



LIMITED ENGLISH PROFICIENCY (LEP) PLAN

A resource created by the Office of Civil Rights and in collaboration with the Engineering Division to assist the NYSDOT program areas and sub recipients with providing meaningful access to services for individuals and communities with Limited English Proficiency.

Table of Contents

- Section I. Limited English Proficiency (LEP)**
 - A. Key NYSDOT Oversight Responsibilities**
 - B. Authorities**
 - 1. LEP Executive Order 13166**
 - 2. Who should use this LEP Plan?**
 - 3. Legal basis for language assistance requirements**
- Section II. LEP Plan and LEP Guide**
 - A. Plan of Action**
- Section III. Commissioner's Civil Rights Policy Statement and NYSDOT's Title VI Assurance**
- Section IV.. The Office of Civil Rights and the NYSDOT Title VI Unit**
- Section V. Title VI Mechanics**
 - A. OCR Mission Statement**
 - B. NYSDOT Main Office and Regional Title VI Coordinators (T6C)**
 - C. Title VI Semi-Annual Report**
 - D. Title VI Assurance**
- Section VI: Background on Limited English Proficiency**
 - A. What is LEP?**
 - B. An Important Note On Race and LEP**
 - C. What are Language Access Rights?**
 - D. What is National Origin Discrimination?**
- Section VII. Federal Regulations and Guidance**
 - A. Title VI of the Civil Rights Act of 1964**
 - B. What is an Executive Order?**
 - C. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (65 FR 50121, 2000)**
 - D. US Department of Justice (DOJ) LEP Guidance (65 FR 50123, 2000)**
 - E. Federal Highway Administration (FHWA) and LEP**
 - F. Title VI and Title VII**
 - G. NYSDOT and Sub-recipients**
- Section VIII. NYSDOT'S Approach**
 - A. "Meaningful Access": The Four Factor Analysis**
- Section IX. LEP Baseline Data**
 - A. LEP at the National Level**
 - B. Regional Profiles: Geographic Analyses and Census Charts**
 - C. Four Major Language Groups**
 - D. An important Note on English Proficiency**
- Section X. Methodology for Implementation of LEP**
 - A. Determining when to Provide Language Services**
 - B. Defining a Service Area**
 - C. Accessing Census Data for an LEP Analysis**

- D. Additional Sources of Data
- E. Additional Analyses
- F. LEP Needs Assessment: Compliance Checklist
- Section XI. Public Information, Public Involvement and Community Outreach/Partnership
 - A. LEP and Public Information
 - B. Best Practices for Public Involvement
 - C. Important Resources for Public Involvement
 - D. Directory of Community Based Organizations
 - E. Deliverables to Include in a Public Involvement Plan for LEP
 - F. Language Assistance Services
 - G. A Note on Quality Assurance
 - H. A Word of Caution
 - I. Identifying Vital Documents
 - J. A Note on Automated Websites
- Section XII: Implementation Q & A
- Section XIII. Bibliography (A Work in Progress)
- Section XIV. Resources
 - A. Recommended Resources
 - B. Additional Research and Reports
- Section XV. NYSDOT - OCR - LEP Contacts
 - Intradot
 - Website

Listing of Acronyms and Abbreviations

DOT:	Department of Transportation
EO:	Executive Order
EPM:	Environmental Procedures Manual
EJ:	Environmental Justice
LEP:	Limited English Proficiency
NEPA:	National Environmental Protection Agency
NYSDOT:	New York State Department of Transportation
PDM:	Project Development Manual
FHWA:	Federal Highway Administration
FTA:	Federal Transit Administration
OCR:	Office of Civil Rights
USDOJ:	United State Department of Justice
USDOT:	United States Department of Transportation
USEPA:	United States Environmental Protection Agency
RPIC:	Regional Public Information Coordinator
STIP:	State Transportation Improvement Program
MPO:	Metropolitan Planning Organization
JARC:	Job Access and Reverse Commute
TIP:	Transportation Improvement Programs

Section I. Limited English Proficiency (LEP)

Executive Order 13166 (EO 13166) challenges federal agencies to “implement a system by which [limited English-proficient or “LEP”] persons can meaningfully access...services consistent with, and without unduly burdening, the fundamental mission of the agency.” When read in its entirety, and interpreted consistently with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1972, the Executive Order applies to all programs and activities of a federal agency, which is, essentially, everything the agency does.

The Executive order requires Federal agencies that provide Federal financial assistance to develop guidance to clarify these obligations for recipients of such assistance (“recipient guidance”).

In addition, the Executive Order requires all Federal agencies to apply the four-factor analysis as Federal financial assistance recipients in providing meaningful access for LEP individuals to all of its federally conducted programs and activities. Each federal agency is required to develop a plan for taking reasonable steps to provide meaningful access for LEP persons, in light of the four-factor analysis.

A. KEY NYSDOT Oversight Responsibilities

- Ensure that the Department and all sub-recipients have an LEP plan that is being implemented in accordance with regulations (including complaint procedures).
- Ensure that the Department and sub-recipients programs and activities provide for a fully coordinated process (i.e., implementation of an annual needs assessment [data collection and analysis of LEP community, needs, etc.], public involvement that includes a process for seeking out and considering the needs of the LEP population).
- Use a multidisciplinary approach, monitor and evaluate Department staff and sub-recipients’ efforts to prevent, resolve or mitigate issues/situations that could lead to LEP violations.

B. Authorities

1. LEP Executive Order 13166

Title VI of the Civil Rights Act prohibits discrimination on the basis of national origin, among other things. The LEP Executive Order (Executive Order 13166) ensures that, consistent with Title VI, persons with Limited English proficiency (“LEP”) have meaningful access to federally conducted and federally funded programs and activities. The Order requires all agencies that provide Federal financial assistance to issue

guidance on how Title VI applies to recipients of that assistance in their contact with persons who are LEP. The Order also requires that recipients and sub-recipients organizations create plans for ensuring that their own activities also provide meaningful access for persons who are LEP.

2. Who should use this LEP Plan?

This document was written for use by New York State Transportation and recipients (sub-recipients) agency staff responsible for ensuring that their agency provides language assistant to LEP persons. Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) encourage its grantees to designate an individual or team of people to coordinate language services for their agency.

3. Legal basis for language assistance requirements

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and its implementing regulations provide 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 otherwise subjected to discrimination under any program or activity that receives Federal financial assistance. The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted Title VI regulations promulgated by the former Department of Health, Education, and Welfare to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination.

Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services. Federal agencies were instructed to publish guidance for their respective recipients in order to assist them with their obligations to LEP persons under Title VI. The Executive order states that recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons

Section II. LEP Plan and LEP Guide

The LEP Plan is designed to assist the NYSDOT and recipients that receive Federal financial assistance by providing a methodology to follow in conducting an LEP analysis. This LEP Plan contains a series of guidelines for implementation and a compilation of best practices.

While the LEP Guide (refer to Attachment 1) provides step by step guidance to providing meaningful access for LEP individuals to all of its federally conducted programs and activities, both may be read in its entirety or by section as needed.

Additional practices, tools and tips are welcome. Due to the diversity of New York State, this analysis represents a flexible approach that will vary by location. This analysis will also be subject to limitations in the availability and reliability of data.

Please note: NYSDOT advises all LEP efforts be taken on a case-by-case basis and that guidance should be interpreted accordingly.

A. Plan of Action

This LEP Plan was designed to accomplish the following five elements:

1. **Identification:** Show volume and location of LEP's and LEP communities using the four factor analysis.
2. **Language assistance measures:** Types of languages services available: how to respond to LEP callers; how to respond to LEP's in person; how to respond to written communication; types of documents/info to translate by implementation of how to question and answer.
3. **Staff:** Knowledge of policy and procedures, linguistic diversity and sophistication, cultural sensitivity and communication skills, training and experience, and provide training.
4. **Outreach measures:** Notification methods on special language assistance and best practices.
5. **Monitoring and evaluation of efforts:** Development and distribution of compliance checklist and Semi-Annual Reports.

In addition:

1. **Educate:** Share information with the public about NYSDOT's efforts to provide meaningful access to the LEP population and introduce our programs in a linguistically appropriate manner.
2. **Gather information:** Get feedback from individuals who may experience barriers to accessing NYSDOT programs and services due to their Limited English Proficiency.
3. **Develop cultural and linguistic sensitivity:** In our approach and the information that we share.

Section III. Commissioner's Civil Rights Policy Statement And NYSDOT Title VI Assurance

NYSDOT's LEP program is supported by the Commissioner's Civil Rights Policy Statement and Title VI Assurance letter which is Attachment 2 and is also available at <http://tinyurl.com/DOTAffirmativeAction> (McDonald, 2011).

Section IV. The Office of Civil Rights (OCR) and the Title VI Unit

The OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964, as amended. LEP is considered one of two special emphasis areas along with Environmental Justice within the Office of Civil Rights.

The Title VI Unit of the Office of Civil Rights in 2008 expanded to include the special emphasis programs of LEP along with Environmental Justice (EJ) and the Americans with Disabilities Act (ADA) in addition to its Title VI non-discrimination program.

Section V. Title VI Mechanics

A. OCR Mission Statement

It is the mission of the Office of Civil Rights to implement and develop programs and policies which ensure that the New York State Department of Transportation's (NYSDOT) compliance with all federal civil rights laws and regulations. The Office of Civil Rights is responsible for ensuring that no person in the State of New York be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or project administered by NYSDOT, or any of the contractors, consultants and sub-recipients who receive federal funding through NYSDOT; and that all individuals have an equal opportunity to participate in these programs.

B. NYSDOT Main Office & Regional Title VI Coordinators

The Office of Civil Rights is working with both the Regions and Main Office Program Areas to fulfill the Department's Title VI goals. To meet this mission, Title VI Coordinators have been designated in all NYSDOT Offices and act as the main point person to oversee Title VI activities and reporting requirements. A complete list of Title VI Coordinators and their responsibilities (work in progress) can be found in Attachment 3A and Attachment 3B, respectively.

