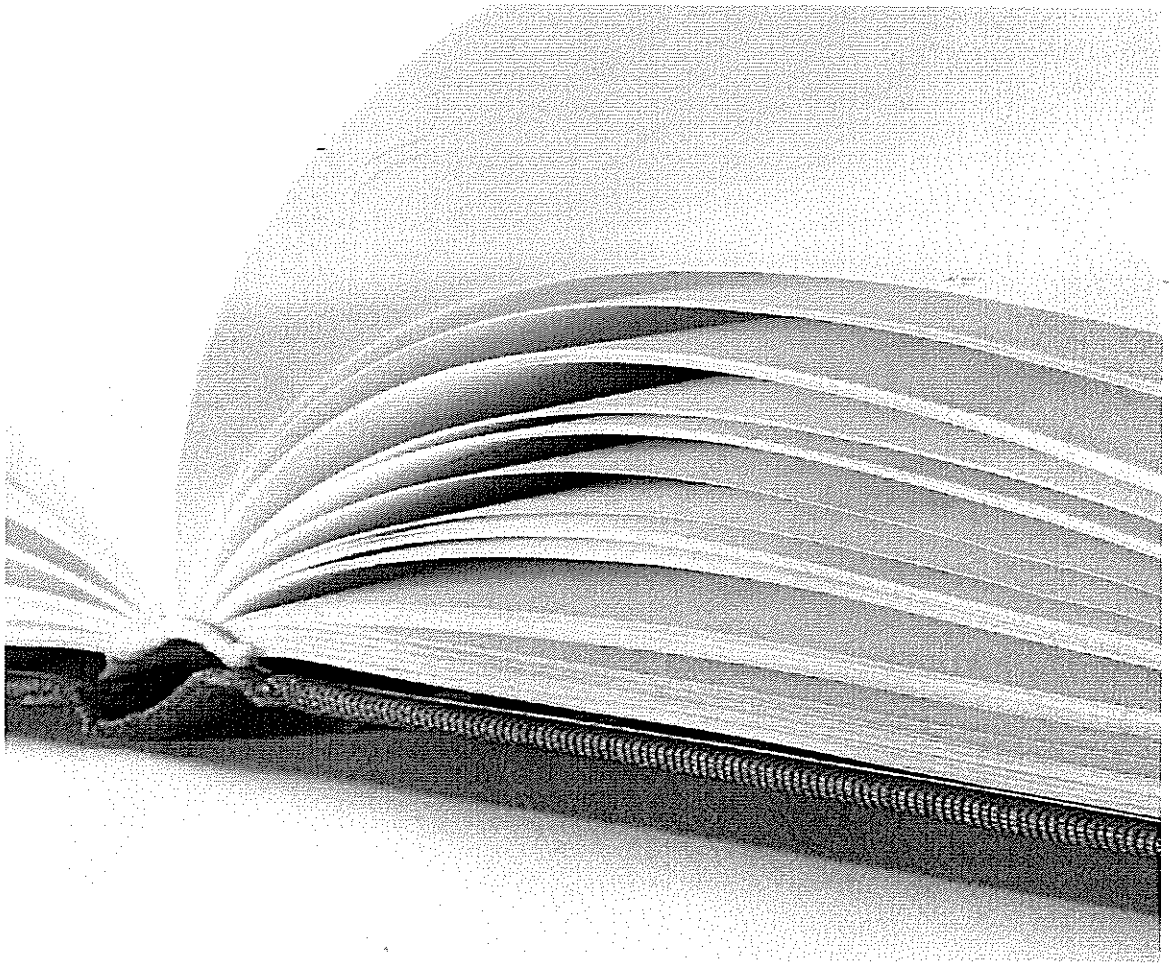
# Civil Rights Resource Book



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# Office of Employee and Business Services Bureau of Civil Rights

**30 E. Broad Street, 37th Floor**
**Columbus, Ohio 43215**
**Phone: (614) 644-2703**
**Fax: (614) 752-6381**
**Jfs.ohio.gov/civilrights/**

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WIA, Civil Rights Complaints, EEO Complaints

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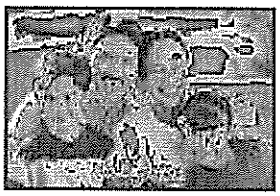
## Civil Rights

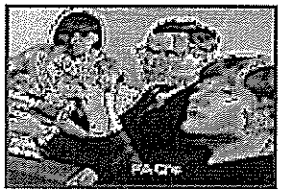
**Bureau of Civil Rights**

**Our Mission:** The Bureau of Civil Rights ensures through education, monitoring and enforcement that all Ohio Department of Job and Family Services customers (internal and external) are provided equal access to all rights and benefits as mandated by state and federal laws prohibiting discrimination.



En Español

How to File A Complaint



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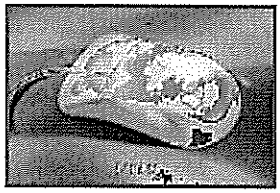

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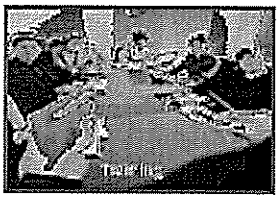

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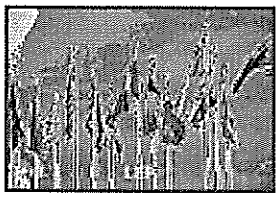
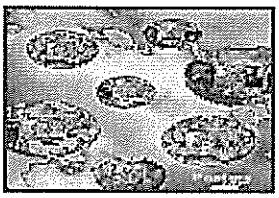


LEP



Posters

# Position Statement

Bob Taft
Governor

Barbara Riley
Director

30 East Broad Street · Columbus, Ohio 43215-3414
jfs.ohio.gov

Date

OCRC and/or EEOC Investigator(s)
Address

Re: Name of Complainant v. Ohio Department of Job and Family Services, OCRC and/or EEOC Complaint No.

Dear (OCRC and/or Investigator(s) name):

*(Introduction)*

"This position statement responds to the above referenced charge filed by (complainant) against the Ohio Department of Job and Family Services with the Ohio Civil Rights Commission/EEOC. (Complainant) alleges that (he/she) was (briefly summarize action by ODJFS if discipline or other type of allegation like sexually harassed) based upon (state the protected class - race, color, national origin, sex, disability, religion or age). The Ohio Department of Job and Family Services asserts that it did not discriminate against (complainant) because (brief summary statement like "(complainant) violated established work rules at the Ohio Department of Job and Family Services."

*(Background)*

Explain where the individual works, starting date and his/her duties if relevant to OCRC charge. Add any other general information including duties if felt necessary to provide OCRC/EEOC with context while reading the Ohio Department of Job and Family Services position statement. Also identify supervisors or other relevant personnel whose statements or documents will be cited or provided with the position statement.

*(ODJFS EEO Policies)*

The Ohio Department of Job and Family Services is dedicated to equal opportunity for all Ohio Department of Job and Family Services job applicants and employees. The Ohio Department of Job and Family Services does not tolerate any type of discrimination based on age, race, color, religion, sex (including sexual harassment), national origin, disability, veteran status, or sexual orientation. The Ohio Department of Job and Family Services Internal Policy 9002 makes this clear and Codes F13 and F14 in the Ohio Department of Job and Family Services disciplinary grid require suspension and removal as sanctions for acts of discrimination or sexual harassment. It should be noted that training concerning cultural diversity, sexual harassment and non-discrimination policies are being provided to the entire workforce at the Ohio Department of Job and Family

Services. Each new employee is scheduled for and must attend an orientation session that includes segments on the non-discrimination and sexual harassment policies as well as information on filing internal complaints if an individual feels that he/she is experiencing discrimination or sexual harassment. *If relevant,* (Name of Complainant) received this training and/or orientation on (date) where he/she received this information.

*(ODJFS Position)*

List exhibits with brief description of each that is cited or used in the ODJFS position statement:

Example:

Attached are the following exhibits used in composing this position statement.

- Position statement from (complainant's supervisor) (exhibit #)
- Witness statement of ..... (exhibit #)
- Table of Organization (exhibit #)

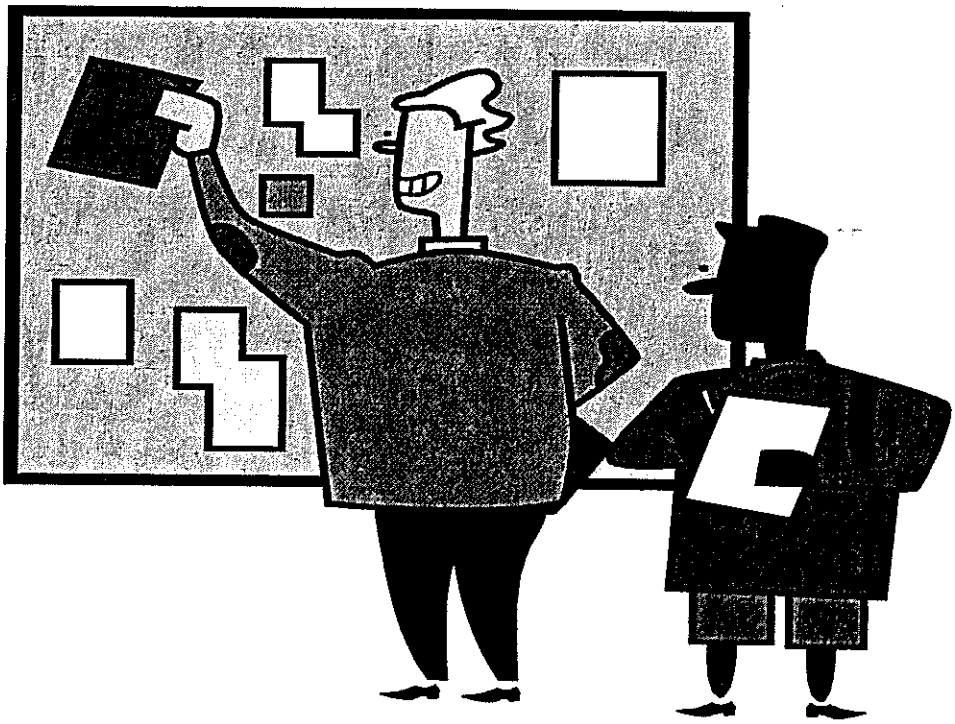
State allegation: (if more than one allegation then number as "1. (allegation statement from OCRC word for word if possible).

Ohio Department of Job and Family Services Response: Set out the ODJFS position citing where the position comes from (eg. statement from complainant's supervisor, table of organization, identify persons in similar circumstances who have been treated the same, cite statistics showing that there is no disparate impact if relevant) and explain in some detail the non-discriminatory reason for the action being complained about or factual dispute (eg. failure to promote, discipline, incident cited to show harassment or hostile work environment). Include in the position statement any affirmative defenses that can be identified (eg. harassment or hostile work environment claim – no timely complaint made to BCR or anyplace in the chain of command; demographic of ODJFS or section – list number of females who have successfully returned to work following maternity leave; other employees outside of complainant's protected class who have been treated similarly; chosen person for position had demonstrably superior qualifications or scored higher on test or assessment). If relevant, state that immediate action was taken to rectify a situation once brought to ODJFS attention (very important in hostile work environment situations or sexual harassment).

*(Summarize position and request that charge be dismissed)*

*BCR Chief Name and Signature*

# Required Posters and Brochures



ODJFS posters and brochures can be ordered by contacting Forms Central at www.odjfs.state.oh.us/forms/

# EQUAL OPPORTUNITY IS THE LAW

## It is against the law for this recipient of Federal financial assistance to discriminate on the following basis:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

## The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have any access, to any WIA Title I-financially assisted program or activity;

Providing opportunities in, or treating any person with regard to, such a program or activity; or

Making employment decisions in the administration of, or in connection with, such a program or activity.

## WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think you have been subjected to discrimination under a WIA Title I-financially assisted program or activity, you may file a complaint within 180 days from the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with the CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with the CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

The State Recipient Equal Opportunity Officer is Mr. Joseph J. Silver. His Office may be contacted at the address, telephone and fax numbers shown below.

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Joseph J. Silver, Chief, Bureau of Civil Rights
150 East Gay Street, 18th Floor, Columbus, Ohio 43215-3130
TDD/TTY (866) 221-6700 · FAX: (614) 752-6381 · LOCAL: (614) 644-2703 · TOLL FREE: 1-866-BCR-ODJF (227-6353)

Ted Strickland
Governor

Helen E. Jones-Kelley
Director

Auxiliary aids and services are available upon request to individuals with disabilities. An Equal Opportunity Employer/Program

JFS 08004 (Rev. 1/2007)

# IGUALDAD DE OPORTUNIDAD
# ES LA LEY

## Es ilegal que este recibidor (e.g. agencia) de asistencia financiera federal discrimine basándose en la siguientes razones:

Hacía un individuo en los Estados Unidos, por razones de raza, color, religión, género sexual, nacionalidad, edad, incapacidad, afiliación política, o creencias; y

Hacía cualquier beneficiario de programas asistidos financieramente bajo el Título I del Acta de Inversión Laboral de 1998 (WIA), por razones de la ciudadania o estado migratorio del beneficiario como inmigrante admitido legalmente y autorizado para trabajar en los Estados Unidos, o por su participación en cualquiera de los programas o actividades financieramente asistidos por el Título I de WIA.

## El recibidor de fondos federales no debe de discriminar en las siguientes áreas:

Decidiendo quién será admitido, o quién tendrá acceso a cualquiera de los programas o actividades financieramente asistidos por el Título I de WIA; o

Proporcionando oportunidades en, o tratando a cualquiera persona con relación a, tal programa o actividad: o

Tomando decisiones de empleo en la administración de, o en relación a tal programa o actividad.

## QUE HACER SI USTED CREE QUE HA SIDO SUJETO A LA DISCRIMINACION

Si usted cree que ha sido sujeto a la discriminación en los programs o actividades financieramente asistidos bajo el Título I de WIA, usted puede entablar una queja dentro de 180 días a partir de la supuesta violación con uno de dos:

El Oficial de Igualdad de Oportunidades (o con la persona a quién el recibidor de fondos ha designado para este propósito); o

Con el Director del Centro de Derechos Civiles (CRC) U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-4123, Washington, DC 20210.

Si usted presenta su queja con el recibidor de los fondos, deberá esperar hasta que el recibidor de los fondos expida una Notificación de la Decisión Final por escrito, o hasta que hayan pasado 90 días (cualquiera que suceda primero), antes de presentar su queja con el Centro de Derecho Civiles (vea su dirección en el párrafo anterior).

Si el recibidor de fondos no le provee una Notificación de la Decisión Final por escrito dentro de los 90 días del día en el cual presentó su queja, usted no tiene que esperar que el recibidor de los fondos expida esa Notificación antes de presentar su queja con el CRC. Sin embargo, usted deberá presentar su CRC queja dentro de 30 días del límite de los 90-días ( en otras palabras, dentro de 120 días despues del día en el cual usted presentó su queja con el recibidor de los fondos).

Si el recibidor de los fondos le expide la Notificación de la Decisión Final por escrito acerca de su queja, pero usted no está satisfecho con la decisión o resolución, usted puede someter una queja con el CRC. Usted debe de someter su queja con el CRC dentro de 30 días de haber recibido la Notificación de la Decisión Final.

El Oficial de Igualdad de Oportunidades para el recibidor de fondos es el Sr. Joseph J. Silver. Para comunícarse con su oficina puede escribirle o llamar a la siguiente dirección:

**Joseph J. Silver, Chief, Bureau of Civil Rights**
**150 East Gay Street, 18th Floor, Columbus, Ohio 43215-3130**
**TDD/TTY (866) 221-6700 · FAX: (614) 752-6381 · LOCAL: (614) 644-2703· SIN PAGAR: 1-866-BCR-ODJFS (227-6353)**

Ted Strickland
Gobernador

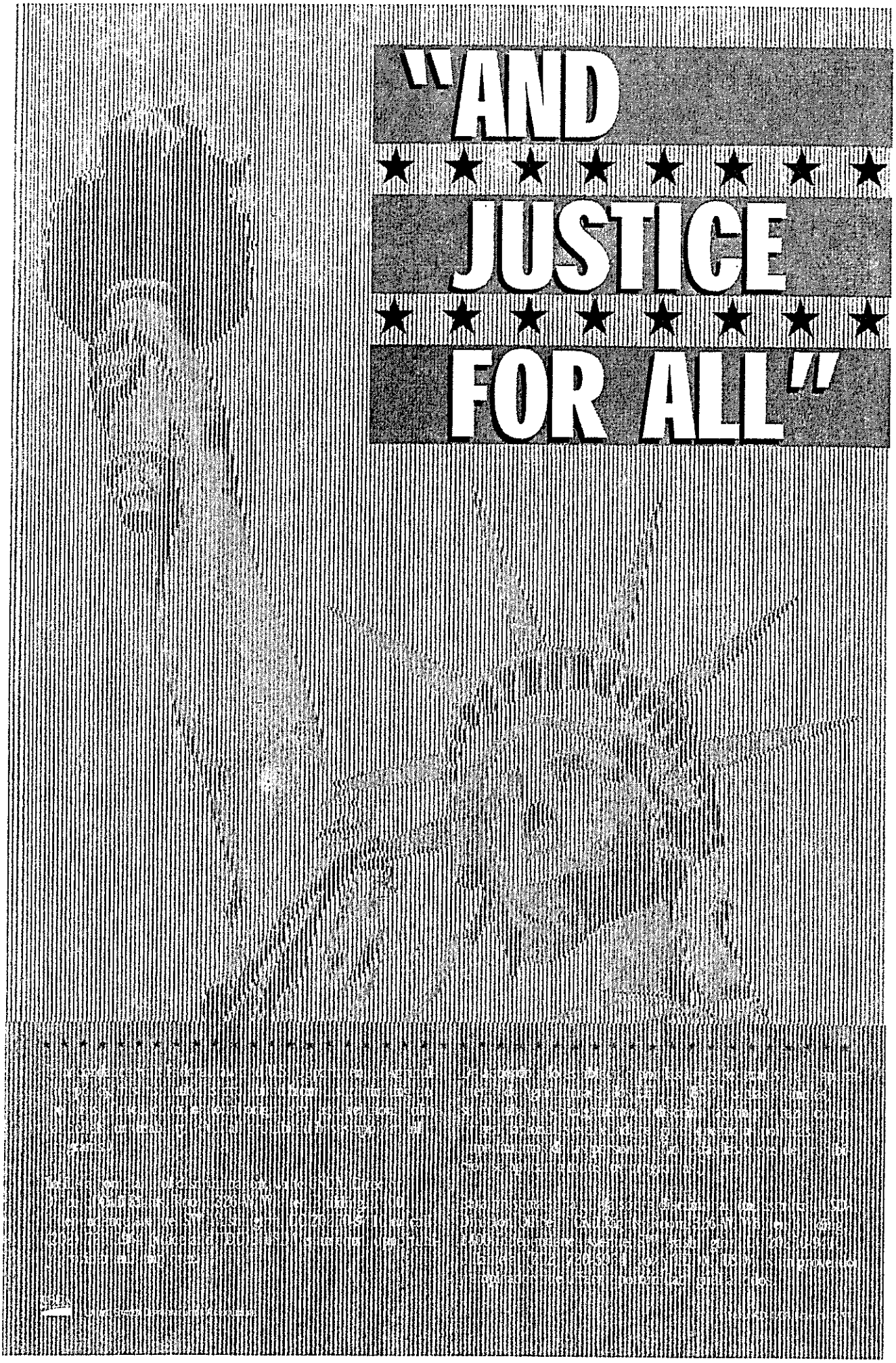
Ohio Job & Family Services

Helen E. Jones-Kelley
Directora

**Si lo requieren, asistencia y servicios adicionales estan disponibles para individuos con incapacidades. Un Empleador con Igualdad de Oportunidades y de Programas.**

JFS 08004-S (Rev. 1/2007)

# "AND JUSTICE FOR ALL"



To file a discrimination complaint, or if you need assistance filing your complaint(s) please contact us at:

**The Ohio Department of Job and Family Services**
**Office of Employee and Business Services**
**Bureau of Civil Rights**
**150 E. Gay Street, 18th Floor**
**Columbus, Ohio 43215**
**Telephone: (614) 644-2703 or Toll free 1-866-227-6353**
**TTY hearing impaired: 1-866-221-6700**
**Fax: (614) 752-6381**

Complaints about WIA programs, which do not allege unlawful discrimination, are to be filed with the Equal Opportunity (EEO) Officer who has been identified for the local Workforce Investment Area. This person's name and telephone number appears on the first page of the workforce agency's WIA Summary of Complaint Rights which is available at your local One Stop Center.


Ted Strickland, Governor
State of Ohio
Helen E. Jones-Kelley, Director
Ohio Department of Job and Family Services

JFS 08050 (Rev. 1/2007)


*An Equal Opportunity Employer and Service Provider*

**THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

# Equal Opportunity in Job and Family Services Programs

## Introduction

Individuals eligible for receiving services from or benefitting from programs funded by or through the Ohio Department of Job and Family Services (ODJFS) are protected by various laws, regulations, rules and policies against unlawful discrimination on the basis of race, color, religion, disability, age, gender, political affiliation (food stamps only) and national origin.

## What Is Discrimination?

Discrimination is a direct action, whether purposeful or not, which results in unequal treatment of people.

Persons cannot be discriminated against **because of** their race, color, religion, disability, age, gender, political affiliation (food stamps only) or national origin and based on these categories:

- Be denied or delayed any service, aid or other benefit provided under an ODJFS program.
- Be subjected to segregation or disparate treatment in an ODJFS program.
- Be given services in humiliating or embarrassing ways.
- Be provided services using different rules to decide who will get help.
- Be limited in the use of buildings, rooms or other space in a way that denies individual participation or access.
- Be denied access to a service because buildings or facilities are not physically accessible to persons with disabilities or because there was not means of effective communication with the service provider.

The key words are: **"because of."** If you are denied or delayed equal service and you think it was because of your race, color, religion, disability, age, gender, political affiliation (food stamps only) or national origin, you may have been subjected to unlawful discrimination.

There is a difference between **lawful** and **unlawful** denial or delay of benefits and/or services. Persons may be denied benefits and/or services if they do not meet the eligibility requirements. This is not unlawful nor discriminatory.

## Limited English Proficiency (LEP)

Persons who are ***Limited English Proficient*** (LEP) are protected against discrimination based on national origin. Accommodations may include providing qualified interpreters, language cards/lines, oral translation and/or written translation of documents.

## Persons with Disabilities

Those individuals who have a hearing or visual impairment are also protected against discrimination. Accommodations may include providing qualified interpreters, oral translation and/or written translation of documents. Any accommodation will be provided free of charge.

## Workforce Investment Act (WIA)

The basis for unlawful discrimination in WIA programs includes race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship (for lawful, admitted immigrants authorized to work) and WIA participant status.

Persons wishing to file discrimination complaints about programs funded under WIA may file their complaints at the Local Workforce Investment Area (LWIA) sub-area recipient level or with the ODJFS Bureau of Civil Rights or with the U.S. Department of Labor's Civil Rights Center. All complaints must be filed within 180 days of the incident or treatment causing the complaint.

ODJFS and/or its WIA recipients must issue a NOTICE OF FINAL ACTION within ninety (90) days of the date of the filing of the complaint. This notice shall also include the right to file a complaint with the U.S. Department of Labor's Civil Rights Center when any party is dissatisfied with the state recipient's final action.

The Bureau of Civil Rights will provide the address and phone number of the Department of Labor at the time of the initiated action.

## How Do I File A Complaint?

If you believe that you have been denied or delayed services for which you are eligible because of your race, color, national origin, religion, gender, political affiliation (food stamps only), disability or age, you must file your complaint within six months of the date on which the incident or treatment happened.

You may call the Bureau of Civil Rights to submit your complaint or you may submit your complaint in writing. If the complaint is submitted in writing, you must include the time, place, persons involved, the nature of the complaint, evidence of discrimination, your name, address and phone number.

Para entablar una queja en contra de la discriminacion, o si necesita ayuda para llenar el formulario de queja o quejas, por favor comuniquese con nosotros al:

Departamento de Trabajo y Servicios Para La Familia de Ohio
Bureau of Civil Rights
30 East Broad Street - 37th Floor
Columbus, Ohio 43215-3414
Teléfono: (614) 644-2703 o Linea gratis 1(866) 227-6353
TTY Ayuda Auditiva 1(866) 221-6700
Fax: (614) 752-6381

Demandas acerca de los programas de WIA, los cuales no indican discriminación ilegal, deberán de someterse primeramente con la oficina de Oficial de Igualdad en Oportunidades Laborales (EO) quien que ha sido identificado para el Area de Inversion Laboral local. El nombre y el teléfono de esta persona aparece en la primera página del Resumen de los Derechos de Queja de WIA de la agencia la cual esta disponible en su One Stop Center local.

Barbara Riley, Director
Bob Taft, Gobernador
JFS #08050-S (12/2004)

*Un Empleador con Igualdad de Oportunidades de Empleo y de Servicios*

DEPARTAMENTO DE TRABAJO Y SERVICIOS PARA LA FAMILIA DE OHIO

# Igualdad de Oportunidades en los Programas de Trabajo y Servicios para la Familia

# Introducción

Individuos que son elegibles, que reciben servicios o beneficios de los programs con fondos de/o por medio del Departamento de Trabajo y Servicios para la Familia de Ohio (ODJFS) estan protegidos por varias leyes, regulaciones, reglas y pólizas en contra de la discriminación basada en la raza, color, religión, incapacidad, edad, sexo/género, afiliación política (solamente en Cupones de Alimentos) y nacionalidad.

# Que Es la Discriminación?

La discriminación es un acto directo, aunque sea a próposito o no, que resulta en la desigualdad del trato a la gente. Personas no pueden ser discriminados **debido a** su raza, color, religión, incapacidad, edad, sexo/género, afiliación política (solamente en Cupones de Alimentos) o nacionalad y basados en estas categorías:

- Negarle o retrasarle ningun servicio, ayuda, u otro beneficio proveido bajo un programa de ODJFS.
- Ser sujeto a separación o a un tratamiento desigual en un programa de ODJFS.
- Ofrecerle servicios en una manera ofensiva o humillante.
- Proveerle servicios usando diferentes reglas para decidir quien recibe la ayuda.
- Limitarle el uso de los edificios, oficinas, u otro espacio en una manera que le niega el acceso y la participación al individuo.
- Negarle el acceso a un servicio debido a que los edificios o sus oficinas no estan accesible a personas con incapacidades o porque no hubo una manera efectiva de comunicarse con el proveedor de los servicios.

Las palabras clave son "**debido a**". Si a usted se le han negado o retrasado servicios y usted cree que ha sido debido a su raza, color, religión, incapacidad, edad, sexo/género, preferencia sexual, nacionalidad, es posible que usted haya sido víctima de una discriminación ilegal.

Hay una diferencia entre la negación o retraso de los beneficios y/o de los servicios **legal** e **ilegal**. A las personas se les puede negar beneficios y/o servicios si no son elegibles para recibirlos. Esto no es ilegal o una discriminación.

# Capacidad de Inglés Limitada (LEP)

Personas que tienen un ***Capacidad de Inglés Limitada*** (LEP) estan protegidas en contra de la discriminación basada en la nacionalidad. Maneras de acomodar a las personas de Capacidad de Inglés Limitada (LEP) puede incluir provisión de interpretes competentes, tarjetas identificando los idiomas o con frases en varios idiomas, y traducciones de documentos.

# Personas con Incapacidades

Aquellos individuos que tienen una incapacidad auditiva o visual tambien estan protegidas en contra de la discriminación. Maneras para acomodar a estas personas puede incluir el proveer intérpretes competentes, traducciones orales y/o documentos traducidos por escrito. Cualquiera acomodación que se haga será gratuita.

# Acta de Inversión Laboral (WIA)

La discriminación ilegal dentro de los programas de WIA está basada en: raza, color, religión, sexo/género, nacionalidad, edad, incapacidad, asociación política, o creencia, ciudadanía (hacia emigrantes admitidos legalmente autorizados para trabajar), y condición de participación.

Personas que deseen entablar una demanda en contra de programas pagados bajo WIA pueden entablar sus demandas con la Area Local de la Inversion Laboral (LWIA) al sub nivel de area recipiente o con el Oficiado de los Derechos Civiles de ODJFS o con el Centro de Derechos Civiles del Departamento Nacional de Labor. Todas las demandas deben de ser entabladas dentro de 180 de la fecha del incidente o el tratamiento que causó la demanda.

ODJFS o los recipientes de WIA deben de mandar un ANUNCIO DE ACCION FINAL dentro de noventa (90) dias de la fecha de haber entablado la demanda. Este anuncio tambien deberá de incluir los derechos de entablar una demanda con el Centro de Derechos Civiles del Departamento de Labor Nacional cuando cualquiera de las partes interesadas no está satisfecha con la accion final del recipiente estatal.

El Oficiado de los Derechos Civiles proveerá la dirección y el número de teléfono del Departamento de Labor al momento de iniciarse la acción

# Como Puedo Yo Entablar una Demanda?

Si Usted cree que se le han negado o demorado servicios para los cuales usted es elegible debido a su raza, color, nacionalidad, religion, sexo/género, afiliacion politica (solamente en Cupones de Alimentos), incapacidad o edad, usted tiene que entablar su demanda dentro de 6 meses de la fecha cuando el incidente o tratamiento ocurrió. Usted puede llamar al Oficiado de los Derechos Civiles y someter su demanda o usted puede someter su demanda por escrito. Si la demanda es sometida por escrito, usted tiene que incluir la hora, lugar, el nombre de las personas envueltas, la clase de demanda, la prueba de discriminación su nombre, dirección y su número de teléfono.

HADDII AAD QADIMEYSO DACWO AMA UBAAHANTAHAY GARGAAR SIDII AAD U XEREEN LAHAYD DAWCO FADLAN LA XARIIR OHAYO WAXDA SHAQADDA IYO QOYSKA. XAFIISKA SHAQAALAHA IYO HAWLAHA GANACSIGA. GUDIGA XUQUQDA MADANIGA 30 E. BROAD STREET 37th FLOOR TELEFOONKA (614) 644-2703 AMA TELEFOONKA LACAG LAANTA AH 1-866-221-6700 TELEFOONKA DADKA DHAGAHA LA 1-866-221-6700 FAX(614) 752-6381

DACWO KU SAABSAN PROGRAMKA WIA OO AAN EHEEN TAKOOR WAXA LOO QORI KARAA HEYADDAHA LOO SIMANYAHAY XAGGA SHAQA HELISTA (EEO) OO KU XUSSAN MALGALINTA SHAQADA EE DEGAANKA QOFKA MAGACIISA IYO TELEFOONKIISA WAXAA KAHELI KARTAA SAFXADDA UGU HOREYSA EE HAYADDA MURUQMAAI KA (WIA) LANA YIRAHDO URURINTA DACWADA OO LAGA HELO DEGMADAADA (ONE STOP CENTER)

BOB TAFT, GUDOOMIYAHA
GOBOLKA EE OHAAYO

BARBARA RILEY, AGAASIMAHA
WAXDA SHQADDA IYO HOWLAHA QOYSKA

JFS 08050-SO (REV. 06/2005)

**SINAANTA HELISTA SHAQADA IYO FIDIYAHA HAWLAHA**
**OHAAYO WAAXDA SHAQADA IYO HAWLAHA QOYSKA**

# U SINAANTA HELISTA SHAQADA IYO HAWLAHA QOYSKA

# GOGAL HAAR

SHAQSIYAALKA MUDAN IN AY HELAAN HAWLAHA AMA FAIDOOYINKA LAGA HELO PROGRAMYADA LAGA BIXIYO SANDUUQO OHAYO WAXDA QOOSKA IYO REERKA (ODJFS) WAXAA ILAALIYA SHARCIYO KALA DUWAN, XEERAR IYO QODOBO SIYAASADEED OO LID KU AH TAKOOR AAN MUDNEEN OO KA MID AH TAKOOR MIDAB, DA'AD, DIIN, JIINSIYAD, CURYAAN, FIR, AQOONSI SIYAASADEED(GAR-GAR RAASHIN KELI AH) IYO WADANIYADDAADI HORE.

# MAXAY TAHAY TAKOOR?

TAKOORKA WAA FAL TOOS AH, AMA HA AHAADO ULA KAC AMA UUSAN HAAN OO MIRAHIISU YAHY DAQAN AN SIN-NAANTA WAAFAQSANEEN BULSHADA DHEXDEEDA

DADKA LAMA TAKOORI KARO DINTOODA, JINSIYADDOOA, MIDABKOODA, DALASHADOODI HORE, CURYAANIMO, DA'AAD, AMINAAD SIYAASADEED, IYO FIKARKOODA AWGOOD IYO WIXI LAMID AH.

> HADII LUGU DIIDO AMA LAGAA DAHIYO HAWLO, GAR-GAAR MACAAWIMO AMA SAMAFAL LUGU FIDIYEY OO PROGRAMKA ODJFS KU SALEEYSAN.

> MARKII AAD MUDNAANTID TAKOOR AMA LUGUULA DHAQMO SI FOOL HUN KANA SOO HORJEEDA MASHRUUCA ODJFS.

> HADII SU XURMADARO AH LUGUU SIIYO HAWL

> HADII LUGUU ADEEGSADO SHARCI KADUWAN SHARCIGA SI LUGUU FIDIYO HAWL GAR GAAR.

> MARKII DAARTA HAWSHA KA SOCOTO AY KU FILNEEN HAWLAHA GAR-GAARKA SIDOO KALE QOLALKA OONA AY KAHORISTAGEYSO DADKA QAARKOOD IN AY HELAAN GAR-GAAR.

>MARKII KU SURTO GALIWAYSO IN AAD ADEEG HESHID SABABTOO AH DHARTO AAD DHEXMARI KARIN ADOO AH CURWAAN AMA AY LAHEYN ISGAARSIIN WAX KUJOOL AH SI LOOLA XARIIRO KUWA HAWLAHA FIDIYA.

WARKA FURIHIISU WA **"SABABTO AH"** HADDII LUGUU DIIDO AMA LAGAA DAAHIYO GAR-GAAR AMA HAWL CADAALD DARO AWGEED SALDHIGEEDANA UU YAHAY TAKOOR KU SALEYSAN MIDAB, DA'AD, DIN, JINSI, AMINSANAAN SIYAASADEED, CURYAANIMO IYO FIR(GAR-GAAR RAASHIN) AMA DHALASHADAADI HORE , WAXAAD MUDNAANTAY TAKOOR AAN SHARCIGA WAFAQSANEEN.

WAXAABA U DHEXEYA DIIDMO **CADAALAD** KUFADHIDA IYO DIDMADA AAN **CADAALADA AHEYN** SI AAD U HESHID AMA LUGU FIDIYO GARGAAR. QOFKA WA DHICI KARA IN LOO DIIDO GAR-GAAR SABABTOO AH HADDI AYNAN WAFAQSANEEN SHARCI GARGAARIDA MUDAN.TAASI MA AHA TAKOOR

# AQOONTA AF-INGRIIKA XADIDAN (LEP)

SHAQSIYAADKA **AQOONTOODA AFKA INGRIISKA YARTAHAY** WAXAY KA XUJAABAN YIHIIN TAKOOR LID KU AH WADANKA AY KA YIMAADEEN. SOODHAWEENTA WAXAA KA MIDAH IN LAGA CAWIMO QOF U TURJIMO AMA WARQADAHA RASMIGA AH IN LOO U QORO AFKOODI HOYO.

# SHAQSIYAADKA CURYAAMAN

QOFKII INDHO AMA DHAGO LA-AAN AH WAXAY KA XUJAABAN YIHIIN TAKOOR LO GEYSTO. WAXA LOO FIDIYA GARGAAR , AQOONYAHANNO U TURJIMA QORAAL IYO HOROHBA , GARGAARKA WAA LACAG-LAAN.

# HEERKA MALGELINTA MURQMAALKA (WIA)

SALDHIIKA TAKOORIDDA SHARCIDARADDA AH EE HAYADDA WIA WXAA KA MID AH MIDB, DIIN, WADANKAAGI HORE, MIDABKA, JINSIYAD, DA-DAAD, CURYAANIMO, AMINSANAAN SIYAASADEED IYO HADII AAD TAHAY LAAJI SHARCIYEYSAN OO LA OGOLAADAY IN UU KA SHAQEEYO WADANKAAN.

