



# Language Access Plan

January 4, 2023

Approval:

A handwritten signature in black ink, appearing to read "Julia S. Moore", is written over a horizontal line.

Julia S. Moore, P.E.  
Secretary  
Vermont Agency of Natural Resources

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Date

# Vermont Agency of Natural Resources Language Access Plan

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## A. Introduction

The Vermont Agency of Natural Resources (ANR) Language Access Plan (LAP) contains the policy and steps describing how ANR will provide information and services to people who speak languages other than English and have “limited English proficiency” or people who use various modes of communication, such as people with hearing, vision, or speech loss. ANR is committed to providing everyone in Vermont effective communication, equal opportunity, and meaningful access to its programs, activities, and services.

The LAP contains five steps to aid in identifying and supporting people who speak languages other than English and have limited English proficiency and people using various modes of communication to ensure that they are provided with effective communication, equal opportunity, and meaningful access to ANR’s programs, services, and activities. These steps are: (1) identify persons for language access, (2) provide language and communication access, (3) train staff and parties that receive grants or contracts, (4) provide public notice of language and communication access, and (5) monitor, evaluate, and update the Language Access Plan. ANR has prepared a separate LAP Implementing Procedure (Procedure) as a step-by-step guide to support ANR staff and parties that receive ANR grants or contracts to implement the LAP.

Individuals that do not use English as their primary language and have a limited ability to speak, understand, read, or write in English are identified by the U.S. Census as having “limited English proficiency” or LEP. According to the 2016-2019 U.S. Census Bureau American Community Survey, Vermont has over 8,300 people ages 5 years old or older that speak English less than very well.<sup>1</sup> The Procedure includes a list of the more common non-English languages spoken in Vermont.

People who are Deaf, Hard of Hearing, Deaf-Blind, and people who experience hearing, vision, or speech loss use various modes of communication. For example, people who are blind or have low vision may give and receive information audibly rather than in writing, and people who are Deaf, Hard of Hearing, or Deaf-Blind may give and receive information through writing or sign language rather than through speech. There are approximately 70,000 people<sup>2</sup> in Vermont with hearing loss and between 13,000-16,000 people who are blind or have low vision.<sup>3</sup> The most common non-spoken languages in Vermont are American Sign Language and Nepali Sign Language.

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<sup>1</sup> U.S. Census Bureau, American Community Survey, Data 2020 ACS 5-Year Estimates, Table B16001, Population 5 Years or over.

<sup>2</sup> Vermont Deaf, Hard of Hearing, and Deaf/Blind Advisory Council, [https://dail.vermont.gov/sites/dail/files/documents/Final\\_2022\\_D-HH-DB\\_Council\\_Report.pdf?msclkid=edc1a005c27311ec8204a3e2c4ea0a28](https://dail.vermont.gov/sites/dail/files/documents/Final_2022_D-HH-DB_Council_Report.pdf?msclkid=edc1a005c27311ec8204a3e2c4ea0a28).

<sup>3</sup> Vermont Disabilities, Aging and Independent Living Division for the Blind and Visually Impaired, <https://dbvi.vermont.gov/>.

The LAP was developed in compliance with state and federal law and consistent with federal guidance. A detailed background of the legal requirements that apply to ANR is in Appendix C and includes:

- Title VI of the Civil Rights Act of 1964 (Title VI), implementing regulations, and guidance which prohibit discrimination—disparate treatment and disparate impact—on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance.<sup>4</sup>
- The Civil Rights Restoration Act of 1987, which clarifies that recipients of federal funds and assistance, such as ANR, must comply with the civil rights laws across the institution or agency. Civil rights compliance applies to all programs and activities of that institution or agency, regardless of whether the program receives federal funds.<sup>5</sup>
- Section 504 of the Rehabilitation Act<sup>6</sup> and the Americans with Disabilities Act (ADA), implementing regulations, and guidance which protects qualified persons with disabilities from discrimination related to the programs, services, and activities and requires recipients of federal funds to ensure effective communication for persons with disabilities.<sup>7</sup>
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, which affirms Title VI’s language access requirement and outlines additional requirements.<sup>8</sup>
- The U.S. Environmental Protection Agency (EPA) guidance entitled, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (EPA LEP Guidance).<sup>9</sup>

For questions about the LAP, contact ANR’s Director of Civil Rights and Environmental Justice at [ANR.civilrights@vermont.gov](mailto:ANR.civilrights@vermont.gov).