In early 2009, NYSDOT designated Regional and Main Office staff as Title VI Coordinators. Title VI Coordinators are responsible for helping to administer the Department's Title VI Program. Since the designation of the Title VI Coordinators, the Title VI Unit with FHWA staff has provided several trainings and informational sessions. These training sessions have helped the Title VI Coordinators better understand their new roles and responsibilities. Functions of the Regional and Main Office Title VI Coordinators with future trainings are to:

- Review Department program directives, announcements, manuals and written procedures to ensure that Title VI language, where applicable, is included.
- Submit Semi-Annual reports of Title VI accomplishments and activities to the Title VI Unit for inclusion in Title VI Accomplishment Report and Work Plan.
- Coordinate Title VI information for dissemination to the general public and when appropriate, in languages other than English.
- Direct Title VI Complaints to the Title VI Unit.
- Perform Title VI/Environmental Justice Assessments (work in progress).
- Title VI Program offers technical assistance to the Department program areas in order to minimize the risks of complaints of discrimination against our programs and on projects administered by NYSDOT and its sub-recipients.

Since each NYSDOT Regional Office contains several program areas that include: Construction, Design, Operations/Maintenance, Real Estate (Right of Way, Planning, Environment, Modal programs (Transit, Rail, Aviation, Bicycle/Pedestrian). It is the expectation of Title VI Unit that these regional program areas would designate a Title VI program staff person who would work with the Regional Title VI Coordinators to promulgate Title VI as an integrated way of doing business.

C. Title VI Semi-Annual Reports

The Office of Civil Rights has developed a Title VI Semi-Annual Reporting system for the Regional Offices and Main Office program areas to use as a tool to collect and document information pertaining to their Title VI activities and responsibilities. The goal of this system is to track progress, goals (planning) and accomplishments related to Title VI compliance activities; identify issues and concerns to be addressed; and collect best practices.

The Title VI Semi-Annual Report, refer to Attachment 4, has been shared with NYSDOT's Title VI Coordinators who have received training on how to complete the report and will be responsible for coordinating the responses in collaboration with Regional Program Areas. This section is specifically for LEP and will serve as a repository for LEP and other Title VI related data. Also Refer to the following links:

- **Title VI Power Point Presentation: Title VI Nondiscrimination in the Federal-Aid Program: A Systematic Multidisciplinary Approach**
- Civil Rights Compliance Responsibilities of Federal Agencies and Recipients of Federal Financial Assistance:
<http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/whatsnew1.cfm>
- **Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964**
- The Title VI Desk Reference:
<http://ops.fhwa.dot.gov/publications/fhwahop10027/users.htm>
- FHWA Training via DVD entitled “Public Funds for Public Benefit”
www.fhwa.dot.gov/resourcecenter/teams/civilrights/cr_ppp10.ppt

D. Title VI Assurance

Refer to the Department’s Title VI plan departmental assurance which can be viewed on the OCR website (link)

http://axim22.nysdot.private:7779/pls/portal/docs/PAGE/WCC_PG/AUDIT_AND_RISK_MANAGEMENT/ARMS_ADMIN_TAB/ARMS_REPOSITORY_STAB/NYSDOT%20TITLE%20VI%20ASSURANCE%20AUG_2010.PDF

Section VI. Background on Limited English Proficiency - LEP

A. What is LEP?

An individual who does not speak English as a primary language and has a limited ability to read, speak, write or understand English is considered Limited English Proficient, or LEP.

An individual is considered to be LEP if he or she speaks English less than “very well” according to the US Census Bureau. A household where no one over the age of 14 speaks English is considered linguistically isolated.

LEP individuals may be entitled language assistance with respect to a particular type of service, benefit, or encounter. Source: <http://www.lep.gov/faqs/faq.html>

B. An Important Note on Race and LEP

Race and ethnicity should not be confused with *language* or English language *proficiency*. These variables are not synonymous and racial data should not be used to conduct an LEP analysis. For example, White, African-American, Hispanic, Asian, Native American, etc. are considered racial groups, not linguistic groups. These are not appropriate for an LEP analysis.

C. What are Language Access Rights?

“Language access” refers to the rights of Limited English Proficient individuals to receive meaningful access to federally funded State and Federal programs.

As a recipient of Federal funding, the New York State Department of Transportation, along with other agencies, is required to have language access procedures and language services in place to assist LEP individuals.

Sub-recipients are also required to comply. (Source: Empire Justice Center, p11)
<http://www.empirejustice.org/issue-areas/language-access/>

D. What is National Origin Discrimination?

National origin discrimination is based on a person's birthplace, ancestry, culture or language. This means people cannot be denied equal opportunity because they or their family are from another country, because they have a name or accent associated with a national origin group, because they participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin. Different treatment based on a person's inability to speak, read, write understand English is considered national origin discrimination. *Lau v. Nichols*, 414 U.S. 563 (1974).

Section VII. Federal Regulations and Guidance

A. Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who are limited English proficient (LEP). The Civil Rights Act of 1964 requires Nondiscrimination in Federally Assisted Programs and Activities. Title VI specifically states:

“No person in the United States 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 receiving federal financial assistance.”

B. What is an Executive Order?

Executive orders are official documents, numbered consecutively, given by the President of the United States to manage the operations of the Federal Government. Executive orders are generally used to direct federal agencies and officials in their execution of congressionally established laws or policies.

www.archives.gov/federal-register/executive-orders/about.html

C. Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” (65 FR 50121, 2000)

EO 13166 requires recipients of federal funding to:

- examine the services they provide,
- identify any need for services to LEP individuals,
- develop and implement a system to provide LEP persons with meaningful access

Action should be taken without unduly burdening the fundamental mission of the agency.

D. US Department of Justice (DOJ) LEP Guidance (65 FR 50123, 2000)

The same day as Executive Order 13166 was issued, the Civil Rights Division of the United States Department of Justice (DOJ) provided an initial Guidance document entitled “Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency” which explains the requirements of recipients of federal funding.

E. Federal Highway Administration (FHWA) & LEP

As the oversight agency for OCR, FHWA requires the NYSDOT to provide an equal opportunity for all citizens in an affected project area to attend public meetings and hearings regarding transportation related programs and activities that may affect their community.

The FHWA Desk Reference tool on Limited English Proficiency contains a complete list of Federal regulations and guidance from the USDOJ and USDOT.

<http://ops.fhwa.dot.gov/publications/fhwahop10027/users.htm>

F. Title VI and Title VII

There is an important distinction between Title VI and Title VII of the Civil Rights Act of 1964; Title VI deals with external discrimination and Title VII prohibits employment discrimination. Furthermore, Title VII compliance falls under the jurisdiction of The U.S. Equal Employment Commission whereas Title VI compliance falls under the oversight of the U.S. Department of Justice, and is regulated by the Federal Highway Administration (FHWA); FHWA has no oversight over Title VII (employment) issues. Here are some resources:

- Title VII: <http://www.eeoc.gov/policy/vii.html> (The Equal Pay Act of 1963, 2009)
- Title VI: <http://www.fhwa.dot.gov/civilrights/programs/tvi.htm> (Title VI of the Civil Rights Act of 1964, 2008)
- <http://www.fhwa.dot.gov/civilrights/programs/tvi.htm> and <http://www.lep.gov/faqs/faqs.html> (LEP Frequently Asked Questions, 2007)
- See also page 3-2 of the FHWA LEP Desk Reference Manual for examples of populations likely to include LEP persons who are served or encountered by DOT recipients. <http://ops.fhwa.dot.gov/publications/fhwahop10027/users.htm>

G. NYSDOT and Sub-Recipients

A sub-recipient is an entity or person to whom Federal assistance is indirectly extended either through a recipient or another sub-recipient and thereby subjects them to Title VI compliance obligations. 23 CFR 200.5 (n). Sub-recipients of federal monies are also responsible for meeting Title VI (LEP) requirements, and include MPOs, transit agencies, transit authorities and local agencies (private and nonprofit entities). Consultants and Contractors are not sub-recipients but are still held accountable to Title VI provisions by law (USDOJ).

Section VIII. NYSDOT'S Approach

There are no specific rules and steps that agencies and federally funded entities must take in fulfilling their LEP requirements. Activities vary depending upon the services they offer, the community they serve, and their resources. NYSDOT's specific strategies and goals include:

1. Geographic mapping and analysis of baseline data for LEP (Regional Profiles).
2. Encouraging community outreach and developing best practices for public involvement.

3. Training and Surveying Main Office and Regional Office Program Areas to raise awareness and determine current policy, procedure and data/resources.
4. Working with other State agencies to share information.
5. Developing, monitoring and evaluation tools.

A. “Meaningful Access”: The Four Factor Analysis

The US DOJ LEP Guidance sets out four factors for consideration in deciding what reasonable steps should be taken to ensure meaningful access to LEP persons:

- 1) **The number or proportion of LEP persons eligible to be served or likely to be encountered by NYSDOT programs.**

The greater the number or proportion of LEP persons, the greater the need to provide meaningful access to services. NYSDOT program areas and Regions should examine prior experience serving LEP communities, analyzing best practices and determining future needs to strengthen communication with and service provision for linguistic minorities. This will include consulting census and other sources of data as well as building partnerships with local community-based organizations.

NYSDOT has developed a baseline analysis of LEP data including a geographic analysis and will be working with program areas and sub recipients to refine both the data collection process and analysis.

- 2) **The frequency with which LEP persons come in contact with NYSDOT services.**

NYSDOT program areas should assess the frequency with which they have (or should have) contact with LEP individuals from different language groups, and to adjust service provision based on the nature of the contact. A one-time encounter will be very different from a regularly provided service, and this distinction should be taken into account. A system for tracking these encounters and measuring language requests should be reviewed and documented.

- 3) **The nature and importance of the programs, activities or services provided to LEP persons.**

The more important a particular service or activity, the greater is the need to provide meaningful access to the LEP customer by providing language services and assistance. NYSDOT needs to assess the services provided by each program area to determine which are most critical and examine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Examples include identifying and translating vital documents

4) The resources available and the costs.

*Costs and resource expenditures must be balanced in a reasonable manner with the need to provide meaningful services. Language services need to be prioritized to target those individuals most in need because of the nature and importance of the activity involved. NYSDOT will continue to examining how to provide meaningful services in light of shrinking resources. **This challenge has been addressed through partnerships and innovative practices and should also be factored into the LEP Needs Assessment.***

The Four Factor Analysis initiates the action steps that should be taken. After following the four factor analysis a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For example, the number of languages into which a document should be translated depends on the four factor analysis.