DADKA DOONAHAYO IN AY QADIMAAN DACWO TAKOOR AH LIDNA KU AH HAYADDA WIA WAXAY KEENI KARAAN DACWADOODA MALAHA LAGA MALGELIYO HAWLAHA WIA WAANA FARACYO HOOSYIMAADA HAYADDA LOO YAQAAN ODJFS(URURKA XUQUUQDA MADANIGA AH AMA WAXDA DHEXE EE SHAQAALAHA DAWLADDA MAREYKANKA OO AH XUQUUQDA MADANIGA AH)

DACWADDA WAA LAKEENI KARA MUDDO ILLA 180 MALMOOD GUDOHOOD MARKII LAGA BILAABO DHACDADA. ODJFS IYO WIA MARKEY HELAAN DACWADA WA IN AY SIIYAAN MUHIMAD WAXNA KA QABTAAN UGU DAMBEYN 90 MOLMOOD GUDAHOOD WARGALINNA WAA IN AY LA SOCOTA XUQUUQ IN LOO LEYAHAY IN LOO QADIMKARO DACWO DAWLADDA DEXE EE FEDERAALIGA AH EE WAXDA DHEXE XUQUUQDA MADANIGA AH EE SHAQAALAHA MARKII AAD DAREENTID IN SI CADAALAD KA SOO HORJEEDA LO WAAFAJIYO DACWADA.

HAYADDA XUQUUQDA MADANIGA AH WA INAY KU SIISA ADRESKA IYO TELEFOONKA WAXDA DAWLADDA DHEXE EE SHAQAALAHA.

# SIDEE AN QADIMI KARAA DACWAD?

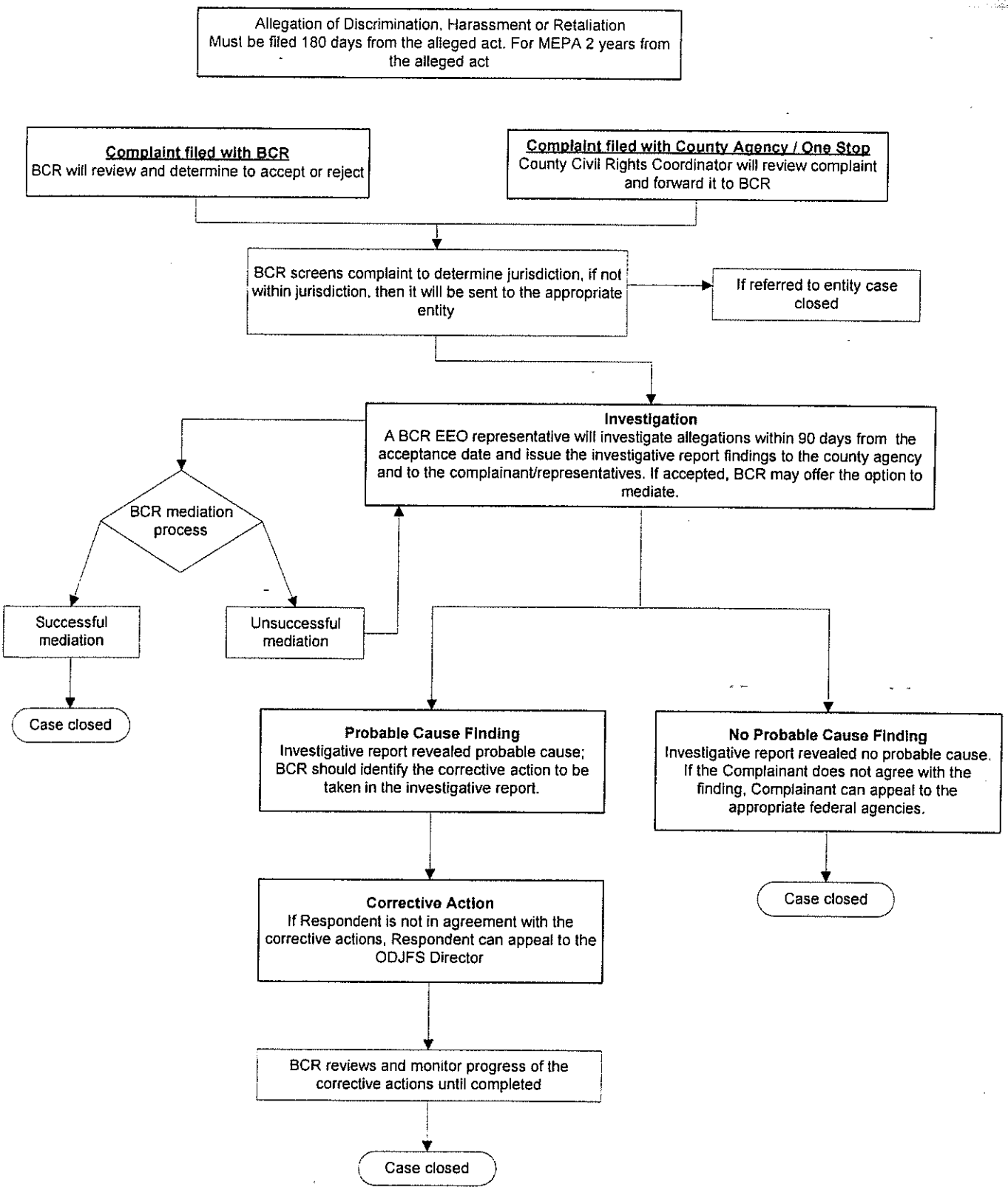
HADDI ADD RUMEYSANTAHAY IN TAKOOR LUGUGU SAMEEYEY AMA LACAA DAAHIYEY GARGAAR AAD XAQ U LAHAYD SALDHIGEEDU YAHAY TAKOOR LA MID AH MIDAB, DIIN, DA- AAD, JINSI, WADANKAAGI HORE, CURYAAN AMA SIYAASAD AAD AAMINSANTAY WAA IN AAD QADIMTAA DACWADA MUDO LIX BILOOD GUDOHOOD AH.

WAAD WICI KARTAA GUDIGA XUQUUQDA MADANIGA AH ADOO U GUDBINEYSA DACWADDA QORAL AHAAN. HADII DACWADDA QORAL TAHAY WA IN AAD RACISAA WAQTIGA AY DHACDAY TAKOORKAS IYO MEESHA AY KA DHACDAY IYO QOFKII GEYSTAY FAI KAAS IYO NOCU YAHAY TAKOORKAAS IYO HADII ADD RAACINKARTID CADEEMO IYO MARQAHYAAL. RAACI DACWADAADA MAGACAAGA ADRESKAAGA IYO TELEFOONKAAGA

# Discrimination Complaint Process

Complaint Process Flow Chart
Complaint Forms
OAC Rules

Ohio Department of Job and Family Services
Bureau of Civil Rights (BCR)
**Discrimination Complaint Process**



## INSTRUCTIONS FOR COMPLETING
## EEO DISCRIMINATION COMPLAINT FORM
## JFS 02333

**Box 1.** Name of complaint, last, first, middle initial and home address;

**Box 2.** Complainant's office telephone number;

**Box 3.** Complainant's home telephone number;

**Discrimination:** A biased action often based on prejudicial attitudes against and individual or group characterized by race, sex, national origin, ancestry, disability, color, religion, age and that results in unequal treatment.

**Box 4a.** Check the area (s) in which you believe you have been discriminated against. Based on race, color, religion, sex, national origin, ancestry, disability, age, citizenship/participant status (WIA Programs only).

**Box 4b.** What assistance (programs and/or services) are you currently receiving?

**Box 5.** Provide your race and sex;

**Box 6.** Provide the name and county of the agency you believe has discriminated against you.

**Box 7.** Provide the location of the agency you believe has discriminated against you.

**Box 8.** Provide the name(s) and title(s) of the person(s) you believe has discriminated against you.

**Box 9.** Provide the date the alleged discrimination occurred.

**Box 10.** Provide the working / training site where you were located: (if applicable)

**Box 11.** Provide an explanation of how you believe you were discriminated against.

**Box 12.** The date you filed the complaint;

**Box 13.** The signature of the complainant;

**For Official Use Only**
The Ohio Department of Job and Family Services, Bureau of Civil Rights will complete this section.

**Ohio Department of Job and Family Services**
**Bureau of Civil Rights**
**150 East Gay Street, 18th floor**
**Columbus, Ohio 43215-3130**

# DISCRIMINATION COMPLAINT FORM

Toll Free 1-866-227-6353 TDD/TTY 614-995-9961 FAX 614-752-6381

*Assistance with completion of this form shall be provided.*

1. Name: *(Last)* *(First)* *(Middle Initial)*

Home Address:
*(Number and Street)*
*(City)* *(Zip)*

2. Work Phone Number
( )

3. Home Phone Number
( )

4a. On what basis do you believe you have been discriminated against?

- ☐ Race
- ☐ Age
- ☐ Disability
- ☐ Color
- ☐ National Origin
- ☐ Citizenship/Participant Status (WIA Programs Only)
- ☐ Religion
- ☐ Ancestry
- ☐ Sex

4b. Program/Service Area

- ☐ Adoption/Foster Care/Child Welfare
- ☐ Unemployment
- ☐ WIA
- ☐ Medicaid
- ☐ Health Services
- ☐ Child Support
- ☐ Food Stamps
- ☐ TANF
- ☐ Other_____

5. Race of the complainant:

- ☐ Black/African American
- ☐ White/Caucasian
- ☐ Hispanic/Latino
- ☐ Native American
- ☐ Asian/Pacific Islander
- ☐ Other

Sex of the Complainant:

- ☐ Male
- ☐ Female

6. Name the agency you believe has discriminated against you: *(County)*

7. Location *(Number and Street)* *(City)* *(State)* *(Zip)*

8. Name(s) and title(s) of person(s) who you believe discriminated against you:

_____

_____

_____

9. Date of alleged discrimination

10. Work/training site where you were located: *(if applicable)*

11. Please explain why you believe the treatment or incident you experienced was because of your race, color, religion, sex, national origin, age, disability, political affiliation or belief, and/or for WIA Participants: citizenship/participant status. (Please attach additional sheet(s) of paper, if necessary to fully state your complaint.)

12. Date complaint written

13. Complainant's signature

**FOR OFFICE USE ONLY**

| Complaint No. | BCR staff assigned: *(initials)* | Date charge received: |
|---|---|---|

| County Agency: *(specify CSEA, PCSA, CDJFS, etc.)* | Program: *(OWA, WIA, TANF, Food Stamps)* |
|---|---|

ادارة الوظائف و خدمات الاسرة لولاية اوهايو
قسم الحقوق المدنيه
150 شارع جيي الشرقي
كولومبس،اوهايو 3130-43215
استمارة شكوي في حالات التفرقة العنصريه
هاتف : (614)644-2703 او للاتصال المجاني 1-800-227-6353
خدمات الصم : (614)995-9961 او للاتصال المجاني 1-266-221-6700
فاكس رقم : 614-752-6381
من حقك طلب اي مساعدة لملئ هذه الاستمارة

1.الاسم: (الاخيراو العائلى) (الاول) (الاسم الاوسط)

عنوان المنزل: _____ 2.رقم هاتف العمل: ( )

(رقم واسم الشارع) _____ 3.رقم هاتف المنزل : ( )

(المدينه) (الرمز البريدي)

4a. في اي مجال احسست بالعنصرية تجاهك؟
☐العرق ☐السن ☐الاعاقه
☐اللون ☐الاصل الوطنى ☐الجنسية او موقف المشترك (برنامج WIA فقط)
☐الديانه ☐الاصل العائلى ☐الجنس

4b. البرامج و الخدمات:
☐خدمات التبنى او خدمات الطفل
☐البطالة ☐WIA
☐التأمين الصحى ☐الخدماث الصحيه
☐نفقة الاولاد ☐بطاقات الطعام
☐TANF ☐خدمات اخرى: _____

5-عرق المشتكى:
☐اسود او اميريكى افريقى ☐ابيض او اميريكى اوروبى ☐اسبانى او لاتينى
☐امريكى اصلى ☐اسيوى او من جزر المحيط الهادى ☐عرق آخر: ____

جنس المشتكى:
☐ذكر
☐أنثى

6.اذكر الاداره التى مارست العنصريه ضدك: (المقاطعه)

7.موقع الاداره: (رقم واسم الشارع) (البلد) (الولايه) (الرمزالبريدى)

8. اسماء و مراكز من تظن انهم مارسوا العنصريه معك:
_____
_____
_____

9.تاريخ الحادثة | 10.موقع العمل اوموقع التدريب الخاص بك (ان امكن)

11.نرجو شرح الحادث الذى رايت فيه شعورك بالعنصريه و هل كانت بسبب عرقك اولونك اودينك اواصلك القومى اوسنك او اعاقتك او انتمائك السياسى او اعتقاداتك او اذا كنت مشترك فى برنامج WIA : بسبب جنسيتك او موقفك كمشترك (يمكنك اضافة اى صفحات اضافيه ان اردت اذا احتاج الامر لشرح اضافى):

12- تاريخ الشكوى: | امضاء المشتكى:

للاستعمال الرسمي فقط

رقم الشكوى: | اسم موظف BCR المسؤل: | تاريخ استلام الشكوى:

ادارة المقاطعه : (حدد CSEA, PCSA, CDJFS, ODJFS الخ) | البرنامج (OWA, WIA, TANF, Food Stamps)

**Ohio Department of Job and Family Services**
**Bureau of Civil Rights**
**150 East Gay Street, 18th Floor**
**Columbus, OH 43215-3131**

# Форма Жалобы о Дискриминации

(614) 644-2703 или бесплатно 1-800-227-6353 TTY (614) 995-9961 или бесплатно 1-866-221-6700 Факс 614-752-6381

*Помощь с завершением этой формы будет обеспечена.*

1. Имя: *(Фамилия)* *(Имя)* *(Отчество)*

Домашний Адрес:

*(Номер Дома и Улица)*

*(Город)* *(Индекс)*

2. Рабочий Телефон: ( )

3. Домашний Телефон: ( )

4a. На каком основании Вы полагаете, что к Вам предвзято отнеслись?

- ☐ Раса
- ☐ Возраст
- ☐ Неспособность
- ☐ Цвет Кожи
- ☐ Национальное Происхождение
- ☐ Гражданство/ Статус Участника (Программа WIA только)
- ☐ Религия
- ☐ Родословие
- ☐ Пол

4b. Программа/Услуги

- ☐ Усыновление/Забота о ребенке другими людьми/Благополучие Ребенка
- ☐ Пособие по Безработице
- ☐ WIA
- ☐ Medicaid
- ☐ Медицинское обслуживание
- ☐ Пособие на Ребенка
- ☐ Продовольственные талоны
- ☐ TANF
- ☐ Другой

5. Раса Истца:

- ☐ Черный/ Афро-американский
- ☐ Белый
- ☐ Испанец/ Латиноамериканец
- ☐ Коренной американец
- ☐ Азиатский/ Тихоокеанский Островитянин
- ☐ Другой

Пол Истца:

- ☐ Мужской
- ☐ Женский

6. Назовите агентство, которое Вы верите, предвзято отнеслось к Вам: *(Область)*

7. Место: *(Номер Дома и Улица)* *(Город)* *(Штат)* *(Индекс)*

8. Имя (на) и звание (я) того, кто Вы верите, предвзято отнесся к Вам:

9. Дата предполагаемой дискриминации:

10. Место работы/обучения, где Вы находились: *(если применимо)*

11. Пожалуйста объясните, почему Вы полагаете, что неравное обращение или инцидент, который с Вами произошел, был из-за вашей расы, цвета кожи, религии, национального происхождения, возраста, инвалидности, политической принадлежности или веры, и/или для Участников WIA: Гражданство/ Статус Участника. (Пожалуйста приложите дополнительный лист (ы) бумаги если вам нужно больше места для описания жалобы.)

12. Дата Жалобы:

13. Подпись Истца:

## ТОЛЬКО ДЛЯ ОФИСА

| Complaint No. | BCR staff assigned: *(initials)* | Date charge received: |
|---|---|---|

| County Agency: (specify CSEA, PCSA, ODJFS, etc…) | Program: (OWA, WIA, TANF, Food Stamps) |
|---|---|

Ohaye Waaxda Shaqada iyo Hawlaha Qoyska
Guddiga Xuquuqda Madaniga ah
30 E Broad Street 37 Floor
Columbus, Ohio 43266-0423

**WARQADDA ASHTAKADA TAKOORKA**

(614) 644-2703 ama Tel Lacag la'aan 1-800-227-6353 TTY (614) 995-9961 ama Tel Lacag la'aan 1-866-221-6700 Fax 614-752-6381

*Hannaanka dhammeeystirka waarqadda waa in lugu caawiyaa*

1 Magaca. *(Awowga)* *(magacaaga)* *(magacagaa abbahaa xarafkasa koowaad)*

*Cinwaanka guriga*

*(Numbarka guriga & jidka*

2 Telefoonka shaqada
( )

3 Telefoonka Guriga
( )

Magaalada Numbarka Xaafadda

4a maxaad ku saleyneysaa oo la rumeysay in lugugu sameeyey takoor?

☐ Jinsiyad ☐ Da'da ☐ Curyaanimo

☐ Midab ☐ Dhalashadaadi hore ☐ Muwaadin\qaabka-ka-qeybgaleyaasha (waa programka WIA oo keli ah)

☐ Diin ☐ Fir ☐ Jinsi

4b. Barnaamijyada hawlahan ay ka- jiraan
☐ korin cunug aadan dhalin\haayn ilmo dadow\baraarin dhalaan
☐ shaqo la-an ☐ wia
☐ gar-gaar cafimaad ☐ hawla cafimaad
☐ gar-gaar dhalaan ☐ raashin gar-gaar
☐ Macaawinada ku meel gaarka ee qoyska ☐ waxyaale kale

5. Midabka uu leeyahay ashtakoodaha
☐ Madow\Mareeykanka Madow ☐ caddaan \Caucasian ☐ Spaanish\Laatiin
☐ calibesteen ☐ asian\pacific islander ☐ iyo kuwakale

Jinsiyadda Ashtakoodaha
☐ Dheddig ☐ lab

6 Magacaw hay'adda kugu sameysay takoorka *(Degmada)*

7 Meesha *(Lambarka iyo jidka)* *(Magaalada )* *(Gobalka )* *(Lambarka xaafadda)*

8 Magacyada iyo darajooyinka ay leeyihiin kuwa kugu sameeyey takoorka

9. Taarikhda soo eedeeyntii takooriddda. 10 Shaqeeyn\ Goobta tababarka ee aad joogtey. *(haddii la dabakhi karo)*

11 Fadlan cadde sida aad ku aamintay habkii luguula dhaqmay ama dhibka aad dareeyntay in ay sababtay midabkaaga, jinsiyaddaada, dalka aad ka soo jeeddo, da'da, diinta, curyaanimada, ayidaad siyaasadeed, ama rumeyn, iyo/ama ee ka qeybgaleyaasha WIA. dhalasho; wadaniyad\ darajada kaqeybgalaha. (fadalan ku bfaaq haddii ay warqada kale haddii ay kugufillaan waydo mesha aad wax kuqoreyso haddii loo bahdo siddii aad u dhameysid ashtakadaada

12 Taariqda la qoray ashtakada 13 Saxiixa dacwiyaha

**Isticmaalka xafiiska oo keli ah**

Lumbarka ashtakada BCR shaqaalaha qoondeeyey (xarfka hore ee magacaaga iyo kan awoowga) Tarikhda dhacdada laqabtay

Xafiiska degmada. (qhaas-ahaan CSEA, PCSA,CDJFS, iyo wixii lamid ah) Barnaamijka (OWA, WIA, TANF, gargaar raashinka)

**Departamento de Trabajo y Servicios a la Familia de Ohio**
**Oficiado de los Derechos Civiles**
**30 E. Broad Street, 37th Floor**
**Columbus, Ohio 43215-3414**

# FORMULARIO DE QUEJA/DEMANDA POR DISCRIMINACIÓN

Llamada sin pagar 1-866- 227-6353 TTD/TTY (614) 995-9961 Fax (614) 752-6381

Se le dará ayuda para llenar este formulario

1.Nombre: *(Apellido)* *(Primer Nombre)* *(Inicial)*

Dirección de su casa:
*(Número y Calle)*

*(Ciudad, Estado)* *(Código Postal)*

2. Teléfono del Trabajo: ( )

3. Teléfono de Casa: ( )

4a. En que se basa usted para creer que ha sido discriminado?

- Raza
- Edad
- Incapacidad
- Color
- Nacionalidad
- Ciudadania/posición como participante (Programas WIA solamente)
- Religión
- Ascendencia
- Sexo

4b. Programa/Area de Servicio

- Adopción/Bienestar de Niños/Hogar de Adopción
- Desempleo
- WIA
- Medicaid
- Servicios de Salud
- Manunención de Menores
- Cupones de alimentos
- TANF
- Otro: _____

5. Raza del que se Queja/Demanda:

- Negra/Africano Americano
- Blanco/Caucásico
- Hispano/Latino
- Indígena Americano
- Asiático-Isleño del Pácifico
- Otra

Sexo del que se Queja:

- Masculino
- Femenino

6. Nombre de la agencia que usted cree ha discriminado en contra de usted: *(Condado)*

7. Dirección *(Número y Calle)* *(Ciudad)* *(Estado)* *(Código Postal)*

8. Nombre(s) y Posición de la persona o personas que usted cree han discriminado en contra de usted:

9. Fecha en que la supuesta discriminación ocurrió

10. Sitio de trabajo o entrenamiento donde usted se encontraba: *(si es aplicable)*

11.Por favor explique porque cree usted que el incidente o tratamiento al que usted fué expuesto fue debido a su raza, color, religión, sexo, nacionalidad, edad, incapacidad, afiliación pólitica o creencía, y o/para Participantes de WIA: ciudadanía/estado del participante. ( Por favor adjunte páginas adicionales si es necesario para que pueda exponer su queja completamente.)

12. Fecha de cuando la Queja/Demanda fué escrita

13. Firma del que se Queja

**FOR OFFICE USE ONLY**

| Complaint No. | BCR staff assigned: *(initials)* | Date charge received: |
|---|---|---|

| County Agency: (specify CSEA, PCSA, CDJFS, ODJFS, etc.) | Program: (OWA, WIA, TANF, Food Stamps) |
|---|---|

JFS 02333S (4/2004)

Bob Taft
*Governor*

Tom Hayes
*Director*

30 East Broad Street • Columbus, Ohio 43266-0423
www.state.oh.us/odjfs

# ADMINISTRATIVE PROCEDURE MANUAL TRANSMITTAL LETTER NO 234

To: Administrative Procedure Manual Holders
County Departments of Job and Family Services' Directors

From: Thomas J. Hayes, Director

Subj: **CIVIL RIGHTS PLAN FOR COUNTY DEPARTMENTS OF JOB AND FAMILY SERVICES**

Effective January 1, 2002, the Ohio Department of Job and Family Services (ODJFS) will implement its civil rights plan for all 88 county departments of job and family services (CDJFS). This plan provides information regarding county responsibility, guidelines for compliance and monitoring, delegation of authority, federal reporting requirements, and remedial action.

Please note this plan is in accordance with Ohio Administrative Code rule 5101:9-2-01, and is in compliance with Title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996, and the Americans with Disabilities Act of 1990.

ODJFS staff will begin the provision of training to CDJFS with the distribution of this policy. Questions regarding this plan may be directed to the Bureau of Civil Rights at (614) 644-2703.

TJH:MCM:mcm

## INSTRUCTIONS:

- Please remove the pages headed APMTL 157, dated June 15, 1997, and APMTL 134, dated May 15, 1996, and replace with the attached pages.
- Please note the Table of Contents for APM Chapter 9000 is currently being amended to match all Chapter 9000 inclusions and will be distributed soon.

APM.9000.-9099. RESERVED

## APM.9100. HUMAN RESOURCES MANAGEMENT

### APM.9101. Civil Service Law
[OAC 5101-9-01]

County agency personnel are governed by the provisions of civil service law as set forth in ORC and as administered by DAS or a county personnel department properly established by a board of county commissioners. County agency personnel policies may be under the governing authority of a collective bargaining agreement and/or ORC Chapter 124, depending upon the individual county agreement(s).

REFERENCE: ORC Section 124.14 and 302.202, ORC Chapter 4117

### APM.9101.1 Compliance

[OAC 5101:9-2-01]

All programs, services, and benefits which are administered, supervised, authorized, and/or participated in by a county agency shall be operated in accordance with the nondiscriminatory requirements of:

1. Title VI of the Civil Rights Act of 1964, as amended;
2. section 504 of the Rehabilitation Act of 1973, as amended;
3. the Age Discrimination Act of 1975;
4. the Multiethnic Placement Act of 1994, as amended by the Interethnic Adoption Provisions of 1996; and
5. the Americans with Disabilities Act of 1990.

The county agency is responsible for ensuring compliance with this rule by all county agency contractors.

No person(s) shall on the grounds of race, color, national origin, disability, age, gender, or religion, be excluded from participation in, be denied or delayed the benefits or services of, or be otherwise subjected to discrimination under any program, service or benefit authorized or provided by the Ohio Department of Job & Family Services (ODJFS), a county agency, or a county agency contractor.

In carrying out its duties, the county agency shall not discriminate against any employee or applicant for employment because of race, color, national origin, disability, age, gender, religion, ancestry, or veteran status. The county agency will ensure applicants are hired, and employees are treated during employment without regard to their race, color, national origin, disability, age, gender, religion, ancestry, or veteran status. Such action includes, but is not limited to, the following:

APM.9101.1 (continued)

- employment;
- upgrading;
- demotion or transfer;
- recruitment or recruitment advertising;
- layoff or termination;
- rates of pay or other forms of compensation; and
- selection for training including apprenticeship.

The county agency and its county agency contractors shall operate each program or activity so when viewed in its entirety, each program or activity is readily accessible to persons with disabilities and provides meaningful access to persons with limited english proficiency. This shall include, but not be limited to, making the physical facilities accessible to persons with disabilities and providing interpreters at no charge to those beneficiaries whom are visually or hearing impaired, or are limited english proficient.

The county agency shall ensure that the opportunity to participate as members of planning, advisory, and policy boards is available to persons in a nondiscriminatory manner.

The county agency and county agency contractors shall develop policies and procedures which ensure that all recruitment and employment practices do not discriminate on the basis of race, color, national origin, disability, gender, age, or religion. Its employment practices also must not have the effect of causing discrimination in the delivery of services and benefits under the program.

## APM.9101.2 Delegation of Authority

ODJFS, shall administer nondiscrimination laws, rules, and regulations through the following methods of administration. The director of the county agency has the responsibility for implementing and enforcing civil rights laws, rules, and regulations within its service system, including county agency contractors.

For purposes of administration of this plan, there are two distinct levels of responsibility: ODJFS and the county agency.

(1) The ODJFS-Bureau of Civil Rights (ODJFS-BCR) is responsible for the following:

(a) investigating all complaints of discrimination arising under paragraphs one, three, and five of the compliance section (APM.9101.1) of this policy

(b) disseminating information pertaining to civil rights laws to the county agency civil rights coordinator, beneficiaries, and interested members of the general public;

APM.9101.2 (continued)

(c) preparing compliance reports for submission to the U.S. Department of Health and Human Services, Office for Civil Rights (HHS, OCR), the U.S Department of Labor, Civil Rights Center (DOL, CRC), and the U.S. Department of Agriculture, Office for Civil Rights (FCS, OCR); providing instructions and guidance to the county agency civil rights coordinator in all aspects of implementing the civil rights laws and the processing of complaints. ODJFS-BCR will also advise and recommend actions which will remedy noncompliant areas;

(d) conducting compliance reviews of the county agency and county agency contractors;

(e) acting as liaison between ODJFS, HHS, DOL, and USDA offices for civil rights; and

(f) acting as liaison with community groups concerned with civil rights issues involving the delivery of services.

(2) The county agency is responsible for:

(a) developing a civil rights plan to ensure the county agency and county agency contractor comply with this rule and the civil rights laws, rules and regulations; and

(b) appointing a civil rights coordinator who shall have the following responsibilities set forth in their job description:

(1) attending ODJFS approved civil rights training within six months of becoming the civil rights coordinator, and attending training updates as required by the department;

(2) providing input to management to improve the civil rights in service delivery, and to discuss civil rights complaints, issues and reports of compliance activities within the county agency or within county agency contractors;

(3) maintaining essential compliance records and files, including client analysis data, staff training records, confidential complaint files and reasonable accommodation requests;

(4) reviewing written policies to make sure those policies are nondiscriminatory;

(5) providing technical assistance or training on civil rights in service

APM.9101.2 (continued)

delivery to staff, or referring staff to appropriate resources for technical assistance;

(6)disseminating civil rights information to county agency staff and county agency contractors, vendors, beneficiaries, and other interested parties;

(7)acting as civil rights liaison between ODJFS, the county agency, county agency contractors, beneficiaries, and community groups or other organizations concerning civil rights in the delivery of services;

APM.9101.3 COMPLAINTS

Any person may file a written complaint alleging discrimination within six months from the date of the alleged discriminatory act. Complaints can be filed with the ODJFS-BCR or the county agency. Assistance in drafting and filing complaints shall be made available. A complaint is deemed filed when the county agency or ODJFS-BCR receives a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of. ODJFS discrimination complaint forms may be obtained from the ODJFS-BCR or the county agency, but the use of any particular form is not required for the proper filing of a complaint.

(1) any complaint alleging discrimination filed with ODJFS-BCR or a county agency shall contain the following information:

(a) the full name and address of the person making the complaint;

(b) the full name and address of the covered entity against whom the complaint is made; and

(c) the basis on which the complainant believes the discrimination has occurred:

(1) race;

(2) color;

(3) religion;

(4) national origin;

(5) disability;

APM.9101.3 (continued)

(6) age; or

(7) gender.

(2) a concise statement of the facts which the complainant believes indicates an unlawful discriminatory practice;

(3) the date or dates of the alleged unlawful discriminatory practice; or if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing acts are alleged to have occurred;

(4) a statement as to any other action, if any, civil or criminal, instituted in any other forum based upon the same grievance as is alleged in the complaint together with a statement as to the status or disposition of such other action;

(5) a statement as to any other action or proceeding in any other forum based upon the same facts as are alleged in the complaint, together with a statement as to the status or disposition of such other action;

(6) the complainant and respondent shall be advised of the results of the investigation, not later than ten days after the completion of the investigation. The complainant shall also be advised of the right to file a complaint to any appropriate state or federal civil rights enforcement agency;

(7) the ODJFS-BCR will maintain records which show the nature of the complaint, the details of the investigation, and the actions taken by ODJFS;

Upon receiving a complaint alleging discrimination the county agency shall:

(1) forward the complaint to the ODJFS-BCR within three (3) working days of date of receipt;

(2) make all persons or papers pertaining to a case being handled by the ODJFS-BCR available at the ODJFS-BCR's request unless doing so would violate state or federal law;

(6) submit any information requested by the ODJFS-BCR not later than fourteen (14) working days from date of receipt of request unless otherwise agreed upon;

(4) cooperate fully with the ODJFS-BCR during the course of any investigation;

(A) not initiate, conduct, or run concurrent investigation(s);

APM.9101.3 (continued)

(B) not retaliate against the complainant or any person(s) associated with any inquiry conducted by the ODJFS-BCR.

Any complaint by an employee of a county agency or county agency contractor that arises under paragraphs three and four of the compliance section (APM.9101.1) of this policy should be filed with either the Ohio Civil Rights Commission and/or the U.S. Equal Employment Opportunity Commission. ODJFS has no authority to investigate complaints arising under paragraphs three and four of the compliance section (APM.9101.1).

APM.9101.4 NOTICE

The county agency and county agency contractors shall execute, in writing, an assurance they will comply with all federal, state, and local civil rights laws, this rule and all polices and procedures of ODJFS.

The county agency and county agency contractors shall have a written nondiscrimination policy which effectively communicates to beneficiaries that the administration, services, assistance, and other benefits of its programs are provided on a nondiscriminatory basis. The county agency and county agency contractors shall, in brochures, pamphlets, or communications, which are designed to notify the general public of its services and programs, inform all that the services and programs are provided on a nondiscriminatory basis as required by federal, state, and local civil rights laws, and the policies and procedures of ODJFS. As a result of the organization's commitment to civil rights the county agency and its contract providers shall also:

(1) provide notice to beneficiaries, and employees with impaired vision and/or hearing, and individuals who are limited english proficient that, if needed, an interpreter will be provided for them at no charge; and

(2) provide notice to beneficiaries of the right to file a complaint if they feel they have been discriminated against in county agency administered programs, on the basis of race, color, national origin, disability, age, gender, sexual orientation, or religion. This notice shall include the name, title, and location of the person responsible for receiving the complaint.

The county agency agrees to post in conspicuous places, available to employees and applicants for employment, notices stating they comply with all applicable federal and state non-discrimination laws. The county agency shall, in all solicitations or advertisements for employees placed by or on behalf of them, state that all qualified applicants shall receive consideration for employment without regard to race, color, national origin, disability, age, gender, religion,

APM.9101.4 (continued)

ancestry, or veteran status. They will incorporate the foregoing requirements of paragraphs one through four of the compliance section(APM.9101.1) in all of its contracts, grants and other agreements, and will require all county agency contractors to incorporate these requirements in all subcontracts and subgrants for work performed for or on behalf of the county agency.

## APM.9101.5 COMPLIANCE AND MONITORING

ODJFS shall annually review the county agency's compliance program to ensure that it is providing equal employment opportunities, equal opportunity for participation in all programs, and equal opportunity for receiving benefits and services. HHS, DOL, and USDA will be notified of each annual review. ODJFS shall document and maintain a record of the implementation of these civil rights procedures and the compliance status of the county agency, including county agency contractors, in an annual report.

The ODJFS-BCR shall monitor the performance of the county agency and county agency contractors to determine their compliance with this plan in relationship to the population of the agency's service area.

County agency and county agency contractor reviews shall be performed as follows:

(1) the ODJFS-BCR may initiate its own investigation if the regular flow of compliance data alerts ODJFS of a possible problem.

(2) the ODJFS-BCR will review a sample of county agencies and county agency contractors each state fiscal year. Selection will be done on a random basis to reflect geographic distribution of county agencies and county agency contractors.

County agency and county agency contractor reviews by ODJFS-BCR shall be conducted by mail, utilizing a survey form that gathers the following:

(1) site location for services and programs;

(2) referral sources for outreach;

(3) evaluation of client participation in services;

(4) range and provision of services;

(5) accessibility of services for persons with disabilities;

APM.9101.5 (continued)

and for each county agency contractor by the categories specified in this section, paragraphs one and two of the compliance and monitoring section (9101.5) of this policy, to the extent such data is reasonably available.

APM.9101.6 REMEDIAL ACTION

A county agency or county agency contractor found to be in violation of the ODJFS civil rights plan will be notified in writing within thirty days after completion of the investigation or review. Any action taken by ODJFS to bring the county agency into compliance with the ODJFS civil rights plan will be done pursuant to Ohio Revised Code section 5101.24. Examples of remedial action include but are not limited to: corrective action plans or the withholding of funds. The county agency is responsible for compliance by county agency contractors. ODJFS may take action against the county agency pursuant to section 5101.24 of the Revised Code if the county agency fails to obtain compliance by the county agency contractor.

APM.9102. Personnel Records

[OAC 5101-9-01]

In order to be in compliance with Title II of the Intergovernmental Personnel Act of 1970 regarding the standards for a merit system of personnel administration, the county agency must maintain a personnel file on each employee which, at a minimum, contains the following information:

(1) Completed application form.

(2) Job description, classification, date of appointment, salary, Collective Bargaining Unit (if applicable), and status (provisional or certified).

(3) Attendance record, including records of sick leave, vacation time, and personal time.

(4) Performance evaluation completed at the end of an employee's probationary period and at least annually thereafter.

