



Transit Agency Compliance with Title VI: Limited English Proficiency Requirements

DETAILS

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TRANSIT COOPERATIVE RESEARCH PROGRAM

Sponsored by the Federal Transit Administration

Responsible Senior Program Officer: Gwen Chisholm-Smith

Research Results Digest 97

TRANSIT AGENCY COMPLIANCE WITH TITLE VI: LIMITED ENGLISH PROFICIENCY REQUIREMENTS

This digest summarizes the results of TCRP Project J-5, “Legal Aspects of Transit and Intermodal Transportation Programs,” Study Topic 11-03. The research was conducted by Jocelyn K. Waite, Esq., Waite & Associates.

OVERVIEW OF PROJECT PURPOSE AND OBJECTIVES

The 2000 Census shows that in the United States, 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language. The number of individuals who speak those languages has increased greatly since the time of the Census. Such individuals and others from outside the United States who have a limited ability to read, write, speak, or understand English are categorized as having “limited English proficiency” (LEP). Federal requirements to meet the needs of LEP populations are increasingly becoming a concern for transit agencies—particularly in local communities where a large percentage of the population does not speak English fluently and is highly dependent on transit services. To meet those federal requirements, transit agencies have taken a variety of steps to better serve the needs and demands of persons lacking English proficiency, such as providing multilingual trip information in stations and via the Internet; using fewer language-dependent methods of communication (*e.g.*, silhouettes, graphics, and arrows); and deploying multilingual staff. State and local transit agencies that have not implemented programs that satisfy federal LEP requirements face possible discrimination com-

plaints and lawsuits and could become ineligible for federal funding.

Title VI of the Civil Rights Act of 1964¹ provides that:

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.

Under the authority of 42 U.S.C. § 2000d-1, the U.S. Department of Transportation (U.S. DOT) has promulgated regulations prohibiting actions with a disparate impact upon any persons. 49 C.F.R. § 21.5(b)(2) provides that:

A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program . . . may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin. . . .

Since 1972, the Federal Transit Administration (FTA) has required applicants for

¹42 U.S.C. § 2000d *et seq.*

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and recipients and subrecipients of federal assistance to certify compliance with the requirements of Title VI as part of the grant approval process. Given that the Supreme Court has held that there is no private right of action to enforce Title VI regulations, the vigor of enforcement of federal LEP requirements depends on the policies of the U.S. DOT and the U.S. Department of Justice (DOJ). In addition, state and local governments may impose LEP requirements that can be enforced in state court. These state requirements may impose further compliance responsibilities. On the other hand, proponents of English-only policies could object to the provision of multilingual services.

The objective of TCRP Project J-5 Study Topic 11-03 was to assess the legal issues associated with transit operators' LEP compliance efforts. The study was intended to encompass a review and analysis of both administrative compliance actions taken by transit operators and litigation associated with the subject, provided that such compliance actions and litigation existed. Assuming sufficient material was available, the goal of the study was to produce a digest that would serve as a single source of information concerning the development and current status of transit LEP implementation efforts by state and local legislative and operational bodies. It was expected that the bulk of any such complaint/case activity would be based on transit agencies' failure to provide sufficient language access services to LEP populations, although the possibility was raised that English-only proponents objecting to the provision of language access services could raise some complaints. Out of a concern that sufficient case activity did not exist to support a digest, the study was divided into two phases, with the execution of Phase II being dependent on the results of the Phase I research.

SUMMARY OF PHASE I RESEARCH PROCESS

During Phase I, the contractor conducted background research on a variety of topics, including the need for language activities due to a growing LEP population, possible conflicts between federal and state definitions of LEP, Title VI requirements in general, possible conflicts between state and local English-only laws and federal LEP requirements, use of Section 1983 to enforce LEP requirements, prospects for legislative reinstatement of a private

right of action under Title VI,² and state and local language access requirements. In addition, the contractor identified specific issues related to LEP in the transit context: the disproportionate reliance on transit by LEP populations, reported lack of consistency in transit agencies' language access activities, potential gaps between U.S. DOT requirements and transit agency implementation, problems that can result from lack of effective LEP outreach, and benefits of LEP outreach.

The researcher examined general interest periodicals, law review articles, reports and policy papers, articles written by both legal practitioners and LEP and/or transit advocates, and guidance from relevant federal and state agencies. Phase I research also involved case law research on both federal and state cases related to Title VI in general and LEP in particular.