The Four Factor Analysis can also be used for the purposes of evaluating a Title VI complaint related to national origin discrimination to determine if reasonable steps have been taken to provide access.

It should also be noted that the two predominant ways to provide meaningful access to LEP customers is through language assistance services, specifically oral interpretation and written translation. These services are discussed below under Section IX. LEP Baseline Data.

Section IX. LEP Baseline Data

A. LEP at the National Level

Over 24 million people in the United States reported that they speak English “less than very well” or “not at all.” The most commonly spoken languages other than English in the United States are Spanish, Chinese, Vietnamese and Korean. (American Community Survey, 2005-2009).

As of the 2005-2009 American Community Survey:

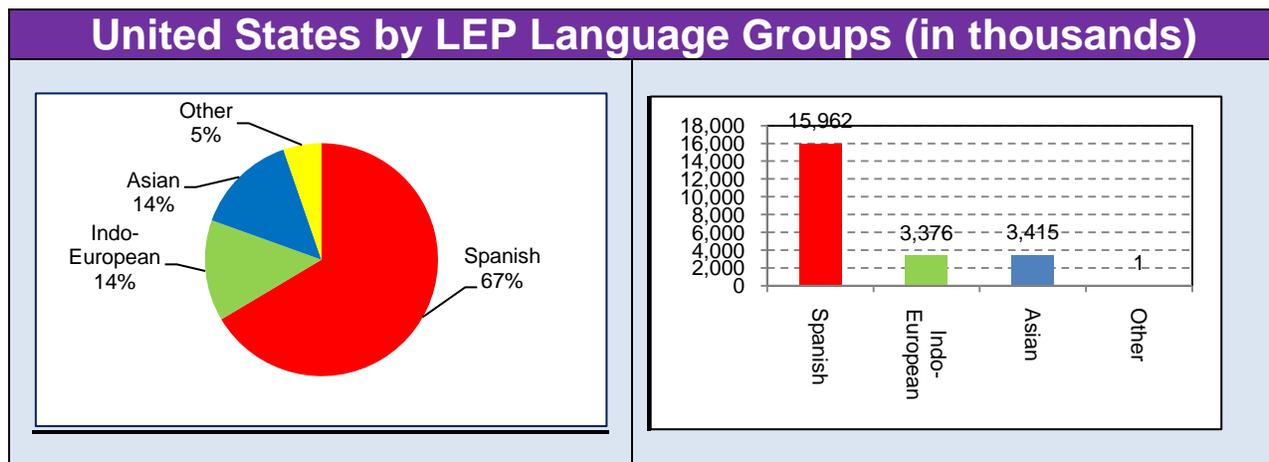
- 5,192,994 people or 29% of the New Yorkers spoke a language other than English.
- 2,343,399 people or 13% of New Yorkers are considered LEP.

- 2,003,443 people or 85% of the LEP population resides in NYC / Long Island, with 75% in New York City alone.

Significant LEP communities have also been identified in our upstate metropolitan areas. On average, the LEP proportion is 13% for the State as a whole. (American Community Survey, 2005-2009).

New York State has the 3rd largest LEP population across the 50 states, with 2,355,164 LEP residents. Only Texas and California have larger LEP populations. Almost 10 percent of the nationwide LEP population lives in New York State. Almost 20 percent of the population who speak Indo-European languages lives in New York State.

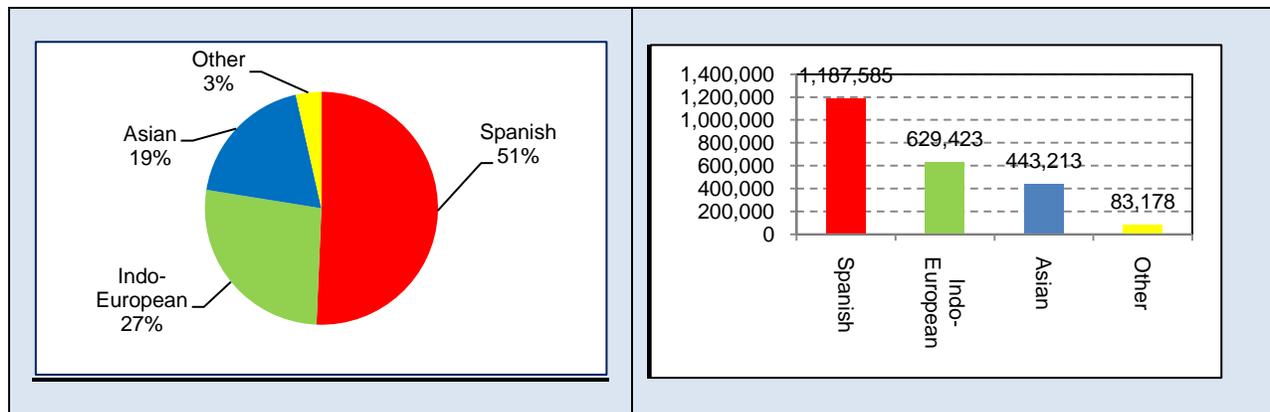
The following figures break down LEP by language groups as provided by the 2005-2009 American Community Survey for the United States:



While only 13% of the total population in New York State, LEP individuals account for 43% of New Yorkers who live below the poverty level. [Source: U.S. Census Bureau, American Community Survey, Table B16009: New York Population 5 Years and Over for Whom Poverty Status is Determined: Income in the Past 12 Months: 2005-2009, available at: <http://tinyurl.com/3en9v55>]

The following figures break down LEP by language groups as provided by the 2005-2009 American Community Survey for New York State:





B. Profiles: Geographic Analysis & Census Charts

OCR has developed a series of baseline data (geographic analysis and population charts) on LEP for Regions using Geographic Information Systems (GIS) technology in order to identify LEP communities around the State. The LEP Guide, Part One provides an overview of this baseline data.

Guidelines for using this data are provided in LEP Guide, Part Two – Using Census Data and LEP Guide, Part Three – Accessing Census Data.

Description / Definition of Terms

Figure 1.
Reproduction of the Questions on Language From the 2007 American Community Survey

13 a. Does this person speak a language other than English at home?
 Yes
 No → SKIP to question 14

b. What is this language?
 For example: Korean, Italian, Spanish, Vietnamese

c. How well does this person speak English?
 Very well
 Well
 Not well
 Not at all

Source: U.S. Census Bureau, 2007 American Community Survey.

The LEP data used to develop this baseline analysis comes from the American Community Survey Table B16001 “Language Spoken At Home by Ability to Speak English for the Population 5 Years and Over.” The table presents data on language spoken at home and the ability to speak English of people aged 5 and over. A sample of the actual question that is asked in the survey, Question 13, is shown in Figure1.

Question 13a asked respondents whether they spoke a language other than English at home. For people who answered “Yes,” Question 13c asked respondents to indicate how well they spoke English.

Respondents who said they spoke English “Very well” were considered to have no difficulty with English. Those who indicated they spoke English “Not well,” or “Not at all” were considered to have difficulty with English — identified also as people who spoke English “less than very well.” These people are Limited English Proficient.

Therefore, the definition of LEP with regard to US census data is an individual speaking English “less than very well.”

C. Four Major Language Groups

The Census Bureau is able to code responses for ACS Question 13b into 382 languages. These languages represent the most commonly spoken languages in the U.S. Due to small counts, the Census collapses these 382 languages into 39 individual languages and language groups.

These 39 individual languages and language groups can be further divided into four broad language categories: “Spanish”, “Other Indo European Languages,” “Asian and Pacific Island Languages” and “All other Languages.” The language categories consist of the following:

Spanish includes those who speak Ladino.

Other Indo-European languages include most languages of Europe and the Indic languages of India. These include the Germanic languages, such as German, Yiddish, and Dutch; the Scandinavian languages, such as Swedish and Norwegian; the Romance languages, such as French, Italian, and Portuguese; the Slavic languages, such as Russian, Polish, and Serbo-Croatian; the Indic languages, such as Hindi, Gujarathi, Punjabi, and Urdu; Celtic languages; Greek; Baltic languages; and Iranian languages.

Asian and Pacific Island languages include Chinese; Korean; Japanese; Vietnamese; Hmong; Khmer; Lao; Thai; Tagalog or Pilipino; the Dravidian languages of India, such as Telegu, Tamil, and Malayalam; and other languages of Asia and the Pacific, including the Philippine, Polynesian, and Micronesian languages.

All other languages include Uralic languages, such as Hungarian; the Semitic languages, such as Arabic and Hebrew; languages of Africa; native North American languages, including the American Indian and Alaska native languages; and some indigenous languages of Central and South America.

Source: <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>

D. An Important Note on English Proficiency

The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Data on speaking a language other than English is not necessarily LEP data.

In other words, some of the most commonly spoken languages other than English may be spoken by people who may be proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English. [Source FHWA Guidance 4-15 and 4-40].

ftp://ftp.dot.state.tx.us/pub/txdot-info/civ/fha_lep_desk_ref.pdf

<http://ops.fhwa.dot.gov/publications/fhwahop10027/users.htm>

Section X. Methodology for Implementation LEP

A. Determining When to Provide Language Services

Generally, if a NYSDOT activity will have an impact on an area where an eligible LEP language Group constitutes 5% or 1,000 people, whichever is less, reasonable efforts should be put forth to provide meaningful access, or what is considered a “*safe harbor*.”

A “*safe harbor*” means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient’s written-translation obligations under Title VI. However, efforts that defeat the legitimate objectives of its program are not necessary. [Source: FHWA 2007 Desk Reference: Limited English Proficiency Program, 4-21]

<http://ops.fhwa.dot.gov/publications/fhwahop10027/users.htm>

This threshold will be applied at different levels depending on the nature of a service. For example, brochures that have a statewide impact may have a higher threshold than targeted outreach materials for a construction project.

B. Defining a Service Area

Ordinarily, persons eligible to be served or likely to be directly affected, by a recipient’s program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient’s service area. As with the threshold for significance, a service area will vary in size depending on the nature of the service provided.

Where no service area has previously been approved, the relevant service area may be that which is approved by State or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations.

Ultimately, the service area is determined by the nature of the project and the work to be done.

