

CITY OF ST. PETERSBURG



TITLE VI PLAN
As
Related to Transportation Projects

PREPARED BY THE:
ENGINEERING & CAPITAL IMPROVEMENTS
DEPARTMENT May 2, 2022

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RECIPIENT INFORMATION

The City of St. Petersburg is a sub-recipient of FHWA funds through the Florida Department of Transportation (FDOT), District 7. Under Title VI of the Civil Rights Act of 1964 and Additional Nondiscrimination Requirements, the City of St. Petersburg thereby assures the FDOT that no person shall on the basis of race, color, national origin, sex, age, disability, family or religious status, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, the Florida Civil Rights Act of 1992 and other nondiscrimination authorities be excluded from participation in, be denied the benefits of, or be otherwise subjected to, discrimination or retaliation under any program or activity.

The City of St. Petersburg's Engineering & Capital Improvements Department is responsible for the administration of all Local Agency Program Projects awarded by FDOT. Contact information for the department is as follows:

Contact Information:

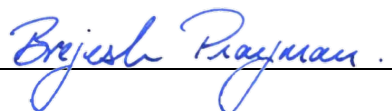
Brejesh Prayman, P.E.
Engineering & Capital Improvements, Director
One 4th St. North, 7th Floor
St. Petersburg, FL 33701
Phone: 727-893-5383
Fax: 727-892-5476
Email: Brejesh.Prayman@stpete.org

Susan Leno
Engineering & Capital Improvements
Capital Improvements Assistant
One 4th St. North, 7th Floor
St. Petersburg, FL 33701
Phone: 727-551-3566
Fax: 727-892-5476
Email: Susan.Leno@stpete.org

Engineering and Capital Improvements Director Statement:

The City of St. Petersburg (hereinafter the Agency) values diversity and welcomes input from all interested parties, regardless of cultural identity, background or income level. Moreover, the Agency believes that the best programs and services result from careful consideration of the needs of all of its communities and when those communities are involved in the transportation decision-making process. Thus, the Agency does not tolerate discrimination in any of its programs, services or activities. Pursuant to Title VI of the Civil Rights Act of 1964 and other federal and state authorities, the Agency will not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion or family status.

Brejesh Prayman, P.E., ECID Director



Date 10/31/2023

PREFACE

Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, creed, sex, age, or national origin in programs or activities receiving federal financial assistance. Presidential Executive Order 13166 addresses services to those individuals with limited English proficiency. Presidential Executive Order 12898 addresses environmental justice in minority and low-income populations. To address these federal requirements, the City of St. Petersburg (COSP) has developed this Title VI Plan, a Limited English Proficiency Plan (LEP) and an Environmental Justice Plan. The following sections provide a summary of the City's activities relating to those requirements.

TITLE VI PROGRAM

The COSP is dedicated to not discriminate in any way against any person with respect to a COSP Transportation project, activity or service. The City has implemented Title VI program which includes the following:

- Definition of what Title VI is.
- The written process of how to file a Title VI complaint.
- Description of the complaint investigation process.

The City's Title VI program is in agreement with and complies with the Presidential Executive Order 13166, Presidential Executive Order 12898 and the Environmental Justice Plan.

TITLE VI PUBLIC INFORMATION AND NOTIFICATION PROCESS

The City provides Title VI information to the public via City's website, a copy of the Title VI policy is available in the Engineering and Capital Improvements department during regular business hours, and via email upon request. In addition to the City's Title VI plan, copies of the following documents are included in the City's Title VI Plan in Appendix B for reference:

- FHA's Civil Rights Title VI of the Civil Rights Act of 1968 and Additional Nondiscrimination Requirements
- FHWA's Notice N 4720.6, September 2, 1992
- Commonly Asked Questions and Answers Regarding Executive Order 13166
- Executive Order 13166 dated August 11, 2000 w/ The Federal Register Vol. 65, No. 159 Wednesday, August 16, 2000. DOJ Policy Guidance document and related memorandum from Attorney General Eric Holder dated February 17, 2011.
- Executive Order 12898
- FHWA Order 6640.23A

The FTA's entire non-discrimination clause is included in all consultant contracts and CONTRACTOR agreements. The following statement is located on the City's website:

CITY NON-DISCRIMINATION POLICY:

“It is the policy of the City of St. Petersburg to provide workplaces free from discrimination, harassment and related inappropriate behavior. The City does not condone or tolerate any behavior that is discriminatory, harassing or otherwise inappropriate when such behavior is based on an Individual's or group's race, color, national origin, religion, gender, marital status, age, disability, sexual orientation, genetic information or other protected category. Gender includes but is not limited to sex, pregnancy, childbirth or medical conditions related to childbirth, and gender-related self-identity which can be shown by evidence such as medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held. Vendors and Contractors are encouraged to adopt such policies and provide workplaces free of discrimination in terms of conditions of employment, including benefits.” -modified 6/25/14

www.stpete.org/nondiscriminationpolicy

The City actively considers viewpoints of low-income, minority, elderly, disabled, LEP, ethnic and religious groups in the course of conducting public outreach and involvement activities in regards to involve the traditionally underserved in transportation planning issues. The City utilizes several venues as public outreach vessels. The City's website and publications offer information on proposed City projects. Written information can and will be provided to the interested public upon request. Public meetings are also held to get information to the public about upcoming planned projects affecting areas of the City. A copy of the City's signed **Title VI Nondiscrimination Policy Statement** is located in Appendix A for your reference.

RECORD OF TITLE VI INVESTIGATIONS, COMPLAINTS OR LAWSUITS:

The City maintains a file for all Title VI complaints, investigations and lawsuits. To date, there are no known investigations or complaints and there have been no lawsuits.

TITLE VI COMPLAINT PROCESS AND PROCEDURES:

1. Any person who believes that he or she, or any specific class of persons, has been subjected to discrimination or retaliation, from the City of St. Petersburg's administration of federally funded programs, as prohibited by Title VI of the Civil Rights Act of 1964, as amended, and related statutes, may file a written complaint. All written complaints received by the City are referred immediately by the COSP's Title VI Specialist, to the FTA's Title VI Coordinator for processing in accordance with approved procedures.

Written complaints should be sent to:

Admir Delic, Title VI Representative
Engineering & Capital Improvements, Operational Analyst
One 4th St. North, 6th Floor
St. Petersburg, FL 33701
Phone: 727-551-3781
Email: Admir.Delic@stpete.org

2. The City's Title VI Representative shall resolve verbal and non-written complaints received by the City informally. If the issue has not been satisfactorily resolved through informal means, or if at any time the complainant requests to file a formal written complaint, the Complainant shall be referred to the FTA's Title VI Coordinator for processing in accordance with approved procedures.
3. The City's Title VI Representative will advise the FTA's Title VI Coordinator within five (5) calendar days of receipt of the allegations. The following information will be included in every notification to the FTA's Title VI Coordinator:
 - a) Name, address, and phone number of the Complainant;
 - b) Name and address of the City;
 - c) Basis of complaint (i.e., race, color, national origin, sex, age, disability, religion, familial status or retaliation);
 - d) Date of alleged discriminatory act(s);
 - e) Date complaint received by the City;
 - f) A statement of the complaint;
 - g) Other agencies (state, local or Federal) where the complaint has been filed; and
 - h) An explanation of the actions the City has taken or proposed to resolve the allegation(s) raised in the complaint.
4. Within ten (10) calendar days, the City's Title VI Representative will acknowledge receipt of the allegation(s), inform the Complainant of action taken or proposed action to process the allegation(s), and advise the Complainant of other avenues of redress available, such as the FTA's Equal Opportunity Office (EOO).
5. Within sixty (60) calendar days, the recipient's City's Title VI Representative will conduct and complete a review of the verbal or non-written allegation(s) and based on the information obtained, will render a recommendation for action in a report of findings to the City's Director of Engineering & Capital Improvements.
6. Within ninety (90) calendar days of the verbal or non-written allegation(s) receipt, the COSP's Director of Engineering will notify the Complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the Complainant of his/her right to file a formal complaint with the FT A's EOO if they are dissatisfied with the final decision rendered by the City. The City's Title VI Representative will also provide the FTA's Title VI Coordinator with a copy of this decision and summary of findings.
7. The City's Title VI Representative will maintain a log of all verbal and non-written complaints received by the recipient. The log will include the following information:
 - (a) Name of Complainant;
 - (b) Name of Respondent;
 - (c) Basis of complaint (i.e., race, color, national origin, sex, age, disability, religion, familial status or retaliation);
 - (d) Date verbal or non-written complaint was received by the recipient;

- (e) Date recipient notified the FTA's Title VI Coordinator of the verbal or non-written complaint; and
- (f) Explanation of the actions the City has taken or proposed to resolve the issue raised in the complaint.