Finally, Phase I research included a survey questionnaire sent out to almost 300 transit agencies nationwide. Eighty-four transit agencies provided responses to the questionnaire. The scope of the questionnaire and results concerning complaints are summarized below.

SUMMARY OF LEP REQUIREMENTS

Section 601 of Title VI of the Civil Rights Act of 1964³—and its implementing regulations⁴—prohibits discrimination, *inter alia*, on the basis of national origin under any program or activity that receives federal financial assistance. The federal government has interpreted this prohibition as requiring recipients to ensure meaningful access to their programs and activities by LEP populations.⁵ The Supreme Court has ruled that conduct that dis-

² Advocates have called for reinstatement of the private right of action as part of the reauthorization of the surface transportation program. *Ensuring Non-Discrimination in Transportation Investments* (last accessed 7/2/10).

³ 42 U.S.C. § 2000d.

⁴ 28 CFR 42.104(b)(2) prohibits discrimination based on race, color, or national origin in federally financed programs, which has a disparate impact; federal financial assistance recipients must provide meaningful access to LEP persons.

⁵ DOJ, Policy Guidance Document, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455, June 18, 2002 (June 2002 DOJ Policy guidance document).

proportionately affects LEP persons constitutes national origin discrimination prohibited under Title VI.⁶ While the Supreme Court has since ruled that there is no private right of action to enforce Title VI regulations,⁷ the Court has yet to invalidate the underlying regulations themselves; DOJ takes the position that the regulations and the Executive Order on LEP compliance remain in effect.⁸

A 2000 Executive Order (EO) on language access⁹ requires federal agencies (1) to ensure that they provide meaningful access for LEP persons to the agencies' own programs and (2) to work to ensure their recipients provide meaningful access to LEP applicants and beneficiaries.¹⁰ EO 13166 requires each federal agency to publish guidance for its recipients on how to provide meaningful access to LEP persons. Both U.S. DOT and the FTA have published guidance based on DOJ's policy guidance.

DOJ's regulation prohibits DOJ's recipients from:

utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.¹¹

The national origin prohibition includes precluding or inhibiting LEP persons from accessing federally funded services. DOJ's policy guidance on implementing its LEP requirements explains the "four-factor analysis" that each recipient should conduct to determine what steps are required in the case

of that particular recipient to meet the recipient's LEP obligations.¹² The four factors are

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service provided by the program to people's lives; and
4. The resources available to the grantee/recipient and costs.¹³

Conducting the analysis requires making a fact-specific determination of the significance of each factor. Thus, the four-factor approach provides flexibility, but also lack of certainty, because individualized assessments are required to determine LEP services required in a particular services area.

U.S. DOT has issued its own Title VI regulations, consistent with the DOJ regulations,¹⁴ as well as policy guidance on LEP compliance¹⁵ based on DOJ's four-factor analysis. Under the guidance, U.S. DOT promotes voluntary compliance and turns to "more intrusive administrative remedies only if voluntary compliance cannot be secured."¹⁶ U.S. DOT's Title VI requirements apply to all recipients of federal transportation assistance including metropolitan planning organizations; regional transportation agencies; and regional, state, and local transit agencies (and the sub-recipients of those transit agencies). Receipt of federal funding by one program of a recipient subjects the recipient's entire program to Title VI requirements. These requirements apply even to recipients that operate in English-only jurisdictions. However, if federal funding were terminated because of lack of compliance with LEP requirements, only funding to the out-of-compliance program would be terminated. Recipients are required to determine the extent of their

⁶ *Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974) (holding failure of San Francisco school system to provide English language instruction to approximately 1,800 students of Chinese ancestry who did not speak English or to provide them with other adequate instructional procedures denied them meaningful opportunity to participate in public educational program and thus violated §601 of the Civil Rights Act of 1964).

⁷ *Alexander v. Sandoval*, 532 U.S. 275, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001).

⁸ June 2002 DOJ Policy Guidance Document, 67 Fed. Reg. at 41458, n. 5.

⁹ Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, August 11, 2000, www.justice.gov/crt/cor/Pubs/eolep.php.

¹⁰ LEP Questions and Answers, www.lep.gov/faqs/faqs.html.

¹¹ 28 C.F.R. 42.104(b)(2).

