

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 types 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.

This guidance is thus published pursuant to Executive Order 13166.

### III. Who Is Covered?

The NRC regulations at 10 CFR part 4, subpart A require all recipients of Federal financial assistance from the NRC to provide meaningful access to LEP persons.<sup>3</sup> Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of assistance from the NRC typically include, but are not limited to:

- Educational systems, universities, colleges, and research institutions;
- Day care center providers;
- Food service providers;
- Emergency response entities;
- State Health and Radiological Offices;
- Fitness center providers;
- Profit and non-profit organizations and institutions;
- Healthcare center providers; and
- Professional societies.

Subrecipients are also 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 Federal assistance.<sup>4</sup>

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 particular type of service, benefit, or encounter.

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

- Persons reasonably likely to be subject to emergency evacuation measures;
- Residents located in reasonable proximity to NRC-licensed facilities;
- Persons served by or subject to state health and radiological offices; and
- Students and faculty at colleges and universities with associated research centers.

### 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 state and local governments or small nonprofit entities.

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 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. The NRC's recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

### (1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly, by" a recipient's program or activity are those who are served or encountered in the eligible population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a research facility or university operates a day care center limited to children of recipient personnel, and that extended groups include a significant LEP population, the appropriate service area is most likely the pool of eligibles from which the center draws its potential participants. When considering the number or proportion of LEP individuals in a service area, recipients providing services to minor LEP individuals should also include the individual's LEP parent(s) or primary caretaker(s) among those likely to be encountered.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth the scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities, but may be under-served because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.<sup>5</sup>

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>3</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 Federally conducted programs and activities of Federal agencies, including the NRC.

<sup>4</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>5</sup> The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate