



**Vermont Practice Advisory:
Language Access Rights and Remedies
for People with Limited English
Proficiency**

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South Royalton Legal Clinic & Environmental Justice Clinic¹
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This advisory summarizes for Vermont advocates the language access rights of people with Limited English Proficiency (“LEP”) under state and federal laws, the obligations on providers to make services language-accessible, and the remedies for people with LEP who experience unlawful discrimination.²

Introduction

In 1974, the Supreme Court in *Lau v. Nichols* declared that a school recipient of federal funding violates Title VI of the Civil Rights Act when it fails to provide non-English speakers with supplemental, language-accessible instruction.³ The Court explained that when people with LEP “receive fewer benefits than [the] English-speaking majority . . . [the LEP students’] school system [] denies them a meaningful opportunity in the educational program—all earmarks of the discrimination banned by the regulations.”⁴ Circuits applied *Lau* broadly and in 2000, Executive Order 13166 clarified that Title VI obligations to provide meaningful language access extend to all federal agencies and all entities that receive federal financial assistance (“recipients”).⁵

Who is a “recipient” of federal financial assistance?

Any receiver of federal funding or financial assistance that enters the marketplace to contract for goods or services is a “recipient” and cannot discriminate on the basis of national origin by denying equal language access.⁶

Courts define “recipient” broadly to include generally any entity or agency that receives funding originating from the federal government, including contractors and subcontractors.⁷ In effect, “recipients” include virtually all public and nonprofit entities, and many for-profit entities—ranging from state agencies to public housing authorities to legal service providers to businesses and private sector employers, and beyond—so long as the entities receive federal funds.⁸

What is federal “financial assistance”?

Federal funds include federal grants; federal cooperative agreements; federal contracts or subcontracts; federal awards, loans, or donations of property or funds; and any other federal “arrangement or other contract that has as one of its purposes the provision of assistance.”⁹ The Department of Treasury has not issued clear guidance on whether or not tax credits constitute federal “financial assistance” in this context, but the appendix to its regulations includes language that could support that a recipient of tax credits must comply with Title VI.¹⁰

What are recipients’ obligations toward people with LEP?

Department of Justice (DOJ) guidance details the obligations imposed on recipients.¹¹ Recipients must “take reasonable steps to ensure meaningful access to their programs and activities,” and four factors govern what is “reasonable.”¹²

The four factors are:

1. An assessment of the number or proportion of LEP individuals eligible to be served or likely to be encountered by the program or grantee;
2. An assessment of the frequency with which LEP individuals come in contact with the program;
3. An assessment of the nature and importance of the program, activity, or service provided by the program;
4. Consideration of resources available to the grantee/recipient and costs.¹³

The four-factor analysis may instruct recipients to develop more or less robust “reasonable steps,” but a baseline standard of “meaningful” language access is always necessary.¹⁴ Recipients owe this obligation in equal measure to prospective and current service beneficiaries, including beneficiaries facing a reduction, denial, or termination of benefits. This obligation applies regardless of what type of entity the recipient is and what type of service the recipient provides. It extends to both written and spoken aspects of recipients’ services and programs.

What is “meaningful” written translation?

An “effective” LEP policy will translate vital written materials “into the language of each regularly encountered LEP group eligible to be served and/or likely to be affected by the recipient’s program.”¹⁵

Vital documents. DOJ guidance distinguishes between vital and non-vital documents and recommends that recipients establish a standard for defining the difference in practice.¹⁶ The following are examples of vital documents:

- Consent and complaint forms.
- Intake forms with the potential for important consequences.
- Written notices of rights; of denial, loss, or decreases in benefits; or of services, parole, and other hearings.
- Notices of disciplinary action.
- Applications to participate in a recipient’s program or activity or to receive recipient benefits or services.¹⁷

Regularly encountered. Recipients’ affirmative obligation to translate vital materials depends on their assessment of which population groups are “regularly encountered.”¹⁸ The DOJ considers the translation of vital documents into languages spoken by served LEP populations above 1000 people or 5% of the service population as “evidence of strong compliance,” triggering a safe harbor protection from liability.¹⁹

What is “meaningful” oral interpretation?

