TITLE VI PLAN
As Related to Transportation Projects

PREPARED BY THE:
ENGINEERING & CAPITAL IMPROVEMENTS DEPARTMENT

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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:

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Engineering & Capital Improvements, Director
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Engineering & Capital Improvements, Asst. Director
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St. Petersburg, FL 33701
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Mark Riedmueller, Title VI Representative
Engineering & Capital Improvements, Civil Engineer I
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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 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:

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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."

http://www.stpete.org/lgbtq/city_non-discrimination_policy.asp

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:

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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 FTA's EOO if they are dissatisfied with the final decision rendered by the City. The City's Title VI Representative

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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.

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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:


"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:

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 FTA may issue.


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

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 FTA, modified only if necessary to identify the affected parties.
Pursuant to Section 9 of US DOT Order 1050.2A, the City of St. Petersburg 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.

The City of St. Petersburg 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 Recipient's City of St. Petersburg's Director of Engineering & Capital Improvements Department.

2. Issue a policy statement signed by the City of St. Petersburg's Director of Engineering & Capital Improvements Department, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the 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 agreement 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 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 Recipient.

X

Brechtel Brayman, PE
Engineering & Capital Improvements Director

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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, "US DOT") 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 8 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 (6) 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, and 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).
TITLE VI NONDISCRIMINATION POLICY LANGUAGE

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 8 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 (6) 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.
§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.


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.


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.

§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.


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


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
23

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.).
(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.


1-4. 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.

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.


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.


§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.


§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.

AMENDMENTS

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 this subchapter 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 2000d–1 of this title, 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 this subchapter:
Provided, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, 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 this subchapter, insofar as the matters covered in the order or judgment are concerned.

REFERENCES IN TEXT
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.


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.

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.


EFFECTIVE DATE

Section 191 of Pub. L. 89–750 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, 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 307 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.


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


(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) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.


REFERENCES IN TEXT

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.


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.
FHWA Order 6640.23A

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

Classification Code: 6640.23A  Date: June 14, 2012  Office of Primary Interest: 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?
4. What is the scope of this directive?
5. What definitions are used in this directive?
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?
9. Where can I obtain additional guidance?

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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.


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).


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 meanings:

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) 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: 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) 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 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) identifying and evaluating environmental, public health, and interrelated social and economic effects of FHWA programs, policies, and activities;

   (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) 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) 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) population served and/or affected by race, color, or national origin, and income level;

(2) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin; and

(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) 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 have either:

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

      (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 website.

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.
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.

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 was 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 LEP.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
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 translations 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 websites?

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 activities 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 languages 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 a copy of the Executive Order and the DOJ General LEP Guidance? What about the Department of Health and Human Services' (HHS) recipient 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/. You can also link to HHS's agency-specific guidance for its recipients at that location.

For more information on Executive Order 13166, please contact the Federal Coordination and Compliance Section, 202-307-2222.
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
Title 3—
The President

Executive Order 13166 of August 11, 2000

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.

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

FROM:  THE ATTORNEY GENERAL

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

Executive Order 13166\(^1\) was issued in August of 2000 and this memorandum reaffirms its mandate. The Executive Order has two primary parts. First, it directs each federal agency to develop and implement a system by which limited English proficient (LEP) persons can meaningfully access the agency's services. Second, it directs each agency providing federal financial assistance to issue guidance to recipients of such assistance on their legal obligations 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

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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
not need to issue recipient guidance, should include a statement of this
determination when transmitting the federally conducted language access plan. 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.

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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.
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@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.
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:

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:

The 2006 Language Access Survey:

GSA Language Services Schedule:
http://www.gsa.gov/portal/content/104610

I Speak Language Identification flashcards:

LEP rights brochure:
Executive Order 12948 of January 30, 1995

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,

[Signature]

William Clinton
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? 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.


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).


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 meanings:

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) 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: 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) 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 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 5610.1(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) identifying and evaluating environmental, public health, and interrelated social and economic effects of FHWA programs, policies, and activities;

(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) 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) 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) population served and/or affected by race, color, or national origin, and income level;

(2) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin; and

(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) 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 have either:

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

(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.

Victor M. Mendez
Administrator

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.
This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE
7 CFR Part 15
[OES–2014–0002]
RIN 0510–AA70

Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency

AGENCY: Office of the Assistant Secretary for Civil Rights, USDA.

ACTION: Significant final guidance.

SUMMARY: The U.S. Department of Agriculture (USDA) is publishing the final guidance on the Title VI prohibition against national origin discrimination as it affects limited English proficient persons. Consistent with Title VI of the Civil Rights Act of 1964, as amended, Title VI regulations, and Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)," the guidance clarifies the obligations of entities that receive Federal financial assistance from USDA. The guidance does not create new obligations, but rather, provides guidance for USDA recipients in meeting their existing obligations to provide meaningful assistance for LEP persons. The guidance also describes some of the methods recipients may use to meet their obligation to provide, under certain circumstances, competent oral interpretative services to LEP persons. It has been determined that this guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act.

