

# Limited English Proficiency Plan of the Memphis Urban Area Metropolitan Planning Organization

## Introduction

The Memphis Urban Area Metropolitan Planning Organization (MPO) is responsible for continual, cooperative, and comprehensive transportation planning in the MPO planning area. This planning process guides the use of federal and state dollars spent on existing and future transportation projects or programs, and the Limited English Proficiency (LEP) Plan plays an integral role in the process. This document will detail the LEP Plan, developed in conjunction with best practice standards for public involvement.

## LEP Guiding Principle

On August 11, 2000, President William J. Clinton signed Executive Order 13166, one of the goals of which is to improve the accessibility of services to eligible LEP persons. E.O. 13166 requires any agency receiving federal funds to examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services without unduly burdening the fundamental mission of the agency. To assist agencies with this endeavor, the Department of Justice 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, recipient agencies must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Executive Order 13166 stated that individuals who do not speak English well and who have a limited ability to read, write, speak, or understand English are entitled to language assistance under Title VI of the *Civil Rights Act of 1964* with respect to a particular type of service, benefit, or encounter. It reads in part:

*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.*

Not only are all federal agencies required to develop LEP plans as a condition of receiving federal financial assistance; recipients must also comply with Title VI and LEP guidelines of the federal agency from which funds are provided.

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of federal funds include state and local agencies, nonprofits, and other organizations and Title VI covers a recipient's entire program or operation. Simply put, any organization that receives federal financial assistance is required to follow this Executive Order.

In accordance with the Executive Order, the U.S. Department of Transportation (DOT) published **Policy Guidance Concerning Recipient's Responsibilities to Limited English Proficient (LEP) Persons** in the December 14, 2005 Federal Register. The guidance explicitly identifies MPOs as organizations that must follow this guidance:

The guidance applies to all DOT funding recipients, which include state departments of transportation, state motor vehicle administrations, airport operators, metropolitan planning organizations, and regional, state, and local transit operators, among many others. Coverage extends to a recipient’s entire program or activity, i.e., to all parts of a recipient’s operations. This is true even if only one part of the recipient receives the Federal assistance. For example, if DOT provides assistance to a state department of transportation to rehabilitate a particular highway on the National Highway System, all of the operations of the entire state department of transportation—not just the particular highway program or project – are covered by the DOT guidance.

## Laws and Policies Guiding Limited English Proficiency Plans

According to federal regulations, the Memphis MPO’s *LEP Plan* will be evaluated by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) as a part of the Memphis MPO’s regular federal certification review. The following matrix illustrates the laws, policies and considerations pertinent to the *LEP Plan* and the MPO review:

Title VI of the Civil Rights Act of 1964	Limited English Proficiency Executive Order 13166
Federal Law	Federal Policy
Enacted in 1964	Enacted in August 2000
Considers all persons	Considers eligible population
Contains monitoring and oversight compliance review requirements	Contains monitoring and oversight compliance review requirements
Factor criteria is required, no numerical or percentage thresholds	Factor criteria is required, no numerical or percentage thresholds
Provides protection on the basis of race, color, and national origin	Provides protection on the basis of national origin
Focuses on eliminating discrimination in federally funded programs	Focuses on providing LEP persons with meaningful access to services using four factor criteria
<i>Annual Accomplishment and Upcoming Goals</i> Report to FHWA	<i>Annual Accomplishment and Upcoming Goals</i> Report to FHWA

The intent of this **Limited English Proficiency (LEP) Plan** is to ensure that residents in the Memphis MPO study area that do not speak or read English proficiently have access to the planning process and information published by the Memphis MPO. The Memphis MPO shall provide multilingual publications and documents and/or interpretation at meetings or events to the degree that funding permits based on current laws and regulations.

### Who Is a Limited English Proficient (LEP) Individual?

The United States Census Bureau defines an LEP individual as a person who does not speak English as their primary language and who has a limited ability in reading, writing, speaking, or understanding English “not well” or “not at all”.

### How Does a Recipient Determine the Extent of Its Obligation to Provide LEP Services?

As a recipient of federal funding, the Memphis MPO must take reasonable steps to ensure meaningful access to the information and services it provides. According to the guiding policy there are four factors to consider in determining “reasonable steps:”

- Factor 1: The number and proportion of LEP persons in the eligible service area;

- Factor 2: The frequency with which LEP persons encounter Memphis MPO programs;
- Factor 3: The importance of the service provided by Memphis MPO programs;
- Factor 4: The resources available and overall cost to the Memphis MPO.