Oral interpretation is always required upon request and creates “meaningful” access if it is provided in a timely and competent manner.²⁰ Bilingual staff, staff interpreters, contracted interpreters, community volunteers, or a telephonic interpretation service may provide timely interpretation.²¹ Whether interpretation is competent turns on the interpreters’ proficiency, specialized knowledge, and adherence to the interpreter role.²²

Proficiency. Interpreters should demonstrate proficiency in and an ability to communicate information accurately in both English and in the other language. Interpreters should identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation).²³

Specialized knowledge. Interpreters should 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. Interpreters should understand and follow confidentiality and impartiality rules to

the same extent required of the recipient employee for whom they are interpreting and/or to the extent their position requires.²⁴

Understanding roles. Interpreters should understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).²⁵

What Title VI remedies are available at the federal level?

Title VI generally functions as a funding statute. While Section 601 creates a limited private right of action for intentional race, color, or national origin discrimination, Title VI does not otherwise create a private right of action for disparate impact or differential treatment forms of discrimination—even where federal agencies have attempted to create that right through rules or regulations promulgated under Section 602.²⁶

Accordingly, compensatory damages (and attorneys' fees²⁷) are available to Title VI plaintiffs who prove *intentional* discrimination—but not to claimants of disparate impact or differential treatment.²⁸ The latter may instead seek remediation by filing administrative complaints to the DOJ, and/or to the relevant state or federal agency(s). The threat of lost funding incentivizes recipients to remediate Title VI noncompliance.²⁹

Department of Justice. The DOJ bears responsibility for overseeing all Title VI programs carried out by federal agencies and focuses on language access through its Office of Justice Programs' Office for Civil Rights (OCR) and its Civil Rights Division's Federal Compliance and Coordination section (FCS).³⁰ Through its Compliance Review Program, the DOJ hears language access complaints, reviews the relevant state agency administering or sub-awarding federal funds, investigates the agency's policies and procedures, issues findings and recommendations, and monitors implementation of recommendations.³¹ For example, the DOJ and Vermont Judiciary have entered into a multi-year Collaborative Technical Assistance Agreement to promote greater language access in Vermont courts.³² Under these kinds of agreements, the DOJ assists entities in their implementation of DOJ recommendations to become compliant with Title VI.³³ The DOJ also has authority to file and litigate claims against entities violating Title VI—as well as to file briefs in matters related to alleged Title VI violations.³⁴ Aggrieved individuals as well as federal agencies may refer Title VI complaints to the DOJ for investigation and remediation.

Other federal agencies. In addition to the DOJ, many federal agencies originating funding for state and private service providers have created avenues through which aggrieved individuals may complain of Title VI violations and seek administrative relief. Some agencies authorize more than one office or branch to hear and resolve Title VI complaints. To determine where to make a complaint, advocates should refer to the regulations and guidance of the federal agencies originating the offending recipient's relevant funding.³⁵ Agency capacity to timely respond to and resolve Title VI complaints varies—but agencies that have established these processes must respond appropriately.³⁶ Accordingly, the DOJ recommends submitting the complaint to every relevant agency or agency branch, including with the DOJ itself.³⁷

What Title VI remedies are available at the state level?

Vermont state and nonprofit federal funding recipients have established LEP language access plans as well as avenues for remediation of Title VI violations, with varying degrees of detail. Whether these plans meet the DOJ's minimum requirements for meaningful language access is an open question.

