

DRAFT

NCUA PLAN TO ASSIST PERSONS WITH LIMITED ENGLISH PROFICIENCY

Purpose: The purpose of this guidance is to clarify the responsibilities of the National Credit Union Administration (NCUA) for providing persons with limited English proficiency meaningful access to NCUA programs and services as required under Executive Order 13166 (August 11, 2000) and Title VI of the Civil Rights Act of 1964. (42 U.S.C. Section 2000d)

Background: Executive Order (E.O.) 13166 requires federal agencies to develop guidance to ensure that the agency and the organizations receiving federal funds from NCUA take reasonable steps to comply with Title VI requirements to provide meaningful access to individuals with limited English proficiency (LEP). Clarifying information provided in the Department of Justice policy guidance entitled “Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency” (Federal Register, August 16, 2000, Vol. 65, No. 159) has assisted NCUA in the development of an agency plan and guidance for credit unions.

Discriminatory Practices Covered: Based on decisions by the courts, Title VI prohibits organizations receiving federal funds from discriminating against clients/members they serve by failing to provide meaningful access to LEP persons. Because the federal government adheres to the principles of non-discrimination and inclusion embodied in Title VI, E.O. 13166 extends these compliance requirements to NCUA and other federal agencies in their dealings with LEP persons.

Discrimination covered by Title VI, E.O. 13166, and this policy includes both intentional discriminatory practices and practices that appear neutral but have a discriminatory effect. Thus, NCUA practices may be considered discriminatory if they have an adverse effect on the ability of national origin minorities to meaningfully access agency services whether or not this is a result of intentional actions by the agency. To assure that there are no discriminatory effects, NCUA will review its policies and practices and take reasonable steps to provide meaningful access to LEP persons.

Examples of practices which may violate the intent of Title VI are:

- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons;
- Subjecting LEP persons to unreasonable delays in the delivery of services;

- Limiting participation in a program or activity on the basis of English proficiency;
- Providing services to LEP persons that are not as effective as those provided to those who are proficient in English; or
- Failing to inform LEP persons of their access to interpreter services and/or requiring LEP persons to provide their own interpreter.

Reasonable Steps in Providing Meaningful Access: NCUA interacts with credit union volunteers, staff, and members; potential members of credit unions; organizations interested in chartering credit unions; as well as members of the general public. Some of these individuals may have limited English proficiency and may not be able to communicate or understand NCUA's programs or services. In these situations, NCUA must take reasonable steps to ensure that limited English proficiency (LEP) persons receive the language assistance necessary to afford them meaningful access to NCUA's programs and services where appropriate. The following four factors assist in identifying what constitutes reasonable steps to ensure meaningful access:

- 1) Number or proportion of LEP persons in the eligible service population;
- 2) Frequency with which LEP persons come into contact with the program;
- 3) Importance of the service provided by the program; and
- 4) Resources available to the agency to provide access.

These four factors are useful in conducting a balanced analysis to determine whether reasonable steps are possible when contacts with persons speaking a particular language occur on an infrequent basis. Justice Department guidance clarifying LEP responsibilities under Title VI indicates that if reasonable steps are possible, the agency should have a plan for what to do if an LEP individual seeks services. This guidance states further that, "Claims of limited resources from large entities will need to be well substantiated." (Federal Register, August 16, 2000, Vol. 65, No. 159)

There is no universal solution for Title VI compliance with respect to LEP persons. The determination of compliance will be based on the end result - whether NCUA has taken the necessary steps to ensure that LEP persons have meaningful access to its programs and services. However, in developing a language assistance program, the following elements should be considered:

- Assessment – Conduct a thorough assessment of the language needs of the LEP persons to be served by NCUA.
- Development of Written Policy on Language Access – Develop and implement a written policy that will ensure meaningful communication with LEP persons.

- Training of Staff – Take steps to ensure that NCUA staff likely to have contact with LEP persons understand the policy and are capable of carrying it out.
- Vigilant Monitoring – Conduct regular monitoring of the language assistance program to ensure that LEP persons can meaningfully access NCUA programs and services.

Failure to incorporate or implement one or more of the above elements does not necessarily mean NCUA is not in compliance with E.O. 13166 or the intent of Title VI. All of the circumstances affecting NCUA's ability to deliver the language assistance program as a whole will be evaluated to determine whether the agency is meaningfully assisting LEP persons in accessing its programs and services. If implementation of one or more of these options will be too financially burdensome or equally effective alternatives ensure meaningful access to NCUA programs and services, NCUA will still be considered in compliance.