REFERENCE: 42 USCA 4728, 5 CFR 900.600 - 900.604, 45 CFR 235.50

APM.9103.-9109. RESERVED

Bob Taft
*Governor*

Barbara Riley
*Director*

30 East Broad Street · Columbus, Ohio 43215-3414
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March 15, 2006

**Administrative Procedure Manual Transmittal Letter (APMTL) No. 326**

**TO:** Administrative Procedure Manual Holders

**FROM:** Barbara E. Riley, Director

**SUBJECT:** WIA – Discrimination Complaint Procedure

Ohio Administrative Code rule 5101:9-2-05 has been amended, effective April 1, 2006, to clarify the responsibilities of the Ohio Department of Job and Family Services, Bureau of Civil Rights (ODJFS-BCR) and the WIA Workforce Development Agencies when a discrimination complaint is filed by a person alleging that he or she was discriminated against by the Workforce Development Agency on the grounds of race, color, national origin, disability, age, gender, religion, citizenship, political affiliation or belief, or participant status.

The amended rule makes clear that "all" discrimination complaints by persons utilizing the Workforce Development Agencies and claiming discrimination will be investigated by ODJFS-BCR. The rule requires that each Workforce Development Agency develop a Limited English Proficiency Plan setting out how the agency will serve individuals seeking services through the Workforce Development Agency who are limited English proficient (e.g., interpreters, language line, or bi-lingual employees). The amended rule also sets forth the Workforce Development Agency's responsibilities when a discrimination complaint is received by it and its duty to cooperate in the discrimination complaint's investigation by ODJFS-BCR.

Questions regarding this APMTL or rule 5101:9-2-05 should be directed to Paul Van Pelt or Joe Silver in the Bureau of Civil Rights at (614) 644-2703.

5101:9-2-05 **Workforce Investment Act -: discrimination complaints.**

(A) Definitions as used in this rule

(1) "Beneficiaries" means applicants, registrants, participants, recipients, subrecipients, service providers, labor unions, joint labor unions, joint labor management committees, and community -based organizations for services, assistance, and other benefits administered by workforce development agencies.

(2) "Workforce ~~Development Agency~~development agency" means the entity given responsibility for workforce development activities that is designated by the board of county commissioners, the chief elected official of a municipal corporation, or the chief elected officials of a local area.

(3) "Workforce ~~Development Agency~~development agency contractor" means any governmental or non-governmental entity that receives funds from the workforce development agency, whether directly or indirectly, to provide services, assistance, or benefits to individuals or that performs duties or activities for the workforce development agency pursuant to a contract, grant, or other agreement.

(4) "Limited English proficiency" means any person or group of persons who cannot speak, read, write, or understand the English language at a level that allows ~~them~~the person or group of persons to meaningfully communicate with workforce development agencies or workforce development agency contractors.

(B) Compliance

(1) For purposes of the Workforce Investment Act (WIA) ~~(2000)~~of 1998, as amended: no person(s) shall on the grounds of race, color, national origin, disability, age, gender, religion, citizenship, political affiliation or belief, beneficiary, or participant status, be excluded from participation in, be denied or delayed the benefits or services of, or be otherwise subjected to discrimination under any program, service or benefit authorized or provided by the Ohio department of job ~~&~~and family services (ODJFS), or a workforce development agency.

(2) The workforce development agency and its workforce development agency contractors shall operate each program or activity so that when viewed in its entirety, each program or activity is readily accessible to persons with disabilities and provides meaningful access to persons with limited English proficiency. This shall include, but not be limited to, making the physical

facilities accessible to persons with disabilities and providing interpreters at no charge to those beneficiaries who are visually or hearing impaired, or are limited English proficient.

(C) Delegation of authority

(1) The Ohio department of job ~~&~~ and family services (ODJFS)~~,~~ shall administer nondiscrimination laws, rules, and regulations through the ~~following~~ methods of administration outlined in this rule. The director of the workforce development agency has the responsibility for implementing and enforcing civil rights laws, rules, and regulations within its service system, including workforce development agency contractors.

(2) For purposes of administration of this rule, there are two distinct levels of responsibility: ODJFS and the workforce development agency.

(a) The ODJFS bureau of civil rights (ODJFS-BCR) is responsible for the following:

(i) Investigating all complaints of discrimination~~;~~.

(ii) Disseminating information pertaining to civil rights laws to the equal opportunity officer at the workforce development agency ~~equal opportunity officer~~, beneficiaries, and interested members of the general public~~;~~.

(iii) Preparing compliance reports for submission to the ~~U.S.~~United States department of labor, civil rights center (DOL, CRC)~~;~~ ~~providing instructions and guidance to the workforce development agency equal opportunity officer in all aspects of implementing the civil rights laws and the processing of complaints. ODJFS-BCR will also advise and recommend actions which will remedy noncompliance areas;~~.

(iv) Providing instructions and guidance to the equal opportunity officer at the workforce development agency ~~equal opportunity officer~~ in all aspects of implementing the civil rights laws and the processing of complaints~~;~~.

(v) ~~ODJFS-BCR will also advise~~Advising and ~~recommend~~recommending actions that will remedy noncompliant areas~~;~~.

(vi) Conducting compliance reviews of the workforce development agency and workforce development agency contractors~~;~~.

(vii) Acting as liaison between ODJFS and DOL for issues relating to civil rights~~;~~.

(viii) Acting as liaison with community groups concerned with civil rights issues involving the delivery of services.

(b) The workforce development agency is responsible for the following:

(i) Developing a civil rights and limited English proficiency plan to ensure that the workforce development agency and the workforce development agency contractors comply with this rule and the civil rights laws, rules, and regulations.

(ii) Appointing an equal opportunity officer ~~meeting the following requirements;~~under the following conditions:

*(a)* ~~An~~The workforce development agency shall appoint an employee of the workforce development agency who is familiar with WIA non-discrimination provisions (29 ~~CFR~~C.F.R. 37), Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (1990), and other pertinent civil rights laws that may apply to the workforce development agency or workforce development agency contractors~~;~~.

*(b)* Depending on the size of the workforce development agency and the number of applicants, registrants and participants served by the workforce development agency~~;~~, the equal opportunity officer may, or may not, be assigned other duties. However, he or she must not have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibility of the equal opportunity officer.

(iii) Appointing an equal opportunity officer who shall have the following responsibilities set forth in ~~their~~his or her job description:

*(a)* Attending ODJFS approved civil rights training within six months of becoming the equal opportunity officer, and attending training updates as required by the department;

*(b)* Providing input to management to promote civil rights in service delivery, and to discuss civil rights complaints, issues, and reports of compliance activities within the workforce development agency or within workforce development agency contractors;

*(c)* Maintaining essential compliance records and files, including client analysis data, staff training records, confidential complaint files and reasonable accommodation requests;

*(d)* Reviewing written policies to make sure that those policies are nondiscriminatory;

*(e)* Providing technical assistance or training on civil rights in service delivery to staff, or referring staff to appropriate resources for technical assistance;

*(f)* Disseminating civil rights information to workforce development agency staff and workforce development agency contractors, vendors, beneficiaries, and other interested parties; and

*(g)* Acting as civil rights liaison between ODJFS, the workforce development agency, workforce development agency contractors, beneficiaries, and community groups or other organizations concerning civil rights in the delivery of services.

(D) Complaints

Any person may file a written complaint alleging discrimination within ~~six months~~ one hundred eighty days from the date of the alleged discriminatory act. Complaints can be filed with ~~the~~ ODJFS-BCR or the ~~workforce development agency~~United States department of labor, civil rights center (DOL, CRC). ~~Assistance~~The workforce development agency shall make available assistance in drafting and filing complaints ~~shall be made available~~. A complaint is deemed filed when ~~the workforce development agency or~~ ODJFS-BCR receives a written statement sufficiently precise to identify the parties and to describe generally the

action or practices ~~complained of~~for which there is a complaint. ODJFS discrimination complaint forms may be obtained from ~~the~~ ODJFS-BCR or the workforce development agency, but the use of any particular form is not required for the proper filing of a complaint.

~~Any complaint alleging discrimination filed with ODJFS-BCR or a workforce development agency shall contain the following information:~~

(1) Any complaint alleging discrimination filed with ODJFS-BCR shall contain the following information:

~~(1)~~(a) The full name and address of the person making the complaint;

~~(2)~~(b) The full name and address of the covered entity against whom the complaint is made;

~~(3)~~(c) The basis on which the complainant believes the discrimination has occurred:

~~(a)~~(i) Race;

~~(b)~~(ii) Color;

~~(c)~~(iii) Religion;

~~(d)~~(iv) National origin;

~~(e)~~(v) Disability;

~~(f)~~(vi) Age;

~~(g)~~(vii) Gender;

~~(h)~~(viii) Citizenship;

~~(i)~~(ix) Political affiliation or belief; or

~~(j)~~(x) Beneficiary, or participant status;

~~(4)~~(d) A concise statement of the facts that the complainant believes indicate an unlawful discriminatory practice;

~~(5)~~(e) The date or dates of the alleged unlawful discriminatory practice; of if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing acts are alleged to have occurred;

~~(6)~~(f) A statement as to any other action, if any, civil or criminal, instituted in any other forum based upon the same grievance as is alleged in the complaint together with a statement as to the status or disposition of such other action; and

~~(7)~~(g) A statement as to any other action or proceeding in any other forum based upon the same facts as are alleged in the complaint, together with a statement as to the status or disposition of such other action~~;~~.

~~(8)~~(2) The complainant and respondent shall be advised of the results of the investigation, not later than thirty days after the completion of the investigation. The complainant shall also be advised of the right to file a complaint with any appropriate state or federal civil rights enforcement agency~~;~~.

~~(9)~~(3) ~~The~~ ODJFS-BCR ~~will~~shall maintain records that show the nature of the complaint, the details of the investigation, and the actions taken by ODJFS.

(E) Upon receiving a complaint alleging discrimination, the workforce development agency shall do the following:

(1) Forward the complaint to ODJFS-BCR within three working days of the date of receipt;

(2) Make all persons or papers pertaining to a case being handled by ODJFS-BCR available at ODJFS-BCR's request unless doing so would violate state or federal law;

(3) Submit any information requested by ODJFS-BCR not later than fourteen working days from the date of receipt of the request unless otherwise agreed upon;

(4) Cooperate fully with ODJFS-BCR during the course of any investigation;

(5) Not initiate, conduct, or run concurrent investigation(s); and

(6) Not retaliate against the complainant or any person(s) associated with any inquiry conducted by ODJFS-BCR.

~~(E)~~(F) Notice

The workforce development agency and workforce development agency contractors shall have a written nondiscrimination policy that effectively communicates to beneficiaries that the administration, services, assistance, and other benefits of its programs are provided on a nondiscriminatory basis. The workforce development agency and workforce development agency contractors shall, in brochures, pamphlets, or communications~~,~~ that are designed to notify the general public of its services and programs, inform all that the services and programs are provided on a nondiscriminatory basis as required by federal, state, and local civil rights laws, and the policies and procedures of ODJFS. As a result of the organization's commitment to civil rights, the workforce development agency and its contract providers shall also do the following:

(1) Provide notice to beneficiaries, and employees with impaired vision and/or hearing, and individuals who are limited English proficient that, if needed, an interpreter will be provided for them at no charge.

(2) Post in conspicuous places, available to employees and applicants for employment, notices stating that ~~they~~the workforce development agency and its contract providers comply with all applicable federal and state non-discrimination laws. The workforce development agency shall, in all solicitations or advertisements for employees placed by or on behalf of them, state that all qualified applicants shall receive consideration for employment without regard to race, color, national origin, disability, age, gender, religion, ancestry, or veteran status. ~~They will~~The workforce development agency shall incorporate the ~~foregoing~~ requirements of this ~~section of this rule~~paragraph in all of its contracts, grants and other agreements, and ~~will~~shall require all workforce development agency contractors to incorporate ~~these~~the requirements of this paragraph in all subcontracts and subgrants for work performed for or on behalf of the workforce development agency.

(3) Provide notice to beneficiaries of the right to file a complaint if they feel that they have been discriminated against on the basis of race, color, national origin, disability, age, gender, religion, citizenship, political affiliation or belief, beneficiary, or participant status. ~~This~~The notice shall include ~~the name, title and location of the person responsible for receiving the complaint~~the web address, mailing address, fax number, and telephone number of ODJFS-BCR.

~~(F)~~(G) Remedial action

A workforce development agency or workforce development agency contractor

found to be in violation of this rule will be notified in writing within thirty days after completion of the investigation or review. Any action taken by ODJFS to bring the workforce development agency into compliance with this rule will be done pursuant to section ~~5101.24~~5101.241 of the Revised Code. ~~examples~~Examples of remedial action include but are not limited to: corrective action plans or the withholding of funds. The workforce development agency is responsible for compliance by workforce development agency contractors. ODJFS may take action against the workforce development agency pursuant to section ~~5101.24~~5101.241 of the Revised Code if the workforce development agency fails to obtain compliance by the workforce development agency contractor.

Effective: 04/01/2006

Certification

Date

| | |
|---|---|
| Promulgated Under: | 111.15 |
| Statutory Authority: | 121.07(B), 5101.02, 6301.03(C) |
| Rule Amplifies: | 5101.01, 5101.02, 6301.01, 6301.02 |
| Prior Effective Dates: | 10/15/01, 7/1/05 |

5101:2-33-03 **Procedure for complaints of alleged discriminatory acts, policies or practices in the foster care or adoption process that involve race, color or national origin.**

(A) Each public children services agency (PCSA), private child placing agency (PCPA), and private noncustodial agency (PNA) shall provide a written notice of the procedure for any complaints of discrimination in the foster care or adoption process that involve race, color or national origin (RCNO) to all individuals inquiring about or applying to be a foster caregiver or adoptive parent. Such notice shall be provided within seven days of the individual's first contact with the agency.

(B) Any individual may file a complaint alleging a discriminatory act, policy or practice involving RCNO in the foster care or adoption process of a PCSA, PCPA, PNA or the Ohio department of job and family services (ODJFS).

Any person, including but not limited to, an employee or former employee of a PCSA, PCPA, or PNA or a member of a family which has sought to become a foster caregiver or adoptive parent, may also file a complaint alleging that he or she was intimidated, threatened, coerced, discriminated against or otherwise retaliated against in some way by a PCSA, PCPA, PNA or by ODJFS because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing in connection with an allegation that a PCSA, PCPA, PNA or ODJFS engaged in discriminatory acts, policies, or practices as it applies in the foster care or adoption process.

(C) The individual filing a complaint shall use the JFS 02333 "Discrimination Complaint Form". The complaint shall be filed within two years from the date of the occurrence of the alleged discriminatory act; or two years from the date upon which the complainant learned or should have known of a discriminatory act, policy or practice. The complaint may be filed with:

(1) Any PCSA, PCPA or PNA; or,

(2) The ODJFS.

(D) When any complaint alleging discrimination involving RCNO in the foster care or adoption process is received by:

(1) A PCSA, PCPA or PNA, the agency shall forward the complaint to ODJFS within three working days of date of receipt of the complaint.

(2) ODJFS, the department shall notify the PCSA, PCPA, PNA that is the subject of the complaint within three working days of the receipt of the complaint.

(E) ODJFS shall conduct an investigation of the complaint. The PCSA, PCPA or PNA that is the subject of the complaint shall not initiate, conduct, or run concurrent investigations surrounding the complaint or take any further action regarding the complainant or the subject of the complaint until the issuance of the final

investigation report by ODJFS, unless approved by ODJFS.

(F) The PCSA, PCPA or PNA that is the subject of the complaint shall cooperate fully with ODJFS during the course of the investigation and shall submit any information requested by ODJFS not later than fourteen days from the date of the request, unless otherwise agreed upon.

(G) ODJFS shall conduct an investigation that shall include, but is not limited to:

(1) Face-to-face interviews with the complainant, the respondent and all relevant witnesses.

(2) Issuance of a final investigation report to the complainant and the PCSA, PCPA or PNA that is the subject of the complaint. The report shall include the allegations, background information, analysis, determination and recommendations and shall be issued within ninety days of the receipt of the initial complaint.

If unanticipated circumstances require additional time to complete the investigation or to issue the final report, ODJFS will notify the complainant and the PCSA, PCPA, or PNA that is the subject of the complaint of the need for additional time.

(H) Upon completion of the final investigation report, ODJFS shall determine if any action against a PCSA, PCPA or PNA is warranted. For noncompliance by a PCSA, ODJFS may take any action permitted under section 5101.24 of the Revised Code. For noncompliance by a PCPA or PNA, ODJFS may take action concerning the agency's certificate pursuant to Chapter 5101:2-5 of the Administrative Code.

(I) No person who has filed a complaint alleging a discriminatory act , policy or practice involving RCNO in the foster care or adoption process of a PCSA, PCPA or PNA or who has testified, assisted or participated in any manner in the investigation of a complaint shall be intimidated, threatened, coerced, or retaliated against by any employee or contractor of the PCSA, PCPA, PNA or ODJFS.

(J) Nothing in this rule or in an agency's policy shall prohibit an individual from filing a complaint with the United States department of health and human services (HHS), office for civil rights (OCR) alleging discrimination that involves RCNO in the foster care or adoption process of a PCSA, PCPA, PNA or ODJFS.

(K) The requirements of rules 5101:2-33-04 and 5101:2-48-24 of the Administrative Code do not apply to complaints of discrimination in the foster care or adoption process that involve RCNO.

(L) Each PCSA, PCPA or PNA shall provide a written notice of the procedures for any complaints of discrimination in the foster care or adoption process that involve RCNO within thirty days of the effective date to all foster caregivers certified or in

the process of certification and to all individuals who have approved adoptive homestudies or who are participating in the adoptive homestudy process on the effective date of this rule.

Effective:

R.C. 119.032 review dates:

_____

Certification

_____

Date

| | |
|---|---|
| Promulgated Under: | 119.03 |
| Statutory Authority: | 5101.141, 5103.03, 5153.16 |
| Rule Amplifies: | 5103.03, 5153.16 |

# Ohio Department of Job and Family Services

## Office of Employee and Business Services
## Bureau of Civil Rights

Workforce Investment Act
Complaint Procedures Manual

**Ted Strickland, Governor**
**Helen E. Jones-Kelley, Director**

*An Equal Opportunity Employer and Service Provider*
**(March 2008)**

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## I. REGULATORY AUTHORITY

Title VI of the Civil Rights Act of 1964
Department of Justice Regulations at 28 CFR, 42.410, et. seq.
Sections 181 and 188 of the Workforce Investment Act of 1998 (WIA, the Act)
Federal Regulations at 29 CFR, Part 37 ( U.S. Dept. of Labor, **CRC**)
Federal Regulations at 20 CFR, Parts 667.600, et. seq. ( U.S. DOL, **ETA**)

## II. PURPOSE

This complaint procedures manual is designed to provide avenues for the resolution of complaints arising from WIA programs, activities and/or services administered by the Ohio Department of Job and Family Services and its county departments of Job and Family Services. Although there are some differences in the established timelines for the processing and resolution of different kinds of complaints, it is both the implicit and expressed intention of this agency that all persons and/or organizations filing complaints alleging unlawful discrimination shall be afforded fairness and due process in the investigation and resolution of their charges. The agency has created a Bureau of Civil Rights, reporting to the Office of Employee and Business Services.

The Bureau of Civil Rights has responsibility for receiving complaints which allege unlawful discrimination in violation of the statutes and regulations listed above. Any such charges, for which the agency lacks proper jurisdiction, shall be referred to other appropriate civil rights agencies or advocacy groups. WIA-based complaints which allege violations **not** of a discriminatory nature are to be filed with the appropriate local Equal Opportunity Officer. These complaints are characterized as *programmatic* complaints and may be appealed to the Ohio Department of Job and Family Services' Bureau of Civil Rights when the remedy (ies) offered at the local level (is, are) unacceptable. Further discussions regarding the different styles of complaints and the aggrieved parties appeal rights appear in pertinent sections of this manual.

The manual prescribes consistency in the handling of complaints and establishes a uniform framework for equitable treatment of all aggrieved parties, regardless of whether their charges appear to have merit. The Bureau of Civil Rights is available to give advice and technical assistance with the information and procedures described herein. The Bureau can be reached, toll free, at 1-866-BCR-ODJF (227-6353). Inquiries are expected and invited.

## III. DEFINITIONS

ALTERNATIVE DISPUTE RESOLUTION (ADR) A structured mediation process for resolving discrimination complaints.

BUREAU OF CIVIL RIGHTS (BCR) The civil rights arm of the Ohio Department of Job and Family Services (ODJFS), reporting to the Office of Employee and Business Services. The Bureau is responsible for receiving and resolving complaints alleging unlawful discrimination in programs administered by ODJFS.

COMPLAINANT/GRIEVANT A participant/beneficiary or other interested or affected party, alleging violation(s) of laws or regulations governing programs administered by the Ohio Department of Job and Family Services and its county departments of Job and Family Services.

CDJFS A county department of Job and Family Services.

CRC The U.S. Department of Labor's civil rights office (**C**ivil **R**ights **C**enter)

DAY As used in this manual, day means **calendar** day, rather than **business** day.

DISCRIMINATION COMPLAINT
A complaint alleging a violation of law(s) that prohibit discrimination in federally assisted programs on the bases of race, color, religion, sex, national origin, disability, political affiliation or belief and, for Workforce Investment Act (WIA) beneficiaries only, citizenship/status as a lawfully admitted immigrant authorized to work in the United States. WIA participants are also protected against discrimination on the basis of their participant status.

DUE PROCESS The basic procedural rules and principles governing the conduct of administrative and judicial hearings and related personnel processes, assuring fairness to all parties. The absence of due process violates constitutional rights and can be a basis for the reversal of any result reached through the faulty procedure.

EO DATA Statistical information including race, age, sex and disability status of participants and beneficiaries under federally assisted programs. The keeping of such data is required of recipients of federal program funding as one means of monitoring those programs to ensure they are free from unlawful discrimination.

ETA The U.S. Department of Labor's office which oversees its federally funded employment and training programs (**E**mployment & **T**raining **A**dministration).

HEARING A quasi-judicial forum convened and presided over by the Hearing Officer. This proceeding is conducted pursuant to administrative procedures set forth in this manual. A decision is rendered, usually within a specified time period, and includes applicable appeal rights and procedures for filing an appeal.

INFORMAL CONFERENCE A meeting facilitated by the Equal Opportunity Officer during which the facts and circumstances attending a complaint are examined in an effort to informally resolve the complaint. If a mutually agreed upon resolution cannot be achieved, parties are advised of their right to request a hearing.

PARTICIPANT An individual who has been registered pursuant to 20 CFR 663.105,has been determined eligible and is receiving services (except for follow up services) under a program or activity authorized by Title I of the Workforce Investment Act of 1998. Participation commences on the first day.

PROGRAMMATIC COMPLAINT Any complaint which alleges a violation of pertinent law, regulations or policy but does not assert unlawful discrimination.

RESPONDENT The person or entity named in a complaint as being responsible for alleged unfair treatment.

STATE RECIPIENT The Ohio Department of Job and Family Services

## IV. INTRODUCTION

### Background

As a condition to receipt of federal financial assistance, the Ohio Department of Job and Family Services is required to establish and maintain procedures for the receipt, investigation and resolution of complaints filed against it and its programs. Those complaints previously defined herein as *discrimination complaints* are to be filed with the ODJFS Bureau of Civil Rights **or** with the DOL Civil Rights Center. Those complaints falling under the *programmatic* definition will be received and processed, pursuant to the provisions set forth at 20 CFR, Part 667.600, et. seq. and as later described in this manual.

Equal Opportunity Officers have been designated to assure the promptness and coordination of the procedures identified in this manual. These individuals will act as liaison with the Bureau of Civil Rights. For uniformity of operation all county departments of Job and Family Services / WIA administering entities shall use the complaint procedures designed by ODJFS.

### Who may file a complaint?

Complaints may be filed by program participants, clients and/or beneficiaries or other interested parties, affected or potentially affected by an alleged violation. Other possible complainants may include: service providers, staff of grant recipients, applicants, labor unions, community- based organizations and local elected officials.

### Time limits for filing complaints/holding hearings

*Programmatic* complaints which are filed in connection with WIA-funded programs must be filed within one year of the date of the incident or treatment which caused the complaint. Hearings are to be held within thirty (30) days of the dates of receipt of complaints.

*Discrimination* complaints must be filed within 180 days of the date of the alleged discriminatory act or treatment.

Differences in complaint handling procedures Under the Workforce Investment Act of 1998.There are two distinct methods of processing complaints, depending upon the nature of the allegation(s) which has/have been made. The following discussion provides some clarification of the differences in the manner in which these different complaints are to be handled:

*Discrimination* complaints which are filed against WIA-funded programs or activities may be filed with BCR or with the **U. S.Department of Labor Civil Rights Center**. These complaints may include any of the bases identified under the definition given on page 3 of this manual. (See also: § 188 of WIA-29 USC 2938)Pursuant to 29 CFR § 37.76(c), individuals filing these complaints must also be provided the opportunity for **Alternative Dispute Resolution(ADR)** in place of the customary process. The intention of this alternative procedure is to provide a less adversarial forum for complaint resolution (more on this later). Disposition of these complaints, must be effected within 90 days of the date of receipt and must include notice of the right to appeal an adverse decision to DOL.

*Programmatic* complaints (AKA grievances) are also addressed under WIA {§ 181(c)} and federal regulations at 20 CFR667.600, et. seq. These complaints are not discrimination-based and are to be initially filed at the local level. The regulations further provide for an opportunity for an informal resolution and a hearing to be completed within 60 days of the date of filing of the complaint. If no decision is reached or the decision is unsatisfactory to either party, either party may appeal to the state (ODJFS Bureau of Civil Rights). The state entity then has 30 days to issue a decision which, if unacceptable, is appealable to the **Secretary of Labor**, to the attention of the Assistant Secretary for Employment and Training.

## V. AGENCY ADDRESSES

The following addresses are provided for the information and convenience of Equal Opportunity Officers and other individuals who may be using this manual and/or who may require assistance regarding receiving, processing and resolving complaints:

Ohio Department of Job and Family Services
Office of Employee and Business Services, Bureau of Civil Rights
30 East Broad Street, 37th floor
Columbus, Ohio 43215-3414

Ohio Department of Job and Family Services
Office of Legal Services
30 East Broad Street, 31st floor
Columbus, Ohio 43266-0423

U.S. Department of Labor
Civil Rights Center
200 Constitution Ave., N.W., Room N-4123
Washington, DC, 20210

U.S. Department of Labor
Office of the Secretary
Attention: ASET
Washington, DC, 20210

## VI. PROGRAMMATIC COMPLAINTS (local level)

LWIA grant recipients and sub recipients shall follow the procedures set forth at 20 CFR 667.600, et. seq. for resolving any complaint alleging a violation of WIA ("the Act"),the regulations promulgated there under, grants or other agreements under the Act. Procedures shall also provide for the resolution of complaints about the results of monitoring findings, investigations and audits.

Where efforts to informally resolve complaints have failed, local procedures shall provide for a hearing and decision within sixty (60) days of the date of filing of the complaint.

Such hearing shall include written notice of the date, time and place of the hearing; an opportunity to present both written evidence and testimony and a written decision based solely on the evidence/testimony presented; and, notice of appeal rights.

If a decision is not rendered within sixty (60) days of the date of filing of the complaint or if the decision is not acceptable to the Complainant and/or Respondent, either party has the right to request a review of the complaint by the State Recipient. The request for review must be made *in writing* within ten (10) days of receipt of the Hearing Officer's decision. If no timely decision has been rendered, the request for review must be made within fifteen (15) days of the date on which a timely decision **should have been received**.

The State Recipient shall issue a determination within thirty (30) days of the date of receipt of the request for review. A request for review of a local level decision is to be forwarded to the State Recipient Bureau of Civil Rights at the address shown on the previous page of this manual.

## VII. PROGRAMMATIC COMPLAINTS (State Recipient level)

In addition to receiving requests for review of local level decisions, the State Recipient will receive and process complaints relating to workforce investment programs when any of the following conditions apply:

- a complaint involves a conflict/dispute between the State Recipient and a local level entity (LWIA recipient or sub recipient);
- a complaint involves more than one local level entity;
- a complaint is directly related to the operations or responsibilities of the State Recipient **and/or**:
- local level time limits and/or procedures have not been adhered to.

Upon receiving a complaint which has not *exhausted* local level administrative remedies, the State Recipient shall, pursuant to 20 CFR 667.600(c)(3), **remand** the complaint to the local level for processing and resolution. Any necessary technical assistance will be provided by the ODJFS Bureau of Civil Rights.

## VIII. FRAUD AND ABUSE

Information and/or complaints alleging program fraud, abuse or other criminal activity is/are to be reported through the Department of Labor's Incident Reporting System. The format for reporting such information/complaints may be obtained from the Department of Labor. The federal agency responsible for investigation of these issues is the Department's Office of Inspector General and is located at the following address:

U. S. Department of Labor
Office of Inspector General, Office of Investigations
200 Constitution Avenue, NW, Room S 5514
Washington, D. C. 20210
**Hotline Phone Number: 1-800-347-3756**

## IX. ALTERNATIVE DISPUTE RESOLUTION (ADR)

Due to the increased emphasis placed on non-adversarial means of resolving complaints which allege unlawful discrimination in WIA-funded programs and activities, this manual section will be devoted to a discussion of ADR and will provide some insight into one model which has been successful in settling contentious issues. With the advent of the Workforce Investment Act of 1998 and the subsequent issuance of nondiscrimination regulations at 29 CFR, Part 37, the Department of Labor's Civil Rights Center has become an advocate of ADR.

Although the regulations do not specifically name the form which ADR should take, it appears that mediation is one method which is gaining popularity and acceptance. There are several models which are currently in use and training is offered through a number of highly credible sources. We offer, for consideration, the **seven stage** model and believe it to be easily understood and employed. Mediation is defined as an informal, structured process in which a third party, called a mediator helps disputing parties generate options for reaching a mutually acceptable solution. There are a number of "key" features which characterize all mediation procedures and those are:

- Mediation is usually a voluntary process
- Mediations are most often private and confidential
- Mediation can be used before or after filing a lawsuit
- Disputing parties maintain control over the outcome
- Mediation encourages the disputing parties to focus on their interests rather than positions
- Mediation allows the parties to agree on creative win/win solutions that courts do not have the time to design or the authority to order
- Mediation tends to mend, maintain, and even strengthen the relationship of disputing parties, whereas, litigation can often damage relationships
- Mediated agreements are often achieved quicker than court judgments
- Voluntary compliance rates for mediated agreements are substantially higher than court judgments

It is clear that a voluntary process can be more conducive to settling disputes and resolving complaints. Individuals who are **willing** to participate in such procedures **are** certainly more likely to focus on interests rather than positions. Having stated that much, as a working premise, we will now list the seven stage mediation model.

*STAGE 1* *INTRODUCTION* This is the first formal contact between the parties and the mediator. The mediator should identify the parties, define mediation, explain the mediation process and establish ground rules.

*STAGE 2* *PROBLEM DETERMINATION* The mediator asks each party to relate his/her account of the dispute. The mediator's function is to facilitate the flow of this information by using effective communication skills.

*STAGE 3* *SUMMARIZING* After each party has completed his/her description of the dispute, the mediator should summarize. The words used by the mediator in the summary must be neutral and nonjudgmental. It is important that the summary accurately reflect the content and emotion of each party's description.

*STAGE 4* *ISSUE IDENTIFICATION* The mediator assists the parties in identifying and presenting all underlying issues that will be addressed in the mediation.

*STAGE 5* *GENERATION AND EVALUATION OF ALTERNATIVES* The parties are responsible for proposing their own alternatives for resolving the dispute. The parties continue to discuss alternatives that may bring about a resolution of the dispute.

*STAGE 6* *SELECTION OF APPROPRIATE ALTERNATIVES* The parties either agree on which alternative(s) will best resolve their dispute or decide that mediation is not the appropriate method for resolving their dispute.

*STAGE 7* *CONCLUSION* If agreement is reached, the mediation should conclude with a final restatement and clarification of the terms of the agreement. If agreement is not reached, the mediator should summarize any progress made toward resolving the dispute.

It is not practical to go into great detail concerning the skills and abilities which are essential for the mediation process. The information supplied herein is intended to be introductory and Equal Opportunity Officers are encouraged to avail themselves of any mediation training that may be offered by their respective employment and training communities. Further information and assistance is available through the ODJFS Bureau of Civil Rights.

## X. NOTIFICATION OF RIGHTS AND BENEFITS

### Orientation

Upon enrollment into WIA Programs/activities, individuals shall be advised of their rights, responsibilities and benefits obtaining from participation in programs.(29 CFR 37.36).They shall also be provided a written description of complaint procedures available to them including notification of their right to file complaints and instructions on how to do so. The local level Equal Opportunity (EO) Officer will also ensure that orientations include discussions of rules of conduct and any applicable disciplinary policies. All other potential complainants will be advised and provided a description of complaint procedures at the time the question of a complaint arises. The accepted document for these procedures is the **WIA SUMMARY OF COMPLAINT RIGHTS**, last revised in October, 2007.

### Complaint Procedures

Complaint procedures will include the following elements:

An opportunity to file a written complaint. Before any filing date can be established, any complaint must be reduced to writing. Equal Opportunity Officers shall be available to assist complainants and to provide information concerning the rights and responsibilities which are afforded by the complaint process.

When a complaint alleges unlawful *discrimination*, the Equal Opportunity Officer shall refer the complaint to the ODJFS Bureau of Civil Rights. (The EO Officer should also ensure that the Complainant understands that he/she may file his/her complaint directly with the Department of Labor's Civil Rights Center (**CRC**), if he or she chooses to do so.)

Upon receipt of a discrimination complaint, BCR will offer Alternative Dispute Resolution as an option for resolution of the complaint. If the parties are not agreeable to this, BCR will then utilize the customary process identified at 29 CFR, Part 37.76, including a fact-finding investigation, Investigative Report(s) on the issue(s), and notice of the right to appeal the decision to the U. S. Department of Labor's Civil Rights Center when the proposed resolution is unsatisfactory.

*Programmatic* complaints shall be filed initially at the local level and shall include the procedures set forth at 20 CFR, Parts 667.600, et. seq., including an opportunity for informal resolution. Where informal resolution efforts fail, complainants shall be offered an opportunity for a hearing and decision within sixty (60) days of the date the complaint was filed. When a complainant is dissatisfied with the local level Hearing Officer's decision, he/she will have the right of appeal to the ODJFS Bureau of Civil Rights (see also pages 6 and 7 of this manual).

As with *discrimination* complaints, each step of the complaint process will be documented in order for there to be a complete record available for any appeal and subsequent review. (Examples of letters and other documentation are provided in the attachment index of this manual)

The Hearing Officer's written decision shall include:

- the reason(s) for the decision(findings of fact, conclusions and any remedies);
- a statement as to whether local level procedures, as specified in this manual, have been followed; *and,*
- notice of the right to request a review by the State Recipient(ODJFS Bureau of Civil Rights), including applicable time limits, when any party disagrees with any aspect of the decision.

**Confidentiality**

To the maximum extent possible, the identity of any person providing information related to or assisting in an investigation of a possible violation of the Act, regulations, grant or other agreement under the Act shall be kept confidential. An individual's identity may, however, need to be disclosed if such disclosure is essential to assure a fair determination of the issues. The identities of all persons giving testimony at a hearing must be disclosed.

**Prohibition Against Retaliation**

No recipient shall discharge or in any manner discriminate or retaliate against or deny any individual benefits to which they are entitled because the individual has filed a complaint, instituted or caused to be instituted any proceeding under the Act, regulations, grant or other agreement under the Act; has testified or is about to testify, assisted or participated in any manner in an investigation, proceeding or hearing under the procedure. The existence of remedies under this procedure **shall not preclude** pursuit of any other non-WIA remedies for conduct that violates the Act and also violates a federal statute other than WIA or a state or local law.(§ 184(f) of WIA and 29 CFR § 37.11)

## XI. ROLES AND RESPONSIBILITIES

**Equal Opportunity Officer**

LWIA grant recipients, sub recipients and county departments of Job and Family Services shall designate individuals to monitor complaint procedures and to ensure that all ODJFS programs and activities are operated in a nondiscriminatory manner. The ODJFS Bureau of Civil Rights will provide initial and continuing training and technical assistance for these individuals in order to assure their effectiveness in carrying out their duties. Local elected officials, agency executive directors and members of governing boards/commissions shall not serve as Equal Opportunity Officers.

