

Limited English Proficiency Plan



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I. Introduction

It is the policy of the Mississippi Department of Transportation (MDOT) to assure full and affirmative compliance with Title VI of the Civil Rights Act of 1964, as amended, and related statutes and implementing authority. MDOT has given certain assurances to the U.S. Department of Transportation in this regard: MDOT assures that no person in the United States, on the grounds of race, color, national origin, sex, age, or disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity for which the recipient receives federal assistance from the Department of Transportation, including Federal Highway Administration.

English is the predominant language of the United States. The United States is also, however, home to millions of national origin minority individuals who are “limited English proficient” (LEP). That is, they cannot speak, read, write or understand the English language at a level that permits them to interact effectively. Because of these language differences and their inability to speak or understand English, LEP persons are often excluded from programs, benefits and/or activities of agencies receiving Federal financial assistance.

Presidential Executive Order (EO) 13166 entitled “Improving Access to Services for Persons with Limited English Proficiency” was intended to improve access to federally conducted and assisted programs for persons who are LEP. The EO requires recipients of Federal financial assistance to develop and implement guidance on how the recipient will assess and address the needs of otherwise eligible limited English proficient persons seeking access to the programs and activities of recipients of federal financial assistance.

MDOT’s LEP guidance provides procedures that will assist MDOT in complying with Title VI responsibilities to ensure meaningful access to all programs, activities and/or benefits for LEP persons.

II. Limited English Proficiency Statement of Commitment

As a recipient of federal-aid funding, MDOT is committed to nondiscrimination in all its programs and activities whether or not those programs and activities are federally funded. This guidance clarifies MDOT’s fulfillment of responsibilities to limited English proficient (LEP) persons, pursuant to Executive Order 13166, entitled “Improving Access to services for persons with Limited English Proficiency.” MDOT will take reasonable steps to ensure meaningful access to the agency’s programs, activities, services and information that are normally provided in English are accessible to LEP persons. Failure to ensure that LEP persons can effectively participate in federally assisted programs and activities may violate the prohibition against national origin discrimination under Title VI of the Civil Rights Act.

The key to providing meaningful access to LEP persons is to ensure that LEP beneficiaries can communicate effectively and act appropriately based on that communication. The Department will ensure that every manager, supervisor, employee, and sub-recipient of federal-aid funds administered by MDOT takes reasonable steps to ensure meaningful access to MDOT recipients’ programs and activities. Where

possible, the agency will collect and maintain demographic statistics on persons who participate in our programs and services. In addition, every district and division will post written notices in a public area regarding the right to free language assistance for persons conducting business with the Department in the most frequently encountered or likely to be encountered languages.

Allegations of discrimination should be brought to the immediate attention of the Civil Rights Division Director, the Title VI Coordinator, the Contract Compliance Coordinator, or a District or Division Title VI Officer.

III. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person 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.” Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity “to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. 2000d-1.

Department of Justice regulations promulgated pursuant to section 602 forbid 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.” 28 CFR 42.104(b)(2). DOT’s Title VI regulations include almost identical language in this regard. See 49 CFR 21.5(b)(vii)(2) (portions of these regulations are provided in Appendix A).

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. “Improving Access to Services for Persons with Limited English Proficiency,” 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how its recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding recipients from “restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program” or 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.”

On that same day, DOJ issued a general guidance document addressed to “Executive Agency Civil Rights Officers” setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. “Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency,” 65 FR 50123 (August 16, 2000) (DOJ’s General LEP Guidance).

Pursuant to Executive Order 13166, DOT developed its own guidance document for recipients and initially issued it on January 22, 2001, “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries.” However, in light of the public comments received and the Assistant Attorney General’s October 26, 2001, clarifying memorandum, DOT has revised its LEP guidance to ensure greater consistency with DOJ’s revised LEP guidance, published June 18, 2002, and other agencies’ revised LEP guidance. 67 FR 117 (June 18, 2002).

IV. Agency Guidelines for Full Participation of Limited English Proficient (LEP) Persons

1. Implementation

The Contract Compliance Coordinator is responsible for monitoring agency programs and activities to ensure meaningful access for LEP persons. The Civil Rights Director has designated the Contract Compliance Coordinator as the agency’s LEP Liaison.

2. Agency Responsibilities

All managers and supervisors have been notified that they are full obligated to ensuring meaningful access to all programs and activities offered by the Mississippi Department of Transportation.

