

APPENDIX 3 -- NYMTC LANGUAGE ACCESS OPERATING PROCEDURES

OVERVIEW

Executive Order 13166 on Improving Access to Services for Persons with Limited English Proficiency (LEP), directs federal agencies and recipients of federal funding to provide meaningful language access to their services. Agencies receiving federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency.

In compliance with guidance and rules issued by United States Department of Transportation (USDOT) to its recipients, the New York Metropolitan Transportation Council (NYMTC) has developed these Language Access Operating Procedures to identify reasonable steps to provide meaningful access and language assistance for LEP persons to its programs and activities at no additional cost. In developing these procedures, we have understood Limited English Proficiency individuals to be persons who do not speak English as their primary language and who have a limited ability to read, speak, write or understand English. In addition, NYMTC reassesses its language needs frequently in an as needed basis.

NYMTC's Language Access Operating Procedures apply to two distinct levels of its programs and activities:

- 1) The general distribution or availability of public information related to federally mandated regional planning products and analyses that affect the entire NYMTC planning area; or
- 2) The spatially specific distribution or availability of public information related to federally funded studies and planning projects undertaken by NYMTC or by its member agencies that affect specific parts of NYMTC's planning area.

The scope of the Language Access Operating Procedures is determined in large part through a "four-factor analysis", which includes the following:

- 1) The number and proportion of LEP persons in the planning area or spatially specific study area;
- 2) The frequency with which LEP individuals come in contact with NYMTC's programs and activities;
- 3) The nature and importance of the programs and activities provided by NYMTC to people's lives.
- 4) The resources to be employed by the NYMTC for language access services.

LEP PERSONS IN THE NYMTC PLANNING AREA

The USDOT LEP guidance states that recipients must provide "meaningful access" to LEP individuals where oral language services are needed and are reasonable. For translations, the guidance provides "safe harbor" rules to help recipients make good decisions.¹

USDOT has adopted the Department of Justice's Safe Harbor Provision, which outlines circumstances that can provide a "safe harbor" regarding translation of written materials for LEP populations. The Safe Harbor Provision stipulates that, if an organization provides written translation of vital documents for each eligible LEP language group that constitutes five percent, or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered, then such action will be considered strong evidence of compliance with the organization's written translation obligations.

The U.S. Census Bureau's American Community Survey (ACS) identifies the size and proportion of LEP populations in the NYMTC planning area. The ACS defines people five years and older who identified themselves as speaking English less than "very well" as LEP individuals.

¹ Title VI limited English proficiency data collection walkthrough - Civil rights | Federal highway administration. (2022, January 26). Federal Highway Administration. https://www.fhwa.dot.gov/civilrights/programs/title_vi/lep_fourfactor.cfm

Table 1 below presents Safe Harbor languages and LEP populations in NYMTC's planning area categorized by language spoken of individuals older than age five years and over who speak another language at home. The data reveal an estimated 2.2 million LEP persons in the NYMTC planning area, of which just over 98% speak Safe Harbor languages.

Table 1: Safe Harbor Languages in the NYMTC Planning Area

Language Spoken	LEP Speakers	% Total LEP	Language Spoken	LEP Speakers	% Total LEP
Spanish	1,118,785	50.56%	Gujarati	4,832	0.22%
Chinese	253,326	11.45%	Nepali	4,656	0.21%
Russian	112,891	5.10%	Min Nan Chinese	4,504	0.20%
Bengali	61,935	2.80%	Thai	4,330	0.20%
Cantonese	60,047	2.71%	Burmese	4,089	0.18%
Haitian	53,477	2.42%	Romanian	3,612	0.16%
Korean	50,792	2.30%	German	3,377	0.15%
Yiddish	49,711	2.25%	Tibetan	3,362	0.15%
Mandarin	41,114	1.86%	Croatian	2,710	0.12%
Italian	37,944	1.71%	Fulah	2,439	0.11%
Arabic	31,898	1.44%	Hungarian	2,392	0.11%
Polish	30,205	1.36%	Pashto	2,359	0.11%
Urdu	26,751	1.21%	Yoruba	2,293	0.10%
French	26,240	1.19%	Pakistan N.E.C.	2,133	0.10%
Albanian	16,551	0.75%	Serbian	2,092	0.09%
Greek	15,508	0.70%	Jamaican Creole	2,072	0.09%
Hindi	15,220	0.69%	Armenian	2,065	0.09%
Japanese	14,076	0.64%	Tamil	1,984	0.09%
Punjabi	14,009	0.63%	Bosnian	1,720	0.08%
Tagalog	12,839	0.58%	India N.E.C.	1,672	0.08%
Portuguese	11,638	0.53%	Indonesian	1,595	0.07%
Hebrew	9,488	0.43%	Igbo	1,481	0.07%
Vietnamese	7,988	0.36%	Serbocroatian	1,431	0.06%
Malayalam	7,474	0.34%	Khmer	1,380	0.06%
Ukrainian	7,297	0.33%	Sinhala	1,335	0.06%
Akan (incl. Twi)	6,261	0.28%	Bulgarian	1,245	0.06%
Turkish	6,180	0.28%	Telugu	1,117	0.05%
Filipino	6,135	0.28%	Wolof	1,060	0.05%
Farsi	6,073	0.27%	TOTAL ALL LEP	2,212,889	98.57%