Comments on Proposed Guidance

On March 8, 2012, USDA published a proposed final Guidance in the Federal Register which resulted in 18 public interest groups/firms responding with over 160 comments and recommendations. The comments and/or the recommendations are addressed as follows:

1. Recipient LEP Plan

We received five comments recommending that the Guidance should require recipients to develop an LEP plan. USDA is cognizant of the value of written LEP plans in documenting a recipient’s compliance with its obligation to ensure meaningful access by LEP persons, and in providing a framework for the provision of reasonable and necessary language assistance to LEP persons. USDA is also aware of the related training, operational, and planning benefits most recipients would derive from the generation and maintenance of an updated written language assistance plan for use by its employees. In the large majority of cases, the benefits flowing from a written language assistance plan have caused or will likely cause recipients to develop, with
varying degrees of detail, such written plans. Even small recipients with limited contact with LEP persons would likely benefit from having a plan in place to assure that, when the need arises, staff have a written plan to turn to even if it addresses only how to access a telephonic or community-based interpretation service when determining what language services to provide and how to provide them.

However, the fact that the vast majority of USDA's recipients already have or will likely develop a written LEP plan to reap its many benefits does not necessarily mean that every recipient, however small its staff, limited its resources, or focused its services, will realize the same benefits and thus must follow an identical path. Without clear evidence suggesting that the absence of written plans for every recipient is impeding accomplishment of the goal of meaningful access, USDA elects at this juncture to strongly recommend but not require written language assistance plans. USDA stresses in this regard that neither the absence of a requirement of written LEP plans in all cases nor the election by an individual recipient against drafting a plan abides the underlying obligation on the part of each recipient to provide, consistent with Title VI, the Title VI regulations, and this Guidance, reasonable, timely, and appropriate language assistance to the LEP populations each serves.

One commentator recommended that the Guidance should require community involvement in developing the recipients' written LEP plans. The Guidance currently contains language to encourage recipients to involve the community in developing their written LEP plans. No additional language is being added to address this recommendation.

2. USDA LEP Plan for Conducted Programs

We received 10 comments recommending that USDA develop its own LEP Plan for Federally conducted programs to ensure that it is accessible in USDA operations. USDA issued its Departmental Regulation 4330-005, Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by U.S. Department of Agriculture effective June 4, 2012. This Departmental Regulation functions as USDA's LEP Plan and is publicly available at http://www.ocio.usda.gov/document/departmental-regulation-4330-005.

3. Updating Automated Online Services

We received seven comments recommending the expansion of online language assistance services. Some of the commenters specifically identified programs providing essential services like food and shelter to consumers, and cited the Social Security Web site as an example. In response to this comment, USDA added a new subparagraph under Section VI in the Guidance that recommends USDA recipients who provide online communications and services to customers include in their LEP plans their strategies for addressing language access needs. (See Section VI, No. 5 Ensuring Online Automation Services).

4. Expansion of Language Beyond Spanish

We received 10 comments recommending that recipients translate outreach material in non-English languages in addition to Spanish. We agree that recipients must take into account the language or languages of their LEP customers within their programs and specific locations. Part V (B) of the Guidance indicates that considering the four-factor analysis can be helpful for determining when to provide language services, including translating vital written materials into additional languages. Moreover, the Safe Harbor Provision in Part V (B) also supports translation into non-Spanish languages when the "LEP language group constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered." Nevertheless, we added additional recommendations that recipients post notices/links regarding the availability of language assistance services in the most commonly encountered languages for their programs and/or areas (See Section VI, Elements of Effective Plan on Language Assistance for LEP Persons, No. 4, Notice to LEP Persons).

5. "Reasonable" Steps

We received six comments stating that the Guidance standard that requires recipients to take "reasonable" steps in providing LEP persons with a meaningful opportunity to participate in Federally funded educational programs is vague. Rather than have recipients consider how to apply this standard, commenters recommended that the Guidance standard clarify that if an individual LEP persons does not have sufficient access to language assistance services should always be deemed reasonable.

The Guidance provides criteria for recipients to consider when deciding to provide language assistance services to LEP individuals. Specifically, the Guidance provides specific steps that recipients may take to ensure that LEP persons have meaningful access by utilizing a balancing test as a starting point (see Section IV, "Steps to Consider When Recipient Determine the Extent of Its Obligation to Provide LEP Services"). The Guidance further defines the balancing test as an individualized assessment that balances the following four factors:

a. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area served by the recipient;

b. The frequency with which LEP persons come in contact with the program or activity;

c. The nature and importance of the program, activity, or service to people's lives; and

d. The resources available to the recipient and costs.

The Guidance states that the four-factor analysis is a "starting point" to help a recipient determine when the recipient is "required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons." Given the flexibility of this standard and its context-specific nature, it is inherently flexible to adjust for the various populations, languages, programs, and activities served. Consequently, we recognize that there are some instances when interpreters constitute reasonable steps but we also acknowledge that different scenarios may yield different results, based on the four-factor analysis.