The Contract Compliance Coordinator along with management will identify language service needs and strategies for responding to those needs. The Contract Compliance Coordinator with assistance from the Title VI Coordinator is responsible for monitoring agency programs and activities to ensure meaningful access for LEP persons. The LEP Liaison duties include:

- Ensure identification and securing of existing and needed resources (in-house, new hire contract, resource sharing with other agencies, volunteers, or other) to provide oral and written language services.
- Identify and develop and recommend guidelines to implement the Plan.
- Identify criteria for designation of language for initial round of translation, based on demographic data;
- Create systems to distribute translated documents, post electronically, and maintain supply;

- Identify training needs to staff and managers needing to use language services, as well as language service providers on staff.
- Establish protocols for ensuring quality, timeliness, cost effectiveness, and appropriate levels of confidentiality in translations, interpretations, and bilingual staff communications.
- Identify and implement a system for receiving and responding to complaints.
- Exchange best practices information with Divisions and Districts.
- Review the progress of MDOT on an annual basis in providing meaningful access to LEP persons, develop reports, and recommend modification to LEP Guidelines as appropriate.

3. LEP Services

The LEP Liaison will identify and maintain an inventory of Language Assistance Services (LAS) providers available to all MDOT personnel. The inventory will include, but is not limited to, the following:

1. Contract language service providers (LSP) based on the following qualification factors:
 - The interpretation skill level of the LSP and its agents;
 - The length of time the LSP has been in business;
 - Any previous experience the agency may have had with the LSP,
 - The LSP's experience in providing LEP services in similar contexts, and
 - The timeliness in which they provide the service.

2. Contract document translators based on the following qualification factors:
 - The translation skill level of the contractor and its agents;
 - The length of time the contractor has been in business;
 - Any previous experience the agency may have had with the contractor,
 - The contractor's experience in providing LEP services in similar contexts, and
 - The timeliness and accuracy in which they provide the service.

These contracts would be available for use by all MDOT Divisions and Districts as a source of professional and responsive language translation and interpretation services. All requests for translation/interpreter services will be forwarded to the Contract Compliance Coordinator within the Office of Civil Rights. Requests for services will include the name of the person requesting the services, and the division or district name and number.

The Contract Compliance Coordinator will maintain a database for LEP requests, by division and district. This database will include, at a minimum, the name of the person requesting the service, type of service requested, name of LEP person affected, type of document to be translated, language translated from and to, and any other pertinent information for tracking language services.

The LEP Liaison will develop a form that each requestor for services will complete to evaluate the services performed by the Contractor. The evaluation forms will be sent directly to the Contract Compliance Coordinator.

All LAS will be made available to LEP persons at the expense of MDOT, where the circumstances indicate the provision of LEP services is appropriate and required.

4. Training

MDOT staff members and sub-recipients should know their obligations to provide meaningful access to information and services for LEP persons, and all persons in public contact positions should be properly trained. An effective training objective would likely include training to ensure that:

- MDOT staff and sub-recipients know about LEP policies and procedures.
- MDOT staff and sub-recipients who have contact with the public (or those in a recipient's custody) are trained to utilize interpreter services effectively.
- MDOT and sub-recipients shall include this training as part of the orientation provided for new employees.

Management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff. Training will be provided by the Office of Civil Rights.

5. Needs Assessment

The agency will, on a continuing basis, assess the need for language services on a district and/or statewide basis and make LAS available as deemed appropriate. In making this assessment, the agency will examine the prevalence of LEP stakeholders statewide, by district and/or by service area of program:

- The number or Proportion of LEP persons served or encountered in the eligible service population
- The frequency with which LEP individuals come in contact with the program
- The nature and importance of the program, activity, or service to people's lives

- The resources available to MDOT and costs to provide LEP services

In making this assessment, the agency will consider the following among other data sources:

- United States census results
- Data maintained by the agency
- The agency's past experience in providing services to LEP stakeholders
- Information sources maintained by private and public local entities, including community-based organizations and local social services departments

The Contract Compliance Coordinator and management will, on a continuing basis, identify vital documents that are routinely provided to stakeholders that will be translated into languages other than English. The translation of vital documents into languages other than English is particularly important where a significant number or percentage of the customers served and/or eligible to be served have limited English proficiency. Whether or not a document is vital depends on how significant the impact on the health, safety, legal rights, or livelihood of an LEP person may be. Written documents include electronic documents and web-sites. Vital documents may include materials such as:

- Emergency transportation information;
- Notices of public hearings and proposed transportation plans;
- Community education materials;
- Notices notifying LEP persons of language assistance at no cost to the LEP person;
- Markings, signs and packaging for hazardous materials and substances;
- Signs in waiting rooms, reception areas, and other initial points of entry;
- Instructions on how to participate in a recipient's program.