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<sup>4</sup> 42 U.S.C. § 2000d et seq. Retrieved from: <https://www.govinfo.gov/content/pkg/USCODE-2008-title42/html/USCODE-2008-title42-chap21-subchapV.htm>; 40 C.F.R. Part 7: <https://www.epa.gov/sites/production/files/2013-09/documents/40p0007.pdf>.

<sup>5</sup> The Civil Rights Restoration Act of 1987 (Pub. L. 100-259) applies this universal application to: (a) Title VI of the Civil Rights Act of 1964, (b) Title IX of the Education Amendments of 1972 (Pub. L. No. 92-318, 86 Stat. 373-75), (c) the Age Discrimination Act of 1975 (Section 4 of 29 U.S.C. § 623 (1975), and (d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 (1985 & Sup. 1988)).

<sup>6</sup> 29 U.S. C. § 794.

<sup>7</sup> *Id.*; 40 C.F.R. Part 7, Subpart C; 28 C.F.R. Part 35, Subpart E.

<sup>8</sup> Exec. Order No. 13166, 65 Fed Reg. 50,121 (Aug. 11, 2000). Retrieved from: <https://www.lep.gov/sites/lep/files/resources/eolep.pdf>.

<sup>9</sup> 69 Fed. Reg. 35602 (June 25, 2004) (hereinafter “EPA LEP Guidance”). Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>.

## B. Definitions

This section contains definitions to aid in understanding how ANR will provide effective communication and meaningful access to programs, services, and activities for people who speak languages other than English and have limited English proficiency or people who use various modes of communication. These definitions apply only to this Language Access Plan and the Procedure and consistent with state and federal law and guidance.

**Aids and Services:** Also referred to as “auxiliary aids and services,” refers to the ways to communicate with people who use various modes of communication. Aids and services can include readers, notetakers, qualified sign language interpreters, assistive listening systems and devices, CART, open and closed captioning, teletypewriter or text telephones (TTYs), captioned phones, videophones, information provided in large print, Braille, audible, or electronic formats, and other tools and assistive technologies for people who have communication needs.

**Compliance:** The satisfactory condition existing when a recipient of federal financial assistance has effectively implemented all the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

**Discrimination:** Discrimination is the act (or inaction), whether intentional or unintentional, through which a person in the United States, solely because of race, color, national origin (including limited English proficiency), age, sex, or range of ability or disability has been subjected to unequal treatment under any program or activity receiving financial assistance.<sup>10</sup>

Disparate Treatment: This type of illegal discrimination refers to treating similarly situated persons differently on the basis of their race, color, national origin (including limited English proficiency), sex, range of ability or disability, or age.

Disparate Impact: This type of illegal discrimination refers to policies or practices that have a discriminatory effect.

**Effective Communication:** Communication that ensures that the person using various modes of communication or the person with hearing, vision, or speech loss can receive information and convey information in the language or manner they prefer to and allows an equal opportunity to participate in ANR programs, services, and activities. Effective communication is a legal term used in federal regulations and guidance implementing the Rehabilitation Act and the Americans with Disabilities Act.

**Federal Financial Assistance:** Federal financial assistance includes, but is not limited to, grants and loans of federal funds; grants or donations of federal property; training; details of federal personnel; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

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<sup>10</sup> In addition to Title VI of the 1964 Civil Rights Act of 1964 that bars discrimination based on race, color and national origin, there are other federal nondiscrimination laws and regulations created to uphold the civil and constitutional rights of all persons in the United States.

**Four-Factor Test:** An assessment contained in EPA guidance to determine language access needs and reasonable steps to take to ensure meaningful access for persons with LEP.<sup>11</sup> The Four-Factor Test, as described in Section D.2a. below, involves the balancing of the number of persons with LEP, the frequency of interactions with persons with LEP, environmental health and safety considerations, and cost.