A copy of the *Title VI Program and Related Statutes Discrimination Complaint against the City of St. Petersburg* is located in Appendix C for your reference.

ACCESS FOR LEP PERSONS/COMPANIES: ASSISTANCE & GUIDANCE:

It is the City's goal to provide meaningful access to its prospective prospects and services who are Limited English Proficient. The City utilizes the Census Bureau and the American Community Survey data to determine which community within each project is in need of language assistance. The City assists each program participant in complying with the general LEP requirements through:

Education: Each program participant is provided with the City plan via written hardcopy or email. The LEP plan also includes information on informing their beneficiaries of their rights under Title VI and procedures on how to file a complaint. Copies of the plan are available at the receptionist's desk the lobby area of the Engineering & Capital Improvements Department.

Enforcement: Each program participant's contract/agreement includes the Civil Rights clauses.

The City maintains a file for language assistance requests. To date, there have been no requests for language assistance received.

ENVIRONMENTAL JUSTICE:

There are three principals by which the City **seeks** to achieve environmental justice.

1. Avoid, minimize or mitigate the disproportionately high and adverse health, social and economic effects on minority, low-income and disadvantaged populations.
2. To ensure full and fair participation by all potentially affected communities in the transportation project decision making process.
3. To collect and analyze data relating to environmental justice.

The City maintains goals that will continue to monitor impacts to the minority, low-income and disadvantaged populations that may be affected by any of its projects. By continually monitoring as well as analyzing these impacts, the City will ensure that no disparate treatment or consequences result from any of its activities. Periodic Environmental Justice studies will be conducted when warranted.

REQUIRED CONSULTANT AND CONTRACTOR TITLE VI CONTRACT CLAUSES:

In the City's Contract Standards, "Instruction to Bidders" section and the Appendices of the contract documents and agreements contain requirements for Title VI of the Civil Rights Act of 1964. Language containing the information that follows regarding non-discrimination is contained in all City Contract Standards, Consultant Agreements and Contractor Agreements as well as all subcontractor agreements and contracts:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332.

"The CONSULTANT or CONTRACTOR shall not discriminate on the basis of race, age, creed, disability, marital status, color, national origin, or sex in the performance of this contract. The CONSULTANT or CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by CONSULTANT or CONTRACTOR to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy, as the City deems appropriate."

Each subcontract the CONSULTANT or CONTRACTOR signs in regards to this federal aid PROJECT must include the assurance in this paragraph (see 49 CFR 26.13(b)). The CONSULTANT or CONTRACTOR agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity The following equal employment opportunity requirements apply to this AGREEMENT:

- a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONSULTANT or CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the PROJECT. The CONSULTANT or CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONSULTANT or CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- b) **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 through 634 and Federal transit law at 49 U.S.C. § 5332, the CONSULTANT or CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONSULTANT or CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONSULTANT or CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

In addition, the CONSULTANT or CONTRACTOR agrees to comply with any implementing requirements FT A may issue.

- d) **Access to Services for Persons with Limited English Proficiency, LEP** - To the extent applicable and except to the extent that FTA determines otherwise in writing, the CONSULTANT or CONTRACTOR agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.
- e) **Environmental Justice**- The CONSULTANT or CONTRACTOR agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
- f) **Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections**-To the extent applicable, the CONSULTANT or CONTRACTOR agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 et seq., and any amendments to these laws.
- g) **Other Nondiscrimination Laws**- The CONSULTANT or CONTRACTOR agrees to comply with all applicable provisions of other federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing. The CONSULTANT or CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FT A, modified only if necessary to identify the affected parties.

APPENDIX A

TITLE VI/ NONDISCRIMINATION ASSURANCE

Pursuant to Section 9 of US DOT Order 1050.2A, the City of St. Petersburg, FL

("Sub-Recipient") assures the Florida Department of Transportation (FDOT) that no person shall on the basis of race, color, national origin, sex, age, disability, family or religious status, as provided by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, the Florida Civil Rights Act of 1992 and other nondiscrimination authorities be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation under any program or activity.

City of St. Petersburg, FL

The _____ further assures FDOT that it will undertake the following with respect to its programs and activities:

1. Designate a Title VI Liaison that has a responsible position within the organization and access to the Sub-Recipient's City Administrator.
2. Issue a policy statement signed by the Sub-Recipient's Engineering and Capital Improvements Director, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the Sub-Recipient's organization and to the general public. Such information shall be published where appropriate in languages other than English.
3. Insert the clauses of *Appendices A and E* of this assurance in every contract subject to the Acts and the Regulations.
4. Develop a complaint process and attempt to resolve complaints of discrimination against sub-recipients. Complaints against the Sub-Recipient shall immediately be forwarded to the FDOT District Title VI Coordinator.
5. Participate in training offered on Title VI and other nondiscrimination requirements.
6. If reviewed by FDOT or USDOT, take affirmative action to correct any deficiencies found within a reasonable time period, not to exceed ninety (90) calendar days.
7. Have a process to collect racial and ethnic data on persons impacted by your agency's programs.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal funds, grants, loans, contracts, properties, discounts or other federal financial assistance under all programs and activities and is binding. The person whose signature appears below is authorized to sign this assurance on behalf of the Sub-Recipient.

Dated 4/30/2022

by Robert Gerdes
Robert Gerdes, City Administrator

APPENDICES A and E

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (1.) **Compliance with Regulations:** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3.) **Solicitations for Subcontractors, including Procurements of Materials and Equipment:** In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- (4.) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the *Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the *Florida Department of Transportation* shall impose such contract sanctions as it or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration* may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
- (6.) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (7) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the

Florida Department of Transportation, the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event a Contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the Contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (7.) **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

APPENDIX B

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

§2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States 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.

(Pub. L. 88–352, title VI, §601, July 2, 1964, 78 Stat. 252.)

COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of this title.

EX. ORD. NO. 13160. NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL ORIENTATION, AND STATUS AS A PARENT IN FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAMS

Ex. Ord. No. 13160, June 23, 2000, 65 F.R. 39775, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921–932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 *et seq.*, of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

Section 1. Statement of policy on education programs and activities conducted by executive departments and agencies.

1–101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–17 [42 U.S.C. 2000e *et seq.*], as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d [et seq.], and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1–102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

Sec. 2. Definitions.

2–201. "Federally conducted education and training programs and activities" includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2–202. "Education and training programs and activities" include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

2–203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2–202, or is excluded from coverage, under section 3.

2–204. "Military education or training programs" are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2–205. "Armed Forces" means the Armed Forces of the United States.

2–206. "Status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- (a) a biological parent;
- (b) an adoptive parent;
- (c) a foster parent;
- (d) a stepparent;
- (e) a custodian of a legal ward;
- (f) in loco parentis over such an individual; or
- (g) actively seeking legal custody or adoption of such an individual.

Sec. 3. Exemption from coverage.

3–301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3–302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3–303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program established consistent with federal law or limited by Federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3–304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of the Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. "Culturally relevant" refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3–305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the executive branch. It shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3–306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

Sec. 4. Administrative enforcement.

4–401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures to be established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive Order.

4–402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4–403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95–454, 92 Stat. 1111 [see Tables for classification].

Sec. 5. Implementation and Agency Responsibilities.

5–501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

- a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2–202, or excluded from coverage, under section 3 of this order;
- b. examples of discriminatory conduct;
- c. applicable legal principles;
- d. enforcement procedures with respect to complaints against employees;
- e. remedies;

- f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and
- g. such other matters as deemed appropriate.

5–502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5–503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5–504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5–505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

Sec. 6. Reporting Requirements.

6–601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

Sec. 7. General Provisions.

7–701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250 [42 U.S.C. 2000d–1 note].

Sec. 8. Judicial Review.

8–801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*

WILLIAM J. CLINTON.

EX. ORD. NO. 13899. COMBATING ANTI-SEMITISM

Ex. Ord. No. 13899, Dec. 11, 2019, 84 F.R. 68779, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* My Administration is committed to combating the rise of anti-Semitism and anti-Semitic incidents in the United States and around the world. Anti-Semitic incidents have increased since 2013, and students, in particular, continue to face anti-Semitic harassment in schools and on university and college campuses.

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.*, prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. While Title VI does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a

group that shares common religious practices. Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin.

It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.

Sec. 2. Ensuring Robust Enforcement of Title VI. (a) In enforcing Title VI, and identifying evidence of discrimination based on race, color, or national origin, all executive departments and agencies (agencies) charged with enforcing Title VI shall consider the following:

(i) the non-legally binding working definition of anti-Semitism adopted on May 26, 2016, by the International Holocaust Remembrance Alliance (IHRA), which states, "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities"; and

(ii) the "Contemporary Examples of Anti-Semitism" identified by the IHRA, to the extent that any examples might be useful as evidence of discriminatory intent.

