

# **SURCHARGE RECIPIENT ORGANIZATION'S**



## **COMPLIANCE PROCEDURES FOR SURCHARGE ELIGIBILITY & PAYMENTS**

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## **I. Introduction**

### **A. Commemorative Coin Programs**

Commemorative coin programs are created by enabling legislation enacted by Congress to honor a person, place or event. The enabling legislation ordinarily mandates the coin specifications, maximum mintage levels, cost considerations, and surcharge amounts to be collected. A surcharge is a set amount per coin that the United States Mint must collect and distribute to the qualifying recipient organization, which must use the proceeds for the purposes specified in the enabling legislation. Prior to the reforms enacted by the Commemorative Coin Reform Act of 1996 (CCRA), Public Law 104-208, the United States Mint was required to pay surcharges to recipient organizations, regardless of whether or not all of the United States Mint's program costs were recovered and without any accountability requirements for the recipient organization. The CCRA changed the United States Mint's prerequisites for payment of surcharges, and the American 5-Cent Coin Design Continuity Act of 2003 (2003 Act), Public Law 108-15, made additional changes to the criteria the United States Mint must employ to ascertain whether a recipient organization qualifies to receive program surcharges.

### **B. Commemorative Coin Program Restrictions Provision of Public Law 104-208**

Congress and the Administration recognized the weaknesses inherent in mandating the payment of surcharges even when the United States Mint's program costs were not recovered. Accordingly, Congress developed a cost/revenue sharing and reporting requirement to ensure that the recipient organizations are viable entities and accountable for the funds raised by these programs. As a result, the CCRA contained a provision that modified payments of surcharges. The 2003 Act made further refinements to this provision.

The CCRA, as amended, imposes four broad prerequisites for the payment of surcharges to recipient organizations.

1. The recipient organization must raise funds from private sources "in an amount that is equal to or greater than the total amount of the proceeds of such surcharge derived from the sale of such numismatic item."
2. The qualifying funds raised from private sources must be for the purposes specified by the enabling legislation.
3. The United States Mint must recover "all numismatic operation and program costs allocable to the program."
4. The recipient organization must submit an audited financial statement and submit the results of annual audits to demonstrate, to the satisfaction of the

Secretary of the Treasury, that it has qualified for surcharge proceeds and is properly expending them.

The United States Mint has issued these procedures as a guide for carrying out its responsibility under the CCRA and as a means to communicate standards to recipient organizations and their auditors.

**C. *Application of Title VI of the Civil Rights Act of 1964 and Similar Civil Rights Laws***

A nonfederal entity (NFE) that is a recipient organization receiving commemorative coin surcharges must comply with the requirements of Title VI of the Civil Rights Act of 1964 (Title VI) and other similar civil rights laws, such as Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal assistance. Specifically, Title VI provides that—

[n]o 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.

42 U.S.C. § 2000d. Additionally, the United States Mint’s role in disbursing commemorative coin surcharges to NFE recipient organizations constitutes Federal financial assistance.

To ensure that NFE recipient organizations are in compliance with Title VI and similar civil rights laws, the United States Mint shall—

- conduct compliance reviews prior to the payment of surcharges (the United States Mint’s Office of Equal Employment Opportunity and Diversity will conduct these compliance reviews);
- require NFE recipient organizations to sign Assurance Agreements under which they recognize their obligations to comply with federal statutes prohibiting discrimination;
- require NFE recipient organizations to disseminate information to the public concerning the protections against discrimination; and
- provide notice to NFE recipient organizations that the Department of the Treasury will investigate and process complaints of discrimination filed against them under the applicable civil rights laws.

Other requirements may apply based on specific provisions of the enabling commemorative coin legislation.

#### ***D. Purpose of This Document***

This document is intended for use by United States Mint personnel and recipient organizations subject to the CCRA. It follows the sequential steps that occur during the life of a commemorative coin program, and describes requirements and specific compliance actions.

These procedures are described in the following sections:

- Private Fund Raising
- Determining Program Cost Recovery
- Surcharge Payments
- Annual Audits of Surcharge Funds Received and Expended
- Title VI Coverage of Commemorative Coin Programs

In addition to sample letters, reports, schedules, recipient organization's assertion statement, and auditor's report, the Appendices include a glossary and a recipient organization compliance checklist to assist in complying with the CCRA and United States Mint policy. Title VI materials to assist NFE recipient organizations comply with various non-discrimination laws are also provided in the Appendices.

## **II. Private Fund Raising**

### **A. Legislative Requirements**

Commemorative coin programs have been subject to the CCRA since 1997. Pursuant to the CCRA, all recipient organizations must demonstrate, to the satisfaction of the Secretary of the Treasury, that they have raised private funds for the purposes stated in the specific commemorative coin program enabling legislation. The private funds raised must be in an amount that is equal to or greater than the total amount of the proceeds of such surcharge derived from the sale of such numismatic items.

### **B. Compliance Requirements**

The following subsections provide specific compliance actions required of the recipient organization. Appendix A contains a compliance checklist that the recipient organization's management may use to assist in complying with requirements of the CCRA and United States Mint policy.

#### **1. Private Fund Raising**

The CCRA requires the recipient organization to demonstrate that it has raised funds from private sources for the purpose or project designated by enabling legislation to be supported by coin surcharges. The total of qualifying private funds raised must be greater than or equal to the total amount of the proceeds of such surcharge derived from the sale of such numismatic item. Private funds are funds raised from non-governmental sources. Such funds must consist of cash contributions. They also may include other assets as long as they are readily converted to cash (e.g., donations of common stock or marketable real estate). In-kind contributions (e.g., volunteer time, gratuitous professional services, donated products not intended to be converted to cash) are not "funds" and, therefore, are not deemed suitable for eligibility purposes.

#### **2. Period of Fund Raising**

In meeting the private fund raising requirement, recipient organizations must demonstrate they have received funds intended for the purpose stated in the enabling legislation during the period between the inception of the recipient organization and the date two years after the last day any coin in the respective program is issued by the Secretary. The private funds raised for one coin program may not be applied to qualify for disbursement of surcharge proceeds for another commemorative coin program. The recipient organization may continue to receive private funds during the course of the applicable commemorative coin program. However, the United States Mint will make no surcharge payment until

the recipient organization has completely met all of the private fund raising criteria.

### **3. Documentation**

The recipient organization must complete and submit a schedule documenting the amount of funds raised from private sources and the period of fund raising. The Schedule of Funds Raised From Private Sources is presented in Appendix B. This schedule must be audited. See subsection below titled Audit of Private Fund Raising.

The recipient organization must also provide a written assertion by its Chief Executive Officer (CEO) or Chief Financial Officer (CFO) that it has met the compliance requirements of the CCRA and specific enabling legislation.

The recipient organization must assert that:

- 1) the amount of qualifying funds received from private sources and the period covered are correct as stated in the accompanying Schedule of Funds Raised from Private Sources;
- 2) the private funds raised are for the purposes described in the enabling legislation (the purpose shall be restated in the assertion); and
- 3) none of the qualifying funds raised from private sources have been used to compensate, directly or indirectly, any agent or attorney for services rendered to support or influence in any way legislative actions of Congress relating to numismatic coin activity as required by Public Law 104-208 Section 529(f)(3), codified as 31 U.S.C. § 5134(f)(3).

A sample Recipient Assertion is shown in Appendix C.

### **4. Audit of Funds Raised From Private Sources**

#### Selecting An Auditor

Federal auditors may perform all or part of the work required for eligibility determination for Federal entities if the auditor complies fully with the United States Mint's stated scope and procedures. An independent public accountant may also be engaged by a Federal recipient. For all NFE recipient organizations, an independent public accountant is required.



## Audit Requirements

A compliance attestation engagement, providing the basis for a report on the fairness of the eligibility assertions made by the recipient organization's management, is required. The compliance attestation engagement must be performed in compliance with the Statements on Standards for Attestation Engagements (SSAE) of the American Institute of Certified Public Accountants (AICPA). SSAE include general, fieldwork, and reporting standards for attestation engagements and also specific standards for compliance attestation engagements. The auditor should apply examination procedures when conducting the compliance attestation engagement.