In 2013, Vermont's *Agency of Human Services (AHS)*, for example, issued policy directing all of its departments, programs, and employees to ensure meaningful language access pursuant to Title VI, relevant federal funders' regulations, and Executive Order 13166.³⁸ The policy sets standards for LEP language access planning, translation and interpretation activities, and complaint resolution. Interestingly, it vests

responsibility for policy implementation with the Office of the State Refugee Coordinator (even though language access rights are not restricted to those with refugee status).³⁹

For a look at how one AHS department responded, *Department of Children and Families (DCF)* administers many of Vermont’s food and shelter benefits, including 3SquaresVT, Reach Up, and emergency and general housing assistance. DCF has published a nondiscrimination and grievance policy that details the agency’s policy on national origin discrimination and the process by which a person may file a discrimination complaint or seek a fair hearing.⁴⁰

Looking to other housing program administrators, Vermont’s *Agency of Commerce and Community Development* and its *Department of Housing and Community Development (DHCD)* oversee and administer the state’s affordable and fair housing plans. While DHCD has oversight of national origin and other forms of discrimination in housing, it appears to lack a formal complaint and resolution process for language access barriers arising in its programs and services.⁴¹

Looking to an example of a housing provider, *Burlington Housing Authority (BHA)* provides housing, subsidies, and retention supports for about 2,500 Vermonters in the Burlington-area. In its Administrative Plan, BHA commits to making “all reasonable attempts” to meet the language access needs of program applicants and participants. Stated measures include free telephonic interpretation, free and competent in-person interpretation during any potentially adverse administrative or judicial proceedings, and free written translation of vital documents for each significant LEP language group that BHA will likely serve.⁴² Individuals who experience housing discrimination under Title VI or other titles may complain orally or in writing to BHA leadership.⁴³

Looking beyond AHS, Vermont’s *Department of Labor (DOL)* administers unemployment insurance, among its other programs and services. In contrast to DCF, it appears to offer limited recourse for Title VI complainants. Its Vermont Occupation Safety and Health Administration (VOSHA) retaliation complaint form directs complainants of national origin and other forms of discrimination to the Vermont Attorney General’s Civil Rights Unit (CRU).⁴⁴ However, the CRU limits its practice to employment discrimination matters and civil remedies for victims of hate crimes.⁴⁵ In contrast to Vermont DOL, the Federal DOL’s Civil Rights Center (CRC) offers considerably more guidance on language access rights and remedies, but clarifies that an individual may *not* file a complaint with both the Federal CRC and its state agency counterpart—complainants must choose one avenue.⁴⁶

Regardless of open questions about federal legal compliance, stories from LEP communities and advocates make clear that Vermont’s human services landscape is not currently meeting Vermont’s language access needs—giving rise to Title VI violations that are difficult to address with piecemeal response.⁴⁷

What if a recipient lacks the funding needed to provide “meaningful” access?

In Vermont and nationally, language access obligations often function as unfunded mandates. However, a lack of dedicated funding does not absolve a federal funding recipient of its Title VI obligations to provide a baseline of meaningful language access to its programs and services.

Vermont recipients should not wait for DOJ resource support through an enforcement action and resulting Collaborative Technical Assistance Agreement. Instead, recipients should plan proactively for language access and incorporate language access into budget plans and funding applications. Recipients in a reactive position should seek grant funding to cover interpretation and translation costs. For example, the Vermont Judiciary has pursued grants to bolster the court interpreters system.⁴⁸ Systemically, Vermont should consider allocating dedicated language access funding across its programs and services, or mandating language access budget planning, or centralizing language access oversight with a statewide office.