(b) In considering the materials described in subsections (a)(i) and (a)(ii) of this section, agencies shall not diminish or infringe upon any right protected under Federal law or under the First Amendment. As with all other Title VI complaints, the inquiry into whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the allegations.

Sec. 3. Additional Authorities Prohibiting Anti-Semitic Discrimination. Within 120 days of the date of this order [Dec. 11, 2019], the head of each agency charged with enforcing Title VI shall submit a report to the President, through the Assistant to the President for Domestic Policy, identifying additional nondiscrimination authorities within its enforcement authority with respect to which the IHRA definition of anti-Semitism could be considered.

Sec. 4. Rule of Construction. Nothing in this order shall be construed to alter the evidentiary requirements pursuant to which an agency makes a determination that conduct, including harassment, amounts to actionable discrimination, or to diminish or infringe upon the rights protected under any other provision of law.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, §602, July 2, 1964, 78 Stat. 252.)

DELEGATION OF FUNCTIONS

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

EXECUTIVE ORDER No. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

EXECUTIVE ORDER No. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

EX. ORD. No. 12250. LEADERSHIP AND COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF NONDISCRIMINATION LAWS

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. DELEGATION OF FUNCTION

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. COORDINATION OF NONDISCRIMINATION PROVISIONS

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).
- (b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).
- (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. IMPLEMENTATION BY THE ATTORNEY GENERAL

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. AGENCY IMPLEMENTATION

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. GENERAL PROVISIONS

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 [this subchapter] shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794], shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER.

EX. ORD. NO. 13166. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Ex. Ord. No. 13166, Aug. 11, 2000, 65 F.R. 50121, provided:

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 [42 U.S.C. 2000d et seq.], 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.

§2000d–2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, §603, July 2, 1964, 78 Stat. 253.)

CODIFICATION

"Chapter 7 of title 5" and "that chapter" substituted in text for "section 10 of the Administrative Procedure Act" and "that section", respectively, on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, §604, July 2, 1964, 78 Stat. 253.)

§2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, §605, July 2, 1964, 78 Stat. 253.)

§2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—
(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(Pub. L. 88–352, title VI, §606, as added Pub. L. 100–259, §6, Mar. 22, 1988, 102 Stat. 31; amended Pub. L. 103–382, title III, §391(q), Oct. 20, 1994, 108 Stat. 4024; Pub. L. 107–110, title X, §1076(y), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 114–95, title IX, §9215(r), Dec. 10, 2015, 129 Stat. 2171.)

AMENDMENTS

2015—Par. (2)(B). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2002—Par. (2)(B). Pub. L. 107–110 substituted "7801" for "8801".

1994—Par. (2)(B). Pub. L. 103–382 substituted "section 8801 of title 20" for "section 198(a)(10) of the Elementary and Secondary Education Act of 1965".

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXCLUSION FROM COVERAGE

This section not to be construed to extend application of Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

§2000d–5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], by the Act of September 30, 1950 ¹(Public Law 874, Eighty-first Congress) or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 602 of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d-1], such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of title VI of the Civil Rights Act of 1964: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with title VI of the Civil Rights Act of 1964 (Public Law 88-352), compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with such title VI, insofar as the matters covered in the order or judgment are concerned.

(Pub. L. 89-750, title I, §182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90-247, title I, §112, Jan. 2, 1968, 81 Stat. 787; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103-382, title III, §392(b)(1), Oct. 20, 1994, 108 Stat. 4026.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89-750, Nov. 3, 1966, 80 Stat. 1191, as amended, known as the Elementary and Secondary Education Amendments of 1966. For complete classification of that Act to the Code, see Short Title of 1966 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Act of September 30, 1950, referred to in text, is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, popularly known as the Educational Agencies Financial Aid Act, which was classified generally to chapter 13 (§236 et seq.) of Title 20 prior to repeal by Pub. L. 103-382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

The Cooperative Research Act, referred to in text, is act July 26, 1954, ch. 576, 68 Stat. 533, which was classified generally to chapter 15 (§331 et seq.) of Title 20, and terminated on July 1, 1975, under provisions of section 402(c)(1) of Pub. L. 93-380, title IV, Aug. 21, 1974, 88 Stat. 544. See section 1851 et seq. of this title. For complete classification of this Act to the Code, see Tables.

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Elementary and Secondary Education Amendments of 1966, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

AMENDMENTS

1994—Pub. L. 103-382, which directed amendment of this section by striking out "by the Act of September 23, 1950 (Public Law 815, 81st Congress)", was executed by striking out "by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress)," before "or by the Cooperative" to reflect the probable intent of Congress.

1968—Pub. L. 90–247 inserted proviso.

EFFECTIVE DATE

Pub. L. 89–750, title I, §191, Nov. 3, 1966, 80 Stat. 1210, provided that: "The provisions of this title [enacting this section and sections 241m, 871 to 880, and 886 of Title 20, Education, amending sections 241b, 241c, 241e, 241f, 241g, 241h, 241j, 241k, 241l, 244, 331a, 332a, 332b, 821, 822, 823, 841, 842, 843, 844, 861, 862, 863, 864, 883, and 884 of Title 20, repealing section 241d of Title 20, and enacting provisions set out as notes under sections 241a, 241b, and 241c of Title 20] shall be effective with respect to fiscal years beginning after June 30, 1966, except as specifically provided otherwise."

TRANSFER OF FUNCTIONS

"Secretary of Education" and "Secretary" substituted in text for "Commissioner of Education" and "Commissioner", respectively, pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

¹ See *References in Text* note below.

§2000d–6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. 2000d–5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

(Pub. L. 91–230, §2, Apr. 13, 1970, 84 Stat. 121; Pub. L. 96–88, title III, §301, title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsecs. (a) and (c), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Elementary and Secondary Education Amendments of 1969, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

TRANSFER OF FUNCTIONS

"Secretary of Education" substituted for "Department of Health, Education, and Welfare" in subsec. (d) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of Department and Secretary of Health, Education, and Welfare to Secretary of Education.

§2000d–7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub. L. 99–506, title X, §1003, Oct. 21, 1986, 100 Stat. 1845.)

REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Rehabilitation Act Amendments of 1986, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

Federal Highway Administration

1200 New Jersey Avenue, SE
Washington, DC 20590
202-366-4000

FHWA Order 6640.23A

Order

Subject

FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Classification Code	Date	Office of Primary Interest
6640.23A	June 14, 2012	HEP

Par.

1. What is the purpose of this directive?
2. Does this directive cancel an existing FHWA directive?
3. What authorities govern this directive?
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6. What is the FHWA's policy concerning Environmental Justice?
7. How are Environmental Justice Principles integrated into existing operations?
8. What are the FHWA's responsibilities?
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1. **What is the purpose of this directive?** This FHWA directive establishes policies and procedures for the Federal Highway Administration (FHWA) to use in complying with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), dated February 11, 1994.
2. **Does this directive cancel an existing FHWA directive?** Yes. This directive cancels [FHWA Order 6640.23](#) FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated December 2, 1998.
3. **What authorities govern this directive?**
 - a. [Executive Order \(EO\) 12898](#), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), issued February 11, 1994. EO 12898 requires Federal agencies to achieve environmental justice by identifying and addressing disproportionately high and adverse human health or environmental effects, including the interrelated social and economic effects of their programs, policies, and activities on minority populations and low-income populations in the United States. As indicated in the EO, the foregoing requirements are to be carried out to the greatest extent practicable and permitted by law and consistent with the principles set forth in the report on the National Performance Review. Compliance with this FHWA Order is a key element in the environmental justice strategy adopted by FHWA to implement EO 12898, and can be achieved within the framework of existing laws, regulations, and guidance.
 - b. [Department of Transportation \(DOT\) Order 5610.2\(a\)](#), Final DOT Environmental Justice Order, issued May 2, 2012.
 - c. [Title VI of the Civil Rights Act of 1964](#) (Title VI).

