

# NIH Language Access Plan

2014



## Table of Contents

INTRODUCTION .....	2
LANGUAGE ACCESS POLICY STATEMENT .....	2
HISTORY OF HHS AND NIH IMPLEMENTATION OF EXECUTIVE ORDER 13166.....	2
DEVELOPMENT OF THE NIH 2014 LANGUAGE ACCESS PLAN .....	3
STATEMENT OF SCOPE .....	4
IMPLEMENTATION OF THE NIH LANGUAGE ACCESS PLAN .....	4
ELEMENTS AND ACTION STEPS .....	6
ELEMENT 1: ASSESSMENT OF NEEDS AND CAPACITY .....	6
ELEMENT 2: ORAL LANGUAGE ASSISTANCE SERVICES .....	7
ELEMENT 3: TRANSLATION OF WRITTEN MATERIALS .....	8
ELEMENT 4: POLICIES AND PROCEDURES.....	9
ELEMENT 5: NOTIFICATION OF THE AVAILABILITY OF FREE LANGUAGE ASSISTANCE SERVICES.....	10
ELEMENT 6: STAFF TRAINING ON THE PROVISION OF LANGUAGE ASSISTANCE SERVICES.....	11
ELEMENT 7: ASSESSMENT OF ACCESSIBILITY AND QUALITY OF SERVICES .....	12
ELEMENT 8: STAKEHOLDER CONSULTATION .....	13
ELEMENT 9: DIGITAL INFORMATION.....	14
ELEMENT 10: GRANTS ASSURANCE AND COMPLIANCE.....	14
ACKNOWLEDGEMENTS .....	16
APPENDIX A: DEFINITIONS .....	1
APPENDIX B: EXECUTIVE ORDER 13166: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY, 65 FED. REG. 50121 (AUG. 16, 2000) .....	1
APPENDIX C: MEMORANDUM FROM RALPH F. BOYD, JR.,.....	1
ASSISTANT ATTORNEY GENERAL (OCTOBER 26, 2001).....	1
APPENDIX D: MEMORANDUM FROM ERIC H. HOLDER, JR., ATTORNEY GENERAL (FEBRUARY 17, 2001).....	1

## INTRODUCTION

The National Institutes of Health (NIH), a division of the U.S. Department of Health and Human Services (HHS), is the nation's biomedical research agency. Its mission is to seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability. NIH is made up of 27 Institutes and Centers (ICs), each with a specific research agenda, often focusing on particular diseases or body systems. Research sponsored by the NIH is conducted through its Extramural and Intramural Programs. More than 80% of the NIH's budget goes toward its Extramural Program, which funds more than 300,000 research personnel at over 2,500 universities and research institutions. Approximately 6,000 scientists work in NIH's own Intramural Research laboratories, most of which are on the NIH main campus in Bethesda, Maryland. The main campus is also home to the NIH Clinical Center, the largest hospital in the world dedicated exclusively to clinical research. NIH also encourages and depends on public involvement in federally supported research and activities. NIH's wide-ranging public efforts include outreach and education, nationwide events, and special programs designed specifically to involve public representatives in clinical research.

In accordance with Title VI of the Civil Rights Act of 1964 and in order to prevent discrimination on the basis of national origin against persons who are limited English proficient (LEP), institutions receiving funding from NIH must take reasonable steps to help ensure that these individuals have meaningful access to all of their programs and activities. Although Title VI does not apply to federally conducted activities, Executive Order 13166 established a goal for all Federal agencies to "examine the services [they] provide and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency." This Language Access Plan (LAP) establishes the steps NIH will take to help ensure that LEP individuals have meaningful access to NIH programs and activities.

Whenever possible, NIH will implement the actions in this plan in conjunction with other agency initiatives to increase access to NIH programs and activities including Section 508 of the Rehabilitation Act of 1973 and The Plain Writing Act of 2010, which requires federal agencies to use plain writing for all public communication, especially public communication about benefits and services. The use of plain language in any language used to communicate with individuals with LEP will help ensure accurate, understandable interpretations and translations, and support the overall goal of meaningful access.

## LANGUAGE ACCESS POLICY STATEMENT

The policy of NIH is to provide individuals with limited English proficiency meaningful access to NIH conducted programs and activities, in accordance with the agency's needs, capacity assessment, and this Plan.

## HISTORY OF HHS AND NIH IMPLEMENTATION OF EXECUTIVE ORDER 13166

On August 11, 2000, President Clinton issued Executive Order 13166 (EO 13166), *Improving Access to Services For Persons With Limited English Proficiency*, which set two overarching goals for each Federal agency: 1) improve access to federally funded programs and activities by persons with limited English proficiency; and, 2) implement a system by which limited English proficient persons can meaningfully access the agency's services consistent with, and without unduly burdening, the fundamental mission of the agency. With respect to the first goal, the Department issued the *HHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting*

*Limited English Proficient Persons*<sup>1</sup>. HHS addressed the second goal by submitting the HHS *Strategic Plan for Improving Access to HHS Programs and Activities by Limited English Proficient (LEP) Persons* (HHS LEP Plan) to the Department of Justice (DOJ)<sup>2</sup>. Also, as directed by the Secretary, NIH created its own agency-specific LAP in 2001. On February 17, 2011, the Attorney General issued a memorandum to agency heads, general counsels and civil rights heads entitled: *Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166*. The Memorandum requests that agencies take eight specific actions, including creating a language access working group to update agency language access plans.

