

Subsequently, federal agencies raised questions regarding the requirements of the Executive Order, 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 DOJ's Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors," which clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*.<sup>3</sup> 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 type of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

Pursuant to Executive Order 13166, DOL developed its own guidance document for recipients, which was initially issued on January 17, 2001. "Guidance on Improving Access to Services for Persons with Limited English Proficiency," 66 FR 4596 (January 17, 2001) (DOL LEP Guidance). This Proposed Revised Guidance is thus published pursuant to Executive Order 13166 in light of the Assistant Attorney General Boyd's October 26, 2001 clarifying memorandum.

### III. Who Is Covered?

Department of Labor regulations, 29 CFR part 31, require all recipients of federal financial assistance from DOL to provide meaningful access to LEP persons.<sup>4</sup> Federal financial assistance includes grants, training, use of

equipment, donations of surplus property, and other assistance. Recipients of DOL assistance include, for example:

- State-level agencies that administer, or are financed in whole or in part with, WIA Title I funds;
- State Workforce Agencies;
- State and local Workforce Investment Boards;
- Local workforce investment areas ("local areas") grant recipients;
- One-Stop Career Center operators;
- Service providers, including eligible training providers and youth service providers;
- On-the-Job Training (OJT) employers;
- Job Corps contractors and center operators;
- Job Corps national training contractors;
- Outreach and admissions agencies, including Job Corps contractors that perform these functions; and
- Other national program recipients.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient. This Guidance does not create any new requirements for community colleges and other educational institutions that receive federal financial assistance under the Higher Education Act as these institutions must already comply with Title VI requirements.

Pursuant to the Civil Rights Restoration Act of 1987 (CRRRA), 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.<sup>5</sup>

*Example:* DOL provides assistance to a state department of labor to support the development of the state's One-Stop Career System. While the funds may be administered by one agency within the state department, Title VI applies to all of the operations of the entire state department of labor—not just the One-Stop Career delivery system.<sup>6</sup>

<sup>5</sup> 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.

<sup>6</sup> The nondiscrimination and equal opportunity provisions of WIA and its implementing regulations apply to programs and activities that are part of the One-Stop Career System and that are operated by the One-Stop Career System partners listed in section 121(b) of WIA (29 U.S.C. 2841(b)), to the extent that the programs and activities are being conducted as part of the One-Stop Career System. When a One-Stop Career System partner receives federal financial assistance from an Executive agency other than DOL, such as the Department of Education, Health and Human Services, Agriculture or Housing and Urban Development, the grant-making agency enforces the recipient's Title VI

Finally, some recipients operate in localities 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.

### 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," and 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 DOL recipients and should be considered when planning language services include, but are not limited to:

- Unemployed and/or dislocated individuals seeking unemployment insurance (UI), job search and/or job training services.
- Workers, such as those doing construction or working in mines, who receive training from Occupational Safety and Health or Mine Safety and Health training providers.
- Youth looking for summer employment, academic and career exploration or vocational training and employment opportunities, such as participation in Job Corps, and their parents or family members.
- Migrant and seasonal agricultural workers seeking placement and/or information on protections afforded to them in this work.
- Workers seeking information or enforcement from a recipient regarding wage and hour and safety and health laws.

### 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 flexible and fact-dependent standard, the starting point is an individualized

obligation. Therefore, when a One-Stop Career System partner receives federal financial assistance from an agency other than DOL, the partner should follow the LEP guidance issued by that agency, to the extent that such guidance exists. If LEP guidance has not been issued by the grant-making agency, or if that guidance does not address the activities of the One-Stop Career partner, the One-Stop Career partner should follow this Guidance until such time as the grant-making agency issues LEP guidance.

<sup>3</sup> The DOJ 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 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.

<sup>4</sup> 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 Labor.