A service area may be the immediate area which surrounds a project (local impact) such as an intersection project in a community setting, or a service area may have a regional (area-wide) impact such as replacing a bridge on an interstate or limited access highway with no local entry points. The nature of a particular project is determined by the Design group, in consultation with MPOs, and based on previous outreach efforts, local knowledge and project history.

[Source: FHWA LEP Manual 4-39; USDOJ Federal Register Volume 67, Number 117 Page 41460; provides examples to assist in determining the relevant service area.]

<http://www.justice.gov/crt/about/cor/lep/DOJFinLEPFRJun182002.pdf>

OCR recommends that projects' service areas for LEP analyses should correspond with the environmental analysis process and the boundaries of the Environmental justice analyses for each project in the planning, environmental and design stages.

C. Accessing Census Data for an LEP Analysis

Regions are encouraged to contact their MPOs as a first step in accessing LEP census data. Please reference the LEP Guide, Part Three - Accessing Census Data for detailed information on how to download census data from the U.S. Census Bureau's website or consult section 5-1 of the FHWA guidance on LEP for additional information. The relevant table from the American Community Survey is B16001: Language Spoken At Home By Ability To Speak English For The Population 5 Years And Over.

Important note: *Any LEP analysis should include community partnership as a cornerstone of assessing a project's potential impact on potential LEP communities in the service shed. US Census Data is another and obvious source of data to be used with community partnership in identifying LEP communities. While the US Census contains a wealth of demographic information for New York State and its sub-areas, please keep in mind that any use of data comes with challenges and limitations.*

There are two types of census data available: Decennial (ten year file) and American Community Survey (ACS) data. The Decennial Census used to consist of the "short form," with basic questions such as age, sex, race, and Hispanic origin, and the "long form" with the basic short-form questions plus about 50 additional questions on socioeconomic and housing characteristics. Though the "short form" still exists, the "long form" has been discontinued. The "long form" used to contain data on the four LEP language groups. Now data for 39 languages can be found in the American Community Survey (ACS).

The ACS is a continuous survey (samples taken every year) unlike the Decennial data which is collected once every ten years. ACS data has a much smaller sample size than Decennial data, creating larger margins of error.

Feature	Census Sample	American Community Survey
1. Frequency	Every 10 years	Annual
2. Sample size Sampling ratio	18.3 million housing units 1 in 6	~3 million housing units 1 in 40
3. Residence rule	Usual place of residence	Current residence: 2+ months
4. Survey follow-up	Telephone/personal visit, all housing units; proxy data (persons outside household) taken; temporary staff	Telephone/Personal visit, sample of housing units; no proxy data; professional staff; follow-up includes any missing responses
5. Type of estimate	Point estimate: April 1, 2000	Period estimates: averages 1 year (population = 65,000) 3 years (population = 20,000) 5 years (balance)
6. Sample weighting	Census counts	Postcensual estimates

Source: <http://www.esri.com/news/arcuser/1207/census.html>

The OCR is recommending the use of the American Community Survey data. All LEP practitioners are also encouraged to review the following Transportation Research Board (TRB) report as a helpful resource on ACS data:

http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_588.pdf

For additional information on using census data, please refer to the “Using Census Data” section of the LEP Guide, Part Two.

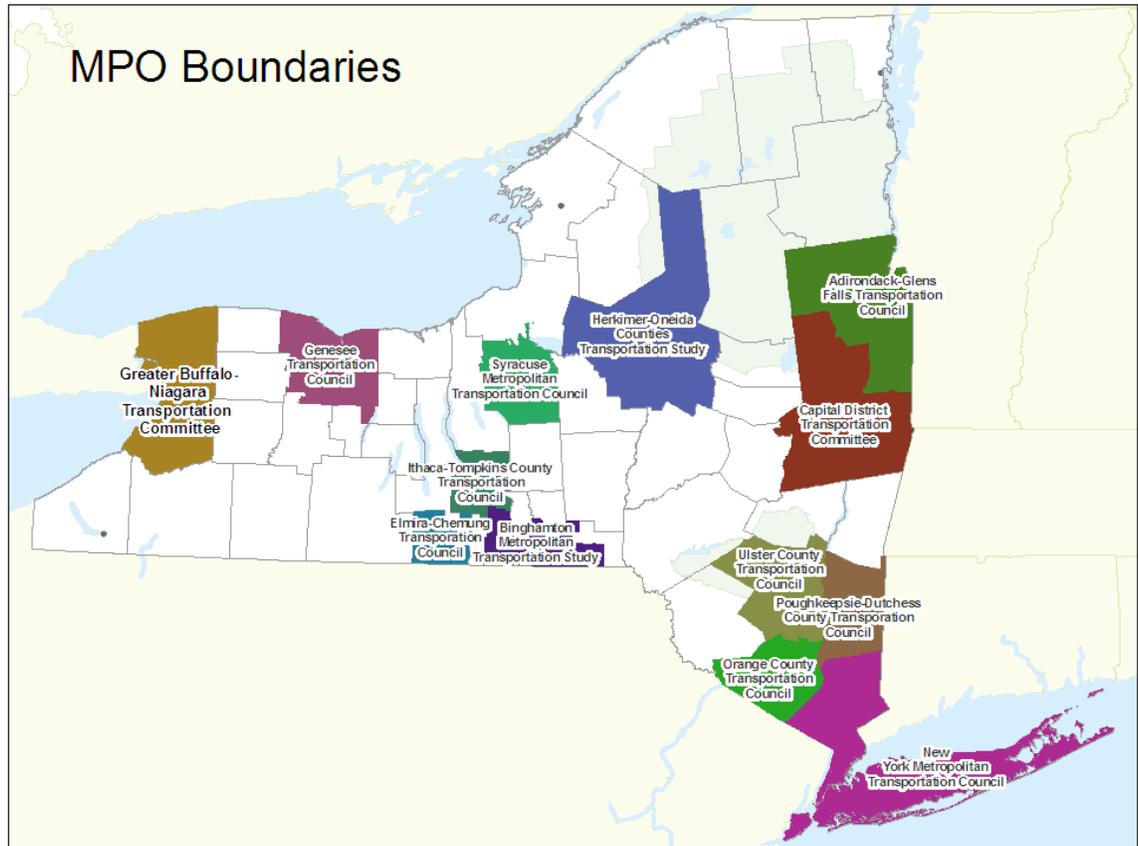
Please also note the following points:

- ❖ Caution: Tracts that appear to qualify under the large groups (i.e. Indo-European) do not necessarily qualify for LEP because there might be a Russian speaking and a Polish speaking community in the same area, neither of which is large enough individually but when combined do indicate a need for LEP. *This underscores the need for partnership with community groups.*
- ❖ The Census has limited information on what languages are spoken by LEP individuals and Census data does not account for proficiency in reading comprehension, oral or written skills, therefore community outreach is essential
- ❖ GIS Coordinators may be able to assist with creating maps and geographic analyses

D. Additional Sources of Data**1) Local Government: City and County Planning Departments; Regional Planning Boards**

Local governments often collect demographic data including information on the local LEP community. Regions are highly encouraged to reach out to these sources.

The MPOs are also an important source of information. A map of the MPOs is featured below.



2) School District Limited English Proficient Data

The NYS Department of Education has Limited English Proficiency data available for each school district and charter school by county.

Whereas the Census data is self-reported, the NYS Department of Education data is acquired through examination. This means students are given a test to determine how well they speak English rather than Census participants reporting for themselves how well they speak English.

- Go to the **New York State Report Cards 2010** website <https://www.nystart.gov/publicweb/Splash.do>.
- Click on the most recent year of data available.
- Select the county you would like to examine.
- Next, select the school district(s) within your service area.
- Click on, “**Accountability and Overview Report.**”

Limited English Proficient figures for the latest three years will be available.

Sample from the Albany City School District

1 District Profile

District **ALBANY CITY SCHOOL DISTRICT**

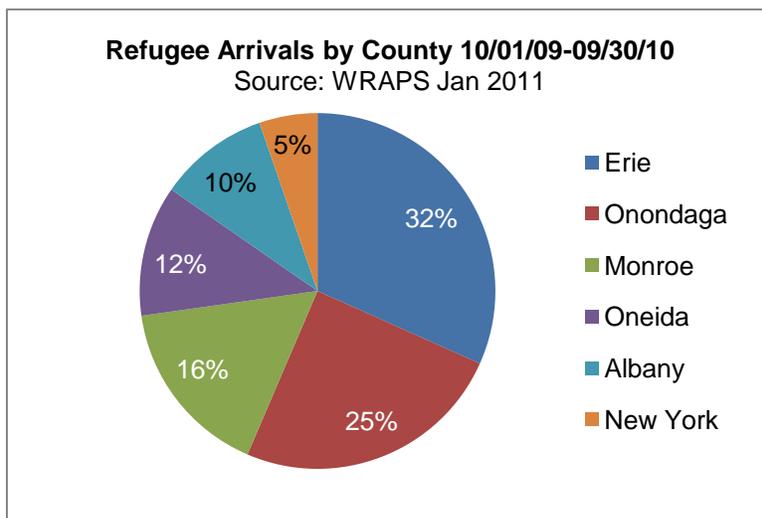
Demographic Factors

	2007-08		2008-09		2009-10	
	#	%	#	%	#	%
Eligible for Free Lunch	3992	48%	4660	59%	4015	50%
Reduced-Price Lunch	789	9%	757	10%	676	8%
Student Stability*		N/A		N/A		N/A
Limited English Proficient	382	5%	405	5%	502	6%

3) The NYS Bureau of Refugee and Immigrant Affairs' (BRIA) Refugee Data

The Office of Temporary and Disability Assistance Bureau of Refugee and Immigrant Affairs provide WRAPS (Worldwide Refugee Admissions Processing System) data on the number of refugees who enter this state. The fiscal year representing arriving refugees are October 1 - September 30. Surprisingly, the data indicates that since 2004, most of the refugees are resettling in upstate New York rather than New York City.

Contact bria.contact@otda.state.ny.us for the latest information.