Consistent with EO 13166, NIH has taken the following actions to increase access by LEP persons to NIH programs and activities:

- Implemented a comprehensive foreign language interpretation system within its Clinical Center.
- Provides written translations of informed consent forms for all NIH Institutes and Centers through the NIH Library. The NIH Library also provides translation services to NIH staff. The materials translated are those necessary to carry out NIH programs, and include official personal documents, protocol consent forms for NIH clinical studies, journal articles, and public information handouts.
- Multiple ICs have translated specific health education materials and have posted translated materials (including videos and e-books) on key websites. Some ICs have fully translated web sites in high-frequency languages and provide translated audiovisual content through videos and e-books. Additionally, some ICs engage LEP users through social media channels in different language (e.g., Spanish-language Facebook pages) and also provide information bilingual (most often English/Spanish) information services such as phone hotlines open to the general public.
- Created the NIH Language Access Plan Steering Committee to draft the NIH 2014 Language Access Plan.

## **DEVELOPMENT OF THE NIH 2014 LANGUAGE ACCESS PLAN**

The updated NIH LAP sets forth a strategy to ensure meaningful access by LEP persons to NIH programs and activities. To draft a comprehensive Plan, the NIH, under the leadership of the Office of Equity, Diversity and Inclusion (EDI)<sup>3</sup>, convened the NIH Language Access Plan Steering Committee (Steering Committee) in early 2013. The Steering Committee consisted of representatives from offices across the organization with special expertise or exposure to language access needs at NIH. Steering Committee members represented the following ICs and offices: The National Library of Medicine, Clinical Center, Office of Science Policy, Office of Extramural Research, Office of Intramural Research, and the Office of Communications and Public Liaison. The Office of Equity, Diversity and Inclusion chaired the Steering Committee. The Steering Committee met on a biweekly basis and drafted the plan based on feedback received from briefings and meetings held with numerous stakeholder groups. Internal stakeholder groups

---

<sup>1</sup> 65 Fed. Reg. 52762 (August 30, 2000). This guidance was subsequently revised and republished as the "Office for Civil Rights; Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency," 67 Fed. Reg. 4968 (February 1, 2002) and "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 68 Fed. Reg. 47311 (August 8, 2003).

<sup>2</sup> <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/lepstrategicplan2000.pdf>.

<sup>3</sup> EDI, formally known as the Office of Equal Opportunity and Diversity Management (OEODM), has been designated as the coordinating office for the NIH Language Access Plan.

briefed on the plan included IC Directors, Office of the Director Senior Staff, Scientific Directors, Communication Directors, as well as staff groups from specific ICs. In November 2013, the Steering Committee held a telephonic listening session with external stakeholder groups which included local language access community groups, universities, legal aid providers, and state health departments.

The Steering Committee modeled the plan on the HHS 2013 Language Access Plan—using that Plan as a template to guide the overall assessment of NIH language access needs and capacity. The Steering Committee also consulted other HHS Operational and Staff Divisions participating in the HHS Language Access Plan Steering Committee, including the Office for Civil Rights, as well as other federal agencies, including the Federal Coordination and Compliance Section of the Department of Justice.

## **STATEMENT OF SCOPE**

Under this plan, an NIH conducted program or activity is<sup>4</sup>:

- 1) Programs or activities involving the general public as part of ongoing NIH operations; and/or,
- 2) Programs or activities directly administered by NIH for program beneficiaries and participants.

## **IMPLEMENTATION OF THE NIH LANGUAGE ACCESS PLAN**

### ***Implementation Structure***

In order to effectively implement the NIH Language Access Plan, each IC and relevant NIH subcomponent within the Office of the Director (OD) will appoint a Language Access Plan Liaison (LAP Liaison). The LAP Liaison should be an individual who is well-situated to lead the process of assessing IC language assistance needs and capacity and implementing the provisions of this plan. To assist in this effort, ICs have suggested that it may be most effective for each LAP Liaison to convene a small committee to ensure that the relevant aspects of IC operations related to language access are represented.

EDI, as the coordinating office within the OD, will convene quarterly meetings with LAP Liaisons to monitor progress and provide technical assistance. In addition to these quarterly meetings, EDI will meet with IC and NIH subcomponents on an as-needed basis<sup>5</sup>.

