

**EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES
LANGUAGE ACCESS PLAN FOR
IMPLEMENTATION OF EXECUTIVE ORDER 13166**

October 2011

1.0 PURPOSE

In compliance with Section 2 of Executive Order 13166, this Language Access Plan (“LAP”) details the initiatives and plans of the Executive Office for United States Trustees (“EOUST”) to improve access to the United States Trustee Program’s (“USTP”) federally-conducted programs and activities by eligible individuals of limited English proficiency. For purposes of the EOUST’s LAP, the definition of “federally-conducted programs and activities” is identical to that used under the regulations implementing Section 504 of the Rehabilitation Act of 1973. 49 Fed. Reg. 35,724, 35,725 (Sept. 11, 1984); Editorial Note: *Section 39.102 Application*.

Neither Executive Order 13166 nor this updated LAP creates any new right(s), including the right to seek administrative or judicial enforcement, on the part of any person, including a person with limited English proficiency. This LAP amends and supersedes the EOUST’s prior LAP dated August 2008.

2.0 BACKGROUND

On August 11, 2000, the President issued Executive Order 13166 titled “Improving Access to Services for Persons With Limited English Proficiency.” 65 Fed. Reg. 50,121 (August 16, 2000). On the same day, the Assistant Attorney General for Civil Rights issued a Policy Guidance Document, titled “Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency.” 65 Fed. Reg. 50,123 (August 16, 2000). Subsequently, the Department of Justice (“Department” or “DOJ”) adopted final LEP guidance for recipients of federal financial assistance titled “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (“DOJ LEP Guidance”). 67 Fed. Reg. 41,455 (June 18, 2002). In June 2010, the Attorney General issued further guidance in the “Memorandum for Heads of Department Components regarding Language Access Obligations Under Executive Order 13166” (June 28, 2010).

Executive Order 13166 requires federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally-conducted programs and activities who, due to limited English proficiency, cannot fully and equally participate in or benefit from those programs and activities. The DOJ LEP Guidance in turn advises each federal department or agency to “take reasonable steps to ensure *meaningful access* to their programs and activities by LEP persons” (emphasis added). 67 Fed. Reg. at 41,459. This standard is achieved by balancing the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program; (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 and costs. Id.

3.0 LEP STAKEHOLDER CONSULTATIONS

The Department has provided for a Stakeholder Consultation process to the DOJ LEP Plan for Implementation of Executive Order 13166, which was incorporated in the guidance provided to agencies for ensuring equal access to federal government services by LEP populations. Entities or persons having a direct and substantial interest in the provisions of the DOJ LEP Plan (stakeholders) include both the individual components of the Department (entities responsible for implementing DOJ's LEP Plan), as well as LEP communities (the intended beneficiaries of the language access initiatives set out in the DOJ LEP Plan). The EOUST has conducted, and will continue to conduct stakeholder consultations in implementing its updated LAP.

This LAP will be made available to the public for review on EOUST's public website at http://www.justice.gov/ust/eo/public_affairs/lep/index.htm, replacing the 2008 LAP.

4.0 DOJ LEP PLAN FOR IMPLEMENTATION OF EXECUTIVE ORDER 13166

In an effort to implement Executive Order 13166, the Department initially identified five important elements of an acceptable LAP. Those elements are as follows:

- Assessment of LEP populations and language needs.
- Publication of a written LAP.
- Provision for appropriate staff training about the LAP.
- Public outreach and notice of the availability of language access services.
- Periodic self-assessment and self-monitoring.

In May 2011, the Department provided feedback concerning the EOUST's LAP. This LAP incorporates the feedback received, which included such recommendations as: identifying a Language Access Coordinator; revising the EOUST's home web page; reminding staff to avoid using family, friends, and untrained volunteers for interpretation; and considering the adequacy of language access in the credit counseling and debtor education systems.

4.0.1 Definitions

Interpretation – The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.

Limited English Proficient (LEP) – Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

Multilingual staff – A staff person who has demonstrated proficiency in both spoken and written English and at least one other language.

Primary Language – An individual’s primary language is the language in which an individual most effectively communicates. Staff should avoid assumptions about an individual’s primary language.

