

## **Commonly Asked Questions and Answers**

### **Regarding the Protection of Limited English Proficient (LEP) Individuals under Title VI of the Civil Rights Act of 1964 and Title VI Regulations**

#### **1. Why are LEP individuals protected from national origin discrimination under Title VI?**

The Supreme Court decided over three decades ago that a federal fund recipient's denial of an education to a group of non-English speakers violated Title VI and its implementing regulations. *Lau v. Nichols*, 414 U.S. 563, 569 (1974). As the Court explained, "[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" Title VI regulations. *Id.* at 568; see also *id.* at 570-71 (Stewart, J., concurring in result).

#### **2. Does the failure by a recipient to provide meaningful access to LEP persons constitute national origin discrimination?**

Since the Supreme Court's decision in *Lau*, other courts have found that the failure by a recipient to provide meaningful access to LEP persons constitutes national origin discrimination. See, e.g., *Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), *rev'd on other grounds*, 532 U.S. 275 (2001); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI).

#### **3. Do Department of Justice (DOJ) Title VI implementing regulations prohibit both intentional discrimination and practices that have a discriminatory impact?**

Yes. DOJ's Title VI implementing regulations prohibit not only intentional discrimination but also facially-neutral practices that have a discriminatory impact, see 28 C.F.R. § 42.104(b)(2). The "failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities" may constitute national origin discrimination. U.S. Dept. of Justice, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455, 41,457 (June 18, 2002).

#### **4. Do other federal agencies have Title VI regulations that prohibit both intentional discrimination and practices that have a discriminatory impact?**

Yes. Federal agencies have implemented Title VI regulations that follow the DOJ regulations and have consistently construed Title VI's prohibition on both intentional and disparate-impact discrimination to require that recipients of federal financial assistance provide meaningful access for LEP persons. See, e.g., 28 C.F.R. § 42.405(d)(1); Department of Health and Human Services (HHS) Notice, 35 Fed. Reg. 11,595 (1970); 45 Fed. Reg. 82,972 (1980); Executive Order 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).