

more focused explanation of how they can comply with their Title VI and regulatory obligations in the context of similar federally assisted programs or activities.

Many commentators have noted that 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. The IMLS and the Department of Justice have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Purpose and Application

This policy guidance provides a legal framework to assist recipients in developing appropriate and reasonable language assistance measures designed to address the needs of LEP individuals. The IMLS Title VI implementing regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient entity's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services.

Recipient entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting and are not required to use the suggested methods and options that follow. However, recipient entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services.

III. Policy Guidance

1. Who Is Covered

All entities that receive Federal financial assistance from IMLS, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, are covered by this policy guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards or donations of Federal property, details of Federal personnel, or any agreement,

arrangement or other contract that has as one of its purposes the provision of assistance.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.

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 limited English proficiency.

2. Basic Requirement: All Recipients Must Take Reasonable Steps To Provide Meaningful Access to LEP Persons

Title VI and the IMLS implementing regulations require that recipients take reasonable steps to ensure meaningful access to the information, programs, and services they provide. Recipients of federal assistance have considerable flexibility in determining precisely how to fulfill this obligation.

It is also important to emphasize that museums and libraries are in the business of maintaining, sharing, and dissemination vast amounts of information and items, most of which are created or generated by third parties. In large measure, the common service provided by these recipients is *access* to information, whether maintained on-site or elsewhere, not the generation of the sources information itself. This distinction is critical in properly applying Title VI to museums, libraries, and similar programs. For example, in the context of library services, recipients initially should focus on their procedures or services that directly impact access in three areas. First, applications for library or membership cards, instructions on card usage, and dissemination of information on where and how source material is maintained and indexed, should be available in appropriate languages other than English. Second, recipients should, consistent with the four factor analysis, determine what reasonable steps could be taken to enhance the value of their collections or services to LEP persons, including, for example, accessing language-appropriate books through inter-library loans, direct acquisitions, and/or on-line materials. Third, to the

extent a recipient provides services beyond access to books, art, or cultural collections to include the generation of information about those collections, research aids, or community educational outreach such as reading or discovery programs, these additional or enhanced services should be separately evaluated under the four-factor analysis. A similar distinction can be employed with respect to a museum's exhibits versus a museum's procedures for meaningful access to those exhibits.

What constitute reasonable steps to ensure meaningful access in the context of federally-assisted programs and activities in the area of museums and library services will be contingent upon a balancing of four factors: (1) The number and proportion of eligible LEP constituents; (2) the frequency of LEP individuals' contact with the program; (3) the nature and importance of the program; and (4) the resources available, including costs. Each of these factors is summarized below. In addition, recipients should consult Section V of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR 41459-41460 or <http://www.lep.gov>, for additional detail on the nature, scope, and application of these factors.

(1) Number or Proportion of LEP Individuals

The appropriateness of any action will depend on the size and proportion of the LEP population that the recipient serves and the prevalence of particular languages. Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. The first factor in determining the reasonableness of a recipient's efforts in the number or proportion of people who will be effectively excluded from meaningful access to the benefits or services if efforts are not made to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day.

(2) Frequency of Contact With the Program

Frequency of contact between the program or activity and LEP individuals is another factor to be weighed. If LEP individuals must access the recipient's program or activity on a daily basis, a recipient has greater duties than if such contact is unpredictable and infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the