6. Interpreter and Translation Services

We received five comments on the use of interpreter and translation services. Specifically, the comments received indicated that the language in the Guidance should be changed or strengthened to clearly state that USDA-funded recipients must use qualified interpreters and provide free interpretation services to all LEP persons. The commenters also noted that vital documents must also be translated by qualified translators. We believe that the Guidance addresses the issue of qualifications adequately under "Competence of Interpreters (See Section A "Oral Language Services")" and that stronger language is not needed nor added. However, to guarantee that recipients ensure the competency of the language service provider, Office of the Assistant Secretary for Civil Rights (OASCR) shall recommend that USDA recipients include their strategy for utilizing competent and impartial interpreters and translators in the LEP plans.
Two commenters focused on the use of children as interpreters. Both commenters indicated that the use of children should not be allowed. The guidance, in accordance with DOJ regulations that "in many circumstances, family members, especially children, are not competent to provide quality and accurate interpretations, as issues of confidentiality, privacy, or conflict of interest may arise." This language makes clear that children may only be used under the most exigent of circumstances and only as a last-resort alternative. To provide further clarity on this issue, we have modified the Guidance’s language to note that reliance on children is disfavored unless it is an emergency situation that is not reasonably foreseeable. (See Section V “Selecting Language Assistance Services, Subsection, Use of Family Members, Friends or Others as Interpreters.”)

7. Considering Low Literacy
We received six comments recommending that written communication by the recipient (such as online translations and program applications) be written so as to be understood by individuals with low literacy (such as language directed to a 6th grade level). No change was made as USDA’s current policy follows the Federal plain written language standards, which includes taking the audience’s current level of knowledge into account. (See section V, “Language Assistance Services and Competence of Translators”) to ensure that individuals with low literacy level can understand written material.

8. Using Other Regulations To Set Minimum Thresholds for Translations and Interpretations
We received nine comments recommending that the Department consider using regulations or sub-regulatory guidance to set specific minimum thresholds for translation and interpretation in particular programs such as the Supplemental Nutrition Assistance Program; the Special Supplemental Nutrition Program for Women, Infants, and Children; and the Child Nutrition Program. No changes were made since the Guidance offers a fact-dependent four-factor assessment to determine the extent of a recipient’s obligation to provide LEP services. Moreover, with respect to translation, the Guidance contains the following Provisions, actions that are considered strong evidence of compliance with the recipient’s written-translation obligation. (See section IV, “How Does a Recipient Determine the Extent of its Obligation to Provide LEP Services?” and section V “Selecting Language Assistance Services.”) However, to ensure that this issue is taken into further consideration, OASCR will encourage USDA agencies to consider this recommendation in their work with recipients, since the recipient’s LEP plan would be the proper vehicle to set specifics on the thresholds for translation and interpretation stated in the Guidance.

9. Require Data Collection
We received 10 comments from various organizations on the need for data collection, as well as the need to track and monitor receipt of translation requests. The commenters specifically recommended that recipients be required to collect language preference data on their LEP beneficiaries and report this data to USDA on at least an annual basis.

In response to the comments received, while language preference data is collected in connection with some assisted programs, making language preference data collection an assisted program requirement across-the-board would involve a mandatory requirement under a review process beyond the Agency. However, we do note that effective recipient LEP plans often incorporate a system for tracking and monitoring the number of LEP persons served, language preferences, translations provided, and other data points. But not mandating data collection for all programs does not mean that such data cannot be required as necessary. Federal regulations, such as 28 CFR 42.408, make clear that data collection not required during the course of compliance reviews can be broad and provide “for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of title VI.”

10. “Summarization” as Appropriate Mode of Interpretation
We received one comment on the use of “summarization” as an appropriate mode of interpretation. The commenter expressed concern for the competence of interpreters and their ability to summarize when performing interpretations. The commenter indicated that interpreters should refrain from summarizing because it allowed for the interpreter to decide or evaluate what is relevant and what is not relevant. After careful consideration of the comment received, no change will be made. However, we recognize that summarization may not always be the ideal mode of interpretation when complete and accurate renditions of the communication are necessary. In keeping with the DOJ LEP Guidance, we place summarization within the context of assessing the competency of an interpreter. The DOJ Guidance states that recipients should ensure that interpreters “demonstrate(s) proficiency in an ability to communicate information accurately in both English and in the other languages and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation).” In situations where complete and accurate interpretation is necessary, a competent interpreter will assist the recipient in selecting the most appropriate mode of interpreting that will yield the most accurate information.

11. Definition of LEP
We received three comments recommending that we provide a clearer definition of LEP in the Guidance because the language contained in the “Background” section of the Guidance states “If these people have a limited ability to read, write, speak, or understand English, they “are” limited English proficient or ‘LEP’.” The commenters believed that this language appears to contradict the definition of LEP in Section III, which states “Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English ‘can be’ limited English proficient, or ‘LEP’ (Who Is a Limited English Proficient Person?).” In order to have consistent and valid language throughout both sections, the language in Section III, which defines LEP, has been revised to read “can be” and inserted with ‘are’ limited English proficient, or ‘LEP’.

12. Require Meaningful Notice of Rights to Language Services
We received three comments recommending that USDA and sub-agencies strengthen the Guidance’s language in regards to informing LEP persons of their right to language services. Commenters recommended that using multilingual telephone voice mail prompts or menus would be an easy way of informing LEP persons of their right to language services.

