

DEPARTMENT OF LABOR**Office of the Secretary****Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of policy guidance with request for comment.

SUMMARY: The Department of Labor (DOL) publishes Revised Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Revised DOL Recipient LEP Guidance). This Revised DOL Recipient LEP Guidance is issued pursuant to Executive Order 13166.

DATES: This Guidance is effective immediately. Comments must be submitted on or before June 30, 2003. DOL will review all comments and will determine what modifications to the Guidance, if any, are necessary. This Guidance supplants existing guidance on the same subject originally published at 66 FR 4596 (January 17, 2001).

ADDRESSES: Interested persons should submit written comments to Ms. Annabelle T. Lockhart, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N-4123, Washington, DC 20210. Commenters wishing acknowledgment of their comments must submit them by certified mail, return receipt requested. Please be advised that mail delivery to federal buildings in the Washington, DC metropolitan area may experience delays due to concerns about anthrax contamination. Comments may also be transmitted by facsimile to (202) 693-6505 or by e-mail to civilrightscenter@dol.gov.

FOR FURTHER INFORMATION CONTACT: Annabelle Lockhart or Naomi Barry-Pérez at the Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N-4123, Washington, DC 20210. Telephone: 202-693-6500; TTY: 202-693-6515. Arrangements to receive the Guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Under DOL regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of federal financial assistance have the responsibility to ensure meaningful

access to their programs and activities by persons with limited English proficiency (LEP). See 29 CFR part 31. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in the Department of Justice (DOJ) Policy Guidance entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." See 65 FR 50123 (August 16, 2000).

On January 17, 2001, DOL published Guidance on how Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*, and its implementing regulations apply to recipients of DOL financial assistance in their contact with persons who are limited English proficient ("LEP Guidance"). See 66 FR 4596. The LEP Guidance also addressed the responsibilities of recipients under Section 188 of the Workforce Investment Act, Public Law 105-220, 29 U.S.C. 2938, and its implementing regulations, which adopt the same prohibition against national origin discrimination that is found in Title VI. DOL received extensive comments following the January 17, 2001 publication of the LEP Guidance.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients, which was drafted and organized to also function as a model for similar guidance documents by other Federal grant agencies. See 67 FR 41455 (June 18, 2002).

This revised DOL Guidance reflects consideration of comments received and the additional guidance of DOJ. Following DOJ's direction, we will again accept public comment and will revise and republish, as appropriate. Because DOJ has indicated that this Guidance must adhere to the federal-wide compliance standards and framework

detailed in the model DOJ LEP Guidance issued on June 18, 2002, DOL specifically solicits comments on the nature, scope and appropriateness of the DOL-specific examples set out in this guidance explaining and/or highlighting how those consistent federal-wide compliance standards are applicable to recipients of federal financial assistance through DOL.

The model DOJ LEP guidance includes a section regarding "safe harbors" for written translations of vital material. That section states:

"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) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" 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 its program, 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. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation