

throughout the United States by making grants for the provision of high-quality civil legal assistance to those who would be otherwise unable to afford legal counsel.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, prohibits the recipients of Federal assistance from, *inter alia*, discriminating on the basis of national origin. As part of a government-wide effort, the Justice Department has recently issued guidance regarding national origin discrimination affecting persons of limited English proficiency (LEP). The DOJ guidance notes that “[i]n 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 * * * against national origin discrimination.” 67 FR 41455, at 41457. The DOJ guidance is intended to provide assistance to DOJ grant recipients and to serve as a model to other Federal agencies, which are required by Executive Order 13166 to issue their own guidance on LEP.¹ LSC is not subject to the executive order (because LSC is not a department, agency or instrumentality of the Federal Government) and is not, therefore, required to issue guidance on this subject. However, to the extent that the Federal effort is intended to improve access to Federally funded services for LEP persons and help ensure compliance with Title VI, it is appropriate to consider whether our grantees could benefit from similar guidance from LSC.

At the outset, a question has been raised with LSC regarding whether our grantees are, in fact, even subject to the requirements of Title VI of the Civil Rights Act. The argument in this case is that LSC grantees should not be

considered recipients of Federal financial assistance, and, therefore, not subject to Title VI. There is no single answer to the question of the “Federal” nature of LSC funds; LSC funds are considered “Federal” funds for some purposes and “non-Federal” for others.² This has been the case for the entire history of the Corporation and the differing answers are justified by reference to the laws governing the particular use of the funds in question.

In this instance, the most closely analogous law is Section 504 of the Rehabilitation Act of 1973, which prohibits against discrimination on the basis of handicap by recipients of Federal financial assistance. In adopting its regulations at 45 CFR Part 1624 implementing Section 504, the Corporation stated that its decision to adopt the regulations was based, in part, on the fact that Section 504 applied directly to LSC recipients as recipients of “Federal financial assistance.” 44 FR 55175 (Sept. 25, 1979). Unfortunately, the preamble to the regulation does not provide an analysis of how that conclusion was reached. Based on the discussion in the preamble, however, it does not appear that the conclusion that LSC grantees are recipients of Federal financial assistance for the purpose of Section 504 was challenged by any of the commenters and in the 23 years since the Part 1624 regulations were adopted no one has raised that issue with LSC.

LSC does not discern a meaningful difference between Section 504 and Title VI in this instance. Both are anti-discrimination laws applicable to recipients of Federal financial assistance. To the extent that LSC and its grantees have understood LSC funds to be Federal funds for the purpose of Section 504, LSC believes that LSC funds must also be considered Federal funds for the purpose of Title VI. However, the Corporation specifically invites comment on this issue.

Even if it were to be determined that Title VI is not directly applicable to LSC’s grantees, it would remain appropriate at this time to consider LEP guidance. Each LSC grantee signs a grant assurance under which it promises not to discriminate on the basis of, among other things, national origin. Although the text of the grant assurance does not mention Title VI specifically, it is clear that the language of the grant assurance is based on the non-

discrimination provisions of Federal civil rights laws, such as the Civil Rights Act, the Rehabilitation Act and the Americans with Disabilities Act. Thus, there is a contractual obligation on the part of each grantee to ensure it is not engaging in national origin discrimination, requiring it to properly serve LEP persons.

Moreover, LSC believes there are sound programmatic reasons to consider this issue at this time. A considerable portion of the LSC grantee client base has always been comprised of LEP persons; many of our grantees have extensive experience in providing services to LEP persons simply out of necessity. Due to changing demographics, and state planning efforts resulting in reconfigured service areas, however, many grantees are grappling with issues relating to serving LEP persons for the first time. It is, therefore, meant to consider whether guidance from LSC would assist these grantees, or, alternately whether there is some other form of information sharing that LSC can facilitate among grantees to help ensure that the knowledge and best practices of the grantees who have been leaders on this issue is available to all grantees and that all grantees are meeting their obligations in this regard.

LSC has identified several possible approaches it could take to this issue: LSC could issue regulations, as it did with Section 504; LSC could issue its own guidance (based on the DOJ guidance or otherwise); LSC could choose to refrain from issuing guidance, but could endorse the DOJ guidance; LSC could, either instead of or in conjunction with issuing guidance and/or endorsing the DOJ guidance, choose to engage in other activities to collect and distribute information of a best practices nature, illustrating what grantees with experience in dealing with LEP persons have been doing as an aid to other grantees needing assistance in this area; or LSC could choose to do nothing at all. Each of these approaches has advantages and disadvantages. Before determining a course of action, LSC, with this notice, is looking to the field for information on which option (or another course of action not identified above) would be most appropriate and helpful for grantees. LSC invites comment on the issues discussed below and on any other relevant consideration regarding service to LEP persons.

Issuing Regulations

LSC could issue its own regulations on the matter. Doing so would be analogous to LSC’s action in issuing its Part 1624 regulations. LSC was not

¹ Under the DOJ Guidance, recipients are encouraged to undertake an individualized assessment that balances the following four factors: (1) The number of proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee/recipient; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs. The guidance recommends that recipients consider adopting LEP plans or policies based on the results of their assessment. The guidance identifies the following elements which may be helpful in designing an LEP policy or plan: (1) identifying LEP persons who need language assistance; (2) identifying ways in which language assistance will be provided; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating LEP policy. The guidance also identifies a variety of language assistance services which recipients may consider using, including oral interpretation services, bilingual staff, telephone interpreter lines, written language services and community volunteers.

² For example, LEP funds are considered non-Federal funds for the purpose of matching Title III funds under the Older Americans Act, but they are considered Federal funds for the purpose of a federal prosecution for theft or embezzlement under Title 18 of the U.S. Code.