Translation – The replacement of written text from one language (source language) into an equivalent written text in another language (target language).

4.1 EOUST Assessment Overview

The USTP’s mission is to act in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases to promote and defend the integrity of the federal bankruptcy system. To that end, the EOUST, under the leadership of a Director reporting to the Associate Attorney General, directs policy and legal matters, oversees the USTP’s substantive operations, and handles administrative functions.

While the EOUST generally does not itself engage in activities having a direct and substantial impact on significant LEP populations, the local United States Trustee offices (USTO), and the standing trustees and panel trustees (collectively, “private trustees”) appointed and supervised by the United States Trustees, do perform services and collect information from and provide information to members of the general public. Depending on the geographic location, the population served can include significant LEP populations. Therefore, accurate two-way communication with LEP debtors and others is essential to the USTP mission.

Accordingly, the USTP has been identified by the Department’s Civil Rights Division, Federal Coordination and Compliance Section, as a component with a mission or primary function to serve the legal, investigative, and policy needs of the Department or the Executive Branch in a manner that involves (and in some cases is dependent upon) interactions with the public, including predictable and periodic interactions with identifiable LEP populations in the performance of its duties.

The EOUST developed and conducted a limited English proficiency survey, titled “Survey Regarding Language Assistance Services,” of the EOUST and its 95 USTOs to identify predominant LEP populations and languages, and to evaluate the extent to which the USTP has contact with LEP individuals, the need to provide language access to LEP persons nationwide, the resources available, and the current language access services being provided by the USTP. The EOUST subsequently issued a report titled “Executive Office for United States Trustees’ Limited English Proficiency (LEP) Assessment Report” which provides an evaluation and analysis of the survey data. In addition, the EOUST issued a LAP in August 2004 (the “2004 LAP”).

In an effort to take reasonable steps to ensure “meaningful access,” the EOUST implemented its 2004 LAP by establishing a LEP Pilot Project which focused on language access at the creditors’ meetings in bankruptcy cases mandated by 11 U.S.C. § 341(a) (“creditors’ meetings”). The pilot project involved seven USTOs that serve and/or interact with significant LEP communities, and it was conducted over a one-year period from October 1, 2004, through September 30, 2005. Based upon the results of that project, the EOUST updated its LAP in 2008 (the “2008 LAP”).

The 2008 LAP included a phased-in installation of conference quality speaker phones at all locations used by the USTOs and private trustees to conduct creditors’ meetings (“meeting rooms”), and establishment of contracts with one or more interpreter services to provide telephone interpreters. In fiscal year 2007, the EOUST issued the initial purchase order for 394 speaker phones, which were installed in those meeting rooms under the control of the USTP that were equipped with the necessary technology to operate the phones. The tele-interpreter services, which began in May 2009, addressed the needs of a significant majority of the debtor population with language access needs. The USTP is exploring alternatives for securing equipment in locations where the meeting rooms are not controlled by the USTP and upgrading the technology in those locations where necessary for the proper operation of the speaker phones. In addition, the EOUST allows private trustees to access the tele-interpreter services using cell phones with speaker capability in locations where there is not currently a phone line so that interpreter services are available in all meeting rooms.

In March 2009, the EOUST conducted a survey of all field offices to determine how many Spanish translations of the FBI Warning sign and Weapons Prohibition sign were needed in meeting rooms. The signs were distributed in August 2009.

In June 2009, interpreter posters (“please point to the language”) were mailed to all USTOs to be posted in all meeting rooms.

4.2 EOUST Language Access Plan

It is the policy of the USTP to take reasonable steps to provide meaningful access for LEP individuals to USTP information and programs; to provide appropriate language assistance to LEP individuals; and to take reasonable steps to inform the public of the availability of language accessible programs and activities.

The Assistant Director for the Office of Oversight is the USTP’s Language Access Coordinator. The Language Access Coordinator has primary responsibility for promoting the effectiveness of the USTO’s language access programs, determining whether new documents, programs, services, and activities need to be made accessible to LEP individuals, serving as the primary contact for USTP language access matters, and ensuring compliance by USTOs with the requirements of the LAP. The Assistant United States Trustee for each USTO will be responsible for ensuring local compliance with the LAP.