¹² June 2002 DOJ Policy Guidance Document, 67 Fed. Reg. 41455.

¹³ *Id.* at 41459.

¹⁴ 49 C.F.R. pt. 21, *Nondiscrimination in Federally Assisted Programs of the U.S. DOT—Effectuation of Title VI of the Civil Rights Act of 1964*.

¹⁵ Office of the Secretary (OST), U.S. DOT, *Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons*, 70 Fed. Reg. 74087, December 14, 2005.

¹⁶ *Id.* at 74089.

LEP obligations by engaging in the four-factor analysis, balancing the need to ensure meaningful access to the federally funded programs with avoidance of undue burdens on small businesses, small local governments, or small nonprofits.

The FTA addresses LEP compliance in the agency's Title VI circular. The circular states that recipients must "take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are Limited English Proficient (LEP)."¹⁷ Development and implementation of a language implementation plan is cited as a way to ensure such meaningful access, but is not required. The circular cites U.S. DOT's Policy Guidance for the elements of an effective language implementation plan. The Title VI circular includes several other references to LEP obligations, but does not contain a significant amount of additional guidance on implementing LEP requirements. Meeting Title VI requirements for recipients serving populations of 200,000 or greater requires those recipients to conduct additional outreach that will result in such agencies having additional information about their LEP populations.

What appears to be the FTA's primary LEP guidance is included in a 2007 LEP implementation handbook prepared by the FTA's Civil Rights Office.¹⁸ In addition to DOT and FTA guidance, recipients may review the model language implementation plan developed by Tri-Met of Portland, Oregon, under an FTA cooperative agreement.¹⁹

In addition to federal requirements, both state and local law may require local governmental entities to create language implementation plans to ensure meaningful access to their services.²⁰ On the other hand, state or local law may prohibit government agencies from providing information in languages other than English. While such English-only laws either explicitly exclude safety requirements or can be expected

to be preempted by federal LEP requirements, the existence of state English-only laws could give rise to legal challenges to transit agencies' language activities. The background research did not, however, reveal any such challenges.

SUMMARY OF LEP ENFORCEMENT ACTIVITY

Cases

Although there are a substantial number of LEP cases related to bilingual education and a seminal Supreme Court case on the issue²¹—as well as a number of housing cases—there do not appear to be any reported cases directly related to LEP implementation by transit agencies. Transit advocates have successfully challenged transit agency priorities on Title VI grounds, but the cases did not directly involve LEP issues.²² However, the Supreme Court has since ruled that there is no private right of action to enforce Title VI, so earlier cases holding that such a right exists, including *Lau*, have limited applicability.²³ The education/housing cases appear to be of extremely limited utility in assessing LEP legal requirements for transit agencies because of factual differences and because the cases finding Title VI violations are pre-*Sandoval*.

The FTA

The FTA reviews LEP compliance during FTA regular Title VI compliance reviews, triennial reviews, and joint FHWA/FTA planning certification reviews²⁴ as well as during state management

²¹ *Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974).

²² *E.g.*, *Labor/Community Strategy Center and Bus Riders Union et al. v. Los Angeles County Metropolitan Transportation Authority* (resulting in consent decree requiring the MTA to improve bus service), www.thestrategycenter.org/campaign/consent-decree-compliance; oldbru.thestrategycenter.org/engli/Campaigns/consentdecree/consentdecreeoverview.htm. See *Labor/Community Strategy Center v. Los Angeles County Metropolitan Transit Authority*, 263 F.3d 1041 (9th Cir. 2001).

²³ *Alexander v. Sandoval*, 532 U.S. 275, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001).

²⁴ *Better Dissemination and Oversight of DOT's Guidance Could Lead to Improved Access for Limited English-Proficient Populations*, GAO-06-52, Language Access to Transportation Services, November 2005, p. 47, www.gao.gov/new.items/d0652.pdf.

¹⁷ FTA C 4702.1A §IV, 4 (May 13, 2007), p. IV-1.

¹⁸ FTA Office of Civil Rights, *Implementing the Department of Transportation's Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons: A Handbook for Public Transportation Providers*, April 13, 2007.

¹⁹ Available through the FTA's Civil Rights website, www.fta.dot.gov/civilrights/title6/civil_rights_5741.html.