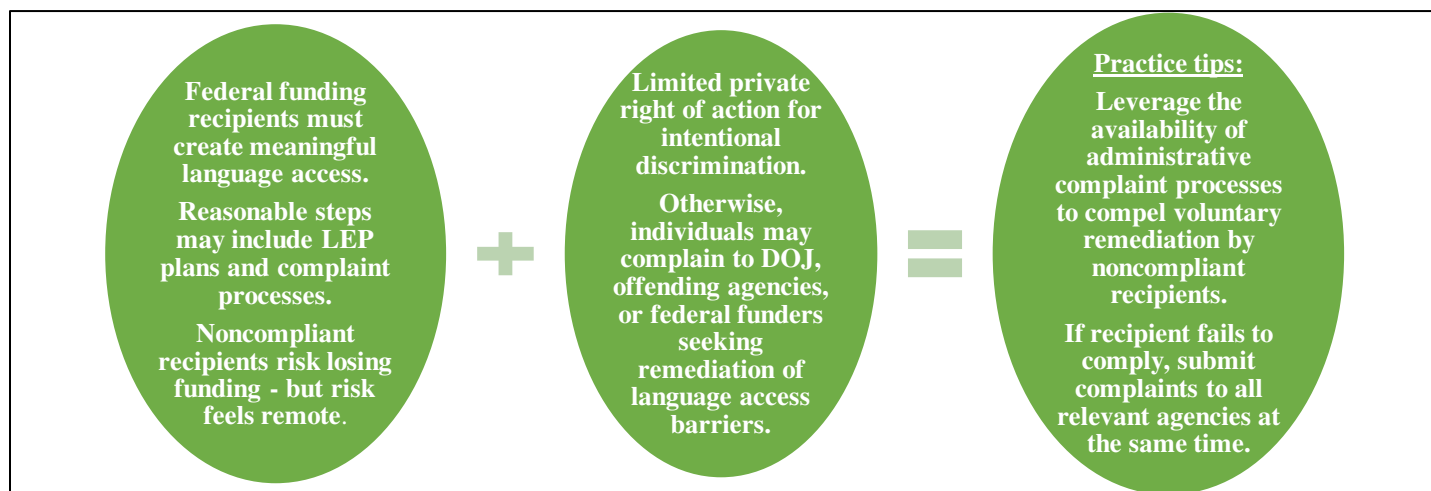


Fig. 1 – Title VI Practice Tips.⁴⁹

Are there language access remedies besides those created by Title VI?

Title VI is not the only source of protection from national origin discrimination for individuals with LEP. The Vermont Human Rights Act empowers the Vermont Human Rights Commission (VHRC) to enforce the Vermont Fair Housing and Public Accommodations Act (VFHPAA).⁵⁰ The VFHPAA is coextensive with and expands upon protections provided by the federal Fair Housing Act (FHA)—over which the VHRC has also been delegated authority.⁵¹ These laws prohibit discrimination against an individual based on national origin in both the individual’s housing and in places of public accommodation.⁵² Under fair housing laws, national origin discrimination in housing includes unlawful language access barriers, as well. For example, a California federal district court denied a public housing authority’s motion to dismiss a tenant’s FHA claim of differential treatment discrimination, based on the housing authority’s repeated failure to translate vital documents into Spanish for the tenant.⁵³

Anyone can submit a complaint of discrimination to the VHRC—in writing, in person, by telephone, or by email.⁵⁴ Individuals may submit claims based on any theory of discrimination, including direct evidence of discrimination, differential treatment having a discriminatory effect, or actions having a disparate, and thus discriminatory, impact.⁵⁵ The VHRC must investigate every complaint it receives and attempt informal dispute resolution.⁵⁶ The VHRC may file suit on behalf of aggrieved complainants if it determines there are reasonable grounds that there was discrimination.⁵⁷ As for VHRC’s capacity to file suit for complainants who establish reasonable grounds for language-based national origin discrimination, the VHRC has suggested it would prioritize litigating complaints that suggest a pattern and practice of national origin discrimination by repeat offenders. Complainants may seek compensatory and punitive damages, injunctive and other appropriate relief, and attorney’s fees.⁵⁸

¹ Credit and gratitude to student clinicians Sara Gaylon, Joe Roberts, Serena White, and Rico Edwards for their research and authorship.