The Guidance addresses this issue by recommending telephone voice mail menus, among other approaches, when providing notice to LEP persons about the availability of language assistance services (See Section VI, part 4 “Providing Notice to LEP Persons”). Therefore, no change was made.
13. Include Existing LEP Regulations in Legal Authority

We received one comment recommending that the Guidance include existing regulations that establish mandatory legal requirements.

In response to this comment, no change was made as the Guidance already includes reference to existent regulations. USDA makes its programs and subprograms aware of their obligations and requirements to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, Title VI regulations, and program-specific regulations as noted in the Guidance under the Background on page 9 and in the Legal Authority on pages 11–15.

14. Require Adequate Signs Regarding Critical LEP Services

We received one comment, which notes that the language in the guidance is inconsistent regarding posting notices in places that LEP individuals commonly encounter. According to the commenter, the current language should be made consistent with 7 CFR 272.6(f) and 7 CFR 272.4(b), which require adequate signs in the offices with respect to information critical to LEP services.

No change was made to the Guidance in reference to this comment. Both 7 CFR 272.6(f) and 7 CFR 272.4(b) regulations refer to requirements set forth for participating agencies in the Food and Nutrition Service Agency’s programs, such as the Supplemental Nutrition Assistance Program (SNAP). Specifically, 7 CFR 272.6, paragraph (f) “Public Notification” requires State agencies to ensure that all offices involved in administering the SNAP program must publicly display the nondiscrimination poster. 7 CFR 272.4, paragraph (b) “Bilingual Requirements” requires State agencies to provide bilingual program information, certification materials, and staff or interpreters to households that speak the same non-English language and that do not have an adult fluent in English as a second language. Both of these issues are adequately addressed in the Guidance. The Guidance specifically recommends that recipients (which, in this case, would be State agencies) ensure that adequate signage is posted in the offices and all information for the public is translated. The Guidance further defines the importance of these issues as stated in the following language contained in Section VI, Elements of an Effective Language Assistance Plan for LEP Persons:

Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors that it will provide language services, it is important to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include posting signs in intake areas and other entry points and noting the availability of language assistance services on recipient Web sites. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notices in appropriate languages in intake areas or initial points of contact (including Web sites) so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to important programs, activities, services, or benefits provided by USDA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the language help.

15. Outreach to LEP Persons

We received two comments recommending that in addition to developing procedures to serve LEP individuals, it is equally important that LEP community members be made aware of the policies that are in place to serve the LEP population through radio programs, ethnic media, and other news outlets.

USDA agrees with the importance of finding effective methods of disseminating this information and we believe this has been adequately addressed in the Guidance. The Guidance notes that an effective language access plan includes information about notifying LEP individuals about the availability of language assistance services. This can include “providing notices on non-English language radio and television stations about the available language assistance services and benefits and how to get them.” (See Section VI, Part 4.) Therefore, no change was made to the Guidance. USDA agencies are encouraged to work with recipients to ensure that this issue is addressed in recipient LEP plans.

16. Conduct Roundtable and Follow-up

We received one comment recommending follow-up roundtable discussions to solicit further recommendations. USDA acknowledges the importance of gathering feedback and following up on recommendations gathered from roundtable discussions. However, no further roundtable discussions are warranted in advance of issuing this final Guidance. Instead, OSACR will encourage USDA agencies to conduct roundtable discussions with the community as a strategy to inform LEP individuals of the resources available to them, as a means to determine the most critical outreach material to translate, as well as a mechanism to obtain feedback on an LEP plan from the community. This is in keeping with our Guidance’s emphasis on relying on community-based organizations to provide important feedback to ensure LEP individuals have meaningful access.

17. Appoint a Language Access Coordinator

We received one comment recommending that each recipient appoint a person to handle LEP issues as they arise, review the LEP plan annually, work toward a more effective implementation of the policy, organize necessary trainings, etc. We believe that an LEP Coordinator would be useful for recipients in ensuring that all aspects of the LEP Guidance are being carried out. However, the appointment of this position is based on the funding and hiring responsibilities of the recipients and not USDA. USDA is committed to ensuring that all aspects of the Guidance are carried out effectively and efficiently, and will, therefore, recommend to recipients the usefulness of designating a Language Access Coordinator; but we do not have the authority to require that they designate one. Therefore, no change was made. Nonetheless, the importance of designating a Language Access Coordinator cannot be emphasized enough, and such an appointment will greatly increase the likelihood of effective implementation and maintenance of a language access plan.

18. Broaden Monitoring and Enforcement Activities

We received three comments asking that USDA broaden its monitoring and enforcement activities to ensure that funding recipients meet their Title VI, LEP language access obligations. We agree that USDA should closely monitor the performance of recipients it funds and, where appropriate, take enforcement...
action against those entities that fail to meet their language assistance obligations. This oversight responsibility is addressed in the LEP Guidance under Section VII, which states that "the requirement to provide meaningful access to LEP persons is enforced and implemented by USDA through its regulations at 7 CFR." In addition, USDA will monitor the effectiveness of recipients LEP programs through its compliance reviews. Therefore, no change was made.

