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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).