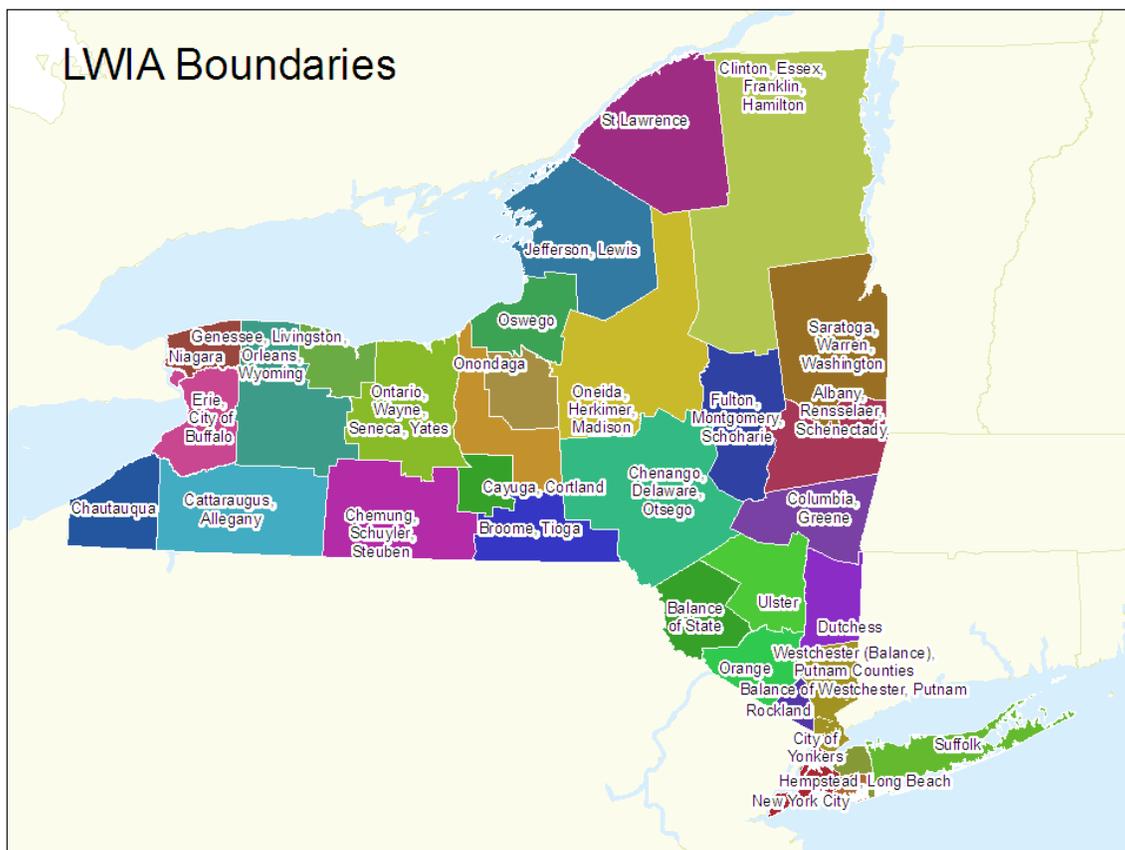


Source: <http://www.otda.state.ny.us/programs/bria/documents/population-report.pdf>

4) NYS Department of Labor (DOL) Workforce Investment Area (WIA) Data

The Department of Labor has sponsored a Special Tabulation of Census 2000 data on Limited English Populations. The data can be downloaded at http://www.doleta.gov/reports/CensusData/eta_default.cfm. This dataset features the 39 Census languages by Local Workforce Investment Areas (LWIA). A LWIA could consist of a set of counties, a county, or a set of cities. The map below shows the LWIA's for New York State.

NOTE: As of April 2011, this data has not been updated to reflect the new American Community Survey (ACS) data.



5) Information From Other Agencies

The Department is in the process of researching how other State DOTs and other New York State agencies address LEP. This research is in process and ongoing and will be posted on the Office of Civil Rights LEP webpage.

The table below compares the ACS, USDOL and NYSED LEP data.

Criteria	Census ACS	US Department of Labor	NYS Department of Education
Languages	39 languages	39 languages	1 category for Limited English Proficient
Frequency	Every year.	Uncertain	Every year
Geography	Census geography (blocks, tracts etc)	Local Workforce Investment Areas (LWIA)	Public schools and districts

E. Additional Analyses

Origin / Destination Analysis

An origin/destination analysis is used for determining high concentrations of LEP populations and likely commuting patterns. This could help the Department determine effectively where LEP populations base their source of income and livelihood.

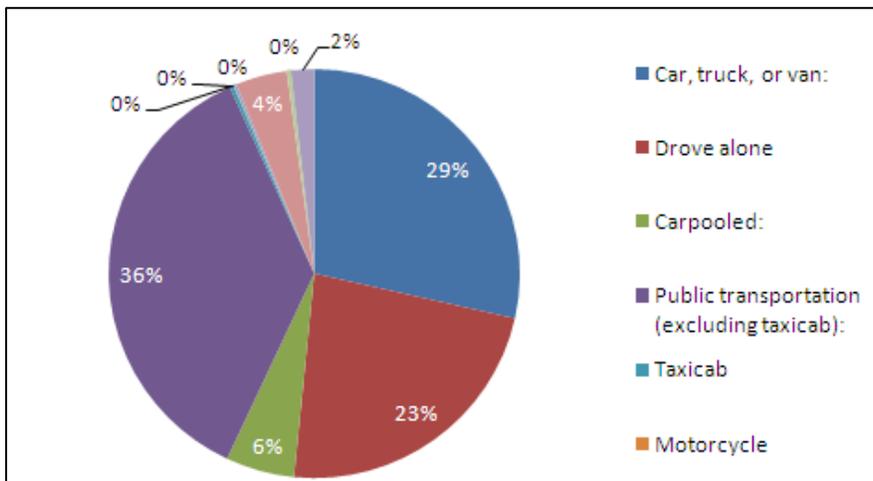
Consequently, by using Journey to Work data to determine these trips, we can allocate funds that most help people of LEP populations get to where they need to be. The results of this could range from expanded bus service to better transit-oriented design.

Regardless, understanding the LEP communities' patterns to and back to their primary origin and destination is an important component to consider in an LEP analysis.

The MPOs do a complex origin-destination analysis called Travel Demand Modeling. Travel Demand Modeling uses socioeconomic data such as household size, automobile availability, and employment data to show travel demand. A limited Origin / Destination analysis can be performed by the NYSDOT practitioner using Census data referred to as Journey to Work (JTW) and Census Transportation Planning Package (CTPP).

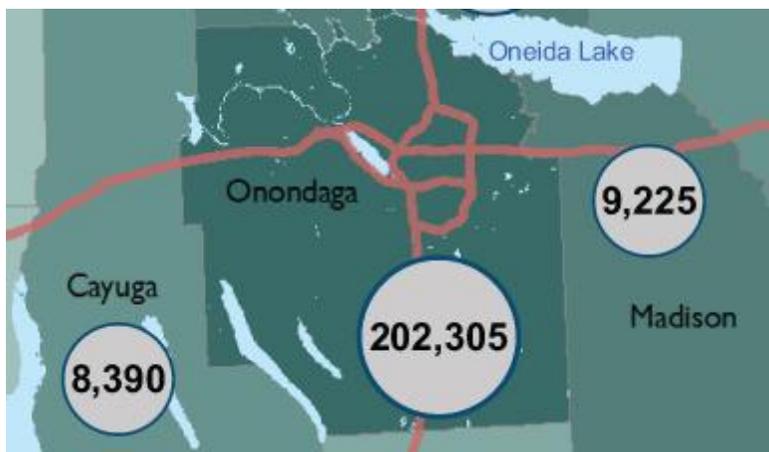
The Journey to Work (JTW) data comes from the 2005 -2009 American Community Survey. It contains information about where people work, how they travel, what time they leave for work, and how long it takes them to get there. The relevant JTW table is B08301: Means of Transportation to Work. This contains the following major means of transportation: Car, truck, or van, public transportation (excluding taxicab), taxicab, motorcycle, bicycle, walked, other means and worked at home.

Sample Journey to Work data for Bronx County, NY:



The newest Census Transportation Planning Package (CTPP) data comes from the 2006 - 2008 ACS. The CTPP contains County-To-County Worker Flow Files. These indicate the county in which a worker lives and the county in which he travels to for work. CTPP data is used to create the below analysis for the I-81 project in Syracuse. The bubbles indicate how many people from the subject county commute to Onondaga County.

Sample County-to-County Worker Flow Files data for Onondaga County



F. LEP Needs Assessment: Compliance Checklist

Please note: The LEP Needs Assessment is currently a “work in progress” document that will be used by Regional and Main Office staff in Planning, Design, Right-of-Way and MPO’s. Refer to Attachments 5A DOT LEP Needs Assessment Work in Progress; 5B FHWA Technical Assistance Tool and 5C FTA LEP Survey Checklist.

- **Objective:** The purpose of the LEP Needs Assessment is to provide a methodology, process and practical guide to implementing LEP. This guidance is essentially a “road map” in the form of a checklist for Regions and sub recipients to use when undergoing transportation planning and project development. The goal of this tool is ensure compliance with LEP and record such efforts. The checklist is broken down into several phases to allow evaluation at each stage of decision-making, depending on the nature of the project and level of public involvement. These stages include:
 - 1) Initial Assessment – Is action necessary?
 - 2) Local (simple) projects
 - 3) Regional (moderate/complex) projects
 - 4) Public involvement
- Transportation planners will be required to initiate the work in progress LEP Needs assessment as part of regularly scheduled activities involving the development of long range plans, corridor or modal studies, and programming of projects, as well as plan updates. The NYSDOT Public Involvement Manual, which is in the process of being finalized, is a useful resource for Transportation Planning.
- The Regional Title VI Coordinator’s role is to communicate with planning and design staff to ensure that responses have been completed and to attach completed Needs Assessments as part of the Title VI Semi-Annual Report.
- An Important Note on LEP: Please note that the methodology also addresses each of the Four Factors for considering what reasonable steps to take to ensure meaningful access.
- An Important Note on the correlation between LEP and EJ: While this Assessment provides a checklist for LEP, the process is designed to mirror and be consistent with the environmental justice analysis process.

