

NATIONAL SCIENCE FOUNDATION

Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance

AGENCY: National Science Foundation.
ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is publishing policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons. 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 the recipients of NSF financial assistance to apply when developing services to individuals with limited English proficiency as required by Title VI of the Civil Rights Act of 1964.

DATES: This guidance is effective immediately. Comments must be submitted on or before May 10, 2002. NSF will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Office of Equal Opportunity Programs, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Comments may also be submitted by e-mail to: rlachte@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Ana Ortiz or Ruth Leichter at the above address or by telephone at 703-292-8020; TDD: 703-292-9027. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

Dated: February 19, 2002.

Ana A. Ortiz,
Director, Office of Equal Opportunity Programs, National Science Foundation.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the National Science Foundation (NSF), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The

policy guidance reiterates NSF's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

I. Background

On August 11, 2000, the President issued Executive Order 13166, titled "Improving Access to Services by Persons With Limited English Proficiency," 65 FR 50121 (August 16, 2000). On the same day, the Assistant Attorney General for Civil Rights issued a Policy Guidance Document, titled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency" (hereinafter referred to as "DOJ LEP Guidance"), reprinted at 65 FR 50123 (August 16, 2000). However, pursuant to a memorandum issued by the United States Department of Justice on October 26, 2001, NSF is republishing this guidance and inviting public comment on the guidance.

Executive Order 13166 requires federal agencies to assess and address the needs of otherwise eligible persons seeking access to federally conducted programs and activities who, due to limited English proficiency, cannot fully and equally participate in or benefit from those programs and activities. The DOJ LEP Guidance in turn advises each federal department or agency to "take reasonable steps to ensure 'meaningful' access [to LEP individuals] to the information and services they provide." DOJ LEP Guidance, 65 FR at 50124. The DOJ LEP Guidance goes on to provide that 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 agency. *Id.* The DOJ LEP Guidance explains that the identification of "reasonable steps" to provide oral and written services in languages other than English is to be determined on a case-by-case basis through a balancing of all four factors. As required by Executive Order 13166, this policy guidance is consistent with the compliance standards set out in the DOJ LEP Guidance.

II. Legal Background

The Title VI requirement to provide meaningful access to LEP persons is not new. Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, *et seq.* states: "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." This is further ordered by Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency," and United States Department of Justice Guidance as published in the **Federal Register**, Vol. 65, No. 159, August 16, 2000. Pursuant to its coordination authority over federal enforcement of Title VI, DOJ addressed in 1976 the circumstances under which recipient/covered entities might be required to provide written language assistance to LEP persons. See 28 CFR 42.405(d)(1). These regulations "govern the respective obligations of Federal agencies regarding enforcement of Title VI." 28 CFR 42.405. Section 42.405(d)(1) formalized LEP obligations under Title VI which were sustained by the Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974). Thus, this Guidance draws its authority from Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; 45 CFR, Part 611 (NSF's Title VI Regulations); and 28 CFR 42.401, *et seq.* (DOJ Title VI enforcement coordination regulation). Further, this Guidance is issued pursuant to Executive Order 12250, reprinted at 42 U.S.C. 2000d, note; Executive Order 13166; and is consistent with the DOJ LEP Guidance.

III. Purpose and Application

The Title VI regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient entity's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services. Accordingly, it is useful for recipient entities to examine their policies and practices to determine whether they adversely affect LEP persons. This policy guidance provides a brief analytical framework consistent with the governing Title VI compliance standards set out in the DOJ LEP

Guidance to assist recipient/covered entities in conducting such assessments.

IV. Compliance and Enforcement

A four-factor analysis is recommended for compliance. Elements of an effective language assistance plan to consider are identification of LEP individuals who need language assistance, available language assistance options, training staff, providing notice to LEP persons, and monitoring effectiveness and need for modifications. It should consist of a determination of the number or proportion of eligible individuals with LEP who might be excluded from a program absent efforts to remove language barriers, their frequency of contact with the program, the nature and importance of the program (is it vital to your existence?) and the resources available. Once it is established that a need exists, one or both of two types of language assistance may be appropriate. Oral language interpretation and/or written material translation may be selected as necessary. These factors, plan elements, and their related compliance standards are discussed in detail in related guidance documents issued by other federal agencies. NSF recipients jointly funded by other federal agencies may rely upon guidance issued by those agencies.

Recipient entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting and are not required to use the suggested methods and options listed. However, recipient entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. NSF's regulations implementing Title VI contain compliance and enforcement provisions to ensure that a recipient's policies and practices overcome barriers resulting from language differences that would deny LEP persons an equal opportunity to participate in and access to programs, services and benefits offered by NSF. See 45 CFR, Part 611. We will ensure that our recipient entities fulfill their responsibilities to LEP persons through the procedures provided for in the Title VI regulations.

Executive Order 13166 requires that each federal department or agency extending federal financial assistance subject to Title VI issue separate guidance implementing uniform Title VI compliance standards with respect to LEP persons. Where recipients of federal financial assistance from NSF also

receive assistance from one or more other federal departments or agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans for NSF. NSF, in discharging its compliance and enforcement obligations under Title VI, looks to analyses performed and plans developed in response to similar detailed LEP guidance issued by other federal agencies. Recipients may rely upon guidance issued by those agencies.

In determining a recipient entity's compliance with Title VI, NSF's primary concern is to ensure that the entity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services and benefits. A recipient entity's appropriate use of the methods and options discussed in this policy guidance is viewed by NSF as evidence of that entity's willingness to comply voluntarily with its Title VI obligations.

V. English-Only Provision

State and local laws may provide additional obligations to serve LEP individuals, but such laws 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, in certain circumstances, violates Title VI.

If you have any questions related to this policy, please contact the NSF Office of Equal Opportunity Programs.

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 133rd meeting on March 19–21, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T-2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, March 19, 2002

A. 8:30–9:40 a.m.: *Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. 10–12:30 p.m.: *Update on DOE Performance Assessment Program* (Open)—The Committee will hear a presentation from DOE on its recent performance assessment program activities for the proposed repository at Yucca Mountain, NV.

C. 2–3:30 p.m.: *Annual Research Report to the Commission* (Open)—The Committee will finalize its annual research report to the Commission.

D. 3:45–6 p.m.: *Preparation for Meeting with the NRC Commissioners* (Open)—The next meeting with the NRC Commissioners is scheduled to be held at 9:30 a.m. in the Commissioners' Conference Room, One White Flint North on March 20, 2002. The Committee will review its proposed presentations.

Wednesday, March 20, 2002

E. 8:30–8:35 a.m.: *Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. 8:35–9:10 a.m.: *Discussion of Topics for Meeting with the NRC Commissioners* (Open)—The Committee will finalize preparations and discuss topics scheduled for the ACNW meeting with the NRC Commissioners.

G. 9:30–11:30 a.m.: *Meeting with the NRC Commissioners* (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North, to discuss:

- Sufficiency Review
- Total Systems Performance Assessment for Site Recommendation
- Key Technical Issues
- Review of NRC-Sponsored Research

H. 1:00–2:45 p.m.: *High-Level Waste Performance Assessment Sensitivity Studies* (Open)—The staff will provide an update on its sensitivity studies related to HLW performance assessment analyses for the proposed repository at Yucca Mountain, NV.

I. 3–6 p.m.: *Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics: