



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

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MEMORANDUM

TO: HEADS OF FEDERAL AGENCIES, GENERAL COUNSELS,
AND CIVIL RIGHTS DIRECTORS

FROM: Ralph F. Boyd, Jr. *RA* *Fu RFB*
Assistant Attorney General

SUBJECT: Executive Order 13166 (Improving Access to Services
for Persons with Limited English Proficiency)

As you know, the Administration has affirmed its commitment to ensure that reasonable steps are taken to make federally funded and federally conducted activities meaningfully accessible to individuals who are limited English proficient (LEP). To that end, on June 18, 2002, the U.S. Department of Justice (DOJ) published final guidance to DOJ recipients on the requirement under Title VI of the Civil Rights Act of 1964, and the Title VI regulations, to ensure such access. 67 Fed. Reg. 41455. The guidance is attached and is also available on www.lep.gov and on www.usdoj.gov/crt/cor/13166 (the LEP portion of the website of the Civil Rights Division's Coordination and Review Section).

I am writing to ask for your continued assistance in implementing Executive Order 13166 to ensure meaningful access for LEP individuals to important federal and federally funded rights, information, benefits, and services. The processes I am setting forth in this memorandum have also been shared, at a staff level, with members of the Interagency Working Group on LEP and Civil Rights Division contacts in many of your agencies.

On October 26, 2001, I issued a memorandum to clarify policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency." 65 Fed. Reg. 50123 (August 16, 2000)

(DOJ LEP Guidance). On January 18, 2002, DOJ's initial guidance for recipients was republished for additional public comment. 67 Fed. Reg. 2671. Based on public comments filed in response to the January 18, 2002 republication, DOJ published revised draft guidance for public comment on April 18, 2002. 67 Fed. Reg. 19237. After taking into account additional comments, DOJ issued this final guidance to recipients.

It is now imperative that agencies take the following steps:

1. Federal agencies that provide federal financial assistance must, pursuant to Executive Order 13166, publish guidance for their recipients on meaningful access for LEP individuals. Section A of this Memorandum discusses the procedures for publishing this guidance.

2. All federal agencies, including those that do not provide federal financial assistance, must create or modify plans, consistent with Executive Order 13166, to ensure meaningful access for LEP individuals to the important benefits, services, information, and rights provided by the agencies themselves. Further, information on this process is discussed in Section B of this Memorandum.

3. All federal agencies should consider participating, if they are not already doing so, in the Interagency Working Group on LEP and contributing appropriate links to the Working Group's website, www.lep.gov. Section C discusses this initiative and requests further agency input and participation.

A. Agency-Specific Recipient Guidance on LEP (Applies to 30 federal funding agencies)

As noted by Deputy Assistant Attorney General Alex Acosta, in the last Interagency Working Group meeting on LEP, it is critical that agency LEP recipient guidance documents be consistent with one another. In its March 14, 2002 Report to Congress on the Assessment of the Total Benefits and Costs of Implementing Executive Order Number 13166 (available on both websites noted above), the Office of Management and Budget (OMB) has made it clear that the benefits of the Executive Order can be substantial, both to the recipients and to the ultimate beneficiaries. However, OMB also stressed that in order to reduce costs of compliance, consistency in agency guidance documents is critical, particularly since many recipients receive assistance from more than one federal agency.

Therefore, as you move toward full implementation of Executive Order 13166, I am requesting that you use the DOJ LEP Guidance as your model for publication or republication of your recipient LEP guidance.¹ All funding agencies should modify Sections I-VIII of the DOJ LEP Guidance to the extent necessary to make the examples relevant to their recipients. The examples and additional information that agencies may have created for previous guidance document versions should be helpful in modifying the examples in Sections I-VIII. These examples may also be included in an appendix that agencies may want to attach, much like DOJ attached Appendix A with examples in the DOJ LEP Guidance.

The goal is for funding agencies to send us drafts of their proposed guidance (or proposed revised guidance) as soon as possible, but no later than July 29, 2002. Regardless of whether your agency has previously published guidance or not, all agencies should publish proposed guidance for comment that uses the DOJ LEP Guidance as a model. As discussed below, agencies have several options for doing so.

Agencies may simply want to modify the examples (such as types of recipients or programs or activities covered) in Sections I-VIII and not include an appendix. Other agencies (especially larger ones) may want to modify the examples, but also include an Appendix A (as DOJ did). Those examples would obviously be different from those in DOJ's appendix, but must be consistent with the standards set forth in Sections I-VIII. Smaller agencies may want simply to incorporate the DOJ LEP Guidance by reference, working with Coordination and Review Section staff to ensure that a clear, but less lengthy guidance document is issued.