² See Civil Rights Center, Enforcement of Title VI of the Civil Rights Act of 1964 (“prohibit[s] recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities”) <https://www.federalregister.gov/documents/2000/08/16/00-20867/enforcement-of-title-vi-of-the-civil-rights-act-of-1964-national-origin-discrimination-against#:~:text=Title%20VI%20of%20the%20Civil%20Rights%20Act%20of%201964%20prohibits,in%20any%20of%20their%20activities>; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons 68 Fed. Reg. 32289 (May 29, 2003) <https://www.federalregister.gov/documents/2003/05/29/03-13125/civil-rights-center-enforcement-of-title-vi-of-the-civil-rights-act-of-1964-policy-guidance-to> (explaining the implementation of Title VI as it relates to the Department of Labor); Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons 67 Fed. Reg. 41455 (June 18, 2002) <https://www.federalregister.gov/documents/2002/06/18/02-15207/guidance-to-federal-financial-assistance-recipients-regarding-title-vi-prohibition-against-national>; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons 68 Fed. Reg. 47311 (Aug. 8, 2003) <https://www.federalregister.gov/documents/2003/08/08/03-20179/guidance-to-federal-financial-assistance-recipients-regarding-title-vi-prohibition-against-national>. The Federal Department of Justice (DOJ) is also required to periodically evaluate its own guidelines, “The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.” Exec. Order No. 12250 (Nov. 2, 1980).

³ *Lau v. Nichols*, 414 U.S. 563, 569 (1974) (interpreting 42 U.S.C. §§ 2000d - 2000d-7 which states, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

⁴ *Id.* at 568 (citing 28 C.F.R. § 42.101 et seq.; 28 C.F.R. § 50.3 et seq.).

⁵ Exec. Order No. 13166, 65 Fed. Reg. 159 (Aug. 11, 2000) <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/eolep.pdf>; *Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13166*, Office of the Attorney General, Feb. 17, 2011. Courts have found that only by not accepting federal funding do agencies avoid Title VI obligations, “By accepting the funds, one accepts the obligations that go along with it, namely, the obligation not to exclude from participation, deny benefits to, or subject to discrimination an otherwise qualified handicapped individual solely by reason of her handicap. Only by declining the federal financial assistance can one avoid this obligation.” *Chester v. Univ. of Wash.*, No. C11-5937, 2012 WL 3599351, at *4 (W.D. Wash. Aug. 21, 2012).

⁶ See *U.S. Dep’t of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 605 (1986) (stating that Title VI liability is a natural result of accepting federal funds, and the ability to accept or decline federal funds is the dispositive factor that determines whether “recipient” status is conferred, *quoting* *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 633 (1984)).

⁷ See, e.g., *Paralyzed Veterans of Am.*, 477 U.S. at 605; see also *Grove City Coll. v. Bell*, 465 U.S. 555, 570 (1984) (referring to the “longstanding and coherent administrative construction of the phrase ‘receiving Federal financial assistance.’”).

⁸ *Id.*

⁹ Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 7,1763 (Jan. 12, 2004) <https://www.archives.gov/eo/laws/title-vi.html>.

¹⁰ Regulation Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance From the Department of the Treasury, *Department of the Treasury*, 81 Fed. Reg. 81,239 (Dec. 13, 2016) <https://www.govinfo.gov/content/pkg/FR-2016-12-13/pdf/2016-29629.pdf> (responding

to commentators who urged the Department to include credits as federal funding, “Though we are not including [credits] in the Appendix, we emphasize that the Appendix does not purport to be exhaustive, and the absence of a program or activity from the list does not by such absence limit the applicability of Title VI to that program or activity.”); Treasury Issues Final Rule to Enforce Title VI of Civil Rights Act of 1964, *National Low Income Housing Coalition* (Jan. 9, 2017) <https://nlihc.org/resource/treasury-issues-final-rule-enforce-title-vi-civil-rights-act-1964#:~:text=COVID%2D19-,Treasury%20Issues%20Final%20Rule%20to%20Enforce%20Title,Civil%20Rights%20Act%20of%201964&text=Treasury%20does%20not%20consider%20tax,be%20%E2%80%9Cfederal%20financial%20assistance.%E2%80%9D>.

¹¹ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002). Note that the DOJ published its initial guidance in 2000, around the time of the Executive Order, and was subsequently revised and republished in 2001 and 2002. *See* Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance, 65 FR 50123 (August 16, 2000); Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 66 FR 3833 (Jan. 16, 2001).

¹² 67 Fed. Reg. 41455 (June 18, 2002).

