

significant public comment. This guidance document is thus published pursuant to Executive Order 13166. Once final it will supplant the January 17, 2001 publication in light of the public comment received and Assistant Attorney General Boyd's October 26, 2001 clarifying memorandum and July 8, 2002 memorandum advising agencies to revise and re-publish their guidance, modeled after DOJ's June 18, 2002 final guidance.

### III. Who Is Covered?

GSA's implementation regulations provide, in part, at 41 CFR 101-6.204-1:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies."

Specific discriminatory actions prohibited are addressed at 41 CFR 101-6.204-2: "(a)(1) In connection with any program to which this subpart applies, a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

- (i) Deny an individual any services/benefits, financial aid, or other benefit provided under the program;
- (ii) Provide any service, financial aid, or other benefit to any individual which is different, or is provided in a different manner, from that provided to others under the program;
- (iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
- (iv) Restrict 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;
- (v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;
- (vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program \* \* \*."

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other

assistance. Recipients of GSA assistance include, for example:<sup>4</sup>

- State and local agencies involved in such activities as: Conservation; economic development; education; park and recreation programs; public safety; public health programs for the elderly; and programs for the homeless; and
- Nonprofit organizations that perform educational and public health activities exempt from taxation under section 501 of the Internal Revenue such as: Medical institutions; hospitals; clinics; health centers; and drug abuse treatment centers; schools; universities; Head Start; childcare centers; educational radio and television stations; museums attended by the public; libraries; food banks; and other eligible organizations that provide support and services to the needy, shelter, or support services to the homeless or impoverished.

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.<sup>5</sup>

*Example:* GSA donates a surplus backhoe and grader to a State park within the State Department of Parks and Recreation. All of the operations of the entire State Department of Parks and Recreation—not just the particular park that received the property—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 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," entitled to language assistance with respect to a

<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 GSA LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including the GSA.

<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.

particular type of service, benefit, or encounter.

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

- Persons seeking assistance from a county's emergency services, such as 9-1-1 service, which include individuals reporting automobile accidents, fires, criminal, or other activity; and individuals who encounter the legal system;
- Parents or other family members seeking information about childcare and educational services; and
- Individuals seeking services from homeless shelters, domestic abuse shelters, food banks, clinics, hospitals, medical institutions, or health-care providers.

### 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 assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. GSA recipients should apply the following four factors