- d. [Title 23, United States Code \(U.S.C.\), Section 109\(h\)](#).
 - e. [National Environmental Policy Act \(NEPA\)](#).
 - f. [Title 49, Code of Federal Regulations \(CFR\), Part 21.9\(b\)](#).
 - g. [23 CFR 200.9\(b\)\(4\)](#).
 - h. [Uniform Relocation Assistance and Real Property Acquisition Act of 1970](#) (Uniform Act)
4. **What is the scope of this directive?** Consistent with paragraph 6-609 of EO 12898 and DOT Order 5610.2(a), this directive is limited to improving the internal management of the FHWA and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the FHWA, its officers, or any person. This directive should not be construed to create any right to judicial review involving the compliance or noncompliance with this directive by FHWA, its officers, or any other person.
5. **What definitions are used in this directive?** The following terms, where used in this directive, shall have the following meanings¹:
- a. **FHWA.** The Federal Highway Administration as a whole and one or more of its individual components.
 - b. **Low-Income.** A person whose median household income is at or below the Department of Health and Human Services poverty guidelines.
 - c. **Minority.** A person who is:
 - 1. (1) Black: a person having origins in any of the black racial groups of Africa;
 - 2. (2) Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
 - 3. (3) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent;
 - 4. (4) American Indian and Alaskan Native: a person having origins in any of the original people of North America, South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition; or
 - 5. (5) Native Hawaiian and Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.
 - d. **Low-Income Population.** Any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.
 - e. **Minority Population.** Any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.
 - f. **Adverse Effects.** The totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of human-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of FHWA programs, policies, or activities.
 - g. **Disproportionately High and Adverse Effect on Minority and Low-Income Populations.** An adverse effect that:
 - 1. (1) is predominately borne by a minority population and/or a low-income population;
 - or

2. (2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the nonminority population and/or non-low-income population.
 - h. **Programs, Policies, and/or Activities.** All projects, programs, policies, and activities that affect human health or the environment, and that are undertaken, funded (in whole or in part), or approved by FHWA. These include, but are not limited to, permits, licenses, and financial assistance provided by FHWA. Interrelated projects within a system may be considered to be a single project, program, policy, or activity for purposes of this directive.
 - i. **Regulations and Guidance.** Regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by FHWA.
6. **What is FHWA's policy concerning Environmental Justice?**
- a. It is FHWA's longstanding policy to actively ensure nondiscrimination in federally funded activities. Furthermore, it is FHWA's continuing policy to identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decisionmaking process--from early planning through implementation. Should the potential for discrimination be discovered, action to eliminate the potential shall be taken.
 - b. EO 12898, DOT Order 5610.2(a), and this directive reaffirm the principles of Title VI and related statutes, NEPA, 23 U.S.C. 109(h), and other Federal environmental laws, emphasizing the incorporation of those provisions with the environmental and transportation decisionmaking processes.
 - c. Under Title VI, each Federal agency is required to ensure that no person on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute applies to every program area in FHWA.
 - d. Under EO 12898, each Federal agency must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. FHWA will implement this EO and the principles of DOT Order 5610.2(a) and EO 12898 by incorporating environmental justice principles in all FHWA programs, policies, and activities within the framework of existing laws, regulations, and guidance.
 - e. In complying with this directive, FHWA will rely upon existing authorities to collect necessary data and conduct research associated with environmental justice concerns, including, but not limited to, 49 CFR 21.9(b) and 23 CFR 200.9(b)(4).
 - f. The FHWA will administer its governing statutes so as to identify and avoid discrimination and disproportionately high and adverse effects on minority populations and low-income populations by:
 1. (1) identifying and evaluating environmental, public health, and interrelated social and economic effects of FHWA programs, policies, and activities;
 2. (2) proposing measures to avoid, minimize, and/or mitigate disproportionately high and adverse environmental or public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by FHWA programs, policies, and activities, where permitted by law and consistent with EO 12898;
 3. (3) considering alternatives to proposed programs, policies, and activities where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, where permitted by law and consistent with EO 12898; and
 4. (4) providing public involvement opportunities and considering the results thereof, including providing meaningful access to public information concerning the human health or environmental impacts and soliciting input from affected minority

populations and low-income populations in considering alternatives during the planning and development of alternatives and decisions.

7. How should Environmental Justice principles be integrated into existing operations?

- a. The principles outlined in this directive are required to be integrated into existing operations.
- b. Future rulemaking activities undertaken, and the development of any future guidance or procedures for FHWA programs, policies, or activities that affect human health or the environment, shall explicitly address FHWA compliance with EO 12898, with DOT Order 5610.2(a), and with this directive.
- c. The formulation of future FHWA policy statements and proposals for legislation that may affect human health or the environment will include consideration of the provisions of EO 12898 and this directive.

8. What are the FHWA's responsibilities? FHWA managers and staff are responsible for the following:

- a. Under Title VI, FHWA managers and staff must administer their programs in a manner to ensure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination under any program or activity of FHWA because of race, color, or national origin.
- b. Under EO 12898, FHWA managers and staff must administer their programs to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of FHWA programs, policies, and activities on minority populations and low-income populations.
- c. The FHWA currently administers policies, programs, and activities that are subject to the requirements of NEPA, Title VI, the Uniform Act, Title 23 of the United States Code, and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered to identify the risk of discrimination early in the development of FHWA's programs, policies, and activities so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate, and practical:
 1. (1) population served and/or affected by race, color, or national origin, and income level;
 2. (2) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin; and
 3. (3) present and proposed membership by race, color, or national origin, in any planning or advisory body that is part of the program.
- d. Following the guidance set forth in this directive, FHWA managers and staff shall ensure that FHWA programs, policies, and activities for which they are responsible do not have a disproportionately high and adverse effect on minority populations or low-income populations.
- e. When determining whether a particular program, policy, or activity will have disproportionately high and adverse effects on minority and low-income populations, FHWA managers and staff should take into account mitigation and enhancement measures and potential offsetting benefits to the affected minority and/or low-income populations. Other factors that may be taken into account include design, comparative impacts, and the relevant number of similar existing system elements in nonminority and non-low-income areas.
- f. The FHWA managers and staff will ensure that the programs, policies, and activities that will have disproportionately high and adverse effects on minority populations and/or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or an alternative is "practicable," the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.
- g. The FHWA managers and staff will also ensure that any of their respective programs, policies, or activities that have the potential for disproportionately high and adverse effects on populations protected by Title VI ("protected populations") will only be carried out if:
 1. (1) a substantial need for the program, policy or activity exists, based on the overall public interest; and
 2. (2) alternatives that would have less adverse effects on protected populations have either:
 - a. (a) adverse social, economic, environmental, or human health impacts that are severe; or
 - b. (b) would involve increased costs of an extraordinary magnitude.
- h. Any relevant finding identified during the implementation of this directive must be included in the planning or NEPA documentation that is prepared for the appropriate program, policy, or activity.
- i. Environmental and civil rights statutes, along with Executive Orders require that the environmental effects on minority populations and low-income populations be addressed. Under Title VI, each Federal agency is required to ensure that no person on grounds of race, color, or national origin is excluded from participation in, denied the benefits of, or in any other way subjected to discrimination

under any program or activity receiving Federal assistance. Therefore, any member of a protected class under Title VI may file a complaint with the FHWA Office of Civil Rights, alleging that he or she was subjected to disproportionately high and adverse health or environmental effects.

9. **Where can I obtain additional guidance?** For more information or additional guidance related to Environmental Justice, please see the FHWA Environmental Justice [web site](#).

A handwritten signature in blue ink, appearing to read "Victor M. Mendez".

Victor M. Mendez
Administrator

¹ These definitions are intended to be consistent with the draft definitions for EO 12898 that have been issued by the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA). To the extent that these definitions vary from the CEQ and EPA draft definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the FHWA program.

Commonly Asked Questions and Answers

Regarding Executive Order 13166

1. What is new in Executive Order 13166?

Executive Order 13166 (EO 13166) contains two major initiatives. The first is designed to better enforce and implement an existing obligation: Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who are limited English proficient (LEP). The Executive Order requires federal agencies that provide federal financial assistance to develop guidance to clarify those obligations for recipients of such assistance ("recipient guidance"). Thus, for instance, the Department of Justice (DOJ) is developing guidance specifically for its recipients, which are primarily state and local law enforcement agencies and departments of corrections.

Second, the Executive Order sets forth a new obligation: Because the federal government adheres to the principles of nondiscrimination and inclusion embodied in Title VI, the Executive Order requires all federal agencies to meet the same standards as federal financial assistance recipients in providing meaningful access for LEP individuals to federally conducted programs. Each federal agency must thus develop a plan for providing that access. For example, DOJ components such as the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Bureau of Prisons, the Civil Rights Division, and others, are in the process of developing a combined plan. Each federal agency must undertake the same process.

The Federal Coordination and Compliance Section (FCS) of the Civil Rights Division of DOJ has taken the lead in coordinating and implementing this Executive Order. In late August, Assistant Attorney General Bill Lann Lee sent a letter to heads of agencies, general counsels, and (where available) civil rights offices in every federal agency. The letter informed each agency of its obligations under the Executive Order and of FCS's role in providing technical assistance and review to agencies.

