP Plan to ensure that LEP populations are not excluded from participating in the development of our plans and programs.

Because this is a language based concern, the responses will be either *interpretation* of oral communication or *translation* of written documents. These services meet very different needs, and have different resource demands. For an LEP individual to be able to participate in a public meeting, the agency will have to provide an interpreter. For the same individual to have access to an agency’s program material may require translation of vital documents. The USDOJ guidance suggests that defining vital documents is subjective, based on the importance of the program and the consequences of the LEP individual not being properly informed. Among the list provided in the guidance is:

- ♦ “Notices of public hearing regarding recipients’ proposed transportation plans, projects, or changes; and reduction, denial, or termination of services or benefits”

Finally, a threshold must be established in recognition of the fourth factor, which is the resource requirement and cost. It would not be feasible to provide translation or interpretive services to every LEP individual. The USDOJ guidance provides no threshold for interpretive services. For translation of vital documents, it proposes a “safe harbor” of compliance that limits services to geography where members of an LEP language group constitute 1,000 people or 5% of the population, whichever is less.

### ANALYSIS

This analysis begins by defining the program service area. For most BMTS actions, like the Transportation Plan or the Transportation Improvement Program, outreach is done across the Metropolitan Planning Area. However, there are sometimes more narrowly defined service areas, as when doing public outreach for a corridor study. This plan will provide guidance for outreach in both of those cases, by displaying LEP data at both the regional and Census tract levels.

There are data limitations that must be recognized. The U.S. Census Bureau has used the decennial census long form to collect information on national origin and language, among many other items. This was done for the 2000 Census, but discontinued for the 2010 Census. While data is available from the 2000 Census, it is outdated and may portray a less than accurate picture of current conditions.

The new source of that data is the Census Bureau’s American Community Survey (ACS). While the long form was administered to 1 in 6 households, the ACS samples approximately 1 in 40, producing a larger margin of error. But because it is an annual survey, it can be averaged over a number of years. What is currently available is one year data for 2009, and a three year dataset for 2006-2008. It is anticipated that the first five year dataset will be released by early 2011. The issue with the currently available ACS data is level of geographic detail. Data is not available at the census tract level, which is most useful for LEP applications like corridor studies. This data will become available with the 5 year dataset. Data availability for small geography is related to privacy concerns, where a specific table entry has too few entries (for example, native born people who speak Spanish at home and speak English less than “very well” in a certain tract).

In sum, the base data for this plan is the 2000 Census for tract-level, and 2009 ACS for regional, where the Binghamton NY-PA urbanized area is used as a reasonable surrogate for the BMTS MPA. Because 2000 data is likely to be outdated, the plan will be updated when tract level ACS data becomes available.

<b>TABLE 1</b>			
<b>2009 American Community Survey 1 year estimate</b>			
Language Spoken at Home by Ability to Speak English for Population 5 years and over Binghamton NY-PA Urbanized Area			
		TOTAL	%LEP
Native		144,738	
English only		131,056	
Spanish		2,392	
	English "very well"	1,884	
	English <"very well"	508	0.35%
Indo-European		6,236	
	English "very well"	4,029	
	English <"very well"	2,207	1.52%
Asian&Pacific Island		4,541	
	English "very well"	3,010	
	English <"very well"	3,531	2.44%
Other languages		513	
	English "very well"	450	
	English <"very well"	63	0.04%
<b>TOTAL English &lt;"very well"</b>		<b>6,309</b>	<b>4.36%</b>

This data indicates that the BMTS region has a relatively small population of LEP persons, but one that is relatively diverse in terms of language groups.

<b>TABLE 2</b>									
<b>U.S. CENSUS, 2000 DATA</b>		<b>Limited English Proficiency (# of persons by language group; highest group highlighted)</b>							
<b>TRACT</b>	<b>Geography</b>	<b>Spanish</b>	<b>Indo-European</b>	<b>Asian</b>	<b>Other</b>	<b>Total LEP</b>	<b>Tract Population</b>	<b>Total LEP Proportion</b>	
1	City of Binghamton	15	55	<b>90</b>	22	182	2869	6.3%	
2	City of Binghamton	57	64	<b>76</b>	23	220	2777	7.9%	
3	City of Binghamton	20	<b>431</b>	50	22	523	3059	17.1%	
5	City of Binghamton	41	<b>197</b>	15	10	263	1789	14.7%	
6	City of Binghamton	20	<b>98</b>	26	8	152	2249	6.8%	
11	City of Binghamton	29	<b>60</b>	59	21	169	1637	10.3%	
134	Village of Endicott	10	<b>206</b>	10	0	226	4009	5.6%	
135	Village of Endicott	9	0	<b>79</b>	0	88	1689	5.2%	
140	Village of Johnson City	12	24	<b>123</b>	9	168	2674	6.3%	
143.02	Binghamton University	37	33	<b>331</b>	12	413	7206	5.7%	
	<b>Subtotal (without Binghamton University)</b>	213	1135	528	115	1991			
	<b>Total</b>	250	1168	859	127	2404			