*Equal Opportunity Officers and their alternates shall:*

act independently and without fear of intimidation or retaliation and have direct access to the decision maker( in the course of complaint investigation, resolution and/or referral, the Equal Opportunity Officer may find it necessary to suggest or bring about changes in policy or practice to

correct deficiencies which have adversely affected the Complainant or other individuals)

*Equal Opportunity Officers (and alternates) shall perform the following:*

1. determine the nature of each complaint and the procedures applicable for processing it;

2. receive and/or, if needed, assist complainant in writing the complaint; immediately log the complaint, listing: the name, address and phone number of the Complainant, the grounds or basis for the complaint, the date the complaint was filed, the person(s) and/or organization(s) against whom the complaint is filed, and any other pertinent information;

3. within ten (10) days:

4. begin to prepare an administrative case file and record of the complaint;

5. submit a copy of the complaint to ODJFS Bureau of Civil Rights and continue to forward documentation, as the status of the complaint changes;

6. notify appropriate field staff that a complaint has been filed;

7. investigate to ascertain pertinent facts;

8. determine if proper procedures have been followed (for example: if an individual is complaining about being unfairly terminated or being denied benefits or services, is there adequate record of action(s) taken and were those actions consistent with agency policy?);

9. attempt informal resolution;

10. make **recommendations** based on the fact-finding investigation and information obtained during the informal conference;

11. coordinate the hearing process and assist the Hearing Officer.

12. Within ten (10) days of receipt of a **Programmatic Complaint**, the local area Equal Opportunity Officer should have conducted a fact finding investigation and scheduled an **Informal Conference**. The purpose of the conference is to bring the parties together to discuss the issues and to examine evidence and make recommendations which may lead to a resolution. If a resolution is reached, the EO Officer will prepare a brief **Statement of Resolution**, identifying the issue(s) and the action(s)/remedy(ies) to be taken to assure settlement of the matter. This statement will be reviewed by the parties to assure they are in agreement. If the resolution is agreeable to both the Complainant and Respondent, they will be asked to sign and date the document. The EO Officer will also sign and date the statement, provide a copy to each party, and place the original in the case file. This would close the case.

If the Informal Conference does not result in a resolution, the parties will be provided written notice of their right to request a hearing. Formats for this notice, witness notification letters, hearing rights and responsibilities notifications and other pertinent documents are included in the attachments section of this manual.

As discussed previously, **Discrimination Complaints** relating to WIA-funded programs/activities may be filed with either the ODJFS Bureau of Civil Rights or the U. S. Department of Labor, Civil Rights Center. Resolution of these complaints **is not** under the jurisdiction of WIA Hearing Officers. They are to be investigated by EO Officers or their counterparts at either ODJFS or the Civil Rights Center. Complainants must be provided a **Notice of Final Action,** no later than ninety (90)days from the date of filing their complaints. They must also be informed of their right to file with CRC if: a. they have not received a timely decision or b. they have received a decision they are dissatisfied with.

**Hearing Officer**

A specific individual and an alternate shall be designated by each LWIA grant recipient to function in a quasi-judicial capacity in relation to **Programmatic Complaints** filed by WIA applicants, participants and/or other beneficiaries or interested parties wishing to allege a violation of the Workforce Investment Act of 1998, its regulations, a grant or some other agreement under the Act. As with Equal Opportunity Officers, local elected officials, agency executive directors and members of governing boards/commissions shall not serve as Hearing Officers. WIA funds may be used to reimburse Hearing Officers for their services. It is suggested that a cap of twenty-five dollars per hour be adopted for Hearing Officer reimbursement so that a uniform standard may be applied for these services. The Hearing Officer might be a person from a city, county or state legal department, legal aid organization or some other person who possesses administrative experience.

*Standards to be used in the selection of Hearing Officers are:*

- The Hearing Officer shall be an impartial third party and must have complete independence in obtaining facts and making decisions. Whatever the organizational structure of the LWIA grant recipient, the Hearing Officer must be in a position to render an impartial decision.

- The Hearing Officer shall not be subordinate to any LWIA grant recipient staff involved in administration of WIA programs/activities.

- The Hearing Officer shall not in any way be involved in the issue(s) causing the complaint.

*Responsibilities within the scope of the Hearing Officer's role include:*

1. receiving and reviewing a complete case file prior to the hearing;
2. identifying the nature of the action to determine if there is an alleged violation of the Act, regulations, grant or other agreement under the Act or a misapplication of personnel policies/procedures;
3. attempting to informally resolve the complaint at any time circumstances arise that indicate the possibility of informal resolution;

4. supplying a hearing agenda;
5. defining Complainant's and Respondent's rights;
6. directing parties to appear(notices are to be sent via certified mail, return receipt requested, to assure proper notification has been made);
7. stating the purpose of the hearing;
8. receiving evidence and reserving the right to exclude irrelevant, immaterial or repetitive evidence;
9. disposing of procedural questions;
10. exercising discretion in the separation of witnesses;
11. eliciting testimony from and questioning witnesses;
12. avoiding the appearance of impropriety and conflict of interest;
13. considering and evaluating facts, evidence and arguments;
14. determining appropriate remedies;
15. making complete record including any materials that would be relevant to an appeal/request for review;
16. preparing a tape recorded transcript of the hearing;
17. rendering and disseminating a decision to all parties and/or their representatives, as well as to the ODJFS Bureau of Civil Rights;
18. including applicable appeal rights at the end of the written decision.

## XII. HEARING PROCEDURES, DOCUMENTS AND DUE PROCESS (local level)

### Request for Hearing

Upon receiving the notice of the right to request a hearing, the parties to a **Programmatic Complaint** should, within sixteen (16) days of the date of filing of the complaint, consider the facts of the case and decide whether to request a hearing. If either party requests a hearing the Equal Opportunity Officer shall direct the request to the Hearing Officer. A hearing must be held within thirty (30) days of the date of filing of the complaint.

*The written request for hearing shall include but not necessarily be limited to:*

- the name, address and telephone number of the Complainant;
- the name, address and telephone number of the attorney or other representative, if any, for the Complainant;
- the name(s), address(es) and telephone number(s) of the party(ies) whom the complaint is against;
- the names and addresses of witnesses (for Complainant and/or Respondent);
- the date the request is being submitted;
- the date of the informal conference, and,
- the signature (s) of the party (ies) requesting the hearing.

## Notification of Hearing

The notification of hearing shall be provided to the parties within five (5) days after receipt of the request for hearing, via certified mail, return receipt requested. *Because it is necessary to safeguard the rights of* ***both the Complainant and Respondent****, the notice of hearing shall include, but not necessarily be limited to:*

- written notice of the date time and place of the hearing, the manner in which it will be conducted and the issues to be decided;
- the purpose of and necessity for attending the hearing;
- the opportunity to request rescheduling of the hearing for good cause;
- the opportunity to withdraw the request for hearing (this must be in writing);
- the opportunity to be represented by an attorney or other representative;
- the opportunity to bring documentary evidence and to have witnesses called (names and addresses must be provided to the Hearing Officer for proper witness notification);
- the opportunity to have "ordinary course of business" records/documents produced by their custodian;
- the opportunity to present testimony and oral arguments and to question all parties and/or witnesses to the complaint;
- the availability of further information or assistance ( this will include an address and telephone number for the local level Equal Opportunity Officer).

## Conduct of Hearing

The hearing should be conducted in a manner which avoids unnecessary technicalities (such as legal requirements which would be mandatory in court proceedings). It should provide flexibility for case by-case adjustment to the circumstances presented.
full regard should be given to the requirements of due process, including the right to an impartial Hearing Officer and a fair hearing;

- the Hearing Officer may attempt to negotiate a resolution any time that the parties appear receptive to such negotiations;
- the Hearing Officer will establish criteria for the participation of interested parties;
- the Hearing Officer should begin the hearing by summarizing the issue(s): He/she should explain the manner in which the hearing will be conducted, making certain that everyone understands the proceedings; such explanations should be adapted to the needs of the specific situation;
- the Hearing Officer shall take testimony under oath or affirmation;
- the Hearing Officer ***shall not advocate*** for any party;
- burden of proof will be upon the party (ies) who originally filed the complaint.

*The hearing will be generally conducted as follows:*

Complainant makes his/her/their opening statement, outlining the facts they intend to prove and the relief sought (it may be necessary for the Hearing Officer to make an initial statement regarding the need for this statement to be **brief**-complainants, at times believe this to be the only opportunity they

will get to present their story, and, as a result, may think they should state their entire case);

- Respondent makes opening statement, outlining position being taken;
- Complainant presents case-in-chief: Respondent given opportunity to cross-examine;
- Respondent presents case-in-chief: Complainant given opportunity to cross-examine;
- rebuttal evidence is presented
- Complainant makes his/her closing statement;
- Respondent makes his/her/its closing statement;
- closing remarks, if any, from Hearing Officer, and, adjournment.

Although we have previously stated that the hearing should be conducted in a manner which avoids unnecessary technicalities, hearing officers may find it expedient to apply rules of procedure in order to ensure that the proceedings are fair and that all parties behave with decorum and respect toward one another **and** that they accord the Hearing Officer the respect due that officer. Additionally, it is important for the Hearing Officer to obtain the most complete information for the record. Therefore, if the parties, or their representatives, do not know how to ask pertinent and relevant questions, it may be necessary for the Hearing Officer to ask questions to ensure all material and relevant facts are brought forth.

**Hearing Officer's Decision**

The Hearing Officer's written decision shall be submitted, no later than sixty (60) days from the date of filing of the complaint, to all parties, their representatives and the ODJFS Bureau of Civil Rights. The standard of proof shall be by a preponderance of the evidence. The opinions, conclusions and any remedy (ies) ordered shall be based on all the evidence presented at the hearing. *In clear, simple language, the decision shall include the following:*

- a statement that a hearing was held on a specific date and time at which the parties, their representatives and/or witnesses appeared and were heard;
- a list of those in attendance;
- a clear and concise statement of the issues;
- a synopsis of the facts, based on the entire record disclosed at the hearing;
- the opinions and statement of the reasons for the decision;
- the conclusions, based on findings of fact, and a statement indicating the remedies to be applied;
- appeal rights (notification of the parties' right to request a review by the ODJFS Bureau of Civil Rights);
- The Hearing Officer shall sign and date the decision which will then be sent out to the parties via certified mail, return receipt requested.

**Record of Hearing**

A complete record shall be made of the hearing using tape recording equipment. Care should be taken to ensure that the recording is of sufficient quality so that it may be fully understood during any subsequent review. Court Reporters are not recommended due to the prohibitively high cost of these services. The record will substantiate the procedures followed by the LWIA grant recipient in

resolving the complaint and shall be available for any further review.

**Request for Review** (ODJFS)

Generally, no request for review will be accepted by the ODJFS Bureau of Civil Rights until LWIA grant recipient level administrative remedies have been exhausted. Complaints which have not exhausted these remedies shall be **remanded** to the local level, *unless one or more of the following apply:*

- the LWIA grant recipient has not acted within the time frames;
- the LWIA grant recipient's procedures are not in compliance;
- the complaint involves a dispute between two or more LWIA grant recipients **or** between a local entity and ODJFS;
- the complaint relates directly to other operations or responsibilities of the State Recipient (ODJFS).

Any party to the complaint has ten (10) days from the date of receipt of the Hearing Officer's decision **or** fifteen (15) days from the date on which the decision ***should have been received*** to request a review with the ODJFS Bureau of Civil Rights (see also page 6 of this manual).

The ODJFS Bureau of Civil Rights Reviewer may uphold the local level Hearing Officer's decision, in whole or in part, or provide a hearing and decision within thirty (30) days of the date of receipt of the request for review. The Reviewer's decision is the Governor's final decision. If the ODJFS Reviewer fails to provide a timely decision (within thirty days of receipt of a request for review), **or** if either party is dissatisfied with the decision, a complaint may be filed with the Secretary, U. S. Department of Labor, Washington, DC 20210, to the attention of the Assistant Secretary for Employment and Training (ASET).

## XIII. PREHEARING CONFERENCE (Programmatic Complaints filed at ODJFS)

When, because of one or more of the circumstances outlined above, a programmatic complaint is filed initially with the ODJFS Bureau of Civil Rights, the State Recipient has in place a pre-hearing conference protocol which is designed to afford maximum opportunity for informal resolution of the issues and for saving the time and money of the parties to the complaint. Although the pre-hearing conference cannot guarantee resolution of the complaint, it may result in the resolution of some of the issues, thereby simplifying the matter for hearing.

*The objectives of the prehearing conference are:*

- where feasible, simplification of the issues;
- itemization of any applicable monetary amounts;
- to effect any necessary amendment(s) to the complaint;
- the exchange of reports, affidavits, citations of the Act, regulations and any other pertinent documents and to exchange the names of any expert witnesses expected to be called for a hearing;
- examine the possibility of obtaining stipulations of fact, documents and other exhibits which will avoid unnecessary proof;

- **specify** the kinds of documents and/or relief required to resolve the complaint;
- afford the opportunity for discovery by opposing parties (representatives for the parties must have the authority to resolve issues through negotiations and they must be prepared to spend sufficient time and effort in negotiations which may require more than one meeting);

The parties must bring all pertinent files, records and other documents to the pre-hearing conference. In any subsequent hearing, the Hearing Officer may exclude from evidence any files or such materials **not marked** as exhibits during the pre-hearing conference. The pre-hearing conference is a requirement for the receipt and processing of these complaints and cannot be waived.

When all informal resolution efforts have been exhausted and there are issues which remain unresolved, the parties shall be afforded opportunity for a State Recipient level hearing under the same general procedures outlined on pages 13, 14 and 15 of this manual. ODJFS shall designate hearing officials who will be responsible for ensuring the elements of due process provided for by the procedures set forth herein, including the right to file a complaint with the Secretary of Labor.

## XIV. PERFORMANCE STANDARDS/REORGANIZATION PLANS

LWIA grant recipients are responsible for meeting performance standards set forth under §136 of the Act and any subsequent state-issued requirements. If those performance standards are not met and failure to meet them persists, the Governor may impose a reorganization plan. If objecting to the plan, the LWIA grant recipient may file a complaint with the ODJFS Bureau of Civil Rights. A pre-hearing conference (as discussed in section XIII. of this manual) will be scheduled. If the complaint remains unresolved, an opportunity for a State Recipient level hearing will be given.

If the decision of the Hearing Officer is unsatisfactory to the LWIA grant recipient, an appeal may be made to the Secretary of Labor, no later than sixty (60) days from the date of receipt of the decision.(see page 16, final ¶ of section XII.)

## XV. LABOR STANDARDS

Complaints alleging violations of §181(b) of the Act may be submitted to the Secretary of Labor, by either party to the complaint, when:

- the complainant has exhausted the procedures set forth at 20 CFR 667.600; **or**
- the sixty (60) day time period has elapsed without a decision; **or**
- the State Recipient decision is unsatisfactory [the time limit for appeal of an adverse decision to the Secretary of Labor is sixty (60) days].

## XVI. ATTACHMENT INDEX

A. Notification of Adverse Action

B. Programmatic Complaint letter

C. Notice of Informal Conference letter

D. Sample format for Statement of Resolution

E. Notice of Right to Request a Hearing letter

F. Notification of Hearing letter

G. Witness Notification letter

H. Outline for Hearing Officer's Decision

Attachment A

## NOTICE OF ADVERSE ACTION

Participant Name_____ Date_____

Work/Training Site_____

Supervisor/Instructor Name_____

Action to be taken: ( ) Oral Reprimand ( ) Written Reprimand
( ) Suspension ( ) Probationary removal
( ) termination

Statement of Offense: (List the reasons for the action taken or recommended–poor attendance, insubordination, poor performance, etc. Cite the authority for the action established policy and procedure, work/training rules and provide notice of the date the action is to become effective)

Reason(s) for Action:

Basis(es) for Action:

Effective date:

Notice to the Affected Party: You have the right to appeal this action. If you wish to file a *Programmatic* Complaint, it must be filed within one (1) year of any alleged unfair treatment. If you wish to file a *Discrimination* Complaint, you must file within 180 days of the alleged unlawful discrimination. It is requested that you sign this notice to ACKNOWLEDGE RECEIPT but not necessarily AGREEMENT with the action being taken.

_____ _____
(Signature of affected party) (Signature of authorized official)

_____ _____
(Date) (LWIA grant recipient)

_____
(Date)

Attachment B

## PROGRAMMATIC COMPLAINT LETTER

Name_____ Telephone Number_____

Home Address_____

City_____ County_____

Work/Training Site_____

Job Title or Training Type_____

Description of what occurred: (Please state the facts which prompted the complaint, including the name and address of the party(ies) against whom the complaint is made; the date of the incident or treatment causing the complaint; the names of any witnesses; any documents or evidence and the remedy being requested. Attach additional sheets, if necessary.)

_____ _____

(Complainant's signature) (Equal Opportunity Officer)

_____ _____

(Date) (Date complaint received)

Attachment C

## NOTICE OF INFORMAL CONFERENCE

Date

Inside Address

Dear_____:

This is in response to your complaint filed _____. Please be advised that an informal conference has been scheduled for _____. If you have any conflicts with this date and time, please advise me immediately.

Yours Truly,

_____
(Name of Equal Opportunity Officer)

Reference Initials

Enclosure(s) (if any)

Attachment D

## STATEMENT OF RESOLUTION

Statement of Issues: (Background)

Summary of Proposed Remedy/Settlement: (Requires mutual understanding and agreement upon terms and conditions)

Comments: (This should include language which shows that all parties understand and accept the terms and conditions of the resolution. It must not appear in any way coercive or exclusionary nor can it preclude the right of any party to file another complaint.)

| | |
|---|---|
| _____ | _____ |
| (Complainant's signature) | (Equal Opportunity Officer) |
| _____ | _____ |
| (Date) | (Date complaint received) |
| | _____ |
| | (Respondent's representative) |

Attachment E

## NOTICE OF RIGHT TO REQUEST A HEARING

Date

Inside Address

Dear_____:

Since we were not able to informally resolve your complaint, filed on_____, you are hereby advised of your right to request a hearing. If you wish to have a hearing, you must give me your written request within sixteen (16) days of the date your complaint was filed. Your request should include the following information:

1. Your full name, address and telephone number.

2. The name, address and telephone number of your attorney/representative, if any.

3. The name, address and telephone number of the person against whom you are complaining.

4. Any amendment(s) you may wish to make to your complaint.

5. The name(s) and address(es) of any witness(es) you wish to appear on your behalf.

6. The date you are sending this request.

7. The date of the informal conference.

8. Your signature.

Your request will be forwarded to the Hearing Officer who will provide notice of the hearing and of procedural rights. If you have questions or need further assistance, please contact me at (telephone number)

Yours Truly,

_____, Equal Opportunity Officer

Reference Initials

Attachment F

## NOTIFICATION OF HEARING

Date

Inside Address

Dear_____:

The_____ WIA program has designated me to conduct a hearing in the matter of_____v._____. The issue(s) appear(s) to be_____.

Listed below is an summary of the responsibilities assigned to me as well as those of the Complainant and Respondent:

The Hearing Officer will have complete independence in obtaining facts and making decisions regarding the complaint.

You have the opportunity to withdraw the request for hearing, in writing, no later than three (3) days prior to the scheduled date of the hearing. You will have the opportunity to request a rescheduling of the hearing for good cause.

You will be given full opportunity to be heard.

You have the right to be represented at the hearing by counsel or any representative you choose.

All parties have the right to hear the entire testimony and evidence produced against them; to know the claims or charges against them.

All parties have the right to offer evidence and witnesses in their behalf and to rebut or explain testimony or evidence against them. This includes the right of cross-examination or explanation in support of positions or contentions.

You have the opportunity to have records and/or documents relevant to the issues to be decided at the hearing produced by their custodian when such records or documents are kept by or for the recipient or subcontractor in the ordinary course of WIA business.
State law gives the Hearing Officer subpoena power to call witnesses for testimony (Ohio Revised Code § 5101). Please submit the names and addresses of witnesses whom you wish to appear on your behalf as soon as possible.

The Hearing Officer has the responsibility for providing a written decision, setting forth the findings of fact and giving reasons for the decision after the hearing is held. The conclusions or opinions in the decision will be governed by and based on all the evidence adduced at the hearing.

The Hearing Officer may enter a default judgment granting the relief requested against any party who, without just cause, does not appear and argue their case at the scheduled time and place.

Applicable appeal rights and the procedures for doing so will accompany the decision.

You are, therefore, directed to appear at the hearing scheduled for_____ @_____ a.m. The location for the hearing will be_____ _____. If you have questions, please call_____ _____, Equal Opportunity Officer, @_____.

Sincerely,

_____, Hearing Officer

Reference initials

Attachment G

## WITNESS NOTIFICATION

Date

Inside Address

Dear_____:

The_____, local recipient of WIA funding, has appointed me to conduct a hearing in the matter of _____, Complainant v._____, Respondent. After reviewing the subject case file in preparation for the hearing, I find it necessary to call you to present testimony. You are therefore directed to appear at the hearing scheduled for_____, @_____a.m. The location of the hearing will be_____.

Sincerely,

_____, Hearing Officer

Reference Initials

Attachment H

**(OUTLINE FOR HEARING OFFICER'S DECISION)**

**UNDER THE WORKFORCE INVESTMENT ACT**
**OF 1998, As Amended**

In the Matter of:

Date of hearing:_____
Date of Issuance: _____

_____,
Complainant;

LWIA Grant Recipient
DECISION
Complaint No._____

v.

_____,
Respondent.

**********

ISSUE(S):

(This portion of the written decision identifies the cause of action for the complaint...why did the Complainant file his/her charge? What service(s), program(s) and or benefit(s) does he/she claim have been denied and how was this violative of his/her rights under WIA?)

PROCEDURES or, PROCEDURAL MATTERS:

(This should contain a summarization of any preliminaries which led up to the hearing, acknowledgement that parties were duly notified of the hearing date, time, and place and that witnesses, if any, were requested to appear, including their connection(s) with the case, the Complainant and/or Respondent.)

FINDINGS OF FACT:

(This section of the decision contains the facts adduced during the hearing, through submission of documentary and testimonial evidence. What has been provided to support Complainant's charges? What kinds of rebuttal evidence/testimony has Respondent produced to support the action(s) taken? This section is often best compiled, based on the chronological order of events, leading up to the filing of the complaint, followed by the production of evidence and results of the taking of testimony during the hearing itself.)

CLAIMANT'S (COMPLAINANT'S) ARGUMENTS:

(What has the Complainant asserted regarding why and how he/she has been harmed? What kind(s) of argument(s) has he/she advanced which would support his/her allegations and are any of those arguments supported by fact(s)? Does the record show, for example, that the Complainant did everything he/she was required to do to establish eligibility for the service(s), program(s) and/or benefit(s) which he/she claims have been unfairly or unlawfully denied?)

RESPONDENT'S ARGUMENT(S)/REBUTTAL OF CHARGE:

(What kind of defense has the Respondent advanced, what documentation has been produced to support the action(s) taken? What, if any, regulations, policies and procedures have been produced by the Respondent, showing that it acted properly, without being arbitrary or capricious in the decision(s) taken?)

CONCLUSIONS OF LAW AND POLICY:

(What portions of the Workforce Investment Act of 1998 and its regulations at 20 CFR, Part 652, et. al., apply to the circumstances, events and actions which have been represented? Are there any such citations which expressly prohibit the actions taken by Respondent? Are there any which support Complainant's assertion(s)? And, are there any other applicable laws and/or constitutional tenets which either support or refute the position(s) of either party?)

ANALYSIS:

(Based on all of the evidence and testimony taken and the application of law, policy and regulation, where does the preponderance of the evidence lead? Does the Complainant's case hold merit or are his/her arguments insubstantial? If, as Hearing Officer, you are compelled to find in favor of the Complainant, in whole or in part, consider what if any remedy might be appropriate.)

DECISION:

(In this final action section of the decision, it is time to either support the Complainant's charge(s) or the Respondent's rebuttals. If the Complainant has produced prevailing evidence and arguments it is appropriate to fashion a remedy, if there is clearly a means of doing so: reinstatement into a program; retrospective and/or prospective relief, etc. If, on the other hand, Respondent has produced clear and convincing evidence, Complainant's requested relief must be denied.)

APPEAL RIGHTS:

(This portion of the decision gives the parties the option of appealing the decision to the Ohio Department of Job and Family Services, Bureau of Civil Rights, if one or the other party (or, conceivably, both) is/ are dissatisfied with the outcome. The appeal must be filed within ten (10) days of the date of receipt of the decision or within fifteen (15) days of the date it should have been received.) BCR is located at the following address:

Ohio Department of Job and Family Services
Bureau of Civil Rights
30 East Broad Street, 37th floor
Columbus, Ohio 43215-3414

The Hearing Officer shall sign and date the decision.

# Non-Discrimination Laws and Guidance

## Executive Summary - FNS Instruction 113-1

The instruction has been revised to ensure increased accountability and efficiency at all levels – from local agencies to Headquarters FNS. The efforts to revise the instruction are the results of an intense partnering process over the past three years. The last major revision of the instruction was in the mid 1980s. Revisions to the instruction primarily reflect the legislative changes that have occurred over the past several years. The new document merges all of the previous, independent 113 series instructions into a single instruction. It provides a clearer explanation of roles and responsibilities, and it removes ambiguity regarding the process of managing complaints of discrimination. The title has been changed from Policy on Nondiscrimination to Civil Rights Compliance and Enforcement – Nutrition Programs and Activities. The following describes the major changes made to each section of the instruction.

### Section I – Purpose

The bases for discrimination (race, color, national origin, age, sex, or handicap) were removed from the purpose statement and an all encompassing phrase was added, so that the last part now reads "....enforcement of the prohibition against discrimination in all FNS nutrition programs and activities, whether Federally funded in whole or not."

### Section II – Authority

Repealed citations were culled and several relevant citations were added:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-6
- Americans with Disabilities Act (28 CFR Part 35, Public Law 101-336, Title II, Subtitle A).
- Title IX of the Education Amendments of 1972, and USDA Implementing Regulation, 7 CFR 15a.
- Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, and USDA Implementing Regulation, 7 CFR 15b
- Age Discrimination Act of 1975 (45 CFR Part 91).
- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and Department of Justice Memorandum dated January 28, 1999 on Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant Type Programs.
- Civil Rights Restoration Act of 1987.
- Food Stamp Act of 1977, as amended.
- Enforcement of Title VI of the Civil Rights Act of 1964 B National Origin Discrimination Against Persons With Limited English Proficiency.
- USDA Departmental Regulation 4330-2, Activities Receiving USDA Financial Assistance.
- USDA Regulation 7 CFR 16, Equal Opportunity for Religious Organizations.

Program Appendices include additional authorities.

## Section III - Policy

Several terms have changed in order to reflect current legislation, and several categories of protected classes have been added to certain programs. Now the policy reads:

The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. **(Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TTY).**

The instruction provides additional clarification by explicitly stating the 8 protected bases for the Food Stamp Program and the Food Distribution Program on Indian Reservations and the 6 protected bases for all other FNS nutrition assistance programs.

## Section IV - Applicability

This section was not changed. All programs and activities administered by FNS in which Federal financial assistance or other services are provided to the public by a State agency, local agency or other subrecipients are covered by this FNS instruction.

## Section V - Definitions

Several new terms have been added to this revised instruction as result of new legislation and new OMB reporting requirements. Other new terms are the result of changes in how we operate. The addition of alternative dispute resolution (ADR) is an example. All of the definitions used in the instruction have been reworded where necessary to provide a clearer understanding of their meaning and application.

New definitions include: Alternative Dispute Resolution, Beneficiaries, Corrective Action Plan, Disability, Federal Financial Assistance with Commodities added later as a category, Local Agency or other subrecipient, Memorandum of Understanding, Participants, Program Compliance Review, Prohibited Bases, Project Area Special Compliance Retail Food Store (Retailer), Review, Standard Operating Procedures, State Agency, Subrecipient, Underserved Group or Community.

## Section VI - Responsibilities

To help ensure accountability and compliance with this instruction we have clarified responsibilities and addressed delegations of authority where applicable.

- USDA's Office of Civil Rights is assigned staff responsibility for the development, implementation, coordination and *enforcement* of all aspects of the Department's civil rights program.
- The FNS Administrator is assigned line responsibility for implementing a comprehensive civil rights program that ensures nondiscrimination compliance in all FNS programs and activities.
- Regional Administrators provide direction, leadership and resources to ensure proper implementation of the regional civil rights compliance program.
- Regional Civil Rights Directors in collaboration with appropriate regional program and administrative staff will provide technical and operational assistance, direction and leadership in implementing the civil rights policies of FNS programs, as well as, processing, managing and facilitating resolution of civil rights complaints in accordance with guidance from FNS headquarters Civil Rights Division.

**Section VII - Limited English Proficiency**

All of the provisions in this section are relatively new. State agencies are directed to consider a number of different factors in determining meaningful access for persons of limited English proficiency. Among the primary factors to be considered are the:

- number or proportion of LEP persons in the fully eligible service population,
- frequency with which LEP individuals come in contact with the program,
- importance of the service provided by the program, and
- resources available to the recipient.

**Former Part One – Interagency Coordination and Responsibilities**

This has been deleted as a section; however, the contents have been incorporated throughout the revised instruction.

**Section VIII – Equal Opportunity for Religious Organizations**

This section is a recent addition due to the promulgation of USDA Regulation 7 CFR 16, Equal Opportunity for Religious Organizations to ensure the elimination of unwarranted barriers to the participation of faith-based organizations in USDA programs.

**Section IX - Public Notification**

This section makes it clear that all FNS assistance programs must include a public notification system. Program availability was added as a primary function of the State public notification system, and a provision for web-based information was created. The purpose of a State public notification system is to inform potential eligibles, applicants and participants of:

- program availability,
- program rights and responsibilities,

- nondiscrimination policy, and
- procedures for filing a complaint.

## Section X - Assurances

No changes. Compliance with all nondiscrimination laws, regulations, instructions and guidelines is required and, where applicable, the assurance can be incorporated into the Federal/State/local/subrecipient agency agreement.

As in the past, FNS Regional Offices are responsible for reviewing, approving and monitoring FNS/State agency agreements. State agencies are responsible for monitoring compliance with the agreements that cover their respective programs. State agencies are also responsible for reviewing, approving and monitoring local agency and other subrecipient agreements.

## Section XI - Civil Rights Training

Two new areas of training have been added, and responsibilities for performing training have been clarified. This training may be carried out as part of ongoing technical assistance.

The Regional Offices and State agencies will be responsible for training the State agency staffs to include civil rights compliance in all aspects of program operations.

State agencies are responsible for training local agencies. Local agencies are responsible for training their subrecipients. Individuals identified as front line staff must be trained annually.

Specific subject areas include, but are not limited to:

- Collecting and using data,
- Effective public notification systems,
- Complaint procedures,
- Compliance review techniques,
- Resolution of noncompliance,
- Requirements for reasonable accommodation of persons with disabilities,
- Conflict Resolution, and
- Customer Service.

## Section XII - Data Collection and Reporting

Recent OMB reporting requirements directed the changes made to this section. In addition, State and local agencies were given more specific responsibilities to perform trend analysis on potential eligible populations, applicants and participants identified by racial, ethnic and linguistic category in their program service area. The procedures to

collect, evaluate, report and analyze this data are program-specific, and are set forth in the specific program administrative regulations, policies, instructions and guidelines.

## Section XIII - Compliance Reviews

This section has been significantly revised based on statutory requirements, and has been rewritten to provide clearer instructions. While major headings are the same, the content has been augmented; notably, paragraphs on review content now include examples of data and information to be collected and questions to be asked to aid in making a review determination.

A paragraph on Corrective Action has been added.

Reports of alleged noncompliance made by the media, grassroots organizations or advocacy groups has been added to the list of situations for which a Special Compliance Review should be conducted.

## Section XIV - Resolution of Noncompliance

Examples of prohibited discrimination were consolidated and a new one was added – *Selecting members for planning and advisory bodies in such a way as to exclude persons from membership on the basis of race, color, .....*

Negotiating with local agencies or subrecipients to achieve compliance was added to the responsibilities of the State agency.

The actions to be taken by each level of government in the process of resolving noncompliance have been further clarified to reflect USDA civil rights requirements and accountability criteria.

## Former Part Six – Compliance Work Plan

This part was deleted.

## Section XV - Complaints of Discrimination

Primary changes to this section reflect the requirements of the FNS Memorandum of Understanding with USDA OCR on complaint processing and resolution that directs FNS actions. Some specific changes to this section are:

- The complainant must be advised of confidentiality and Privacy Act applications. The complainant and the entity that the complaint is filed against will be encouraged to resolve the issue at the lowest possible level and as expeditiously as possible and in accordance with ADR guidelines.
- The use of a standardized complaint form is encouraged, and collaboration and coordination are encouraged during the revision or development of new forms or complaint related documents.

- A consent release provision and form were added.

### Section XVI – Guidelines for Processing Civil Rights Complaints

This section contains information that was formerly included in the following section to add clarity. This section describes broad responsibilities of FNS while the following section is more specific.

### Section XVII - Procedures for Processing and Resolving Complaints of Discrimination

Responsibilities of State agencies, local agencies or other subrecipients in regard to discrimination complaint processing are set out in USDA regulations implementing civil rights laws and, in some instances, in program regulations. State Agencies are required to:

- maintain a processing system for discrimination complaints;
- process complaints within the time frames established by Departmental regulations and agreements;
- submit a description of the agency's discrimination complaint/grievance processing system to the FNS Regional Office for review;
- forward all complaints alleging discrimination on the basis of age, except as noted in the program specific appendix, to the appropriate Regional OCR within 5 working days after receipt.

FNS Headquarters Civil Rights Division and USDA Office of Civil Rights will maintain responsibility for oversight of FNS Regional Office actions in regard to processing complaints of discrimination. This includes monitoring and evaluation during civil rights compliance reviews and ongoing monitoring and assessments of the complaint processing systems in place nationwide.

### Appendices

These appendices are a major change to the instruction. They provide program specific guidance to include the legislative and regulatory authority, and the unique aspects of each program.

- Appendix A – Food Stamp Program
- Appendix B – Child Nutrition Program
- Appendix C – Food Distribution Programs
- Appendix D – Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and WIC Farmers' Market Nutrition Program (FMNP)
- Appendix E – provides sample complaint processing form letters
- Appendix F – depicts the complaint processing and procedures flow chart.

## THE AMERICANS WITH DISABILITIES ACT

### What Is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) of 1990 provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, state and local government services, public accommodations, transportation, and telecommunications.

### Who Is Protected Under the ADA?

The ADA protects ***qualified individuals with disabilities***. An ***individual with a disability*** is a person who has a physical or mental impairment that substantially limits major life activities; has a record of such an impairment; or is regarded as having such an impairment. ***Major life activities*** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. Under the ADA, ***a qualified individual with a disability*** is an individual with a disability who meets the essential eligibility requirements for receipt of services or participation in programs or activities. Whether a particular condition constitutes a disability within the meaning of the ADA requires a case-by-case determination.

***Physical or mental impairments*** include, but are not limited to: visual, speech, and hearing impairments; mental retardation, emotional illness, and specific learning disabilities; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; orthopedic conditions; cancer; heart disease; diabetes; and contagious and non-contagious diseases such as tuberculosis and HIV disease (whether symptomatic or asymptomatic).

### What Is Title II of the ADA?

Title II of the ADA prohibits discrimination against ***qualified individuals with disabilities*** on the basis of disability in all programs, activities, and services of public entities. Public entities include state and local governments and their departments and agencies. Title II applies to all activities, services and programs of a public entity.

The Office for Civil Rights (OCR) within the U.S. Department of Health and Human Services has been designated enforcement responsibility under Title II of the ADA for state and local health care and human service agencies.

**Specific Requirements**

Public entities **may not**:

Refuse to allow a person with a disability to participate in, or benefit from, their services, programs or activities because the person has a disability.

Apply eligibility criteria for participation in programs, activities and services that screen out or tend to screen out individuals with disabilities, unless they can establish that such criteria are necessary for the provision of services, programs or activities.

Provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.

Public entities **must**:

Provide services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

Make reasonable modifications in their policies, practices and procedures to avoid discrimination on the basis of disability, unless they can demonstrate that a modification would fundamentally alter the nature of their service, program or activity.

Ensure that individuals with disabilities are not excluded from services, programs and activities because buildings are inaccessible.