Background

Most people living in the United States read, write, speak and understand English. There are many people, however, for whom English is not their primary language. For instance, based on the 2000 Census, over 26 million individuals speak Spanish, over 10 million speak another Indo-European language, 4 and almost 7 million speak an Asian or Pacific Island language at home. If these people have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." According to the 2000 Census data, 28.3 percent of all Spanish speakers, 27.2 percent of all Russian speakers, 22.9 percent of all Chinese speakers, and 32.4 percent of all Vietnamese speakers reported that they spoke English "not well" or "not at all" in response to the 2000 Census.

Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally funded programs. The Federal Government funds an array of services that are available to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help people learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. The fact that ESL classes are made available, however, does not obviate the statutory and regulatory requirements to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and the USDA Title VI regulations against national origin discrimination, 7 CFR part 15. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons. These are the same criteria USDA has been using and will continue to use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

Under Executive Order 13166, DOJ is responsible for providing LEP guidance to all Federal agencies and for ensuring consistency among the agency-specific guidance documents issued by Federal agencies. Consistency among the agency-specific guidance documents issued by Federal agencies is particularly important. Inconsistency or contradictory guidance could confound recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally assisted programs aimed at the American public do not leave some behind simply because those individuals face challenges communicating in English. This is of particular importance because, in many cases, LEP persons form a substantial portion of those encountered in Federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small nonprofits that receive Federal financial assistance.

There are many productive steps the Federal Government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller potential recipients may well choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, USDA plans to continue to provide assistance and guidance in this important area. In addition, USDA plans to work with potential and actual recipients, other Federal agencies, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches.

Moreover, USDA intends to explore how language assistance measures, resources, and cost-containment approaches developed with respect to its own Federally-conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, local governments, and small nonprofit organizations. An interagency working group on LEP has developed a Web site, http:// www.lsp.gov, to assist in disseminating this information to recipients, other Federal agencies, and the communities being served.

Some have interpreted the case of Alexander v. Sandoval, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally-assisted programs and activities. We do not believe this is an accurate reading of the decision as the Supreme Court, in Sandoval, addressed whether a private right of action existed to enforce a DOJ regulation promulgated pursuant to Title VI, not the validity of those regulations themselves. The
Recipients may not, on the grounds of race, color, or national origin, deny an individual any service, financial aid or other benefit provided under the program, deny an opportunity to participate in the program through the provisions of services, or subject or restrict an individual to segregation or separate treatment in any matter related to their receipt of service, financial aid, or other benefit under the program. Please see 7 CFR 15.3(b)(1)-(4) for additional information.

In addition, USDA regulations implementing the Food Stamp Act of 1977 require that the State agency shall provide bilingual program information and certification materials, and staff or interpreters. See 7 CFR 15.5(b)(6)(ii)-(iii), for additional information.

In Lau v. Nichols, 414 U.S. 563 (1974), the Supreme Court concluded that Title VI and its implementing regulations required a federally funded school district to ensure that LEP students were provided with meaningful access to the district's educational programs. That case involved a group of approximately 1,800 public school students of Chinese origin who did not speak English, and to whom the school system provided the same services—an education solely in English—that it provided to students who spoke English. The Court held that by failing to provide LEP Chinese-speaking students meaningful access to educational programs, the school's practices violated Title VI's prohibition against national origin discrimination.

On August 11, 2000, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," was issued: 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

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

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP guidance in light of Sandoval. The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

This guidance clarifies the responsibilities of recipients and will assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act of 1964, as amended, and Title VI regulations. It is consistent with Executive Order 13166, and DOJ LEP guidance. To avoid discrimination against LEP persons on the ground of national origin, USDA recipients should take reasonable steps to ensure that such persons receive language assistance necessary to afford them meaningful access to recipient programs or activities, free of charge.

The memorandum noted that some commentators have interpreted Sandoval as implicitly striking down the disparate impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. See, e.g., Sandoval, 532 U.S. at 289, 296 n.8. "[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations. . . . We cannot help observing, however, how strange it is to say that disparate-impact regulations which are the very basis of the service, and inextricably intertwined with Sec. 601, when Sec. 601 permits the very behavior that the regulations forbid . . . . " The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. Sandoval holds principally that there is no cause of action to enforce Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal agencies to enforce their own implementing regulations.
II. Who is covered?

USDA regulations require all recipients of Federal financial assistance from USDA to provide meaningful access to LEP persons. Federal financial assistance includes grants, below-market loans, training, and use of equipment, donations of surplus property, and other assistance. Covered entities include, but are not limited to:

- State and County agencies, offices, and their subdivisions;
- Private vendors, agents, contractors, associations, and corporations;
- Colleges, universities, and elementary and secondary schools;
- County, district, and regional committees/councils;
- Nursing homes, summer camps, food banks, and housing authorities;
- Research and promotion boards; and
- Other entities covered, directly or indirectly, Federal financial assistance provided by USDA.

Subrecipients likewise are covered when Federal funds are passed through from a recipient to a subrecipient.

Coverage extends to a recipient’s entire program or activity, i.e., to all parts of the recipient’s operations. This is true even if only one part of the recipient receives the Federal financial assistance. For example, USDA provides assistance to a University’s outreach department to provide business development services to local farmers and ranchers. In such a case, all operations of the University, not just those of the University’s outreach department are covered.