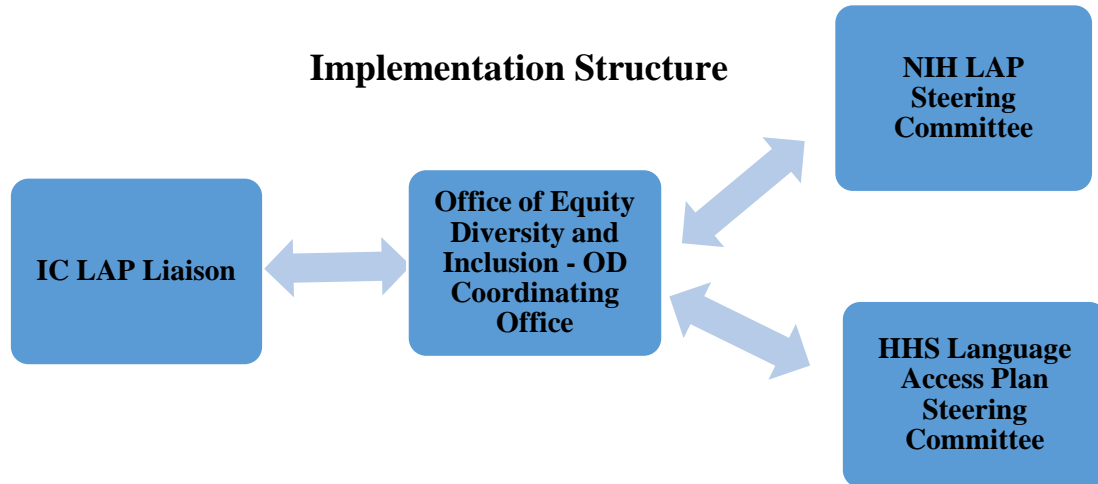
The NIH LAP Steering Committee will continue to meet at least biannually to assist in the implementation of the NIH LAP. The Steering Committee will also monitor and evaluate progress and effectiveness in meeting NIH obligations under EO 13166 and supporting guidance.

NIH will continue to play an active part in the HHS Language Access Plan Steering Committee and will consult the chair of that committee, the Office of Civil Rights, for technical assistance and guidance as necessary.

---

<sup>4</sup> This statement of scope is based on the definition of federally conducted programs under Executive Order 13166, which is the same as the definition used under the regulations for application of Section 504 of the Rehabilitation Act of 1973 to federally conducted programs 28 C.F.R. Pt. 39. Activities in the first part include communication with the public (i.e., telephone contacts, Gateway or Visitor Center walk-ins, access to the main landing pages of the NIH website) and the public's use of the NIH physical facilities (i.e., NLM Library and the NIH Clinical Center.) Activities in the second category include NIH programs that provide Federal services or benefits (i.e., clinical trials.)

<sup>5</sup> EDI has submitted a FY2014 budget request to fund two FTE's to coordinate NIH language access activities. Without funding, NIH OD will need to find alternate ways of providing central guidance and coordination.



***Timeline for Implementation***

Phase 1 (Fiscal Year 2014): LAP Liaisons, in consultation with EDI, will be responsible for completing comprehensive needs and capacity assessments for their respective ICs and NIH subcomponents, in accordance with Element 1 of this Plan. As part of this assessment, LAP Liaisons will be required to submit an implementation plan to EDI by the end of Fiscal Year 2014 (September 2014) with projected completion dates for implementation of the remaining Elements of this Plan. Implementation of all the elements of the Plan must be completed by the end of Fiscal Year 2016. Throughout the assessment process, LAP Liaisons will identify action steps where implementation can begin immediately based on existing capacity. Assessments will be done in accordance with the four-factor analysis established by the DOJ in its original LEP Policy guidance and contained in the HHS LEP Guidance to Recipients. The HHS LEP Guidance, which affirms DOJ’s LEP Guidance, advises recipients to consider: (1) the number or proportion of LEP persons in the eligible service area; (2) the frequency with which LEP persons come into contact with the program; (3) the importance of the service provided by the program; and (4) the resources available<sup>6</sup>.

Phase 2 (Fiscal Years 2015-2016): LAP Liaisons, in consultation with EDI, will ensure that all action steps are completed by the end of Fiscal Year 2016 in accordance with specific timelines established in their respective Implementation Plans.

***Implementation Assessment and Future Planning***

In the second half of Fiscal Year 2016, the NIH LAP Steering Committee, along with EDI, will assess progress of the Implementation Plans across NIH. By the end of FY 2016, the Steering Committee will brief NIH senior leadership on the results of the assessment and will be responsible for submitting a proposal to ensure continued compliance with EO 13166 and related guidance. The proposal should contain a recommended process for updating this Plan.

---

<sup>6</sup> Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 FR 47311 (August 8, 2003).

























## ACKNOWLEDGEMENTS

Many individuals across NIH contributed to the planning and drafting of the 2014 NIH Language Access Plan. Debra C. Chew, director of the Office of Equity, Diversity and Inclusion (EDI) provided meaningful leadership and guidance throughout the process. She was instrumental in designating staff resources and fostering awareness of the Plan among leadership. Other NIH senior leadership, including Drs. Lawrence A. Tabak, Principal Deputy Director NIH, Sally J. Rockey, Deputy Director of Extramural Research, Michael Gottesman, Deputy Director for Intramural Research, and Colleen Barros, Deputy Director for Management and Chief Financial Officer, provided strategic guidance and feedback.