Provide auxiliary aids to individuals with disabilities, at no additional cost, where necessary to ensure effective communication with individuals with hearing, vision, or speech impairments. (Auxiliary aids include such services or devices as: qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for the deaf [TDDs], videotext displays, readers, taped texts, brailled materials, and large print materials.)

# SECTION 504 OF THE REHABILITATION ACT

## What Is Section 504?

**Section 504 of the Rehabilitation Act of 1973 is a national law that protects *qualified* individuals from discrimination based on their disability.** The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS). These organizations and employers include many hospitals, nursing homes, mental health centers and human service programs.

Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.

## Who Is Protected from Discrimination?

Section 504 protects ***qualified individuals with disabilities.*** Under this law, ***individuals with disabilities*** are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of, or who are regarded as having a physical or mental impairment that substantially limits one or more major life activities, are also covered. Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. Some examples of impairments which may substantially limit major life activities, even with the help of medication or aids/devices, are: AIDS, alcoholism, blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, drug addiction, heart disease, and mental illness.

In addition to meeting the above definition, for purposes of receiving services, education or training, ***qualified individuals with disabilities*** are persons who meet normal and essential eligibility requirements.

For purposes of employment, ***qualified individuals with disabilities*** are persons who, with reasonable accommodation, can perform the essential functions of the job for which they have applied or have been hired to perform. (Complaints alleging employment discrimination on the basis of disability against a single individual will be referred to the U. S. Equal Employment Opportunity Commission for processing.) ***Reasonable accommodation*** means an employer is required to take reasonable steps to accommodate your disability unless it would cause the employer undue hardship.

## Prohibited Discriminatory Acts in Health Care and Human Services Settings

Section 504 prohibitions against discrimination apply to service availability, accessibility, delivery, employment, and the administrative activities and responsibilities of organizations receiving Federal financial assistance. A recipient of Federal financial assistance may not, on the basis of disability:

> Deny qualified individuals the opportunity to participate in or benefit from federally funded programs, services, or other benefits.
>
> Deny access to programs, services, benefits or opportunities to participate as a result of physical barriers.
>
> Deny employment opportunities, including hiring, promotion, training, and fringe benefits, for which they are otherwise entitled or qualified....

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# Title VI, Civil Rights Act of 1964

---DISCLAIMER---

**§2000d Prohibition against exclusion from participation in, denial of benefits of, and discrimi federally assisted programs on ground of race, color or national origin**

No person in the United States shall, on the ground of race, color, or national origin, be excluded from p be denied the benefits of, or be subjected to discrimination under any program or activity receiving Fed assistance.

**§2000d-1. Federal authority and financial assistance to programs or activities by way of gran contract other than contract of insurance or guaranty; rules and regulations; approval by Pre compliance with requirements; reports to Congressional committees; effective date of admin action**

Each Federal department and agency which is empowered to extend Federal financial assistance to any activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, reg orders of general applicability which shall be consistent with assistance in connection with which the act No such rule, regulation, or order shall become effective unless and until approved by the President . Co any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal t continue assistance under such program or activity to any recipient as to whom there has been an expr the record, after opportunity for hearing, of a failure to comply with such requirement, but such termina shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a fin made and, shall be limited in its effect to the particular program, or part thereof, in which such noncom been so found, or (2) by any means authorized by law: Provided, however, That no such action shall be department or agency concerned has advised the appropriate person or persons of the failure to comply requirement and had determined that compliance cannot be secured by voluntary means. In the case o terminating, or refusing to grant or continue, assistance because of failure to comply with a requiremen pursuant to this section, the head of the Federal department or agency shall file with the committees of Senate having legislative jurisdiction over the program or activity involved a full written report of the ci and the grounds for such action. No such action shall become effective until thirty days have elapsed af such report.

**§2000d-2. Judicial review; administrative procedure provisions**

Any department or agency action taken pursuant to section 602, shall be subject to such judicial review otherwise be provided by law for similar action taken by such department or agency on other grounds. action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person a (including any State or political subdivision thereof and any agency of either) may obtain judicial review in accordance with section 10 of the Administrative Procedures Act, and such action shall not be deeme unreviewable agency discretion within the meaning of that section.

**§2000d-3. Construction of provisions not to authorize administrative action with respect to e**

**practices except where primary objective of Federal financial assistance is to provide employ**

Nothing contained in this subchapter shall be construed to authorize action under this title by any depar agency with respect to any employment practice of any employer, employment agency, or labor organi where a primary objective of the Federal financial assistance is to provide employment.

**§2000d-4. Federal authority and financial assistance to programs or activities by way of cont insurance or guarantee**

Nothing in this subchapter shall add to or detract from any existing authority with respect to any progra under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

**§2000d-4a. "Program or activity" and "program" defined**

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of of --

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local g

(B) the entity of such State or local government that distributes such assistance and each such departm (and each other State or local government entity) to which the assistance is extended, in the case of as State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education;

(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Educ 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorshi or

(ii) which is principally engaged in the business of providing education, health care, housing, social serv and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assis extended, in the case of any other corporation, partnership, private organization, or sole proprietorship

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2),

any part of which is extended Federal financial assistance.

**§2000d-5. Prohibited deferral of action on applications by local educational agencies seeking funds for alleged noncompliance with Civil Rights Act**

The Secretary of Education shall not defer action or order action deferred on any application by a local agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Educatior [20 U.S.C. 2701 et. seq.], by the Act of September 20, 1950 (Public Law 815, Eighty-first Congress) [2 seq.], by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 631 et seq. Cooperative Research ACt [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provi subchapter for more than sixty days after notice is given to such local agency of such deferral unless su is given the opportunity for a hearing as provided in section 2000d-1 of this title, such hearing to be hel days of suchnotice, unless the time for such hearing is extended by mutual consent of such local agenc

Secretary, and such deferral shall not continue for more than thirty days after the close of any such hea there has been an express finding on the record of such hearing that such local educational agency has comply with the provisions of this subchapter: *Provided,* That, for the purpose of determining whether a educational agency is in compliance with this subchapter, compliance by such agency with a final order a Federal court for the desegregation of the school or school system operated by such agency shall be c compliance with this subchapter, insofar as the matters covered in the order or judgment are concernec

**§ 2000d-6. Policy of United States as to application of nondiscrimination provisions in school educational agencies**

**(a) Declaration of uniform policy**

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civ 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendme U.S.C. 2000d-5] dealing with conditions of segregation by race, whether dejure or de facto, in the scho educational agencies of any State shall be applied uniformly in all regions of the United States whatever cause of such segregation.

**(b) Nature of uniformity**

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such may be provided pursuant to law applied uniformly to de facto segregation wherever found.

**(c) Prohibition of construction for diminution of obligation for enforcement or compliance wi nondiscrimination requirements**

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activi required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]

**(d) Additional funds**

It is the sense of the Congress that the Department of Justice and the Secretary of Education should re additional funds as may be necessary to apply the policy set forth in this section throughout the United

**§2000d-7. Civil rights remedies equalization**

**(a) General provision**

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United State Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq], or the provisions of any other Federal statute pro discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including at law and in equity) are available for such a violation to the same extent as such remedies are availabl violation in the suit against any public or private entity other than a State.

**(b) Effective date**

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in after October 21, 1986.

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# Title VII,Civil Rights Act of 1964, as amended

Section 2000e-16, Employment by Federal Government

**a) Discriminatory practices prohibited; employees or applicants for employment subject to cc**

All personnel actions affecting employees or applicants for employment (except with regard to aliens en the limits of the United States) in military departments as defined in section 102 of title 5, in executive defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those u Government of the District of Columbia having positions in the competitive service, and in those units o and judicial branches of the Federal Government having positions in the competitive service, and in the Congress shall be made free from any discrimination based on race, color, religion, sex, or national orig

**b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regul annual review and approval of national and regional equal employment opportunity plans; re evaluation of equal employment opportunity programs and publication of progress reports; c with interested parties; compliance with rules, regulations, etc.; contents of national and reg employment opportunity plans; authority of Librarian of Congress**

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall h to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinst hiring of employees with or without back pay, as will effectuate the policies of this section, and shall iss regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibiliti section. The Equal Employment Opportunity Commission shall -

(1) be responsible for the annual review and approval of a national and regional equal employment opp which each department and agency and each appropriate unit referred to in subsection (a) of this sectic in order to maintain an affirmative program of equal employment opportunity for all such employees an for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment oppor programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations rel employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, ar which shall include a provision that an employee or applicant for employment shall be notified of any fir on any complaint of discrimination filed by him thereunder. The plan submitted by each department, ag shall include, but not be limited to -

(1) provision for the establishment of training and education programs designed to provide a maximum for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment ( the principal and operating officials of each such department, agency, or unit responsible for carrying ou employment opportunity program and of the allocation of personnel and resources proposed by such de agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equ Employment Opportunity Commission shall be exercised by the Librarian of Congress.

**(c) Civil action by employee or applicant for employment for redress of grievances; time for b action; head of department, agency, or unit as defendant**

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in s of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or natio brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or Equal Employment Opportunity Commission on appeal from a decision or order of such department, age until such time as final action may be taken by a department, agency, or unit, an employee or applicant employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action c complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the hea department, agency, or unit, as appropriate, shall be the defendant.

**(d) Section 2000e-5(f) through (k) of this title applicable to civil actions**

The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions bro hereunder, and the same interest to compensate for delay in payment shall be available as in cases inv nonpublic parties.. (FOOTNOTE 1) (FOOTNOTE 1) So in original.

**(e) Government agency or official not relieved of responsibility to assure nondiscrimination i employment or equal employment opportunity**

Nothing contained in this Act shall relieve any Government agency or official of its or his primary respor assure nondiscrimination in employment as required by the Constitution and statutes or of its or his res under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

## REFERENCES IN TEXT

This Act, referred to in subsec. (e), means Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, knc Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (Sec. 2000a et s complete classification of this Act to the Code, see Short Title note set out under section 2000a of this t Executive Order 11478, as amended, referred to in subsecs. (c) and (e), is set out as a note under sect this title.

## AMENDMENTS

1991 - Subsec. (c). Pub. L. 102-166, Sec. 114(1), substituted `90 days` for `thirty days'. Subsec. (d). 166, Sec. 114(2), inserted before the period `, and the same interest to compensate for delay in payme available as in cases involving nonpublic parties.` 1980 - Subsec. (a). Pub. L. 96-191 struck out `(othe General Accounting Office)` after `in executive agencies`.

## EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-166 effective Nov. 21, 1991, except as otherwise provided, see section 402 102-166, set out as a note under section 1981 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96-191.

## TRANSFER OF FUNCTIONS

`Equal Employment Opportunity Commission` substituted for `Civil Service Commission` in subsecs. (b pursuant to Reorg. Plan No. 1 of 1978, Sec. 3, 43 F.R. 19807, 92 Stat. 3781, set out as a note under se of this title, which transferred all equal opportunity in Federal employment enforcement and related fun in Civil Service Commission by subsecs. (b) and (c) of this section to Equal Employment Opportunity Co certain authority delegable to Director of Office of Personnel Management, effective Jan. 1, 1979, as pr section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, set out as a note under section 200 title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981a, 2000e, 5057 of this title; title 2 sections 60l, 1202; title 5 7201, 7702, 7703; title 22 sections 3905, 4131; title 29 section 794a.

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# Title IX,Education Amendments of 1972

## (Title 20 U.S.C. Sections 1681-1688)

**Section 1681. Sex**

**(a) Prohibition against discrimination; exceptions.** No person in the United States shall, on the ba excluded from participation in, be denied the benefits of, or be subjected to discrimination under any ec program or activity receiving Federal financial assistance, except that:

**(1) Classes of educational institutions subject to prohibition**

in regard to admissions to educational institutions, this section shall apply only to institutions of vocatio professional education, and graduate higher education, and to public institutions of undergraduate high

**(2) Educational institutions commencing planned change in admissions**

in regard to admissions to educational institutions, this section shall not apply (A) for one year from Jur nor for six years after June 23,-1972, in the case of an educational institution which has begun the proc changing from being an institution which admits only students of one sex to being an institution which a of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary (B) for seven years from the date an educational institution begins the process of changing from being which admists only students of one sex to being an institution which admits students of both sexes, but carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the

**(3) Educational institutions of religious organizations with contrary religious tenets**

this section shall not apply to any educational institution which is controlled by a religious organization i application of this subsection would not be consistent with the religious tenents of such organization;

**(4) Educational institutions training individuals for military services or merchant marine**

this section shall not apply to an educational institution whose primary purpose is the training of individ military services of the United States, or the merchant marine;

**(5) Public educational institutions with traditional and continuing admissions policy**

in regard to admissions this section shall not apply to any public institution of undergraduate higher edu an institution that traditionally and continually from its establishment has had a policy of admitting only one sex;

**(6) Social fraternities or sororities; voluntary youth service organizations**

this section shall not apply to membership practices --

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 2( membership of which consists primarily of students in attendance at an institution of higher education, (

(B) of the Young Men's Christian Association, Young Women's Christian Association; Girl Scouts, Boy Sc Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which ha: been limited to persons of one sex and principally to persons of less than nineteen years of age;

**(7) Boy or Girl conferences**

this section shall not apply to--

(A) any program or activity of the American Legion undertaken in connection with the organization or o Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for--

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls conference; or

(ii) the selection of students to attend any such conference;

**(8) Father-son or mother-daughter activities at educational institutions**

this section shall not preclude father-son or mother-daughter activities at an educational institution, but activities are provided for students of one sex, opportunities for reasonably comparable activities shall b students of the other sex; and

**(9) Institutions of higher education scholarship awards in "beauty" pageants**

this section shall not apply with respect to any scholarship or other financial assistance awarded by an i higher education to any individual because such individual has received such award in any pageant in w attainment of such award is based upon a combination of factors related to the personal appearance, pc of such individual and in which participation is limited to individuals of one sex only, so long as such pag compliance with other nondiscrimination provisions of Federal law.

**(b) Preferential or disparate treatment because of imbalance in participation or receipt of Fe benefits; statistical evidence of imbalance.**

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institu preferential or disparate treatment to the members of one sex on account of an imbalance which may e respect to the total number or percentage of persons of that sex participating in or receiving the benefit federally supported program or activity, in comparison with the total number or percentage of persons c any community, State, section, or other area: *Provided*, that this subsection shall not be construed to p consideration in any hearing or proceeding under this chapter of statistical evidence tending to show tha imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or a members of one sex.

**(c) Educational institution defined.**

For the purposes of this chapter an educational institution means any public or private preschool, eleme secondary school, or any institution of vocational, professional, or higher education, except that in the c educational institution composed of more than one school, college, or department which are administrat units, such term means each such school, college or department.

**Section 1682. Federal administrative enforcement; report to Congressional committees**

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is and directed to effectuate the provisions of section 1681 of this title with respect to such program or ac issuing rules, regulations, or orders of general applicability which shall be consistent with achievement c objectives of the statute authorizing the financial assistance in connection with which the action is taker regulation, or order shall become effective unless and until approved by the President. Compliance with requirement adopted pursuant to this section may be effected (I) by the termination of or refusal to gra continue assistance under such program or activity to any recipient as to whom there has been an expr the record, after opportunity for hearing, of a failure to comply with such requirement, but such termina shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a fin made, and shall be limited in its effect to the particular program, or part thereof, in which such noncom been so found, or (2) by any other means authorized by law: *Provided, however*, that no such action sh until the department or agency concerned has advised the appropriate person or persons of the failure t the requirement and has determined that compliance cannot be secured by voluntary means. In the cas terminating, or refusing to grant or continue, assistance because of failure to comply with a requiremen pursuant to this section, the head of the Federal department or agency shall file with the committees of Senate having legislative jurisdiction over the program or activity involved a full written report of the ci and the grounds for such action. No such action shall become effective until thirty days have elapsed af such report.

**Section 1683. Judicial Review**

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such ju may otherwise be provided by law for similar action taken by such department or agency on other grou case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue fi assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 c person aggrieved (including any State or political subdivision thereof and any agency of either) may obt review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall r committed to unreviewable agency discretion within the meaning of section 701 of that title.

**Section 1684. Blindness or visual impairment; prohibition against discrimination**

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied any course of study by a recipient of Federal financial assistance for any education program or activity; herein shall be construed to require any such institution to provide any special services to such person t blindness or visual impairment.

**Section 1685. Authority under other laws unaffected**

Nothing in this chaper shall add to or detract from any existing authority with respect to any program o which Federal financial assistance is extended by way of a contract of insurance or guaranty.

**Section 1686. Interpretation with respect to living facilities**

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be cc prohibit any educational institution receiving funds under this Act, from maintaining separate living facil different sexes.

**Section 1687. Interpretation of "program or activity"**

For the purposes of this title, the term "program or activity" and "program" mean all of the operations c

(I)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local go

(B) the entity of such State or local government that distributed such assistance and each such departm

(and each other State or local government entity) to which the assistance is extended, in the case of as State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; (

(B) a local educational agency (as defined in section2854(a)(10) of this title, system of vocational educa school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship or

(ii) which is principally engaged in the business of providing education, health care, housing, social serv and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assis extended, in the case of any other corporation, partnership, private organization, or sole proprietorship;

(4) any other entity which is established by two or more of the entities described in paragraph (l), (2) o

any part of which is extended Federal financial assistance, except that such term does not include any c entity which is controlled by a religious organization if the application of section 1681 if this title to such would not be consistent with the religious tenets of such organization.

**Section 1688. Neutrality with respect to abortion**

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, t pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this secti construed to permit a penalty to be imposed on any person or individual because such person or individ or has received any benefit or service related to a legal abortion.

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# Section 504, Rehabilitation Act of 1973

**Section 794. Nondiscrimination under Federal grants and programs; promulgation of rules ar**

**(a) Promulgation of rules and regulations**

No otherwise qualified individual with a disability in the United States, as defined in section 706 (20) of solely by reason of his or her disability, be excluded from the participation in, be denied the benefil subjected to discrimination under any program or activity receiving Federal financial assistance or unde or activity conducted by any Executive agency or by the United States Postal Service. The head of eac shall promulgate such regulations as may be necessary to carry out the amendments to this section Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of any propo shall be submitted to appropriate authorizing committees of the Congress, and such regulation may t earlier than the thirtieth day after the date of which such regulation is so submitted to such com

**(b) "Program or activity" defined**

For the purposes of this section, the term "program or activity" means all of the operations (

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local g

(B) the entity of such State or local government that distributes such assistance and each such departr (and each other State or local government entity) to which the assistance is extended, in the case of a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher educ

(B) a local educational agency (as defined in section 8801 of Title 20), system of vocational education, system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole propriet

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorsh or

(ii) which is principally engaged in the business of providing education, health care, housing, social ser and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial a extended, in the case of any other corporation, partnership, private organization, or sole propriet

(4) any other entity which is established by two or more of the entities described in paragraph (l), (2) c of which is extended Federal financial assistance.

**(c) Significant structural alterations by small providers**

Small providers are not required by subsection (a) to make significant structural alterations to their ex for the purpose of assuring program accessibility, if alternative means of providing the services is availa used in this subsection shall be construed with reference to the regulations existing on March 2

**(d) Standards used in determining violation of section**

The standards used to determine whether this section has been violated in a complaint alleging en discrimination under this section shall be the standards applied under title I of the Americans with Dis 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Am Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections related to emplo

**Section 794a. Remedies and attorney fees**

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 16), including the application of sections 706(f) through 706 (k) [42 U.S.C. 2000e-5(f) through k)] sha with respect to any complaint under section 791 of this title, to any employee or applicant for employm by the final disposition of such complaint, or by the failure to take final action on such complaint. In f equitable or affirmative action remedy under such section, a court may take into account the reasonal cost of any necessary work place accommodation, and the availability of alternative therefor or other ap in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assist provider of such assistant under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee a costs.

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**April 27, 2007** DOL Home > OASAM

# Age Discrimination Act of 1975

(42 U.S.C. Sections 6101-6107)

-- Privacy and Security Statement --
---DISCLAIMER---

**Section 6101. Statement of purpose**

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities r Federal financial assistance.

**Section 6102. Prohibition of discrimination**

Pursuant to regulations prescribed under section 6103 of this title, and except as provided by section 6 title and section 6103(c) of this title, no person in the United States shall, on the basis of age, be exclu participation, in be denied the benefits of, or be subjected to discrimination under, any program or acti Federal financial assistance.

**Section 6103. Regulations**

(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-di regulations; effective date.

(1) Not later than one year after the transmission of the report required by section 6106(b) of this title, one-half years after November 28, 1975, whichever occurs first, the Secretary of Health and Human Se publish in the Federal Register proposed general regulations to carry out the provisions of section 6102

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period

(i) the forty-five day period specified in section 6016(e) of this title, and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during w committee of the Congress having jurisdiction over the subject matter involved may conduct hearings w the report which the Commission is required to transmit under section 6106(d) of this title, and with re comments and recommendations submitted by Federal departments and agencies under section 6106(e

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), shall publish in the Federal Register final general regulations to carry out the provisions of section 6106 after taking into consideration any comments received by the Secretary with respect to the regulations under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a of each federal department or agency which extends Federal financial assistance to any program or acti grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to th and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of t provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be c the final general regulations issued by the Secretary, and shall not become effective until approved by t

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section sh before July 1, 1979.

**(b) Nonviolative actions; program or activity exemption.**

(1) it shall not be a violation of any provision of this chapter, or of any regulation issued under this chap person to take any action otherwise prohibited by the provisions of section 6102 of this title if, in the pr activity involved--

(A) Such action reasonably takes into account age as a factor necessary to the normal operation or the any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this chapter shall not apply to any program or activity established under authority which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) es criteria for participation in age-related terms or describes intended beneficiaries or target groups in sucl

**(c) Employment practices and labor-management joint apprenticeship training program exen Discrimination in Employment Act unaffected.**

(1) Except with respect to any program or activity receiving Federal financial assistance for public servic under the Workforce Investment Act of 1998 (29 USC 9201 *et seq.*), nothing in this chapter shall be cor authorize action under this chapter by any Federal department or agency with respect to any employme any employer, employment agency, or labor organization, or with respect to any labor-management joi apprenticeship training program.

(2) Nothing in this chapter shall be construed to amend or modify the Age Discrimination in Employmen (29 U.S.C. §§ 621-634) as amended, or to affect the rights of responsibilities of any person or party pu Act.

**Section 6104. Enforcement**

(a) Methods of achieving compliance with regulations.

The head of any Federal department or agency who prescribes regulations under section 6103 of this tit to achieve compliance with any regulation--

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involve recipient with respect to whom there has been an express finding on the record, after reasonable notice opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

**(b) Limitations on termination of, or on refusal to grant or to continue, assistance; disbursen withheld funds to achiever agencies.**

Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) of this section

limited to the particular political entity or other recipient with respect to which a finding has been made subsection (a)(1) of this section. Any such termination or refusal shall be limited to its effect to the part or activity, or part of such program or activity, with respect to which such finding has been made. No su or refusal shall be based in whole or in part on any finding with respect to any program or activity whicl receive Federal financial assistance. Whenever the head of any Federal department or agency who pres regulations under section 6103 of this title withholds funds pursuant to the subsection (a) of this sectior accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or r private organization or agency, or State or political s ubdivision thereof, which demonstrates the ability goals of the Federal statute authorizing the program or activity while complying with regulations issued 6103 of this title.

**(c) Advice as to failure to comply with regulation; determination that compliance cannot be s voluntary means**

No action may be taken under subsection (a) of this title until the head of the Federal department or ag has advised the appropriate person of the failure to comply with the regulation involved and has determ compliance cannot be secured by voluntary means.

**(d) Report to congressional committees**

In the case of any action taken under subsection (a) of this section, the head of the Federal departmen involved shall transmit a written report of the circumstances and grounds of such action to the committ House of Representative and the Senate having legislative jurisdiction over the program or activity invo action shall take effect until thirty days after the transmission of any such report.

**(e) Injunctions; notice of violations; costs; conditions of actions**

(1) When any interested person brings an action in any United States district court for the district in wh defendant is found or transacts business to enjoin a violation of this Act by any program or activity rece financial assistance, such interested person shall give notice by registered mail not less than 30 days pr commencement of that action to the Secretary of Health and Human Services, the Attorney General of t States, and the person against whom the action is directed. Such interested person may elect, by a den relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the co including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be the court in which the action will be brought, and whether or not attorney's fees are being demanded in plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is br same alleged violation by the same defendant is the subject of a pending action in any court of the Unit (B) if administrative remedies have not been exhausted.

**(f) Exhaustion of administrative remedies**

With respect to actions brought for relief based on an alleged violation of the provisions of this chapter, remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrativ during which time the Federal department or agency makes no finding with regard to the complaint, or that the Federal department or agency issues a finding in favor of the recipient of financial assistance, v occurs first.

**Section 6105. Judicial review**

(a) Revisions of other laws

Any action by any Federal Department or agency under section 6104 of this title shall be subject to sucl review as any otherwise be provided by law for similar action taken by any such department or agency

grounds.

**(b) Provisions of Chapter 7 of Title 5; reviewable agency discretion**

In the case of any action by any Federal department or agency under section 6104 of this title which is subject to judicial review, any person aggrieved (including any State or political subdivision thereof and either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of Title 5 of this subsection, any such action shall not be purposes of this subsection, any such action shall not be committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

**Section 6106. Study of discrimination based on age**

(a) Study by Commission on Civil Rights

The Commission on Civil Rights shall (1) undertake a study of unreasonable discrimination based on ag and activities receiving Federal financial assistance; and (2) identify with particularity any such federall program or activity in which there is found evidence of persons who are otherwise qualified being, on th excluding from particpation in, denied the benefits of, or subjected to discrimination under such prograr

**(b) Public hearings**

As part of the study required by this section, the Commission shall conduct public hearings to elicity the interested parties, including Federal departments and agencies, on issues relating to age discrimination and activities receiving Federal financial assistance, and particularly with respect to the reasonableness distinguishing, on the basis of age, among potential participants in, or beneficiaries of, specific federally programs.

**(c) Publication of results of analyses, research and studies by independent experts; services or uncompensated personnel**

The Commission is authorized to obtain through grant or contract, analyses, research and studies by in experts of issues relating to age discrimination and to publish the results thereof. For purposes of the st by this section, the Commission may accept and utilize the services of voluntary or uncompensated per regard to the provisions of section 1975d(b) of this title.

**(d) Report to President and Congress; copies to affected Federal departments and agencies; and technical assistance**

Not later than two years after November 28, 1975, the Commission shall transmit a report of its finding recommendations for statutory changes (if any) and administrative action, including suggested general the Congress and to the President and shall provide a copy of its report to the head of each Federal dep agency with respect to which the Commission makes findings or recommendations. The Commission is provide, upon request, information and technical assistance regarding its findings and recommendation to the President, and to the heads of Federal departments and agencies for a ninety-day period followin transmittal of its report.

**(e) Comments and recommenations of Federal departments and agencies; submission to Pre Congressional committees**

Not later than forty-five working days after receiving a copy of the report required by subsection (d) of each Federal department or agency with respect to which the Commission makes findings or recommen submit its comments and recommendations regarding such report to the President and to the Committe Human Resources of the Senate and the Committee on Education and Labor of the House of Representa

**(f) Cooperation of Federal departments and agencies with Commission**

The head of each Federal department or agency shall cooperate in all respects with the Commission witl the study required by subsection (a) of this section, and shall provide to the Commission such data, rep documents in connection with the subject matter of such study as the Commission may request.

**(g) Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of t

**§ 6106a. Reports to the Secretary and Congress**

**(a) Reports to Secretary**

Not later than December 31 of each year (beginning in 1979), the head of each Federal department or a submit to the Secretary of Health and Human Services a report (1) describing in detail the steps taken ( preceding fiscal year by such department or agency to carry out the provisions of section 6102 of this ti containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis the department or agency is carrying out the provisions of section 6102 of this title.

**(b) Reports to Congress**

Not later than March 31 of each year (beginning in 1980), the Secretary of Health and Human Services the reports made pursuant to subsection (a) of this section and shall submit them to the Congress, toge evaluation of the performance of each department or agency with respect to carrying out the provisions 6102 of this title.

**§ 6107. Definitions**

For the purposes of this chapter--

(1) the term "Commission" means the Commission on Civil Rights;

(2) the term "Secretary" means the Secretary of Health and Human Services;

(3) the term "Federal department or agency" means any agency as defined in section 551 of Title 5 and United States Postal Service and the Postal Rate Commission; and

(4)the term "program or activity" means all of the operations of --

(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local go

(ii) the entity of such State or local government that distributes such assistance and each such departm (and each other State or local government entity) to which the assistance is extended, in the case of as State or local government;

(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; o

(ii) a local educational agency (as defined in section 8801 of Title 20), system of vocational education, c system;

"(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship

"(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorsh or

"(II) which is principally engaged in the business of providing education, health care, housing, social se and recreation; or

"(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assi extended, in the case of any other corporation, partnership, private organization, or sole proprietorship;

"(D) any other entity which is established by two or more of the entities described in paragraph (A), (B)

any part of which is extended Federal financial assistance.

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**A Guide to The Multiethnic Placement Act of 1994**
**As Amended by the Interethnic Adoption Provisions of 1996**

**Chapter 1: Introduction**


- A. Overview of MEPA-IEP
- B. Children in Out-of-Home Care:
- C. Standard Practice Before MEPA-IEP.
- D. The Law Before MEPA-IEP


The Multiethnic Placement Act (MEPA) was enacted in 1994 amid spirited and sometimes contentious debate about transracial adoption and same-race placement policies. At the heart of this debate is a desire to promote the best interests of children by ensuring that they have permanent, safe, stable, and loving homes that will meet their individual needs. This desire is thwarted by the persistent increases in the number of children within the child protective system waiting for, but often not being placed in, adoptive families. Of particular concern are the African American and other minority children who are dramatically over-represented at all stages of this system, wait far longer than Caucasian children for adoption, and are at far greater risk of never experiencing a permanent home. Among the many factors that contribute to placement delays and denials, Congress found that the most salient are racial and ethnic matching policies and the practices of public agencies which have historically discouraged individuals from minority communities from becoming foster or adoptive parents. MEPA addressed these concerns by prohibiting the use of a child's or a prospective parent's race, color, or national origin to delay or deny the child's placement and by requiring diligent efforts to expand the number of racially and ethnically diverse foster and adoptive parents.

MEPA was signed into law in 1994 as part of the Improving America's Schools Act. In April 1995, the Department of Health and Human Services (HHS) issued a detailed Guidance to assist states and agencies in implementing MEPA and understanding its relationship to the equal protection and anti-discrimination principles of the United States Constitution and Title VI of the Civil Rights Act. In 1996, MEPA was amended by the provisions for Removal of Barriers to Interethnic Adoption (IEP) included in the Small Business Job Protection Act. As explained in the Information Memoranda on IEP issued by HHS in June 1997, and May 1998, the amendments remove potentially misleading language in MEPA's original provisions and clarify that "discrimination is not to be tolerated," whether directed at children in need of appropriate, safe homes, at prospective parents, or at previously "underutilized" communities who could be resources for placing children. The IEP also strengthens compliance and enforcement procedures, including the withholding of federal funds and the right of any aggrieved individual to seek relief in federal court against a state or other entity alleged to be in violation of the Act.

This Guide will not resolve the ongoing controversies about the role of race and ethnicity in

child welfare policies. However, it will assist states and child welfare agencies in their efforts to comply with the new federal mandates concerning the role of race, color, and national origin in foster care and adoptive placements, hereinafter referred to as MEPA-IEP. States and agencies are encouraged to take full advantage of the opportunities the law creates for improving policies and practices and, as a consequence, improving the quality of children's lives. In addition to providing advice for determining precisely what the law does and does not require, the Guide contains practical suggestions for child welfare administrators and social workers who must implement MEPA-IEP in the best interests of the children they serve.

**A. Overview of MEPA-IEP**

MEPA-IEP is one of several recent federal initiatives and laws aimed at removing the barriers to permanency for the hundreds of thousands of children who are in the child protective system. The specific intentions of MEPA-IEP are to:

- decrease the length of time that children wait to be adopted,
- facilitate the recruitment and retention of foster and adoptive parents who can meet the distinctive needs of children awaiting placement, and
- eliminate discrimination on the basis of the race, color, or national origin of the child or the prospective parent.

To achieve these goals, MEPA-IEP has three basic mandates:

1. It prohibits states and other entities that are involved in foster care or adoption placements, and that receive federal financial assistance under title IV-E, title IV-B, or any other federal program, from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin;

2. It prohibits these states and entities from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, or national origin; and

3. It requires that, to remain eligible for federal assistance for their child welfare programs, states must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes.

Although MEPA-IEP does not explicitly incorporate a "bests interests" standard for making placements, the 1997 and 1998 HHS Guidances note that "the best interests of the child remains the operative standard in foster care and adoptive placements." Nonetheless, to be consistent with constitutional "strict scrutiny" standards for any racial or ethnic classifications, as well as with MEPA-IEP, a child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests. Only in narrow and exceptional circumstances arising out of the specific needs of an individual child can these factors lawfully be taken into account. Even when the best interests of an individual child appear to compel consideration of these factors, caseworkers cannot assume that needs based on race, color, or national origin can be met only by a racially or ethnically matched parent. Much will depend on the nature of the child's specific needs and on the capacity of individual prospective parents to respond to these needs.

MEPA-IEP is fully consistent with the Adoption 2002 Initiative and its goal of doubling by the year 2002 the number of adoptions of children who cannot return to their biological parents. MEPA-IEP also complements the emphasis of the 1997 Adoption and Safe Families Act (ASFA) on a child's health and safety as the paramount concern in child welfare decisions. This emphasis implies that no factors, including racial or ethnic factors, should be taken into account in placement decisions unless they have a specific and demonstrable bearing on the child's health and safety.

In conjunction with these and other federal policies, MEPA-IEP offers child welfare agencies an unprecedented opportunity to make early and individualized assessments of a child's needs, expand the pool of qualified foster and adoptive parents, and make prompt placements based on the distinctive characteristics of each child.

**B. Children in Out-of-Home Care:**

In enacting MEPA, Congress found that there are nearly 500,000 children in out-of-home care, of whom many tens of thousands are waiting for adoption, and that children who are eventually adopted wait an average of 2.67 years after they are legally available for permanent placement. More recent data shows that compared to white children, African-American and American Indian/Alaskan Native children typically spend considerably more time in foster care before being adopted.

African American children are vastly over represented within the child welfare system compared to their proportion within the population as a whole. They also constitute more than half of the children legally free for adoption, and wait significantly longer than other children for an adoptive placement.

According to HHS-VCIS data, nearly 60,000 children in out-of-home care at the end of 1994 had a goal of adoption, of whom around 16,000 were legally free. Of these children, 54% were African American, 42% were white, and 1.3% were Hispanic. Most of these children were over six years of age, but nearly a third were between one and five years of age. Of the total number of children in out-of-home care at the end of fiscal year 1995, estimates are that more than 45% were African American, 36.5% white, 11.3% Hispanic, 1.6% American Indian\Alaskan Native, 1.0% Asian\Pacific Islander and around 4% of unknown racial or ethnic origin. The annual number of finalized adoptions in the 1990s has not exceeded 18,000-19,000, or not quite 4% of the total number of children in out-of-home care.

The striking 72% increase since 1986 in the number of children in the child protective system is not necessarily attributable to the larger numbers of infants under age one who are entering care, but to declines in the rate of children who leave care. In California, for example, 1/4 of all children under age six entering non-kinship foster care are likely to be there six years later, without having been reunified with their birth parents and without being adopted by foster parents or other non-related individuals.

Although very few studies track children's experience within the child protective system from the time they enter care until their cases are closed, Richard Barth and his colleagues now have a thorough account of the experiences over a six year period for the nearly 3,900 children under the age of six who entered non-kinship out-of-home care in California during the first half of 1988. The most significant and independent predictors of how long these children wait for a permanent placement are their age at the time they enter care and their race or ethnicity. Infants who entered care before their first birthday were more likely than older children, regardless of their race or ethnicity, to be returned to their birth parents or adopted within a few years. By contrast, African American children, and to a much lesser extent, Hispanic children, regardless of their age at entry, wait dramatically longer than white children. Six years after entering care, African American children's likelihood of being adopted was only 1/5 of that of white children.

