

Proficiency,” 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 recipients pursuant to the E.O. “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”). The DOJ role under the (E.O.) is unique. The E.O. charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address.

Subsequently, federal agencies raised questions regarding the requirements of the E.O., 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*.³ 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 part of the E.O. that applies to federally assisted programs and activities—the E.O. remains in force.

III. Who Is Covered?

The DOC regulations, 15 CFR 8.4(b)(2), require all recipients of federal financial assistance to provide meaningful access to LEP persons.⁴ Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. The fundamental premise of the E.O. is that 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.

To this end, the E.O. provides that federal agencies shall work to ensure that recipients of federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. In general, the DOC does not fund recipients who, in turn, provide services and benefits of the entitlement-type to the general public. The DOC does, however, fund recipients of the following DOC programs who provide information and services to the public relating to various aspects of business or economic development:

- Economic Development Administration’s Economic Adjustment Program and Trade Adjustment Program;
- International Trade Administration’s Trade Development and Commercial Service programs; and
- Minority Business Development Agency’s Minority Business Development Centers; Native American

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 are ‘inspired by, at the service of, and inseparably 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 private right 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 grant agencies to enforce their own implementing regulations.

⁴ Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of federal agencies, including the Department of Commerce.

Business Development Centers; and Minority Business Opportunity Committee Program.

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

Coverage extends to a recipient’s entire program or activity, *i.e.*, to all parts of a recipient’s operations. This is true even if only one part of the recipient receives the federal assistance.⁵

Example: DOC provides assistance to a university to provide business development services to minority firms. All operations of the university—not just the business department—are covered.

Finally, some recipients operate in jurisdictions 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 services to persons with LEP.

IV. Who Is a Limited English Proficient Individual?

Individuals 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,” entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by DOC recipients and should be considered when planning language services include, but are not limited to:

- Persons who are seeking technical assistance about starting or expanding a business.
- Persons in rural and urban areas of the nations experiencing high unemployment, low income, or other severe economic distress.
- Persons in underserved communities interested in accessing telecommunications and information technologies.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a

³ The memorandum noted that some commentators have interpreted *Sandoval* as impliedly 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 286, 286 n.6 (“[W]e

⁵ However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d-1.