



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

**PLAN OF THE U.S. OFFICE OF SPECIAL COUNSEL
FOR COMPLIANCE WITH EXECUTIVE ORDER NO. 13166
(IMPROVING ACCESS TO SERVICES FOR PERSONS
WITH LIMITED ENGLISH PROFICIENCY)**

Summary

Executive Order No. 13166 requires that Federal agencies ensure meaningful access to their programs and benefits for persons with limited English proficiency (LEP). The Office of Special Counsel (OSC) investigates allegations of prohibited personnel practices in Federal agencies, provides a safe channel for disclosures by Federal whistleblowers, enforces and provides advisory opinions on political activity under the Hatch Act, and represents Federal employees in cases brought under the Uniformed Services Employment and Reemployment Rights Act. OSC provides these services to a limited population of current and former Federal employees, applicants for Federal employment, and a relatively small number of state and local government employees covered by the Hatch Act. Since most government employees (Federal, state and local) need to be English-proficient, the LEP population seeking OSC services is very small. OSC has handled few matters involving persons with limited English proficiency and, in those cases, bilingual staff attorneys or investigators have interpreted or translated necessary information. OSC continues to have this skilled language translation capability available in-house, and will continue to use it as the need arises.

Introduction

Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," dated August 11, 2000 (65 F.R. 50121) requires each Federal agency to "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." The accompanying statement by the President, dated August 11, 2000, states that:

[A]gencies and recipients must take reasonable steps to provide meaningful access to their programs and activities, taking into account a variety of considerations. Among the factors to be considered is the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come into contact with the

U.S. Office of Special Counsel

OSC Plan for Improving Access for Persons with Limited English Proficiency

April 14, 2003

Page 2 of 4

program, the nature and importance of the service provided by the program, and the available resources.

OSC prepared its initial “Plan of the U.S. Office of Special Counsel for Compliance with Executive Order No. 13166 (Improving Access to Services for Persons with Limited English Proficiency)” and posted the plan on the agency web site on December 11, 2000. The U.S. Department of Justice (DOJ), pursuant to its obligation under the executive order to provide formal guidance to agencies in implementing the order, requested, in a memorandum dated November 12, 2002, that agencies review and update their plans. In accordance with that memorandum, and the DOJ guidance published in the Federal Register (F.R.) on June 18, 2002 (67 F.R. 41455), OSC has reviewed and updated its plan.

Analysis of Factors

Factor 1: Number or Proportion of LEP Individuals in the Eligible Population¹

OSC’s statutory responsibilities primarily consist of receiving and investigating complaints and whistleblower disclosures from current and former Federal employees and applicants for Federal employment; and receiving complaints about, and issuing advisory opinions on, the Hatch Act, as it applies to covered Federal, state and local government employees. In OSC's experience, the vast majority of the population from which such matters are received is proficient in English, so that LEP services would not normally be required.

Factor 2: Frequency of Contact with the Program²

In general, all contacts with OSC are made through its three offices (in Washington, D.C.; Dallas, Texas; and Oakland, California) by means of: (a) telephone (main telephone line and hotlines); (b) mail; (c) Internet (web site and e-mail); and (d) in-person visits. In addition to thousands of contacts by those seeking general information, OSC opens over 2,000 complaint and disclosure matters each year, and issues approximately 3,000 Hatch Act advisory opinions. LEP individuals contact the agency

¹ “[T]hose who serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine whether reasonable steps are possible and if so, have a plan of what to do if a LEP individual seeks service. ... This plan...may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.” “Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency,” Policy Guidance Document, Civil Rights Division, U.S. Department of Justice, 65 F. R. 50123, 50124-50125 (Aug. 16, 2000).

² “If LEP individuals must access the [agency's] program or activity on a daily basis... [an agency] has greater duties than if such contact is unpredictable or infrequent. [Agencies] should have the flexibility to tailor their services to those needs.” *Id.* at 50125.

U.S. Office of Special Counsel

OSC Plan for Improving Access for Persons with Limited English Proficiency

April 14, 2003

Page 3 of 4

very infrequently. OSC estimates that since January 2002, fewer than a dozen persons with limited English proficiency have contacted the agency.³ In most such contacts, OSC has determined that it does not have jurisdiction over the matter involved.

Factor 3: Nature and Importance of the Program⁴

OSC programs are not compulsory. The agency provides important services in significant employment-related situations, but these generally do not rise to the level of matters having life or death implications (*e.g.*, the provision of services to children, medical care, food, housing, or the like).

Factor 4: Resources Available⁵

As a small agency with just over 100 employees, and a large case load in which the LEP population is extremely small and contact is infrequent, OSC's policy of using bilingual experienced staff attorneys and investigators for translation or interpretation as may be needed is an efficient and effective use of resources.⁶

³ The callers were all Spanish-speaking persons.

⁴ "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. ... A decision by a Federal, state, or local entity to make an activity compulsory...serves as strong evidence of the program's importance." *Id.*

⁵ "[A] small [agency] with limited resources may not have to take the same steps as a larger [agency] 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." *Id.*

⁶ Approximately one-half of all LEP contacts to OSC have been received by the agency's Dallas, Texas, field office, where a staff investigator fluent in Spanish has provided all necessary interpretation and translation.

U.S. Office of Special Counsel

OSC Plan for Improving Access for Persons with Limited English Proficiency

April 14, 2003

Page 4 of 4

**OSC PLAN FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY
WHO CONTACT THE AGENCY**

OSC's current in-house language capabilities are Spanish, German and Portuguese. Several experienced staff attorneys and investigators are fluent in these languages. They have served as interpreters as needed on those infrequent occasions when a person with limited English proficiency has contacted OSC.

OSC's policy is to provide a prompt and courteous response to all who contact the agency. To that end, all OSC personnel have been informed of the staff available to interpret or translate other languages, and will refer any LEP contacts as appropriate. OSC will obtain interpreter and translator services for other languages as needed through the General Services Administration.

OSC has added a Spanish language option to the agency web site, which includes information about the agency, and an e-mail link to a staff attorney fluent in Spanish who is available to answer questions. In addition, the agency's Outreach Specialist will work with other agencies, as needed and requested, to improve access to OSC for LEP persons in conjunction with OSC's 5 U.S.C. § 2302(c) agency certification program. (Sec. 2302(c) makes Federal agencies responsible, in consultation with OSC, for informing employees of their rights and remedies in connection with prohibited personnel practices, whistleblower disclosures, political activity, and access to OSC. OSC's certification program is designed to assist agencies in fulfilling that obligation.

OSC will periodically review any contacts with persons with limited English proficiency to determine the types and frequency of contacts, the language used, and how the contacts were handled. The information will be used to determine whether additional efforts are needed. If so, OSC will update this plan and submit it to DOJ.