¹³ *Id.* at 41459.

¹⁴ *See* Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance, 65 FR 50123, 50124 (August 16, 2000) (“Programs that serve . . . even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access.”).

¹⁵ 66 Fed. Reg. 3833, 3836.

¹⁶ Though federal regulations and guidance do not explicitly mandate the translation of vital documents, the function of the “vital” denomination is precisely to determine which documents ought to be translated as a matter of course in order to ensure meaningful language access. 67 Fed. Reg. 41455, 41463 (“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.”). Arguments that the translation of vital documents is unnecessary to ensure meaningful access are unlikely to succeed. Vital, after all, means “absolutely necessary or important; essential.” Oxford Language, Google Definitions, <https://www.google.com/search?client=firefox-b-l-d&q=vital>.

¹⁷ 67 Fed. Reg. 41455, 41463.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 41461 (noting that some recipients like courts or police departments may have additional requirements for a higher caliber of interpretation).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Alexander v. Sandoval*, 532 U.S. 275, 284, 292 (2001); Civil Rights Act, Title VI, Pub. L. 88-352, Title VI, Sec. 601-602, July 2, 1964, 78 Stat. 252.

²⁷ Civil Rights Attorney’s Fees Awards Act of 1976, Pub. L. No. 94-559, § 2, 90 Stat. 2641, 2641 (codified as amended at 42 U.S.C. § 1988) (stating that the “court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs”).

²⁸ *Alexander v. Sandoval*, 532 U.S. 275, 282–83 (2001); *Barnes v. Gorman*, 536 U.S. 181, 187 (2002) (Title VI invokes Congress’s Spending Clause power to impose conditions on federal funding. Remedies are

“appropriate” in private suits under Spending Clause statutes like Title VI if the federal funding recipient has notice that it accepts Title VI liability by accepting federal funding. Recipients are generally considered to have notice that they are liable for Title VI Section 601 remedies as well as remedies for breach of contract.).

²⁹ Although, it bears noting that the likelihood that federal agencies would pull funding from a state’s lone provider of essential services may be very remote.

³⁰ Exec. Order No. 12250, 45 Fed. Reg. 72995. *See also*, Tony LoPresti, Realizing the Promise of Environmental Civil Rights: The Renewed Effort to Enforce Title VI of the Civil Rights Act of 1964, 65 Admin. L. Rev. 757, 799 (2013); Federal Coordination and Compliance Section, *United States Department of Justice*, <https://www.justice.gov/crt/fcs> (last visited Feb. 22, 2021).

³¹ Office for Civil Rights, *Office of Justice Programs*, https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/ocr_titlevi.pdf (last visited Dec. 3, 2020). The Compliance Review Program conducts “civil rights audits that the [Office for Civil Rights] initiates. The investigation entails reviewing the policies and procedures of a recipient; determining whether the recipient is in compliance with Title VI and other federal civil-rights laws; issuing findings and recommendations; and when warranted, monitoring the recipient to ensure it implements the [Office for Civil Rights] recommendations for coming into compliance with Title VI and other federal statutes.” *Id.* The DOJ defines a State Administering Agency as, “the principal bureau in a state government that receives DOJ funding and then subawards it to other state agencies, units of local government, Indian tribes, or nonprofit organizations.” *Id.*

³² *Collaborative Technical Assistance Agreement*, Vermont Judiciary and U.S. Dept. of Justice (June 10, 2019) https://www.lep.gov/sites/lep/files/resources/2019_6_19_SIGNED_DOJ_Vermont_Judiciary_Collaborative_Agreement%28508%29.pdf.

³³ *E.g., id.* (differing from other civil rights matters because the DOJ is able to directly offer advice on the law and how to comply with it).

