

This analysis contains SD GOED and SD Housing's Four-Factor Analysis assessing Limited English Proficiency (LEP) and our Language Assistance Plan (LAP).

Four-Factor Analysis: Language Assistance Plan

Assessing Limited English
Proficiency

SD Governor's Office of Economic
Development and South Dakota Housing

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RECORD OF CHANGE

Version	Date	Summary of Changes
1.0	September 15, 2023	Original Document Approval

1 INTRODUCTION

The State of South Dakota Governor’s Office of Economic Development (GOED) and South Dakota Housing Development Authority (SD Housing) are recipients of federal funds and, therefore obligated to reduce language barriers that can preclude meaningful access by LEP persons to GOED and SD Housing Programs. GOED and SD Housing have prepared this Language Access Plan (LAP), which defines the actions to be taken to ensure meaningful access to agency services, programs, and activities on the part of persons who have limited English proficiency.

1.1 POLICY STATEMENT

It is the policy of the South Dakota Governor’s Office of Economic Development (GOED) and South Dakota Housing Development Authority (SD Housing) to take reasonable steps to provide meaningful access to its programs and activities for persons with Limited English Proficiency (LEP). The policies of SD Housing and GOED are to ensure that staff will communicate effectively with LEP individuals, and LEP individuals will have access to important programs and information. GOED and SD Housing are committed to complying with federal requirements in providing free meaningful access to its programs and activities for LEP persons.

1.2 HISTORY

Title VI of the Civil Rights Act of 1964 is the federal law which protects individuals from discrimination based on their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who have Limited English Proficiency can effectively participate in, or benefit from, federally assisted programs may violate Title VI’s prohibition against national origin discrimination.

Persons who, because of national origin, do not speak English as their primary language and who have limited ability to speak, read, write, or understand English may be entitled to language assistance under Title VI to receive a particular service, benefit, or encounter.

On August 11, 2000, Executive Order 13166, titled, “Improving Access to Services by Persons with Limited English Proficiency,” was issued. Executive Order 13166 requires federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. It is expected that agency plans will provide for such meaningful access consistent with, and without unduly burdening, the fundamental mission of the agency. The Executive Order also requires that agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.¹

¹ This assessment and plan is pursuant to Title VI of the Civil Rights Act of 1964 and in accordance with Supreme Court precedent in *Lau v. Nichols*, recipients of federal financial assistance are required to take reasonable steps to ensure meaningful access to their programs and activities by limited English proficient (LEP) persons. In accordance with Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the Department of Justice (DOJ) LEP Guidance apply to the programs and activities of federal agencies, including HUD.

1.3 DESCRIPTION OF COVERED PROGRAMS

GOED and SD Housing are home to the following programs which are covered by this Four Factor Analysis and Language Access Plan:

- 1) **Community Development Block Grant (CDBG)** - The CDBG Program provides grants to units of local government in non-entitlement areas for the development of viable communities by providing a suitable living environment, expanding economic opportunities, principally for persons of low and moderate income. Grants are made to these communities for primary needs such as potable water, sanitary sewer, streets, and economic development activities.
- 2) **Community Development Block Grant Disaster Recovery (CDBG-DR)** – GOED occasionally receives supplemental allocations of funding specifically to presidentially declared disasters. Most recently, GOED received funds from the 2008 Hurricane IKE and Midwest Floods Supplemental Appropriation.
- 3) **HOME Investment Partnerships Program (HOME)** provides loans and grants - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership.
- 4) **Emergency Solutions Grants Program (ESG)** provides funding to assist individuals to quickly regain stability in permanent housing through street outreach, emergency shelter, homelessness prevention, and rapid re-housing assistance.
- 5) **Housing Trust Fund (HTF)** funds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation of non-luxury housing with suitable amenities.

1.4 DEFINITIONS

Beneficiary: The ultimate consumer of HUD programs and receives benefits from a HUD Recipient or Sub-recipient.

Limited English Proficient Person (LEP): Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English because of national origin.

Language Assistance Plan (LAP): A written implementation plan that addresses the identified needs of the LEP persons served.

