**MEMORANDUM**

To: All CEOs

From: NRECA

Date: December 8, 2016

Re: **Rural Development Limited English Proficiency (LEP)**

On July 28, 2016, RUS borrowers received an email from USDA notifying them of their obligation to comply with Executive Order 13166, which requires that all government programs ensure that members of the public with Limited-English proficiency (LEP) have reasonable access to services supported by the Federal government. Unfortunately, USDA’s correspondence has created unnecessary confusion. This memo seeks to provide some clarity.

**Executive Summary**

* The LEP obligation is not new. It arises from the 1964 Civil Rights Act, as interpreted by an Executive Order issued in 2000.
* Cooperatives are not required to conduct an LEP evaluation and develop an LEP plan. They are required to provide the public with meaningful access to service.
* RUS recommends that cooperatives conduct an LEP evaluation and put in place an LEP plan as the best means of ensuring the public has meaningful access and of demonstrating that the cooperative has made a good faith effort to comply with its obligations under the Civil Rights Act.
* RUS offers detailed recommendations for how to conduct an analysis and how to determine the elements of an LEP.
* NRECA can offer additional assistance. If you have any questions on census data, please contact Russell Tucker at [russell.tucker@nreca.coop](mailto:russell.tucker@nreca.coop) or via phone at (703) 907-5823. All other LEP questions should be directed to Russell Wasson at [russell.wasson@nreca.coop](mailto:russell.wasson@nreca.coop) or via phone at (703) 402-2510.

# Background

The obligation to serve members with LEP goes back at least to Section 601 of Title VI of the Civil Rights Act of 1964. It arises from requirements in Title VI and its implementing regulations 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, including loans and grants such as FFB financing, REDLEG, EECLIP, RESPA, etc.

Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” reprinted at 65 FR 50121 (August 16, 2000), directed each Federal agency to examine the services it provides and to develop and implement a system by which LEP persons can meaningfully access those services.

Because of the confusion caused by USDA’s emails, NRECA has met several times with USDA and RUS to better understand RUS borrowers’ obligations and to provide greater clarity to our members. We learned the following:

* RUS borrowers are not required per se to conduct an analysis of their systems or to have a formal LEP plan. They are required to provide LEP consumers with meaningful access to service, something most cooperatives have done as a matter of course. By conducting an analysis of their system and developing an LEP plan, however, cooperatives can better ensure that they are meeting the needs of their LEP members.
* If an RUS borrower fails to provide meaningful access, a consumer has two options. He or she may file a civil rights action against the cooperative under Title VI. Or, he or she may file a complaint with RUS and USDA’s Office of Civil Rights.
* If a consumer files an action or files a complaint, the fact that a cooperative has conducted an analysis of their system and developed and implemented an LEP plan can serve as strong evidence that the cooperative has taken reasonable actions to comply with the LEP obligation.
* If a consumer files a complaint with RUS or USDA Office of Civil Rights and the cooperative has been found not to have provided meaningful access, it will be asked at that time to analyze its system and develop and implement an LEP plan.
* The LEP requirement does not apply to G&Ts so long as the G&Ts provide service only to their members or other wholesale customers that are not LEP.
* The LEP requirement does not apply to CFC or CoBank, except perhaps with respect to loans to Puerto Rico, because they do not serve an LEP population.
* Electric cooperatives receiving REDLEG loans or grants have no obligation to ensure their funding recipients comply with LEP requirements unless the recipient is in the business of public accommodation, such as a hotel or restaurant. If the recipient of REDLEG funds from the electric cooperative is involved in a public accommodation activity, the electric cooperative should include a covenant in their loan or grant documents requiring the recipient to comply with all applicable federal laws, including the Civil Rights Act of 1964.
* Electric cooperatives re-lending funds to consumers for energy efficiency improvements to their facilities do not have an obligation to ensure that loan recipients comply with LEP.
* RUS General Field Representatives will be asking about LEP as part of their normal review of Civil Rights compliance when they meet with RUS borrowers or grant recipients.

# The Four Factor Approach – How RUS Determines if LEP Services Are Needed

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

**Step 1: Prior Experience with LEP Individuals**

* + Contact with existing customer base
  + Calls to customer service telephone line for program services
  + Visits to program offices
  + Access to website
  + Attendance at community meetings or public hearings hosted through the RD funded program

**Step 2: Data from the U.S. Census Bureau**

* + Become familiar with data from the U.S. Census Bureau. Data from the 2010 Census and the Census Bureau’s American Community Survey (ACS) is currently available at [www.census.gov](http://www.census.gov).

**Step 3: Identify the Boundaries of the Area Served**

* + Identify the geographic boundaries of the area served by the RD funded program and obtain the census data on the LEP populations in that area.

