



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PLAN OF THE ADMINISTRATIVE CONFERENCE OF THE U.S. FOR COMPLIANCE WITH EXECUTIVE ORDER NO. 13166 (IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY)

[Last Updated November 6, 2023]

Purpose

The purpose of this document is to provide ACUS staff with guidance regarding communicating with persons with LEP, during the limited instances that ACUS interacts with persons with LEP.

Summary

Executive Order No. 13166 requires that federal agencies ensure meaningful access to their programs and benefits for persons with limited English proficiency (LEP). The Administrative Conference of the U.S. (ACUS) is an independent agency whose principal mission is to recommend improvements to administrative procedure and process to the President, federal agencies, Congress, and the federal judiciary. ACUS accomplishes this mission by conducting research, formulating recommendations, spreading agency best practices, promoting information exchange, and sponsoring events and publications. ACUS is a micro agency with 18 authorized personnel positions that does not provide direct services or benefits to the public.

Consistent with its statutory authority and mission, ACUS promotes more effective public participation in rulemaking by federal administrative agencies and encourages these agencies to consider equitable public and private interests when they make decisions. ACUS has produced important recommendations and resources to help federal administrative agencies ensure that all people affected by the decisions of administrative agencies, including persons with LEP, can meaningfully participate in those agencies' processes for rulemaking, adjudication, licensing, and investigation.¹

In carrying out its programs, ACUS primarily engages with other entities and branches of the federal government, its members (50 government members, 40 public members, 10 council members who are appointed by the President, and one chair appointed by the President with Senate confirmation), its research consultants, its employees, and job applicants. ACUS employees (who must be U.S. citizens as requirement of federal service), members, and research consultants are all proficient in English because of the nature of the agency's work. Moreover, due to the agency's unique mission, size, and limited authority, ACUS's interactions with the public are extremely limited--not just persons with LEP, but also the general public. Finally, ACUS does not administer any grant or benefits programs and, therefore, is not subject to Title VI of the Civil Rights Act that requires agencies to develop LEP guidance for recipients.

¹ See Attachment A.

Introduction

Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," dated August 11, 2000 (65 F.R. 50121), requires each federal agency to "examine the services it provides and develop and implement a system by which persons with LEP can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency." The accompanying statement by the President, dated August 11, 2000, states that:

[A]gencies and recipients must take reasonable steps to provide meaningful access to their programs and activities, taking into account a variety of considerations. Among the factors to be considered is the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come into contact with the program, the nature and importance of the service provided by the program, and the available resources.

Definitions

- a. *Interpretation*. The act of listening, understanding, analyzing, and processing a spoken communication in one language (source language) and then faithfully orally rendering it into another spoken language (target language) while retaining the same meaning.
- b. *Limited English Proficiency (LEP)*. Describes individuals who do not speak English as their primary language and have a limited ability to read, write, speak, or understand English. Individuals/Persons with LEP may be competent in English for certain types of communication (e.g., speaking or understanding), but have limited proficiency in English in other areas (e.g., reading or writing). LEP designations are also context-specific; an individual may possess sufficient English language skills to function in one setting (e.g., conversing in English with coworkers), but these skills may be insufficient in other settings (e.g. addressing court proceedings). An individual who is D/HOH may also have limited proficiency in spoken or written English and may not be proficient in ASL or any other recognized sign language.
- c. *Language Assistance Services*. Oral and written language services used to provide individuals with LEP meaningful access to, and an equal opportunity to participate fully in, the services, activities, and other programs administered by ACUS.
- d. *Meaningful Access*. Language assistance that results in accurate, timely, and effective communication at no cost to the individual with LEP needing assistance. Meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English-proficient individuals.
- e. *Translation*. The process of converting written text from a source language into an equivalent written text in a target language as fully and accurately as possible while maintaining the style, tone, and intent of the text, while considering differences of culture and dialect.
- f. *Vital Document*. Paper or electronic written material that contains information that is critical for accessing a component's programs or activities or is required by law.

Individuals with LEP and a Disability

Individuals with LEP may also have a disability and are entitled to additional considerations in accordance with section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d). Section 508 requires agencies, during the procurement, development, maintenance, or use phases of ICT, to ensure that individuals with disabilities have access to and use of ICT information and data comparable to the access and use afforded to individuals without disabilities (i.e., “ICT accessibility”), unless an undue burden would be imposed on the agency. In the case of LEP and disability, ACUS is committed to providing resources for individuals of all abilities.

Analysis of Factors Underlying the ACUS LEP Plan

Factor 1: Number or Proportion of Persons with LEP in the Eligible Population²

ACUS's statutory responsibilities are broadly explained in the Summary section above. The agency brings together federal agencies and outside experts to make government work better by cooperatively studying mutual problems, exchanging information, and developing recommendations for action by the President, Congress, federal agencies, and the judiciary to improve the fairness, adequacy, and efficiency of federal agency rulemaking, adjudication, licensing, and investigation.

Although most agency activities are public and include opportunities for public input, the primary consumers of ACUS materials and programs are federal entities and experts in administrative law and allied disciplines.

