

Civil Rights issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. In addition, on March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients that was drafted and organized to also function as a model for similar guidance documents by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). NASA reviewed its March 15, 2001, publication in light of the aforementioned clarifications, to determine whether there was a need to clarify or modify the March 15th policy guidance.

In furtherance of those memoranda, NASA republished revised policy guidance for additional public comment on August 15, 2003 (68 FR 48947), for the purpose of obtaining additional public comment. Because the guidance must adhere to the federal-wide compliance standards and framework detailed in the model DOJ LEP Guidance, NASA specifically solicited comments on the nature, scope and appropriateness of the NASA-specific examples set out in the revised guidance explaining and/or highlighting how those consistent federal-wide compliance standards are applicable to recipients of federal financial assistance through NASA. No public comments were received.

It has been determined that this guidance, which supplants existing guidance on the same subject previously published at 66 FR 15141 (March 15, 2001), does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It also has been determined that this guidance is not subject to Executive Order 12866.

## I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their

primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or LEP. While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English not well or not at all in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper Language Assistance Plan (LAP). However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.<sup>1</sup>

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The

purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.<sup>2</sup> These are the same criteria DOJ will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

There are many productive steps that NASA can take to help recipients 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, NASA plans to continue to provide assistance and guidance in this important area. In addition, NASA plans to work with its recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, NASA 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, and small non-profits. 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.

Many commentators, responding to the proposed DOJ LEP Policy Guidance, 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 Department of Justice has taken the position that this is not the case, and NASA agrees with that position. Accordingly, NASA will strive to ensure that federally assisted programs and activities work in a way

<sup>1</sup> NASA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

<sup>2</sup> The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible 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.