The scope of the compliance attestation engagement must be sufficient to provide a basis for the auditor's report on the assertion of the recipient organization's management. The assertions are as follows:

- 1) The amount of qualifying funds raised from private sources and period during which they were received are correct as stated in the accompanying Schedule of Funds Raised from Private Sources.
- 2) The private funds raised are for the purposes described in the enabling legislation.
- 3) None of the qualifying funds raised from private sources has been used to compensate, directly or indirectly, any agent or attorney for services rendered to support or influence in any way legislative actions of Congress relating to numismatic coin activity as required by 31 U.S.C. § 5134(f)(3).

## Audit Report

The scope, conduct, and report of the auditor shall be consistent with AICPA SSAE for compliance attestation engagements. Also, the report should indicate the procedures performed during the attestation engagement.

Sample report language, consistent with AICPA compliance attestation standards, is presented in Appendix D.

The auditor's report shall cover the period necessary to demonstrate that required funds from private sources have been raised by the recipient organization. The period reported should be by fiscal year of the recipient organization and must correspond with the period covered by the recipient organization's assertion. The auditor should submit its report promptly to the recipient organization upon completion.

## Audit Findings

If the compliance attestation engagement of the auditor does not satisfy the United States Mint that the recipient organization is in compliance with the CCRA, the applicable enabling legislation, and the United States Mint's own procedures, the United States Mint may decline to grant initial eligibility to the recipient organization. In this instance, the recipient organization may cure the deficiencies noted in the auditor's report, reassert compliance with all requirements for private fund raising eligibility, and provide the United States Mint with a new report from the auditor to establish eligibility.

## Transmittal of the Audit Report

The recipient organization must submit the auditor's report to the United States Mint to be received no later than 30 days prior to any surcharge payment. A letter of transmittal must accompany the submission of the auditor's report. This letter, addressed to the United States Mint's CFO, must be signed by the recipient organization's CEO or CFO and state whether the recipient organization has complied with eligibility requirements, as reported by the auditor. A sample transmittal letter is presented in Appendix E.

### **C. *United States Mint Acceptance***

#### **1. Determination**

Based upon the documentation provided by the recipient organization, the United States Mint will determine if the eligibility requirements have been satisfied. Documentation provided must include the:

- Schedule of Funds Raised From Private Sources;
- recipient organization's management assertions letter; and
- auditor's attestation report on compliance.

The recipient organization must make available to the United States Mint or its agent any additional information the United States Mint may deem necessary to determine eligibility.

The United States Mint will make the eligibility determination by performing the following steps:

- 1) calculating the total amount of the proceeds of such surcharge derived from the sale of such numismatic item;
- 2) reviewing documentation provided by the recipient organization; and

- 3) comparing the amount calculated in Step 1 to the amount of funds raised from private sources, per documentation provided by the recipient organization.

The United States Mint will grant eligibility to the recipient organization if the documentation provided demonstrates to the United States Mint's satisfaction that all eligibility requirements have been met. This eligibility will be granted by the Director of the United States Mint, based upon the CFO's recommendation.

## **2. Notification**

If the United States Mint determines that the recipient organization has met the private fund raising eligibility requirements, the CFO will sign the Schedule of Funds Raised From Private Sources to document the United States Mint's approval. The United States Mint will forward a copy of the approved schedule to the recipient organization. Also, the United States Mint will file this document in the applicable commemorative coin program file to document that the recipient organization qualifies for any subsequent surcharge payments.

If the auditor's report does not satisfy the United States Mint that the recipient organization is in compliance with the CCRA, the applicable enabling legislation, and the United States Mint's procedures, the CFO shall notify the recipient organization of this determination and that surcharge funds cannot be paid unless the recipient organization submits to the United States Mint evidence that it has raised sufficient funds from private sources and a satisfactory auditor's report. The recipient organization may cure the deficiencies noted in the auditor's report, reassert compliance with all requirements for private fund raising eligibility, and provide the United States Mint a new report from the auditor.

## **D. Waiver of Requirements**

The CCRA does not afford the United States Mint the authority to waive the private fund raising requirement.

### **III. Determining Program Cost Recovery**

#### **A. Legislative Requirements**

Commemorative coin programs have been subject to the CCRA since 1997. The CCRA requires the United States Mint to recover “all numismatic operation and program costs allocable to the program under which such numismatic item is produced and sold . . . .” before releasing surcharge funds to the recipient organization.

#### **B. Computation of Program Cost Recovery**

The United States Mint determines program cost recovery quarterly. The cost recovery of a commemorative coin program is equal to total revenue less the following cost components:

- cost of goods sold;
- selling, general, and administrative costs;
- advertising costs; and
- program close-out costs.

The following subsections provide a description of the revenue and cost components used in the cost recovery computation.

#### **1. Revenue**

##### **Total Revenue**

Total revenue is equal to the product of the net number of commemorative coins sold multiplied by the sales price. The number of commemorative coins includes coins in all configurations. Total revenue also includes surcharge funds collected by the United States Mint.

#### **2. Cost Components**

##### **Cost of Goods Sold**

Cost of goods sold includes the cost of metals, manufacturing, and packaging. Metal costs include the cost of gold, silver, other metals, and fabrication. The United States Mint uses standard cost to determine the manufacturing and assembly costs for a program during the life of the program. The United States Mint uses actual costs instead of standard cost when computing the final cost recovery upon the program’s termination.

### **Selling, General and Administrative Costs**

Selling, general and administrative costs include promotion costs, shipping, marketing, travel, and general and administrative costs. General and administrative costs will be allocated to the commemorative program based upon the United States Mint's standard allocation policy.

### **Advertising Costs**

Advertising costs include those direct advertising costs incurred to promote the commemorative coin program.

### **Program Close-Out Costs**

Program close-out costs include those costs the United States Mint would incur if the commemorative coin program were to cease to exist as of the end of the quarter for which the United States Mint is determining the program's cost recovery. Program close-out costs include:

- inventory on-hand;
- disposition cost;
- packaging materials on-hand; and
- unused dies.

The cost of inventory on-hand includes the value of work-in-progress and unsold finished goods, less cost of precious metals (precious metal is reclaimed and reused for other programs; the cost of the reclaimed precious metal is not charged to the commemorative program). Costs that are inventoried include fabrication, manufacturing, and assembly. Disposition costs include the costs to melt down inventory on-hand, including finished goods, work-in-progress, and condemned coins. Packaging materials on-hand includes only those packaging materials ordered specifically for the commemorative coin program that cannot be utilized by other commemorative coin programs. Unused dies are those dies created specifically for the commemorative coin program that have not been used during the manufacturing of the commemorative coins.

## **3. Net Revenue Before Surcharges Calculation**

The United States Mint will calculate the net revenue before surcharges are paid to the recipient organization to determine if the commemorative coin program is eligible for surcharge payments. Net revenue before surcharges equals total revenue less applicable costs as defined above in Section III subsections B1 and B2. For your information, the public laws authorizing commemorative coin programs generally require the Secretary to include the commemorative coin's nominal face value in the sale price of each commemorative coin. Because commemorative coins are legal tender, as defined in 31 U.S.C. § 5103, and as such, are monetized, the nominal face value of each commemorative coin sold (i.e., seigniorage) is deposited into the general fund as an off-budget receipt.

## **IV. Surcharge Payments**

### **A. Legislative Requirements**

Commemorative coin programs have been subject to the CCRA since 1997. Section 529(f)(1) of the CCRA, Conditions on Payment of Surcharges to Recipient Organization, as amended by Public Law 108-15, Title II, section 201(a)(1)(A), states that “no amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item shall be paid from the fund to any recipient organization unless—

- A) all numismatic operation and program costs allocable to the program, under which such numismatic item is produced and sold have been recovered; and
- B) the designated recipient organization submits an audited financial statement that demonstrates . . . that, with respect to all projects or purposes for which the proceeds of such surcharge may be used, the organization has raised funds from private sources for such projects and purposes in an amount that is equal to or greater than the total amount of the proceeds of such surcharge derived from the sale of such numismatic item.”

Sections II and III outline the above requirements.

### **B. Surcharge Payments**

#### **1. Prerequisites**

The United States Mint will pay surcharges only if the recipient organization has been granted eligibility based upon the requirements outlined Section II, Private Fund Raising, and the United States Mint has recovered all numismatic and operational costs allocable to the commemorative coin program as outlined in Section III, Determining Program Cost Recovery. As outlined in Section VI, if the recipient organization is a NFE, the United States Mint must also perform a compliance review of the requirements of Title VI of the Civil Rights Act of 1964 and similar civil rights laws before surcharge payments can be made.