Another way to summarize this sobering data is that, after six years, African American children were more than twice as likely to be in care than to have been adopted. For white children, the ratios are reversed: they were twice as likely to be adopted as to remain in care. Hispanic children were about as likely to remain in care as to be adopted.

What accounts for these extraordinary differences in outcomes between African American and all other children? No doubt, some of these differences are attributable to the initially large numbers of African Americans who are subject to the child protective system, as well as to factors that cause delay for all children, including bottlenecks in court proceedings, low rates

of reunification,and the challenge of providing appropriate care givers for children who have suffered serious neglect or abuse. Nonetheless, much of the difference is probably due to same race matching policies that preclude others from adopting these children and recruitment practices that, however well intended, discourage African American and other minority families from pursuing adoption.

**C. Standard Practice Before MEPA-IEP.**

Before MEPA-IEP became the law, adoption practice throughout the country had for several decades generally favored placing children in racially or ethnically matched families. Transracial placements, which nearly always refer to placements of children of Color, especially African-American children, with Caucasian parents, were considered as a "last resort," acceptable only under unusual circumstances. The states generally required foster care and adoptive placements to meet a best interests standard. Many differences existed, however, in how much discretion caseworkers could exercise in making a best interests assessment and in determining whether and to what extent to consider race, culture, and ethnicity. Some states required that children be placed with families of the same racial, ethnic, or cultural background if consistent with the best interests test; others specified that such matching was preferred or created an order of preference that typically began with relatives and then favored other matched families. Several states prescribed the time period within which agencies had to search for a matched family before widening the search for an unmatched family.

Racial and ethnic matching policies were based on the widely accepted belief that children have significant needs generated by their immutable racial or ethnic characteristics, as well as by their actual cultural experiences, and further, that children have a right to placements that meet these needs. Just as it was assumed that most prospective parents want children who resemble them, it was assumed that children would be uncomfortable in an adoptive family that did not have a similar racial or ethnic heritage. It was alleged that children raised in racially or ethnically matched families would more easily develop self esteem and a strong racial identity, and that minority children would have the best opportunity to learn the skills needed to cope with the racism they were likely to encounter as they grew up in American society.

Unfortunately, during the same decades when racial matching policies became standard practice, efforts to expand the pool of minority foster and adoptive parents faltered. Even when successful, these recruitment efforts did not keep up with the growing demand for appropriate homes for minority children who could not be reunified with their parents or placed with relatives. The unintended consequence of these developments, as well as of other and often inadvertently discriminatory practices throughout the child welfare system, has been the prolonged delays in securing permanent placements for African American, Hispanic, and other minority children.

Both proponents and critics of matching policies became concerned about these delays and about allegations that some children were being removed from stable transracial fost-adopt homes solely in order to prevent a permanent transracial placements. No one doubts the adverse effects on children's emotional and cognitive development if they spend considerable time in their early years in institutional care or in a succession of foster placements. Research conducted from a variety of theoretical perspectives indicates that children who are deprived of an early, continuing, stable relationship with at least one psychological parent may lack the capacity to form deep emotional attachments or close social relationships. This risk is exacerbated if children are subject to additional neglect or abuse while in out-of-home care. Claims about the harms attributable to delays in achieving permanency gain support from studies that show how much better adopted children do on most outcome measures than do children who remain in foster care. Moreover, being placed at an early age is positively correlated with generally more positive adoption outcomes for all kinds of children.

Proponents of racial and ethnic matching insist that the key to eliminating delays is to do a

better job recruiting racially and ethnically diverse foster and adoptive parents and ferreting out traditional screening procedures that have historically discriminated against minority applicants and discouraged them from pursuing adoption. Critics of matching policies fully acknowledge the need for non-discriminatory yet targeted and flexible efforts aimed at screening minority applicants into, rather than out of, the pool of prospective parents. However, many critics also believe that racial and ethnic matching policies are independently harmful to children, even if more successful recruitment of minority parents would eventually reduce delays. These policies are said to be harmful because they are based on unsubstantiated assumptions that children have racial or ethnic needs that outweigh their other needs and that only racially or ethnically matched families can adequately serve these needs.

The critics of racial matching note that no credible evidence supports the claim that transracial adoption is harmful to children's self-esteem, sense of racial identity, or ability to cope with racism. There are consistent positive findings, they assert, regardless of sample size and methodology, concerning the children adopted transracially before the practice was discouraged in the mid-1970s, as well as the smaller numbers of transracially adopted children since then. Whether compared to African American or white adoptees raised in same race adoptive homes, or to African American or white children raised by their biological families, transracial adoptees do as well as other children on standard measures of self-esteem, cognitive development and educational achievement, behavioral difficulties, and relations to peers and other family members. When compared to children who remain in foster care, or are returned to dysfunctional biological parents, both same-race and transracial adoptees do significantly better.

Studies that focus on adolescence, when most children experience doubts about their identity and capacity for autonomy and independence, do not find unusual difficulties among transracial adoptees. The few studies that track children into their twenties indicate that transracial adoptees are doing well, maintain solid relationships with their adoptive families, and may have higher educational attainments than same-race adoptees.

Transracial adoptees develop a positive sense of racial identity. Studies of transracial adoptees conclude that African American children raised by white or mixed race parents are as comfortable with their racial identities as children raised in same-race families. Although some public agencies report adoption disruption rates as high as 10-15%, these rates are no higher for transracial adoptions than for other adoptions. There are some differences that manifest themselves over time between same-race and transracial adoptive families. Among these is that transracial adoptees have a more positive attitude about relations with whites, are more comfortable in integrated and multiethnic settings, and do not consider race as basic to their self-understanding as do most same-race adoptees.

MEPA-IEP addresses the desire of both the proponents and the critics of racial matching to expand the pool of racially and ethnically diverse prospective parents. It also addresses the concerns of the critics of racial matching who claim that the policy is based on unsubstantiated claims about the needs of children and denies minority children an equal opportunity to have a permanent home.

**D. The Law Before MEPA-IEP**

Discrimination within the child welfare system based on race, color, or national origin was illegal before MEPA or the 1996 amendments were enacted. Under the Constitution's Equal Protection Clause, racial classifications are generally invalidated unless they meet the "strict scrutiny" test. To survive this test, racial and other "suspect classifications" must be justified by a compelling governmental interest and must be necessary to achieve this interest. If the state's interest can be served through a less restrictive, non-discriminatory means, the non-discriminatory means must be used. The strict scrutiny test similarly applies to cases arising under Title VI of the Civil Rights Act which prohibits discrimination based on race, color, or national origin in all federally funded programs.

In the past, some racial classifications were evaluated with less than strict scrutiny if they were intended, along with other factors, to promote diversity or remedy the deleterious effects of historic discrimination. Recently, however, the United States Supreme Court has applied the strict scrutiny standard to all racial classifications, even those that are allegedly benign. Strict scrutiny is warranted "precisely because it is necessary to determine whether [the classifications] are benign ... or whether they misuse race and foster harmful and divisive stereotypes without a compelling justification."

Applying anti-discrimination principles to child welfare decisions demands care. Unlike decisions in other areas, such as housing or credit loans, where general qualifications determine an individual's entitlement to certain goods and services, a child welfare decision requires an individualized determination of whether a specific placement is in the child's best interest. In making these determinations, broad or general assumptions about children's needs or parental suitability are supposed to be put aside in order to place a child with individuals who can love and respond to the child's distinctive characteristics.

Can the "best interests of the child" standard, which is a fundamental principle in child welfare practice, ever be a "compelling reason" to consider the race, color, or national origin of a child or a prospective parent in making a placement decision? In *Palmore v. Sidoti*, the United States Supreme Court did not say that the state has a "compelling reason" to use a best interests test to resolve custody disputes between parents, but acknowledged that the test "indisputably" serves "a substantial governmental interest." The Court then went on to conclude that it was not in a child's best interests to allow private racial biases to justify removing her from the home of her white mother and her Black stepfather.

In foster care and adoption cases, as contrasted with custody disputes between two parents, some lower appeals courts have indicated that a commitment to a child's best interests may be a compelling reason to consider race, color, or national origin, but only if these factors are not used categorically to preclude the possibility of transracial placements. Many courts have allowed race to be one among a number of factors that may appropriately be considered in making placement decisions, especially if sensitivity to the development of the child's racial identity and self-esteem is determined to be important for the well-being of a specific child. Nonetheless, blanket policies favoring same-race placements have generally been disfavored, and in individual cases, courts have held that a child's need for a permanent home may outweigh any considerations based on race or color.

# Section 188 of the Workforce Investment Act of 1998

---DISCLAIMER---

**Sec. 188. Nondiscrimination**

(a) In general

(1) Federal financial assistance For the purpose of applying the prohibitions against discrimination on th under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), on the basis of disability under secti Rehabilitation Act of 1973 (29 U.S.C. 794), on the basis of sex under title IX of the Education Amendme (20 U.S.C. 1681 et seq.), or on the basis of race, color, or national origin under title VI of the Civil Righ (42 U.S.C. 2000d et seq.), programs and activities funded or otherwise financially assisted in whole or i this Act are considered to be programs and activities receiving Federal financial assistance.

(2) Prohibition of discrimination regarding participation, benefits, and employment

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination denied employment in the administration of or in connection with, any such program or activity because religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972 (20 U. seq.)), national origin, age, disability, or political affiliation or belief.

(3) Prohibition on assistance for facilities for sectarian instruction or religious worship

Participants shall not be employed under this chapter to carry out the construction, operation, or mainte part of any facility that is used or to be used for sectarian instruction or as a place for religious worship respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instructic worship, in a case in which the organization operating the facility is part of a program or activity providi participants).

(4) Prohibition on discrimination on basis of participant status

No person may discriminate against an individual who is a participant in a program or activity that recei under this chapter, with respect to the terms and conditions affecting, or rights provided to, the individu because of the status of the individual as a participant.

(5) Prohibition on discrimination against certain noncitizens

Participation in programs and activities or receiving funds under this chapter shall be available to citizer nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and paro immigrants authorized by the Attorney General to work in the United States.

(b) Action of Secretary Whenever the Secretary finds that a State or other recipient of funds under this failed to comply with a provision of law referred to in subsection (a)(1) of this section, or with paragrap or (5) of subsection (a) of this section, including an applicable regulation prescribed to carry out such pr

paragraph, the Secretary shall notify such State or recipient and shall request that the State or recipien within a reasonable period of time, not to exceed 60 days, the State or recipient fails or refuses to com Secretary may -

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be i

(2) take such other action as may be provided by law.

(c) Action of Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whe Attorney General has reason to believe that a State or other recipient of funds under this chapter is eng pattern or practice of discrimination in violation of a provision of law referred to in subsection (a)(1) of t in violation of paragraph (2), General may bring a civil action in any appropriate district court of the Uni such relief as may be appropriate, including injunctive relief.

(d) Job Corps

For the purposes of this section, Job Corps members shall be considered as the ultimate beneficiaries of financial assistance.

(e) Regulations

The Secretary shall issue regulations necessary to implement this section not later than one year after 1998. Such regulations shall adopt standards for determining discrimination and procedures for enforce consistent with the Acts referred to in a subsection (a)(1) of this section, as well as procedures to ensur complaints filed under this section and such Acts are processed in a manner that avoids duplication of e

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**1-**
TTY:

# Office for Civil Rights

## Guidance to Federal Financial Assistance Recipients Regarding Title VI and the Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons - Summary

The U.S. Department of Health and Human Services has published revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons. The Revised LEP Guidance is issued pursuant to Executive Order 13166. It is effective immediately and replaces the Guidance issued August 30, 2000. You can print out a copy of the Guidance from OCR's website at http://www.hhs.gov/ocr/lep or contact one of the OCR Regional Offices listed below.

**LEGAL AUTHORITY**

Title VI and Department of Health and Human Services regulations, 45 C.F.R. Section 80.3(b)(2), require recipients of Federal financial assistance from HHS to take reasonable steps to provide meaningful access to Limited English Proficient (LEP) persons. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of HHS assistance may include hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs, State, county, and local health agencies. It may also include State Medicaid agencies, State, county, and local welfare agencies, programs for families, youth, and children, Head Start programs, public and private contractors, subcontractors, and vendors, and physicians and other providers who receive Federal financial assistance from HHS.

**DEFINITION OF LIMITED ENGLISH PROFICIENT INDIVIDUALS**

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English may be LEP and may be eligible to receive language assistance with respect to the particular service, benefit, or encounter.

**FACTORS USED TO DETERMINE THE TITLE VI OBLIGATION TO ENSURE MEANINGFUL ACCESS FOR LEP PERSONS**

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. The Guidance explains that the obligation to provide meaningful access is fact-dependent and starts with an individualized assessment that balances 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 into contact with the program; (3) the nature and importance of the program, activity or service provided by the recipient to its beneficiaries; and (4) the resources available to the grantee/recipient and the costs of interpretation/translation services. There is no "one size fits all" solution for Title VI compliance with respect to LEP persons, and what constitutes "reasonable steps" for large providers may not be reasonable where small providers are concerned.

**USE OF FAMILY MEMBERS AND FRIENDS**

Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. When an LEP person attempts to access the services of a recipient of federal financial assistance, who upon application of the four factors is required to provide an interpreter, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Recipients should also consider special circumstances that may affect whether a family member or friend should serve as an interpreter, such as whether the situation is an emergency, and whether there are concerns over competency, confidentiality, privacy, or conflict of interest. Recipients cannot require LEP persons to use family members or friends as interpreters.

**VITAL DOCUMENTS**

Recipients can use the four factor analysis described above to determine if specific documents or portions of documents should be translated into the language of the various frequently-encountered LEP groups eligible to be served and/or likely to be affected by the recipient's program. Recipients should assess whether specific documents or portions of documents are "vital" to the program, information, encounter, or service involved and the consequences to the LEP person if the information in question is not provided accurately or in a timely manner. As with the LEP Guidance of other Federal agencies, the HHS Guidance provides recipients with a "safe harbor" that, if undertaken, will be considered strong evidence that the recipient has satisfied its written translation obligations.

**INTERPRETER/TRANSLATOR COMPETENCE**

The Guidance provides additional guidance on what to consider in determining interpreter and translator competency in particular contexts.

**ELEMENTS OF AN EFFECTIVE LANGUAGE ASSISTANCE PLAN**

If, after completing the four-factor analysis, a recipient determines that it should provide language assistance services, a recipient may develop an implementation plan to address the identified needs of the LEP populations it serves. Recipients have considerable flexibility in developing this plan. The Guidance provides five steps that may be helpful in designing such a plan: (1) identifying LEP individuals who need language assistance; (2) language assistance measures (such as how staff can obtain services or respond to LEP callers); (3) training staff; (4) providing notice to LEP persons (such as posting signs); and (5) monitoring and updating the LEP plan.

**VOLUNTARY COMPLIANCE EFFORT**

The Office for Civil Rights and HHS are committed to assisting recipients of HHS financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964. HHS is committed to engaging in outreach to its recipients and to being responsive to inquiries from its recipients. HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons so they are in compliance with the Title VI regulations. The requirement to provide meaningful access to LEP persons is enforced and implemented by the HHS Office for Civil Rights through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

**FOR MORE INFORMATION**

Anyone who believes that he/she has been discriminated against because of race, color or national origin may file a complaint with OCR within 180 days of the date on which the discrimination took place. The OCR Regional Offices are listed below:

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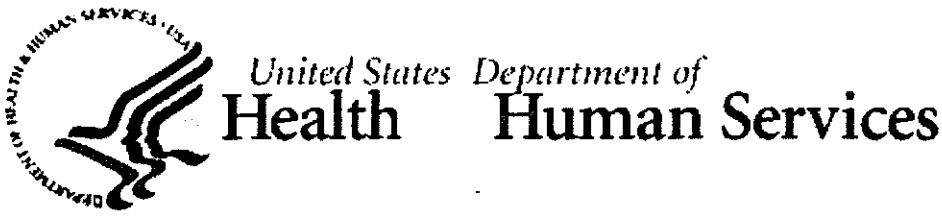
|---|---|
| **Region I - CT, ME, MA, NH, RI, VT**<br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>JFK Federal Building - Room 1875<br>Boston, MA 02203 | **Region VI - AR, LA, NM, OK, TX**<br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>1301 Young Street - Suite 1169<br>Dallas, TX 75202 |

| | |
|---|---|
| (617) 565-1340; (617) 565-1343 (TDD)<br>(617) 565-3809 FAX | (214) 767-4056; (214) 767-8940 (TDD)<br>(214) 767-0432 FAX |
| **Region II - NJ, NY, PR, VI**<br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>26 Federal Plaza - Suite 3313<br>New York, NY 10278<br>(212) 264-3313; (212) 264-2355 (TDD)<br>(212) 264-3039 FAX | **Region VII - IA, KS, MO, NE**<br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>601 East 12th Street - Room 248<br>Kansas City, MO 64106<br>(816) 426-7278; (816) 426-7065 (TDD)<br>(816) 426-3686 FAX |
| **Region III - DE, DC, MD, PA, VA, WV**<br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>150 S. Independence Mall West - Suite 372<br>Philadelphia, PA 19106-3499<br>(215) 861-4441; (215) 861-4440 (TDD)<br>(215) 861-4431 FAX | **Region VIII - CO, MT, ND, SD, UT, WY**<br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>1961 Stout Street - Room 1426<br>Denver, CO 80294<br>(303) 844-2024; (303) 844-3439 (TDD)<br>(303) 844-2025 FAX |
| **Region IV - AL, FL, GA, KY, MS, NC, SC, TN**<br><br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>61 Forsyth Street, SW. - Suite 3B70<br>Atlanta, GA 30323<br>(404) 562-7886; (404) 331-2867 (TDD)<br>(404) 562-7881 FAX | **Region IX - AZ, CA, HI, NV, AS, GU,<br>The U.S. Affiliated Pacific Island Jurisdictions**<br><br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>90 7th Street, Suite 4-100<br>San Francisco, CA 94103<br>(415) 437-8310; (415) 437-8311 (TDD)<br>(415) 437-8329 FAX |
| **Region V - IL, IN, MI, MN, OH, WI**<br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>233 N. Michigan Ave. - Suite 240<br>Chicago, IL 60601<br>(312) 886-2359; (312) 353-5693 (TDD)<br>(312) 886-1807 FAX | **Region X - AK, ID, OR, WA**<br>Office for Civil Rights<br>U.S. Department of Health & Human Services<br>2201 Sixth Avenue - Mail Stop RX-11<br>Seattle, WA 98121<br>(206) 615-2290; (206) 615-2296 (TDD)<br>(206) 615-2297 FAX |

Last revised: April 23, 2007






## Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

**AGENCY:** Health and Human Services, HHS.

**ACTION:** Policy guidance document.

**SUMMARY:** The Department of Health and Human Services (HHS) publishes revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons ("Revised HHS LEP Guidance"). This revised HHS LEP Guidance is issued pursuant to Executive Order 13166. HHS is seeking comment on the revised HHS LEP Guidance for a 120-day period ending on January 6, 2004.

**DATES:** This Guidance is effective immediately. Comments must be submitted on or before January 6, 2004. HHS will review all comments and will determine if modifications to the Guidance are necessary. This Guidance supplants existing guidance on the same subject originally published at 65 FR 52762 (August 30, 2000).

**ADDRESSES:** Comments should be addressed to Deeana Jang with "Attention: LEP Comments," and should be sent to 200 Independence Avenue, SW, Room 506F, Washington, DC 20201. Comments may also be submitted by e-mail at LEP.comments@hhs.gov.

**FOR FURTHER INFORMATION CONTACT:** Onelio Lopez at the Office for Civil Rights, U.S. Department of Health and Human Services, 200 Independence Avenue, SW, Room 506F, Washington, DC 20201, addressed with "Attention: LEP Comments;" telephone 202-205-0192; TDD: toll-free 1- 800-537-7697. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

**SUPPLEMENTARY INFORMATION:** The United States Department of Health and Human Services (HHS) is publishing revised "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" ("Revised HHS LEP Guidance"). This guidance was originally published on August 30, 2000, and included a 60-day comment period. See 65 FR 52762. This original guidance was republished for additional comment on February 1, 2002, pursuant to a memorandum issued by the United States Department of Justice on October 26, 2001. See 67 FR 4968.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress entitled "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, which was drafted and organized to also function as a model for similar guidance documents by other Federal grant-making agencies. See 67 FR 41455 (June 18, 2002).

This revised HHS LEP Guidance reflects consideration of the comments received and the subsequent guidance of DOJ. HHS welcomes comments from the public on the revised guidance document, and has announced the extended comment period to encourage comment from the public and from recipients regarding experience in applying this revised guidance. Following the comment period, HHS will evaluate whether further revisions to the guidance are necessary or appropriate.

The text of the guidance appears below. Appendix A to the guidance is a series of questions and answers that provides a useful summary of a number of the major aspects of the guidance.

It has been determined that this revised HHS LEP Guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and is not subject to Executive Order 12866 (Regulatory Review and Planning, September 30, 1993).

Dated: August 4, 2003.
Richard M. Campanelli,
Director, Office for Civil Rights.

I. Background and Legal History

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.

Department of Health and Human Services regulations promulgated pursuant to section 602 forbid recipients 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 with respect to individuals of a particular race, color, or national origin." 45 CFR 80.3(b)(2).

The Supreme Court, in Lau v. Nichols, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare (HHS's predecessor), 45 CFR 80.3(b)(2), 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 was issued. "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000). 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 forbidding funding recipients from "restrict[ing] 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" 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, the Department of Justice ("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 Federal 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 for recipients of DOJ federal financial assistance in light of Sandoval.(1) 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 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.

(1) The memorandum noted that some commentators had 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. DOJ stated that 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.

Consistent with Executive Order 13166, HHS developed its own guidance document for recipients and initially issued it on August 30, 2000. "Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency," 65 FR 52762 (August 30, 2000) ("HHS Guidance"). Following the instructions in the October 26, 2001 memorandum from Ralph F. Boyd, Jr., the Department republished, on February 1, 2002, its existing guidance document for additional public comment. "Office for Civil Rights; Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency," 67 FR 4968 (February 1, 2002).

II. Revised HHS LEP Guidance

Following republication of our guidance in February 2002, the Department received nearly 200 public comments. Most comments were in full support of the principles behind the HHS Guidance, and a number supported maintaining the guidance without change. While the comments reflected recognition that effective communication is critical for necessary health and human services, many commentors raised serious concerns about coverage, compliance costs, and use of family and friends as interpreters. In addition, many providers of services requested assistance from the Office for Civil Rights on how to comply with both general and specific provisions of the guidance.

On July 8, 2002, Assistant Attorney General Boyd issued a memorandum expressing the need for consistency across federal agency LEP guidance documents. Specifically, he requested that the Department (and all other affected agencies) use the DOJ LEP guidance (published at 67 FR 41455, June 18, 2002) as a model, and revise and republish the HHS guidance based on that model for public comment.

The DOJ's role under Executive Order 13166 is unique. The Executive Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency- specific guidance. DOJ's guidance stated the following principles. "Consistency among Departments of the federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. 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.

This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive federal financial assistance."

HHS believes that the DOJ model guidance responds to the important issues raised in comments on the HHS document published in February, and the Department is confident that the DOJ LEP Guidance serves as an appropriate model for HHS to adopt. The Department notes that it has made certain modifications for purposes of clarity and organization, and a few additional modifications to accommodate particular programmatic needs and purposes.

There are many productive steps that the federal government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller recipients of Federal financial assistance may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the

Department plans to continue to provide assistance and guidance in this important area. In addition, HHS plans to work with representatives of state health and social service agencies, hospital associations, medical and dental associations, managed care organizations, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, HHS 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, small local governments, 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.

As discussed earlier, in certain circumstances, the 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 the Title VI regulations against national origin discrimination. Specifically, the failure of a recipient of Federal financial assistance from HHS to take reasonable steps to provide LEP persons with meaningful opportunity to participate in HHS-funded programs may constitute a violation of Title VI and HHS's implementing regulations. 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.(2) These are the same criteria HHS will use in evaluating whether recipients are in compliance with Title VI and the Title VI regulations.

(2) 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.

III. Who Is Covered?

Department of Health and Human Services regulations, 45 CFR 80.3(b)(2), require all recipients of federal financial assistance from HHS to provide meaningful access to LEP persons.(3) Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

(3) 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 apply additionally to the programs and activities of federal agencies, including HHS.

Recipients of HHS assistance may include, for example:

- Hospitals, nursing homes, home health agencies, and managed care organizations.
- Universities and other entities with health or social service research programs.
- State, county, and local health agencies.
- State Medicaid agencies.
- State, county and local welfare agencies.
- Programs for families, youth, and children.
- Head Start programs.
- Public and private contractors, subcontractors and vendors.
- Physicians and other providers who receive Federal financial assistance from HHS.

Recipients of HHS assistance do not include, for example, providers who only receive Medicare Part B payments.(4)

(4) HHS's Title VI regulations do not apply to (i) Any federal financial assistance by way of insurance or guaranty contracts, (ii) the use of any assistance by any individual who is the ultimate beneficiary under any program which receives federal financial assistance, and (iii) any employment practice, under any such program, or any employer, employment agency, or labor organization, except as otherwise described in the Title VI regulations. 45 CFR 80.2.

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.(5)

(5) However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its implementing regulations, only funds directed to the particular program or activity that is out of compliance could be terminated. 42 U.S.C. 2000d-1.

Example: HHS provides assistance to a state department of health to provide immunizations for children. All of the operations of the entire state department of health--not just the particular immunization programs--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 may be limited English proficient, or "LEP," and may be eligible to receive 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 HHS recipients and should be considered when planning language services may include such as those:

- Persons seeking Temporary Assistance for Needy Families (TANF), and other social services.
- Persons seeking health and health-related services.
- Community members seeking to participate in health promotion or awareness activities.
- Persons who encounter the public health system.
- Parents and legal guardians of minors eligible for coverage concerning such programs.

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, or, in fact, that, in certain circumstances, recipient-provided language services are not necessary. (As discussed below, recipients may want to consider documenting their application of the four-factor test to the services they provide.) 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. HHS 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, if any, 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 affected, by" a recipient's program or activity are those who are served or encountered in the eligible service 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 particular office of the county or city health department serves a large LEP population, the appropriate service area is most likely that office, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider whether the minor children their programs serve have LEP parent(s) or guardian(s) with whom the recipient may need to interact.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In certain circumstances, it is important in conducting this analysis to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted when appropriate 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.(6) Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations which may be underserved because of existing language barriers and who would benefit from the recipient's program, activity, or service, were language services provided.

(6) 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 the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

(2) The Frequency With Which LEP Individuals Come in Contact With the Recipient's Program, Activity or Service

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a recipient's program, activity, or service on a daily basis, a recipient has greater duties than if an LEP individual's contact with the recipient's program, activity, or service is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. For example, a drug treatment program that encounters LEP persons on a daily basis most likely may have a greater obligation than a drug treatment program that encounters LEP persons sporadically. The obligations of both programs are greater than that of a drug treatment program which has never encountered a LEP individual where the service area includes few or no LEP individuals.

In applying this standard, certain recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups. For example, in areas where a community health center serves a large LEP population, outreach may be appropriate. On the other hand, for most individual physicians or dentists, outreach may not be necessary.

(3) The Nature and Importance of the Recipient's Program, Activity, or Service

The more important the recipient's activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient needs

to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Thus, the recipient should consider the importance and urgency of its program, activity, or service. If the activity is both important and urgent--such as the communication of information concerning emergency surgery and the obtaining of informed consent prior to such surgery--it is more likely that relatively immediate language services are needed. Alternatively, if the activity is important, but not urgent--such as the communication of information about, and obtaining informed consent for, elective surgery where delay will not have any adverse impact on the patient's health, or communication of information regarding admission to the hospital for tests where delay would not affect the patient's health-- it is more likely that language services are needed, but that such services can be delayed for a reasonable period of time. Finally, if an activity is neither important nor urgent--such as a general public tour of a facility--it is more likely that language services would not be needed. The obligation to communicate rights to a person whose benefits are being terminated or to provide medical services to an LEP person who is ill differ, for example, from those to provide medical care for a healthy LEP person or to provide recreational programming.

Decisions by a federal, state, or local entity to make an activity compulsory, such as job search programs in welfare to work programs, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take to comply with Title VI. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, reasonable steps may cease to be "reasonable" where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.(7) Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

(7) Recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

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This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons, to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient--or to another recipient--for language assistance. In certain circumstances, pursuant to an arrangement, where there is no discriminatory intent, the purpose is beneficial and will result in better access for LEP persons, it may be appropriate for a recipient to refer the LEP beneficiary to another recipient.

For example, if two physicians in the same field, one with a Spanish-speaking assistant and one with a Vietnamese-speaking assistant, practice in the same geographic area and have a custom/ practice of referring patients between each other, it may be appropriate for the first doctor to refer LEP Vietnamese patients to the second doctor and for the second doctor to refer LEP Spanish patients to the first doctor. In certain circumstances, a referral would not be

appropriate: for example, a Korean speaking LEP woman comes to a battered women's shelter requesting assistance. Although the shelter has space, it has no arrangement to provide language assistance for LEP persons. Instead, as with all LEP persons, the staff only offer her a prepared list of three shelters in the neighborhood that generally provide language assistance. The staff does not check to assure that any of the three alternative shelters can actually provide the Korean language assistance she needs, or that any have space available for her.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. In some circumstances, where the importance and nature of the activity, the number or proportion and frequency of contact with LEP persons may be high and the relative costs and resources needed to provide language services may be low, it may be appropriate for a recipient to hire bilingual staff or staff interpreters. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high, in which case language services for the particular activity may not be necessary. In situations that fall in between the two, it may be appropriate for recipients to use contract interpreters or telephone language lines to provide language services to LEP persons in contact with their program or activity. A hospital emergency room in a city with a significant Hmong population may need immediately available oral interpreters and may want to give serious consideration to hiring some bilingual staff. (Of course, many hospitals have already made such arrangements.) On the other hand, a physician's practice which encounters one LEP Hmong patient per month on a walk-in basis may want to use a telephone interpreter service. In contrast, a dentist in an almost exclusively English-speaking neighborhood who has rarely encountered a patient who did not speak English and has never encountered a Hmong-speaking patient may not need, pursuant solely to Title VI, to provide language services for a LEP Hmong individual who comes in for a dental cleaning.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services (interpretation and translation, respectively). Regardless of the type of language service provided, quality and accuracy of those services is critical to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

A. Considerations Relating to Competency of Interpreters and Translators

Competence of Interpreters. Recipients should be aware that competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to perform written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should take reasonable steps, given the circumstances, to assess whether the interpreters:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation);

To the extent necessary for communication between the recipient or its staff and the LEP person, have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person; (8)

(8) Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, the interpreter should be aware when languages do not have an appropriate direct interpretation of certain terms and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue, so that the interpreter and recipient can work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

Understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires;

Understand and adhere to their role as interpreters without deviating into other roles--such as counselor or legal advisor--where such deviation would be inappropriate (particularly in administrative hearings contexts).

Some recipients, such as some state agencies, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the context of administrative proceedings, the use of certified interpreters is strongly encouraged.(9)

(9) For those languages in which no formal accreditation or certification currently exists, certain recipients may want to consider a formal process for establishing the credentials of the interpreter, or assess whether a particular level of membership in a professional translation association can provide some indicator of professionalism.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a hospital emergency room, for example, should be as high as possible, given the circumstances, while the quality and accuracy of language services in other circumstances need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. When the timeliness of services is important, and delay would result in the effective denial of a benefit, service, or right, language assistance likely cannot be unduly delayed. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

For example, language assistance could likely not be delayed in a medical emergency, or when the time period in which an individual has to exercise certain rights is shortly to expire. On the other hand, when an LEP person is seeking a routine medical examination or seeks to apply for certain benefits and has an ample period of time to apply for those benefits, a recipient could likely delay the provision of language services by requesting the LEP person to schedule an appointment at a time during which the recipient would be able to have an appropriate interpreter available.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting; a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. As noted above, certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.(10) Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.

(10) For instance, there may be languages which do not have an appropriate direct translation of some specialized medical terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients may find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be

helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, to translate nonvital documents that have no legal or other consequence for LEP persons who rely on them, a recipient may use translators that are less skilled than the translators it uses to translate vital documents with legal or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to take reasonable steps to determine that the quality and accuracy of the translations permit meaningful access by LEP persons.

B. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

*Hiring Bilingual Staff.* When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as social service eligibility workers or hospital emergency room receptionists/workers, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of a child support administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

*Hiring Staff Interpreters.* Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

*Contracting for Interpreters.* Contract interpreters may be a cost- effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

*Using Telephone Interpreter Lines.* Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. While telephone interpreters can be used in numerous situations, they may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing, if available, may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it may be important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

*Using Community Volunteers.* In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. Because such volunteers may have other demands on their time, they may be more useful in providing language access for a recipient's less critical programs and activities where the provision of language services can reasonably be delayed. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and

impartiality rules. Recipients should consider formal arrangements with community- based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

*Use of Family Members or Friends as Interpreters.* Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. However, when a recipient encounters an LEP person attempting to access its services, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, the recipient should, except as noted below, respect an LEP person's desire to use an interpreter of his or her own choosing (whether a professional interpreter, family member, or friend) in place of the free language services expressly offered by the recipient. However, a recipient may not require an LEP person to use a family member or friend as an interpreter.

In addition, in emergency circumstances that are not reasonably foreseeable, a recipient may not be able to offer free language services, and temporary use of family members or friends as interpreters may be necessary.

However, with proper planning and implementation, recipients should be able to avoid most such situations.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether making a record of that choice, and of the recipient's offer of assistance, is appropriate.

As with the use of other non-professional interpreters, the recipient may need to consider issues of competence, appropriateness, conflicts of interest, and confidentiality in determining whether it should respect the desire of the LEP person to use an interpreter of his or her own choosing. Recipients should take reasonable steps to ascertain that family, legal guardians, caretakers, and other informal interpreters are not only competent in the circumstances, but are also appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation.

In some circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence matter. For these reasons, where the LEP individual has declined the express offer of free language assistance and has chosen to use a family member, friend or other informal interpreter, if a recipient later determines that a family member or friend is not competent or appropriate, the recipient should provide competent interpreter services to the LEP person in place of or, if appropriate, as a supplement to the LEP individual's interpreter. For HHS recipient programs and activities, this is particularly true, for example, in administrative hearings, child or adult protective service investigations, situations in which life, health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient may want to consider providing its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well.

Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using minor children as interpreters. The recipient should take reasonable steps to ascertain whether the LEP person's choice is voluntary, whether the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and whether the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

Again, while the use of a family member or friend may be appropriate, if that is the choice of the LEP person, the following are examples of where the recipient should provide an interpreter for the LEP individual:

- A woman or child is brought to an emergency room and is seen by an emergency room doctor. The doctor notices the patient's injuries and determines that they are consistent with those seen with victims of abuse or neglect. In such a case, use of the spouse or a parent to interpret for the patient may raise serious issues of conflict of

interest and may, thus, be inappropriate.

- A man, accompanied by his wife, visits an eye doctor for an eye examination. The eye doctor offers him an interpreter, but he requests that his wife interpret for him. The eye doctor talks to the wife and determines that she is competent to interpret for her husband during the examination. The wife interprets for her spouse as the examination proceeds, but the doctor discovers that the husband has cataracts that must be removed through surgery. The eye doctor determines that the wife does not understand the terms he is using to explain the diagnosis and, thus, that she is not competent to continue to interpret for her husband. The eye doctor stops the examination and calls an interpreter for the husband. A family member may be appropriate to serve as an interpreter if preferred by the LEP person in situations where the service provided is of a routine nature such as a simple eye examination. However, in a case where the nature of the service becomes more complex, depending on the circumstances, the family member or friend may not be competent to interpret.

C. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

*What Documents Should be Translated?* After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. In determining what outreach materials may be most useful to translate, such recipients may want to consider consulting with appropriate community organizations.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Given the foregoing considerations, vital written materials could include, for example:

- Consent and complaint forms.
- Intake forms with the potential for important consequences.
- Written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings.
- Notices advising LEP persons of free language assistance.
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Nonvital written materials could include:

- Hospital menus.
- Third party documents, forms, or pamphlets distributed by a recipient as a public service.
- For a non-governmental recipient, government documents and forms.
- Large documents such as enrollment handbooks (although vital information contained in large documents may need to be translated).
- General information about the program intended for informational purposes only.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Some recipients may serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is usually a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their Title VI obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non- compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, may be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The HHS recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where an application of the four factor test leads to the determination that oral language services are needed and are reasonable. Conversely, oral interpretation of documents may not substitute for translation of vital written documents. For example, oral

interpretation of the rules of a half-way house or residential treatment center may not substitute for translation of a short document containing the rules of the half-way house or residential treatment center and the consequences of violating those rules.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

If, after completing the four-factor analysis, a recipient determines that it should provide language assistance services, a recipient may develop an implementation plan to address the identified needs of the LEP populations it serves. Such recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically updated written plan on language assistance for LEP persons ("LEP plan") for use by a recipient's employees who serve or interact with the public could be an appropriate and cost-effective means of documenting compliance with Title VI and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans may provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits may lead recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain HHS recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying Title VI obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it may want to consider alternative and reasonable ways to articulate how it is providing meaningful access in compliance with Title VI. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

For the recipient who decides to develop a written implementation plan, the following five steps may be helpful in designing such a plan; they are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. Similarly, this step of an LEP implementation plan requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at http://www.usdoj.gov/crt/cor/13166.htm, and accessed at http://www.lep.gov. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to identify themselves.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

An effective LEP plan would likely include a process for identifying staff who need to be trained regarding the recipient's LEP plan, a process for training them, and the identification of the outcomes of the training. Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan may include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It may be important to take reasonable steps to see to it that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

An effective LEP plan would likely include a description of the process by which to provide notice of the services that are available to the LEP persons it serves or, to the extent that a service area exists, that reside in its service area and are eligible for services. Once a recipient has decided, based on the four factors, that it will provide language services, it may be important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients may want to consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, safety, or public benefits and services, or activities run by HHS recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.(11)

(11) The Social Security Administration has made such signs available at http://www.ssa.gov/multilanguage/langlist1.htm, which also can be accessed at http://www.lep.gov. These signs could, for example, be modified for recipient use.

- Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered, and provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

An effective LEP plan would likely include a process for a recipient to monitor its implementation of its plan and for updating its plan as necessary. For example, determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals may be appropriate, and recipients may want to provide notice of any changes in services to the LEP public and to employees. In addition, changes in demographics, types of services, or other needs may require annual reevaluation of an LEP plan. Less frequent

reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan may be to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals and establish management accountability. Some recipients may also want to consider whether they should provide opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by the HHS Office for Civil Rights through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Office for Civil Rights, and the entire Department, are committed to assisting recipients of HHS financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964. HHS believes that, on the whole, its recipients genuinely desire to comply with their obligations, but that some may lack knowledge of what is required of them or information concerning the resources that are available to them that would assist in meeting their Title VI obligations. Accordingly, HHS is committed to engaging in outreach to its recipients and to being responsive to inquiries from its recipients. Through its Administration on Children and Families, Administration on Health Care Quality and Research, Administration on Aging, Centers for Medicare and Medicaid Services, Health Resources Services Administration, Office for Civil Rights, and Office of Minority Health, HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons. This technical assistance includes translated forms and vital documents; training and information about best practices; and grants and model demonstration funds for LEP services. HHS also provides a variety of services for LEP persons who come in contact with the Department. These services include oral language assistance services such as language lines and interpreters, translation of written materials, and foreign language Web sites.

Further, HHS is committed to working with representatives of state and local health and social service agencies, organizations of such agencies, hospital associations, medical and dental associations and managed care organization to identify and share model plans, examples of best practices, cost-saving approaches, and information on other available resources, and to mobilize these organizations, to educate their members on these matters.

HHS continues to explore how it can share with its recipients language assistance measures, resources, cost-containment approaches, and other information and knowledge, developed with respect to its own federally conducted programs and activities, and welcomes suggestions and comments in this regard. The HHS Office for Civil Rights, in conjunction with other HHS components, through direct contact and its Web site at http://www.hhs.gov/ocr, will continue to provide technical assistance that assists HHS recipients in understanding and complying with their obligations under Title VI, and assists recipients and the public by identifying resources offered by the Office for Civil Rights and other HHS components that facilitate compliance with Title VI, with respect to LEP persons. This and other helpful information may also be accessed at http://www.lep.gov.

The Title VI regulations provide that HHS will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, HHS will inform the recipient in writing of this determination, including the basis for the determination. However, if a case is fully investigated and results in a finding of noncompliance, HHS must inform the

recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HHS must secure compliance through the termination of federal assistance after the HHS recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ to seek injunctive relief or pursue other enforcement proceedings. HHS engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, HHS proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, HHS's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, HHS acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, HHS will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance with Title VI, but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, HHS recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

**Appendix A**

## Questions and Answers Regarding the Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

**1. Q. What is the purpose of the guidance on language access released by the Department of Health and Human Services (HHS)?**

A. The purpose of the Policy Guidance is to clarify to members of the public, and to providers of health and social services who receive Federal financial assistance from HHS, the responsibility of such providers to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964. Among other things, this guidance clarifies existing legal requirements by providing a description of the factors providers of health and social services who receive Federal financial assistance from HHS should consider in determining and fulfilling their responsibilities to LEP persons under Title VI.

**2. Q. What does the policy guidance do?**

A. The policy guidance does the following:

- Reiterates the principles of Title VI with respect to LEP persons.
- Discusses the reasonable policies, procedures and other steps that recipients can take to ensure meaningful access to their program by LEP persons.
- Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI.
- Explains to recipients of Federal financial assistance that OCR will determine compliance on a case by case basis, in light of the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program, activity or service provided by the recipient; (2) the frequency with which LEP individuals come in contact with the recipient's program, activity or service; (3) the nature and importance of the recipient's program, activity, or service; and (4) the resources available to the recipient and costs.
- Provides that, based on these four factors, recipients with limited resources will not have the same compliance responsibilities applicable to recipients with greater resources. All recipients will have a great deal of flexibility in achieving compliance.
- Provides that OCR will offer extensive technical assistance for recipients.

**3. Q. Does the guidance impose new requirements on recipients?**

A. No. Since its enactment, Title VI of the Civil Rights Act of 1964 has prohibited discrimination on the basis of race, color or national origin in any program or activity that receives Federal financial assistance. Title VI requires that recipients take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. Over the past three decades, OCR has conducted thousands of investigations and reviews involving language differences that affect the access of LEP persons to medical care and social services. This guidance synthesizes the legal requirements that OCR has been enforcing for over three decades.

**4. Q. Who is covered by the guidance?**

A. Covered entities include any state or local agency, private institution or organization, or any public or private individual that (1) Operates, provides or engages in health, or social service programs and activities, and (2) receives Federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to the following entities, which may receive federal financial assistance: hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs; state, county and local health agencies; state Medicaid agencies; state, county and local welfare agencies; federally-funded programs for families, youth and children; Head Start programs; public and private contractors, subcontractors and vendors; physicians; and other providers who receive Federal financial assistance from HHS.

**5. Q. How does the guidance affect small practitioners and providers who are recipients of federal financial assistance?**

A. Small practitioners and providers will have considerable flexibility in determining precisely how to fulfill their obligations to take reasonable steps to ensure meaningful access for persons with limited English proficiency. OCR will assess compliance on a case by case basis and will take into account the following factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the recipient's program, activity or service; (2) the frequency with which LEP individuals come in contact with the program, activity or service; (3) the nature and importance of the program, activity, or service provided by the recipient; and (4) the resources available to the recipient and costs. There is no "one size fits all" solution for Title VI compliance with respect to LEP persons, and what constitutes "reasonable steps" for large providers may not be reasonable where small providers are concerned. Thus, smaller recipients with smaller budgets will not be expected to provide the same level of language services as larger recipients with larger budgets. OCR will continue to be available to provide technical assistance to HHS recipients, including sole practitioners and other small recipients, seeking to operate an effective language assistance program and to comply with Title VI.

**6. Q. The guidance identifies some specific circumstances which OCR will consider to be strong evidence that a program is in compliance with its obligation under Title VI to provide written materials in languages other than English. Does this mean that a recipient/covered entity will be considered out of compliance with Title VI if its program does not fall within these circumstances?**

A. No. The circumstances outlined in the guidance are intended to identify circumstances which amount to a "safe harbor" for recipients who desire greater certainty with respect to their obligations to provide written translations. This means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations. However, the failure to provide written translations under the circumstances outlined in the "safe harbor"does not mean there is non- compliance. Rather, the safe harbor provides a tool which recipients may use to consider whether the number or proportion of LEP persons served call for written translations of vital documents into frequently encountered languages other than English. However, even if the safe harbors are not used, if written translation of certain documents would be so financially burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances when, upon application of the four factors, translation services are required.

**7. Q. The guidance makes reference to "vital documents" and notes that, in certain circumstances, a recipient/covered entity may have to translate such documents into other languages. What is a vital document?**

A. As clarified by the guidance, the extent of Title VI obligations will be evaluated based on a four-factor test including the nature or importance of the service. In this regard, the guidance points out that documents deemed "vital" to the access of LEP persons to programs and services may often have to be translated. Whether or not a document (or the information it contains or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are "vital" to the meaningful access of the LEP populations they serve. Thus, vital documents could include, for instance, consent and complaint forms, intake forms with potential for important health consequences, written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings, notices advising LEP persons of free language assistance, written tests that do not assess English language competency, but test competency for a particular license, job or skill for which knowing English is not required, or applications to participate in a recipient's program or activity or to receive recipient benefits or services.

**8. Q. Will recipient/covered entities have to translate large documents such as managed care enrollment handbooks?**

A. Not necessarily. Some large documents may contain no vital information, and others will contain vital information that will have to be translated. Again, the obligation to translate will depend on application of the four factors. In this context, vital information may include, for instance, the provision of information in appropriate languages other than English, or identifying where a LEP person might obtain an interpretation or translation of the document. However, depending on the circumstances, large documents such as enrollment handbooks may not need to be translated or may not need to be translated in their entirety.

**9. Q. May an LEP person use a family member or friend as his or her interpreter?**

A. Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. When an LEP person attempts to access the services of a recipient of federal financial assistance, who upon application of the four factors is required to provide an interpreter, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Recipients should also consider the special circumstances discussed in the guidance that may affect whether a family member or friend should serve as an interpreter, such as whether the situation is an emergency, and concerns over competency, confidentiality, privacy, or conflict of interest.

**10. Q. May a recipient/covered entity require a LEP person to use a family member or a friend as his or her interpreter?**

A. No.

**11. Q. How does low health literacy, non-literacy, non-written languages, blindness and deafness among LEP populations affect the responsibilities of federal fund recipients?**

A. Effective communication in any language requires an understanding of the literacy levels of the eligible populations. However, where a LEP individual has a limited understanding of health matters or cannot read, access to the program is complicated by factors not generally directly related to national origin or language and thus is not a Title VI issue. Under these circumstances, a recipient should provide remedial health information to the same extent that it would provide such information to English-speakers. Similarly, a recipient should assist LEP individuals who cannot read in understanding written materials as it would non-literate English-speakers. A non-written language precludes the translation of documents, but does not affect the responsibility of the recipient to communicate the vital information contained in the document or to provide notice of the availability of oral translation. Of course, other law may be implicated in this context. For instance, Section 504 of the Rehabilitation Act of 1973 requires that federal fund recipients provide sign language and oral interpreters for people who have hearing impairments and provide materials in alternative formats such as in large print, braille or on tape for individuals with visual impairments; and the Americans with Disabilities Act imposes similar requirements on health and human service providers.

**12. Q. What assistance is available to help to recipients who wish to come into compliance with Title VI?**

A. For over three decades, OCR has provided substantial technical assistance to recipient/covered entities who are

seeking to ensure that LEP persons can meaningfully access their programs or services. Our regional staff is prepared to work with recipients to help them meet their obligations under Title VI. As part of its technical assistance services, OCR can help identify best practices and successful strategies used by other federal fund recipients, identify sources of federal reimbursement for translation services, and point providers to other resources.

In addition, the entire Department is also committed to assisting recipients of HHS financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964. Through its Administration on Children and Families, Administration on Health Care Quality and Research, Administration on Aging, Centers for Medicare and Medicaid Services, Health Resources and Services Administration, Office for Civil Rights, Office of Minority Health and Substance Abuse and Mental Health Services Administration, HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons. This technical assistance includes translated forms and vital documents; training and information about best practices; and grants and model demonstration funds for LEP services. HHS believes that, on the whole, its recipients genuinely desire to comply with their obligations, and that increased understanding of compliance responsibilities and knowledge about cost-effective resources that are increasingly available to them, will assist recipients/covered entities in meeting Title VI obligations. Accordingly, HHS is committed to providing outreach to its recipients and to being responsive to queries from its recipients. It is also committed to working with representatives of state and local health and social service agencies, organizations of such agencies, hospital associations, medical and dental associations and managed care organizations to identify and share model plans, examples of best practices, cost-saving approaches, and information on other available resources, and to mobilize these organizations to educate their members on these matters. HHS will continue to promote best practices in language access and fund model demonstration programs in this area. The HHS Office for Civil Rights, in conjunction with other HHS components, will continue to provide technical assistance and outreach to HHS recipients to assist them in understanding and complying with their obligations under Title VI and to provide information to recipients and the public through its Web site at http://www.hhs.gov/ocr. LEP information and resources can also be found at http://www.lep.gov.

**13. Q. How will OCR enforce compliance by recipient/covered entities with the LEP requirements of Title VI?**

A. The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to take reasonable steps to provide meaningful access to LEP persons is enforced and implemented by OCR through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that OCR will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, OCR will inform the recipient in writing of this determination, including the basis for the determination. However, if a case is fully investigated and results in a finding of noncompliance, OCR must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, OCR may secure compliance through the termination of federal assistance after the recipient has been given an opportunity for an administrative hearing. OCR may also refer the matter to the Department of Justice to secure compliance through any other means authorized by law.

At all stages of an investigation, OCR engages in voluntary compliance efforts and provides technical assistance to recipients. During these efforts, OCR proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, OCR's primary concern is to ensure that the recipient's policies and procedures contain reasonable steps to provide meaningful access for LEP persons to the recipient's programs, activities or services. As a result, the vast majority of all complaints have been resolved through such voluntary efforts.

**14. Q. Does issuing this guidance mean that OCR will be changing how it enforces compliance with Title VI?**

A. No. How OCR enforces Title VI is governed by the Title VI implementing regulations. The methods and procedures used to investigate and resolve complaints, and conduct compliance reviews, have not changed.

**15. Q. What is HHS doing to promote access for LEP persons to its own programs and services?Z**

A. HHS provides a variety of services for LEP persons who come in contact with the Department. These services include oral language assistance services such as language lines and interpreters; translation of written materials; and foreign language web sites. HHS will continue to explore how it can share with its recipients language assistance measures, resources, cost-containment approaches, and other information and knowledge, developed with respect to its own federally conducted programs and activities, and welcomes any suggestions in this regard.

Last revised: October 4, 2006

# Commonly Asked Questions And Answers Regarding Executive Order 13166

## Providing Meaningful Access to Individuals Who Are Limited English Proficient to Federally Assisted and Federally Conducted Programs and Activities

Printer-Friendly Page

### 1) Question: What is new in Executive Order 13166?

Answer: Executive Order 13166 (EO 13166) contains two major initiatives. The first is designed to better enforce and implement an existing obligation: Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to individuals who are limited English proficient (LEP). The Executive Order requires federal agencies that provide federal financial assistance to develop guidance to clarify those obligations for recipients of such assistance ("recipient guidance"). Thus, for instance, the Department of Justice (DOJ) is developing guidance specifically for its recipients, which are primarily state and local law enforcement agencies and departments of corrections.

Second, the Executive Order sets forth a new obligation: Because the federal government adheres to the principles of nondiscrimination and inclusion embodied in Title VI, the Executive Order requires all federal agencies to meet the same standards as federal financial assistance recipients in providing meaningful access for LEP individuals to federally conducted programs. Each federal agency must thus develop a plan for providing that access. For example, DOJ components such as the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Bureau of Prisons, the Civil Rights Division, and others, are in the process of developing a combined plan. Each federal agency must undertake the same process.

The Coordination and Review Section (COR) of the Civil Rights Division of DOJ has taken the lead in coordinating and implementing this Executive Order. In late August, Assistant Attorney General Bill Lann Lee sent a letter to heads of agencies, general counsels, and (where available) civil rights offices in every federal agency. The letter informed each agency of its obligations under the Executive Order and of COR's role in providing technical assistance and review to agencies.

### 2) Question: What federal activities are covered by the Executive Order?

Answer: The Executive Order covers all "federally conducted programs and activities." Anything a federal agency does falls within the scope of federally conducted programs or activities. All of the over ninety agencies are responsible for developing and implementing "federally conducted plans" to ensure that persons who are LEP have meaningful access to federal programs and activities.

The definition of federally conducted programs is the same under Executive Order 13166 as the definition used under the regulations for application of Section 504 of the Rehabilitation Act of 1973 to federally conducted programs. 28 C.F.R. Pt. 39, Editorial Note, Section 39.102 Application. That definition states:

> Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by the regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Department's facilities (cafeteria, library). Activities in the second category include programs that provide Federal services or benefits (immigration activities, operation of the Federal prison system).

Id.

Federally conducted activities include the provision of federal benefits or services, the imposition of a burden on a member of the public, and any other activities a federal agency conducts. For example, the investigation of a complaint of discrimination by an office of civil rights or the provision of information by a law enforcement agency that would inform a person of or allow a person to exercise their rights would be a "service." The grant of authority to engage in temporary employment by the Immigration and Naturalization Service or of social security benefits would be a "benefit." The imposition of taxes by the Internal Revenue Service or discipline upon a prisoner in a Bureau of Prisons correctional facility would be a "burden." Another example of federal activities covered by the Executive Order are law enforcement activities such as custodial interrogations, arrests and detentions, searches, investigations, etc., performed by federal law enforcement agencies.

**3) Question: What is an agency's "recipient guidance?"**

Answer: Throughout the questions and answers, when we refer to "recipient guidance" we mean to the guidance that agencies must develop to ensure that entities to which they grant federal financial assistance comply with Title VI's prohibition against national origin discrimination. Approximately 28 federal agencies provide some form of federal financial assistance to private, state, or local entities. Federal financial assistance includes, but is not limited to, grants and loans of federal funds; grants or donations of federal property; training; details of federal personnel; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. For instance, the Department of Justice provides federal financial assistance to several agencies, primarily state and local law enforcement agencies, and departments of corrections.

**4) Question: What is the general DOJ Guidance on Limited English Proficiency that was issued along with EO 13166? How can agencies use it? How is it different from the guidance that DOJ and other agencies are working on now?**

Answer: DOJ has consistently interpreted Title VI and its regulations to require recipients of federal financial assistance to provide meaningful access to LEP individuals, and funding agencies have found recipients in violation of this obligation and prescribed remedial efforts on myriad occasions. The general DOJ LEP Guidance sets forth the standards DOJ has been applying, and it provides a framework for agencies to use in developing specific guidance for their own recipients. EO 13166 requires each agency to prepare guidance that is tailored to the agency's recipients. For example, DOJ is preparing guidance as to how the general LEP standards apply in law enforcement agencies and departments of corrections. EO 13166 also requires agencies to apply the standards set forth in the DOJ LEP Guidance to their own federally conducted activities. The general DOJ LEP Guidance can be found on the COR website at www.lep.gov

**5) Question: If an agency does not provide federal financial assistance, does the Executive Order apply to that agency?**

Answer: Yes. EO 13166 requires that ALL federal agencies take reasonable steps to provide meaningful access to their own federally conducted activities. Each agency must develop and begin to implement a plan for doing so by December 11, 2000. That plan must be submitted to the Department of Justice, through the Coordination and Review Section, by sending it to:

Merrily Friedlander, Chief
Coordination and Review Section
Civil Rights Division
United States Department of Justice
P.O. Box 66560
Washington, D.C. 20035-6560

COR staff is available to discuss these plans with agencies.

**6) Question: What is the time frame for action?**

Answer: By December 11, 2000, each agency must have developed and begun to implement a plan for providing meaningful access for LEP individuals to the agency's federally conducted activities.

Also by December 11, 2000, each agency that provides federal financial assistance must submit a draft of its guidance for recipients of that assistance to the Department of Justice, Civil Rights Division, Coordination and Review Section (COR), at the address noted above. COR will review each guidance for consistency with other agencies' guidance and with the Executive Order. Once COR approves the guidance, it must be published in the Federal Register for review and comment.

**7) Question: What standards should agencies apply to recipient guidance and to their plans for federally conducted activities?**

Answer: Each agency and each recipient of federal financial assistance must take reasonable steps to provide meaningful access to LEP individuals. Among the factors to be considered in determining what constitutes reasonable steps to ensure meaningful access are: (1) the number or proportion of LEP persons in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program; (3) the importance of the service provided by the program; and (4) the resources available to the recipient. These four factors are further explained in the DOJ LEP Guidance found on the COR website and published in the Federal Register on August 16, 2000.

**8) Question: If a recipient is covered by a State or local "English-only" law, must it still comply with the Title VI obligation and agency guidance interpreting that obligation?**

Answer: Yes. State and local laws may provide additional obligations to serve LEP individuals, but cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, State or local "English-only" laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in States and localities with "English-only" laws are certainly not required to accept federal funding – but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

**9) Question: When developing plans and guidance regarding translations of documents, how do we determine which documents must be translated?**

Answer: It is important to ensure that written materials routinely provided in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document will be considered vital if it contains information that is critical for obtaining the federal services and/or benefits, or is required by law. Vital documents include, for example: applications; consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; prison rule books; and written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. Non-vital information includes documents that are not critical to access such benefits and services. Advertisements of federal agency tours and copies of testimony presented to Congress that are available for informational purposes would be considered non-vital information.

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will

suffice and the documents need not be translated in their entirety.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, we recognize that it would be impossible, from a practical and cost-based perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients of federal financial assistance, and EO 13166 does not require it of federal agencies. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important for federal agencies to continually survey/assess the needs of eligible service populations in order to determine whether certain critical outreach materials should be translated into other languages.

**10) Question: Does the Executive Order apply to materials on websites?**

Answer: Yes. However, the decision to place something on the web will not affect whether the document must be translated. For example, placement on the website should not change the agencies' or recipients' original assessment regarding the number or proportion of LEP persons that comprise the intended audience for that document.

The four-factor analysis applies to each individual "document" on the website. Generally, entire websites need not be translated, as only the vital information/documents within the website might need translation. If, in applying the four-factor analysis, the agency or recipient determines that a particular document/piece of information should be translated, that translation should also be posted on the website if the English-language version is on the website. If documents are translated within a website, the existence of the translation should be noted (in the appropriate language) at an initial entry point to the site (usually the homepage).

**11) Question: What about the standards for oral interpretation?**

Answer: The obligation to provide meaningful opportunity to individuals who are LEP is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program."

There are a number of steps which can assist recipients and federal agencies in providing such oral assistance. They range from hiring bilingual staff or staff interpreters competent in the skill of interpreting, to contracting with qualified outside in-person or telephonic interpreter services, to arranging formally for the services of qualified voluntary community interpreters who are bound by confidentiality agreements. Generally, it is not acceptable for agencies or recipients to rely upon an LEP individual's family members or friends to provide the interpreter services. The agency or recipient should meet its obligations under EO 13166 or Title VI by supplying competent language services free of cost. In rare emergency situations, the agency or recipient may have to rely on an LEP person's family members or other persons whose language skills and competency in interpreting have not been established. Proper agency or recipient planning and implementation is important in order to ensure that those situations rarely occur.

**12) Question: Does the Executive Order apply to federally conducted activities overseas or to foreign recipients of federal financial assistance?**

Answer: No. The Department of Justice has determined that EO 13166 applies only within the United States and its territories and does not apply extraterritorially.

However, agencies that conduct activities overseas must still submit a plan for making their domestic activities accessible to people who are limited English proficient. That plan should indicate that the agency conducts federal activities abroad, but that DOJ has determined that the EO does not apply to those activities.

Similarly, agencies that provide federal financial assistance abroad and domestically must still create guidance for their domestic recipients, and may include a statement in the guidance indicating that the guidance does not apply extraterritorially.

**13) Question: Does Executive Order 13166 require that bids be let in languages other than English?**

Answer: Generally, current practice with regard to announcing federal government contracts and grants would not be altered under the Executive Order. In determining what is required, the focus of the analysis in this situation is on the first factor – the number or proportion of eligible LEP persons. Except, perhaps, in territories, it is reasonable to expect that the number or proportion of eligible contract or grant recipients who are LEP and are themselves attempting to find and respond to announcements of grants and contracts is negligible.

**14) Question: If a federal agency contracts with a private or other entity to conduct certain activities of the agency, does the Executive Order apply to the activities of the contractor?**

Answer: Yes. When a different entity conducts certain activities for the federal agency, then the Executive Order applies to the entity's activities. The agency should ensure that the entity knows the general standards for LEP access and applies the agency's plan to the activities it is conducting on behalf of the agency. An agency cannot avoid its obligations by contracting them out. Mandatory compliance with the agency's LEP policy should be included in the contract.

**15) Question: What does Executive Order 13166 require for federal employment practices?**

Answer: If English is essential in a job, the Executive Order would not require any services for LEP individuals. For jobs where agencies determine English is not essential, agencies should apply the four factors.

**16) Question: Where can I get a copy of the Executive Order and the DOJ General LEP Guidance? What about the Department of Health and Human Services' (HHS) recipient guidance?**

Answer: A copy of the Executive Order and DOJ's general LEP Guidance (both translated into Spanish and Chinese) can be found on the Coordination and Review website at www.usdoj.gov/crt/cor/. You can also link to HHS's agency-specific guidance for its recipients at that location.

**For more information on Executive Order 13166, please contact the Coordination and Review Section, 202-307-2222.**

[Federal Register: August 16, 2000 (Volume 65, Number 159)]
[Notices]
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From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr16au00-136]

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DEPARTMENT OF JUSTICE

Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Policy guidance document.

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SUMMARY: This Policy Guidance Document entitled ``Enforcement of Title VI of the Civil Rights Act of 1964 `` National Origin Discrimination Against Persons with Limited English Proficiency (LEP Guidance)" is being issued pursuant to authority granted by Executive Order 12250 and Department of Justice Regulations. It addresses the application of Title VI's prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency. This policy guidance does not create new obligations, but rather, clarifies existing Title VI responsibilities. The purpose of this document is to set forth general principles for agencies to apply in developing guidelines for services to individuals with limited English proficiency. The Policy Guidance Document appears below.

DATES: Effective August 11, 2000.

ADDRESSES: Coordination and Review Section, Civil Rights Division, P.O. Box 66560, Washington, D.C. 20035-6560.

FOR FURTHER INFORMATION CONTACT: Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, (202) 307-2222.

Helen L. Norton,
Counsel to the Assistant Attorney General, Civil Rights Division.
Office of the Assistant Attorney General

Washington, D.C. 20530

August 11, 2000.
TO: Executive Agency Civil Rights Officers
FROM: Bill Lann Lee, Assistant Attorney General, Civil Rights Division
SUBJECT: Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency (``LEP Guidance")

This policy directive concerning the enforcement of Title VI of the

Civil Rights Act of 1964, 42 U.S.C. Secs. 2000d et seq., as amended, is being issued pursuant to the authority granted by Executive Order No. 12250 \1\ and Department of Justice regulations.\2\ It addresses the application to recipients of federal financial assistance of Title VI's prohibition on national origin discrimination when information is provided only in English to persons who do not understand English. This policy guidance does not create new obligations but, rather, clarifies existing Title VI responsibilities.

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\1\ 42 U.S.C. Sec. 2000d-1 note.
\2\ 28 C.F.R. Sec. 0.51.

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Department of Justice Regulations for the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (Coordination Regulations), 28 C.F.R. 42.401 et seq., direct agencies to ``publish title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI." 28 CFR Sec. 42.404(a). The purpose of this document is to set forth general principles for agencies to apply in developing such guidelines for services to individuals with limited English proficiency (LEP). It is expected that, in developing this guidance for their federally assisted programs, agencies will apply these general principles, taking into account the unique nature of the programs to which they provide federal financial assistance.

A federal aid recipient's failure to assure that people who are not proficient in English can effectively participate in and benefit from programs and activities may constitute national origin discrimination prohibited by Title VI. In order to assist agencies that grant federal financial assistance in ensuring that recipients of federal financial assistance are complying with their responsibilities, this policy directive addresses the appropriate compliance standards. Agencies should utilize the standards set forth in this Policy Guidance Document to develop specific criteria applicable to review the programs and activities for which they offer financial assistance. The Department of Education \3\ already has established policies, and the Department of Health and Human Services (HHS) \4\ has been developing guidance in a manner consistent with Title VI and this Document, that applies to their specific programs receiving federal financial assistance.

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\3\ Department of Education policies regarding the Title VI responsibilities of public school districts with respect to LEP children and their parents are reflected in three Office for Civil Rights policy documents: (1) the May 1970 memorandum to school districts, ``Identification of Discrimination and Denial of Services on the Basis of National Origin," (2) the December 3, 1985, guidance document, ``The Office for Civil Rights' Title VI Language Minority Compliance Procedures," and (3) the September 1991 memorandum, ``Policy Update on Schools Obligations Toward National Origin Minority Students with Limited English Proficiency." These documents can be found at the Department of Education website at www.ed.gov/office/OCR.

\4\ The Department of Health and Human Services is issuing policy guidance titled: ``Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency." This policy addresses the Title VI responsibilities of HHS recipients to individuals with limited English proficiency.

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Background

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. Sec. 2000d, provides:

No person in the United States 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.

The term ``program or activity" is broadly defined. 42 U.S.C. Sec. 2000d-4a.
Consistent with the model Title VI regulations drafted by a Presidential task force in 1964, virtually every executive agency that grants federal financial assistance has promulgated regulations to implement Title VI. These regulations prohibit recipients from ``restrict[ing] 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" and ``utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination" 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."
In Lau v. Nichols, 414 U.S. 563 (1974), the Supreme Court interpreted these provisions as requiring that a federal financial recipient take steps to ensure that language barriers did not exclude LEP persons from effective participation in its benefits and services. Lau involved a group of students of Chinese origin who did not speak English to whom the recipient provided the same services--an education provided solely in English--that it provided students who did speak English. The Court held that, under these circumstances, the school's practice violated the Title VI prohibition against discrimination on

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the basis of national origin. The Court observed that ``[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program--all earmarks of the discrimination banned by" the Title VI regulations.\5\ Courts have applied the doctrine enunciated in Lau both inside and outside the education context. It has been considered in contexts as varied as what languages drivers' license tests must be given in or whether material relating to unemployment benefits must be given in a language other than English.\6\

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\5\ 414 U.S. at 568. Congress manifested its approval of the Lau decision requirements concerning the provision of meaningful education services by enacting provisions in the Education Amendments of 1974, Pub. L. No. 93-380, Secs. 105, 204, 88 Stat. 503-512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401 et seq., which provided federal financial assistance to school districts in providing language services.
\6\ For cases outside the educational context, see, e.g.,

Sandoval v. Hagan, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), affirmed, 197 F.3d 484, (11th Cir. 1999), rehearing and suggestion for rehearing en banc denied, 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98-6598-II), petition for certiorari filed May 30, 2000 (No. 99-1908) (giving drivers' license tests only in English violates Title VI); and Pabon v. Levine, 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

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Link Between National Origin And Language

For the majority of people living in the United States, English is their native language or they have acquired proficiency in English. They are able to participate fully in federally assisted programs and activities even if written and oral communications are exclusively in the English language.

The same cannot be said for the remaining minority who have limited English proficiency. This group includes persons born in other countries, some children of immigrants born in the United States, and other non-English or limited English proficient persons born in the United States, including some Native Americans. Despite efforts to learn and master English, their English language proficiency may be limited for some time.\7\ Unless grant recipients take steps to respond to this difficulty, recipients effectively may deny those who do not speak, read, or understand English access to the benefits and services for which they qualify.

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\7\ Certainly it is important to achieve English language proficiency in order to fully participate at every level in American society. As we understand the Supreme Court's interpretation of Title VI's prohibition of national origin discrimination, it does not in any way disparage use of the English language.

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Many recipients of federal financial assistance recognize that the failure to provide language assistance to such persons may deny them vital access to services and benefits. In some instances, a recipient's failure to remove language barriers is attributable to ignorance of the fact that some members of the community are unable to communicate in English, to a general resistance to change, or to a lack of awareness of the obligation to address this obstacle.

In some cases, however, the failure to address language barriers may not be simply an oversight, but rather may be attributable, at least in part, to invidious discrimination on the basis of national origin and race. While there is not always a direct relationship between an individual's language and national origin, often language does serve as an identifier of national origin.\8\ The same sort of prejudice and xenophobia that may be at the root of discrimination against persons from other nations may be triggered when a person speaks a language other than English.

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\8\ As the Supreme Court observed, ``[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond." Hernandez v. New York, 500 U.S. 352, 370 (1991) (plurality opinion).

Language elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility * * *. It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.\9\

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\9\ Id. at 371 (plurality opinion).

While Title VI itself prohibits only intentional discrimination on the basis of national origin,\10\ the Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.\11\ The Department of Justice has consistently adhered to the view that the significant discriminatory effects that the failure to provide language assistance has on the basis of national origin, places the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations.\12\ Also, existing language barriers potentially may be rooted in invidious discrimination. The Supreme Court in Lau concluded that a recipient's failure to take affirmative steps to provide ``meaningful opportunity" for LEP individuals to participate in its programs and activities violates the recipient's obligations under Title VI and its regulations.

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\10\ Alexander v. Choate, 469 U.S. 287, 293 (1985).
\11\ Id. at 293-294; Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642-645 (Stevens, Brennan, Blackmun, JJ.); Lau v. Nichols, 414 U.S. at 568; id. at 571 (Stewart, J., concurring in result). In a July 24, 1994, memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning ``Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964," the Attorney General stated that each agency ``should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs."
\12\ The Department's position with regard to written language assistance is articulated in 28 CFR Sec. 42.405(d)(1), which is contained in the Coordination Regulations, 28 CFR Subpt. F, issued in 1976. These Regulations ``govern the respective obligations of Federal agencies regarding enforcement of title VI." 28 CFR Sec. 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in Lau.

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All Recipients Must Take Reasonable Steps To Provide Meaningful Access

Recipients who fail to provide services to LEP applicants and beneficiaries in their federally assisted programs and activities may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its regulations require recipients to take reasonable steps to ensure ``meaningful" access to the information and services they provide. What constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the

resources available to the recipient.

(1) Number or Proportion of LEP Individuals

Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. However, a factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day. But even those who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are

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possible and if so, have a plan of what to do if a LEP individual seeks service under the program in question. This plan need not be intricate; it may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

(2) Frequency of Contact with the Program

Frequency of contacts between the program or activity and LEP individuals is another factor to be weighed. For example, if LEP individuals must access the recipient's program or activity on a daily basis, e.g., as they must in attending elementary or secondary school, a recipient has greater duties than if such contact is unpredictable or infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

(3) Nature and Importance of the Program

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted zoo or theater. In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. A decision by a federal, state, or local entity to make an activity compulsory, such as elementary and secondary school attendance or medical inoculations, serves as strong evidence of the program's importance.

(4) Resources Available

The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipients must take. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual's day-to-day existence. Claims of limited resources from large entities will need to be well-substantiated.\13\

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\13\ Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, see Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1975)), or there is another ``substantial legitimate justification for the challenged practice." Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1407 (11th Cir. 1993). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are ``consistent with business necessity" and there is no ``alternative employment practice" that is equally effective. 42 U.S.C. Sec. 2000e-2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. Sec. 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. Alexander v. Choate, 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be ``reasonable" to take no affirmative steps to provide further access.