Source: U.S. Census, 2015-2019 5 Year American Community Survey (ACS) and Public Use Microdata Sample (PUMS)

Under the Safe Harbor Provision, NYMTC provides translation of written materials related to its planning products and analyses into languages that meet or exceed the established five percent or 1,000-person threshold. As seen in Table 1, 57 Safe Harbor languages meet or exceed this threshold in the NYMTC planning area, while roughly 67 percent of the total LEP population speaks one of three languages: Spanish, Chinese, or Russian. These languages each exceed five percent of the total LEP population and therefore, for purposes of these operating procedures, these three languages are considered primary LEP languages in NYMTC's planning area, while the remaining LEP languages are regarded as secondary LEP languages.

Federal regulations mandate that Metropolitan Planning Organizations (MPOs) such as NYMTC produce three required products and two analyses, along with a Public Involvement Plan. These products guide the long-, medium- and short-term transportation planning activities of the region and confer eligibility for federal transportation funding. NYMTC's planning area includes people that are LEP and may require additional services to participate fully in the planning process. Public input is an important consideration for NYMTC as it undertakes its planning responsibilities.

PROVISION OF LANGUAGE ASSISTANCE

NYMTC will provide ongoing language assistance for LEP populations in the planning area as a whole and in specific study areas for planning studies. Instructions explaining the language assistance will be publicly available and accessible to the LEP populations.

Written Translation of Vital Documents

NYMTC identifies the following as vital documents for translation:

- Title VI/ Non-Discrimination Notice to the Public (Appendix 1);
- Title VI/Non-Discrimination Complaint Form (Appendix 2);
- Display ads in ethnic newspapers and media;
- Public hearing/meeting notices with information on free language assistance;
- Other documents and media that allow LEP persons to participate in NYMTC's programs and activities, including public notices, surveys, and polls; and
- The Title VI/Non-Discrimination Program document.
- Summaries of NYMTC's federally mandated regional planning products and analyses; specifically:
 - Regional Transportation Plan;
 - Transportation Improvement Program and related Annual Listing of Obligated Projects;
 - Unified Planning Work Program;
 - Congestion Management Process Status Report;
 - Transportation Conformity Determination; and
 - Public Involvement Plan.

Summaries of the regional planning products and analyses, along with the other vital documents previously listed in their entirety, will be translated to the languages that meet or exceed the established five percent or 1,000-person threshold as defined in Table 1, in the following manner:

- Drafts and final versions of executive summaries and final versions of the other vital documents that

are released publicly will be issued in English and the three primary LEP languages as shown in Table 1.

- For the secondary LEP language that total more than 1,000 speakers but less than 5% of the total LEP population, the vital documents as described above can be translated on demand, as practical, into the secondary LEP languages using online open-source translation programs provided on the NYMTC website or upon written or verbal request to NYMTC.
- Other NYMTC documents will be translated in whole or in part on demand for all LEP languages, as practical, using the online open-source translation programs provided on the NYMTC website or upon written or verbal request to NYMTC.

Website Language Assistance

Translation services are provided on the NYMTC website through online open-source translation programs, which can translate all the constituent website pages as well as the vital documents identified above. The translation program provides translation for the primary LEP languages and as many of the secondary languages as are provided through the program. Instructions on the use of the online open-source translation program will also be provided on the website.

Oral Interpretation Language Assistance

Designated public facing staff are provided language assistance training and tools to be prepared for potential encounters with LEP speakers, either in person, on the phone or online. Tools provided include Language Identification Tool signs and "I Speak" cards. Over the phone interpretation is provided on demand.

For meetings related to the regional transportation planning process and NYMTC's mandated planning products, NYMTC will advertise the availability of translation services prior to the meeting. Meeting announcements can be translated upon request or using the online open-source translation program available on the website.

Upon request at least 72 hours in advance, oral interpretation services in the primary LEP languages will be provided for NYMTC's public meetings. Requests American Sign Language (ASL) must be made five days in advance of the meeting.