The Contract Compliance Coordinator will coordinate with the LSP to have identified documents translated accordingly. Translated documents will be made available on MDOT's website for divisions and districts' access.

6. Complaint Procedure

- a. Any LEP individual has a right to file a complaint against the agency where he or she believes that the agency did not provide necessary LEP services as appropriate. These complaints include those available under Title VI of the Civil rights Act of 1964.
- b. All complaints, alleging a violation under Title VI will be referred to the Title VI Coordinator or a Title VI Officer.

- c. The Title VI Coordinator and Civil Rights Director will take appropriate steps to resolve all complaints in accordance with the agency's discrimination complaint procedures.
- d. The Title VI Coordinator will maintain a database tracking requests for all complaints and their resolution. The database will include the following items:
 - 1. Source of complaint
 - 2. LEP request including relevant contact information
 - 3. Nature of complaint request
 - 4. Date complaint/request received
 - 5. Date complaint/request resolved
 - 6. Manner of resolution
 - 7. Comments
- e. Fact-finding procedures by Title VI Coordinator and Civil Rights Director will follow the investigation protocol in the Title VI Plan.
- f. Mediation and hearings:
- g. Interpreters will be made available to hearing participants upon request or where CRD staff identifies a need for an interpreter.

V. APPLYING THE FOUR-FACTOR ANALYSES

1. The number or proportion of LEP persons eligible in the MDOT service area who maybe served or likely to encounter a MDOT program, activity, or service.

The MDOT examined the US Census report from 2000 and was able to determine that approximately 3.6% or 95,522 of Mississippi population spoke language other than English. Of the 95,522 people reporting speaking a language other than English 36,059 or 37.7% of respondents either speak English "well", "not well" or "not at all." (See **APPENDIX A** Mississippi Language Spoken at Home Chart).

2. The frequency with which LEP individuals come in contact with a MDOT program, activity, or service

The MDOT assesses the frequency at which staff and contractors have or could possibly have contact with LEP persons. This includes documenting phone inquiries and verbally surveying staff via on-site visits and other reporting mechanisms. We have not received requests through our special emphasis program areas or transit agencies from individuals requesting interpreters. However we have required that all sub-recipients of FTA and FHWA federal funds develop a written plan to accommodate the possible need of interpreter services in the event that requests are

received. The Public Transit and the Office of Civil Rights divisions maintain a copy of these written plans in our files. The staff and sub-recipients have had very little to no contact with LEP individuals.

3. The nature and importance of the program, activity, or service provided by the MDOT to LEP community

There is no large geographic concentration of any one type of LEP individuals in the Mississippi. According to the 2000 U.S. Census Bureau information, the overwhelming majority of the population, 96.4% or 2,545,931, speak only English.

Therefore, there have been no specific focused outreach efforts to get LEP communities involved in program, activity and/or services provided by the MDOT and/or sub-recipients. However, efforts are made via advertising, media, community meetings, etc. to insure that information about hearings, meetings, conference/workshops, planning activities are broadly circulated throughout the state of Mississippi. Alternative language format have been used by MDOT and sub-recipients in this effort although our prevalent population speaks English

4. The resources available to the MDOT and overall costs

The MDOT and contractors assessed its available resources that could be used for providing LEP assistance. This included identifying how much a professional interpreter and translation service would cost on as needed basis, which documents would be the most valuable to be translated if and when the populations supports, taking an inventory of available organizations that the MDOT and contractors could partner with for outreach and translation efforts, and what level of staff training is needed.

After analyzing the four factors, the MDOT developed the plan outlined in the following section for assisting persons of limited English proficiency.