Factor 2: Frequency of Contact with the Program³

In general, all public contacts with ACUS are made through its headquarters office in Washington, DC via: (a) telephone; (b) U.S. Mail; and (c) online (website and e-mail). In-person visits from the general public are virtually non-existent. ACUS opened in 2010, and since that time, few persons with LEP have sought to participate in agency programs (including public meetings) or request information produced by the agency. The only examples are: 1) the occasional LEP FOIA requester who may send a misdirected request (via the national FOIA portal, FOIA.gov) for non-agency records like passport or immigration records; and b) a foreign delegation (with their own interpreter) that visited in 2011 to learn more about the American system of administrative law and procedure.

² “[T]hose who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are possible and if so, have a plan of what to do if a LEP individual seeks service... This plan... may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.” “Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency,” Policy Guidance Document, Civil Rights Division, U.S. Department of Justice, 65 F. R. 50123, 50124-50125 (Aug. 16, 2000).

³ “If LEP individuals must access the [agency's] program or activity on a daily basis ... [an agency] has greater duties than if such contact is unpredictable or infrequent. [Agencies] should have the flexibility to tailor their services to those needs.” *Id.* at 50125.

Factor 3: Nature and Importance of the Program⁴

ACUS programs are not compulsory, and the agency has no enforcement authority. The agency provides important advice and outputs that relate to improving the efficiency, adequacy, and fairness of government procedures; but these activities do not have a crucial impact on the health or safety of the public.

Factor 4: Resources Available⁵

As a small agency with 18 authorized positions, an annual budget of approximately \$3.5 million, and limited opportunities to engage with the LEP population directly, it would be impractical and costly to implement comprehensive LEP measures such as hiring interpreters as employees or publishing sourcebooks and other materials (including ACUS's vital documents) in multiple languages. The agency relies on off-the-shelf tools designed to make its outputs more accessible to LEP individuals.

For example, for the few FOIA requests that are written in a foreign language, the staff uses translation software to respond. Anyone accessing the agency's website--which houses all of ACUS's vital documents, publications, recommendations, meeting agendas, etc.--can similarly use online translation tools that were not available when EO 13166 took effect. Should an individual with LEP visit our office in person, similar online tools can be used to translate via cell phone. ACUS has determined that these translation technology tools are adequate to provide meaningful access in most instances since the rare examples of foreign-language interactions in the past have been limited to common languages like Spanish (e.g., misdirected FOIA requests from Spanish-speaking individuals seeking immigration information or other records that are not agency records).

ACUS's overall goal/policy is to ensure that anyone who needs translation can access our program information. This goal is achievable with machine technology and is the most efficient and effective use of the agency's very limited resources.

⁴ "More affirmative steps must be taken in programs where the denial or delay of access may, have life or death implications than in programs that are not as crucial to one's day-to-day existence. A decision by a Federal, state, or local entity to make an activity compulsory...serves as strong evidence of the program's importance." *Id.*

⁵ "[A] small [agency] with limited resources may not have to take the same steps as a larger [agency] to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual's day-to-day existence." *Id.*

ACUS PLAN FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY WHO CONTACT THE AGENCY

ACUS's practice of using online tools for translation services has proven to be an effective means of communication during the rare occasions when LEP individuals have contacted ACUS. ACUS will continue to rely on these tools in the future. For situations in which online tools prove ineffective (e.g., an in-person public meeting in which an LEP individual is participating), ACUS will work with the General Services Administration, as appropriate and feasible, to secure translator services.

ACUS's policy is to provide a prompt and courteous response to all who contact the agency. To that end, all ACUS personnel have been informed of the need to provide meaningful access to persons with limited English proficiency in compliance with Executive Order 13166. In addition, ACUS will ensure that any contractors who provide LEP services such as translation or interpretation meet government-wide quality standards.

ACUS will periodically review any contacts with any LEP individuals to determine the types and frequency of contacts, the language used, and how the contacts were handled. The information will be used to determine whether additional efforts are needed. If so, ACUS will update this plan and submit it to DOJ.

This plan, and any updates, will be maintained on ACUS's website at <https://www.acus.gov/document/limited-english-proficiency-lep-plan> and the government-wide LEP portal at <https://www.LEP.gov>. Questions about this plan or LEP services offered by ACUS should be directed to www.acusinfo.gov.

**ATTACHMENT A: SELECTED ACUS PROJECTS AND GUIDANCE
RELATED TO LIMITED ENGLISH PROFICIENCY**

Click on each title below to access the linked document.

**ACUS-DOJ Report on Promising Practices for Language Access in
Federal Administrative Hearings and Proceedings** (also available on
DOJ's website)

ACUS Recommendation 2023-2, Virtual Public Engagement in Rulemaking

ACUS Recommendation 2023-4, Online Processes in Agency Adjudication

Model Adjudication Rules (*See* Rules 114 and 115)

ACUS Recommendation 2011-8, Agency Innovations in E-Rulemaking (*See* LEP
recommendation in numbered paragraph 6)

ACUS-funded Report on **Best Practices for Using Video Teleconferencing for
Hearings and Related Proceedings**

White House Legal Aid Interagency Roundtable Report (2022)