If the recipient organization has not been granted eligibility by the United States Mint, or the United States Mint has not recovered all allocable commemorative program costs, the United States Mint will evaluate the recipient’s eligibility or the program’s cost recovery performance at the next evaluation date.

## 2. Surcharge Payments

The CCRA requires the United States Mint to recover all allocable program and operational costs before releasing surcharge funds. If the recipient organization satisfactorily demonstrates that it has raised qualifying funds from private sources in an amount equal to or greater than the maximum amount the organization may receive from the proceeds of surcharges under the respective program, the United States Mint will consider accommodating the recipient organization by making interim surcharge payments at the United States Mint's discretion. Any interim surcharge payment will depend on the financial performance of the program and the risk of loss to which the United States Mint may be exposed by releasing surcharge funds before the termination of the coin program. The United States Mint must comply with the provision of the law that requires it to recover all costs allocable to the program, and the bureau will not jeopardize its ability to comply with the provisions of the CCRA. Additionally, if the recipient organization is a NFE, it must demonstrate its full compliance with the applicable provisions of Title VI of the Civil Rights Act and other similar civil rights laws.

The following table illustrates the general time frames when the United States Mint will evaluate whether to make surcharge payments, and, if so, the maximum amount of the payments.

**Interim Surcharge Payments**

<b>Time Period</b>	<b>Amount of Payment</b>
6 Months After Start of Program	Up to 50 % of surcharges collected by the United States Mint
9 Months After Start of Program	Up to an additional 25% of total surcharges collected by United States Mint
Program Close-Out	Remaining balance of surcharges collected by the United States Mint

The United States Mint may adjust the above surcharge payment guidelines at its discretion without prior notice.

In the event that the program incurs a loss, no amount derived from the proceeds of any surcharge imposed on the sale of any numismatic item will be paid to the recipient organization. If the allocable costs of the program exceed the surcharge payment, the United States Mint will not make an interim surcharge payment and will reevaluate the financial performance of the commemorative coin program on the next evaluation date.

The United States Mint will forward any remaining surcharge fund balance to the recipient organization after performing the final accounting for the program. The final surcharge payment may not result in the United States Mint incurring a loss.

The final accounting of the commemorative coin program is performed after the “close of a program.” The “close of a program” is determined by the enabling legislation. The enabling legislation will indicate a specific date that the United States Mint may no longer mint or issue the commemorative coins included in the program. If the specified date is the date on which the United States Mint can no longer issue the commemorative coins, the United States Mint will cease selling the commemorative coins on that date regardless of whether commemorative coins remain in inventory. If the specified date is the date on which the United States Mint may no longer mint the commemorative coins, the United States Mint will cease production, but may continue to sell the commemorative coins remaining in inventory. The United States Mint may continue selling the commemorative coins until the inventory is depleted or the United States Mint decides to end the program based on legal, marketing or other reasons, based on the best interests of the United States Mint and the United States Government.



## **V. Annual Audits of Surcharge Funds Received and Expended**

### **A. Legislative Requirements**

Commemorative coin programs have been subject to the CCRA since 1997. The CCRA specifies several requirements for recipient organizations that are receiving and expending coin surcharge funds:

- Recipient organizations are required to have annual audits of surcharge funds received from the United States Mint. The objective is to verify that all coin surcharge funds paid by the United States Mint to the recipient organization have been used for the purpose specified in that program's enabling legislation.
- The recipient organization's accounts must be kept in a manner that supports accountability, examination, and reporting. Each NFE recipient organization shall ensure that the receipt and expenditure of surcharge funds in each fiscal year of the recipient organization is accounted for separately from all other revenues and expenditures of the recipient organization.
- Each NFE recipient organization and its auditors must also retain its applicable records and working papers and make them available to the United States Mint and certain other Federal entities upon request.

### **B. Compliance Requirements**

The following subsections provide specific compliance actions required of the recipient organization. Appendix A contains a compliance checklist the recipient organization's management may use to assist in complying with requirements of the CCRA and United States Mint policy.

#### **1. Applicability of Annual Audits**

The recipient organization must have the surcharge funds audited annually beginning with the first fiscal year in which the recipient organization receives surcharge funds. This annual audit requirement remains in effect for each fiscal year that surcharge funds are received, expended or until the surcharge funds are placed into a trust. The trust must support the purpose specified in the program's enabling legislation.

## 2. Documentation

The recipient organization must complete and submit a schedule of surcharge funds received and expended during the recipient organization's fiscal year. The Schedule of Surcharge Funds Received and Expended is presented in Appendix F. This schedule must be audited. (See subsection 3 below). The recipient organization should present expenditures on the schedule in categories consistent with the recipient organization's income statement.

The recipient organization must also provide a written assertion by its CEO or CFO that it has met the compliance requirements of the CCRA and specific enabling legislation. By letter, the recipient organization shall assert that—

- 1) the period covered and the amount of receipts and expenditures of surcharge funds identified in the Schedule of Surcharge Funds Received and Expended are correct;
- 2) the surcharge funds received and expended are in compliance with Section 529, Commemorative Coin Program Restrictions, of Public Law 104-208, Omnibus Consolidated Appropriations for Fiscal Year 1997, and the purpose(s) described in the enabling legislation (the purpose shall be restated);
- 3) no surcharge funds have been used to compensate, directly or indirectly, any agent or attorney for services rendered to support or influence in any way legislative actions of Congress relating to numismatic coin activity; and
- 4) surcharge revenues and expenditures are accounted for separately from other revenues and expenditures of the recipient organization.

A sample assertion letter is presented in Appendix G. The recipient organization will also provide a list of individual commemorative coin programs for which the schedules are intended to apply.

## 3. Annual Audit of Surcharge Funds

### Selecting an Auditor

NFE recipient organizations must select an independent public accountant to conduct the audit.

## Audit Requirements

The minimum scope to satisfy the CCRA's requirements is a compliance attestation engagement. The compliance attestation engagement must be performed in compliance with SSAE of the AICPA. SSAE includes general, fieldwork, and reporting standards for attestation engagements and also specific standards for compliance attestation engagements. The auditor should apply examination procedures when conducting the compliance attestation engagement.

The scope of the attestation engagement must be sufficient to provide a basis for the auditor's report on the assertion of the recipient organization. The assertions are that—

- 1) the period covered and the amount of receipts and expenditures of surcharge funds identified in the Schedule of Surcharge Funds Received and Expended are correct;
- 2) the surcharge funds received and expended are in compliance with Section 529, Commemorative Coin Program Restrictions, of Public Law 104-208, Omnibus Consolidated Appropriations For Fiscal Year 1997, and the purpose(s) described in the enabling legislation;
- 3) no surcharge funds have been used to compensate, directly or indirectly, any agent or attorney for services rendered to support or influence in any way legislative actions of Congress relating to numismatic coin activity; and
- 4) surcharge revenues and expenditures are accounted for separately from other revenues and expenditures of the recipient organization.

An audit made for other purposes may be accepted by the United States Mint in lieu of the audit required by these procedures if the other audit meets audit standards specified above.

The determination of when surcharge funds are expended should be based on when the activity related to that commemorative coin program purpose occurs. Generally, the activity pertains to events that require the program to comply with the CCRA and applicable enabling legislation.

The cost of audits made in accordance with the provisions of these procedures may be paid with surcharge funds. A recipient organization may also use surcharge funds for the cost of limited scope audits to monitor its subrecipients. For purposes of this section, limited scope audits include only agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a recipient organization and address only the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; level of effort; and reporting.

Audits conducted to comply with this requirement shall be performed annually. A State or local government that is required by constitution or statute to undergo its audits less frequently than annually shall nonetheless provide annually a program-specific audit or a compliance attestation for coin surcharges funds received or expended. An audit must be conducted for a fiscal year of the recipient organization when surcharge funds are first received and when surcharge funds are last expended or placed in trust. The recipient organization may apply by letter for a waiver of audit requirements for any fiscal year, other than the first and last, when it believes surcharge funds received or expended are minimal and there are no outstanding audit findings or significant internal control risk or deficiencies.

### Audit Report

The scope, conduct, and report of the auditor shall be consistent with the AICPA's SSAE for compliance attestation engagements. Also, the report should indicate the procedures performed during the attestation engagement.