The NIH Language Access Plan Steering Committee, formed to facilitate the drafting of the Plan, worked with vigor and consistency and guided the drafting of a comprehensive Plan. The Committee was comprised of representatives from across the NIH and included the following: Office of Intramural Research - Roland Owens, Assistant Director, J. Fernando Caetano, Recruitment and Outreach Manager; Office of Research Services - Joy Gaines, Program Manager; NIH Library - Shari Lama, Translator; Clinical Center - Brenda Robles, Language Interpreter Program Coordinator, Adrienne Farrar, Chief, Social Work Department; National Library of Medicine - Wanda Whitney, Librarian; Office of Science Policy - Ryan Bayha, Senior Analyst for Science Policy Outreach, Allan Shipp, Director of Outreach; Office of Extramural Research - Lisa Evans, Scientific Workforce Diversity Program Specialist; Office of Communications and Public Liaison - Carla Alvarez, Public Affairs Outreach Specialist; Office of Equity, Diversity and Inclusion - Regina Coleman, Program Support Assistant, Llaurnyn Iglehart-Howard, EEO Specialist, Golda Philip, EEO Specialist, and Pamela Hightower, EEO Specialist.

Steering Committee Representatives, led by EEO Specialists Golda Philip and Pamela Hightower, engaged the NIH community by briefing NIH leadership, ICs, and subcomponents. These briefings provided an opportunity to introduce the Plan and receive important information about the existing language assistance needs and capacity at NIH.

## APPENDIX A: DEFINITIONS

For the purpose of this Language Access Plan, the terms listed below shall have the following meanings:

**Agency:** Agency refers to HHS Operating Divisions (such as CDC, FDA, or NIH) and Staff Divisions (such as the Office for Civil Rights or the Office of the Assistant Secretary for Public Affairs). Operating Divisions focus on specific programs and activities as authorized by Congress. Staff Divisions are part of the Office of the Secretary and serve in a coordinating role for the Department.

**Applicant:** Any person who inquires about or submits an application for public assistance benefits under any program or service.

**Bilingual/Multilingual Staff:** A staff member who has oral and/or written proficiency in English and at least one other language, and can use specialized terminology necessary for effective communication. A staff member who only has a rudimentary familiarity with a language other than English shall not be considered Bilingual/Multilingual Staff.

**Contractor:** Any entity that performs work or provides services on behalf of an agency or division under a contractual agreement with reimbursement.

**Digital Information:** Information, as defined in OMB Circular A-130, which the government produces and provides digitally to help individuals access NIH conducted programs and activities for which they are individually eligible to participate. OMB Circular A-130 defines digital information as any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

**Interpreter:** An individual who has been assessed for professional skills, demonstrates a high level of oral proficiency in at least two languages, and has the appropriate training and experience to render a message spoken or signed in one language into a second language and who abides by a code of professional ethics.

**Language Access:** Is achieved when individuals with LEP can communicate effectively with NIH employees and/or contractors to facilitate participation in NIH supported and conducted activities.

**Language Assistance:** All oral and written language services needed to assist individuals with LEP to communicate effectively with NIH staff and/or contractors and gain meaningful access and an equal opportunity to participate in the services, activities, programs, or other benefits administered by NIH.

**Limited-English Proficiency (LEP):** An individual who does not speak English as his or her preferred language and who has a limited ability to read, write, speak, or understand English in a manner that permits him or her to communicate effectively with NIH and have meaningful access to and participate in the services, activities, programs or other benefits administered by NIH.

**Participant:** Any person seeking information or services, who has applied for and is receiving public assistance benefits or services, under any NIH program or service.

**Plain Language:** Plain language as defined in the Plain Writing Act of 2010 is writing that is "clear, concise and well organized."

**Preferred Language:** The language that an LEP individual identifies as the preferred language that he or she uses to communicate effectively.

**Sub-recipient:** An entity that, on behalf of and in the same manner as a recipient of federal financial assistance, provides services to and has contact with applicants to and participants in a program administered by a recipient of federal financial assistance, but does not include an individual applicant or participant who is a beneficiary of the program.

**Taglines:** Brief messages that may be included in or attached to a document. Taglines in languages other than English can be used on documents written in English that describe how individuals with LEP can obtain translation of the document or an interpreter to read or explain the document.

**Vital Document:** Include, but are not limited to: critical records and notices as part of emergency preparedness and risk communications; consent forms; complaint forms; letters or notices pertaining to the reduction, denial, or termination of services or benefits that require a response from an individual with LEP; documents that must be provided by law; and notices regarding the availability of language assistance services for individuals with LEP at no cost to them.

**APPENDIX B: EXECUTIVE ORDER 13166: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY, 65 FED. REG. 50121 (AUG. 16, 2000)**

On August 11, 2000, the President signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency, and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

THE WHITE HOUSE

Office of the Press Secretary  
(Aboard Air Force One)

---

For Immediate Release

August 11, 2000

EXECUTIVE ORDER

13166

IMPROVING ACCESS TO SERVICES FOR  
PERSONS WITH LIMITED ENGLISH PROFICIENCY

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. Goals.

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

## Sec. 2. Federally Conducted Programs and Activities.

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

## Sec. 3. Federally Assisted Programs and Activities.

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance.

Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

## Sec. 4. Consultations.

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

## Sec. 5. Judicial Review.

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON  
THE WHITE HOUSE,  
August 11, 2000.

**APPENDIX C: MEMORANDUM FROM RALPH F. BOYD, JR.,  
ASSISTANT ATTORNEY GENERAL (OCTOBER 26, 2001)**



**U.S. Department of Justice**

Civil Rights Division

*Office of the Assistant Attorney General*

*Washington, D.C. 20035*

October 26, 2001

**MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES  
GENERAL COUNSELS AND CIVIL RIGHTS DIRECTORS**

**FROM:** Ralph F. Boyd, Jr.  
Assistant Attorney General  
Civil Rights Division

A large, stylized handwritten signature in black ink, appearing to be "RFB", written over the typed name and title.

**SUBJECT:** Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)

Federal agencies have recently raised several questions regarding the requirements of Executive Order 13166. This Memorandum responds to those questions. As discussed below, in view of the clarifications provided in this Memorandum, agencies that have issued Limited English Proficiency ("LEP") guidance for their recipients pursuant to Executive Order 13166 and Title VI of the Civil Rights Act should, after notifying the Department of Justice ("DOJ"), publish a notice asking for public comment on the guidance documents they have issued. Based on the public comment it receives and this Memorandum, an agency may need to clarify or modify its existing guidance. Agencies that have not yet published guidance document should submit agency-specific guidance to the Department of Justice. Following approval by the Department of Justice and before finalizing its guidance, each agency should obtain public comment on their proposed guidance documents. With regard to plans for federal conducted programs and activities, agencies should review their plans in light of the clarifications provided below.

**BACKGROUND OF EXECUTIVE ORDER 13166**

The legal basis for Executive Order 13166 is explained in policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency." 65 F.R. 50123 (August 16, 2000). This "DOJ LEP Guidance" was referenced in and issued concurrently with the Executive Order.

As the DOJ LEP Guidance details, Title VI of the Civil Rights Acts of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Department of Justice regulations enacted to effectuate this prohibition bar recipients

of federal financial assistance 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. These regulations thus prohibit unjustified disparate impact on the basis of national origin.

As applied, the regulations have been interpreted to require foreign language assistance in certain circumstances. For instance, where a San Francisco school district had a large number of non-English speaking students of Chinese origin, it was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs. *Lau v. Nichols*, 414 U.S. 563 (1974).<sup>1</sup>

The Supreme Court most recently addressed the scope of the Title VI disparate impact regulations in *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001). There, the Court held that there is no private right of action to enforce these regulations. It ruled that, even if the Alabama Department of Public Safety’s policy of administering driver’s license examinations only in English violates Title VI regulations, a private party could not bring a case to enjoin Alabama’s policy. Some have interpreted *Sandoval* as impliedly striking down Title VI’s disparate impact regulations and thus that part of Executive Order 13166 that applies to federally assisted programs and activities.<sup>2</sup>

The Department of Justice disagrees. *Sandoval* holds principally that there is no private right of action to enforce the Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166. Because the legal bases of Executive Order 13166 is the Title VI disparate impact regulations and because *Sandoval* did not invalidate those regulations, it is the position of the Department of Justice that the Executive Order remains in force.

---

<sup>1</sup> “It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the education program – all earmarks of the discrimination banned by the regulations.” 414 U.S. at 568.

<sup>2</sup> *See Sandoval*, 121 S. Ct. at 1519 n.6 (“[W]e assume for purposes of this decision that § 602 confers the authority to promulgate disparate-impact regulations; . . . We cannot help observing, however, how strange it is to say that disparate-impact regulations are ‘inspired by, at the service of, and inseparably intertwined with’ § 601 . . . when § 601 permits the very behavior that the regulations forbid.”).

## REQUIREMENTS OF EXECUTIVE ORDER 13166

Federally Assisted Programs and Activities. The DOJ LEP Guidance explains that, with respect to federally assisted programs and activities, Executive Order 13166 “does not create new obligations, but rather, clarifies existing Title VI responsibilities.” Its purpose is to clarify for federal-funds recipients the steps those recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin in violation of the Title VI disparate impact regulations. To this end, the Order requires each Federal Agency providing federal financial assistance to explain recipients of federal funds their obligations under the Title VI disparate impact regulations.

In developing their own LEP guidance for recipients of federal funds, an agency should balance the factors set forth in the DOJ LEP Guidance. These factors include, but are not limited to (i) the number or proportion of LEP individuals, (ii) the frequency of contact with the program, (iii) the nature and importance of the program, and (iv) the resources available.

As the DOJ LEP Guidance explains, “a factor in determining the reasonableness of a recipient’s efforts is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers.” Similarly, the frequency of contact must be considered. Where the frequency and number of contacts is so small as to preclude any significant national origin based disparate impact, agencies may conclude that Title VI disparate impact regulations impose no substantial LEP obligations on recipients.

The nature and importance of the program is another factor. Where the denial or delay of access may have life or death implications, LEP services are of much greater importance than where denial of access results in mere inconvenience.