4.2.1 *Language Access Principles*

The EOUST maintains the following language access principles for situations in which a LEP individual is seeking to participate in a creditors' meeting conducted by the USTO or a private trustee; endeavors to obtain a direct service or benefit; or where there is potential for the direct imposition of a burden on the individual by the USTP.

- Private trustees or USTOs will notify LEP persons of free telephone interpreter services offered by the USTP for participation at creditors' meetings or of their ability to choose to secure the assistance of a qualified interpreter of their choice, at their expense. The receipt of this notice and the LEP person's election should be documented. The use of relatives of the LEP person, debtor's counsel, or employees of debtor's counsel as interpreters is not permitted.
- The EOUST, the USTOs, and the private trustees should take reasonable steps, appropriate to each circumstance, to ensure that they provide interpretation services only through individuals who are competent to provide such services at a level of fluency, comprehension, and confidentiality appropriate to the specific nature, type, and purpose of information at issue.
- The EOUST and the USTOs should endeavor to expand the range or nature of language access measures whenever experience, change in target or service population demographics, or new program-specific data indicates that the failure to do so may result in a denial of substantially equal and meaningfully effective services to a significant LEP population served by the USTP.
- To the maximum extent practicable, limited English proficiency shall not act as a barrier or otherwise limit access to vital information, i.e., information publicly available in English as to when, where, or how to access benefits or services from the EOUST or the USTOs.
- USTP personnel should encourage trustees, debtors, and the bankruptcy bar to provide feedback regarding the effectiveness of the telephone interpreter service directly to the local USTO or via e-mail to the EOUST e-mail box at www.ustlap.usdoj.gov. The Language Access Coordinator will maintain records of this feedback and incorporate the information into the biennial reassessment of the LAP.

These principles guided the initial implementation, and continue to inform the administration, of the EOUST's LAP.

4.2.2 *Uniform Language Access Initiatives*

The EOUST, through its Office of Oversight, will provide oversight of all oral and written guidance provided to USTO staff, private trustees, and LEP populations. To assist the EOUST in implementing its language access initiatives, USTO's will provide the following:

1. *Oral and Written Information*

Each USTO will have in place personnel or language access resources capable of providing, within a reasonable period of time, information and/or instructions in appropriate languages other than English, which will include:

- Procedures to access telephonic interpretation services for use by USTO personnel, or multilingual staff, or appropriate translations of frequently requested information in commonly encountered languages (e.g., the Bankruptcy Information Sheet ("BIS")).¹
- Quality speaker telephones in meeting rooms, where possible; language identification cards; and a resource list for telephone language access services and in-person interpreter services for use by USTO personnel.
- Written procedures for accessing telephone language assistance resources and in-person interpreter services. These procedures will be: (1) inserted into every office telephone book (both written and electronic); (2) posted or otherwise made readily available (e.g., through an Intranet system) at every point of public contact; and (3) distributed to every employee whose duties routinely include contact with members of the public.
- A listing of staff members assigned to each duty station, facility, or work group who have volunteered to provide de minimis language access services, in temporary, exigent circumstances only, such as walk-ins, telephone calls, and correspondence to the USTO. This list will be distributed to each duty station, facility, or work group. Such staff members will be identified by name, office, physical location, business telephone number, work hours, language, and their self-assessed level of fluency. On an infrequent and de minimis basis only, these staff members may assist with contacts made by LEP persons to the USTO. Due to conflict of interest concerns, however, USTO staff will not act as interpreters for LEP debtors at creditors' meetings where the debtors are questioned under oath.
- Telephone interpreters and in-person interpreters who provide language access services at creditors' meetings will be placed under oath, as will the LEP debtor(s).

¹ The BIS contains general information on chapters 7, 11, 12, and 13 of the Bankruptcy Code, describes how a bankruptcy discharge operates, and explains the criteria for reaffirmation agreements.

- A reminder to employees that the use of family, friends, untrained volunteers, and debtor's counsel as interpreters at the creditors' meeting is not permitted.
- The LAP will be distributed to all USTP employees.
- LAP documents, such as the BIS, will be reviewed at least once every two years. In addition, EOUST may determine whether further translations are warranted, based on LEP debtor feedback concerning the use of telephonic interpreter services, public comment concerning the LAP published on the EOUST public website, and the limited English proficiency data set forth on the LAP Dashboard.