²⁰ *E.g.*, New York City Executive Order No. 120 (July 22, 2008), www.nyc.gov/html/imm/downloads/pdf/exe_order_120.pdf. This executive order incorporates DOJ's four-factor analysis.

reviews and specific fact-based Title VI compliance reviews.²⁵ Issues include whether the agency has conducted an adequate four-factor analysis of LEP populations in its service area(s); whether the agency has developed and implemented a language assistance plan; whether the agency has a process for monitoring and updating its language assistance plan; whether safety and emergency information is consistently provided in required languages;²⁶ and whether notice of right to file Title VI complaints is provided in required languages. LEP issues have also arisen in the context of environmental reviews.²⁷ Issues include whether the agency has conducted adequate analysis to identify LEP populations within the project study area; whether outreach to LEP communities is sufficient to make those communities aware of the environmental process; and whether the agency has adequately sought out and considered the viewpoints of LEP populations within the project study area.

There are indications that FTA enforcement of Title VI issues may become more stringent.²⁸ In February of 2010, the FTA rejected a plan by the Bay Area Rapid Transit District (BART) to use funding from the American Recovery and Reinvestment Act (ARRA) for the Oakland Airport Connector (OAC) project based on Title VI noncompliance, based on BART's inability to rectify "well-founded" allegations that BART had not completed a service equity

analysis for the OAC project in time to meet ARRA funding deadlines.²⁹

Several new FTA LEP deficiency findings are expected to be released later in 2010. In addition, an FTA civil rights task force was as of April 2010 examining all Title VI enforcement practices, including LEP activity. Although it is anticipated that additional guidance will be released based on the task force's conclusions, there is no public timeframe for the release of such guidance.³⁰

Between 2002 and June 16, 2010, the FTA had finalized 27 Title VI compliance reviews, 19 of which covered LEP issues to some degree. Of those compliance reviews, it appears only the review of the Regional Transit District in Denver focused on LEP in particular, although the reviews of Houston Metro, New York City Transit, and the Detroit DOT did note deficiencies related to LEP.³¹

SUMMARY OF SURVEY QUESTIONNAIRE

The purpose of the survey questionnaire (included as Appendix A) was to determine whether there have been LEP complaints not reported in cases or described by the FTA in its published compliance reviews. The questionnaire posed two screening questions concerning complaints: whether the agency had received or been the subject of any complaints of any kind regarding either LEP compliance or environmental justice based on the agency's treatment of LEP populations (Question 4) and whether the agency had received any objections to providing multilingual trip information (Question 5). Question 4 was intended to discern both complaints made directly to the transit agency and complaints made to the FTA or other entities about the transit agency. Only those agencies that answered affirmatively to Questions 4 or 5 were asked to complete Part II. Table 1 summarizes the aggregate responses to Questions 4 and 5.

²⁵ Telephone interview with Amber Ontiveros (FTA's Office of Civil Rights, lead on Title VI), Mar. 19, 2010.

²⁶ AB 611, introduced in the California Assembly in 2009, would require the California Emergency Management Agency to take measures to help LEP population prepare for emergencies and understand information conveyed during emergencies. Bill Analysis, AB 611 (Fong)—as amended: April 15, 2009, http://info.sen.ca.gov/pub/09-10/bill/asm/ab_0601-0650/ab_611_cfa_20090422_103934_asm_comm.html.

²⁷ U.S. DOT Complaint No. 2008-0154 and 2008-0171 (alleging lack of compliance with 49 C.F.R. 21.5, EO 12898, and EO 13166 by Metropolitan Transit Authority of Harris County in carrying out public involvement for the Draft Environmental Impact Statement for the North Corridor Light Rail Transit project).

²⁸ *Transit Breakthrough in Restoring Civil Rights: Title VI Complaint by San Francisco Bay Area Coalition Has National Implications*, Oakland Local, February 23, 2010, oaklandlocal.com/article/transit-breakthrough-restoring-civil-rights-title-vi-complaint-san-francisco-bay-area-coalit.

²⁹ FTA February 12, 2010, letter to Steve Heminger, Executive Director, Metropolitan Transportation Commission, and Dorothy Dugger, General Manager, BART, www.mtc.ca.gov/pdf/OAC_2-12-10_memo.pdf.

³⁰ Telephone interview with Amber Ontiveros (FTA's Office of Civil Rights, lead on Title VI), May 5, 2010.