**Interpretation:** For the purposes of this LAP, the act of converting spoken words or words conveyed in sign language from one language to a different language while retaining the same meaning.

**Language Access Services:** Language access services include interpretation and translation of documents into non-English languages. This applies to both spoken and sign languages.

**Language and Communication Access:** Steps taken by ANR to provide effective communication and meaningful access to its programs, services, and activities to persons with LEP and people with varying levels of hearing, vision, or speech loss and using various modes of communication.

**Language Service Provider:** Someone who provides interpretation or translation services.

**Meaningful Access:** Language access services that provide accurate, timely, and effective communication to people who use a variety of languages or modes of communication that is free of charge. Meaningful access is a legal term used in federal regulations and guidance implementing Title VI of the Civil Rights Act.

**Modes of Communication:** Refers to the types of communication used by people who are protected by the Americans with Disabilities Act and the Rehabilitation Act, including verbal communication, nonverbal communication, visual communication, written communication, or listening.

**Noncompliance:** The condition that exists when a recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing state and federal civil rights laws and regulations.

**Persons with Limited English Proficiency (LEP):** People who do not speak English as their primary language and who have a limited ability to read, speak, write, sign, or understand English.

**Primary Language:** The language an individual uses to most effectively communicate.

**Programs, Services, and Activities:** Refers to all ANR operations.

**Recipient:** Any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal funds and assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.<sup>12</sup> ANR is a recipient of Federal funds and assistance.

**Safe Harbor:** This is a phrase used in regulations as a legal standard to provide protection from a penalty or liability. In this context, “safe harbor” is used by the federal government to mean that

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<sup>11</sup> EPA LEP Guidance, *supra* note 9.

<sup>12</sup> 40 C.F.R. § 7.25.

if a recipient, such as ANR, provides written translation information under certain circumstances, described in EPA LEP Guidance and Department of Justice (DOJ) LEP Guidance,<sup>13</sup> such action will be considered strong evidence of compliance with the recipient’s written-translation obligations.<sup>14</sup>

**Subrecipient:** An entity that receives federal financial assistance through a recipient, such as an entity that receives a grant or a contract.

**Translation:** For the purposes of the LAP, the process of converting written text from one language into an equivalent text in another language. Text may be in electronic format.

**Vital Document:** Paper or electronic material that contains information that is critical for enabling meaningful access to ANR’s programs, activities, and services, or contains information about procedures or processes required by law. Classification of a document as “vital” may depend upon, the importance of the program, information, encounter, or service involved, and the consequence to the person with LEP if the information is not provided accurately or in a timely manner.

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<sup>13</sup> Safe Harbor provisions in the United States Department of Justice 2002 LEP Guidance 67 Fed. Reg. 41455, 41464 (June 18, 2002) (hereinafter “DOJ LEP Guidance”). Retrieved from: <https://www.govinfo.gov/content/pkg/FR-2002-06-18/pdf/02-15207.pdf>.

<sup>14</sup> EPA LEP Guidance, *supra* note 9.

### C. ANR Language Access Policy

It is the policy of ANR to provide people who speak languages other than English and who have limited English proficiency meaningful access to its programs, services, and activities. Ensuring meaningful access means providing accurate, timely, and effective language access services that are free of charge and consistent with federal law.

It is also the policy of ANR to provide effective communication to people who are Deaf, Hard of Hearing, blind, Deaf-Blind, use other modes of communication, or are protected by the Americans with Disabilities Act and the Rehabilitation Act. ANR will provide effective communication at no cost and in a timely manner to allow an equal opportunity to participate in ANR programs, services, and activities, consistent with federal and state law. ANR will provide effective communication in such a way as to protect the privacy and independence of the individual. Provisions for effective communication could include appropriate auxiliary aids and services.