2. Electronic Information

Each USTO that maintains a web page accessible to members of the general public should include information regarding the availability of language access resources. Where documents in languages other than English are placed on or accessible through the USTO's web page, information on their availability should be included in the appropriate languages on the USTO's home web page or other initial point of access.

In July 2009, the EOUST conducted a survey to determine the most commonly spoken non-English languages for purposes of translating the BIS. Between September 2009 and March 2010, the BIS was translated, using a professional translation service, into Russian, Mandarin, Bengali, Portuguese, Laotian, Cambodian, Haitian Creole, Polish and Ukrainian, and posted on the Internet. Previously, the BIS was available in Spanish, Vietnamese, French, Chinese, Korean, Hmong, Tagalog and Arabic. These translated BIS documents are accessible on the EOUST's public website at http://www.justice.gov/ust/eo/ust_org/bky-info/index.htm. In addition, where documents are available for viewing or downloading through a USTO web page in languages other than English, an indication of the availability of the documents in each of the relevant foreign languages will be included on each USTO web page.

3. Signage

At a minimum, where signage within a publicly-accessible duty station or facility maintained or administered by the USTO is provided in English, signs or notices will also be provided, as soon as reasonably practicable, in the most common non-English language spoken in the area served by the duty station or facility. Based on currently available data, this will be required where more than five percent of the population indicate they speak English less than well. Available data includes, but is not limited to, language and demographic census information pertaining to the area or region served. The EOUST will review available data periodically to identify changes in population that may affect current signage requirements.

4.3 Staff and Private Trustee Training

Employees expected to implement the language access initiatives set out in this LAP should be knowledgeable about: (1) the nature and scope of language access services and the resources available through their region or office; and (2) the procedures through which they may access those services to assist in the discharge of their respective duties. All employees identified by USTOs as critical to the implementation of the LAP will be provided with training concerning the scope and nature of available or planned language access services and the specific procedures through which such services can be accessed at the employee's work location.

The EOUST will develop and incorporate into existing new employee orientation and/or training programs a module on the nature and scope of language access services and the specific procedures through which each employee can access those services. In addition, the National Bankruptcy Training Institute developed and produced for the EOUST a training video on language access services. The video, entitled "Access to Services for Persons with Limited English Proficiency," was distributed to chapters 7, 12, and 13 trustees and certain USTP personnel in May 2009. The video is distributed to new trustees upon their appointment.

4.4 Outreach

LEP individuals in need of language access services should have reasonable notice of the availability of such services. The USTOs with significant LEP contacts will undertake appropriate written and oral outreach efforts to alert LEP communities and individuals to the nature, scope, and availability of the language access services. In the area of outreach, the EOUST will take the following actions:

1. To the maximum extent possible, the EOUST will strive to inform stakeholder organizations of the nature and scope of available language access services through appropriate oral and written means.
2. The USTOs will inform all chapters 7, 12, and 13 trustees about limited English proficiency resources and available interpretation services and materials. Guidance and training concerning the LAP, and the importance of facilitating access by LEP individuals, will be provided to all private trustees via the training video described in section 4.3. In addition, the EOUST will provide guidance in the trustee handbooks to private trustees, and will update trustee handbooks to conform to the LAP, to the extent necessary.

4.5 Assessment and Monitoring

The LAP will be reassessed not less frequently than once every two years to ensure that the scope and nature of language access services provided under the LAP reflect updated information on relevant LEP populations, their language access needs, and the USTOs' experience under the

LAP. In addition, the EOUST public website makes available limited English proficiency data on the LAP Dashboard. The LAP Dashboard provides state-by-state data concerning interpreter usage, and is available at http://www.justice.gov/ust/eo/public_affairs/data_files/lap/lap_statistics/index.htm. In reassessing the LAP, the EOUST, through its Language Access Coordinator, will review LEP debtor feedback concerning the use of telephonic interpreter services, public comment concerning the LAP published on the EOUST public website, and the limited English proficiency data set forth on the LAP Dashboard.