Given the very real need for legal consistency, and for recipients to be assured that the standards that one agency applies to them are not different than those that another agency may apply to them, we expect modifications to focus on the examples. Any deviations from the standards presented in the guidance will require justification. Thus, if an agency feels that the standards set forth in the DOJ LEP Guidance need to be modified in any way, that agency will also need to provide a written justification for those modifications, and an explanation of why those modifications are consistent with the law and with

¹Word processing versions of this document have been sent electronically to staff-level agency contacts.

the need to ensure that recipients are not subject to differing standards. All modifications to the final DOJ LEP Guidance that agencies propose to make should be highlighted, in redline/strikeout form if at all possible.

Pursuant to Executive Order 13166, all recipient LEP guidance documents require DOJ approval prior to publication. (Recipient LEP guidance documents that agencies have already published are effective until new guidance documents become final.) Once the guidance documents are published in final, agencies should conduct outreach to recipients to ensure that they are made aware of the guidance. The Civil Rights Division's Coordination and Review Section (202/307-2222) stands ready to assist agencies in this important matter.

B. Federally Conducted Plans (Applies to all 95 federal agencies)

Executive Order 13166 also calls for all agencies to ensure that their own federally conducted programs and activities are meaningfully accessible to LEP individuals. To that end, each agency must have an LEP implementation plan in place. Those plans should be updated, as appropriate. The general standards set forth in the DOJ LEP guidance for DOJ recipients would also apply to each agency's own activities. For instance, the four-factor analysis set forth in the DOJ LEP Guidance should be applied to each agency's activities. Primary focus of planning and implementation in this area should be with components or activities that have significant amounts of contact with the general public, or that have contacts which impact significantly on an LEP person's rights or access to vital information, benefits, or services. As these plans are finalized, they must be filed with the Coordination and Review Section. Please also consider placing them on your websites. The Coordination and Review Section website at www.usdoj.gov/crt/cor/13166 contains links to agency federally conducted LEP implementation plans already published on agency websites.

C. Interagency Working Group on LEP and www.LEP.gov
(Applies to all 95 federal agencies)

In December of last year, I instituted the creation of an Interagency Working Group on LEP. That Working Group initially met in January and set a number of priorities for interagency collaboration. Three subcommittees of that Working Group meet

bimonthly and are focused on three main areas: 1) creation and expansion of a one-stop website on LEP issues (the Clearinghouse Subcommittee); 2) creation of tools to assist recipients and beneficiaries in understanding and applying recipient guidance documents (the Outreach, Training, and Uniform Standards Subcommittee); 3) collaboration amongst agencies in making federally conducted activities meaningfully accessible to LEP individuals (the Consistent, Cost-Effective, and Competent Language Services Subcommittee).

I ask that you continue to support the efforts of this Working Group, particularly the efforts to create technical assistance tools for recipients and beneficiaries and to ensure high quality and cost-effective language assistance. Currently, approximately twenty agencies actively participate in the Working Group, which meets bimonthly. I urge your active participation, if you are not already an active member. The next meeting of the Interagency Working Group on LEP is being hosted by the Department of Education on July 9, 2002. Please contact the Coordination and Review Section's Chief, Merrily Friedlander, at (202) 307-2222 or at merrily.a.friedlander@usdoj.gov if you are interested in becoming an active member.

In an effort to reduce costs of compliance for recipients and to ensure that agency efforts are having maximum impact given resources, I ask for your assistance in further developing the LEP.gov website in the following ways.

- When agencies (either headquarters or regional offices) create useful documents regarding their programs or activities that are translated into languages other than English, they should strongly consider posting those documents on their websites and informing the Interagency Working Group so that those documents can be linked to and from LEP.gov. Many agencies may already have created such translations. For instance, the Social Security Administration has posted a number of documents in several languages on its site, and LEP.gov links to those documents. Section 508 of the Rehabilitation Act of 1973 does not prevent agencies from posting documents in languages other than English in an appropriate PDF format, but care must be taken to ensure that new PDF files are created in a manner that makes them accessible. Links should be provided to

Clearinghouse Subcommittee co-chairs John Hanberry (John.Hanberry@do.treas.gov) and Michael Katz (Mkatz@coms.hhs.gov) as well as to the LEP.gov webmaster, Nancy Sweesy (Nancy.Sweesy@usdoj.gov).

- We urge you to provide links to information that you may have on your websites regarding promising practices, compliance agreements, or other tools that may assist recipients in carrying out their responsibilities. If such documents exist but are not on your websites, I encourage you to place them there. For example, if your agency has demographic data showing numbers of LEP individuals in geographic areas, which is not presently available on your website, we strongly urge you to notify the above-named individuals of this information and to consider posting it on your website.
- We also urge you to provide links to your federally conducted LEP implementation plans and to any other information that your agency believes would be useful to include in the LEP.gov site.

In addition, I am asking the Interagency Working Group to provide me with an Annual Report of its activities, including agency participation, on the anniversary of its inception, December 19, 2002. This Report will include a summary of activities, statement of achievements, and plans for additional action, and will be available on LEP.gov as well as on the Coordination and Review Section's website.

I look forward to our continued joint efforts in this important endeavor of ensuring access for LEP individuals in all federal and federally assisted programs.

Enclosure