³¹ Title VI Compliance Reviews, www.fta.dot.gov/civilrights/title6/civil_rights_5463.html; Title VI Compliance Review of the Metropolitan Transit Authority of Harris County, vvoice.vo.llnwd.net/e7/3676770.0.PDF.

Table 1 Responses regarding LEP complaints and objections to multilingual trip information (Questions 4 and 5)

	Yes	No	No Response	Other
Complaints received/ subject of complaints	3	81	0	1: “Nothing reportable”
Objections to providing multilingual trip information	1	84	0	0

As reflected in Table 1, the survey responses indicate that there have been very few complaints, at least among the 84 responding agencies (listed in Appendix B). Two agencies indicated that the FTA had raised questions about their LEP compliance. Of these, one agency had had issues raised during FTA reviews, but without feedback as to specific deficiencies; one agency believes it may be subject to some LEP deficiency findings, but as those reviews are not final, the agency was not prepared to provide any descriptions of its issues. The former is the agency that responded “nothing reportable” to the complaint question. Two agencies indicated that they have had complaint activity. Of these, one agency has had a complaint, but cannot discuss the issue until the FTA provides a response; the other agency reported miscellaneous minor complaints that do not appear to have been escalated to the FTA. A fifth agency, although not responding affirmatively to Question 4, indicated in its Part II response that the FTA had documented LEP deficiencies. None of the agencies have been involved in any litigation related to LEP compliance. Only one of the agencies reported objections to providing multilingual trip information (*i.e.*, objection to Spanish audio announcements on vehicles).

In addition to requesting contact information and basic information about the LEP population in the agency’s service area (*i.e.*, number of LEP persons, percentage of LEP out of total population, and basis for LEP population estimate) and posing the queries about complaints, the questionnaire asked whether respondents had a written compliance program and whether they believed a report examining legal issues related to LEP compliance would be useful. Table 2

Table 2 Responses regarding written compliance programs and report’s usefulness (Questions 3 and 7)

	Yes	No	No Response	Other
Written LEP compliance program	58	24	1	2 in progress
Report useful?	70	11	3	1 unsure

summarizes the aggregate responses to those two questions.

Although most of the agencies indicated that they believed a report on LEP compliance issues would be useful, only three specified issues that they would like to see addressed. One agency suggested that any such report address LEP issues facing agencies that serve rural populations; the second agency asked that the report address case law defining the difference between major and minor service changes as that distinction is related to the requirement for conducting a Title VI service analysis report; and the third agency noted an operational problem related to providing paratransit service to an LEP individual whose mental challenges were masked by the language barrier.

In addition the questionnaire assessed agency use of guidance by asking respondents to indicate whether they were either aware of or relied upon five sources of LEP guidance:

- EO 13166 (*Improving Access to Services for Persons with Limited English Proficiency*);
- U.S. DOT guidance on LEP compliance (DOT LEP Guidance, Federal Register, Vol. 70, No. 239, pp. 74087–74100, December 14, 2005);
- The FTA’s guidance on LEP compliance (Chapter IV, Part 4 of Circular 4702.1A, *Title VI and Title VI-Dependent Guidelines for FTA Recipients*);
- State or local requirements for providing language access to LEP populations in the agency’s service area; and
- U.S. DOT Order 5610.2, *U.S. DOT Order on Environmental Justice to Address Environmental Justice in Minority Populations and Low-Income Populations*.

Table 3 aggregates the responses.

Part II of the questionnaire consisted of three questions concerning compliance issues (Question 8),

Table 3 Responses regarding sources of LEP guidance (Question 6)

	EO 13166	DOT LEP guidance	FTA LEP guidance	State or local requirements	DOT Order 5610.2
Aware	36	36	44	38	37
Relied on	33	36	34	22	29
Neither/none	16	13	7	25	19

compliance activities (Question 9), and outreach strategies (Question 10). Only those agencies that had self-identified as having had complaints (Questions 4 and 5) were asked to complete Part II. As requested, the five agencies that indicated complaint/compliance issues completed the questions concerning compliance activities and outreach strategies. In addition, three agencies voluntarily completed Question 9, two completed Question 10, and fourteen completed both. Table 4 aggregates the three responses to Question 8, Table 5 aggregates the seventeen responses to Question 9, and Table 6 aggregates the sixteen responses to Question 10.

