

**Department of
Veterans Affairs**

Memorandum

Date: MAR 14 2017

From: Acting Assistant Secretary for Human Resources and Administration (006)

Subj: Limited English Proficiency Policy Statement and Language Access Plan
(VAIQ 7736077)

To: Under Secretaries, Assistant Secretaries, and Other Key Officials

1. The Limited English Proficiency (LEP) policy statement and Language Access Plan (LAP) are the Department of Veterans Affairs (VA) policies that prohibit discrimination against any person who is limited in English proficiency. In accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166, the VA will take reasonable steps to provide LEP persons meaningful access to its programs and activities. This commitment applies to all VA federally conducted programs and activities.
2. The VA hereby adopts the attached LAP which articulates responsibilities and strategies for providing language assistance services to people who are limited in English proficiency. The LAP applies to all administrations and staff offices.
3. The LAP is a general framework which the administrations and staff offices may use to develop targeted solutions for providing language assistance as needed and, thus, eliminate limited English proficiency as a barrier to meaningful access to VA programs and activities.
4. If you have any questions, please contact Denene Burnette, Resolution Services Center Manager, Office of Resolution Management, at Denene.Burnette@va.gov or (216) 707-7717.


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Attachment

U.S. Department of Veterans Affairs



Language Access Plan (LAP)

TABLE OF CONTENTS

- I. General Language Access Plan**
 - A. Policy
 - B. Purpose
 - C. Legal Authority
 - D. Scope
 - E. Definitions

- II. VA Organizations**
 - A. VHA
 - B. VBA
 - C. NCA
 - D. VACO

- III. Responsibilities**
 - A. Office of Human Resources and Administration
 - B. Administrations/Staff Offices
 - C. Language Access Working Group (LAWG)

- IV. Operational Guidelines Regarding Language Assistance Services**
 - A. Quality Control
 - B. Identifying LEP Individuals
 - C. Who Is a Limited English Proficient Individual?
 - D. Tracking and Reporting
 - E. Staff Training
 - F. Notification of the Availability of Language Assistance
 - G. Oral Language Interpretation
 - H. Translation of Department Texts
 - I. VA Organizations Providing Federal Financial Assistance
 - J. Performance Measurement and Evaluation
 - K. Compliance and Enforcement

I. GENERAL LANGUAGE ACCESS PLAN

A. Policy

It is the Department of Veterans Affairs (VA) policy that no individual be subjected to any form of discrimination because of national origin in any VA programs, programs receiving VA funding, or VA programs receiving Federal financial assistance.

B. Purpose

This Language Access Plan (LAP) ensures equal access to services provided by VA to individuals with limited English proficiency (LEP). This Plan does not create new services, but instead eliminates or reduces, to the maximum extent practicable, LEP as a barrier to accessing existing information, programs, and activities.

C. Legal Authority

This Plan establishes guidelines in accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. 50,121 (Aug. 16, 2000). These guidelines are consistent with the standards set forth by the Department of Justice guidance regarding enforcement of Title VI of the Civil Rights Act of 1964 and the Attorney General's memorandum to the heads of Department components, Language Access Obligations under Executive Order 13166 (June 28, 2010).¹ On February 17, 2011, the Attorney General issued a memorandum, Federal Government's Renewed Commitment to Language Access Obligations under Executive Order 13166, requesting that Federal agencies join the Department of Justice in recommitting to the implementation of Executive Order 13166.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall, on the grounds 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.

D. Scope

VA employees and contractors who conduct or have responsibility over programs and services where they may interact with LEP individuals should take the appropriate reasonable steps to provide language assistance services when they encounter, or have reason to believe that they may encounter, LEP individuals in the course of fulfilling VA's mission.

¹ This document is available at http://www.justice.gov/crt/about/cor/language_access_memo.pdf. Further information, guidance, and technical assistance on the implementation of Executive Order 13166 can be found on the website of www.lep.gov.

