

persons.<sup>1</sup> These are the same criteria the United States Nuclear Regulatory Commission (NRC) will use in evaluating whether recipients are in compliance with Title VI.

Before discussing these criteria in greater detail, it is important to note two basic underlying principles. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on recipients of Federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. To that end, the NRC in conjunction with the Department of Justice (DOJ), plans to continue to provide assistance and guidance in this important area. In addition, the NRC plans to work with its recipients and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches.

Moreover, the NRC 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. An interagency working group on LEP has developed a Web site: <http://www.lep.gov>, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

In cases where a recipient of Federal financial assistance from the NRC also receives assistance from one or more other Federal agencies, there is no obligation to conduct and document separate data, when the data would be identical and for the same purpose. The same analyses and language assistance plans can be used. The NRC, in discharging its compliance and enforcement obligations under Title VI, will look to analyses performed and plans developed in response to similar detailed LEP guidance issued by other

Federal agencies. Accordingly, as an adjunct to this guidance, recipients may, where appropriate, also rely on guidance issued by other agencies in discharging their Title VI LEP obligations.

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 NRC and DOJ have taken the position that this is not the case, and will continue to do so. Accordingly, NRC will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with 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.

In pertinent part, the NRC’s regulations promulgated pursuant to section 602 forbid recipients from “utiliz[ing] criteria for 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 [with respect to] individuals of a particular race, color, or national origin.” See 10 CFR part 4 subpart A section 4.12(b) [29 FR 19277, December 31, 1964].

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 language identical to that of 45 CFR part 1110, 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 them with a meaningful

opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” (65 FR 50121; August 16, 2000), was issued. 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 Title VI regulations for forbidden funding recipients from “[restricting] and 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 general 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”).

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 the Civil Rights Division, issued a memorandum for “Heads of Departments and Agencies, General Counsels and Civil Rights Directors.” This memorandum clarified and reaffirmed the DOJ LEP guidance in light of *Sandoval*.<sup>2</sup> The Assistance

<sup>2</sup> The 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, 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,

<sup>1</sup> The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.