Some recipients operate in jurisdictions in which English has been declared the official language. These recipients may be subject to Federal nondiscrimination requirements, including those applicable to the provision of Federally assisted services and benefits to persons with limited English proficiency.13

III. Who is a limited English proficient person?

Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English are limited English proficient or “LEP” and entitled to language assistance with respect to a particular type of benefit, service, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by USDA recipients and should be considered when planning language services include, but are not limited to, for example:

- Persons seeking access to or needing assistance to obtain food stamps or other food assistance from a recipient;
- Persons seeking information, seeking to enforce rights, or seeking benefits or services from recipient State and County agencies, offices, and their subdivisions;
- Persons encountering recipient private vendors, agents, contractors, associations, and corporations;
- Students, community members, and others encountering recipient extension programs, colleges, universities, and elementary and secondary schools;
- Persons seeking to participate in public meetings or otherwise participate in the activities of county, district, and regional committees/councils;
- Persons seeking access to, or services or information from nursing homes, summer camps, food banks, and housing authorities;
- Persons subject to the work of research and promotion boards;
- Persons encountering other entities or persons who receive, directly or indirectly, Federal financial assistance provided by USDA; and
- Parents and family members of the above.

IV. How does a recipient determine the extent of its obligation to provide LEP services?

In order to ensure compliance with Title VI and Title VI regulations, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs and activities. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;
2. The frequency with which LEP persons come in contact with the program or activity;
3. The nature and importance of the program, activity, or service to people’s lives; and
4. The resources available to the recipient and costs.

As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while avoiding undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient’s activities will be more relevant to the public than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. However, the flexibility that recipients have to address the needs of the LEP populations they serve does not diminish and should not be used to minimize their obligation to address those needs. USDA recipients should apply the four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

1. The number or proportion of LEP persons served or encountered in the eligible service population.

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of LEP persons within the eligible service population, the more likely language services are needed.

Ordinarily, persons “eligible to be served or likely to be directly affected by” a recipient’s program or activity are those who are served or encountered in the eligible service population. The eligible service population is program/activity-specific, and includes persons who are in the recipient’s geographic service area as established by USDA, State or local authorities, or the recipient, as appropriate, provided that those designations do not themselves discriminatorily exclude certain populations. For instance, if a statewide.
agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients’ programs and activities were language services provided.

(2) The Frequency With Which LEP Persons Come Into Contact With the Program or Activity.

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP person from different language groups seeking assistance. More frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. These steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contact with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP program or service on a daily basis, recipient has greater duties than if the same person’s program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP person seeks services 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 telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program or Activity or Service by the Program.

The more important the information, service, or benefit provided in a program or activity, or the greater the possible consequences of the contact to

LEP persons, the more likely language services are needed. For instance, in determining importance, the obligation to communicate information on the availability of emergency food assistance in a designated disaster area may differ significantly from the obligation to communicate information on the opportunity to attend a one-time free luncheon at a community recreation center. A recipient needs to determine whether denial or delay of access to services, benefits or information could have serious or even life-threatening implications for an LEP person. For example, the failure to translate consent forms and applications for important benefits or services could have serious or life-threatening implications for LEP persons in need of food, shelter, emergency services, and many other important benefits. In the same vein, to avoid serious, negative consequences to an LEP person, a recipient must also determine the appropriate media or format that will reach that LEP population and does not result in a delay in providing information on a program, service, or benefit. Further, decisions by a Federal, State, or local entity, or by the recipient, to make an activity compulsory, such as educational programs and notifications of the right to a hearing or appeal, can serve as strong evidence of the program’s importance.

(4) The Resources Available to the Recipient and Costs.

A recipient’s level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as those with larger budgets. In addition, “reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be “redrafted” later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the
formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs. This is not to suggest that smaller entities are immune from the requirement to provide meaningful access. Any recipient of federal financial assistance must be sure that any claim of resource limitations is well substantiated.

The four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP person may be referred to another office of the recipient for language assistance. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a social service recipient having a service area with a significant Hispanic LEP population may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many social services have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a recreational facility in which pre-arranged language services for the particular service may not be necessary. All recipients must provide meaningful access to all their programs. However, the four-factor analysis recognizes that there may be gradations of import concerning certain activities that will lessen the burden on a recipient in certain unique situations. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to LEP persons and to recipients. Recipients have substantial flexibility in determining the appropriate mix.

V. Selecting Language Assistance Services

Recipients have two main ways to provide language assistance to LEP persons—oral interpretation and written translation. Quality and accuracy of the language service is critical in order to avoid serious consequences to LEP persons and to recipients.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner.

Competence of Interpreters. When providing oral assistance, recipients should ensure that the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations. Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient’s program or activity and of any particularized vocabulary and phraseology used by the LEP person who is being assisted;
- Understand and follow confidentiality and impartiality rules to the same extent as the recipient for whom he or she is interpreting; and
- Understand and adhere to their role as interpreters, without deviating into a role as counselor, advisor, or other inappropriate roles.

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly where ambiguous, incomplete, or inaccurate information may result in the denial or reduction of services or benefits, the use of certified interpreters is strongly encouraged. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and prevent mental fatigue of interpreters. While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a hearing regarding the reduction of benefits, for example, must be extraordinarily high, while the quality and accuracy of language services in a voluntary recreational program may not need to meet the same exacting standards.

Finally, when interpretation is needed, it should be provided in a timely manner. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be:

13 Many languages have "regionalisms," or differences in usage. For instance a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of some programmatic terms, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

14 For those languages in which no formal certification or certification exists, recipients should consider a formal process for establishing the credentials of the interpreter.
provided at a time and place that avoids the effective denial of the service or benefit at issue or the imposition of an undue burden or delay in the provision of important information rights, benefits, or services to the LEP person. For example, when the timelines of information, benefits, or services is important, such as with certain activities related to various types of emergency assistance by way of nutrition or housing services, or emergency loans, grants, etc., a recipient would likely not be providing meaningful access if it had one bilingual staff available one day a week to provide language assistance. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to information, service, or benefit is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as receptionists, secretaries, program specialists, and/or program aides, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee conflicts with the role of an interpreter (for instance, a bilingual program specialist would probably not be able to perform effectively the role of an interpreter in a benefits hearing and also carry out his or her duties to administer requirements of the program or activity at the same time, even if the program specialist were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person. Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communication is with an English proficient person who would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program or activity that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to read the documents prior to the discussion, and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone), as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information, services, or benefits of the program or activity and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are readily available.

Use of Family Members, Friends, or Others as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, or other person of their choosing) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other person acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family members, friends, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service, or activity, including protection of the recipient's own administrative or regulatory interest in accurate interpretation. In many circumstances, family members (especially children), friends, or others identified by LEP persons, are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP persons may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing family, medical, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.
For USDA recipient programs and activities, this is particularly true in an administrative hearing or in situations in which health, safety, or access to sustenance or important benefits and services are at stake, or when credibility and accuracy are important to protect an LEP person’s rights or access to important benefits and services. An example of such a case is when an LEP recipient applies for food stamps or a low-interest farm loan. The recipient should not rely on friends or family members of the LEP recipient or other informal interpreters.

While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or other informal interpreters can make their use inappropriate, their use as interpreters may be an appropriate option where proper application of the factors would lead to a rare conclusion that recipient-provided services are not necessary. An example of this is a voluntary tour of a recipient’s farmland offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person’s use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient’s offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information are critical for adjudicatory or legal reasons, or where the competency of the LEP person’s interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person’s decision should be respected, using children/minors as interpreters may create additional issues of competency, confidentiality, or conflicts of interest.

Reliance on children is especially discouraged unless there is an extreme emergency and no preferable qualified interpreters are available. The recipient should ensure that the LEP person’s choice is voluntary, the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that the recipient could provide a competent interpreter at no cost (to the LEP person).

**B. Written Language Services (Translation)**

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

**What Documents Should Be Translated?** After applying the four-factor analysis, a recipient may determine that an LEP plan for a particular program or activity includes the translation of written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient’s program. Such written materials could include, but are not limited to:

- Applications to participate in a recipient’s program or activity or to receive recipient benefits or services;
- Consent forms, complaint forms, intake forms, letters containing important information related to participation (such as cover letters outlining conditions of participation in a loan program or committee election);
- Written notices pertaining to eligibility requirements, rights, losses, denials, decreases in benefits or services, terminations of services or benefits and/or the right to appeal such actions;
- Notices advising LEP persons of the availability of free language assistance;
- Written tests that do not assess English language proficiency, but test competency for a particular license, job, or skill for which knowing English is not required;
- Outreach materials; and
- Any documents that require a response from applicants, beneficiaries, and other participants.

Whether or not a document (or the information it solicits) is “vital” may depend upon the importance of the program or activity, information, encounter, service, or benefit involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for voluntary credit management courses are not necessarily vital (so long as they are not a prerequisite to obtaining or maintaining better credit), whereas, applications for rural rental housing would be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve. Note, however, that even when a document is not vital, the recipient still must provide meaningful access, which may require right translation or other language assistance services.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of “meaningful access.” Lack of awareness that a particular program, right, or service exists may effectively deny LEP persons meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious or community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or more information about the document.

**Into What Languages Should Documents Be Translated?** The languages spoken by the LEP persons with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all
written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient’s obligation to provide translations of documents will be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the up-front costs of translating a document (as opposed to oral interpretation) should be amortized over the likely life span of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that can provide a “safe harbor,” which means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient’s written translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of a recipient’s program or activity, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor Provisions. The following actions will be considered strong evidence of compliance with the recipient’s written-translation obligations:

a. The USDA recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents if needed, can be provided orally; or
b. If fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These Safe Harbor Provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable. The four-factor analysis must always be used in evaluating the need for, and extent of use of, oral interpreters.

For example, recipients should, where appropriate, ensure that program rules have been explained to LEP program recipients prior to taking adverse action against them.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators, though certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator “check” the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called “back translation.”