**Step 4: Analyze the Data Collected**

* + Using the downloaded census data, determine the number and proportion of LEP persons in the RD funded program service area, as well as the languages most frequently spoken by LEP persons. The 2011 Language Mapper Tool[[1]](#footnote-1) can also be used to provide a visual estimate of the number and proportion of LEP persons. RD recommends that agencies use 2013 ACS Census data to identify the proportion of LEP persons.
  + RD recommends conducting community outreach to organizations that work with LEP populations. Community organizations may be able to provide you with information that is not included in the Census, such as information on specific languages spoken by the LEP population, population trends, and what services are most frequently sought by the LEP population.
  + In order to help members meet their LEP obligations, NRECA staff is working to assist members with evaluation of census data to determine the number of LEP individuals in their service territory. NRECA is also working with RUS to determine the degree to which we can help make nationwide vital document translation services and interpretation services available to our members. Once we know more, we will send out further information.
* **Factor 2: The Frequency with which LEP Individuals Come into Contact with the RD Funded Programs, Activities, and Services**
  + Review the relevant programs, activities, and services provided as well as results from community organizations. While reviewing prior experiences with LEP persons in Factor 1 Step 1, compile a list of the programs, activities, and services with which LEP persons most frequently come in contact.
  + Another way to obtain relevant information is to conduct face-to-face meetings, such as focus groups or individual interviews, with LEP individuals.
* **Factor 3: The Importance to LEP Persons of the RD Program, Activities and Services**
  + Identify the most critical services of the RD funded program. The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed.
  + Review input from community organizations and LEP persons. Contact with community organizations serving LEP persons, as well as contact with LEP persons themselves, should provide information on the importance of the types of services provided to LEP populations.
* **Factor 4: The Resources Available to the Recipient and Costs**
  + Inventory the language assistance services and measures currently provided, along with the associated costs. This last step in the four-factor analysis will weigh the demand for language assistance against current and projected financial and personnel resources.
  + To the extent practical, consider what percentage of capital and/or operating budget could be devoted to additional language assistance expenses, if needed, and whether the budget for these expenses will remain stable over time or whether it may be subject to reduction. Also, estimate the cost of providing new or additional measures by obtaining price quotes from translating and interpreting firms or by consulting with other community-based agencies that have implemented similar assistance measures.
  + Consider cost effective practices for providing language services. Evaluate access to language assistance products developed and paid for by local, regional, or state government agencies and the utilization of any bilingual staff that could provide language assistance on an ad hoc or regular basis. These resources should be inventoried and taken into consideration as part of the assessment of total resources available.
* **Monitoring/Evaluation**
  + Monitoring and evaluation of a recipient’s compliance with LEP requirements will be reviewed in accordance with RD Instruction 1901-E, “Civil Rights Compliance Requirements.” Compliance reviews will be conducted until the loan is paid in full or otherwise satisfied, sold through the sale of Agency assets, or until the final advance of grant funds.
* **Subsequent Reviews**
  + Subsequent reviews will be conducted at intervals no less than 90 days or more than three years after the previous Civil Rights compliance review.
* **Implementing the Language Access Plan (LAP)** 
  + Using the four-factor analysis results, RD recipients must develop a Language Access Plan (LAP) and an implementation plan to address the needs of the LEP populations they serve. LAP implementation plans must include the following six elements:
    1. **Identifying LEP individuals who need language assistance**
    2. **Provisions for language assistance measures**
    3. **Staff training**
    4. **Notices to identified LEP persons or populations**
    5. **Vital document translations**
    6. **Means to monitor and update the plan**
* **Safe Harbor for Translation of Vital Documents and Interpretive Services**
  + RD recipients may use the **“Safe Harbor”** provision for translation of vital written materials found in the USDA LEP Guidance. The provision outlines the circumstances that can provide a “Safe Harbor” for compliance with LEP requirements. If a recipient provides written language under the conditions identified in the below table, such action will be considered strong evidence of compliance with written translation obligations under Title VI:
    - **1,000 or more in the eligible population in the market area or among current beneficiaries *Translated vital documents***
    - **5% or more of the eligible population or beneficiaries and 50 or more in number *Translated vital documents***
    - **5% or more of the eligible population or beneficiaries and fewer than 50 in number *Translated written notice of right to receive free oral interpretation of documents***
    - **Less than 5% of the eligible population or beneficiaries and less than 1,000 in number *No written translation is required***
* Once a recipient has decided, based on the four-factor analysis, to provide language services, it is important the recipient notify LEP persons of services available free of charge. Recipients should provide such notice in languages LEP persons would understand.
  + Posting signs in intake areas and other entry points. This is important so that LEP persons can learn how to access language services at initial points of contact.
  + Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be “tagged” onto the front of common documents.
  + Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients’ services, including the availability of language assistance services.
  + Using an automated telephone voice mail attendant or menu system. The system could be in the most common languages encountered. It should provide information about available language assistance services and how to obtain them.
  + Including notices in local newspapers in languages other than English, as well as established community papers published in languages other than English.
  + Providing notices on non-English language radio and television stations about the available language assistance services and how to obtain them.
  + Providing presentations and/or notices at schools and religious organizations.
* **Monitoring and Updating the Language Access Plan** 
  + To measure and maintain the effectiveness of a language access plan, recipients shall monitor, evaluate and update, as needed, the plan’s policies and procedures.
* **Monitoring reviews shall evaluate changes in:**
  + Current LEP populations in the service area or population affected or encountered.
  + Frequency of encounters with LEP language groups.
  + Nature and importance of activities to LEP persons.
  + Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
  + Whether existing assistance is meeting the needs of LEP persons?
  + **Whether staff is aware of and understands the LEP plan and how to implement it?**
  + **Whether identified sources for assistance are still available and viable?**

1. [https://www.census.gov/hhes/socdemo/language/data/language\_map.html](https://www.census.gov/hhes/socdemo/language/data/language_map.html%20) [↑](#footnote-ref-1)