Sample report language, consistent with the AICPA compliance attestation standards, is presented in Appendix D.

The auditor must submit its report to the recipient organization timely, to allow the recipient organization to forward the report to the United States Mint no later than 90 days subsequent to the recipient organization's fiscal year-end.

### Audit Findings

If findings result from the audit, the United States Mint may suspend future surcharge payments or take other necessary steps. The recipient organization must take sufficient corrective action to address the deficiencies to the auditor's satisfaction. If the recipient organization is unable to clear audit findings, the United States Mint may seek reimbursement of surcharge funds paid to the recipient organization.

### Transmittal of Audit Report

Not later than 90 days after the end of any fiscal year of a recipient organization for which an audit is required, the recipient organization shall submit a copy of the audit report to the United States Mint and make a copy of the report available to the public.

A letter of transmittal must accompany the submission of the auditor's report. This letter, addressed to the United States Mint's CFO, must be signed by the recipient organization's CEO or CFO and state the results of the compliance attestation engagement performed by the auditor. A sample transmittal letter is presented in Appendix H.

## Records Retention

Recipient organizations shall keep one copy of the report for three years from the date of submission to the United States Mint. Its auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the United States Mint, or other applicable Federal oversight agency for audit, to extend the retention period. If the auditor has been requested to extend the records retention period, the auditor shall contact the parties requesting the extension prior to destroying the working papers and reports.

### **4. Availability of Financial Records**

The recipient organization shall provide the Inspector General of the Department of the Treasury or the Comptroller General of the United States, upon request, all books, records, and working papers belonging to or used by the recipient organization, or by the independent public accountant who audited the recipient organization, which may relate to the receipt or expenditure of any surcharge funds by the recipient organization.

### **C. United States Mint Acceptance**

#### **1. Determination**

Based upon the documentation provided by the recipient organization, the United States Mint will determine if the recipient organization has maintained its eligibility and accountability. Documentation provided must include the—

- Schedule of Surcharge Funds Received and Expended;
- recipient organization's management assertions letter; and
- auditor's compliance attestation report.

The recipient organization must make available to the United States Mint or its agent any additional information the United States Mint may deem necessary to ensure compliance.

The United States Mint will make this determination by reviewing the audited Schedule of Surcharge Funds Received and Expended, the assertion of the recipient organization's management, and the auditor's report. Acceptance will be determined by the Director of the United States Mint, based upon the CFO's recommendation.

## **2. Notification**

If the United States Mint determines that the recipient has met compliance requirements, the CFO will sign the Schedule of Surcharge Funds Received and Expended to document the United States Mint's approval. The United States Mint will forward a copy of the approved schedule to the recipient organization. The United States Mint also will file this document in the applicable commemorative coin program file to document that the recipient organization qualifies for any subsequent surcharge payments.

If the auditor's report does not satisfy the United States Mint that the recipient organization is in compliance with the CCRA, applicable enabling legislation, and the United States Mint's procedures, the CFO shall notify the recipient organization of this determination and that additional surcharge funds cannot be paid. The recipient organization may cure the deficiencies noted in the auditor's report, reassert compliance with all requirements for surcharge fund expenditures, and provide the United States Mint with a new auditor's report.

## **3. Sanctions**

No audit costs may be charged to surcharge funds when audits required by these procedures have not been made or have been made but are not in accordance with these procedures. In cases of continued inability or unwillingness to have an audit conducted in accordance with these procedures, the United States Mint may take appropriate action using sanctions such as—

- (a) withholding surcharge payments until the audit is completed satisfactorily;
- (b) suspending surcharge payments until the audit is conducted; or
- (c) terminating the payment of surcharges to the recipient organization under the commemorative coin program.

## **D. Waiver of Requirements**

Any Federal agency or department of any independent establishment in the Executive Branch of the United States Government is exempted by the CCRA from these requirements for separate accounting, auditing for the receipt and expenditure of surcharge funds, retaining records, and reporting to the United States Mint.

A waiver of any of the requirements for separate accounting and for auditing of the receipt and expenditure of surcharge funds for reporting to the United States Mint may be granted to an NFE recipient organization for any fiscal year after taking into account the amounts of surcharges received or expended during such year. The waiver provision is contained in Public Law 104-208 Section 529, as

codified at 31 U.S.C. § 5134 (f)(2)(F). Should the recipient organization decide to seek such a waiver, the CEO or CFO of the recipient organization must apply to the Secretary of the Treasury, through the United States Mint, stating the request for waiver and justifications for such waiver.

## **VI. Title VI Coverage of Commemorative Coin Programs**

### **A. Background**

An NFE that is a recipient organization receiving commemorative coin surcharges must comply with the requirements of Title VI and other similar civil rights laws, such as Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Title VI prohibits discrimination on the basis of race, color or national origin in programs and activities receiving Federal assistance. Specifically, Title VI provides that

[n]o 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.

42 U.S.C. § 2000d. Additionally, the United States Mint's role in disbursing commemorative coin surcharges to NFE recipient organizations constitutes Federal financial assistance.

### **B. Compliance Requirements**

The United States Mint shall take the following steps to ensure that the NFE recipient organizations are in compliance with Title VI and similar civil rights laws:

1. Conduct a review of the NFE recipient organization to determine whether it is in compliance with Title VI, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, before approving the disbursement of any surcharges. (The review will be conducted by the United States Mint Office of Equal Employment Opportunity.)
2. Require the NFE recipient organization to sign an Assurance Agreement (Appendix I, Standard Form 424B, Assurances for Non-Construction Programs), under which it recognizes its obligation to comply with Federal statutes prohibiting discrimination.
3. Require the NFE recipient organization to disseminate information to the public on the protections against discrimination, to include complaint procedures and the rights of the NFE recipient organization's commemorative coin surcharge beneficiaries, in handbooks, manuals, pamphlets and other materials that are ordinarily distributed to the public by the NFE recipient organization. (See Appendix J, Sample Notification Statement.)



4. If a significant number or proportion of the population of the NFE recipient organization's commemorative coin surcharge beneficiaries need services or information in a language other than English to meaningfully participate in the organization's Federal financial assisted program, require the NFE recipient organization to take reasonable steps to provide information in such languages. (See Appendix K, Department of the Treasury Guidance on Limited English Proficient (LEP) Beneficiaries.)
5. Notify NFE recipient organizations that the Department of the Treasury will investigate and process complaints of discrimination filed against them under Title VI and other similar civil rights laws.

## VII. Appendices

- A. Recipient Organization's Compliance Checklists**
- B. Schedule of Funds Raised from Private Sources**
- C. Sample Recipient Assertion for Eligibility**
- D. Sample Auditor Attestation Statement**
- E. Sample Transmittal Letter for Eligibility**
- F. Schedule of Surcharge Funds Received and Expended**
- G. Sample Recipient Assertion for Annual Audits**
- H. Sample Transmittal Letter for Annual Audits**
- I. Standard Form 424B, Assurances for Non-Construction Programs**
- J. Sample Notification Statement**
- K. Department of the Treasury LEP Guidance**
- L. Glossary**





**Surcharge Recipient Organization's  
Compliance Procedures for Surcharge Eligibility and Payments**

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**Appendix A - Recipient Organization's Compliance Checklist: Eligibility**

Name of Commemorative Coin Program

Title of Enabling Legislation

Date

Purpose

if Yes,  
Check

Completion Dates  
Planned      Actual

- |    |   |  |  |  |
|----|---|--|--|--|
| 1  | Did you obtain a copy of the enabling legislation?  |  |  |  |
|    |   |  |  |  |
| 2  | Have compliance procedures been obtained from the Mint?   |  |  |  |
|    |   |  |  |  |
| 3  | Have matching funds from private sources been raised for this purpose?  |  |  |  |
|    |   |  |  |  |
| 4  | Has the Schedule of Funds Raised from Private Sources been completed?   |  |  |  |
|    |   |  |  |  |
| 5  | Have you determined that no matching funds were used to influence or support numismatic-related legislation?              |  |  |  |
|    |   |  |  |  |
| 6  | Has an auditor been sought?   |  |  |  |
|    |   |  |  |  |
| 7  | Has the written assertion been completed and signed?  |  |  |  |
|    |   |  |  |  |
| 8  | Has the auditor been engaged?   |  |  |  |
|    |   |  |  |  |
| 9  | Did you review your accounting system for adequacy for compliance?  |  |  |  |
|    |   |  |  |  |
| 10 | Has the audit been started?   |  |  |  |
|    |   |  |  |  |
| 11 | Has the audit been completed?   |  |  |  |
|    |   |  |  |  |
| 12 | Has the audit report been received?   |  |  |  |
|    |   |  |  |  |
| 13 | Have you transmitted the audit report to the Mint at least 30 days in advance of the first planned surcharge payout date? |  |  |  |
|    |   |  |  |  |
| 14 | Have you received eligibility approval from the Mint?   |  |  |  |