Recipient: Any political subdivision of the State of South Dakota, or an eligible nonprofit organization, to whom Federal financial assistance is extended for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign or transferee thereof, but such term does not include any Beneficiary under any such program.

Sub-recipient: Any public or private agency, institution, organization, or other entity to whom Federal financial assistance is extended, through another Recipient, for any program or activity, who participates in carrying out such program or activity.

Vital Document: Any document that is critical for ensuring meaningful access to the Recipient’s major activities and programs by beneficiaries generally and LEP persons specifically.

1.5 FRAMEWORK & METHODOLOGY

A Four Factor Analysis is the first step in providing meaningful access to federally funded programs for LEP persons. The Four Factor Analysis completed by GOED/SD HOUSING addresses the following:

1. The number or proportion of LEP persons eligible to be serviced or likely to be encountered by GOED/SD Housing;
2. The frequency with which LEP persons using a particular language come in contact with GOED/SD Housing;
3. The nature and importance of the GOED/SD Housing programs or activities provided to the individual’s life; and
4. The resources available to GOED, SD Housing, and costs associated with providing LEP services.

After completion of the Four Factor Analysis, GOED/SD Housing will prepare a Language Assistance Plan (LAP) to address the needs identified in the Four Factor Analysis. The LAP will include the following:

1. The procedures GOED/SD Housing will use to identify LEP persons with whom GOED/SD Housing has contact, the size of LEP populations, and the languages of LEP populations.
2. Points and types of contact GOED/SD Housing may have with LEP persons.
3. Ways in which language assistance will be provided by GOED/SD Housing, and the plan for outreach to LEP populations.
4. GOED/SD Housing’s plan for training staff members on LEP guidance and the LAP, including specific provisions for training staff that are responsible for monitoring recipients of HUD funding.
5. A list of vital documents to be translated, the languages into which they will be translated and the timetable for translations.
6. GOED/SD Housing’s plan for translating informational materials that detail services and activities provided to beneficiaries and GOED/SD Housing’s plan for providing appropriately translated notices to LEP persons.
7. GOED/SD Housing’s plan for providing interpreters for large, medium, small, and one-on-one meetings.
8. GOED/SD Housing’s plan for developing community resources, partnerships, and other relationships to help with the provision of language services.
9. GOED/SD Housing’s plan for monitoring and updating the LAP.

2 FOUR FACTOR ANALYSIS

The Four Factor Analysis is an individualized assessment that balances the following four factors:

- The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services);
- The frequency with which LEP persons come into contact with the program;
- The nature and importance of the program, activity, or service provided by the program; and
- The resources available and costs to the recipient. Examples of applying the four-factor analysis to HUD-specific programs are in Appendix A of the LEP Final Guidance.

2.1 FACTOR ONE | Data

The number or proportion of LEP persons eligible to be served or likely to be encountered by GOED/SD Housing.

GOED/SD Housing is the recipient of funding from the United States Department of Housing and Urban Development (HUD). This includes, but may not be limited to, Community Development Block Grant Program (CDBG) funds, Community Development Block Grant Disaster Recovery Program (CDBG-DR), National Housing Trust Fund (HTF), and HOME Investment Partnerships Program (HOME) funds. GOED/SD Housing subgrants this funding to eligible recipients throughout the State of South Dakota, and such recipients undertake projects in specific service areas (i.e., within a particular local government, a group of counties, or other identified service area). GOED/SD Housing does not often come into direct contact with LEP persons, as most direct contact with an LEP person occurs at the project level between the Recipient and the LEP person.

GOED/SD Housing's service area generally consists of the entire State of South Dakota, except the CDBG entitlement cities of Rapid City and Sioux Falls. To determine the LEP population of South Dakota, GOED/SD Housing reviewed the 2021 5-year American Community Survey (ACS) Table DP02 to find what the primary languages were for people who spoke English less than "very well". The Census Bureau estimated that 6,497 (0.8%) South Dakotans over 5 years did not speak English very well and spoke Spanish. A total of 3,004 (0.4%) also did not speak English well and spoke Other Indo-European and 3,253 (0.4%) spoke Other Asian and Pacific Island languages. An additional 3,049 (0.4%) persons who speak English less than "very well" spoke other non-identified languages.²

GOED/SD Housing has identified Minnehaha County as the only county in South Dakota that has an LEP population exceeding the 1,000-person or 5% threshold. According to the 2021 American Community Survey 5-year Estimates (Table DP02), Minnehaha has a Spanish-speaking LEP population of 2,004 persons or 1.1% of the County population.