Assessment of Language Needs: The following steps should be taken to assess language needs of persons likely to be served by NCUA:

- Identify the number, purpose, and the non-English languages spoken in contacts encountered by the Central and Regional Offices and the proportion of contacts each language represents. This may be done by keeping a log of phone calls and other correspondence received where a language barrier occurs or by surveying staff with public contact responsibilities.
- Identify areas of the United States where census, workforce, NCUA field staff experience, or other population data show high percentages of particular non-English language groups.
- Identify the points of contact where language assistance is likely to be needed in the Central Office, Regional Offices, and other field locations.
- Identify the resources that will be needed to provide the effective language assistance for frequently occurring and infrequently occurring languages. This may include bilingual employees and/or the use of interpreters depending on the nature and frequency of contacts.
- Identify the location and availability of existing language assistance resources and additional resources that may be needed. This will vary depending on the part of the country and the languages encountered.
- Identify the arrangements that must be made to access these language assistance resources in a timely fashion.

Development of a Written Policy on Language Access: In compliance with E.O. 13166, NCUA is developing and implementing a written policy on language assistance program for LEP persons. This may include these and other language access policy areas:

- Identification and assessment of the language needs of LEP contacts,

- Provision for a range of oral language assistance options for in person and telephone contacts,
- Notices to LEP persons in a language they can understand of their access to language assistance,
- Periodic training of staff,
- Monitoring of the program, and
- Translation of vital written materials provided to LEP contacts in person, by mail, or on websites, in certain circumstances.

Written materials are considered vital if they contain information that is critical for obtaining the services and/or benefits, or are required by law. These written materials could include but are not limited to notices of rights, complaint forms and procedures, and explanations of critical benefits. Vital written materials should be translated when a significant number, or percentage of those eligible to be served, need information in a language other than English to communicate effectively. For many larger documents, translations of vital information contained within the document will suffice. The documents need not be translated in their entirety.

Training of Staff

To ensure that the LEP policies are followed, NCUA should provide a copy of the policies to employees likely to have contact with LEP persons and provide periodic training of these employees. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation. This training should be part of the orientation for new employees in these positions. A training register may be used to record the names and dates of employees trained.

Monitoring

To assure that the LEP program continues to provide meaningful access to LEP persons, NCUA should monitor the program at least annually. The monitoring process should incorporate feedback from LEP persons when feasible and a formal LEP complaint process. It should assess:

- Current languages encountered,
- Current communication needs of LEP persons,
- Whether existing assistance is meeting the needs of the LEP persons,
- Whether staff likely to have contacts with LEP persons are knowledgeable about policies and procedures and how to implement them, and
- Whether sources of and arrangements for assistance are still current and viable.
- Whether staff know how to handle complaints from LEP persons about their access to NCUA or credit union programs and activities

Language Assistance Strategies for NCUA

The following are examples of language assistance strategies that may assist NCUA in complying with E.O. 13166 and the intent of Title VI.

- ❖ Identify and assess the languages that are likely to be encountered and estimate the most common languages encountered. This can be done by keeping a log at the Central and Regional Offices recording the languages encountered and how often they are encountered. Field staff experience with credit unions also may help to identify language needs.
- ❖ Provide signs to credit unions in appropriate languages informing LEP persons of their right to contact NCUA to file consumer complaints, to obtain information about deposit insurance or other specific concerns or needs, and to access available interpreter services if they identify themselves as persons needing language assistance.
- ❖ Provide a link on NCUA's web site that includes one or more non-English language options, as appropriate.
- ❖ Provide initial call in language options for telephone calls to the Central and Regional Offices using an automated telephone system that will route the call to a speaker of the required language.
- ❖ Develop directories by language of bilingual NCUA employees, credit unions, and language or national origin based associations for use in responding to telephone calls, correspondence, and other needs. Currently NCUA staff obtain assistance from these individuals and organizations on an ad hoc basis as it is needed.
- ❖ Contract with interpreting services that can provide competent interpreters in a wide variety of languages, in a timely manner.
- ❖ Make arrangements with community groups for competent and timely interpreter services by community volunteers.
- ❖ Arrange for language interpreter service provided by telephone.
- ❖ Translate instructional, informational, and other key NCUA documents into appropriate non-English languages, such as "Your Insured Funds," now available in paper format in English and Spanish.
- ❖ Attempt to provide oral interpreter assistance with documents for those persons whose language does not exist in written form.

- ❖ Establish procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons.
- ❖ Provide training of staff, particularly staff likely to contact LEP persons, with respect to NCUA's obligation to provide language assistance to LEP persons, and on language assistance policies and procedures to be followed in securing such assistance in a timely manner.
- ❖ Post notices on the web, in appropriate languages, about the access of LEP persons to interpreters and other language assistance.
- ❖ Provide notice to the credit unions regarding the language assistance policies and procedures, and notice to and consultation with community organizations and sponsors that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.
- ❖ Adopt a procedure for the resolution of complaints regarding the provision of language assistance, and for notifying eligible LEP persons of their right to file a complaint under Title VI and the procedures for doing so.

Implementation of NCUA Plan: Following Justice Department review of the NCUA Plan, the agency's LEP Committee will work with NCUA management to develop a more detailed implementation plan for LEP programs and activities, including assignments of responsibility for implementing the plan.

Attachment:

Executive Order 13166, Improving Access to Service for Persons with Limited English Proficiency (August 11, 2000)