SUMMARY OF PHASE I RESEARCH CONCLUSIONS

The purpose of Phase 1 was to research LEP requirements in the transit environment and to determine the case activity associated with LEP implementation. Phase 1 activity included back-

ground research on LEP requirements and a survey questionnaire distributed by TRB to almost 300 transit agencies nationwide. Phase 1 also included querying the FTA Chief Counsel and FTA Civil Rights Office on LEP compliance issues, as well as attempting to contact transit advocates who have raised Title VI issues with transit agencies. The research indicates that while LEP compliance is indeed an issue of interest to transit agencies, there are no reported transit-related LEP cases and—based on the questionnaire responses—very limited LEP complaint activity. Moreover, to date there has been little in the way of transit LEP enforcement action, although it appears that the FTA is preparing to report additional LEP deficiency findings from recent triennial and state management reviews and is conducting a larger review of civil rights enforcement.

Based on the Phase I Research, it was found that the topic in general is of considerable interest to transit agencies and, in fact, that LEP compliance issues do exist. The dearth of reported complaints may be due to several factors. Many LEP persons—

Table 4 Responses regarding compliance issues (Question 8)

Compliance Issues With Which Agency Has Been Involved	Agencies Reporting Compliance Issues
LEP deficiencies documented by FTA	2
LEP issues with employees	0
Suspension of federal funding due to LEP noncompliance	0
Administrative action related to LEP compliance	0
Litigation related to LEP compliance	0
Actions related to environmental justice	1
Complaint filed with FTA re: service changes	1

Table 5 Responses regarding compliance activities (Question 9)

LEP Trip Information Activities	Agencies Reporting Engaging in Activity
LEP needs assessment	11
Evaluation of agency’s language access activities	10
Multilingual information on agency website	15
Multilingual brochures and signs	15
Multilingual telephone services	15
Bi/multilingual drivers	11
Bi/multilingual customer service staff	14
Multilingual ticket machines	5
Translated recorded announcements	8
Symbolic trip information (pictograms)	3

Table 6 Responses regarding outreach strategies (Question 10)

LEP Trip Outreach Strategies	Agencies Reporting Engaging in Strategy
Return receipt letters	0
Signage on buses and shelters	12
Notices to community-based organizations serving LEP populations	11
Oral translators	8
Advertising in media that serves LEP communities	12
Other	6

precisely because of inadequate communication—do not understand their rights and, so, do not file complaints. In addition, there may be a certain number of LEP persons who are reluctant to file complaints due to cultural issues such as the reluctance to challenge the authorities.³² Finally, the absence of transit LEP cases may also be due to the fact that there is no private right of action to enforce Title VI regulations.

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The Phase I research, conducted to scope the LEP topic, was fairly wide ranging. The purpose of the bibliography is to document the research that was conducted. Some of the references identified during the beginning of the research process may be deemed of limited interest, but are included as part of the documentation.

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 - NJDOT Title VI Limited English Proficiency (LEP) Implementation Plan, October 2008, www.state.nj.us/transportation/business/civilrights/pdf/lep_implementation.pdf.
 - New Mexico, Executive Order 2005-056, Environmental Justice Executive Order, www.nmenv.state.nm.us/Justice/EO_2005_056.pdf.
 - Washington State DOT Title VI Responsibilities, wadot.wa.gov/NR/rdonlyres/CFBD0E84-54DD-462D-AB2E-43DFE28E339A/0/WSDOTTitleVIResponsibilities.pdf.

Other LEP Resources

- New Jersey DOT Guide to Limited English Proficiency Under Title VI, www.state.nj.us/transportation/business/civilrights/pdf/lepbrochure.pdf.
- NJDOT Policy and Procedures Development Study: Title VI, Environmental Justice, and LEP: Effective Practices, August 2008, www.state.nj.us/transportation/business/civilrights/pdf/effectivepractices.pdf.
- New Mexico Passenger Transportation Association, What’s an LEP Plan? An Overview of the U.S. DOT Guidance on Language Assistance for Limited English Proficient (LEP) Persons, Annual Conference, Apr. 27, 2009, www.nmshtd.state.nm.us/upload/images/Programs-Transit%20and%20Rail-Transit/LEP.ppt.
- Ohio DOT, Civil Rights and Public Transportation, September 2008, www.dot.state.oh.us/Divisions/TransSysDev/Transit/Documents/Programs/Training/Civil%20Rights%20Training%20Material/Civil%20Rights%20and%20Public%20Transportation.pdf.
- Washington DOT English to Spanish Glossary of Transportation Terms, www.wsdot.gov/NR/rdonlyres/B8B5F5EE-186F-4220-BAA7-59ECD69B1AC0/0/EnglishSpanishTranslation.pdf.