## D. Five Steps to Plan Implementation

ANR will use five steps to implement the ANR Language Access Policy. These steps aid in identifying and supporting persons with LEP and/or people using various modes of communication to ensure effective communication and meaningful access to ANR's programs, services, and activities. The steps are: (1) identify persons for language access, (2) provide language and communication access, (3) train ANR staff and subrecipients, (4) provide public notice of language and communication access, and (5) monitor, evaluate, and update the LAP. The ANR LAP Implementation Procedure provides greater detail on how ANR will implement the LAP.

### Step #1: Identify Persons for Language Access

ANR will employ a number of methods described in the Procedure, to identify persons with LEP for language access. This includes a variety of federal, state, and local demographic data sources and coordination with other agencies. ANR staff will bring "[I Speak Language Identification Cards](#)" to public meetings to help identify people for language access. To support future public engagement activities, ANR will maintain records of encounters with people with LEP and records of requests for communication access services by people that use various modes of communication. ANR will maintain records in such a way as to protect the privacy and independence of the individual.

### Step #2: Provide Language and Communication Access

Once ANR has completed Step #1, the next step is to determine whether and how to provide language and communication access. Section 2.A describes the process for providing language access to people with LEP and Section 2.B describes the process for providing language access to people using various modes of communication. These processes are described in detail in the Procedure.

#### 2.A. Language Access for People with LEP

ANR will use a Four Factor Test as a starting point to determine language access needs and reasonable steps ANR will take to ensure meaningful access for persons with LEP that is free of charge and consistent with federal law.<sup>15</sup> ANR will balance these four factors to ensure meaningful access without imposing undue burden on small businesses, local governments, and civic organizations.<sup>16</sup> The Four Factor Test assesses:

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<sup>15</sup> EPA LEP Guidance, *supra* note 9.

<sup>16</sup> *Id.*

- **Factor 1:** The number or proportion of persons with LEP estimated to be served or likely to be encountered by an ANR program, activity, or service.
- **Factor 2:** The frequency with which persons with LEP come in contact with the ANR program, activity, or service.
- **Factor 3:** The nature and importance of the program, activity, or service being provided. This factor will help determine whether the lack of access to language services or information could cause immediate or severe impacts to public health and safety, environmental hazards, or other detrimental consequences to persons with LEP.
- **Factor 4:** The resources available and associated costs. ANR will evaluate options that cost-effectively deliver adequate and accurate language access services before steps are taken to limit services due to financial constraints.

The balancing of these four factors will help ANR to identify and translate vital documents, in whole or in part, into languages of the affected persons with LEP within a reasonable timeframe. The classification of a document as “vital” depends upon several considerations, such as the importance of the information; the program, activity, or service involved; and the consequences of not providing information accurately or in a timely manner.

ANR will conduct an initial review to identify vital documents for translation, in whole or in part. ANR will then rely on the LAP and the Procedure to provide written translations of vital documents on an as needed basis. ANR will use the State of Vermont language services contractors to provide translation, interpretation, telephonic interpretation.<sup>17</sup> ANR will take reasonable steps to ensure language and communication access is conducted using qualified language service providers (i.e., interpreter or translator) and keep records of its activities.

ANR will also employ a “Safe Harbor” standard for written translation of vital documents. The Safe Harbor standard is to ensure that ANR is meeting a minimum level of compliance consistent with EPA LEP Guidance.<sup>18</sup> This standard contains two requirements:

- Provide written translation of vital documents for each eligible LEP language group that constitutes three percent or 500 people, whichever is less, of the population of persons eligible for or to be affected by ANR’s programs, services and activities.<sup>19</sup> Translation of other, non-vital documents, if needed, can be provided orally.

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<sup>17</sup> Current Statewide Contracts, <https://bgs.vermont.gov/purchasing-contracting/contract-info/current#Translation%20Services>.

<sup>18</sup> EPA LEP Guidance, *supra* note 9.

<sup>19</sup> Federal Guidelines use 5 percent or 1,000 people. EPALEP Access Guidance, *supra* note 9 at 35610; DOJ LEP Guidance *supra* note 13, at 41464. The recommended minimum threshold is to reflect Vermont’s current demographics, which still assure a balanced approach to provide LEP persons meaningful access to ANR programs, activities, and services.