LIMITED ENGLISH PROFICIENCY PLAN OUTLINE

- a) **How to Identify an LEP Person who Needs Language Assistance** - Below are tools to help identify persons who may need language assistance:
- Examine records requests for language assistance from past meetings and events to anticipate the possible need for assistance at upcoming meetings.
 - When MDOT or subrecipients sponsored workshops or conferences are held, set up a sign-in sheet table, have a staff member greet and briefly speak to each attendee. To informally gage the attendee's ability to speak and understand English, ask a question that requires a full sentence reply.
 - Have the Census Bureau's "I Speak Cards" at the workshop or conference sign-in sheet table (contained herein as **APPENDIX B**). While staff may not be able to provide translation assistance at this meeting, the cards are an excellent tool to identify language needs for future meetings. Also, have the cards available at the contractor sites.

- Frequently survey drivers and other first line staff of any direct or indirect contact with LEP individuals.
 - Frequently survey MDOT's district and division offices of any direct or indirect contact with LEP individuals.
- b) Language Assistance Measures** - The MDOT has or will implement the following LEP procedures. The creation of these steps are based on the very low percentage of persons speaking other languages or not speaking English at least "well," and the lack of resources available in the MDOT service area:
- Census Bureau's "I Speak Cards" are to be located at each division and district reception area or business office locations at all times.
 - When needed, staff will be able to use a telephonic language communication provider to connect with the language need of LEP customers. Service is activated by using a call in number to the language interpreter services call center. The customer will be put on the phone where the language interpreter service call center will be able to determine what language is required if not already known.
 - When the MDOT's website is redesigned, AltaVista Babel Fish translation will be an added feature. This will aid LEP persons seeking services with MDOT.
- c) Outreach Techniques** - MDOT does not have a formal practice of outreach techniques due to the lack of LEP population and resources available in the service area. However, the following are a few options that the MDOT will incorporate when and/or if the need arises for LEP outreach:
- If staff knows that they will be presenting a topic that could be of potential importance to an LEP person or if staff will be hosting a meeting or a workshop in a geographic location with a known concentration of LEP persons, meeting notices, fliers, advertisements, and agendas will be printed in an alternative language, based on known LEP population in the area.
 - When running a general public meeting notice, staff will insert the clause, based on the LEP population and when relevant, that translates into "A (insert alternative Language) translator will be available". For example: "Un traductor del idioma español estará disponible" This means "A Spanish translator will be available".
 - Key print materials, including but limited to schedules and maps, will be translated and made available at meetings or public hearings in communities where a specific and concentrated LEP population is identified.
- d) Monitoring and Updating the LEP Plan** - This plan is designed to be flexible and is one that can be easily updated. At a minimum, the MDOT will follow the Title VI Program update schedule for the LEP Plan. However, major updates most likely will not occur until the next Census in 2010 unless the MDOT finds it necessary and crucial for an update before such time.

Each update should examine all plan components such as:

- How many LEP persons were encountered?
 - Were their needs met?
 - What is the current LEP population in the State of Mississippi?
 - Has there been a change in the types of languages where translation services are needed?
 - Is there still a need for continued language assistance for previously identified MDOT programs? Are there other programs that should be included?
 - Have the MDOT's available resources, such as technology, staff, and financial costs changed?
 - Has the MDOT fulfilled the goals of the LEP Plan?
 - Were any complaints received?
- e) **Dissemination of the MDOT Limited English Proficiency Plan** - MDOT's LEP Plan will be posted on MDOT's website where any person, including social service, non-profit, and law enforcement agencies and other community partners with internet access will be able to access the plan. Notice of protection for LEP persons is included in MDOT's Title VI brochure titled "Your Rights under Title VI of the Civil Rights Act of 1964". Brochures are distributed at public hearings and meetings.

Copies of the LEP Plan will be provided, on request, to any person(s) requesting the document via phone, in person, by mail or email. LEP persons may obtain copies/translations of the plan upon request.

Any questions or comments regarding this plan should be directed to the MDOT's Title VI Coordinator or Contract Compliance Coordinator.

Office of Civil Rights
Mississippi Department of Transportation
P. O. Box 1850
Phone: 601-359-7466
Fax: 601-576-4504
Email: srobert@mdot.state.ms.us or jrigby@mdot.state.ms.us

APPENDIX A

Mississippi Languages Spoken at Home Based on 2000 Census		
LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER	Total	Percent of population
Total resident population 5 years and over:	2,641,453	100.00%
Speak only English	2,545,931	96.4%
Language other than English	95,522	3.6%
Speak English less than "very well"	36,059	1.4%
Speak Spanish	50,515	2.9%
Speak English less than "very well"	20,856	0.8%
Speak Other Indo-European Languages	23,700	0.9%
Speak English less than "very well"	5,805	0.2%
Speak Asian and Pacific Island Languages	13,558	0.5%
Speak English less than "very well"	6,303	0.2%
All other languages	3,095	0.3%
Speak English less than "very well"	3,095	0.1%
Final Findings on the State of Mississippi "Non" or "Limited" Spanish/Other Speaking Persons:		