In an effort to secure the federal government's full compliance with EO 13166, and under the DOJ's coordination authority conferred by Executive Order 12250, Attorney General Eric Holder issued a memorandum on February 17, 2011 requesting that each agency recommit to the implementation of EO 13166. See [Attorney General Eric Holder's Memorandum to All Federal Agencies Regarding the Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166 \(February 17, 2011\)](#).

2. What federal activities are covered by the Executive Order?

The Executive Order covers all "federally conducted programs and activities." Anything a federal agency does falls within the scope of federally conducted programs or activities. All of the over ninety agencies are responsible for developing and implementing "federally conducted plans" to ensure that persons who are LEP have meaningful access to federal programs and activities.

The definition of federally conducted programs is the same under Executive Order 13166 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, Editorial Note, Section 39.102 Application. That definition states:

Under this section, 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 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). Id.

Federally conducted activities include the provision of federal benefits or services, the imposition of a burden on a member of the public, and any other activities a federal agency conducts. For example, the investigation of a complaint of discrimination by an office of civil rights or the provision of information by a law enforcement agency that would inform a person of or allow a person to exercise their rights would be a "service." The grant of authority to engage in temporary employment by the Immigration and Naturalization Service or of social security benefits would be a "benefit." The imposition of taxes by the Internal Revenue Service or discipline upon a prisoner in a Bureau of Prisons correctional facility would be a "burden." Another example of federal activities covered by the Executive Order are law enforcement activities such as custodial interrogations, arrests and detentions, searches, investigations, etc., performed by federal law enforcement agencies.

3. What is an agency's "recipient guidance"?

Throughout the questions and answers, when we refer to "recipient guidance" we mean the guidance that agencies must develop to ensure that entities to which they grant federal financial assistance comply with Title VI's prohibition against national origin discrimination. Approximately 28 federal agencies provide some form of federal financial assistance to private, state, or local entities. Federal financial assistance includes, but is not limited to, grants and loans of federal funds; grants or donations of federal property; training; details of federal personnel; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. For instance, the Department of Justice provides federal financial assistance to several agencies, primarily state and local law enforcement agencies, and departments of corrections.

4. What is the general DOJ Guidance on Limited English Proficiency that issued along with EO 13166? How can agencies use it? How is it different from the guidance that DOJ and other agencies are working on now?

DOJ has consistently interpreted Title VI and its regulations to require recipients of federal financial assistance to provide meaningful access to LEP individuals, and funding agencies have found recipients in violation of this obligation and prescribed remedial efforts on myriad occasions. The general DOJ LEP Guidance sets forth the standards DOJ has been applying, and it provides a framework for agencies to use in developing specific guidance for their own recipients. EO 13166 requires each agency to prepare guidance that is tailored to the agency's recipients. For example, DOJ is preparing guidance as to how the general LEP standards apply in law enforcement agencies and departments of corrections. EO 13166 also requires agencies to apply the standards set forth in the DOJ LEP Guidance to their own federally conducted activities. The general DOJ LEP Guidance can be found on the FCS website at www.LFP.gov.

5. If an agency does not provide federal financial assistance, does the Executive Order apply to that agency?

Yes. EO 13166 requires that ALL federal agencies take reasonable steps to provide meaningful access to their own federally conducted activities. Each agency must have developed and begun implementing a plan for doing so by December 11, 2000. That plan must be submitted to the Department of Justice, through the Federal Coordination and Compliance Section, by sending it to:

Deeana Jang, Chief
Federal Coordination and Compliance Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue NW - NWB

Washington, D.C. 20530
FCS staff is available to discuss these plans with agencies.

6. What is the time frame for action?

By December 11, 2000, each agency was to develop and begin implementation of a plan for providing meaningful access for LEP individuals to the agency's federally-conducted activities.

Also by December 11, 2000, each agency that provides federal financial assistance must have submitted a draft of its guidance for recipients of that assistance to the Department of Justice, Civil Rights Division, Federal Coordination and Compliance Section (FCS), at the address noted above. FCS reviews each guidance for consistency with other agencies' guidance and with the Executive Order. Once FCS approves the guidance, it must be published in the Federal Register for review and comment.

7. What standards should agencies apply to recipient guidance and to their plans for federally conducted activities?

Each agency and each recipient of federal financial assistance must take reasonable steps to provide meaningful access to LEP individuals. Among the factors to be considered in determining what constitutes reasonable steps to ensure meaningful access are: (1) the number or proportion of LEP persons in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program; (3) the importance of the service provided by the program; and (4) the resources available to the recipient. These four factors are further explained in the DOJ LEP Guidance found on the FCS website and published in the Federal Register on August 16, 2000.

8. If a recipient is covered by a state or local "English-only" law, must it still comply with the Title VI obligation and agency guidance interpreting that obligation?

Yes. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, State or local "English-only" laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in States and localities with "English-only" laws are certainly not required to accept federal funding – but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

9. When developing plans and guidance regarding translation of documents, how do we determine which documents must be translated?

It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document will be considered vital if it contains information that is critical for obtaining the federal services and/or benefits, or is required by law. Vital documents include, for example: applications; consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; prison rule books; and written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. Non-vital information includes documents that are not critical to access such benefits and services.

Advertisements of federal agency tours and copies of testimony presented to Congress that are available for informational purposes would be considered non-vital information.

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a

language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, we recognize that it would be impossible, from a practical and cost-based perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients of federal financial assistance, and EO 13166 does not require it of federal agencies. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important for federal agencies to continually survey/assess the needs of eligible service populations in order to determine whether certain critical outreach materials should be translated into other languages.

10. Does the Executive Order apply to materials on website?

Yes. However, the decision to place something on the web will not affect whether the document must be translated. For example, placement on the website should not change the agencies' or recipients' original assessment regarding the number or proportion of LEP persons that comprise the intended audience for that document.

The four-factor analysis applies to each individual "document" on the website. Generally, entire websites need not be translated, as only the vital information within the website might need translation. If, in applying the four-factor analysis, the agency or recipient determines that a particular document/piece of information should be translated, that translation should also be posted on the website if the English-language version is on the website. If documents are translated within a website, the existence of the translation should be noted (in the appropriate language) at an initial entry point to the site (usually the homepage).

11. What are the standards for oral interpretation?

The obligation to provide meaningful opportunity to individuals who are LEP is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program."

There are a number of steps which can assist recipients and federal agencies in providing such oral assistance. They range from hiring bilingual staff or staff interpreters competent in the skill of interpreting, to contracting with qualified outside in-person or telephonic interpreter services, to arranging formally for the services of qualified voluntary community interpreters who are bound by confidentiality agreements. Generally, it is not acceptable for agencies or recipients to rely upon an LEP individual's family members or friends to provide the interpreter services. The agency or recipient should meet its obligations under EO 13166 or Title VI by supplying competent language services free of cost. In rare emergency situations, the agency or recipient may have to rely on an LEP person's family members or other persons whose language skills and competency in interpreting have not been established. Proper agency or recipient planning and implementation is important in order to ensure that those situations rarely occur.

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

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 should 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.

13. Does Executive Order 13166 require that bids be let in language other than English?

Generally, current practice with regard to announcing federal government contracts and grants would not be altered under the Executive Order. In determining what is required, the focus of the analysis in this situation is on the first factor – the number or proportion of eligible LEP persons. Except, perhaps, in territories, it is reasonable to expect that the number or proportion of eligible contract or grant recipients who are LEP and are themselves attempting to find and respond to announcements of grants and contracts is negligible.

14. If a federal agency contracts with a private or other entity to conduct certain activities of the agency, does the Executive Order apply to the activities of the contractor?

Yes. When a different entity conducts certain activities for the federal agency, then the Executive Order applies to the entity's activities. The agency should ensure that the entity knows the general standards for LEP access and applies the agency's plan to the activities it is conducting on behalf of the agency. An agency cannot avoid its obligations by contracting them out. Mandatory compliance with the agency's LEP policy should be included in the contract.

15. What does Executive Order 13166 require for federal employment practices?

If English is essential in a job, the Executive Order would not require any services for LEP individuals. For jobs where agencies determine English is not essential, agencies should apply the four factors.

16. Where can I get copy of the Executive Order and DOJ General LEP Guidance?

A copy of the Executive Order and DOJ's general LEP Guidance (both translated into Spanish and Chinese) can be found on the Federal Coordination and Compliance Section website at <http://www.justice.gov/crt/about/cor>. For more information on Executive Order 13166, please contact the Federal Coordination and Compliance Section, 202-307-2222.



