**Title VI of the Civil Rights Act of 1964 and Language Access Rights**

*Title VI Prohibits Disparate Impact Discrimination*

Section 601 of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d provides that “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.”

Title VI’s enforcing regulations prohibit intentional discrimination, but also disparate impact discrimination by programs receiving Federal financial assistance.

Most federal agencies have adopted some version of the following disparate impact regulation: 28 CFR § 42.104(b)(2) (Department of Justice); 45 CFR § 80.3(b)(2) (Health and Human Services) “A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize 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.”

*Title VI Requires Language Access for Non-English Speakers*

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted 45 CFR 80.3(b)(2) to hold that Title VI prohibits conduct that has a disproportionate effect on Limited English Proficiency (LEP) persons because such conduct constitutes national-origin discrimination.

To implement these regulations and the holding under *Lau v. Nichols*, in 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."

*How Title VI and EO 13166 Are Implemented*

This requirement to “take reasonable steps to provide meaningful access to LEP persons” applies to any program receiving funding from the federal government. This includes state or county agencies administering government benefits, courts, subsidized housing providers, schools, legal services providers, and more.

Meeting Title VI’s language access requirements has essentially been reduced down to a formula. Federal funding recipients complete 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. The goal is to obtain 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.

Most recipients (including state agencies, courts, etc.) have publicly available written language access policies which explain the findings from their assessments, and their procedures to meet Title VI’s language access requirements.

*Enforcement of Title VI Language Access Requirements*

The Department of Justice (DOJ) is tasked with enforcing the disparate impact protection, including language access requirements for recipients of federal funding. DOJ can investigate complaints of language access violations, issue findings, assess penalties, and bring legal action on behalf of the United State. All federal and state agencies have an “Office of Civil Rights” (or equivalent) where individuals can file Title VI discrimination complaint, including not meeting language access requirements, which will be investigated and potentially lead to enforcement actions by DOJ.

In *Alexander v. Sandoval*, 532 U.S. 275 (2001) the Supreme Court held thatprivate individuals have no mechanism to directly enforce their right to be free from disparate impact discrimination under Title VI. This forecloses all private litigation enforcing an individual’s language access rights, since these are disparate impact claims. Individuals’ only option enforce their Title VI language access rights is to file discrimination complaints with the Office of Civil Rights.