³⁴ Pl.’s Compl., *United States v. City of Ferguson*, No. 4:16-cv-00180 (E.D. Mo. Feb. 10, 2016) <https://www.justice.gov/opa/file/823486/download> (“The United States is authorized to initiate this action against the City under . . . Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d”); Statement of Int., *Exodus Refugee Immigr., Inc.*, No. 1:15-cv-01858-TWP-DKL (S.D. Ind. Feb. 11, 2016) <https://www.justice.gov/crt/file/827346/download> (“Under 28 U.S.C. § 517, ‘[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.’ *Id.*; *see also* *Pl. A v. Jiang*, 282 F. Supp.2d 875, 882 (N.D. Ill. 2003) (‘The statute ensures an avenue for the interests of the United States to be heard in cases where the government is not a party’), *aff’d sub nom.* *Ye v. Jiang*, 383 F.3d 620 (7th Cir. 2004).

³⁵ For a list of federal agencies that have promulgated rules relating to Title VI, *see* <https://www.justice.gov/crt/fcs/TitleVI#2>. For a list of federal agencies that have promulgated LEP guidance pursuant to Executive Order 13166, *see* <https://www.lep.gov/title-vi-guidance-for-recipients>.

³⁶ Recently, a U.S. District Court in California ruled that the Environmental Protection Agency (EPA) violated the Administrative Procedure Act for failing to timely address Title VI complaints. *Californians for Renewable Energy v. United States Env’tl. Prot. Agency*, No. C 15-3292 SBA, 2018 WL 1586211 (N.D. Cal. Mar. 30, 2018).

³⁷ For example, a complaint about unlawful language barriers to public housing could be heard by the Department of Housing and Urban Development (HUD) at its regional Fair Housing Enforcement Center, as well as its Office of Fair Housing and Equal Opportunity. It could also be heard by the DOJ. The DOJ has relayed to the SRLC that it recommends individuals complaining to all three bodies simultaneously. Complainants in this situation should approach HUD because HUD receives fewer complaints than the DOJ and has a more tailored focus. This may mean HUD offices have more capacity to take up complaints for investigation. Complainants should also approach the DOJ,

noting that the DOJ's resources are spread thin across a broad area of oversight and that DOJ often settles cases before they reach final formal review. Nevertheless, the DOJ's broad oversight of Title VI compliance positions it well to ensure complaints are being given their due attention by HUD. When DOJ capacity is limited, it will prioritize investigating agencies with a pattern and practice of Title VI violations.

³⁸ Limited English Proficiency, *Agency of Human Services* (Aug. 26, 2013) https://humanservices.vermont.gov/sites/ahsnew/files/doc_library/Doc_transfer_folder/Limited%20English%20Proficiency%20.pdf.

³⁹ We are not aware of additional AHS rules or policy that expand upon the language access responsibilities of the Office of the State Refugee Coordinator. We understand this office has oversight of general refugee issues and needs, and concerns about pertinent AHS policies or resources. For AHS language access issues, advocates may wish to contact the Office of the State Refugee Coordinator directly. The Coordinator position is held by Denis Lamoureux, tel: 802-241-2229 and 802-652-4192; em: denise.lamoureux@ahs.state.vt.us. Advocates may also wish to submit a Title VI grievance to the AHS Secretary pursuant to the AHS Nondiscrimination/Grievance Policy (tel: 802-241-0440; em: ahs.secretary@vermont.gov). Policy 1.11 Nondiscrimination Policy/Grievance Policy, *State of Vermont Agency of Human Services* (October 1, 2020), <https://humanservices.vermont.gov/sites/ahsnew/files/1.11%20Nondiscrimination%20Policy%20-%20Grievance%20Policy.pdf>. Finally, for AHS or any state agency language issues, advocates may also wish to inform the Executive Director of Racial Equity about systemic language access barriers that they or their constituents are encountering. The Executive Director position is held by Xusana Davis, Agency of Administration, tel: 802-828-3322 and em: xusana.davis@vermont.gov. See 3 V.S.A. § 5001 et seq.

⁴⁰ Nondiscrimination Policy/Grievance Policy, *Department of Children and Families* (July 11, 2019), <https://dcf.vermont.gov/sites/dcf/files/DCF/docs/Nondiscrimination-Policy.pdf>.