APPENDIX A—SURVEY QUESTIONNAIRE



TRANSPORTATION RESEARCH BOARD
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SURVEY QUESTIONNAIRE
Transportation Cooperative Research Program
Study Topic 11-03, Limited English Proficiency (LEP) Compliance

Part I

1. Contact Information:
 Agency Name _____
 Location _____
 Respondent’s Name _____
 Respondents’ email _____ Phone _____
2. Estimated LEP population in agency service area:
 Number of LEP persons _____ Percentage of LEP out of total population _____
 Basis for LEP population estimate (Please check all that apply)
 Survey of transit patrons Input from community organizations
 Census data Data from state and local governments
 School system data
3. Does your agency have a written compliance program? Yes No
4. Has your agency received or been the subject of any complaints of any kind regarding LEP compliance or environmental justice based on treatment of LEP populations? Yes No
5. Has your agency received any objections to providing multilingual trip information? Yes No
6. LEP guidance: (Please check all that apply)
 - Executive Order (EO) 13166 (*Improving Access to Services for Persons with Limited English Proficiency*)? Aware Relied on in designing agency’s language activities
 - DOT guidance on LEP compliance (DOT LEP Guidance, Federal Register, vol. 70, no. 239, pp. 74087–74100, December 14, 2005)? Aware Relied on in designing agency’s language activities
 - FTA’s guidance on LEP compliance (Chapter IV, part 4 of Circular 4702.1A, *Title VI and Title VI-Dependent Guidelines for FTA Recipients*)? Aware Relied on in designing agency’s language activities
 - State or local requirements for providing language access to LEP populations in your service area? Aware Relied on in designing agency’s language activities
 - DOT Order 5610.2, *U.S. DOT Order on Environmental Justice to Address Environmental Justice in Minority Populations and Low-Income Populations*? Aware Relied on in engaging in LEP outreach
7. Would a report examining legal issues related to LEP compliance be useful to your agency? Yes No
 Are there any specific legal issues that you think should be addressed? Yes No

If you answered Yes to questions 4 or 5, please complete Part II.

Part II

8. Compliance: (Please check any compliance issues with which your agency has been involved)

<input type="checkbox"/> LEP deficiencies documented by FTA	<input type="checkbox"/> Administrative action related to LEP compliance
<input type="checkbox"/> LEP issues with employees	<input type="checkbox"/> Litigation related to LEP compliance
<input type="checkbox"/> Suspension of federal funding due to LEP noncompliance	<input type="checkbox"/> Actions related to environmental justice

9. **LEP trip information:** (Please check any activities that your agency conducts)

<ul style="list-style-type: none"> <input type="checkbox"/> LEP needs assessment <input type="checkbox"/> Evaluation of agency’s language access activities <input type="checkbox"/> Multilingual information on agency Web site <input type="checkbox"/> Multilingual brochures and signs <input type="checkbox"/> Multilingual telephone services 	<ul style="list-style-type: none"> <input type="checkbox"/> Bi/multilingual drivers <input type="checkbox"/> Bi/multilingual customer service staff <input type="checkbox"/> Multilingual ticket machines <input type="checkbox"/> Translated recorded announcements <input type="checkbox"/> Symbolic trip information (pictograms)
--	---
10. **LEP outreach:** (Please check any outreach strategies employed by your agency to engage LEP populations during public hearing processes)

<ul style="list-style-type: none"> <input type="checkbox"/> Return receipt letters <input type="checkbox"/> Signage on buses and shelters <input type="checkbox"/> Notices to community-based organizations serving LEP populations 	<ul style="list-style-type: none"> <input type="checkbox"/> Oral translators <input type="checkbox"/> Advertising in media that serves LEP communities <input type="checkbox"/> Other
--	--

Please provide any narrative responses as attachments to the questionnaire.

Thank you for your assistance. Upon request, Waite & Associates can send your agency an electronic version of the questionnaire to be completed and returned by email.