E. Definitions

1. *Administration/Staff Office* – A major organizational unit of the Department with delegated authorities to deliver programs, activities, benefits, and services.
2. *Bilingual* – The knowledge and ability to understand, read, and write fluently in two languages.
3. *Discrimination* – The unfavorable treatment or consideration of, or making a distinction in favor of or against, a person based on the group, class, or category to which that person belongs, rather than on individual merit.
4. *Effective Communication* – Communication sufficient to provide the LEP individual with substantially the same level of access to services received by individuals who are not LEP. For example, staff must take reasonable steps to ensure communication with an LEP individual is as effective as communications with others when providing similar programs and services.
5. *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.
6. *Language Assistance Services* – Oral and written language services needed to assist LEP individuals to communicate effectively with staff, and to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in, the services, activities, or other programs administered by the Department.
7. *Limited English Proficient (LEP) Individuals* – Individuals for whom English is not their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).
8. *Meaningful Access* – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English-proficient individuals.
9. *Multilingual Staff or Employee* – A staff person or employee who has demonstrated proficiency in English and reading, writing, speaking, or understanding at least one other language as authorized by his or her organizational component.
10. *Primary Language* – An individual's primary language is the language in which an individual most effectively communicates.
11. *Program or Activity* – The term "program or activity" and the term "program" mean all of the operations of the Department.²

² For the purposes of this Plan, the definition of "program or activity" is identical to that used under the regulations implementing Section 504 of the Rehabilitation Act of 1973: "[A] federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by the regulation: those

12. *Qualified Translator or Interpreter* – An in-house or contracted translator or interpreter who is competent to interpret or translate as demonstrated through these means: State Interpreter Certification/National Center for State Courts, the National Board of Certification for Medical Interpreters, National Council on Interpreting in Health Care Certification, or Interagency Language Roundtable (ILR).

13. *Sight Translation* – Oral rendering by an interpreter of written text into spoken language without change in meaning based on a visual review of the original text or document.

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

15. *Vital Document* – Paper or electronic written material that contains information that is critical for accessing a VA organization's program or activities, or is required by law.

II. VA ORGANIZATIONS

VA is comprised of three administrations: Veterans Health Administration (VHA), Veterans Benefits Administration (VBA), and National Cemetery Administration (NCA). A VA Central Office (VACO) houses several staff offices and organizations. Each of these administrations, staff offices and organizations has programs that provide Federal financial assistance to recipients.

VA provides numerous benefits and services to Service members, Veterans and their families. Some of the programs, benefits and services provided by VA to Veterans and their families throughout the country include health care; shelters for the homeless; support for caregivers; disability compensation; pension for the disabled or aged; insurance; education; home loan guaranty; vocational rehabilitation and employment; and burial.

A. VHA

VHA administers several programs and activities that receive Federal financial assistance from VA. With more than 168 VA medical centers nationwide, 1035 community-based outpatient clinics, 300 Vet centers and 80 mobile veteran centers, VHA manages one of the largest health care systems in the United States. VA

involving general public contact as part of ongoing agency operations and those directly administered by the department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Department's facilities (cafeteria, library). Activities in the second category include programs that provide Federal services or benefits (immigration activities, operation of the Federal prison system)." 28 C.F.R. § 39.102.

medical centers are regionalized within a Veterans Integrated Service Network (VISN) structure and provide efficient, accessible health care to Veterans. VHA also conducts research and education and provides emergency medical preparedness.

B. VBA

VBA's 56 regional offices provide benefits and services to Veterans and their dependents in a responsive and compassionate manner. The benefits and services they offer in recognition of an individual's service to our Nation include compensation, pension, education, home loan guaranty, insurance, vocational rehabilitation and employment.

Pertinent to this Plan, VBA also accepts referrals from the Office of Resolution Management to investigate and decide complaints under Federal law regarding equal opportunity filed by students enrolled in non-degree proprietary schools.

C. NCA

NCA provides Federal assistance to States, territories and tribal governments. The Veterans Cemetery Grants Program (VCGP) provides grants to establish, expand or improve Veterans cemeteries that are owned and operated by a State, federally-recognized tribal government or U.S. territory. NCA's 135 national cemeteries in the United States and Puerto Rico provide burial benefits to Veterans, spouses and eligible dependents. NCA also provides headstones and grave markers worldwide, administers the VCGP that complements the national cemeteries and provides memorial certificates bearing the President's signature to the next-of-kin of honorably discharged deceased Veterans.