² The [2021 Census ACS](#) report did not contain a breakdown of the population of non-English speaking persons by language other than

Spanish.

HUD has established a “safe harbor” regarding the responsibility to provide translation of Vital Documents for LEP populations. This safe harbor is based upon the number and percentages of the service area-eligible population or current beneficiaries and applicants that are LEP. According to the safe harbor rule, HUD expects translation of Vital Documents to be provided when the eligible LEP population in the service area or Beneficiaries exceeds 1,000 persons or if it exceeds 5% of the eligible population or Beneficiaries along with more than 50 people. In cases where more than 5% of the eligible population speaks a specific language, but fewer than 50 persons are affected, there should be a translated written notice of the person’s right to an oral interpretation.

2.2 FACTOR TWO | Frequency

The frequency with which LEP persons using a particular language come into contact with GOED/SD Housing staff.

GOED/SD Housing understands that the more frequently contact occurs with LEP persons, the more likely enhanced language services will be needed. However, GOED/SD Housing does not provide direct assistance to individuals. GOED/SD Housing awards HUD funds to Recipients who carry out eligible projects that benefit individuals in the service area. As such, LEP persons rarely come into contact with GOED/SD Housing SD-administered HUD-funded programs at the State level. However, it is possible that some citizen participation efforts may be directed to the State by persons seeking to participate in the Consolidated Plan, Annual Action Plan, and CAPER process for GOED/SD Housing programs.

If contact is made with an LEP person, GOED/SD Housing will document any action taken.

2.3 FACTOR THREE | Nature & Importance

The nature and importance of the GOED/SD Housing program or activity provided.

GOED/SD Housing understands that the more important the activity, information, services, or program, or the greater the possible consequences of contact with the LEP persons, the more likely language services are needed. The programs administered by GOED/SD Housing result in Recipients of HUD funding from GOED/SD Housing carrying out projects, and in some instances, providing direct assistance to LEP individuals and families. It is likely that the type of project activities proposed by the Recipient will impact the level and type of language assistance needed to be provided. At the GOED/SD Housing level, it is most important for language assistance services to be provided for citizen participation efforts undertaken by GOED/SD Housing, as this is when it is most likely that LEP individuals will come into contact with GOED/SD Housing directly. It is also important that GOED/SD Housing provide information to LEP persons that will allow them to file a complaint if they believe they have been denied the benefits of language assistance.

2.4 FACTOR FOUR | Available Resources

The resources available to GOED/SD Housing, and costs associated with providing LEP services.

GOED/SD Housing has limited resources available for the administration of HUD-funded programs. These resources primarily come from the percentage of CDBG, CDBG-DR, ESG, HTF, and HOME Program funding that is allowed to be used for the administration of such programs. GOED/SD Housing will use these administration funds to provide LEP services, in addition to using such funds for fulfilling all other statutory and regulatory requirements of these programs.

The costs associated with providing LEP services will vary depending upon the service provided. If GOED/SD Housing uses existing resources, such as having GOED/SD Housing staff members who are proficient in languages other than English assist in translation and/or interpretation, this will be a cost-effective method of providing LEP services. Another cost-effective method of providing LEP services would be to make LEP persons aware of the brochures, handbooks, booklets, fact sheets, and forms that are available in multiple languages on the HUD website. GOED/SD Housing may also, when appropriate, utilize free websites to translate written materials. The costliest option for providing LEP services would be to contract with outside persons who are proficient in the interpretation of spoken word and in the translation of documents. GOED/SD Housing will contract for translation services when necessary. It is expected that the cost of obtaining such services will vary depending upon the nature of the services requested, and the service provider selected.