When the LEP data is examined at the Census tract level, using data from the 2000 Census, as displayed in the above table, there are 10 tracts (see maps for location) where the total LEP population exceeds 5% of the total population. Note that one of the tracts is Binghamton University. Because of the transitory nature of the student population, this data is not meaningful. It is also the case that universities have language assistance services available for students who are mastering English. As such, that tract will not be considered for services in this plan.

The other tracts reflect immigrant settlement patterns through the 1990s that would be represented by 2000 data. Binghamton has been a settlement location for Eastern European and Russian immigrants. This most likely accounts for the Indo-European language group on the north side of the City of Binghamton. A larger number of Asian immigrants have settled in the west side of Binghamton, Johnson City and Endicott. These may be Vietnamese, Laotian, Cambodian, and Chinese.

## PLAN: RECOMMENDED ACTIONS

Based on the foregoing analysis and definitional understanding of avoiding discrimination against individuals with Limited English Proficiency, the Binghamton Metropolitan Transportation Study will take the following actions to reduce barriers to participation in its transportation planning process for LEP individuals.

### *Public Outreach on Regional Issues*

When BMTS conducts public outreach for products that have broad regional impact, including the Transportation Plan and the Transportation Improvement Program, it will accommodate LEP individuals by:

- ♦ Stating on the BMTS website the commitment to make interpretation services available upon request for specified public meetings and outreach events.
- ♦ Including in public announcements for those events the availability of interpretation services upon request.
- ♦ Use of the U.S. Census Bureau “I Speak...” cards at sign-in locations for these events so LEP individuals may request interpretation services for subsequent meetings.
- ♦ Use of the American Civic Association as a resource, an organization that provides translation and language interpreter services.

### *Public Outreach on Sub-Regional Issues*

The only outreach that BMTS typically does on a sub-regional scale is for corridor studies. Where the study area includes any Census tracts with a significant population or percentage of LEP persons, BMTS will accommodate LEP individuals by:

- ♦ Contact with neighborhood organizations, including neighborhood assemblies, civic organizations, and places of worship to gain an understanding of the resident population in terms of specific languages, rather than LEP language groups.
- ♦ Using these organizations to promulgate information about public meetings and outreach events; and encouraging them to host outreach events.
- ♦ Stating on the BMTS website the commitment to make interpretation services available upon request for public meetings and outreach events related to the study.
- ♦ Including in public announcements for those events the availability of interpretation services upon request.
- ♦ Use of the U.S. Census Bureau “I Speak...” cards at sign-in locations for these events so LEP individuals may request interpretation services for subsequent meetings.
- ♦ Use of the American Civic Association as a resource, an organization that provides translation and language interpreter services.

### *Translation of Vital Documents*

Because of their broad regional impact, BMTS considers the following as “vital documents”:

- ♦ Long-range regional transportation plan.

- Importance: spells out transportation priorities and investment strategies, including projects and actions to be considered for federal funding over a twenty-five year period.
- Timeframe: *Transportation Tomorrow:2035 ~ Creating a Sustainable Future* was adopted on September 27, 2010. The required update is on a five year cycle.
- ◆ Transportation Improvement Program
  - Importance: lists all projects to be funded through programs of the Federal Highway Administration and Federal Transit Administration.
  - Timeframe: 2011-2015 Transportation Improvement Program was approved on July 1, 2010 to take effect on October 1, 2010. While federal regulation requires an update no less than every four years, the practice in New York is a biennial update.
- ◆ Participation Plan
  - Importance: encompasses the full content and process of BMTS' interaction with the public.
  - Timeframe: the current Participation Plan was approved in 2007. There is no required update cycle. Will be updated when circumstances warrant.

As demonstrated in Table 1, none of the LEP language groups constitutes a large proportion of the MPA population. While the Indo-European and Asian language groups both have more than 1,000 members, neither approaches the 5% threshold. If a specific language constitutes at least one-half of the language group, BMTS will consider translating vital documents into that language.

**LIMITED ENGLISH PROFICIENCY PLAN**

**APPENDIX**

**EXECUTIVE ORDER 13166**

# Presidential Documents

50121

Federal Register, Vol. 65, No. 159

Wednesday, August 16, 2000

Title 3—

The President

Executive Order 13166 of August 11, 2000

## 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.

### Sec. 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.

### Sec. 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.

### Sec. 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.

**Sec. 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.