Federal Register

Wednesday,
August 16, 2000

Part V

The President

Executive Order 13166—Improving Access
to Services for Persons With Limited
English Proficiency

Department of Justice

Enforcement of Title VI of the Civil
Rights Act of 1964—National Origin
Discrimination Against Persons With
Limited English Proficiency; Notice

Presidential Documents

Title 3—

Executive Order 13166 of August 11, 2000

The President

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.



THE WHITE HOUSE,
August 11, 2000.

[FR Doc. 00-20938
Filed 8-15-00; 8:45 am]
Billing code 3195-01-P

DEPARTMENT OF JUSTICE**Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance**

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Policy guidance document.

SUMMARY: This Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency (LEP Guidance)" is being issued pursuant to authority granted by Executive Order 12250 and Department of Justice Regulations. It addresses the application of Title VI's prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency. This policy guidance does not create new obligations, but rather, clarifies existing Title VI responsibilities. The purpose of this document is to set forth general principles for agencies to apply in developing guidelines for services to individuals with limited English proficiency. The Policy Guidance Document appears below.

DATES: Effective August 11, 2000.

ADDRESSES: Coordination and Review Section, Civil Rights Division, P.O. Box 66560, Washington, D.C. 20035-6560.

FOR FURTHER INFORMATION CONTACT: Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, (202) 307-2222.

Helen L. Norton,

Counsel to the Assistant Attorney General, Civil Rights Division.

Office of the Assistant Attorney General
Washington, D.C. 20530

August 11, 2000.

TO: Executive Agency Civil Rights Officers

FROM: Bill Lann Lee, Assistant Attorney General, Civil Rights Division

SUBJECT: Policy Guidance Document: *Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency* ("LEP

Guidance")

This policy directive concerning the enforcement of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, as amended, is being issued

Executive Order No. 12250¹ and Department of Justice regulations.² It addresses the application to recipients of federal financial assistance of Title VI's prohibition on national origin discrimination when information is provided only in English to persons who do not understand English. This policy guidance does not create new obligations but, rather, clarifies existing Title VI responsibilities.

Department of Justice Regulations for the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (Coordination Regulations), 28 C.F.R. 42.401 *et seq.*, direct agencies to "publish title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI." 28 CFR § 42.404(a). The purpose of this document is to set forth general principles for agencies to apply in developing such guidelines for services to individuals with limited English proficiency (LEP). It is expected that, in developing this guidance for their federally assisted programs, agencies will apply these general principles, taking into account the unique nature of the programs to which they provide federal financial assistance.

A federal aid recipient's failure to assure that people who are not proficient in English can effectively participate in and benefit from programs and activities may constitute national origin discrimination prohibited by Title VI. In order to assist agencies that grant federal financial assistance in ensuring that recipients of federal financial assistance are complying with their responsibilities, this policy directive addresses the appropriate compliance standards. Agencies should utilize the standards set forth in this Policy Guidance Document to develop specific criteria applicable to review the programs and activities for which they offer financial assistance. The Department of Education³ already has

¹ 42 U.S.C. § 2000d-1 note.

² 28 C.F.R. § 0.51.

³ Department of Education policies regarding the Title VI responsibilities of public school districts with respect to LEP children and their parents are reflected in three Office for Civil Rights policy documents: (1) the May 1970 memorandum to school districts, "Identification of Discrimination and Denial of Services on the Basis of National Origin," (2) the December 3, 1985, guidance

document, "The Office for Civil Rights' Title VI

pursuant to the authority granted by

established policies, and the Department of Health and Human Services (HHS)⁴ has been developing guidance in a manner consistent with Title VI and this Document, that applies to their specific programs receiving federal financial assistance.

Background

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. § 2000d, provides:

No person in the United States 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.

The term "program or activity" is broadly defined. 42 U.S.C. § 2000d-4a.

Consistent with the model Title VI regulations drafted by a Presidential task force in 1964, virtually every executive agency that grants federal financial assistance has promulgated regulations to implement Title VI. These regulations prohibit 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" and "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" 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."

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted these provisions as requiring that a federal financial recipient take steps to ensure that language barriers did not exclude LEP persons from effective participation in its benefits and services. *Lau* involved a group of students of Chinese origin who did not speak English to whom the recipient provided the same services—an education provided solely in English—that it provided students who did speak English. The Court held that, under these circumstances, the school's practice violated the Title VI prohibition against discrimination on

Language Minority Compliance Procedures," and (3) the September 1991 memorandum, "Policy Update on Schools Obligations Toward National Origin Minority Students with Limited English Proficiency." These documents can be found at the Department of Education website at www.ed.gov/office/OCR.

⁴The Department of Health and Human Services is issuing policy guidance titled: "Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency." This policy addresses the Title VI responsibilities of HHS recipients to individuals with limited English proficiency.

the basis of national origin. The Court observed that “[i]t 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 educational program—all earmarks of the discrimination banned by” the Title VI regulations.⁵ Courts have applied the doctrine enunciated in *Lau* both inside and outside the education context. It has been considered in contexts as varied as what languages drivers’ license tests must be given in or whether material relating to unemployment benefits must be given in a language other than English.⁶

Link Between National Origin And Language

For the majority of people living in the United States, English is their native language or they have acquired proficiency in English. They are able to participate fully in federally assisted programs and activities even if written and oral communications are exclusively in the English language.

The same cannot be said for the remaining minority who have limited English proficiency. This group includes persons born in other countries, some children of immigrants born in the United States, and other non-English or limited English proficient persons born in the United States, including some Native Americans. Despite efforts to learn and master English, their English language proficiency may be limited for some time.⁷ Unless grant recipients take steps to respond to this difficulty, recipients effectively may deny those who do not

⁵ 414 U.S. at 568. Congress manifested its approval of the *Lau* decision requirements concerning the provision of meaningful education services by enacting provisions in the Education Amendments of 1974, Pub. L. No. 93-380, §§ 105, 204, 88 Stat. 503-512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401 *et seq.*, which provided federal financial assistance to school districts in providing language services.

⁶ For cases outside the educational context, *see, e.g., Sandoval v. Hagan*, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *affirmed*, 197 F.3d 484, (11th Cir. 1999), *rehearing and suggestion for rehearing en banc denied*, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98-6598-II), *petition for certiorari filed* May 30, 2000 (No. 99-1908) (giving drivers’ license tests only in English violates Title VI); and *Pabon v. Levine*, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary

judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

⁷ Certainly it is important to achieve English language proficiency in order to fully participate at every level in American society. As we understand the Supreme Court’s interpretation of Title VI’s prohibition of national origin discrimination, it does not in any way disparage use of the English language.

speak, read, or understand English access to the benefits and services for which they qualify.

Many recipients of federal financial assistance recognize that the failure to provide language assistance to such persons may deny them vital access to services and benefits. In some instances, a recipient’s failure to remove language barriers is attributable to ignorance of the fact that some members of the community are unable to communicate in English, to a general resistance to change, or to a lack of awareness of the obligation to address this obstacle.

In some cases, however, the failure to address language barriers may not be simply an oversight, but rather may be attributable, at least in part, to invidious discrimination on the basis of national origin and race. While there is not always a direct relationship between an individual’s language and national origin, often language does serve as an identifier of national origin.⁸ The same sort of prejudice and xenophobia that may be at the root of discrimination against persons from other nations may be triggered when a person speaks a language other than English.

Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility * * *. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.⁹

While Title VI itself prohibits only intentional discrimination on the basis of national origin,¹⁰ the Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.¹¹ The Department of Justice has consistently adhered to the view that the significant

⁸ As the Supreme Court observed, “[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond.” *Hernandez v. New York*, 500 U.S. 352, 370 (1991) (plurality opinion).

⁹ *Id.* at 371 (plurality opinion).

¹⁰ *Alexander v. Choate*, 469 U.S. 287, 293 (1985).

¹¹ *Id.* at 293-294; *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642-645 (Stevens, Brennan, Blackmun, JJ.); *Lau v. Nichols*, 414 U.S. at 568; *id.* at 571 (Stewart, J., concurring in result). In a July

24, 1994, memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning “Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964,” the Attorney General stated that each agency “should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs.”

discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies’ implementing regulations.¹² Also, existing language barriers potentially may be rooted in invidious discrimination. The Supreme Court in *Lau* concluded that a recipient’s failure to take affirmative steps to provide “meaningful opportunity” for LEP individuals to participate in its programs and activities violates the recipient’s obligations under Title VI and its regulations.

All Recipients Must Take Reasonable Steps To Provide Meaningful Access

Recipients who fail to provide services to LEP applicants and beneficiaries in their federally assisted programs and activities may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its regulations require recipients to take reasonable steps to ensure “meaningful” access to the information and services they provide. What constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the recipient.