3 LANGUAGE ASSISTANCE PLAN

As a result of the preceding Four Factor Analysis, GOED/SD Housing has developed a Language Assistance Plan. The Language Assistance Plan addresses the identified needs of the LEP persons GOED/SD Housing serves, the process by which GOED/SD Housing will monitor and update the LAP, and GOED/SD Housing's plan for ensuring Recipients of funding from GOED/SD Housing fulfill LEP responsibilities.

GOED/SD Housing understands that the actions GOED/SD Housing are expected to take to meet its LEP obligations depend upon the results of the Four Factor Analysis including the services GOED/SD Housing offers, GOED/SD Housing's service area, the resources GOED/SD Housing possesses, and the costs of various language service options. However, GOED/SD Housing is to take reasonable steps to ensure meaningful access to LEP persons. The meaningful access is based upon a reasonableness standard that is both flexible and fact dependent.

3.1 PROCEDURES

This section describes procedures GOED/SD Housing will use to identify LEP persons with whom GOED/SD Housing has contact, the size of LEP populations, and the languages of LEP populations.

GOED/SD Housing will review American Community Survey data as it is updated to determine the size of LEP populations and the languages of LEP populations within the State of South Dakota.

GOED/SD Housing will use its citizen participation process conducted on at least an annual basis in conjunction with preparation of the required Annual Action Plan to determine whether additional contact with LEP persons is likely to occur at the State level. This will be accomplished by including information in public notices for Annual Action Plan hearings regarding obtaining language assistance in order to participate in the planning process.

GOED/SD Housing staff persons will also interact with public hearing attendees and informally engage in conversation to gauge each attendee's ability to speak and understand English. GOED/SD Housing will keep records of language assistance requests to determine whether language assistance may be needed at future hearings.

3.2 CONTACT AND ENCOUNTERS

This section describes the points and types of contact GOED/SD Housing may have with LEP persons.

LEP persons rarely come into contact with GOED/SD Housing SD-administered HUD-funded programs at the State level. However, GOED/SD Housing is aware that LEP populations may wish to participate in the citizen participation efforts of GOED/SD HOUSING, especially when GOED/SD Housing is determining state and local needs and program policies. GOED/SD Housing's LAP focuses on the need for GOED/SD Housing to ensure that individuals have access to citizen participation efforts and that Recipients of HUD funding from GOED/SD Housing fulfill their LEP obligations to ensure that the LEP community has access to appropriate language assistance. It is possible that some programs GOED/SD Housing administers will have a greater likelihood to affect LEP persons, in such instances GOED/SD Housing may adapt to those needs by expanding available resources.

3.3 LANGUAGE ASSISTANCE

This section describes ways in which language assistance will be provided by GOED/SD Housing.

GOED/SD Housing will provide language assistance as requested, and as appropriate. GOED/SD Housing has limited resources available for the administration of HUD-funded programs, and such resources must be used to provide LEP services in addition to fulfilling all other statutory and regulatory requirements of these programs. GOED/SD Housing will initially work with the person requesting language assistance to assess whether there is a family member or friend who can assist. If not, GOED/SD Housing is able to provide language assistance as follows:

1. Maintain a list of identified GOED/SD Housing staff members (and where possible other state agency employees) who are proficient in languages other than English who are willing to assist in translation and/or interpretation and will make this list available to staff persons so that they can appropriately obtain language assistance services for LEP persons.
2. Use and make persons aware of the many brochures, handbooks, booklets, fact sheets, and forms that are available in multiple languages on the HUD website. When, and if appropriate, GOED/SD

Housing may utilize free websites and computer programs to translate written materials.

3. As needed, GOED/SD Housing may contract with entities that are proficient in the interpretation of spoken word and translation of documents.
4. Translate Vital Documents, including but not limited to Annual Action Plans, the Citizen Participation Plan, and Complaint procedures, into languages meeting the minimum safe harbor threshold. GOED/SD Housing will continue to monitor what program-related documents are considered vital.