**This checklist is to be used in accordance with the United States Mint Surcharge Recipient Organization's Compliance Procedures for Surcharge Eligibility and Payments**



**Surcharge Recipient Organization's  
Compliance Procedures for Surcharge Eligibility and Payments**

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**Appendix A - Recipient Organization Checklist: Annual Audit Compliance**

Name of Commemorative Coin Program

Title of Enabling Legislation

Date

Purpose

if Yes,  
Check

Completion Dates  
Planned Actual

1. Are you at the end of your fiscal year?

[Redacted]

2. Have you received any surcharge funds for this program date

[Redacted]

IF YOU ANSWERED  
YESTO 2, AUDIT IS REQUIRED

[Redacted]

3. Have compliance procedures been obtained from the Mint?

[Redacted]

4. Have you completed the Schedule of Surcharge Funds Received or Expended?

[Redacted]

5. Have you determined that no surcharge funds were used to influence or support numismatic-related legislation?

[Redacted]

6. Are surcharge funds accounted for separately from other recipient funds?

[Redacted]

7. Has the audit report been sought?

[Redacted]

8. Has the written assertion been completed and signed?

[Redacted]

9. Has the audit been engaged?

[Redacted]

10. Has the audit been started?

[Redacted]

11. Has the audit been completed?

[Redacted]

12. Has the audit report been received?

[Redacted]

13. Have you transmitted the audit report to the Mint not later than 90 days after the end of your fiscal year?

[Redacted]

14. Did you submit a copy of the audit report to the Secretary of the Treasury?

15. Did you make a copy of the audit report available to the public?

16. Have you received annual audit compliance approval from the Mint?

17. Are you retaining your copy of the report for three years?

18. Is your auditor retaining working papers and reports for three years?

**This checklist is to be used in accordance with the United States Mint Surcharge Recipient Organization's Compliance Procedures for Surcharge Eligibility and Payments**



**Surcharge Recipient Organization's  
Compliance Procedures for Surcharge Eligibility and Payments**

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**Appendix B - Schedule of Funds Raised From Private Source**

**Commemorative Coin Program  
Schedule of Funds Raised From Private Sources**

Recipient Organization: \_\_\_\_\_  
Commemorative Coin Program \_\_\_\_\_

Enabling Commemorative Coin Legislation  
Act Title \_\_\_\_\_  
Date of Act \_\_\_\_\_

Program Life            From \_\_\_\_\_            To \_\_\_\_\_

Period of Fund        From \_\_\_\_\_            To \_\_\_\_\_

Dollar Amount of Funds  
Raised From Private Sources        \$ \_\_\_\_\_

Recipient Organization Representative  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_

Mint Approval:  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_







**Surcharge Recipient Organization's  
Compliance Procedures for Surcharge Eligibility and Payments**

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**Appendix C - Sample Recipient Assertion for Eligibility**

(designated recipient organization)  
(address)  
(date)

Chief Financial Officer  
United States Mint  
Department of the Treasury  
Washington, DC 20220

RE: Assertions to Establish Eligibility

The (name of designated recipient organization) has been designated the recipient of commemorative coin surcharge funds by (title and date of enabling legislation).

For the purpose of establishing eligibility to receive funds, I assert the following:

1. Qualifying matching funds have been raised as shown in the attached Schedule of Funds Raised from Private Sources, dated (insert date).
2. The private funds raised are for the purpose(s) described in the enabling legislation. The purpose is (state authorized purpose).
3. No matching funds have been used to compensate, directly or indirectly, any agent or attorney for services rendered to support or influence in any way legislative actions of Congress relating to numismatic coin activity.

In accordance with statute and the U.S. Mint's procedures, an auditor has been engaged to conduct a compliance attestation engagement. Our auditor is:

(insert auditor's name  
address  
telephone)

Upon completion, the auditor's report will be promptly forwarded to you.

Very truly yours,

(name)

Chief Executive Officer (or Chief Financial Officer)

(designated recipient organization)

Attachment: Schedule of Funds Raised from Private Sources



## Surcharge Recipient Organization's Compliance Procedures for Surcharge Eligibility and Payments

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### Appendix D - Sample Auditor's Report

We have examined management's assertion about [name of recipient organization]'s compliance with; Section 529, Commemorative Coin Program Restrictions, of Public Law 104-208, Omnibus Consolidated Appropriations for Fiscal Year 1997; [name of commemorative coin program enabling legislation]; and the Mint's Compliance Procedures for Surcharge Eligibility and Payments during the [period] ended [date] included in the accompanying letter dated [date]. Management is responsible for [name of recipient organization]'s compliance with those requirements. Our responsibility is to express an opinion on management's assertion about the organization's compliance based on our examination.

Our examination was made in accordance with standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence about [name of recipient organization] compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on [name of recipient organization]'s compliance with specified requirements.

In our opinion, management's assertion that [name of recipient organization] complied with the requirements of: Section 529, Commemorative Coin Program Restrictions, of Public Law 104-208, Omnibus Consolidated Appropriations for Fiscal Year 1997; [name of commemorative coin program enabling legislation]; and the Mint's Compliance Procedures for Surcharge Eligibility and Payments for the period of [start date] to [end date] is fairly stated, in all material respects.



**Surcharge Recipient Organization's  
Compliance Procedures for Surcharge Eligibility and Payments**

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**Appendix E - Sample Transmittal Letter for Eligibility**

(designated recipient organization)  
(address)  
(date)

Chief Financial Officer  
United States Mint  
Department of the Treasury  
Washington, DC 20220

RE: Surcharge Payment Eligibility - Matching Funds  
Audit Report

The (name of designated recipient organization) has been designated the recipient of commemorative coin surcharge funds by (title and date of enabling legislation).

For the purpose of establishing eligibility to receive funds, an audit has been completed. The auditor has reported that the assertion of (designated recipient organization) (is/ is not) (if is not, include Corrective Action Plan) fairly stated. The auditor's report is attached.

We understand that you must receive this report at least thirty days prior to a scheduled surcharge payout, and that the Mint will make payment only if you have approved our eligibility and the Mint has recovered its cost for this commemorative coin program.

Very truly yours,

(name)  
Chief Executive Officer (or Chief Financial Officer)  
(designated recipient organization)

Attachment: Audit Report



**Surcharge Recipient Organization's  
Compliance Procedures for Surcharge Eligibility and Payments**

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**Appendix F - Schedule of Surcharge Funds Received and Expended**

**Commemorative Coin Program  
Schedule of Surcharge Funds Received and Expended**

Recipient Organization: \_\_\_\_\_

Commemorative Coin Program \_\_\_\_\_

Program Life From \_\_\_\_\_ To \_\_\_\_\_

Recipient Organization's Fiscal Year  
From \_\_\_\_\_ To \_\_\_\_\_

Beginning Fiscal Year Surcharge Balance	FY Surcharge Fund Activity		Ending Fiscal Year Balance
	Surcharge Funds Received	Surcharge Funds Expended	
	<i>Itemized listing of surcharge fund payments received from the Mint</i>	<i>Categorized listing of expenditures consistent with income statement</i>	

Recipient Organization Representative

Signature \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

Mint Approval:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_



## Surcharge Recipient Organization's Compliance Procedures for Surcharge Eligibility and Payments

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### Appendix G - Sample Recipient Assertion for Annual Audits

(designated recipient organization)  
(address)  
(date)

Chief Financial Officer  
United States Mint  
Department of the Treasury  
Washington, DC 20220

RE: Assertions for Annual Audits

The (name of designated recipient organization) has been designated the recipient of commemorative coin surcharge funds by (title and date of enabling legislation).