The policy gives recipients of federal funds substantial flexibility in determining what language assistance is appropriate based on a local assessment of the four factors listed above. The following is an assessment of need in the Memphis MPO study area in relation to the four factors and the transportation planning process.

## MPO LEP Assessment

### Factor 1: The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

In an effort to determine the profile of LEP persons the Memphis MPO reviews census data to measure the location and number of individuals within the study area that may be affected by the transportation planning process and/or beneficiaries of programs, activities, or services. Tables 1 and 2 on the following pages display the primary language spoken and number of individuals that are LEP.

For our planning purposes, we are considering people that speak English “not well” or “not at all” and only the top four language groups are included in the analysis.

Table 1, derived from the 2000 US Census, shows the number and percent of persons who are age five (5) and older, with regard to their English language skills, for the cities and the unincorporated portions of the Counties within the Memphis MPO study area. As indicated, 8.4% of the Memphis MPO area population is not proficient in English. Nearly 90% of LEP persons within the Memphis MPO study area reside in Shelby County, Tennessee, with the remaining 10% residing in DeSoto County, Mississippi. A small percentage of LEP persons within the Memphis MPO study area reside in Fayette County, Tennessee.

Jurisdiction	Total Population 5 Years and Older	Number of LEP Persons (% of total LEP Population)	LEP Percentage of Total Population (by County)
Shelby County, TN	862,314	76,745 (89.7%)	8.90%
Desoto County, MS	147,537	8,704 (10.1%)	5.90%
Fayette County, TN	3,650	139 (0.2%)	3.80%
Bradensville, TN	261	2	0.80%
Gallaway, TN	538	37	6.90%
Hickory Wythe, TN	2,308	66	2.90%
Piperton, TN	543	34	6.30%
<b>Total MPO Area (includes all cities and unincorporated county)</b>	<b>1,013,501</b>	<b>85,588</b>	<b>8.40%</b>

Spanish speakers comprise the largest concentration of LEP individuals in the Memphis MPO’s study area, approximately 5% of the total MPO population. The second most common language group of the area’s LEP populations is Asian and Pacific Islander languages (Chinese, Vietnamese, Thai, Laotian, Korean and Japanese), representing 1.3%, followed by Indo-European languages (Dutch, Italian, Portuguese, Russian, French or German) at 1.2%, and 0.8% speaking “other” languages at home. Table 2, shows the number of LEP persons and percent of the total Memphis MPO population by language spoken at the individual’s home.

Table 2: Language Spoken at Home by LEP Persons – MPO Study Area 2000 Census of Population and Housing US Census Bureau				
LEP Persons	Spanish Language	Indo-European Languages	Asian & Pacific Islander Languages	Other Languages
Total 5 Years of Age and Older	50,701	12,567	14,126	7,760
Percentage of Total MPO Population	5.00%	1.20%	1.30%	0.80%

**Factor 2:** *The Frequency with Which LEP Individuals May Come in Contact With Memphis MPO Programs, Activities, or Services*

The LEP population in this region is expanding, which will increase the probability of future contact with the transportation planning process. To date, no requests have been made by either individuals or groups directly to the MPO for Spanish or other language interpreters or publications. The MPO currently provides Spanish version publications.

**Factor 3:** *The Nature and Importance of the Program, Activity, or Service Provided by the Memphis MPO*

Memphis MPO programs use federal funds to plan for future transportation projects, and therefore do not include any direct service or program that requires vital, immediate or emergency assistance, such as medical treatment or services for basic needs (like food or shelter). Involvement by any citizen with the Memphis MPO or its committees is on a voluntary basis.

However, the Memphis MPO must ensure that all segments of the population, including LEP persons, have been involved or have had the opportunity to be involved in the transportation planning process to be consistent with the goal of the Federal Environmental Justice program and policy.