3.4 OUTREACH

This section describes the plan for outreach to LEP populations. GOED/SD Housing administers HUD-funded programs at the State level and do not carry out activities directly with beneficiaries. Therefore, GOED/SD Housing staff rarely come into contact with LEP individuals.

GOED/SD Housing will provide its Recipients with technical assistance regarding their responsibilities to provide language assistance services to individuals in their jurisdiction and/or service area.

3.5 TRAINING STAFF

This section describes GOED/SD Housing's plan for training staff members on LEP guidance and the LAP, including specific provisions for training staff that are responsible for monitoring Recipients of HUD funding.

GOED/SD Housing will ensure staff persons associated with HUD-funded programs are given proper LEP training, making them aware of the obligations to provide meaningful access to information and services for LEP persons. Training for these individuals will include the following:

1. Language assistance requirements, including applicable law and resources.
2. Make available a copy of GOED/SD Housing's Four Factor Analysis and Language Assistance Plan and inform when such information is updated.
3. Make available a list of other staff persons proficient in providing language assistance and receive instructions on actions to take when LEP individuals are encountered, including the use of language identification cards (i.e., "I Speak") which invite LEP persons to identify their language needs.
4. All staff persons that monitor Recipients, on examining the efforts of Recipients to comply with LEP requirements. This will include the following: (1) evaluating whether the Recipient has completed a Four Factor Analysis; (2) determining whether such Four Factor Analysis necessitated the preparation of a Language Assistance Plan; (3) determining whether the Recipient provided language assistance outreach and services as identified in the Language Assistance Plan; and (4) determining whether Vital Documents have been made available in appropriate languages.

3.6 VITAL DOCUMENTS

This section identifies a list of Vital Documents to be translated, the languages into which they will be translated, and the timetable for translations.

Vital Documents are any documents that are critical for ensuring meaningful access to GOED/SD Housing's major activities and programs by beneficiaries generally, and LEP persons specifically. GOED/SD Housing will translate Vital Documents into appropriate languages.

Based on the information gathered through the completion of the Four Factor Analysis, GOED/SD Housing has determined that the Annual Action Plans, Citizen Participation Plan, and complaint procedures contained in the GOED/SD Housing program administration manuals are Vital Documents. The Annual Action Plans describe the methods of distribution and requirements for all covered programs. The Citizen Participation Plan provides a plan for ensuring that citizens are aware of when activities take place, which will help ensure they have the opportunity to participate and/or request the necessary assistance to participate. The complaint procedure provides information on how to inform GOED/SD Housing if an individual has a complaint against GOED/SD Housing or its Recipients in administering funding.

GOED/SD Housing will document all requests received for language assistance, observe interactions with LEP persons that occur, continue to review American Community Survey data as it is updated, and determine whether South Dakota has met the minimum threshold to translate Vital Documents.

3.7 TRANSLATION SERVICES

This section describes GOED/SD Housing's plan for translating informational materials that detail services and activities provided to Beneficiaries and GOED/SD Housing's plan for providing appropriately translated notices to LEP persons.

Because the cost of translation can be high, GOED/SD Housing will continue to evaluate the need for translation of informational materials and consider the best way to undertake translation services. GOED/SD Housing wishes to be resourceful in providing language assistance without compromising the quality and accuracy of the language services provided.

As explained in the Four Factor Analysis, GOED/SD Housing does not provide services directly to beneficiaries but instead provides funding to Recipients who then provide services to beneficiaries. Therefore, GOED/SD Housing believes it is appropriate to focus on ensuring Recipients are taking appropriate action to ensure notice of language assistance services is provided to LEP persons, and that documents that are identified as Vital Documents by Recipients are translated into appropriate languages.

3.8 INTERPRETER SERVICES

This section describes GOED/SD Housing's plan for providing interpreters.

As explained in the Four Factor Analysis, GOED/SD Housing does not provide services directly to beneficiaries but instead provides funding to Recipients who then provide services to beneficiaries. Therefore, GOED/SD Housing believes it is appropriate to focus on ensuring Recipients are taking appropriate action to ensure notice of language assistance services is provided to LEP persons.

If GOED/SD Housing comes in direct contact with an LEP individual, they will follow the steps listed in Section 3.3.