D. VACO

In addition to VHA, NCA and VBA, many staff offices of VACO staff deliver program and services covered under the Plan. All entities that receive Federal financial assistance from VA, either directly or indirectly, through grants, contracts, or subcontracts, are covered by this Plan. See 38 C.F.R. Part 18, Appendix A. Covered entities include: (1) any State or local agency, private institution, or organization or (2) any public or private individual that operates, provides or engages in health or social service programs and activities and receives Federal financial assistance from VA directly or through another recipient/covered entity. Therefore, the Department's mission depends on accurate communication with Veterans and members of the public regardless of their level of English proficiency. In compliance with Executive Order 13166, this Plan details the Department's initiatives to enhance access by LEP individuals to its federally conducted programs and activities.

III. RESPONSIBILITIES

A. Office of Human Resources and Administration

Pursuant to 38 U.S.C. 308(b)(7), the Assistant Secretary for Human Resources and Administration (HR&A) has responsibilities for Equal Opportunity functions. This authority is defined as general oversight, coordination and liaison for the external civil rights program (Title VI and Title IX). VA Notice 99-3 delegates this authority to the Deputy Assistant Secretary for Resolution Management (ORM). ORM's External Complaints Program Manager is responsible for ensuring the establishment and implementation of policies and procedures for providing language assistance sufficient to fulfill equal opportunity responsibilities and provide LEP individuals with meaningful access to services.

B. Administrations/Staff Offices

Under Secretaries, Assistant Secretaries, and other Key Officials are accountable for implementing, training and enforcing the Guidelines in Section IV of this Plan as it applies to covered programs, services or activities provided to LEP clients/customers or individuals. Some VA organizations with higher levels of interaction with the public will have greater language assistance requirements under the guidelines. Other organizations may have no or minimal language assistance to implement based on their assessments of the range and nature of component activities and contact, or potential contact, with LEP individuals. LEP Coordinators should be appointed to provide oversight and guidance to the facility LEP Program for the implementation of agency programs and activities for language accessibility. ORM will serve as the coordinating office for the LAWG and maintain oversight over its activities.

C. Language Access Working Group

The Department will establish and maintain a Language Access Working Group (LAWG) that reflects VA's organizational structure and whose membership is representative of the Department's services, programs and activities as appropriate. The LAWG will be responsible for implementing LAP. The Department's LAWG will be composed of representatives from the three VA administrations and identifiable VA program offices. The LAWG will coordinate and monitor the implementation of the Department's plan. The LAWG will also recommend appropriate revisions to the External Complaints Program Manager and will establish a schedule to periodically evaluate and update agency LEP services along with LEP policies, plans, protocols and best practices.

IV. OPERATIONAL GUIDELINES REGARDING LANGUAGE ASSISTANCE SERVICES

A. Quality Control

Ensuring the quality and accuracy of language assistance services provided by VA is critical to providing LEP individuals with meaningful access to programs and activities. VA administrations and staff offices/organizations should take reasonable steps to ensure that all staff or contracted personnel who serve as translators, interpreter or who communicate "in-language" with LEP persons are competent to do so. Factors indicating competency may include:

- Demonstrated proficiency in communicating information accurately in both English and the other language;
- Identifying and employing the appropriate mode of interpreting (e.g., consecutive, simultaneous, or sight translation), translating, or communicating fluently in the target language;
- Knowledge in both languages of any specialized terms or concepts particular to the component's program or activity and of any particular vocabulary used by the LEP person;
- Understanding and following confidentiality, impartiality and ethical rules to the same extent as VA staff;
- Understanding and adhering to the role as interpreter, translator or multilingual individual.

VA administrations and staff offices/organizations should also take reasonable steps to ensure that all certified staff or contracted personnel who serve as bilingual translators are oriented, trained and briefed by VA designated staff on the context and intended audience for the translated text. Appointed key staff overseeing the translators (staff or contracted) will review, oversee and assess the quality of any translated written text. Efforts to gain feedback from the recipients of these services are critical. Instituting an on-line survey after receiving services can assist in assessing quality, the improvement, and the professionalism of the delivery of the interpreters/translators.