Section XI. Public Information, Public Involvement and Community Outreach/Partnership

A. LEP & Public Information

NYSDOT recognizes the value of public information to educate, improve access to its services, address LEP concerns, promote program integrity, and build public confidence in its programs. The Department has produced public information materials in languages other than English and intends to continue to improve its information to LEP individuals and take meaningful steps in removing barriers and providing access for LEP individuals.

Best Practices for Public Involvement

The OCR has conducted research on best practices for providing LEP communities with meaningful opportunities for public involvement. The Department recommends the following practices where LEP individuals are impacted in addition to existing best practices. While these are general guidelines to follow, efforts should be made on a case-by-case basis for each activity or public meeting given the diversity of the State and the Department's services and programs.

(**Note:** For a comprehensive look at public involvement at the project development stage, refer to the NYSDOT Public Involvement Manual, Project Development, dated January, 2004) <https://www.nysdot.gov/divisions/engineering/design/dqab/dqab-repository/pdmapp2.pdf>

Best Practices

- **Notification of Rights**
 - Post notice to the public, including local community groups, regarding the Department's language assistance policies and procedures (ex. Insertion of notices, in appropriate languages, about the right of LEP customers to free interpreters and other language assistance, such as the translation of brochures)
 - Post and maintain signs in regularly encountered non-English languages in public points of entry, waiting rooms, reception areas, etc. informing beneficiaries of their right to free language assistance and invite them to identify themselves as needing these services.

- **Community Outreach** (appropriate for projects' public meetings and hearings)
 - Refer to the Directory of CBOs and work to identify local partners.
Refer to Attachment 6
 - Print and post translated public meeting notices in locations commonly accessed by people with Limited English Proficiency throughout the impacted neighborhood:
 - Ethnic grocery & convenience stores and other businesses; ethnic shopping areas
 - Places of Worship such as churches, synagogues, mosques
 - Post offices
 - Main access roads
 - Community bulletin boards
 - Schools
 - A Statement of Notice for public meetings and outreach materials should include:
 - A translated statement about the right to receive free language assistance services available upon request (such as interpreters) on notices of public hearings
 - If possible include a 1-800 telephone number where an LEP individual can call for free for more information in their native language or to request language assistance.

- When providing a 1-800 number for LEP customers, create a recorded message in the most commonly-spoken languages in your service area
 - Coordinate efforts with local organizations that may work closely with the LEP population you serve in order to develop an effective outreach campaign, gather information / feedback. Groups include:
 - Stakeholders identified during scoping
 - Community-Based Organizations & Immigrant Rights / Advocacy groups
 - Local Government officials & Neighborhood Associations
 - Bus shelters / public transit stops
 - Schools and local BOCES programs (offer adult ESL classes)
 - Literacy volunteers
 - Community Actions programs
 - Partner with MPOs public involvement offices in urban areas

Consult the CBO directory, talk to MPOs and use past experience to identify local organizations and community leaders to partner with and determine effective meeting locations, times, etc. Work with groups to piggy-back off of existing events and outreach opportunities and perhaps partner on providing language assistance.
 - Signage, postings, placards and other notices posted in public places should also be considered for translation, especially postings outside of a meeting area when language assistance has been requested. Examples of useful tools include:
 - Language identification cards/posters (“I speak cards”)
 - Signs posted in non-English languages
 - Statements in non-English languages in brochures, outreach materials, etc
 - Telephonic messages in non-English languages
 - Public Service Announcements
 - Community outreach (2002 DOJ Guidance at 41,465)
 - Consider the use of pictograms, symbol signs or other graphics/visuals where appropriate
 - Minimize complexity by using very few details; maximize the space between symbols
 - Ask community groups to review translated materials and messages for appropriateness of language
- **Ethnic Media (TV, Newspapers and Radio)**
 - The use of non-English radio and television outlets to inform the public of upcoming events is another effective means of advertising to target language groups
 - Translate major ads and press releases in major non-English newspapers
 - The Main Office as well as each Region has access to *The Bacon’s Directory* of media sources which provides a breakdown of ethnic media for New York.
- **Working with faith-based organizations (CBO Directory)**
- **Holding effective public meetings & hearings with LEP customers**
 - Provide interpreters at public meetings in LEP communities; be sure to advertise this!
 - Consider the use of qualified community volunteers to provide interpretive services
 - Follow RPIC group & FHWA recommendations for public meetings best practices

- NYC public hospitals have greeters that speak languages other than English to help people navigate hospitals. OCR recommends having a bilingual greeter at NYSDOT's public meetings to help LEP attendees with basic questions. They would not necessarily have to be skilled interpreters, but doing so would send a message to the community that the meetings are LEP-friendly.
- Look for clues that people may not read, speak or understand English
- **Post-Meeting best practices**
 - Keep track and document the languages and services provided
 - Obtain effective feedback from the public by asking them to fill out comment cards (respond by thanking the individual for their input) or distribute an Attendance Form after each public meeting / hearing to collect statistical data on attendees and track or document how well different segments of population are represented.
- **Electronic Information**
 - Web pages accessible to members of the general public should include information on the availability of language assistance in the significant LEP languages of the service area.
- **Other Practices**
 - **Language Banks** – some community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations. This approach is particularly effective where there is a scarcity of language services or a large variety of language needs
 - Chicago Area Transportation Study created a foldout pamphlet describing the planning process to the public through images and charts
 - Colorado DOT hosts “block meetings” to focus on the transportation process and how it affects communities
 - NJ transit system established community advisory groups for LEP
 - Portland, OR's TRIMet transit agency coordinated a community parade and organized a lunch bus service advertising a new transit line
 - **Telephone Interpreter or “Language Lines” & Language Identification cards:** - The use of I Speak Cards at points of public contact to identify a customer's language followed-by connecting to a 1-800 language line is a solution used by other organizations in the public and private sector alike. Lowe's, for example, accommodates LEP customers through a language line service. AT&T has recently partnered with Language Line Services to create a program which “connects limited English speakers with specially trained interpreters who facilitate communication between the consumer and the business' English-speaking customer representative.”
 - Provide customer service representatives with key phrases in commonly encountered languages
 - Consult the regional offices of other State agencies such as the OCFS, OTDA, DHCR and DEC to see what top languages they provide services in.
 - Provide incentives for attending meetings such as (ethnically appropriate) food
 - Outreach to schools with large ESL enrollments

- **CBO Linkage-** It may be useful to have an established, formal linkage with a minority community-based organization. This can be confirmed by a signed agreement between both parties with specifies in detail the roles and resources that each entity will bring to the project, and states the duration and terms of the linkage. (USDOJ Civil Rights Division, Coordination & Review Section)
- Explore the possibility of using pictorial or symbol messages into frequently encountered languages on **variable message signs** that report dangerous driving conditions

B. Important Resources for Public Involvement

- NYSDOT Public Involvement Manual (Appendix 2, Project Development Manual)
<https://www.nysdot.gov/divisions/engineering/design/dqab/dqab-repository/pdmapp2.pdf>
- *Transportation Planning Capacity Building Program - Peer Program Report.* Federal Highway Administration Resource Center Peer-to-Peer Workshop: Identifying and Engaging Low Literacy and Limited English Proficiency Populations in the Transportation Decision-making Process:
http://www.planning.dot.gov/PublicInvolvement/pi_documents/toc-foreword.asp
- *FHWA Public Involvement Techniques for Transportation Decision-making Report*
<http://www.fhwa.dot.gov/REPORTS/PITTD/contents.htm>
- *US DOJ LEP Tips & Tools from the Field*
http://www.lep.gov/guidance/tips_and_tools-9-21-04.htm

C. Directory of Community-Based Organizations (CBO)

The Office of Civil Rights has developed a directory of ethnic and community-based organizations (CBOs) as a resource for the Regions to use for public involvement efforts and community outreach activities. This is designed to be a living document. Refer to Attachment 6 [link](#)

D. Deliverables to include in a Public Involvement Plan for LEP

Any Public Involvement (PI) Plan for a transportation project should include a section on LEP. This may be titled “Compliance with Limited English Proficiency (LEP) Executive Order 13166.”

Basic Structure or Outline of the Plan as well as PIN, date and preparer

- Basic elements include
 - Implementation Plan: The Four Factor Analysis
 - Outreach strategy and steps taken to aid LEP individuals

Specific Components

- Identify specific languages within the area being impacted and targeted for outreach
- Identify geographic boundaries of the service area with significant LEP populations that may be impacted (Census tracts, congressional districts, etc and include maps or census tables). Note: neighborhoods targeted for outreach
 - Final Environmental Impact Statement
- Specify community partners involved in outreach
- Which best practices for public involvement will be utilized?
- Identify ethnic media used for advertising purposes
- List the steps taken to provide language assistance, including the service provider used
 - translators / interpreters
 - automated telephone Hot Line
- Include a cost break-down
- Provide samples of outreach materials

E. Language Assistance Services

Please be aware that there are two main ways to provide language assistance services: **oral interpretation service** and **written translation service**. [FHWA LEP Manual 3-5]

Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services.

Written translation can range from translation of an entire document to translation of a short description of the document. The correct mix should be based on what is both necessary and reasonable.

NYSDOT utilizes two primary sources for hiring certified translators/interpreters:

1. NYSDOT contract with OGS

The link below brings you to the contract for Translation & Interpretation services where you can browse different certified language service providers. Unlike an OGS commodity contract, usage of an OGS service contract is not mandatory. Therefore, it is left to the program area or agency's discretion as to which company to use for the services. The company does not have to be on contract with OGS but it gives a good reference point to start with.

Website: <http://www.ogs.state.ny.us/purchase/snt/awardnotes/7300520487can.pdf>

2. NYS Minority/Women-owned Business Enterprises Directory

This Directory is a second resource for selecting a language service provider and has been created by Empire State Development and used by NYSDOT to find certified language assistance services. (Scroll down to the bottom of the page and browse under "Select Product / SIC Codes").

Please keep in mind our discretionary limits for purchases. Purchases over \$15,000 have to be advertised in the NYS Contract Reporter.