To comply with annual audit requirements, I assert the following:

1. The period covered and the amount of receipts and expenditures of surcharge funds are identified in the attached Schedule of Surcharge Funds Received and Expended, dated (insert date).
2. The surcharge funds received and expended are in compliance with: Section 529, Commemorative Coin Program Restrictions, of Public Law 104-208, Omnibus Consolidated Appropriations For Fiscal Year 1997; and the purpose(s) described in the enabling legislation. The purpose shall be stated. The purpose is (state authorized purpose).
3. No surcharge funds have been used to compensate, directly or indirectly, any agent or attorney for services rendered to support or influence in any way legislative actions of Congress relating to numismatic coin activity.
4. Surcharge revenues and expenditures are accounted for separately from other revenues and expenditures of the (designated recipient organization).

In accordance with statute and the U.S. Mint's procedures, an auditor has been engaged to conduct a compliance attestation engagement. Our auditor is:

(insert auditor's name  
address  
telephone)

Upon completion, the auditor's report will be promptly forwarded to you.

Very truly yours,

(name)

Chief Executive Officer (or Chief Financial Officer)

(designated recipient organization)

Attachments:

Required:

Schedule of Surcharge Funds Received and Expended

Notes describing significant accounting policies used in preparing schedules

If applicable:

List of individual commemorative coin programs





**Surcharge Recipient Organization's  
Compliance Procedures for Surcharge Eligibility and Payments**

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**Appendix H - Sample Transmittal Letter for Annual Audits**

(designated recipient organization)  
(address)  
(date)

Chief Financial Officer  
United States Mint  
Department of the Treasury  
Washington, DC 20220

RE: Annual Audit Report

The (name of designated recipient organization) has been designated the recipient of commemorative coin surcharge funds by (title and date of enabling legislation).

To comply with Section 529, Commemorative Coin Program Restrictions, of Public Law 104-208, Omnibus Consolidated Appropriations For Fiscal Year 1997, an audit has been completed. The auditor has reported on the fairness of the (name of recipient organization) management's assertion regarding compliance with the Section 529 of Public Law 104-208, the (title of enabling legislation), and the Mint's policy concerning the receipt and expenditure of surcharge funds, and other requirements. The auditor's report is attached.

The auditor has reported that the assertion of (designated recipient organization) (is/ is not) (if is not, include Corrective Action Plan) fairly stated.

We are forwarding this report not more than 90 days following the end of our fiscal year, which ended (date.) A copy of this audit report has been made available to the public at our offices at (location).

Very truly yours,

(name)  
Chief Executive Officer (or Chief Financial Officer)  
(designated recipient organization)

Cc: Secretary of the Treasury  
Attachment: Audit Report



**Surcharge Recipient Organization's  
Compliance Procedures for Surcharge Eligibility and Payments**

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**Appendix I - Standard Form 424B, Assurances for Non-Construction Programs**

[http://www.nps.gov/ncrc/programs/lwcf/stan\\_fms/sf424b-f.pdf](http://www.nps.gov/ncrc/programs/lwcf/stan_fms/sf424b-f.pdf)



## Surcharge Recipient Organization's Compliance Procedures for Surcharge Eligibility and Payments

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### Appendix J - Sample Notification Statement

The nondiscrimination statement set out below shall be posted in all recipient offices and included, in full, on all materials regarding such recipients' programs that are produced by the recipients for public information, public education, or public distribution.

"In accordance with federal law and U. S. Department of the Treasury policy, this institution is prohibited from discriminating on the bases of race, color, national origin, sex, age, or disability. (not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write to the Director, Office of Equal Opportunity and Diversity, 1750 Pennsylvania Avenue, NW, Washington, D.C. 20220. The Department of the Treasury is an equal opportunity provider and employer."

If the material is too small to permit the full statement to be included, the material will at minimum include the following statement, in print size no smaller than the text: "this institution is an equal opportunity provider."



## Surcharge Recipient Organization's Compliance Procedures for Surcharge Eligibility and Payments

### APPENDIX K - Federal Register

Federal Register / Vol. 70, No. 23 / Friday, February 4, 2005 / Notices

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Estimated Total Reporting Burden: 275 hours.

OMB Number: 1545-1478.

Regulation Project Number: INTL-9- 95 Final.

Type of Review: Extension.

Title: Certain Transfers of Domestic

Stock or Securities by U.S. Persons to Foreign Corporations.

Description: Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies (section 367(a)). Under the regulations, no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements. Respondents: Business or other for profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Respondent: 10 hours.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545-1634.

Regulation Project Number: REG- 106902-98 Final.

Type of Review: Extension.

Title: Consolidated Returns—Consolidated Overall Foreign Losses and Separate Limitation Losses.

Description: The regulations provide guidance relating to the amount of overall foreign losses and separate limitation losses in the computation of the foreign tax credit. The regulations affect consolidated groups of corporations that compute the foreign tax credit limitation or that disposes of property used in a foreign trade or business. Respondents: Business or other for profit. Estimated Number of Respondents: 2,000.

Estimated Burden Hours Respondent: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545-1750.

Form Number: IRS Form 8038-R.

Type of Review: Extension.

Title: Request for Recovery of Overpayments under Arbitrage Rebate Provisions. Description: Under Treasury

Regulations section 1.148-3(i), bond issuers may recover an overpayment of arbitrage rebate paid to the United States under Internal Revenue Code section 148. Form 8038-R is used to request recovery of any overpayment of arbitrage rebate made under the arbitrage rebate provisions.

Respondents: State, Local or Tribal Government. Estimated Number of Respondents/ Recordkeepers: 200.

Estimated Burden Hours Respondent/Recordkeeper: Recordkeeping—5 hr., 44 min. Learning about the law or the form—3 hr., 16 min. Preparing, copying, assembling, and sending the form to the IRS—3 hr., 30 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,458 hours.

Clearance Officer: Paul H. Finger, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622-3634.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395-7316.

Lois K. Holland, Treasury PRA Clearance Officer.

[FR Doc. 05-2167 Filed 2-3-05; 8:45 am]

BILLING CODE 4830-01-P

#### DEPARTMENT OF THE TREASURY

#### Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Department of the Treasury.

**ACTION:** Notice of final guidance.

**SUMMARY:** The Department of the

Treasury is publishing its final policy guidance on the prohibition in Title VI of the Civil Rights Act of 1964 against national origin discrimination as it affects limited English proficient (LEP) persons. This policy guidance replaces policy guidance published March 7, 2001 and republished on March 7, 2002.

On December 22, 2003, the Department published proposed guidance for public comment. No comments were received.

**FOR FURTHER INFORMATION CONTACT:**

Pamela Proctor, Office of Equal Opportunity and Diversity, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Room 8127 Washington, DC 20220; (202) 622-0324.

**SUPPLEMENTARY INFORMATION:** Title VI of the Civil Rights Act of 1964, 42 U.S.C.

2000d, *et seq.* provides that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance.

Treasury's initial guidance regarding Title VI was published on March 7, 2001. *See* 66 FR 13829. The document was based on the 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 FR 50123 (August 16, 2000).

On October 26, 2001 and January 11, 2002, the Assistant Attorney General for Civil Rights issued to Federal departments and agencies guidance memoranda that reaffirmed the Department of Justice's (DOJ) commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities, and which clarified and answered certain questions raised regarding the August 16, 2000 guidance. In furtherance of those memoranda, the Department of the Treasury republished its guidance for the purpose of obtaining additional public comment on March 7, 2002. *See* 67 FR 10477.

On March 14, 2002, following republication of Treasury's policy guidance, the Office of Management and Budget (OMB) issued a Report to Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance by all Federal agencies, with flexibility to permit each agency to tailor its guidance to its specific customers. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients that was drafted and organized to also function as a model for similar guidance by other Federal agencies. *See* 67 FR 41455 (June 18, 2002). To the extent appropriate, Treasury's final guidance is consistent with the LEP guidance document published by DOJ.

The text of the complete final guidance document appears below. Dated: December 21, 2004.

**Jesus H. Delgado-Jenkins**, *Acting Assistant Secretary for Management*.

## **I. Introduction**

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to

<sup>1</sup> Treasury recognizes that many recipients may have had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

<sup>2</sup> The policy guidance is not a regulation but rather a guide. Title VI requires that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient, read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data from the 2000 census has not yet been released, 26% of all Spanish speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.<sup>1</sup>

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d . The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.<sup>2</sup>

These are the same criteria Treasury will use in evaluating whether recipients are in compliance with Title VI.