Recipients should ensure that translators understand the expected reading level of their audiences and, where appropriate, have fundamental knowledge about the target language group’s vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.

Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, or technical concepts, can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called “back translation.”

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of assessing the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other negative consequence for LEP persons may be translated by individuals who are less skilled than those who translate documents with legal or other important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VI. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations it serves. Recipients have considerable freedom to design their plans to suit their needs and circumstances. Some possible options include:

a. For those languages in which no formal certification currently exists, a particular level of membership in a professional translation association can provide some indicator of professional level.

For instance, there may be languages that do not have an appropriate direct translation of some program-specific terms of art or technical concepts and the translator should be able to provide an appropriate translation. The translator should also make the recipient aware of this. Recipients can work with translators to develop a consistent and appropriate set of descriptions of these terms. Recipients can find it more cost-effective to match the words and phrases used to translate terms of art and technical concepts. Creating or using already-created glosses of commonly used words may be useful for LEP persons and translators and cost-effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.
flexibility in developing this plan. The development and maintenance of a periodically updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be a proper and effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain USDA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written LEP plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following six steps may be helpful in designing an LEP plan and are typically part of effective implementation plans:

(1) Identifying LEP Persons Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number of proportion of LEP persons eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom they have contact. One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of the most, the Federal Government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at www.justice.gov/crt/about/cor/Pubs/ISpeakCards.pdf. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition, employees should identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:
- Types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP persons who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:
- Staff know about LEP policies and procedures; and
- Staff have contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, even management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors, that it will provide language services, it is important to let LEP persons know that those services are available and they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include:
- Placing signs in intake areas and other entry points and adequate posting on Web sites. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact (including Web sites) so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to important programs, activities, services, or benefits provided by USDA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the language help;
- Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and "tagged" onto the front of common documents;
- Working with community-based organizations and other stakeholders to inform LEP persons of the recipients' services, including the availability of language assistance services;
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them;
- Including notices in local newspapers in languages other than English. Providing notices on non-English-language radio and television stations about the available language assistance services and benefits and how to get them;
- Presentations and/or notices at schools and religious organizations; and
- Posting notices/links for language assistance on recipient agency Web sites. These should be translated into the most commonly encountered

**The Social Security Administration has made such signs available at http://www.ssa.gov/ multilanguage/langett.htm. These signs could, for example, be modified for recipient use.
languages and tagged on the agency home pages.

(5) Ensuring Online Automation Services

USDA recipients who provide online communications and services to customers, including but not limited to online applications, forms, and brochures, must include in their LEP plan their strategy for ensuring that LEP individuals have meaningful access to online automation services.

(6) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, activities, services, and benefits need to be made accessible for LEP persons, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or program affected or encountered;
- Frequency of encounters with LEP language groups;
- Nature and importance of activities to LEP persons;
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed;
- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff know and understand the LEP plan and how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to these six elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VII. Voluntary Compliance Effort

The goal for Title VI and Title VII regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by USDA through its regulations at 7 CFR part 15, Departmental Regulation 4330-2, “Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance From USDA,” and Departmental Manual 4330-5, “Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Assisted Programs and Activities.” These documents contain USDA requirements and procedures for discrimination complaints processing, complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

USDA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, USDA will inform the recipient in writing of this determination, including the basis for the determination. USDA uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, USDA must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance.

It must attempt to secure voluntary compliance through informal means, if necessary. If the matter cannot be resolved informally, USDA must secure compliance with either through the termination of Federal assistance after the USDA recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ to seek injunctive relief or pursue other enforcement proceedings. USDA engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, USDA proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, USDA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP persons, USDA acknowledges that the implementation of a comprehensive system to serve LEP persons is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally-assisted programs and activities for LEP persons, USDA will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, USDA recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to programs or activities having a significant impact on important benefits, and services, are addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

VIII. Effect on State and Local Laws

Some State and local laws may identify language access obligations/reuirements. Recipients may meet these obligations, so long as they do not conflict with or set a lower standard than is required under Title VI and Title VII regulations. Moreover, recipients must also comply as a matter of state law with higher requirements if those requirements exist under state laws. Finally, as noted above, some recipients operate in a jurisdiction in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted benefits and services to persons with limited English proficiency.

Dated: November 17, 2014.
Thomas J. Vilsack, Secretary.
(PR Doc. 2014-27969 Filed 11-20-14; 8:45 am)
BILLING CODE 3410-90-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


   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 5a, 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 disproportionally high and adverse effect on populations protected by Title VI (“protected populations”) will only be carried if:
(1) 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

1. Definitions

The following terms where 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.
1. Regulations and guidance means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

May 2, 2012

Ray LaHood
Secretary of Transportation
Title VI Program and Related Statutes
Discrimination Complaint Form

Name: ____________________________________________

Address: _________________________________________

Telephone: ( ) ___________________________ □Work □Cell □Home

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

Location of the project or place where the alleged incident took place:

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

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

☐ Race  ☐ Retaliation  ☐ Gender  ☐ Familial Status  ☐ Religion
☐ Color  ☐ Nationality  ☐ Age  ☐ Disability  ☐ Other (please state why 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

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