Website: <http://www.esd.ny.gov/MWBE/directorySearch.html>

F. A Note on Quality Assurance

You should make sure the contractor/vendor you are working with has a process or procedure in place for ensuring the competency of the translator/interpreter. The Department also recommends looking at certain criteria to compare the quality and cost effectiveness of different providers to the extent possible. The following can be used as a guide: http://www.justice.gov/crt/lep/guidance/tips_and_tools-9-21-04.htm#42

Quality Assurance: Provider Comparison Table

Criteria	Provider A	Provider B	Provider C
<i>Certification Status</i>	Yes	yes	yes
<i>responsiveness</i>	timely, thorough	timely, thorough	timely, thorough
<i>Explanation (languages, method)</i>	Satisfactory	satisfactory	satisfactory
<i>Technical Ability (knowledge of language, method)</i>	Includes 3-step quality-control process in proposed contract	Asked for preference between French Canadian and European French	Explained different versions of Chinese and gave recommendations
<i>Price</i>	\$891 (charged the same price per word for all the languages; having one flat rate costs less than doing the standard price per word by each	\$909.3 (minimum fee or charged rate/word)	\$856 (charged rate/word)

	Language.		
<i>Turn-around-time</i>	1 week	2-3 business days	3 business days
<i>Other (added value)</i>	demonstrated flexibility (quickly provided updated proposal when our original survey changed; also included explanation of price change)	mailed a follow-up info package (including a series of awards and recognitions)	

Please visit the USDOJ Guidance (pg 41461), USDOJ Tips and Tools from the Field (pg 5-29) and USDOT guidance (pg4-17) available in the FHWA LEP Desk Reference book for more information.

G. A Word of Caution

It is not recommended for LEP customers to provide their own interpreters, such as minors or friends. This is particularly important in emergencies or situations involving safety issues, as such interpreters may not understand terminology he/she is asked to translate, or may obstruct the flow of emergency information to the provider, thereby acting as an impediment to communication.

H. Identifying Vital Documents

It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English.

Vital documents are outreach or other documents designed to raise awareness of rights or services such as critical outreach materials. A document will be considered vital if it contains information that is critical for obtaining the Federal services and/or benefits, or is required by law.

One should ask the question, “Could the denial or delay of access to services or information have serious or even life implications for LEP individuals?” If the answer is yes, you have most likely encountered a vital document.

Each Region will be asked to identify their top three vital documents following LEP training. OCR will coordinate the translation of these documents which will also be posted online.

What are examples of vital documents?

- Applications, or instructions on how to participate in a recipient's program or activity or to receive recipient benefits or services
- Consent and complaint forms
- Notices of rights and disciplinary action
- Notices advising LEP persons of the availability of free language assistance and language identification cards for staff (i.e., "I speak" cards)
- Statements about the services available and the right to free language assistance services in appropriate non-English languages, in brochures, booklets, outreach and recruitment information, and other materials routinely disseminated to the public
- Written tests that do not assess English language competency, but rather, competency for a particular license, job, or skill for which English competency is not required
- Letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital, as would be notices of public hearings regarding recipients' proposed transportation plans and/or projects, etc.
- Notices of public hearings regarding recipients' proposed transportation plans, projects, or changes, and reduction, denial, or termination of services or benefits
- Signs in waiting rooms, reception areas, and other initial points of entry
- Emergency transportation information

Non-vital information includes documents that are not critical to access such benefits and services. For many larger vital documents, translation of specific sections contained within the document will suffice and the documents need not be translated in their entirety. Translating an executive summary of a large planning document, for example, is sufficient. Specs will not be translated.

NYSDOT's Vital Documents Project **Maria – Status?**

NYSDOT began developing and drafting its' LEP program in January 2008. The major focus of the LEP program since has been developing baseline data, developing training modules and creating community based organization (CBO) listing in an effort to provide meaningful access to services for the LEP populations.

Prior to the Department's LEP efforts, various offices have translated different materials on a case-by-case basis, such as Real Estate brochures, regional construction notices, Title VI posters and various public involvement materials.

However, as the LEP and Title VI program expanded, the Department recognized the need to collect data; therefore the Office of Civil Rights requested program areas in Regional offices Title VI coordinators to identify vital documents for translation. The Office of Civil Rights identified and prioritized these vital documents. An initiative

was developed whereby a partnership with the College of St. Rose was established. NYSDOT anticipated that approximately ten vital documents will be translated in Spanish by students at the College of St. Rose in the Fall of 2009 through the summer of 2010 in exchange for course credit.

The Department currently has ten vital documents translated (**Refer to Att**). **OCR** will maintain a central database for identifying other documents that will need to be translated as well as monitoring for future updates.

For More Information:

FHWA LEP Desk Reference pages: 3-7, 4-20

USDOT LEP Guidance (FHWA LEP Desk Reference pages 4-20, 4-45)

I. A Note on Automated Websites

Translate buttons and automated translated websites such as Yahoo! Babel Fish and Google Translate are not considered a best practice because the translated information is not always logical coherent. Federal guidelines strongly discourage using automated translation tools because of the poor quality. For additional information, please visit: http://www.usa.gov/webcontent/managing_content/specific_websites/other_languages/best_practices.shtml

That being said, automated websites can be used internally as part of a vetting process, to understand the nature of an email communication and as a first step in identifying the subject of the email and where to direct the inquiry/comment for a response.

Section XII: Implementation Questions & Answers

This section contains a series of responses to frequently asked questions. We hope to expand this section over time and encourage users to submit any other questions to OCR for future inclusion.

Additional Questions for review/consideration for inclusion in the Frequently Asked Questions:

1. Does the Executive Order apply to materials on websites?

Yes. However, the decision to place something on the web will not affect whether the document must be translated. For example, placement on the website should not change the agencies' or recipients' original assessment regarding the number or proportion of LEP persons that comprise the intended audience for that document.

The four-factor analysis applies to each individual "document" on the website. Generally, entire websites need not be translated, as only the vital information within the website might need translation. If, in applying the four-factor analysis, the agency or recipient determines that a particular document/piece of information should be translated, that translation should also be posted on the website if the English-language version is on the website. If documents are translated within a website, the existence of the translation should be noted (in the appropriate language) at an initial entry point to the site (usually the homepage).

2. If a federal agency contracts with a private or other entity to conduct certain activities of the agency, does the Executive Order apply to the activities of the contractor?

Yes. When a different entity conducts certain activities for the federal agency, then the Executive Order applies to the entity's activities. The agency should ensure that the entity knows the general standards for LEP access and applies the agency's plan to the activities it is conducting on behalf of the agency. An agency cannot avoid its obligations by contracting them out. Mandatory compliance with the agency's LEP policy should be included in the contract.

3. What are the standards for oral interpretation?

The obligation to provide meaningful opportunity to individuals who are LEP is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program."

There are a number of steps which can assist recipients and federal agencies in providing such oral assistance. They range from hiring bilingual staff or staff interpreters

competent in the skill of interpreting, to contracting with qualified outside in-person or telephonic interpreter services, to arranging formally for the services of qualified voluntary community interpreters who are bound by confidentiality agreements. Generally, it is not acceptable for agencies or recipients to rely upon an LEP individual's family members or friends to provide the interpreter services. The agency or recipient should meet its obligations under EO 13166 or Title VI by supplying competent language services free of cost. In rare emergency situations, the agency or recipient may have to rely on an LEP person's family members or other persons whose language skills and competency in interpreting have not been established. Proper agency or recipient planning and implementation are important in order to ensure that those situations rarely occur.

4. What standards should agencies apply to recipient guidance and to their plans for federally conducted activities?

Each agency and each recipient of federal financial assistance must take reasonable steps to provide meaningful access to LEP individuals. Among the factors to be considered in determining what constitutes reasonable steps to ensure meaningful access are: (1) the number or proportion of LEP persons in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program; (3) the importance of the service provided by the program; and (4) the resources available to the recipient. These four factors are further explained in the DOJ LEP Guidance found on the FCS website and published in the Federal Register on August 16, 2000.

5. When developing plans and guidance regarding translations of documents, how do we determine which documents must be translated?

It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document will be considered vital if it contains information that is critical for obtaining the 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 rule books; and written tests that do not 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. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. Non-vital information includes documents that are not critical to access such benefits and services. Advertisements of federal agency tours and copies of testimony presented to Congress that are available for informational purposes would be considered non-vital information.

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, we recognize that it would be impossible, from a practical and cost-based perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients of federal financial assistance, and EO 13166 does not require it of federal agencies. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important for federal agencies to continually survey/assess the needs of eligible service populations in order to determine whether certain critical outreach materials should be translated into other languages.

OTHER DOT Q&As

1. We recently offered a NYSDOT Design project newsletters in Spanish because of a small Latino population located within the project vicinity:

What will be the limit or extent that we will we be obligated to do more now that we've taken the step of providing information in a language other than English?

Advertise in Spanish for any upcoming public projects in that area (public hearing announcements) and include a statement indicating a telephone number for a Spanish speaker to call if that individual plans to attend the public meeting/hearing and would like to have an interpreter available.

2. Moreover, are we now responsible for translating the project design web page and meeting minutes into another language because we offer a Spanish language newsletter?

One suggestion would be to provide a blurb on the front page of the web page in Spanish providing a phone number where a Spanish speaker with LEP might call for more information. Perhaps you could also provide a link (in Spanish) to the Spanish version of the newsletter? Perhaps you could provide a statement indicating who to contact if someone would like a copy of the minutes in Spanish? Are there vital public documents this group may access which should be translated?

This is of particular concern because we may not have the resources in the future to translate any information for our projects.

Yes we certainly understand this and are working on developing creative and cost-effective solutions to keep our efforts realistic and without unduly burdening the agency.

3. Can data on Race be used for an LEP analysis?

NO. LEP refers to discrimination based on national origin and ability to speak the English language, not race or ethnicity; it is therefore not appropriate to use data on race in an LEP analysis as race does not necessarily related to one's ability to speak English; race is an environmental justice issue but is not appropriate for LEP as is not interchangeable with English language proficiency.

To show how complex race is, look at this break-down as shown in a report produced by the NYS Assembly Puerto Rican/Hispanic Task Force report titled "The Changing Face of the Empire State: Latinos, Portuguese and Brazilians in Upstate New York"), which illustrates the complexity and diversity of race:

- nearly half of Upstate's Latinos say they are white;
- 8.7% say they are of two or more races;
- 5% say they are African-American;
- .8% percent say they are Native American or Alaskan Native;
- .3% say they are Asian;
- .1% say they are of Native Hawaiian or other Pacific Island descent; and
- 37% say they are of some other race alone.