Further, VA staff, recipients or covered entities should always record in the files of LEP patients, clients or customers along with their language needs for future use and as formal recording of their language needs.

B. Identifying LEP Individuals

At the point of first contact with an LEP individual, VA Staff should make reasonable efforts to conduct or arrange for an initial assessment of the need for language assistance services and make reasonable efforts to obtain such services if they are needed to effectively communicate with the individual.

VA staff can determine whether a person needs language assistance in several ways:

- Inquiring if the individual identifies him/herself as a non-English speaker, LEP individual or companion thereof;
- Inquiring as to the primary language of the individual who identified him/herself as needing language assistance services;
- Asking a multilingual staff or qualified interpreter to verify an individual's primary language;
- Observing the individual's use of an "I speak ... [language]" identification card or poster.

C. Who Is a Limited English Proficient Individual?

Individuals who do not read, write, speak or understand English can be LEP and are entitled to language assistance with respect to a particular type of service, benefit or encounter.

Examples of populations likely to include LEP persons who VA employees encounter and/or serve and should consider when planning language services include, but are not limited to:

- Persons seeking healthcare services or benefits;
- Persons seeking access to Veterans cemeteries, including family members and friends of deceased Veterans and others who are eligible for burial in such cemeteries;
- Persons seeking education or training, including spouses and children;
- Persons seeking assistance in the preparation, presentation, and prosecution of claims for VA benefits;
- Other persons who encounter or seek services, benefits, or information from entities receiving Federal financial assistance from VA.

D. Tracking and Reporting

Each VA administration and staff office/organization should collect data regarding its assistance with language and provide this data to ORM annually in order for ORM to assess its effectiveness. ORM's External Complaints Program Manager, in consultation with the administrations and staff offices, will identify the data to collect, which may include the number of cases, matters or outreach initiatives which received language assistance; the primary languages of communication with the LEP persons; the cost of any language assistance services provided; and the type of language assistance provided during a case or matter, if any.

E. Staff Training

VA LEP coordinators need to know how and when to access language assistance services. VA will ensure that new and existing VA staff members periodically receive training on the LAP; identify language access needs; and provide language assistance services to LEP individuals. Training may include but is not limited to:

- Identifying the language needs of LEP individuals;
- Working with interpreters in-person or on the telephone;
- Requesting documents for translation;
- Accessing and providing language assistance services through multilingual employees, in-house interpreters and translators or contracted personnel;
- Professional responsibility with respect to LEP individuals;
- Interpreter ethics;
- Tracking the use of language assistance services; and
- Tips on providing effective assistance to LEP individuals.

F. Notification of the Availability of Language Assistance

VA LAP will be posted on the VA website. Signs informing LEP persons of their right to free language assistance services shall be posted, in regularly encountered languages other than English, in VA facilities to include waiting rooms, reception areas and other initial points of entry.

G. Oral Language Interpretation

VA will assist LEP persons in face-to-face and telephone encounters with oral interpretations from qualified interpreters, employees or the National Language Service Corps (NLSC). At the point of first contact, the VA employee will determine whether the person has LEP by determining the primary language and implement or procure the appropriate language assistance. VA may identify an individual's primary language using the following:

- "I speak ... [language]" identification cards, which should be procured depending on the facility's language needs. A sample "I speak..." card can be found at: <http://www.iustice.gov/crt/lep/resources/ISpeakCards2004.pdf>.
- Displaying language identification posters within work units that typically serve LEP persons.
- Verifying foreign language proficiency by using a qualified interpreter (in-person, telephonically, or through video interpretation services).
- Written translations –VA will translate in relevant languages vital printed documents such as procedures on completing benefits forms or applying for healthcare;

Strictly limit and do not encourage the use of friends or family as interpreters. Permit such use only after meeting all of the following conditions:

- The LEP person declines the right to free interpreter services and requests the use of a family member or friend;
- The use of such a person will not compromise the effectiveness of services or violate the LEP person's confidentiality; and
- The LEP person's file documents the offer and declination of free interpreter services.