Resources available and costs must likewise be weighed. A small recipient with limited resources may not have to take the same steps as a larger recipient. *See* DOJ LEP Guidance at 50125. Costs, too, must be factored into this balancing test. “Reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits in light of the factors outlined in the DOJ LEP Guidance. The DOJ LEP Guidance explains that a small recipient may not have to take substantial steps “where contact is infrequent, where the total costs of providing language services is relatively high and where the program is not crucial to an individual’s day-to-day existence.” By contrast, where number and frequency of contact is high, where the total costs for LEP services are reasonable, and where the lack of access may have life and death implications, the availability of prompt LEP services may be critical. In these latter cases, claims based on lack of resources will need to be well substantiated.



Finally, consideration of resources available naturally implicates the “mix” of LEP services required. While on-the-premise translators may be needed in certain circumstances, written translation, access to centralized translation language lines or other means may be appropriate in the majority of cases. The correct balance should be based on what is both necessary to eliminate unjustified disparate impact prohibited by the Title VI regulations and reasonable light of the factors outlined in the DOJ LEP Guidance.

Federally Conducted Programs and Activities. Executive Order 13166 also applies to federally conducted programs and activities. With respect to these, the Order requires each Federal Agency to prepare a plan to improve access to federally conducted programs and activities by eligible LEP persons. These plans, too, must be consistent with the DOJ LEP Guidance. Federal agencies should apply the same standards to themselves as they apply to their recipients.

## **PROCEDURAL CONSIDERATIONS**

Administrative Procedure Act: Agency action taken pursuant to Executive Order 13166 and the DOJ LEP Guidance may be subject to the Administrative Procedure Act’s (“APA”) rulemaking requirements. 5 U.S.C. § 553. Although interpretive rules, general statements of policy, and rules of agency organization and procedure are not subject to section 553, courts have section 553’s notice and comment requirements. *See Paralyzed Veterans of America v. D.C. Arena*, 117F.3d 579, 588 (D.C. Cir. 1997). Agencies, therefore, should consider whether the action they have taken or that they propose to take to implement Executive Order 13166 and Title VI of the Civil Rights Act is subject to the APA’s requirements. If it is, they must comply with these statutory obligations. Agencies must bear in mind, however, that Executive Order 13166 “does not create new obligation, but rather, clarifies existing Title VI responsibilities.” Accordingly, agency action taken pursuant to Executive Order 13166 must not impose new obligations on recipients of federal funds, but should instead help recipients to understand their existing obligations.

Executive Order 12866: Agency action taken pursuant to Executive Order 13166 and the DOJ LEP Guidance may also be subject to requirements set forth in Executive Order 12866 (*Regulatory Review and Planning*, Sept. 30, 1993). That Order directs agencies to submit to the Office of Management and Budget for review any “significant regulatory actions” the agency wishes to take. See § 6 (a). Agencies, therefore should consider whether the action they have taken or that they propose to take to implement Executive Order 13166 and Title VI of the Civil Rights Act is subject to Executive Order 12866’s requirements. If it is, they should ensure that the action or proposed action complies with Executive Order 12866’s obligations. With regard to federally conducted programs in light of the clarifications below and make any necessary modifications.



**APPENDIX D: MEMORANDUM FROM ERIC H. HOLDER, JR.,  
ATTORNEY GENERAL (FEBRUARY 17, 2001)**




**Office of the Attorney General**

Washington, D.C. 20530

February 17, 2011

MEMORANDUM FOR: HEADS OF FEDERAL AGENCIES, GENERAL COUNSELS,  
AND CIVIL RIGHTS HEADS

FROM: THE ATTORNEY GENERAL 

SUBJECT: Federal Government's Renewed Commitment to Language Access  
Obligations Under Executive Order 13166

Executive Order 13166<sup>1</sup> was issued in August 2000 and this memorandum reaffirms its mandate. The Executive Order has two primary parts. First, it directs each federal agency to develop and implement a system by which limited English proficient (LEP) persons can meaningfully access the agency's services. Second, it directs each agency providing federal financial assistance to issue guidance to recipients of such assistance on their legal obligations take reasonable steps to ensure meaningful access for LEP persons under the national origin nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, and implementing regulations.

Whether in an emergency or in the course of routine business matters, the success of government efforts to effectively communicate with members of the public depends on the widespread and nondiscriminatory availability of accurate, timely, and vital information. Events such as the H1N1 influenza pandemic, Hurricanes Katrina and Rita, the Gulf oil spill, and the 2010 Decennial Census highlight the need for federal agencies to ensure language access both in their own activities, as well as in those of the recipients of federal financial assistance.

Despite the legal and public service obligations that compel federal agencies and recipients to ensure language access, a 2006 language access survey of the federal government revealed significant variations in the extent to which federal agencies are aware of, and in compliance with, principles of language access. This conclusion is buttressed by an April 2010 Government Accountability Office (GAO) report on language access at federal agencies. That report offers concrete suggestions, some of which are incorporated in this memorandum, for improving our efforts to comply with Executive Order 13166. Further, federal interagency

---

<sup>1</sup> 65 Fed. Reg. 50, 121 (Aug. 16, 2000).

language access conferences held over the last few years revealed that, while the federal government as a whole has taken commendable strides toward providing language access in certain areas, the implementation of comprehensive language access programs remain uneven throughout the federal government and among recipients of federal financial assistance, especially in the face of limited resources and personnel.