The EOUST has taken or will take the following actions to monitor the effectiveness of its language access initiative and to assess the possible need for enhancements or modifications.

1. The EOUST has determined that cell phones may be used to access telephonic interpreter services in meeting rooms not controlled by the USTP. In September 2010, seven such meeting rooms were chosen to pilot the cell phone project, and cell phones were mailed to those field offices.
2. The EOUST has implemented a process for receiving and investigating complaints regarding the access to, and quality of, the interpretation services provided. By April 2012, the EOUST will enhance its quality control process to randomly sample recordings of interpretations provided during creditors' meetings in the five languages for which interpretation services were provided most frequently. As part of this enhancement, the EOUST will devise a procedure for identifying critical errors or inadequacies in interpretation and will use the results to develop standards, solutions for eliminating errors, and recommendations for improving the overall quality of the interpreter program.
3. On an ongoing basis, the EOUST will evaluate the feasibility of working and/or contracting with other federal agencies and DOJ components to provide interpretation services.
4. On an ongoing basis, the EOUST will evaluate the potential for improving access for LEP debtors through the use of cell phones and in person interpretation, and the solicitation of LEP debtor feedback concerning the use of telephonic interpreter services.

5.0 LEP INITIATIVES FOR CREDIT COUNSELING AND DEBTOR EDUCATION

Under 11 U.S.C. § 109(h), unless a statutory exception applies, every individual debtor is required to receive credit counseling from an approved nonprofit budget and credit counseling agency within 180 days before the date of filing for bankruptcy relief ("credit counseling"). In addition, before receiving a discharge of debts, every individual debtor must complete an approved instructional course concerning personal financial management ("debtor education"). 11 U.S.C. § 111(b) governs the approval by United States Trustees of credit counseling agencies and debtor education providers for inclusion under 11 U.S.C. § 111(a)(1) on publicly available lists in one or more United States district courts.

In addition to its obligations under Executive Order 13166, the EOUST has taken, or plans to take, the following steps to increase access by LEP individuals to approved credit counseling agencies and debtor education providers:

1. The EOUST has provided written guidance on its website instructing approved credit counseling agencies and debtor education providers to make every reasonable effort to accommodate individuals with limited or no proficiency in the English language.
2. The EOUST has designed its website so that individuals can identify approved credit counseling agencies and debtor education providers that offer services in languages other than English.
3. On February 1, 2008, the EOUST issued a notice of proposed rulemaking, setting forth the proposed procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved credit counseling agencies satisfy all prerequisites of the United States Code. 73 Fed. Reg. 6,062 (Feb. 1, 2008). Section 58.20(j) of this proposed rule requires that entities applying to supply credit counseling services provide written and oral communication in the languages of the major population groups served by the credit counseling agency. Approved credit counseling agencies are required to provide or arrange for multilingual staff, interpreters, or technology, as necessary, to comply with this requirement, and if unable to do so, the credit counseling agency must use its best efforts to direct the client to one or more approved credit counseling agencies that can assist the client.
4. On November 14, 2008, the EOUST issued a notice of proposed rulemaking, setting forth the proposed procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved debtor education providers satisfy all prerequisites of the United States Code. 73 Fed. Reg. 67,435 (Nov. 14, 2008). Section 58.33(I) of this proposed rule requires that entities applying to supply debtor education instructional courses provide written and oral communication in the languages of the major population groups served by the debtor education provider. Approved debtor education providers are required to make available or arrange for multilingual staff, interpreters, or technology, as necessary, to comply with this requirement, and if unable to do so, the provider must use its best efforts to direct the debtor to one or more approved debtor education providers that can assist the debtor.

The EOUST received comments on these proposed rules and has modified the final rules accordingly. After the final rules are completed, they will be published in the Federal Register.

6.0 PUBLIC COMMENT REGARDING THE LAP

The EOUST will continue to update its official website, as appropriate, with information regarding its language access initiatives. Those who would like to provide comment regarding

the EOUST's LAP may do so either by sending an email to ust.lap@usdoj.gov or by writing to the Office of Oversight at the following address:

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