(1) Number or Proportion of LEP Individuals

Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. However, 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. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day. But even those who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are

¹² The Department’s position with regard to written language assistance is articulated in 28 CFR § 42.405(d)(1), which is contained in the Coordination Regulations, 28 CFR Subpt. F, issued in 1976. These Regulations “govern the respective obligations of Federal agencies regarding enforcement of title VI.” 28 CFR § 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in *Lau*.

possible and if so, have a plan of what to do if a LEP individual seeks service under the program in question. This plan need not be intricate; it may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

(2) *Frequency of Contact with the Program*

Frequency of contacts between the program or activity and LEP individuals is another factor to be weighed. For example, if LEP individuals must access the recipient's program or activity on a daily basis, e.g., as they must in attending elementary or secondary school, a recipient has greater duties than if such contact is unpredictable or infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

(3) *Nature and Importance of the Program*

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted zoo or theater. In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. A decision by a federal, state, or local entity to make an activity compulsory, such as elementary and secondary school attendance or medical inoculations, serves as strong evidence of the program's importance.

(4) *Resources Available*

The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP

assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual's day-to-day existence. Claims of limited resources from large entities will need to be well-substantiated.¹³

Written vs. Oral Language Services

In balancing the factors discussed above to determine what reasonable steps must be taken by recipients to provide meaningful access to each LEP individual, agencies should particularly address the appropriate mix of written and oral language assistance. Which documents must be translated, when oral translation is necessary, and whether such services must be immediately available will depend upon the factors previously mentioned.¹⁴ Recipients often communicate with the public in writing, either on paper or over the Internet, and written translations are a highly effective way of communicating with large numbers of

people who do not speak, read or understand English. While the Department of Justice's Coordination Regulation, 28 CFR § 42.405(d)(1), expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program" in the same manner as persons who speak English.

In some cases, "meaningful opportunity" to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In some circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning

written translations on reasonable request. It is the responsibility of federal assistance-granting agencies, in conducting their Title VI compliance activities, to make more specific judgments by applying their program expertise to concrete cases.

Conclusion

This document provides a general framework by which agencies can determine when LEP assistance is required in their federally assisted programs and activities and what the nature of that assistance should be. We expect agencies to implement this document by issuing guidance documents specific to their own recipients as contemplated by the Department of Justice Coordination Regulations and as HHS and the Department of Education already have done. The Coordination and Review Section is available to assist you in preparing your agency-specific guidance. In addition, agencies should provide technical assistance to their recipients concerning the provision of appropriate LEP services.

[FR Doc. 00-20867 Filed 8-15-00; 8:45 am]

BILLING CODE 4410-13-P

¹³ Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, see *Frontera v. Sindell*, 522 F.2d 1215 (6th Cir. 1975)), or there is another "substantial legitimate justification for the challenged practice." *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are "consistent with business necessity" and there is no "alternative employment practice" that is equally effective. 42 U.S.C. § 2000e-2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. *Alexander v. Choate*, 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be "reasonable" to take no affirmative steps to provide further access.

¹⁴ Under the four-part analysis, for instance, Title VI would not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all state statutes or notices of rulemaking made generally available to the public. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of documents.




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 13166¹ was issued in August of 2000 and this memorandum reaffirms its mandate. The Executive Order has two primary purposes. 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 to 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 language access conferences held over the last few years reveal that, while the federal government as a whole has taken commendable strides toward providing language access in

¹ 65 Fed. Reg. 50,121 (Aug. 16, 2000).

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

certain areas, the implementation of comprehensive language access programs remains 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 updated 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 on your website 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

SUBJECT: Federal Government's Renewed Commitment to Language Access
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not need to issue recipient guidance, should include a statement of this determination when transmitting the federally conducted language access plan.² 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 the 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.

² 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 FEDERAL AGENCIES ON EXECUTIVE ORDER 13166 COMPLIANCE**

SPECIFICS OF IMPLEMENTATION FOR THE ACTION ITEMS:

- (1) *Action Item:* Each agency should establish a Language Access Working Group that reflects 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 the agency). The Working Group should be comprised of individuals 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. Staff should also be apprised of the agency's Language Access Working Group and its mission.

- (2) *Action Item:* Each agency should evaluate and/or update 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 months 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: Christine Stoneman and Bharathi Venkatraman. You may also email information to christine.stoneman@usdoj.gov or [bharathi.a.venkatraman\(a\).usdoj.gov](mailto:bharathi.a.venkatraman(a).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 methods for publicizing LEP access information include, but are not limited to, posting on agency 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-pronged 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 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.

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 Bharathi Venkatraman. You may also email agency recipient guidance to christine.stoneman@usdoj.gov or bharathi.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.pbp>

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

The 2006 Language Access Survey:

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

Federal Register

Vol. 60, No. 21

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Presidential Documents

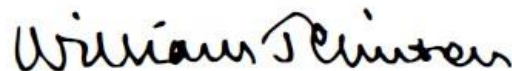
Title 3—

Executive Order 12948 of January 30, 1995

The President

Amendment to Executive Order No. 12898

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to amend Executive Order No. 12898, it is hereby ordered that section 1-103(e) of that order is amended by deleting the phrase "Within 12 months of the date of this order," and inserting the phrase "By March 24, 1995," in lieu thereof and by deleting, in the second sentence of section 1-103(e), the phrase "During the 12 month period from the date of this order," and inserting the phrase "From the date of this order through March 24, 1995," in lieu thereof.



THE WHITE HOUSE,
January 30, 1995.

[FR Doc. 95-2687
Filed 1-31-95; 10:39 pm]
Billing code 3195-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Docket No. DOT-OST-2012-0044

Department of Transportation Updated Environmental Justice Order 5610.2(a)

AGENCY: Office of the Secretary of Transportation, DOT

ACTION: Final DOT Environmental Justice Order

SUMMARY:

The Department of Transportation (the Department or DOT) is issuing an update to Departmental Order 5610.2(a) (Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). This Order updates the Department's original Environmental Justice Order, which was published April 15, 1997. The Order continues to be a key component of the Department's strategy to promote the principles of environmental justice in all Departmental programs, policies, and activities.

DOT Order 5610.2(a) sets forth the DOT policy to consider environmental justice principles in all (DOT) programs, policies, and activities. It describes how the objectives of environmental justice will be integrated into planning and programming, rulemaking, and policy formulation. The Order sets forth steps to prevent disproportionately high and adverse effects to minority or low-income populations through Title VI analyses and environmental justice analyses conducted as part of Federal transportation planning and NEPA provisions. It also describes the specific measures to be taken to address instances of disproportionately high and adverse effects and sets forth relevant definitions.

This updated Order reaffirms DOT's commitment to environmental justice and clarifies certain aspects of the original Order, including the definitions of "minority" populations in compliance with the Office of Management and Budget's (OMB) Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity of October 30, 1997. The revisions clarify the distinction between a Title VI analysis and an environmental justice analysis conducted as part of a NEPA review, and affirm the importance of considering environmental justice principles as part of early planning activities in order to avoid disproportionately high and adverse effects. The updated Order maintains the original Orders general framework and procedures and DOT's commitment to promoting the principles of environmental justice in all DOT programs, policies, and activities.

This Order is effective upon its date of issuance.

FOR FURTHER INFORMATION CONTACT: Beth Osborne, Deputy Assistant Secretary for Transportation Policy, telephone (202) 366-8979, or EJ@dot.gov, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington DC 20590

Order 5610.2(a)

Subject: Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

1. Purpose and Authority

a. This Order updates and clarifies environmental justice procedures for the Department in response to the Memorandum of Understanding on Environmental Justice signed by heads of Federal agencies on August 4, 2011, DOT's revised environmental justice strategy issued on March 2, 2012, and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.

The Department's original Environmental Justice Order, issued April 15, 1997, was a key component of the Department's original strategy and established procedures to be used by DOT to comply with Executive Order 12898. This revised Order continues to be a key component of DOT's environmental justice strategy. It updates and clarifies certain aspects of the original Order while maintaining its general framework and procedures and DOT's commitment to promoting the principles of environmental justice in all DOT programs, policies, and activities. Relevant definitions are in the Appendix.

b. Executive Order 12898 requires each Federal agency, to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT to implement the Executive Order, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6-609 of Executive Order 12898, this Order is limited to improving the internal management of DOT and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Department, its Operating Administrations, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its Operating Administrations, its officers or any other person.

2.Scope

This Order applies to the Office of the Secretary, DOT's Operating Administrations, and all other DOT components.

3. Effective Date

This Order is effective upon its date of issuance.