In an effort to secure the federal government's full compliance with Executive order 13166, and under the Department of Justice's (DOJ's) coordination authority conferred by Executive Order 12250, I request that your agency join DOJ in recommitting to the implementation of Executive Order 13166 by undertaking the following action items:

- 1) Establish a Language Access Working Group that reflects your agency's organizational structure and is responsible for implementing the federally conducted and federally assisted provisions of the Executive Order.
- 2) Evaluate and/or update your current response to LEP needs by, among other things, conducting an inventory of languages most frequently encountered, identifying the primary channels of contact with LEP community members (whether telephonic, in person correspondence, web-based, etc.), and reviewing agency programs and activities for language accessibility.
- 3) Establish a schedule to periodically evaluate and update federal agency LEP services and LEP policies, plans, and protocols. As an initial step, within six months after the date of this memorandum, submit update LEP plans and an anticipated time frame for periodic reevaluation of LEP plans and related documents to the Federal Coordination and Compliance Section (previously named the Coordination and Review Section) of DOJ's Civil Rights Division.
- 4) Ensure that agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access.
- 5) Notify the public, through mechanisms that will reach the LEP communities you serve, of your LEP policies, plans, and procedures, and LEP access-related developments. Provide a link to materials posted to the Federal Coordination and Compliance Section so that it can be posted on LEP.gov.
- 6) When considering hiring criteria, assess the extent to which non-English language proficiency would be necessary for particular positions or to fulfill your agency's mission.
- 7) For written translations, collaborate with other agencies to share resources, improve efficiency, standardize federal terminology, and streamline processes for obtaining community feedback on the accuracy and quality of professional translations intended for mass distribution.

- 8) For agencies providing federal financial assistance, draft recipient guidance. Note that such assistance is broadly defined to include not only financial grants, but also equipment, property, rental below fair market value, training, and other forms of assistance. Agencies that have not already done so should issue recipient guidance on compliance with language access obligations, and submit that guidance to the Federal Coordination and Compliance Section of DOJ's Civil Rights Division within six months after the date of this memorandum. Agencies that have determined that they do not provide federal financial assistance and, therefore, do not need to issue recipient guidance, should include a statement of this determination when transmitting the federally conducted language access plan.<sup>2</sup> Federal funding agencies should also regularly review recipient compliance, and provide vigorous technical assistance and enforcement action in appropriate cases.

DOJ's Civil Rights Division, in cooperation with the Federally Conducted Committee of Interagency Working Group on Limited English Proficiency, will undertake periodic monitoring of these action items through follow-up language access surveys of the type distributed in 2006. Agencies should expect the first of these follow-up surveys in 2011.

For your convenience, the addendum to this memorandum contains a variety of useful information, including links to resources and further guidance on some of the action items outlined above. Should you require further technical assistance or support in implementing the goals of Executive Order 13166, please do not hesitate to contact Christine Stoneman, Special Legal Counsel, or Bharathi Venkatraman, Attorney, at the Federal Coordination and Compliance Section, at (202) 307-2222. Thank you for your continued commitment to ensuring that federal resources and services are available and accessible to the LEP community and the public as a whole.

---

<sup>2</sup> Agencies disputing coverage under the Executive Order's provision relating to federally conducted programs and activities should file with the Department a report indicating the basis for disputing coverage, the number of contacts they have had with LEP individuals, the frequency of such contacts, and the nature and importance of such contacts. The report should capture phone contacts, in person contacts, correspondence, and any other interactions with LEP individuals (including via agency websites). Finally, the report should describe the standards such agencies are using to determine LEP status.

**SUPPLEMENT TO THE ATTORNEY GENERAL'S MEMORANDUM TO  
THE FEDERAL AGENCIES ON EXECUTIVE ORDER 13166 COMPLIANCE**

*SPECIFIC OF IMPLEMENTATION FOR THE ACTION ITEMS:*

- 1) *Action Item:* Each agency should establish a Language Access Working Group that reflects its organizational structure and its organizational structure and is responsible for implementing the federally conducted and federally assisted provisions of the Executive Order.

*Specifics:* The Working Group should be chaired by an LEP Coordinator who reports to a designee of the Secretary (or to a designee of a Secretary-level official in charge of that agency). The Working Group should be comprised of individuals from multiple components or operational subdivisions of the agency, and should include members from multiple components or operational subdivisions of the agency, and should include members from field offices, as appropriate. Members of the Working Group should be responsible for identifying barriers to language access, consulting with stakeholders, formulating strategies and responses to overcome the barriers to meaningful language access, ensuring consistency within the agency on its federally assisted enforcement activities. They also should be accountable for implementation activities. They also should be apprised of the agency's Language Access Working Group and its mission.