Note that being bilingual or multilingual is not the same as LEP, therefore not all Spanish or other foreign language speakers are necessarily LEP. According to the Assembly's report, 29% of Upstate Latinos speak only English. Of the 70% of those who speak Spanish, more than half speak English very well, the other half are considered to be limited English proficient (about a quarter speak English well, 17% do not speak English well, and 5% do not speak English at all.

4. What is NOT considered Limited English Proficiency?

- Hearing or visual impairments - sign language interpretation and Braille texts are accommodations of disabilities provided under the Americans with Disabilities Act and/or Section 504 of the Rehabilitative Acts of 1973.
- Illiteracy - LEP individuals protected by the Executive Order and Title VI are those who not only cannot speak, read, or write English, but primarily speak, read or write an language other than English

Source: Federal Highway Administration,
2004 AASHTO National Civil Rights Conference Workshop Presentation
<http://www.fhwa.dot.gov/civilrights/2004workshops/04lepsandiego.htm>

5. What languages do I need to translate my materials into?

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed.

XIII. Bibliography (a work in progress)

Bacon's Information, I. (1992). *Bacon's newspaper directory : directory of daily and weekly newspapers news services syndicates*. Chicago, Ill.: Bacon's Information Inc. Civil Rights Division, U. D. (2007, July 31).

LEP Frequently Asked Questions. Retrieved from LEP (Limited English Proficiency) Home Page: <http://www.lep.gov/faqs/faq.html>

Corporation, T. N. (2006). *2006 Report to the Community*. New York: The New York City Health and Hospitals Corporation.

Cosgrove, B. (2008, May 13). *How to Identify Limited English Proficient (LEP) Populations in Your Locality*. <http://www.state.nj.us/lps/hts/downloads/LEP.pdf>

Division of Minority and Women-Owned Business Development. (2009, mAY 8). Retrieved from Search Directory of Certified Minority-and Women-Owned Businesses : <http://www.nylovesmwbe.ny.gov/cf/search.cfm>

(2007). *Draft Environmental Impact Statement for Proposed Long Island Truck - Rail Intermodal (LITRIM) Facility Project*. Albany, NY: New York State Department of Transportation.

Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field. (2004, September 21). Retrieved from Civil Rights Division, U.S. Department of Justice: http://www.lep.gov/guidance/tips_and_tools-9-21-04.htm

FAQ's About Executive Orders. (2007, December 14). Retrieved from Federal Register FAQ: <http://www.archives.gov/federal-register/executive-orders/about.html> (2008).

Final Environmental Impact Statement - Kosciuszko Bridge Project. Albany, NY: New York State Department of Transportation.

Language Line Services and AT&T Team up to Connect Businesses With Nation's Culturally Diverse Population. (2006, September 14). Retrieved from Language Line Services : <http://www.languageline.com/page/news/9/>

(2003). *Language Use and English-Speaking Ability: 2000*. Washington, D.C.: U.S. Census Bureau.

LEP Frequently Asked Questions. (2007, July 31). Retrieved from U.S. Department of Justice, Civil Rights Division: <http://www.lep.gov/faqs/faqs.html>

Lowe's speaks your language. (2009). Retrieved from Lowe's:

http://www.lowes.com/cd_Welcome+Lowe's+Speaks+Your+Language_830973134

National Cooperative Highway Research Report. (2007). *A Guidebook for using American Community Survey Data for Transportation Planning*. Washington, D.C.: Transportation Research Board.

New York State Report Cards for School Year 2006-2007. (2009). Retrieved from New York State Testing and Accountability Reporting Tool:

<https://www.nystart.gov/publicweb/Home.do?year=2007>

NYS DOT Long Island Truck-Rail Intermodal Facility. (2004). Retrieved from NYS Department of Transportation.

Office Of General Services Procurement Services Group. (2007, October 2). Retrieved from Translating and Interpreting Service Award # 20487:

<http://www.ogs.state.ny.us/purchase/snt/awardnotes/7300520487can.pdf>

Papineau, H. (2009, May 14). *Audit and Civil Rights Division* . Retrieved from Limited English Proficiency Program (LEP):

http://axim22.nysdot.private:7779/portal/page?_pageid=39,359510,39_390171:39_1856620:39_1856645&_dad=portal&_schema=PORTAL

Public Involvement Techniques for Transportation Decision-Making. (1996, September). Retrieved from Federal Highway Administration:

<http://www.fhwa.dot.gov/REPORTS/PITTD/contents.htm>

Special Tabulation of LEP Information from Census 2000 . (2009, January 13).

Retrieved from U.S. Department of Labor: <http://www.doleta.gov/reports/CensusData/>

The Equal Pay Act of 1963. (2009, February 17). Retrieved from U.S. Equal Employment Opportunity Commission.

The New York State Report Card Accountability and Overview Report 2006 – 07. (2007, September 1). Retrieved from New York State Testing and Accountability Reporting Tool:

<http://www.nystart.gov/publicweb-external/2008statewideAOR.pdf>

Title VI of the Civil Rights Act of 1964. (2008, July 25). Retrieved from U.S. Department of Justice: www.fhwa.dot.gov/civilrights/programs/tvi.htm

TPCB Peer Report: Low Literacy and Limited English Proficiency Populations, Atlanta, GA. (2004, May 5). Retrieved from Federal Highway Administration Resource Center:

<http://www.planning.dot.gov/Peer/Atlanta/atlanta>.

Transportation, N. D. (2004, January). *Project Development Manual*. Retrieved from Public Involvement Manual :
<https://www.nysdot.gov/divisions/engineering/design/dgab/dgab-repository/pdmapp2.pdf>

U.S. Department of Justice. (n.d.). Retrieved from I Speak Cards:
<http://www.justice.gov/>

Section XIV: Resources

A. Recommended Resources

Executive Order 13166: <http://www.lep.gov/13166/eolep.htm>

Website of the Federal Inter-agency Working Group on Limited English Proficiency <http://www.lep.gov/>
LEP Q&A (DOJ): <http://www.justice.gov/crt/lep/faqs/faqs.html>

***USDOT Federal Highway Administration (FHWA) Desk Reference Manual:** Limited English Proficiency Program & the Federal-Aid Highway Program (available by request)

USDOT Federal Transit Administration (FTA) Handbook for Public Transportation Providers: Office of Civil Rights, "Implementing the Department of Transportation's Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons; April 13, 2007: http://www.fta.dot.gov/documents/LEP_Handbook.doc

USDOT LEP Guidance (DOJ Policy Guidance Document):
Federal Register, June 18, 2002 (Volume 67, Number 117)
<http://www.justice.gov/crt/about/cor/Pubs/guidfr.php>

Memorandum for Heads of Departments and Agencies General Councils and Civil Rights Directors, October 2001.
<http://www.justice.gov/crt/about/cor/lep/Oct26Memorandum.php>

Department of Justice, Civil Rights Division, Coordination & Review Section
<http://www.usdoj.gov/crt/cor/13166.htm> and <http://www.justice.gov/crt/about/cor/>

Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons: <http://www.fta.dot.gov/documents/Newlepguidance.doc>

Census 2000 Brief on Language Use and English-Speaking Ability to Speak English
<http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>

**Please note that the FHWA Desk Reference Manual contains a complete list of authorities and resources regarding Limited English Proficiency beyond what are provided here.*

B. Additional Research & Reports

The Changing Face of the Empire State: Latinos, Portuguese and Brazilians in Upstate New York (2006) New York State Assembly Puerto Rican/Hispanic Task Force

<http://assembly.state.ny.us/comm/PRHisp/20060428/>

A Guide for using American Community Survey data for transportation planning (2007), National Cooperative Highway Research Program

http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_588.pdf

Federal Highway Administration. (2006). *How to Engage Low-Literacy and Limited-English-Proficiency Populations in Transportation Decision making*. Washington, DC.

<http://www.fhwa.dot.gov/hep/lowlim/webbook.pdf>

HOCTS Coordinated Human Services Transportation Plan (2008), Herkimer-Oneida Counties Transportation Study. <https://www.nysdot.gov/divisions/policy-and-strategy/public-trans-respository/6293A01BB7499086E0430A3DFC039086>

NYS Department of Transportation (2008). *Public Information Hearing For The Proposed NYSDOT NY Route 25 Safety and Mobility Improvement Project in Western Nassau County*. Albany, NY. <https://www.nysdot.gov/news/press-releases/2008/2008-09-151>

Proximity One, Texas LEP Analysis by Warren Glimpse – great case study!

<http://www.proximityone.com/elp.htm>

The Town that Loves Refugees (2005), UN High Commissioner for Refugees

<http://www.unhcr.org/publ/PUBL/426f4c772.pdf>

U.S. Department of Justice (2005). *Limited English Proficiency: What Federal Agencies and Federally Assisted Programs Should Know About Providing Services to LEP Individuals*. Washington, DC.

http://www.lep.gov/resources/lep_aug2005.pdf

U.S. Department of Justice (2005) LEP Brochure

http://www.lep.gov/resources/lep_aug2005.pdf

Upstate's Recent Arrivals (2008), University at Buffalo Regional Institute

http://regional-institute.buffalo.edu/Includes/UserDownloads/RecentArrivals_1_08.pdf

Zitowsky, R. (2008). *Mohawk Valley - Utica*. Retrieved September 19, 2008, from

<http://www.albany.edu/~rz436852/lep/utica.htm>

Context Sensitive Solutions

http://axim22.nysdot.private:7779/portal/page?_pageid=39,380990,39_381017&_dad=portal&_schema=PORTAL

Title VI: http://www.fhwa.dot.gov/environment/title_vi.htm

Title VII: <http://www.eeoc.gov/laws/statutes/titlevii.cfm> See also page 3-2 of the FHWA LEP Desk Reference Manual for examples of populations likely to include LEP persons who are served or encountered by the DOT recipients.

XV. LEP Contacts

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IntraDOT:

http://axim22.nysdot.private:7779/portal/page?_pageid=39,359510,39_390171:39_1856620:39_1856645&dad=portal&schema=PORTAL

Website:

<https://www.nysdot.gov/main/business-center/civil-rights/general-info> (under revision)