The impact of proposed transportation investments on underserved and underrepresented population groups is part of the evaluation process in use of federal funds in four (4) major areas for the MPO:

- The biennial **Unified Planning Work Program (UPWP)**
- The four year **Transportation Improvement Program (TIP)**
- The **Long Range Transportation Plan (LRTP)**, covering 20+ years
- The **Coordinated Human Services Plan**

Public involvement is a priority consideration in Memphis MPO plans, studies and programs. The impacts of transportation improvements resulting from these planning activities have an impact on all residents. Understanding and continued involvement are encouraged throughout the process. The Memphis MPO is concerned with input from all stakeholders, and every effort is taken to make the planning process as inclusive as possible as prescribed in the Memphis MPO Public Participation Plan (PPP).

As a result of the long range transportation planning process, selected projects receive approval for federal funding and progress towards project planning and construction under the responsibility of local jurisdictions or state transportation agencies. These state and local organizations have their own policies to ensure LEP individuals can participate in the process that shapes where, how and when a specific transportation project is implemented.

#### **Factor 4: The Resources Available and Overall Cost to the Memphis MPO**

Given the size of the LEP population in the Memphis MPO area and current financial constraints, full multi-language translations of large transportation plan documents and maps is not considered as well as warranted at this time. However, continued growth of the Memphis MPO area and its Spanish-speaking population makes offering Spanish translations a sound community investment.

As a result, the Memphis MPO make available in Spanish executive summaries for the *Long Range Transportation Plan*, the *Transportation Improvement Program*, the *Public Participation Plan*, and other key documents. To accommodate the cost, these summaries may be presented in alternative formats, such as brochures or newsletters, which are designed to capture all of the significant points of the full document. The Memphis MPO will continue efforts to collaborate with state and local agencies to provide language translation and interpretation services when practical and in consideration of the funding available. The translation of these documents will begin after the final English version has been completed. Spanish language outreach materials from organizations such as federal, state, and local transportation agencies will be used when possible.

#### **Safe Harbor Stipulation**

Federal law provides a “safe harbor” stipulation so recipients of federal funding can ensure compliance with their obligation to provide written translations in languages other than English with greater certainty. 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. Failure to provide written translations under the circumstances does not mean there is noncompliance, but rather provides for recipients a guide for greater certainty of compliance in accordance with the four factor analysis.

Compliance with written translation obligations under “safe harbor” includes providing written translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000 persons, whichever is less, of eligible persons served or likely to be affected. Translation can also be provided orally. The “safe harbor” provision applies to the translation of written documents only. It does not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and reasonable to provide.

#### **Providing Notice to LEP Persons**

US DOT guidance indicates that once an agency has decided, based on the four factors, to provide language services, it is important that the recipient notify LEP persons of services available free of charge in a language the LEP persons would understand. Example methods for notification include:

1. Signage that indicates when free language assistance is available with advance notice;
2. Stating in outreach documents that language services are available;
3. Working with community-based organizations and other stakeholders to inform LEP individuals of MPO services and the availability of language assistance;
4. Using automated telephone voice mail or menu to provide information about available language assistance services;

5. Including notices in local newspapers in languages other than English;
6. Providing notices on non-English-language radio and television about MPO services and the availability of language assistance; and
7. Providing presentations and/or notices at schools and community based organizations (CBO).

The Memphis MPO will publicize the availability of Spanish interpreter services, free of charge, at least five (5) days prior to MPO Board and Committee meetings, workshops, forums or events which will be noticed on the MPO website, in meeting notices (packets), and using the following additional tools as appropriate:

- Signage
- Public outreach materials
- Community-based organizations
- Local newspapers
- Desoto, Fayette and Shelby Counties Library System

The Memphis MPO defines an interpreter as a person who translates spoken language orally, as opposed to a translator, who translates written language and transfers the meaning of written text from one language into another.

The Memphis MPO currently provides notices for meetings in *La Prensa Latina*, a Spanish-language newspaper serving the Hispanic community throughout the MPO study area. As covered under Title VI requirements for nondiscrimination, at each meeting, the MPO will provide Title VI material and include this material in an alternative language when applicable.

## Language Assistance

As noted previously in this document, the Memphis MPO provides Executive Summaries for key documents available in Spanish. Key documents include the Long Range Transportation Plan, the Transportation Improvement Program, the Public Participation Plan, and other major studies and plans produced by the MPO.

The Memphis MPO also offers translation services on its website through the Google™ Translate web service.

## MPO Staff Training

The Memphis MPO will incorporate the LEP Plan in the Title VI Report. In order to establish meaningful access to information and services for LEP individuals, the MPO will train its employees to assist in person, and /or by telephone, LEP individuals who request assistance.