- 2) *Action Item:* Each agency should evaluate and/or updated its current response to LEP needs by, among other things, conducting an inventory of languages most frequently encountered, identifying the primary channels of contact with LEP community members (whether telephonic, in person, correspondence, web-based, etc.), and reviewing agency programs and activities for language accessibility.

*Specifics:* Agencies may need to update program operations, services provided, outreach activities, and other mission-specific activities to reflect current language needs. Further, each agency should ensure that its in-house and contract language services, directory, of translated documents, signs and web-based services meet current language needs.

- 3) *Action Item:* Each agency should establish a schedule to periodically evaluate and update agency LEP services and LEP policies, plans and protocols. As an initial step, updated LEP plans and an anticipated time frame for periodic reevaluation of LEP plans and related documents should be submitted within six month after the date of this memorandum to the Federal Coordination and Compliance Section of the Department of Justice's (DOJ's) Civil Rights Division.

*Specifics:* Requested information can be sent to the Federal Coordination and Compliance Section at 950 Pennsylvania Avenue, NW (NW Bldg). Washington, D.C. 20530, Attention: Christie Stoneman and Bharati Venkatraman. You may also email information to [christine.stoneman@usdoj.gov](mailto:christine.stoneman@usdoj.gov) or [bharati.a.venkatraman@usdoj.gov](mailto:bharati.a.venkatraman@usdoj.gov). Note that an agency's contemplated schedule should not serve to bar the agency from

conducting more frequent inventories/reinventories of languages encountered to ensure that agency services are meeting current language needs and demands.

- 4) *Action Item:* Agencies should ensure that staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access.

*Specifics:* Agency staff should be able to, among other tasks, identify LEP contact situations, determine primary language of LEP individuals, and effectively utilize available options to assist in interpersonal, electronic, print, and other methods of communication between the agency and LEP individuals.

- 5) *Action Item:* Agencies should notify the public, through mechanisms that will reach the LEP communities it serves, of its LEP policies and LEP access-related developments.

*Specifics:* Examples of method for publicizing LEP access information include, but are not limited do, posting on agency's websites, issuing print and broadcast notifications, providing relevant information at "town hall" style meetings, and issuing press releases. Agencies should consult with their information technology specialists, civil rights personnel, and public affairs personnel to develop a multi-prolonged strategy to achieve maximum and effective notification to LEP communities.

- 6) *Action Item:* When considering hiring criteria, agencies should assess the extent to which non-English language proficiency would be necessary for particular positions or to fulfill an agency's mission.

*Specifics:* Determine whether the agency would benefit from including non-English language skills and competence thresholds in certain job vacancy announcements and position descriptions.

- 7) *Action Item:* For written translation, collaborate with other agencies to share resources, improve efficiency, standardize federal terminology, and streamlines processes for obtaining community feedback on the accuracy and quality of professional translations intended for mass distribution.

*Specifics:* Agencies should actively participate in the Interagency Working Group's efforts to develop collaborations and clearinghouse options to produce high quality and effective translations. While improving efficiency is a priority, ensuring the quality of translations is equally, if not more, important. As such, agencies should avoid pursuing free translations from community groups. Rather, community input can serve to ensure that professional translations meet community needs and are appropriate to the audience.

- 8) *Action Item:* For agencies providing federal financial assistance, draft recipient guidance.

*Specifics:* Agencies should refer to the DOJ Recipient Guidance document and LEP.gov, both of which are referenced in the Resources section below, for templates. Agencies should submit their recipient guidance documents for review and approval to the Federal Coordination and Compliance Section of DOJ's Civil Rights Division, at 950

Pennsylvania Avenue, NW (NW Bldg.), Washington, D.C. 20530, Attention: Christine Stoneman and Bharati Venkatraman. You may also email agency recipient guidance to [christine.stoneman@usdoj.gov](mailto:christine.stoneman@usdoj.gov) or [bharati.a.venkatraman@usdoj.gov](mailto:bharati.a.venkatraman@usdoj.gov).

*RESOURCES:*

Executive Order 13166:

<http://www.justice.gov/crt/cor/Pubs.eolep.pdf>

DOJ LEP Guidance:

<http://www.justice.gov/crt/cor/lep/DOJFinLEPFRJun182002.php>

Website of the Federal Interagency Working Group on LEP:

<http://www.lep.gov>

Top Tips from responses to the 2006 language access survey of federal agencies:

[http://www.lep.gov/resources/2008\\_Conference\\_Materials/TopTips.pdf](http://www.lep.gov/resources/2008_Conference_Materials/TopTips.pdf)

The 2006 Language Access Survey:

[http://www.lep.gov/resources/2008\\_Conference\\_Materials/FedLangAccessSurvey.pdf](http://www.lep.gov/resources/2008_Conference_Materials/FedLangAccessSurvey.pdf)

GSA Language Services Schedule:

<http://www.gsa.gov/portal/content/104610>

I Speak Language Identification flashcards:

<http://www.lep.gov/ISpeakCards2004.pdf>

LEP rights brochure:

[http://www.lep.gov/resources/lep\\_aug2005.pdf](http://www.lep.gov/resources/lep_aug2005.pdf)