APPENDIX B
Census Bureau's "I Speak Cards"

  	LANGUAGE IDENTIFICATION FLASHCARD
<input type="checkbox"/> <p>املأ هذا المربع إذا كنت تقرأ أو تتحدث العربية.</p>	Arabic
<input type="checkbox"/> <p>Գրե՛ք այս քառակուսու մեջ ձեր լեզունը՝ կամ այն լեզունը, որով կարող եմք խոսել:</p>	Armenian
<input type="checkbox"/> <p>হাট্‌ আপনি বংল পড়েন বা বাসল হা হুঙে এই বাকস্‌ দাগ্‌ দিত্‌</p>	Bengali
<input type="checkbox"/> <p>សូមបំពេញតុំប្រអប់នេះ ដើម្បីដឹងថា អ្វីជាភាសាដែល អ្នក រ ៖</p>	Cambodian
<input type="checkbox"/> <p>Matea i kahhon komu un tsukai pat un sang i Chamorro.</p>	Chamorro
<input type="checkbox"/> <p>如果您是只有中文閱讀和會話能力，請在本空格內標上「只識讀」。</p>	Chinese
<input type="checkbox"/> <p>Make kazyo sa a si ou li oswa ou pale kreyòl ayisyen.</p>	Creole
<input type="checkbox"/> <p>Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.</p>	Croatian (Serbo Croatian)
<input type="checkbox"/> <p>Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.</p>	Czech
<input type="checkbox"/> <p>Kruis dit vakje aan als u Nederlands kunt lezen of spreken.</p>	Dutch
<input type="checkbox"/> <p>Mark this box if you read or speak English.</p>	English
<input type="checkbox"/> <p>اگر خواندن و نوشتن فارسی بدو هستند، این مربع را علامت بگذارید.</p>	Farsi

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VI. FREQUENTLY ASKED QUESTIONS

Q. Who is a Limited English Proficient (LEP) individual?

A. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP." These individuals may be entitled language assistance with respect to a particular type or service, benefit, or encounter.

Q. Does a recipient have to provide translation services in every language?

A. No. Recipients and federal agencies are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. What is "reasonable" is based on the four factor analysis. Once the recipient researches the demographics and takes resources available and costs into consideration it may be that they only provide language services in the largest number of LEP persons served or encountered by a program or service.

Q. Will providing language services increase the risk of litigation and liability for recipients as a result of LEP Guidance?

A. No. *Alexander v. Sandoval* holds principally that there is no private right of action to enforce Title VI disparate regulations. The LEP Guidelines are based on Title VI and DOT's Title VI regulations at 49 CFR Part 21 and does not provide any private right of action beyond that which exists in those laws. Thus LEP Guidance does not increase the risk of recipient's legal liability to private plaintiffs. DOT does not dismiss the fact that although there is no legal grounds this does not prevent persons from initiating legal actions.

Q. What is a "safe harbor?"

A. "safe harbor means that if a recipient provides written translations under certain circumstances, such action will be considered strong evidence of compliance with the recipient's WRITTEN translation obligations under Title VI. The following actions will be considered strong evidence of compliance with the recipient's written translation obligations: (a) the DOT recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served; (b) if there are fewer than 40 persons in a language group that reaches the 5% trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

Q. Does the Executive Order apply to federally conducted activities overseas or to foreign recipients of federal financial assistance?

A. No. The Department of Justice has determined that EO 13166 applies only within the United States and its territories and does not apply extraterritorially.

However, agencies that conduct activities overseas must still submit a plan for making their domestic activities accessible to people who are limited English proficient. That plan will indicate that the agency conducts federal activities abroad, but that DOJ has determined that the EO does not apply to those activities.

Similarly, agencies that provide federal financial assistance abroad and domestically must still create guidance for their domestic recipients, and may include a statement in the guidance indicating that the guidance does not apply extraterritorially.

Q. What are recipients of federal funds and federal agencies required to do to meet LEP requirements?

A. Recipients and federal agencies are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

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 or agency, and costs. As indicated above, the intent of this guidance is to find a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, or small nonprofits.