⁴¹ Advocates may try contacting the DHCD Housing Policy Specialist for language access issues. Resources and Rules, *Agency of Commerce and Community Development*, <https://accd.vermont.gov/housing/plans-data-rules/fair-housing> (last accessed February 12, 2021).

⁴² Administrative Plan, *Burlington Housing Authority*, Ch. 2-1.B. (May 20, 2019) https://burlingtonhousing.org/uploads/files/1567703533_BHA%20Administrative%20Plan.pdf.

⁴³ *Id.*

⁴⁴ VOSHA Retaliation Complaint Form, *Department of Labor*, <https://labor.vermont.gov/form/vosha-retaliation-complaint-form> (last accessed Feb. 12, 2021).

⁴⁵ Civil Rights, *Office of the Vermont Attorney General*, <https://ago.vermont.gov/about-the-attorney-generals-office/divisions/civil-rights/> (last accessed Feb. 12, 2021).

⁴⁶ Compliance Assistance for Programs of Federal Financial Assistance, *Federal Department of Labor*, <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/external/compliance-assistance> (last accessed Feb. 12, 2021).

⁴⁷ As in Note 39, advocates may wish to cast a wide net at the state level when raising and seeking resolution of systemic language access barriers. In addition to utilizing formal grievance channels available through an agency and its funder, advocates might consider contacting the Vermont Office of the State Refugee Coordinator and/or the Vermont Executive Director of Racial Equity with language access concerns.

⁴⁸ *SJI Funding for Language Access Programs at National, State, and Local Levels*, National Center for State Courts <https://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/called-to-action/responses-to-the-call-to-action/sji-funding-for-language-access-programs-at-national-state-and-local-levels>.

⁴⁹ See Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice, *Department of Labor*, 68 Fed. Reg. 103,32290 (May 29, 2003) <https://www.govinfo.gov/content/pkg/FR-2003-05-29/pdf/03-13125.pdf> (explaining the Department of Labor's efforts "to secure voluntary compliance through informal means"); Memorandum from the Assistant Attorney General to Federal Funding Agency Civil Rights Directors, *Title VI Coordination and Enforcement*, Aug. 19, 2010 https://www.lep.gov/sites/lep/files/resources/titlevi_memo_tp.pdf (clarifying that the Attorney General may only initiate litigation after the agency determines "voluntary compliance cannot be achieved . . ."); Compliance Officer's

Manual: A Handbook of Compliance Procedures Under Title VI of the Civil Rights Act of 1964, *United States Commission on Civil Rights*, Oct. 1966 <https://www.hsdl.org/?view&did=473409> (“The Civil Rights Act and regulations require that efforts be made to the fullest extent practicable to obtain voluntary compliance before there can be a refusal, suspension, or termination of Federal financial assistance.”).

⁵⁰ 9 V.S.A. § 4551 et seq.; 9 V.S.A. § 4500 et seq.; Rules of the Vermont Human Rights Commission (2014) <https://hrc.vermont.gov/sites/hrc/files/laws/VHRC-Rules.pdf>.

⁵¹ 42 U.S.C. § 3601 et seq.; see Laws, *State of Vermont Human Rights Commission*, <https://hrc.vermont.gov/legal/laws> (last accessed February 15, 2021).

⁵² 42 U.S.C. 3604(b); 9 V.S.A. § 4503.

⁵³ See *Cabrera v. Alvarez*, 977 F. Supp.2d 969, 977 (N.D. Cal. 2013).

⁵⁴ Rules of the Vermont Human Rights Commission ¶ 2.

⁵⁵ Elements of Proof, Memorandum, *Jeanine M. Worden, Associate General Counsel for Fair Housing, HUD* (Sept. 4, 2018), <https://www.hud.gov/sites/dfiles/FHEO/images/AJElementsofproofmemocorrected.pdf>.

⁵⁶ 9 V.S.A. § 4554(c).

⁵⁷ 9 V.S.A. § 4554.

⁵⁸ 42 U.S.C. § 3612(o), (p); 9 V.S.A. § 4506.