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Written vs. Oral Language Services

In balancing the factors discussed above to determine what reasonable steps must be taken by recipients to provide meaningful access to each LEP individual, agencies should particularly address the appropriate mix of written and oral language assistance. Which documents must be translated, when oral translation is necessary, and whether such services must be immediately available will depend upon the factors previously mentioned.\14\ Recipients often communicate with the public in writing, either on paper or over the Internet, and written translations are a highly effective way of communicating with large numbers of people who do not speak, read or understand English. While the Department of Justice's Coordination Regulation, 28 CFR Sec. 42.405(d)(1), expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations. Oral communication between recipients and beneficiaries often is a necessary part of the exchange of information. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons ``effectively to be informed of or to participate in the program" in the same manner as persons who speak English.

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\14\ Under the four-part analysis, for instance, Title VI would not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all state statutes or notices of rulemaking made generally available to the public. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of documents.

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In some cases, ``meaningful opportunity" to benefit from the program requires the recipient to take steps to assure that translation

services are promptly available. In some circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. It is the responsibility of federal assistance-granting agencies, in conducting their Title VI compliance activities, to make more specific judgments by applying their program expertise to concrete cases.

Conclusion

This document provides a general framework by which agencies can determine when LEP assistance is required in their federally assisted programs and activities and what the nature of that assistance should be. We expect agencies to implement this document by issuing guidance documents specific to their own recipients as contemplated by the Department of Justice Coordination Regulations and as HHS and the Department of Education already have done. The Coordination and Review Section is available to assist you in preparing your agency-specific guidance. In addition, agencies should provide technical assistance to their recipients concerning the provision of appropriate LEP services.

[FR Doc. 00-20867 Filed 8-15-00; 8:45 am]
BILLING CODE 4410-13-P



This page was last updated on February 07, 2001

THE WHITE HOUSE

Office of the Press Secretary
(Aboard Air Force One)

For Immediate Release August 11, 2000

EXECUTIVE ORDER

13166

IMPROVING ACCESS TO SERVICES FOR
PERSONS WITH LIMITED ENGLISH PROFICIENCY

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. Goals.

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Sec. 2. Federally Conducted Programs and Activities.

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Sec. 3. Federally Assisted Programs and Activities.

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's

recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

Sec. 4. Consultations.

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Sec. 5. Judicial Review.

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
August 11, 2000.

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THE WHITE HOUSE

Office of the Press Secretary
(Aboard Air Force One)

For Immediate Release August 11, 2000

EXECUTIVE ORDER

13166

IMPROVING ACCESS TO SERVICES FOR
PERSONS WITH LIMITED ENGLISH PROFICIENCY

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. Goals.

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Sec. 2. Federally Conducted Programs and Activities.

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Sec. 3. Federally Assisted Programs and Activities.

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's

recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

Sec. 4. Consultations.

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Sec. 5. Judicial Review.

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
August 11, 2000.

# # #



This page was last updated on February 07, 2001

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 4, 2003.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

*1. Community Capital Bancshares, Inc.*, Albany, Georgia; to acquire 100 percent of the voting shares of First Bank of Dothan, Dothan, Alabama.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. North American Bancshares, Inc.*, Sherman, Texas; to acquire 100 percent of the voting shares of Pioneer Bankshares, Inc., Fredericksburg, Texas, and thereby indirectly acquire Pioneer II Bankshares, Inc., Dover, Delaware, and Pioneer National Bank, Fredericksburg, Texas.

Board of Governors of the Federal Reserve System, August 4, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 03–20242 Filed 8–7–03; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

**AGENCY:** Health and Human Services, HHS.

**ACTION:** Policy guidance document.

**SUMMARY:** The Department of Health and Human Services (HHS) publishes revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons ("Revised HHS LEP Guidance"). This revised HHS LEP Guidance is issued pursuant to Executive Order 13166. HHS is seeking comment on the revised HHS LEP Guidance for a 120-day period ending on January 6, 2004.

**DATES:** This Guidance is effective immediately. Comments must be submitted on or before January 6, 2004. HHS will review all comments and will determine if modifications to the Guidance are necessary. This Guidance supplants existing guidance on the same subject originally published at 65 FR 52762 (August 30, 2000).

**ADDRESSES:** Comments should be addressed to Deeana Jang with "Attention: LEP Comments," and should be sent to 200 Independence Avenue, SW, Room 506F, Washington, DC 20201. Comments may also be submitted by e-mail at *LEP.comments@hhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Onelio Lopez at the Office for Civil Rights, U.S. Department of Health and Human Services, 200 Independence Avenue, SW, Room 506F, Washington, DC 20201, addressed with "Attention: LEP Comments;" telephone 202–205–0192; TDD: toll-free 1–800–537–7697. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

**SUPPLEMENTARY INFORMATION:** The United States Department of Health and Human Services (HHS) is publishing revised "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" ("Revised HHS LEP Guidance"). This guidance was originally published on August 30, 2000, and included a 60-day comment period. See 65 FR 52762. This original guidance was republished for additional comment on February 1, 2002, pursuant to a memorandum issued by the United States Department of Justice on October 26, 2001. See 67 FR 4968.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress entitled "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, which was drafted and organized to also function as a model for similar guidance documents by other Federal grant-making agencies. See 67 FR 41455 (June 18, 2002).

This revised HHS LEP Guidance reflects consideration of the comments received and the subsequent guidance of DOJ. HHS welcomes comments from the public on the revised guidance document, and has announced the extended comment period to encourage comment from the public and from recipients regarding experience in applying this revised guidance. Following the comment period, HHS will evaluate whether further revisions to the guidance are necessary or appropriate.

The text of the guidance appears below. Appendix A to the guidance is a series of questions and answers that provides a useful summary of a number of the major aspects of the guidance.

It has been determined that this revised HHS LEP Guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553, and is not subject to Executive Order 12866 (Regulatory Review and Planning, September 30, 1993).

Dated: August 4, 2003.

**Richard M. Campanelli,**

*Director, Office for Civil Rights.*

### I. Background and Legal History

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.

Department of Health and Human Services regulations promulgated pursuant to section 602 forbid recipients 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 with respect to individuals of a particular race, color, or national origin." 45 CFR 80.3(b)(2).

The Supreme Court, in Lau v. Nichols, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare (HHS's predecessor), 45 CFR 80.3(b)(2), 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 was issued. "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000). 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 forbidding funding recipients from "restrict[ing] 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" 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, the Department of Justice ("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 Federal 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 for recipients of DOJ federal financial assistance in light of Sandoval.[1] 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 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.

Consistent with Executive Order 13166, HHS developed its own guidance document for recipients and initially issued it on August 30, 2000. "Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency," 65 FR 52762 (August 30, 2000) ("HHS Guidance"). Following the instructions in the October 26, 2001 memorandum from Ralph F. Boyd, Jr., the Department republished, on February 1, 2002, its existing guidance document for additional public comment. "Office for Civil Rights; Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency," 67 FR 4968 (February 1, 2002).

## II. Revised HHS LEP Guidance

Following republication of our guidance in February 2002, the Department received nearly 200 public comments. Most comments were in full support of the principles behind the HHS Guidance, and a number supported maintaining the guidance without change. While the comments reflected recognition that effective communication is critical for necessary health and human services, many commentors raised serious concerns about coverage, compliance costs, and use of family and friends as interpreters. In addition, many providers of services requested assistance from the Office for Civil Rights on how to comply with both general and specific provisions of the guidance.

On July 8, 2002, Assistant Attorney General Boyd issued a memorandum expressing the need for consistency across federal agency LEP guidance documents. Specifically, he requested that the Department (and all other affected agencies) use the DOJ LEP guidance (published at 67 FR 41455, June 18, 2002) as a model, and revise and republish the HHS guidance based on that model for public comment.

The DOJ's role under Executive Order 13166 is unique. The Executive Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. DOJ's guidance stated the following principles. "Consistency among Departments of the federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. 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.

[1] The memorandum noted that some commentators had 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. DOJ stated that 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.

This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive federal financial assistance."

HHS believes that the DOJ model guidance responds to the important issues raised in comments on the HHS document published in February, and the Department is confident that the DOJ LEP Guidance serves as an appropriate model for HHS to adopt. The Department notes that it has made certain modifications for purposes of clarity and organization, and a few additional modifications to accommodate particular programmatic needs and purposes.

There are many productive steps that the federal government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller recipients of Federal financial assistance may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to continue to provide assistance and guidance in this important area. In addition, HHS plans to work with representatives of state health and social service agencies, hospital associations, medical and dental associations, managed care organizations, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, HHS 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, small local governments, 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.

As discussed earlier, in certain circumstances, the 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 the Title VI regulations against national origin discrimination. Specifically, the failure of a recipient of Federal financial assistance from HHS to take reasonable steps to provide LEP persons with meaningful opportunity to participate in HHS-funded programs may constitute a violation of Title VI and HHS's implementing regulations. 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.[2] These are the same criteria HHS will use in evaluating whether recipients are in compliance with Title VI and the Title VI regulations.

## III. Who Is Covered?

Department of Health and Human Services regulations, 45 CFR 80.3(b)(2), require all recipients of federal financial assistance from HHS to provide meaningful access to LEP persons.[3] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

Recipients of HHS assistance may include, for example:

- Hospitals, nursing homes, home health agencies, and managed care organizations.
- Universities and other entities with health or social service research programs.
- State, county, and local health agencies.
- State Medicaid agencies.
- State, county and local welfare agencies.
- Programs for families, youth, and children.
- Head Start programs.
- Public and private contractors, subcontractors and vendors.
- Physicians and other providers who receive Federal financial assistance from HHS.

Recipients of HHS assistance do not include, for example, providers who only receive Medicare Part B payments.[4]

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.[5]

Example: HHS provides assistance to a state department of health to provide immunizations for children. All of the operations of the entire state department of health—not just the particular immunization programs—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 may be limited English proficient, or "LEP," and may be eligible to receive 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 HHS recipients and should be considered when planning language services may include such as those:

- Persons seeking Temporary Assistance for Needy Families (TANF), and other social services.
- Persons seeking health and health-related services.
- Community members seeking to participate in health promotion or awareness activities.
- Persons who encounter the public health system.

[2] 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.

[3] 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 apply additionally to the programs and activities of federal agencies, including HHS.

[4] HHS's Title VI regulations do not apply to (i) Any federal financial assistance by way of insurance or guaranty contracts, (ii) the use of any assistance by any individual who is the ultimate beneficiary under any program which receives federal financial assistance, and (iii) any employment practice, under any such program, or any employer, employment agency, or labor organization, except as otherwise described in the Title VI regulations. 45 CFR 80.2.

[5] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its implementing regulations, only funds directed to the particular program or activity that is out of compliance could be terminated. 42 U.S.C. 2000d–1.

• Parents and legal guardians of minors eligible for coverage concerning such programs.

**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, or, in fact, that, in certain circumstances, recipient-provided language services are not necessary. (As discussed below, recipients may want to consider documenting their application of the four-factor test to the services they provide.) 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. HHS 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, if any, 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 affected, by" a recipient's program or activity are those who are served or encountered in the eligible service 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 particular office of the county or city health department serves a large LEP population, the appropriate service area is most likely that office, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider whether the minor children their programs serve have LEP parent(s) or guardian(s) with whom the recipient may need to interact.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In certain circumstances, it is important in conducting this analysis to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted when appropriate 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.[6] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations which may be underserved because of existing language barriers and who would benefit from the recipient's program, activity, or service, were language services provided.

*(2) The Frequency With Which LEP Individuals Come in Contact With the Recipient's Program, Activity or Service*

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a recipient's program, activity, or service on a daily basis, a recipient has greater duties than if an LEP individual's contact with the recipient's program, activity, or service is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. For example, a drug treatment program that encounters LEP persons on a daily basis most likely may have a greater obligation than a drug treatment program that encounters LEP persons sporadically. The obligations of both programs are greater than that of a drug treatment program which has never encountered a LEP individual where the service area includes few or no LEP individuals.

In applying this standard, certain recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups. For example, in areas where a community health center serves a large LEP population, outreach may be appropriate. On the other hand, for most individual physicians or dentists, outreach may not be necessary.

[6] 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 the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

*(3) The Nature and Importance of the Recipient's Program, Activity, or Service*

The more important the recipient's activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Thus, the recipient should consider the importance and urgency of its program, activity, or service. If the activity is both important and urgent—such as the communication of information concerning emergency surgery and the obtaining of informed consent prior to such surgery—it is more likely that relatively immediate language services are needed. Alternatively, if the activity is important, but not urgent—such as the communication of information about, and obtaining informed consent for, elective surgery where delay will not have any adverse impact on the patient's health, or communication of information regarding admission to the hospital for tests where delay would not affect the patient's health—it is more likely that language services are needed, but that such services can be delayed for a reasonable period of time. Finally, if an activity is neither important nor urgent—such as a general public tour of a facility—it is more likely that language services would not be needed. The obligation to communicate rights to a person whose benefits are being terminated or to provide medical services to an LEP person who is ill differ, for example, from those to provide medical care for a healthy LEP person or to provide recreational programming.

Decisions by a federal, state, or local entity to make an activity compulsory, such as job search programs in welfare to work programs, can serve as strong evidence of the program's importance.

*(4) The Resources Available to the Recipient and Costs*

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take to comply with Title VI. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, reasonable steps may cease to be "reasonable" where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[7] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

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This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons, to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient—or to another recipient—for language assistance. In certain circumstances, pursuant to an arrangement, where there is no discriminatory intent, the purpose is beneficial and will result in better access for LEP persons, it may be appropriate for a recipient to refer the LEP beneficiary to another recipient. For example, if two physicians in the same field, one with a Spanish-speaking assistant and one with a Vietnamese-speaking assistant, practice in the same geographic area and have a custom/practice of referring patients between each other, it may be appropriate for the first doctor to refer LEP Vietnamese patients to the second doctor and for the second doctor to refer LEP Spanish patients to the first doctor. In certain circumstances, a referral would not be appropriate: for example, a Korean speaking LEP woman comes to a battered women's shelter requesting assistance. Although the shelter has space, it has no arrangement to provide language assistance for LEP persons. Instead, as with all LEP persons, the staff only offer her a prepared list of three shelters in the neighborhood that generally provide language assistance. The staff does not check to assure that any of the three alternative shelters can actually provide the Korean language assistance she needs, or that any have space available for her.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. In some circumstances, where the importance and nature of the activity, the number or proportion and frequency of contact with LEP persons may be high and the relative costs and resources needed to provide language services may be low, it may be appropriate for a recipient to hire bilingual staff or staff interpreters. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high, in which case language services for the particular activity may not be necessary. In situations that fall in between the two, it may be appropriate for recipients to use contract interpreters or telephone language lines to provide language services to LEP persons in contact with their program or activity. A hospital emergency room in a city with a significant Hmong population may need immediately available oral interpreters and may want to give serious consideration to hiring some bilingual staff. (Of course, many hospitals have already made such arrangements.) On the other hand, a physician's practice which encounters one LEP Hmong patient per month on a walk-in basis

[7] Recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

may want to use a telephone interpreter service. In contrast, a dentist in an almost exclusively English-speaking neighborhood who has rarely encountered a patient who did not speak English and has never encountered a Hmong-speaking patient may not need, pursuant solely to Title VI, to provide language services for a LEP Hmong individual who comes in for a dental cleaning.

## VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services (interpretation and translation, respectively). Regardless of the type of language service provided, quality and accuracy of those services is critical to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

### *A. Considerations Relating to Competency of Interpreters and Translators*

*Competence of Interpreters.* Recipients should be aware that competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to perform written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should take reasonable steps, given the circumstances, to assess whether the interpreters:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

To the extent necessary for communication between the recipient or its staff and the LEP person, have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[8]

Understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires;

Understand and adhere to their role as interpreters without deviating into other roles—such as counselor or legal advisor—where such deviation would be inappropriate (particularly in administrative hearings contexts).

Some recipients, such as some state agencies, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the context of administrative proceedings, the use of certified interpreters is strongly encouraged.[9]

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a hospital emergency room, for example, should be as high as possible, given the circumstances, while the quality and accuracy of language services in other circumstances need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. When the timeliness of services is important, and delay would result in the effective denial of a benefit, service, or right, language assistance likely cannot be unduly delayed. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

For example, language assistance could likely not be delayed in a medical emergency, or when the time period in which an individual has to exercise certain rights is shortly to expire. On the other hand, when an LEP person is seeking a routine medical examination or seeks to apply for certain benefits and has an ample period of time to apply for those benefits, a recipient could likely delay the provision of language services by requesting the LEP person to schedule an appointment at a time during which the recipient would be able to have an appropriate interpreter available.

*Competence of Translators.* As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting; a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. As noted above, certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[10] Community

[8] Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, the interpreter should be aware when languages do not have an appropriate direct interpretation of certain terms and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue, so that the interpreter and recipient can work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[9] For those languages in which no formal accreditation or certification currently exists, certain recipients may want to consider a formal process for establishing the credentials of the interpreter, or assess whether a particular level of membership in a professional translation association can provide some indicator of professionalism.

[10] For instance, there may be languages which do not have an appropriate direct translation of some specialized medical terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients may find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and other

organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, to translate nonvital documents that have no legal or other consequence for LEP persons who rely on them, a recipient may use translators that are less skilled than the translators it uses to translate vital documents with legal or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to take reasonable steps to determine that the quality and accuracy of the translations permit meaningful access by LEP persons.

*B. Oral Language Services (Interpretation)*

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

*Hiring Bilingual Staff.* When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as social service eligibility workers or hospital emergency room receptionists/workers, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of a child support administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

*Hiring Staff Interpreters.* Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

*Contracting for Interpreters.* Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

*Using Telephone Interpreter Lines.* Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. While telephone interpreters can be used in numerous situations, they may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing, if available, may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it may be important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

*Using Community Volunteers.* In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. Because such volunteers may have other demands on their time, they may be more useful in providing language access for a recipient's less critical programs and activities where the provision of language services can reasonably be delayed. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

*Use of Family Members or Friends as Interpreters.* Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. However, when a recipient encounters an LEP person attempting to access its services, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, the recipient should, except as noted below, respect an LEP person's desire to use an interpreter of his or her own choosing (whether a professional interpreter, family member, or friend) in place of the free language services expressly offered by the recipient. However, a recipient may not require an LEP person to use a family member or friend as an interpreter.

In addition, in emergency circumstances that are not reasonably foreseeable, a recipient may not be able to offer free language services, and temporary use of family members or friends as interpreters may be necessary.

technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

However, with proper planning and implementation, recipients should be able to avoid most such situations.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether making a record of that choice, and of the recipient's offer of assistance, is appropriate.

As with the use of other non-professional interpreters, the recipient may need to consider issues of competence, appropriateness, conflicts of interest, and confidentiality in determining whether it should respect the desire of the LEP person to use an interpreter of his or her own choosing. Recipients should take reasonable steps to ascertain that family, legal guardians, caretakers, and other informal interpreters are not only competent in the circumstances, but are also appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation.

In some circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.*, sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence matter. For these reasons, where the LEP individual has declined the express offer of free language assistance and has chosen to use a family member, friend or other informal interpreter, if a recipient later determines that a family member or friend is not competent or appropriate, the recipient should provide competent interpreter services to the LEP person in place of or, if appropriate, as a supplement to the LEP individual's interpreter. For HHS recipient programs and activities, this is particularly true, for example, in administrative hearings, child or adult protective service investigations, situations in which life, health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient may want to consider providing its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well.

Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using minor children as interpreters. The recipient should take reasonable steps to ascertain whether the LEP person's choice is voluntary, whether the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and whether the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

Again, while the use of a family member or friend may be appropriate, if that is the choice of the LEP person, the following are examples of where the recipient should provide an interpreter for the LEP individual:

- A woman or child is brought to an emergency room and is seen by an emergency room doctor. The doctor notices the patient's injuries and determines that they are consistent with those seen with victims of abuse or neglect. In such a case, use of the spouse or a parent to interpret for the patient may raise serious issues of conflict of interest and may, thus, be inappropriate.
- A man, accompanied by his wife, visits an eye doctor for an eye examination. The eye doctor offers him an interpreter, but he requests that his wife interpret for him. The eye doctor talks to the wife and determines that she is competent to interpret for her husband during the examination. The wife interprets for her spouse as the examination proceeds, but the doctor discovers that the husband has cataracts that must be removed through surgery. The eye doctor determines that the wife does not understand the terms he is using to explain the diagnosis and, thus, that she is not competent to continue to interpret for her husband. The eye doctor stops the examination and calls an interpreter for the husband. A family member may be appropriate to serve as an interpreter if preferred by the LEP person in situations where the service provided is of a routine nature such as a simple eye examination. However, in a case where the nature of the service becomes more complex, depending on the circumstances, the family member or friend may not be competent to interpret.

*C. Written Language Services (Translation)*

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

*What Documents Should be Translated?* After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. In determining what outreach materials may be most useful to translate, such recipients may want to consider consulting with appropriate community organizations.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision

of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Given the foregoing considerations, vital written materials could include, for example:

- Consent and complaint forms.
- Intake forms with the potential for important consequences.
- Written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings.
- Notices advising LEP persons of free language assistance.
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Nonvital written materials could include:

- Hospital menus.
- Third party documents, forms, or pamphlets distributed by a recipient as a public service.
- For a non-governmental recipient, government documents and forms.
- Large documents such as enrollment handbooks (although vital information contained in large documents may need to be translated).
- General information about the program intended for informational purposes only.

*Into What Languages Should Documents be Translated?* The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Some recipients may serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is usually a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

*Safe Harbor.* Many recipients would like to ensure with greater certainty that they comply with their Title VI obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, may be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The HHS recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where an application of the four factor test leads to the determination that oral language services are needed and are reasonable. Conversely, oral interpretation of documents may not substitute for translation of vital written documents. For example, oral interpretation of the rules of a half-way house or residential treatment center may not substitute for translation of a short document containing the rules of the half-way house or residential treatment center and the consequences of violating those rules.

## VII. Elements of Effective Plan on Language Assistance for LEP Persons

If, after completing the four-factor analysis, a recipient determines that it should provide language assistance services, a recipient may develop an implementation plan to address the identified needs of the LEP populations it serves. Such recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically updated written plan on language assistance for LEP persons ("LEP plan") for use by a recipient's employees who serve or interact with the public could be an appropriate and cost-effective means of documenting compliance with Title VI and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans may provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits may lead recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain HHS

recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying Title VI obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it may want to consider alternative and reasonable ways to articulate how it is providing meaningful access in compliance with Title VI. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

For the recipient who decides to develop a written implementation plan, the following five steps may be helpful in designing such a plan; they are typically part of effective implementation plans.

*(1) Identifying LEP Individuals Who Need Language Assistance*

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. Similarly, this step of an LEP implementation plan requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm*, and accessed at *http://www.lep.gov*. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to identify themselves.

*(2) Language Assistance Measures*

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

*(3) Training Staff*

An effective LEP plan would likely include a process for identifying staff who need to be trained regarding the recipient's LEP plan, a process for training them, and the identification of the outcomes of the training. Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan may include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It may be important to take reasonable steps to see to it that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

*(4) Providing Notice to LEP Persons*

An effective LEP plan would likely include a description of the process by which to provide notice of the services that are available to the LEP persons it serves or, to the extent that a service area exists, that reside in its service area and are eligible for services. Once a recipient has decided, based on the four factors, that it will provide language services, it may be important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients may want to consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, safety, or public benefits and services, or activities run by HHS recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[11]
- Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered, and provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

*(5) Monitoring and Updating the LEP Plan*

An effective LEP plan would likely include a process for a recipient to monitor its implementation of its plan and for updating its plan as necessary. For example, determining, on an ongoing basis, whether new documents,

[11] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm*, which also can be accessed at *http://www.lep.gov*. These signs could, for example, be modified for recipient use.

programs, services, and activities need to be made accessible for LEP individuals may be appropriate, and recipients may want to provide notice of any changes in services to the LEP public and to employees. In addition, changes in demographics, types of services, or other needs may require annual reevaluation of an LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan may be to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals and establish management accountability. Some recipients may also want to consider whether they should provide opportunities for community input and planning throughout the process.

**VIII. Voluntary Compliance Effort**

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by the HHS Office for Civil Rights through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Office for Civil Rights, and the entire Department, are committed to assisting recipients of HHS financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964. HHS believes that, on the whole, its recipients genuinely desire to comply with their obligations, but that some may lack knowledge of what is required of them or information concerning the resources that are available to them that would assist in meeting their Title VI obligations. Accordingly, HHS is committed to engaging in outreach to its recipients and to being responsive to inquiries from its recipients. Through its Administration on Children and Families, Administration on Health Care Quality and Research, Administration on Aging, Centers for Medicare and Medicaid Services, Health Resources Services Administration, Office for Civil Rights, and Office of Minority Health, HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons. This technical assistance includes translated forms and vital documents; training and information about best practices; and grants and model demonstration funds for LEP services. HHS also provides a variety of services for LEP persons who come in contact with the Department. These services include oral language assistance services such as language lines and interpreters, translation of written materials, and foreign language Web sites.

Further, HHS is committed to working with representatives of state and local health and social service agencies, organizations of such agencies, hospital associations, medical and dental associations and managed care organization to identify and share model plans, examples of best practices, cost-saving approaches, and information on other available resources, and to mobilize these organizations, to educate their members on these matters.

HHS continues to explore how it can share with its recipients language assistance measures, resources, cost-containment approaches, and other information and knowledge, developed with respect to its own federally conducted programs and activities, and welcomes suggestions and comments in this regard. The HHS Office for Civil Rights, in conjunction with other HHS components, through direct contact and its Web site at *http://www.hhs/gov/ocr*, will continue to provide technical assistance that assists HHS recipients in understanding and complying with their obligations under Title VI, and assists recipients and the public by identifying resources offered by the Office for Civil Rights and other HHS components that facilitate compliance with Title VI, with respect to LEP persons. This and other helpful information may also be accessed at *http://www.lep.gov*.

The Title VI regulations provide that HHS will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, HHS will inform the recipient in writing of this determination, including the basis for the determination. However, if a case is fully investigated and results in a finding of noncompliance, HHS must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HHS must secure compliance through the termination of federal assistance after the HHS recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ to seek injunctive relief or pursue other enforcement proceedings. HHS engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, HHS proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, HHS's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, HHS acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, HHS will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance with Title VI, but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, HHS recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are

encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

## Appendix A

**Questions and Answers Regarding the Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons**

1. Q. What is the purpose of the guidance on language access released by the Department of Health and Human Services (HHS)?

A. The purpose of the Policy Guidance is to clarify to members of the public, and to providers of health and social services who receive Federal financial assistance from HHS, the responsibility of such providers to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964. Among other things, this guidance clarifies existing legal requirements by providing a description of the factors providers of health and social services who receive Federal financial assistance from HHS should consider in determining and fulfilling their responsibilities to LEP persons under Title VI.

2. Q. What does the policy guidance do?

A. The policy guidance does the following:

- Reiterates the principles of Title VI with respect to LEP persons.
- Discusses the reasonable policies, procedures and other steps that recipients can take to ensure meaningful access to their program by LEP persons.
- Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI.
- Explains to recipients of Federal financial assistance that OCR will determine compliance on a case by case basis, in light of the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program, activity or service provided by the recipient; (2) the frequency with which LEP individuals come in contact with the recipient's program, activity or service; (3) the nature and importance of the recipient's program, activity, or service; and (4) the resources available to the recipient and costs.
- Provides that, based on these four factors, recipients with limited resources will not have the same compliance responsibilities applicable to recipients with greater resources. All recipients will have a great deal of flexibility in achieving compliance.
- Provides that OCR will offer extensive technical assistance for recipients.

3. Q. Does the guidance impose new requirements on recipients?

A. No. Since its enactment, Title VI of the Civil Rights Act of 1964 has prohibited discrimination on the basis of race, color or national origin in any program or activity that receives Federal financial assistance. Title VI requires that recipients take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. Over the past three decades, OCR has conducted thousands of investigations and reviews involving language differences that affect the access of LEP persons to medical care and social services. This guidance synthesizes the legal requirements that OCR has been enforcing for over three decades.

4. Q. Who is covered by the guidance?

A. Covered entities include any state or local agency, private institution or organization, or any public or private individual that (1) Operates, provides or engages in health, or social service programs and activities, and (2) receives Federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to the following entities, which may receive federal financial assistance: hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs; state, county and local health agencies; state Medicaid agencies; state, county and local welfare agencies; federally-funded programs for families, youth and children; Head Start programs; public and private contractors, subcontractors and vendors; physicians; and other providers who receive Federal financial assistance from HHS.

5. Q. How does the guidance affect small practitioners and providers who are recipients of federal financial assistance?

A. Small practitioners and providers will have considerable flexibility in determining precisely how to fulfill their obligations to take reasonable steps to ensure meaningful access for persons with limited English proficiency. OCR will assess compliance on a case by case basis and will take into account the following factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the recipient's program, activity or service; (2) the frequency with which LEP individuals come in contact with the program, activity or service; (3) the nature and importance of the program, activity, or service provided by the recipient; and (4) the resources available to the recipient and costs. There is no "one size fits all" solution for Title VI compliance with respect to LEP persons, and what constitutes "reasonable steps" for large providers may not be reasonable where small providers are concerned. Thus, smaller recipients with smaller budgets will not be expected to provide the same level of language services as larger recipients with larger budgets. OCR will continue to be available to provide technical assistance to HHS recipients, including sole practitioners and other small recipients, seeking to operate an effective language assistance program and to comply with Title VI.

6. Q. The guidance identifies some specific circumstances which OCR will consider to be strong evidence that a program is in compliance with its obligation under Title VI to provide written materials in languages other than English. Does this mean that a recipient/covered entity will be considered out of compliance with Title VI if its program does not fall within these circumstances?

A. No. The circumstances outlined in the guidance are intended to identify circumstances which amount to a "safe harbor" for recipients who desire greater certainty with respect to their obligations to provide written translations. This means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations. However, the failure to provide written translations under the circumstances outlined in the "safe harbor"does not mean there is non-compliance. Rather, the safe harbor provides a tool which recipients may use to consider whether the number or proportion of LEP persons served call for written translations of vital documents into frequently encountered languages other than English. However, even if the safe harbors are not used, if written translation of certain documents would be so financially burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances when, upon application of the four factors, translation services are required.

7. Q. The guidance makes reference to "vital documents" and notes that, in certain circumstances, a recipient/covered entity may have to translate such documents into other languages. What is a vital document?

A. As clarified by the guidance, the extent of Title VI obligations will be evaluated based on a four-factor test including the nature or importance of the service. In this regard, the guidance points out that documents deemed "vital" to the access of LEP persons to programs and services may often have to be translated. Whether or not a document (or the information it contains or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are "vital" to the meaningful access of the LEP populations they serve. Thus, vital documents could include, for instance, consent and complaint forms, intake forms with potential for important health consequences, written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings, notices advising LEP persons of free language assistance, written tests that do not assess English language competency, but test competency for a particular license, job or skill for which knowing English is not required, or applications to participate in a recipient's program or activity or to receive recipient benefits or services.

8. Q. Will recipient/covered entities have to translate large documents such as managed care enrollment handbooks?

A. Not necessarily. Some large documents may contain no vital information, and others will contain vital information that will have to be translated. Again, the obligation to

translate will depend on application of the four factors. In this context, vital information may include, for instance, the provision of information in appropriate languages other than English, or identifying where a LEP person might obtain an interpretation or translation of the document. However, depending on the circumstances, large documents such as enrollment handbooks may not need to be translated or may not need to be translated in their entirety.

9. Q. May an LEP person use a family member or friend as his or her interpreter?

A. Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. When an LEP person attempts to access the services of a recipient of federal financial assistance, who upon application of the four factors is required to provide an interpreter, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Recipients should also consider the special circumstances discussed in the guidance that may affect whether a family member or friend should serve as an interpreter, such as whether the situation is an emergency, and concerns over competency, confidentiality, privacy, or conflict of interest.

10. Q. May a recipient/covered entity require a LEP person to use a family member or a friend as his or her interpreter?

A. No.

11. Q. How does low health literacy, non-literacy, non-written languages, blindness and deafness among LEP populations affect the responsibilities of federal fund recipients?

A. Effective communication in any language requires an understanding of the literacy levels of the eligible populations. However, where a LEP individual has a limited understanding of health matters or cannot read, access to the program is complicated by factors not generally directly related to national origin or language and thus is not a Title VI issue. Under these circumstances, a recipient should provide remedial health information to the same extent that it would provide such information to English-speakers. Similarly, a recipient should assist LEP individuals who cannot read in understanding written materials as it would non-literate English-speakers. A non-written language precludes the translation of documents, but does not affect the responsibility of the recipient to communicate the vital information contained in the document or to provide notice of the availability of oral translation. Of course, other law may be implicated in this context. For instance, Section 504 of the Rehabilitation Act of 1973 requires that federal fund recipients provide sign language and oral interpreters for people who have hearing impairments and provide materials in alternative formats such as in large print, braille or on tape for individuals with visual impairments; and the Americans with Disabilities Act imposes similar requirements on health and human service providers.

12. Q. What assistance is available to help to recipients who wish to come into compliance with Title VI?

A. For over three decades, OCR has provided substantial technical assistance to recipient/covered entities who are seeking to ensure that LEP persons can meaningfully access their programs or services. Our regional staff is prepared to work with recipients to help them meet their obligations under Title VI. As part of its technical assistance services, OCR can help identify best practices and successful strategies used by other federal fund recipients, identify sources of federal reimbursement for translation services, and point providers to other resources.

In addition, the entire Department is also committed to assisting recipients of HHS financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964. Through its Administration on Children and Families, Administration on Health Care Quality and Research, Administration on Aging, Centers for Medicare and Medicaid Services, Health Resources and Services Administration, Office for Civil Rights, Office of Minority Health and Substance Abuse and Mental Health Services Administration, HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons. This technical assistance includes translated forms and vital documents; training and information about best practices; and grants and model demonstration funds for LEP services. HHS believes that, on the whole, its recipients genuinely desire to comply with their obligations, and that increased understanding of compliance responsibilities and knowledge about cost-effective resources that are increasingly available to them, will assist recipients/covered entities in meeting Title VI obligations. Accordingly, HHS is committed to providing outreach to its recipients and to being responsive to queries from its recipients. It is also committed to working with representatives of state and local health and social service agencies, organizations of such agencies, hospital associations, medical and dental associations and managed care organizations to identify and share model plans, examples of best practices, cost-saving approaches, and information on other available resources, and to mobilize these organizations to educate their members on these matters. HHS will continue to promote best practices in language access and fund model demonstration programs in this area. The HHS Office for Civil Rights, in conjunction with other HHS components, will continue to provide technical assistance and outreach to HHS recipients to assist them in understanding and complying with their obligations under Title VI and to provide information to recipients and the public through its Web site at *http://www.hhs/gov/ocr*. LEP information and resources can also be found at *http://www.lep.gov*.

13. Q. How will OCR enforce compliance by recipient/covered entities with the LEP requirements of Title VI?

A. The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to take reasonable steps to provide meaningful access to LEP persons is enforced and implemented by OCR through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that OCR will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, OCR will inform the recipient in writing of this determination, including the basis for the determination. However, if a case is fully investigated and results in a finding of noncompliance, OCR must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, OCR may secure compliance through the termination of federal assistance after the recipient has been given an opportunity for an administrative hearing. OCR may also refer the matter to the Department of Justice to secure compliance through any other means authorized by law.

At all stages of an investigation, OCR engages in voluntary compliance efforts and provides technical assistance to recipients. During these efforts, OCR proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, OCR's primary concern is to ensure that the recipient's policies and procedures contain reasonable steps to provide meaningful access for LEP persons to the recipient's programs, activities or services. As a result, the vast majority of all complaints have been resolved through such voluntary efforts.

14. Q. Does issuing this guidance mean that OCR will be changing how it enforces compliance with Title VI?

A. No. How OCR enforces Title VI is governed by the Title VI implementing regulations. The methods and procedures used to investigate and resolve complaints, and conduct compliance reviews, have not changed.

15. Q. What is HHS doing to promote access for LEP persons to its own programs and services?

A. HHS provides a variety of services for LEP persons who come in contact with the Department. These services include oral language assistance services such as language lines and interpreters; translation of written materials; and foreign language web sites. HHS will continue to explore how it can share with its recipients language assistance measures, resources, cost-containment approaches, and other information and knowledge, developed with respect to its own federally conducted programs and activities, and welcomes any suggestions in this regard.

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