APPENDIX B—SURVEY RESPONDENTS

The following agencies responded to the survey questionnaire:

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Housatonic Area Regional Transit, CT 2. Milford Transit District, CT 3. Northeast Transportation Company, Inc., CT 4. Massachusetts Bay Transportation Authority, MA 5. Cape Ann Transportation Authority, MA 6. Casco Bay Island Transit District, ME 7. Greater Portland Transit District, ME 8. The Regional Transportation Program, Inc., ME 9. Manchester Transit Authority, NH 10. New Jersey Transit Corporation 11. Niagara Frontier Transportation Authority, NY 12. MTA Bus Company, NY 13. Centro of Oneida, Inc., NY (Central New York Centro, CNY Centro of Oswego, CYN Centro of Oneida, CNY Centro of Cayuga) 14. Ride-On Montgomery County Transit, MD 15. Lehigh and Northampton Transportation Authority, PA (LANTA) 16. Cambria County Transit Authority, PA 17. Luzerne County Transportation Authority, PA 18. Port Authority of Allegheny County, PA 19. Greater Lynchburg Transit Company, VA 20. Space Coast Area Transit, FL 21. Gainesville Regional Transit System, FL 22. Jacksonville Transportation Authority, FL | <ol style="list-style-type: none"> 23. Miami-Dade Transit, FL 24. Central Florida Regional Transportation Authority, FL 25. VOTRAN, FL 26. Albany Transit System, GA 27. Metropolitan Atlanta Rapid Transit Authority, GA 28. Metra Transit System, GA 29. Fayetteville Area System of Transit, NC 30. Metropolitan Transit Authority, TN 31. Northeast Illinois Regional Commuter Railroad Corporation, IL 32. Greater Peoria Mass Transit District, IL 33. Greater Lafayette Public Transportation Corp, IN 34. Ann Arbor Transportation Authority, MI 35. Bay Metropolitan Transit Authority, MI 36. Mass Transportation Authority, MI 37. Kalamazoo Metro Transit System, MI 38. City of Detroit DOT, MI 39. St. Cloud Metropolitan Transit Commission, MN 40. Stark Area Regional Transit Authority, OH 41. The Greater Cleveland Regional Transit Authority, OH 42. Laketrans, OH 43. Western Reserve Transit Authority, OH |
|---|--|

44. Milwaukee County Transit System, WI
45. City of Waukesha Transit Commission, WI
46. Pine Bluff Transit, AR
47. Crescent City Connection Division-LA DOT
48. Dallas Area Rapid Transit, TX
49. Mass Transit Department-City of El Paso, TX
50. Island Transit, TX
51. Metropolitan Transit Authority of Harris County, TX
52. City Transit Management Company, Inc., TX (Citibus)
53. Waco Transit System, TX
54. Columbia Transit, MO
55. City Utilities of Springfield, MO
56. Transit Authority of Omaha, NE
57. City of Greeley-Transit Services, CO
58. Pueblo Transit System, CO
59. Billings Metropolitan Transit, MT
60. Missoula Urban Transportation District, MT
61. Regional Public Transportation Authority, AZ
62. City of Phoenix Transit Department, AZ
63. City of Arcadia Transit, CA
64. Livermore/Amador Valley Transit Authority, CA
65. San Francisco Bay Area Rapid Transit District, CA
66. North County Transit District, CA
67. Riverside Transit Agency, CA
68. Omnitrans, CA
69. San Mateo County Transit District, CA
70. San Diego Metropolitan Transit System, CA (FTA response pending; SDMT does not want to discuss complaint until response received)
71. Santa Clara Valley Transportation Authority, CA
72. Santa Barbara Metropolitan Transit District, CA
73. Santa Cruz Metropolitan Transit District, CA
74. Simi Valley Transit, CA
75. City and County of Honolulu DOT Services, HI
76. Lane Transit District, OR
77. Tri-County Metropolitan District of Oregon, OR
78. Salem Area Mass Transit District, OR
79. Kitsap Transit, WA
80. Ben Franklin Transit, WA
81. Pierce County Transportation Benefit Area Authority, WA
82. City of Lake Charles—Transit Division, LA
83. Connecticut DOT, CT
84. JAUNT, Inc., VA (Note request for help on determining LEP population numbers; concerns of rural areas)
85. Greater Richmond Transit Company, VA



Transportation Research Board

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