4. Policy

a. It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; SAFETEA-LU) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decision-making; social, economic, or environmental matters; public health; and public involvement.

b. In complying with this Order, DOT will rely upon existing authority to collect data and conduct research associated with environmental justice concerns. To the extent permitted by existing law, and whenever practical and appropriate to assure that disproportionately high and adverse effects on minority or low income populations are identified and addressed, DOT

shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. Integration with Existing Operations

a. The Office of the Secretary and each Operating Administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance.

b. In undertaking the integration with existing operations described in paragraph Sa, DOT shall observe the following principles:

(1) Environmental justice principles apply to planning and programming activities, and early planning activities are a critical means to avoid disproportionately high and adverse effects in future programs, policies, and activities. Planning and programming activities for policies, programs, and activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).

(2) Steps shall be taken to provide the public, including members of minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities, including information that will address the concerns of minority and low-income populations regarding the health and environmental impacts of the proposed action.

c. Future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of future DOT policy statements and proposals for legislation that may affect human health or the environment will include consideration of the provisions of Executive Order 12898 and this Order.

6. Ongoing DOT Responsibility

Compliance with Executive Order 12898 is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that disproportionately high and adverse effects on minority populations and low-income populations are avoided, minimized or mitigated in a manner consistent with this Order and Executive Order 12898. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.

7. Preventing Disproportionately High and Adverse Effects

- a. Under Title VI, each Federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute affects every program area in DOT. Consequently, DOT managers and staff must administer their programs in a manner to assure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination by any program or activity of DOT because of race, color, or national origin. While Title VI is a key tool for agencies to use to achieve environmental justice goals, it is important to recognize that Title VI imposes statutory and regulatory requirements that are broader in scope than environmental justice. There may be some overlap between environmental justice and Title VI analyses; however, engaging in environmental justice analysis under Federal transportation planning and NEPA provisions will not necessarily satisfy Title VI requirements. Similarly, a Title VI analysis would not necessarily satisfy environmental justice requirements, since Title VI does not include low-income populations. Moreover, Title VI applies to all Federally-funded projects and activities, not solely those which may have adverse human health or environmental effects on communities.

b. It is DOT's policy to actively administer and monitor its operations and decision-making to assure that nondiscrimination and the prevention of disproportionately high and adverse effects are an integral part of its programs, policies, and activities. DOT currently administers policies, programs, and activities which are subject to the requirements of NEPA, Title VI, URA, SAFETEA-LU and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination and disproportionately high and adverse effects so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate and practical:

--Population served and/or affected by race, color or national origin, and income level;

--Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin, and income level;

--Present and proposed membership by race, color, or national origin, in any planning or advisory body that is part of the program, policy or activity.

c. Statutes governing DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations and low-income populations by:

(1) identifying and evaluating environmental, public health, and interrelated social and economic effects of DOT programs, policies, and activities,

(2) proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies, and activities, where permitted by law and consistent with the Executive Order,

(3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with the Executive Order, and

(4) eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority and low-income populations in considering alternatives.

8. Actions to Address Disproportionately High and Adverse Effects

a. Following the guidance set forth in this Order and its Appendix, the head of each Operating Administration and the responsible officials for other DOT components shall determine whether programs, policies, or activities for which they are responsible will have

an adverse human health or environmental effect on minority and low-income populations and whether that adverse effect will be disproportionately high.

b. In making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be implemented and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.

c. The Operating Administrators and other responsible DOT officials will ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is "practicable," the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. The Operating Administrations and other responsible DOT officials will also ensure that any of their respective programs, policies, or activities that will have a disproportionately high and adverse effect on populations protected by Title VI ("protected populations") will only be carried if:

(I) a substantial need for the program, policy, or activity exists, based on the overall public interest; and

(2) alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in subparagraph d(1) above), either

(a) would have other adverse social, economic, environmental or human health impacts that are severe; or

(b) Would involve increased costs of extraordinary magnitude.

e. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT programs, policies, or activities under these authorities.

Nothing in this Order adds to or reduces existing Title VI due process mechanisms.

f. The findings, determinations, and/or demonstration made in accordance with this section must be appropriately documented, normally in the environmental impact statement or other NEPA document prepared for the program, policy, or activity, or in other appropriate planning or program documentation.

Appendix

I. Definitions

The following terms were used in this Order shall have the following meanings:

a. DOT means the Office of the Secretary, DOT Operating Administrations, and all other DOT components.

b. Low-Income means a person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

c. Minority means a person who is:

(1) Black: a person having origins in any of the black racial groups of Africa;

(2) Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent;

(4) American Indian and Alaskan Native: a person having origins in any of the original people of North America, South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition; or

(5) Native Hawaiian and Other Pacific Islander: people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

d. Low-Income Population means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

e. Minority Population means any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

f. Adverse effects means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources;

destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

g. Disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:

(1) is predominately borne by a minority population and/or a low-income population, or

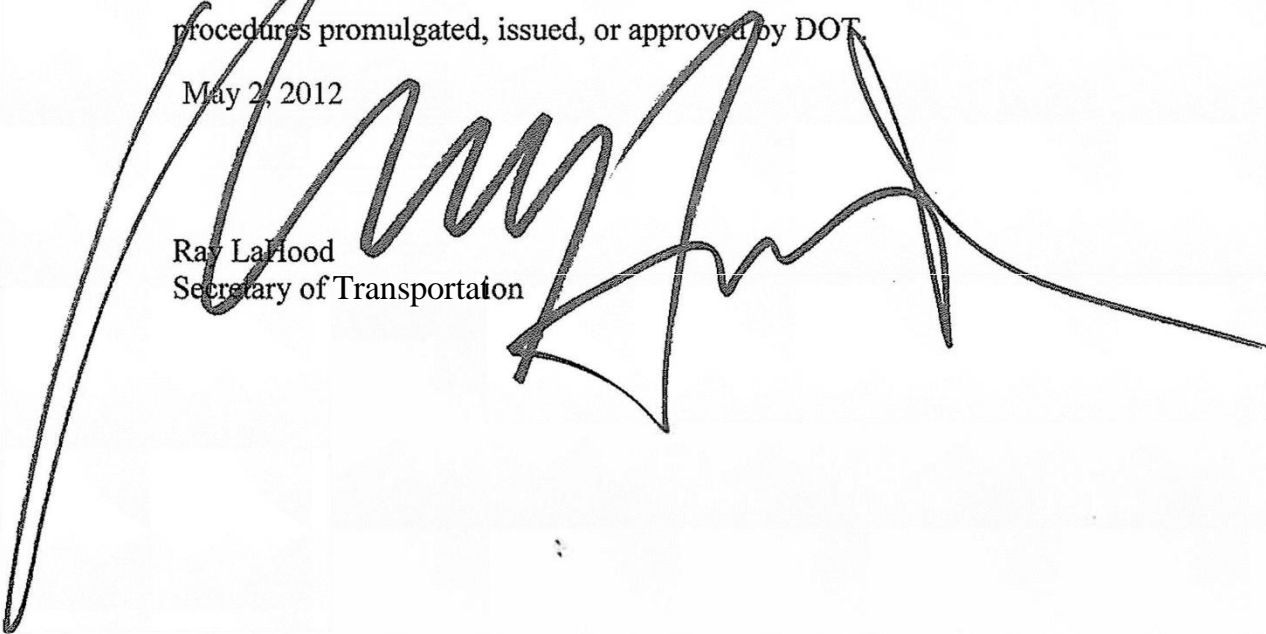
(2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

h. Programs, policies, and/or activities mean all projects, programs, policies, and activities that affect human health or the environment, and which are undertaken or approved by DOT. These include, but are not limited to, permits, licenses, and financial assistance provided by DOT. Interrelated projects within a system may be considered to be a single project, program, policy or activity for purposes of this Order.

i. Regulations and guidance means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

May 2, 2012

Ray LaHood
Secretary of Transportation

A large, stylized handwritten signature in black ink, overlapping the printed name and title of Ray LaHood. The signature is fluid and cursive, extending across the width of the text area.

APPENDIX C



Title VI Program and Related Statues Discrimination Complaint Form

Name: _____

Address: _____

Telephone: () _____ Work Cell Home

Name of City Person or Project that you believe discriminated against you.

Date of the alleged incident (mm/dd/yyyy)

Why do you believe you were discriminated against, because of:

Race Retaliation Gender Family Status Religion

Color Nationality Age Disability Other (please state any below)

Please explain as briefly and precisely as possible what happened and how you believe you were discriminated against. Indicate who was involved. Please attach any written material pertaining to your case.

Signature: _____

Date: _____

**City of St. Petersburg
Title VI Report Log**

	Date mm/dd/yyyy	Summary: (Basis of complaint)	Status	Action Taken
Investigations				
1				
2				
Lawsuits				
1				
2				
Complaints				
1				
2				