3.9 COMMUNITY RESOURCES

This section describes GOED/SD Housing’s plan for developing community resources, partnerships, and other relationships to help with the provision of language services. GOED/SD Housing is aware that other South Dakota government agencies and entities have Language Assistance Plans (LAP), this includes, but may not be limited to, the South Dakota Unified Judicial System, South Dakota WIC, SD Animal Industry Board, and the South Dakota Department of Transportation. GOED/SD Housing may communicate with these agencies regarding their methods of LEP outreach and provision of language assistance services.

GOED/SD Housing may also communicate with community organizations that serve LEP populations (e.g., Lutheran Social Services, University of South Dakota, Cornerstones Career Learning Center, Journey Language Center, etc.) and others that assist people of all cultures by teaching English language and literacy skills. Many of these organizations also partner with educational institutions, community groups, and churches to provide services to LEP persons. Identification of these groups through interaction with literacy skill providers will help GOED/SD Housing become more aware of the needs that exist for language assistance services.

GOED/SD Housing provides Recipients with technical assistance regarding their responsibilities to provide language assistance services, including technical assistance on HUD’s *safe harbor* provision for translation of written materials and the requirement to provide reasonable, timely oral language assistance.

GOED/SD Housing requires all Recipients to provide reasonable oral language assistance, such assistance may involve the use of an in-person interpreter or telephone line interpreter, as may be appropriate.

GOED/SD Housing requires Recipients to complete a Four Factor Analysis and, where necessary and/or in service areas (e.g., city, county, or region) that have populations that exceed the HUD safe harbor threshold, prepare a Language Assistance Plan to address identified needs of LEP persons. Recipients may use a template prepared by GOED/SD Housing as a starting point in preparing a LAP. As part of a monitoring process, GOED/SD Housing reviews action taken by the Recipient to comply with LEP requirements and, where applicable, compliance with provisions contained in a LAP.

GOED/SD Housing makes available LEP resources to Recipients, specifically those noted at the end of the LAP. In particular, GOED/SD Housing may use training videos including, “Communicating Effectively with Limited English Proficient Individuals” or similar such guidance. Guidance and resources, including the video, are available at www.lep.gov.

3.10 MONITORING and UPDATING

This section describes GOED’s plan for monitoring and updating the Language Assistance Plan (LAP).

GOED will monitor, maintain, and update the LAP as necessary. GOED will review American Community Survey (ACS) data annually to determine the size of LEP populations and the languages of LEP populations within the State of South Dakota, review additional guidance provided by HUD, and update the LAP accordingly.

4 AVAILABLE LEP RESOURCES

HUD Frequently Asked Questions on the Final LEP Guidance:

https://www.hud.gov/program_offices/fair_housing_equal_opp/promotingfh/lep-faq

HUD's LEP Website:

https://www.hud.gov/program_offices/fair_housing_equal_opp/limited_english_proficiency_0

Federal LEP Website: <https://www.lep.gov/>

LEP and Title VI Videos: <https://www.lep.gov/videos>

Interpretation and Translation materials: https://www.lep.gov/interp_translation/trans_interpret.html

"I Speak" Cards: <https://www.lep.gov/translation#toc-language-identification-and-i-speak-cards>

5 COMPLAINTS & GRIEVANCES

GOED/SD Housing's complaint procedures provide the opportunity to receive feedback from individuals with language access barriers and ensure the process is accessible regardless of language barriers.

Individuals who think they have been subjected to discrimination involving LEP, Title VI, and related statutes may contact the South Dakota Division of Human Rights at:

Telephone: (605) 773-3681 or (800) 642-6112

Online: https://dlr.sd.gov/human_rights/forms.aspx

Email: <https://apps.sd.gov/LD01EmailContact/Default.aspx?ID=25>

Mail/In-Person:

Division of Human Rights
South Dakota Department of Labor and Regulation
116 W. Missouri Ave.
Pierre, SD 57501

Any person that feels that Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and Executive Order 13166 regulations were not complied with may file a complaint directly to HUD:

Online: https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint# How To File