If a LEP person elects to use a friend or family member as an interpreter, VA suggests that an alternate interpreter sit in on the encounter to ensure the accuracy of the interpretation.

H. Translation of Department Texts

1. Translation of Written Materials

Translation of written material is the replacement of written text from one language (source language) into equivalent written text in another language (target language).

- Written materials may include but are not limited to: letters containing important information regarding participation in programs; notices pertaining to the granting or denial of benefits; notices of appeal rights; notices that require responses from beneficiaries; notices advising LEP individuals of the availability of free language assistance; and other outreach materials. Translation may include all or part of a document.
- On a case-by-case basis, the administrations and staff offices should determine, the extent of the obligation to provide translated documents. Consider translating any document or information if it contains critical information for accessing VA programs, services, benefits or is required by law.
- VA offices will ensure that the individual translating the materials is appropriately qualified and the translations accurately convey the required information. For example, some verbatim translations may not accurately convey the substance contained in the original written materials.

To determine the resources available to provide language assistance to LEP persons and the costs associated with those resources, VA will explore the most cost-effective means of delivering competent and accurate language services. This exploration includes determining costs associated with translating documents, contracting interpreters and securing other language assistance methods as needed in addition to using VA employees who can assist customers in specific languages.

2. Translating the Department's Web Content

Executive Order 13166 also applies to materials on VA's Web Content. VA shall take reasonable steps to translate public website content and electronic documents containing vital information about VA programs and services. Translations of web content may include important information for the general public such as each VA administration's jurisdiction and mission; information about filing complaints; information about contacting program staff; and information designed to educate individuals about their rights under the law.

Administrations and staff offices shall determine which electronic documents contain vital information, identify the appropriate languages for translation and translate the vital information. Each office that maintains a web page accessible to the general public should also include information describing the availability of language assistance. For example, website home pages or other points of access should link in languages other than English to web pages in those same non-English languages.

I. VA Organizations Providing Federal Financial Assistance

VA organizations that provide Federal financial assistance to State and local governments and other entities whether through funding, in-kind assistance, training, detail of personnel or other means should take reasonable efforts to ensure that recipients of such assistance are complying with their Title VI nondiscrimination obligations. VA has a variety of mechanisms for securing compliance which include executing assurances of nondiscrimination, conducting periodic audits, investigating compliance and selecting recipients for compliance reviews.

J. Performance Measurement and Evaluation

VA will periodically reassess and update this LAP to ensure that the scope and nature of language assistance services provided VA-wide reflect updated information on relevant LEP populations, language assistance needs, changes in technology and experience under the Plan. Further, VA will take reasonable efforts to ensure that its in-house and contract language services, directory of translated documents, signs and web-based services meet current language needs.

Every five years, VA will assess the effectiveness of component language assistance by conducting an inventory of languages most frequently encountered³, identifying the primary channels of contact with LEP community members (whether telephonic, in-person, correspondence, web-based, etc.), reviewing component programs and activities for language accessibility, reviewing plans and protocols, reviewing the annual cost of translation and interpreter services and consulting with outside stakeholders.

³ Instructions to determine when languages are prevalent in different places can be found at <http://www.lep.gov/maps/>

K. Compliance and Enforcement

ORM is responsible for ensuring compliance with the LAP. ORM will assess whether an organization's procedures allow LEP persons to overcome language barriers and participate in a meaningful way in programs, services and benefits. Prohibited practices include:

- Providing services to LEP persons that are more limited in scope, not as effective or lower in quality than those provided to other persons who are proficient in English;
- Subjecting LEP persons to unreasonable delays in the delivery of services;
- Limiting participation in a program or activity on the basis of English proficiency;
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreters.

Individuals who believe they have been denied language assistance or received inadequate language assistance in Federal programs operated by VA should contact the External Complaints Program at (888) 566-3982. ORM will work with administration and staff office personnel to investigate the matter, secure voluntary compliance when applicable and provide technical assistance as needed.