

reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, DOL will continue to provide assistance and guidance in this important area and will work with recipients of DOL financial assistance, including state and local workforce agencies, advocacy groups, and LEP persons, to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOL 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, small local governments, and small non-profits. An interagency working group on LEP has developed a website, <http://www.lep.gov>, to assist in disseminating this information to recipients, 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. DOJ has taken the position that this is not the case. Accordingly, DOL 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. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person 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." Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] \* \* \* by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d-1.

Department of Labor regulations promulgated pursuant to section 602 forbid recipients 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." 29 CFR 31.3(b)(2).

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOL, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide the LEP students with a meaningful opportunity to participate in federally funded educational programs.

In the DOL context, Section 188 of the Workforce Investment Act (WIA) provides that no individual shall be excluded from participation in, denied the benefits of, be subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, political affiliation or belief, status as a qualified individual with disabilities or specified noncitizenship statuses (e.g., lawfully admitted resident aliens).

The regulations implementing the nondiscrimination and equal opportunity provisions of Section 188 specifically address national origin discrimination and language access. Where "a significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIA Title I-assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity," the Section 188 regulations require recipients "to take reasonable steps to provide services and information in appropriate languages." 29 CFR 37.35(a). Even where there is not a "significant" number or proportion of LEP persons in the community serviced by the recipient, recipients nonetheless are required to "make reasonable efforts to meet the particularized language needs of limited-English speaking individuals who seek services or information from the recipient." 29 CFR 37.35(b). This

means that, for instance, when the LEP population in the community serviced by a recipient does not comprise a "significant" number or proportion, recipients should still balance the four factors described herein to determine what steps are reasonable to meet the particularized language needs of those seeking services or information.

The regulations implementing Section 188 require the Governor of every state recipient of WIA-Title I financial assistance to establish and adhere to a Methods of Administration ("MOA"). Further, the regulations require that MOAs include a description of how the state programs and recipients have satisfied the specified requirements of the Section 188 implementing regulations, including the obligation to provide services and information in appropriate languages under the circumstances outlined in 29 CFR 37.35. Although the regulatory language differs, the obligations of recipients to provide accessibility by LEP persons to DOL financially assisted programs and activities are the same under Title VI and Section 188.

On August 11, 2000, Executive Order 13166 was issued. "Improving Access to Services for Persons with Limited English 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 the 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 broad principles for agencies to apply in developing guidance documents for 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").