The need to conduct public engagement virtually during the COVID-19 pandemic has resulted in expanded opportunities for virtual or hybrid virtual/in person public meetings and workshops. NYMTC meetings are held virtually on the online meeting platforms such as WebEx. Virtual attendees may request oral interpretation services or close captioning translation 72 hours in advance of the meeting.

The 7-1-1 N.Y. Relay Service is another service the public is notified about. Persons with a hearing or speech disability may use the Telecommunications Relay Service, via Telephone Text (TTY) or a or voice carry-over (VCO) phone may contact the 7-1-1 N.Y. Relay Service by dialing Dial 7-1-1 or 1-800-421-1220.

Public Notice of Availability of Language Assistance

NYMTC will provide public notice of availability of language assistance on an on-going basis through the following mechanisms:

- Information on the availability of language assistance will be maintained on the NYMTC website, along with instructions on how the assistance may be accessed.
- Brochures containing language assistance instructions will be made available at each public meeting offered by the organization and will be available in public areas of NYMTC's main offices.

- Language assistance brochures will also be distributed generally through NYMTC's distribution lists and through the distribution lists of other related organizations.
- Language assistance notices will be placed with local, non-English language media directed at LEP individuals and their languages.
- Language assistance information and instructions will be provided when contacting NYMTC's main phone number.

Frequency of Contact with LEP Populations

Contact with LEP populations most often occurs through online communications, such as through the website, emails, surveys, polls, and social media and media outlets geared towards LEP communities. NYMTC staff and members conduct outreach activities in communities with significant LEP populations and with organizations that involve LEP persons. This outreach is usually undertaken in the context of spatially specific planning studies.

Need for Services and Cost

NYMTC assessed its available resources that could be used for providing LEP assistance by reviewing the four-factor analysis. This included identifying the staff and volunteer language interpreters are readily available, how much a professional interpreter and translation service would cost, LEP contact with NYMTC programs and services, LEP Population in the NYMTC Planning area, and potential contact with the LEP Population in a study or project area, to determine which documents should be translated, examining which financial sources and free language sources could be used to provide assistance, and determine what level of staff training is needed.

MONITORING PROGRAM IMPLEMENTATION

NYMTC will monitor and update the Language Access Operating Procedures through the following information:

- Language access assistance provided through website downloads, use of online translation programs, requests for translated documents, retained translation services, calls to translation services and meetings at which translation services are provided.
- Complaints received regarding language acting as a barrier to accessing information and/or services.
- Consultation with NYMTC staff and members on encounters with LEP persons.
- Surveys and focus groups with LEP persons to evaluate the scale and effectiveness of language access services.

A Language Access Coordinator is designated to oversee NYMTCs Language Access Procedures. The coordinator will maintain:

- A list of oral interpreting and translation resources available to staff.
- Procedures for accessing each interpretation or translation service.
- A list of Professional Vendors.
- A list of Bilingual Volunteer Staff who are self-assessed in their language competency and when they are used.
- A record of oral interpreting services provided to LEP individuals at each encounter.
- A record of translated documents by Professional Vendors.

- Relevant new data for the planning area.

LANGUAGE ASSISTANCE FOR SPATIALLY SPECIFIC PROJECTS AND STUDIES

For spatially specific planning projects and studies funded through NYMTC's planning process, the project managers of these projects and studies will identify the LEP populations within the spatial boundaries of the project or study, define the Safe Harbor LEP languages of the area, identify vital documents for the project or study, and provide language services consistent with the procedures for the regional planning products and analyses, with the following customizations:

- Project managers will perform a Census analysis to identify the LEP populations within the spatially specific boundaries of the project as well as thresholds for language assistance. Oral, written, and website language assistance will be provided for the primary and secondary languages identified.
- Project managers will identify the vital documents related to the spatially specific project or study.
- Brochures or flyers about language assistance services (posted in public areas of the member's office as well as elsewhere in the member's service area).
- Signs posted about language assistance services (in public areas of the member's office as well as elsewhere in the member's service area).
- Local, non-English language media directed at LEP individuals and their languages.
- Community outreach informational handouts will be provided at public hearings.
- Notice of the language access services will be provided on the project or study website.

Project managers of spatially specific planning projects or studies that are funded through NYMTC's planning process must provide notice of availability of language assistance services under the Safe Harbor Provision.

For spatially specific planning projects and studies funded through NYMTC's planning process but managed by a NYMTC member agency, the member agency's Language Access policies will take precedence over NYMTC's Language Access Operating Procedures.

Meetings For Spatially Specific Planning Projects

The procedures for public meetings will be followed for public meetings related to spatially specific planning projects and studies funded through NYMTC's planning process.