Before discussing these criteria in greater detail, it is important to note two basic underlying principles. First, we must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance. There are many productive steps that the Federal Government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons.

Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department of the Treasury, in conjunction with the Department of Justice (DOJ), plans to continue to provide assistance and guidance in this important area. In addition, Treasury plans to work with its recipients and LEP persons to identify and share model plans, examples of best practices, and cost saving approaches. Moreover, Treasury intends to explore how language assistance measures, resources and cost containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, <http://www.lep.gov>, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. Treasury and the Department of Justice have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

## II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person 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.” Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity “to effectuate the provisions of [section 601] \* \* \* by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. 2000d-1. Agency regulations promulgated pursuant to Section 602 of Title VI universally forbid recipients 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.” See, e.g., 28 CFR 42.104(b) (2) (DOJ), 7 CFR 15.3(b)

(2) (Department of Agriculture), 34 CFR 100.3(b) (2) (Department of Education), 45 CFR 80.3(b) (2) (Department of Health and Human Services), and 45 CFR 1110.3(b) (2) (National Endowment for the Arts and Humanities). Treasury has not yet, but intends to, issue regulations implementing Title VI. These will be consistent with this longstanding Federal policy prohibiting the use of criteria or methods of administration which have the effect of discriminating on the basis of race, color, or national origin. The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including language identical to that quoted above, to hold that Title VI prohibits conduct that has a

<sup>3</sup> The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities.

See, e.g., *Sandoval*, 532 U.S. at 286, 286 n.6 (“[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate impact regulations; \* \* \* We cannot help observing, however, how strange it is to say that disparate-impact regulations are ‘inspired by, at the service of, and inseparably intertwined with Sec. 601 \* \* \* when Sec. 601 permits the very behavior that the regulations forbid.’”). The memorandum, however, made clear that DOJ disagreed with the commentators’ interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

<sup>4</sup> Pursuant to Executive Order 13166, the meaningful access requirement of Title VI and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the federally conducted programs and activities of federal agencies, including Treasury.

<sup>5</sup> However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI, only funds directed to the particular program or activity that is out of compliance would be terminated. 41 U.S.C. 2000d-1. disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 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.”

On that same day, DOJ issued a general guidance document addressed to “Executive Agency Civil Rights Officers” setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order.

“Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,” 65 FR 50123 (August 16, 2000) (“DOJ LEP Guidance”).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court’s decision in *Alexander v. Sandoval*. On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for “Heads of Departments and Agencies, General Counsels and Civil Rights Directors.” This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*.<sup>3</sup> The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force. This Guidance is thus published pursuant to Executive Order 13166.

## III. Who Is Covered?

Recipients of Federal financial assistance from Treasury are required to provide meaningful access to LEP persons.<sup>4</sup> Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

Recipients of assistance from Treasury typically include, but are not limited to, for example:

- Nonprofit organizations engaged in taxpayer education,
- Financial institutions serving distressed communities.

Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipient.

This is true even if only one part of the recipient receives the Federal assistance.<sup>5</sup> Coverage extends to a recipient's entire program or activity; *i.e.*, to all parts of a recipient's operations.

Some recipients may operate in jurisdictions in which English has been declared the official language.

Nonetheless, these recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

#### **IV. Who Is a Limited English Proficient Individual?**

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP," entitled to language assistance with respect to a particular type of service, benefit, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by

Treasury's recipients and should be considered when planning language services include, but are not limited to:

- Persons participating in taxpayer education programs conducted by assisted non-profit organizations, and,
- Members of distressed communities seeking fiscal services from assisted financial institutions.

#### **V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?**

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is 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. As indicated above, the intent of this guidance is to suggest 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. For instance, some of a recipient's activities will be more important than others or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. Treasury's

The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English. recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

##### *(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population*

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a precinct in the case of a law enforcement entity or a school in the case of an educational system serves a large LEP population, the appropriate service area is most likely the precinct or school, and not the entire population served by the recipient. Where no service area has previously been approved, the relevant service area may be that which is approved by State or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients providing educational services to minor LEP students should also include the students' LEP parent(s) or primary caretakers among those likely to be encountered.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from State and local governments.<sup>6</sup> Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

##### *(2) The Frequency With Which LEP Individuals Come in Contact With the Program*

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily.

It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

### *(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program*

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, the obligations of a federally assisted school or hospital to LEP constituents are generally far greater than those of a federally assisted zoo or theater. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual.

Decisions by a Federal, state, or local entity to make an activity compulsory, such as a particular educational program, can serve as strong evidence of the program's importance. While all situations must of course be analyzed on a case-by-case basis, the following general observations may be helpful to Treasury's recipients considering the implications of applying this factor of the four-factor test to their respective programs:

#### Examples

##### An assisted financial institution in

a city with a large Hispanic population including a significant number of LEP members should consider translating account and loan applications into Spanish (or implementing a procedure through which Spanish-speaking LEP persons could be served by Spanish speaking officers).

With respect to the importance of a program, activity, or service provided by one of the Agency's recipients, the obligation to provide translation services will most likely be greatest in educational/training situations or in connection with the provision of law enforcement services. As an aid in applying this guidance to their own programs or activities, entities that receive Federal financial assistance from either the Department of Education or Department of Justice and Treasury may rely on the more particularized LEP Guidance of the Department of Education (in the case of a school-based educational program) or the Department of Justice (in the case of a law enforcement entity) to ensure compliance with the obligation to provide meaningful access in those respective contexts. *(4) The Resources Available to the Recipient and Costs* A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the

<sup>7</sup> Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

<sup>8</sup> Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some terms, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.<sup>7</sup>

Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

Treasury is well aware of the fact that some of its grant recipients may experience difficulties with resource allocation. Treasury emphasizes that reasonable translation and interpretation costs are appropriately included in grant and award budget requests.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services:

Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

## **VI. Selecting Language Assistance Services**

Recipients have two main ways to provide language services: Oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

### *A. Oral Language Services (Interpretation)*

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language).



Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

□ *Competence of Interpreters.* When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual.

Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification may be helpful. When using interpreters, recipients should ensure that they:

—Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

—Have knowledge in both languages of any specialized terms or concepts peculiar to the entity’s program or activity and of any particularized vocabulary and phraseology used by the LEP person; and, if applicable, understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.

—Understand and adhere to their role as interpreters without deviating into any other role such as counselor or advisor.

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in information about completion of tax forms, for example, must be quite high while the quality and accuracy of language services in translation of a brochure about the history of money need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for “timely” applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

—*Hiring Bilingual Staff.* When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients and sub-recipients can, for example, fill public contact positions with staff who are bilingual and competent to communicate directly with LEP persons in their language and at the appropriate level of competency. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting.

Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual member of a formal review panel adjudicating allegations of program or fiscal noncompliance would probably not be able to perform effectively the role of interpreter and adjudicator at the same time, even if the bilingual employee were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

—*Hiring Staff Interpreters.* Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

—*Contracting for Interpreters.* Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient’s programs and processes to these organizations can be a cost effective option for providing language services to LEP persons from those language groups.

—*Using Telephone Interpreter Lines.*

While of limited value for live performances or museum exhibits, telephone interpreter service lines often offer speedy interpreting assistance in many different languages in other public-contact situations.

They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone.

Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

—*Using Community Volunteers.* In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient’s less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality

rules, if any. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

—*Use of Family Members or Friends as Interpreters.* Although recipients should not plan to rely on an LEP person’s family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient’s own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.

While issues of competency, confidentiality, and conflict of interest in the use of family members or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. If the importance and nature of the activity is relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy, and the resources needed and costs of providing language services are high, an LEP person’s use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient’s offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person’s interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person’s decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person’s choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

#### *B. Written Language Services (Translation)*

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

*What Documents Should be Translated?* After applying the four factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient’s program. Such written materials could include, for example:

—Notices advising LEP persons of free language assistance

—Written tests that do not assess

English language competency, but test competency for a particular license, job, or skill for which knowing English is not required —Applications to participate in a recipient’s program or activity or to receive recipient benefits, grants, or services. Whether or not a document (or the information it solicits) is “vital” may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are “vital” to the meaningful access of the LEP populations they serve. Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services.

Awareness of rights or services is an important part of “meaningful access.” Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message. Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

*Into What Languages Should Documents be Translated?* The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic.

Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently

encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four factor analysis. Because translation is a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis. *Safe Harbor*. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English.

Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written

For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism. For instance, there may be languages which do not have an appropriate direct translation of some terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful. translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

*Example:* Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary.

Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

*Safe Harbor Guides.* The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. Treasury provides assistance to a range of programs and activities serving different geographic areas with varying populations. Moreover, as noted above, the obligation to consider translations applies only to a recipient's vital documents having a significant impact on access rather than all types of documents used or generated by a recipient in the course of its activities. For these reasons, a strict reliance on the numbers or percentages set out in the safe harbor standards may not be appropriate for all of Treasury's recipients and for all their respective programs or activities. While the safe harbor standards outlined above offer a common guide, the decision as to what documents should be translated should ultimately be governed by the underlying obligation under Title VI to provide meaningful access by LEP persons by ensuring that the lack of appropriate translations of vital documents does not adversely impact upon an otherwise eligible LEP persons ability to access its programs or activities. *Competence of Translators.* As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate. Particularly where vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.<sup>9</sup> Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.<sup>10</sup> Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful. While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no significant consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences.

The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

## **VII. Elements of Effective Plan on Language Assistance for LEP Persons**

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by

recipient employees serving the public will likely be the most appropriate and cost effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services.

Despite these benefits, certain recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program. The Social Security Administration has made

such signs available at <http://www.ssa.gov/multilanguage/langlist1.htm>. These signs could, for example, be modified for recipient use or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

#### *(1) Identifying LEP Individuals Who Need Language Assistance*

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact. One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at <http://www.usdoj.gov/crt/cor/13166.htm>.

When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify. *(2) Language Assistance Measures* An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

#### *(3) Training Staff*

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters. Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff. *(4) Providing Notice to LEP Persons*

Once an organization has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.<sup>11</sup>

- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu.

The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

- Including notices in local newspapers in languages other than English.
- Providing notices on non-English language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

#### *(5) Monitoring and Updating the LEP Plan*

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of

their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

— Current LEP populations in service area or population affected or encountered.

— Frequency of encounters with LEP language groups.

- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.

Whether identified sources for assistance are still available and viable. In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

### **VIII. Voluntary Compliance Effort**

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is implemented by Treasury through complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. Upon publication of Treasury's Title VI regulations, the enforcement procedures in those regulations will be applicable to this program. Treasury will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, Treasury will inform the recipient in writing of this determination, including the basis for the determination. Treasury will use voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, Treasury will inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, Treasury will secure compliance through the termination of federal assistance after the recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. Treasury will engage in voluntary compliance efforts and provide technical assistance to recipients at all stages of an investigation. During these efforts, Treasury will propose reasonable timetables for achieving compliance and consult with and assist recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, Treasury's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities. While all recipients must work toward building systems that will ensure access for LEP individuals, Treasury acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, Treasury will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons.

This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

In cases where a recipient of Federal financial assistance from Treasury also receives assistance from one or more other Federal agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans. Treasury, in discharging its compliance and enforcement obligations under Title VI, will look to analyses performed and plans developed in response to similar detailed LEP guidance issued by other Federal agencies. Accordingly, as an adjunct to this Guidance, recipients may, where appropriate, also rely on guidance issued by other agencies in discharging their Title VI LEP obligations.

In determining a recipient entity's compliance with Title VI, Treasury's primary concern is to ensure that the entity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient entity's appropriate use of the methods and options discussed in this policy guidance is viewed by Treasury as evidence of that entity's willingness to comply voluntarily with its Title VI obligations.

### **IX. Complaint Process**

Anyone who believes that he/she has been discriminated against because of race, color or national origin in violation of Title VI may file a complaint with Treasury within 180 days of the date on which the discrimination took place. The following information should be included:

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required);
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s);
- The name and location of the organization or institution that committed the alleged discriminatory act(s);
- A description of the alleged discriminatory act(s) in sufficient detail to enable the Office of Equal Opportunity and Diversity (OEOD) to understand what occurred, when it occurred, and the basis for the alleged discrimination.
- The letter or form must be signed and dated by the complainant or by someone authorized to do so on his or her behalf.

A recipient may not retaliate against any person who has made a complaint, testified, assisted or participated in any manner in an investigation or proceeding under the statutes governing Federal financial assistance programs. Civil rights complaints should be filed with: Department of the Treasury, Office of Equal Opportunity and Diversity, 1750 Pennsylvania Avenue, NW., Room 8157, Washington, DC 20220.

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**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-0501]

**Proposed Information Collection Activity: Proposed Collection; Comment Request**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register**

<http://edocket.access.gpo.gov/2005/pdf/05-2156.pdf>



## **Surcharge Recipient Organization's Compliance Procedures for Surcharge Eligibility and Payments**

### **Appendix L - Glossary Of Terms**

Actual costs - costs associated with the manufacturing of coins.

All costs - the total of expended, or sunk, costs plus anticipated program costs through close-out.

AICPA - American Institute of Certified Public Accountants

Assertion - any declaration, or set of related declarations, made by a responsible party.

Attestation Engagement - an engagement in which an auditor/independent public accountant issues a written communication that expresses an opinion on a written assertion that is the responsibility of another party.

Auditee - any recipient entity that receives or expends coin surcharges which must be audited.

Auditor - is an independent public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). For this legislation, the term auditor does not include internal auditors of non-profit organizations.

Audit finding - deficiencies which the auditor is required to report in the schedule of findings and questioned expenditures.

Audited financial statements - either full statements of financial condition and operations for an organization or a sub-unit of the organization, or a limited statement such as the schedule of receipts and expenditures of surcharge funds, together with the report of the auditor regarding whether the statements are fairly presented in all material respects in accordance with generally accepted accounting principles (GAAP) or a comprehensive basis of accounting other than GAAP.

Close-out costs - anticipated costs to complete a commemorative coin program or to close it.

Commemorative Coin Program - a particular commemorative coin program created by enabling legislation, and developed by the Mint and recipient organization for the benefit of a designated purpose or project. Also referred to as Program.

Cost recovery - Mint revenues are equal to or greater than all costs for the commemorative coin program.

Cost variance - the difference between actual or estimated (e.g., standard) costs.

Designated recipient organization - any organization, designated under provision of law, as the recipient of any surcharge imposed on the sale of any numismatic item. Also referred to as recipient organization.

Federal agency - as defined in Section 551(1) of title 5, United States Code.

GAGAS - generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

GAAS - generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

In-kind contributions - non-cash contributions to a project or program.

Independent Public Accountant - accountant licensed by authorized state board to practice within the state.

Local government - any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Maximum potential surcharges - the greatest amount a recipient organization may receive, computed by multiplying the mintage limit by the surcharge amount per coin.

Matching funds - private funds the designated recipient organization must demonstrate have been raised for the purpose or project supported by coin surcharges. Matching funds must be greater than or equal to maximum potential surcharges from the commemorative coin program.

Meltdown costs - the costs of melting inventory of rejected and/or unsold coins.

Non-Federal entity - a State, local government, or non-profit organization.

Packaging disposal costs - the cost of removal and disposition of unused packaging at program close-out.

Private funds - funds from non-Federal sources.

Program - see Commemorative Coin Program.

Purpose - the activity designated in particular commemorative coin enabling legislation authorized for the use of surcharge funds. The project to receive surcharge funds must benefit the authorized purpose.



Recipient - a Federal or non-Federal entity that expends surcharge funds received directly from the Mint to carry out a commemorative coin program purpose or mission objective. The recipient is the designated recipient organization and is the beneficiary of coin surcharges.

Schedule of Funds Raised from Private Sources - the financial schedule prepared by the recipient organization and audited by an independent accountant. This schedule documents matching funds is used to establish recipient eligibility.

Schedule of Surcharge Funds Received and Expended - the financial schedule prepared by the recipient organization and audited by an independent accountant. This schedule documents surcharge funds received and expended by the recipient organization during the fiscal year.

Standard costs - estimated costs based on prior operating experience.

Surcharge - the amount per coin authorized by Congress to be collected through commemorative coin sales and paid to a designated recipient organization.

Surcharge payment - the amount of funds paid to a recipient organization according to the payment schedule during the course of the program.

Surcharge Payment Schedule - the schedule of surcharge payments, made if revenue exceed all costs, as designated by the Mint for a particular commemorative coin program.

Waiver - an exception granted by the Mint from specific recipient procedural requirements.