- For a language group that reaches the three percent trigger above, provide written notice, translated into the primary language of the LEP language group, stating that persons with LEP have the right to receive competent oral interpretation of written vital materials at no cost.

#### 2.B. Communication Access for People Protected by the Americans with Disabilities Act and the Rehabilitation Act

ANR will ensure timely and effective response to people who need language and communications access, information, or other related services. ANR will provide language and communication access services for people using various modes of communication that are specific to their ability and methods of communication at no cost and in a timely manner, consistent with state and federal law and guidance. ANR will use the State of Vermont language services contractors to provide language services.<sup>20</sup> ANR will take reasonable steps to ensure language and communication access is conducted using language service providers (i.e., interpreter or translator), and keep records of its activities. ANR will also ensure the use of facilities for public meetings are physically accessible for persons with disabilities.

#### Step #3: Train ANR Staff and Subrecipients

ANR will provide mandatory training for staff and ANR subrecipients who are involved in public outreach and engagement and are likely to encounter people with LEP or people who use various modes of communication. The purpose of the training is to ensure that staff and ANR subrecipients know of ANR staff's responsibility to provide language and communication access services, how to use state resources, and how to maintain cultural competence and sensitivity when interacting with the public, among other relevant topics. ANR will also train subrecipients and conduct training when there are substantive changes to this Plan, as part of new employee orientation, and at a minimum of every four years.

#### Step #4: Provide Public Notice of Language and Communication Access

ANR will provide notice and information about available language and communication access services to ensure that persons with LEP and communication needs have effective communication, equal opportunity, and meaningful access to ANR's programs, activities, and services. ANR will publish the LAP and Procedure on its website. GoogleTranslate (with disclaimer) is already readily available to translate on-line notices on ANR webpages into languages other than English.

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<sup>20</sup> Current Statewide Contracts, <https://bgs.vermont.gov/purchasing-contracting/contract-info/current#Translation%20Services>.

## Step #5: Monitor, Evaluate, and Update the Language Access Plan

ANR will periodically monitor, evaluate, and update the LAP, policies, and the Procedure. ANR will keep records of use of language and communication access services and any complaints, feedback, or suggestions regarding the services provided; survey staff on how often they use language and communication access services in their work; observe and evaluate agency interactions with people with LEP and people who use various modes of communication; and keep current on community demographics and needs. ANR will update the LAP periodically and at a minimum of every four years.

## E. Compliance

ANR will offer staff and subrecipients feedback on a periodic basis to ensure that the staff and subrecipients have the information and resources they need to implement and comply with the LAP. ANR will offer staff and subrecipients opportunities to provide feedback to identify sections in the Plan, timeframes, and training materials in need of further clarification or updating. ANR will help staff and subrecipients comply with the terms and provisions of the LAP and the Procedure. Failure to comply in good faith with the terms and provisions of this Plan could result in disciplinary consequences.

ANR will utilize the *Civil Rights and Nondiscrimination Grievance Procedure* policy for providing prompt and equitable resolution of complaints alleging any action that would violate the LAP or federal civil rights law.<sup>21</sup>

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<sup>21</sup> ANR, *Civil Rights and Nondiscrimination Grievance Procedure*,  
<https://anr.vermont.gov/sites/anr/files/2021.12.08%20Final%20Title%206%20Grievance%20Procedure.pdf>.

## Appendix A: Abbreviations

ACS: American Community Survey (of the U.S. Census)

ADA: The Americans with Disabilities Act

ANR: Agency of Natural Resources

CFR: Code of Federal Regulations

Census: United States Census Bureau

DEC: Department of Environmental Conservation (Vermont); part of ANR

DOI: United States Department of Interior

DOJ: United States Department of Justice

EPA: United States Environmental Protection Agency

FPR: Department of Forests, Parks, and Recreation Department (Vermont); part of ANR

FWD: Department of Fish and Wildlife (Vermont); part of ANR

LEP: Limited English Proficiency

USDA: United States Department of Agriculture

## Appendix B: References

- Attorney General Holder Memorandum to All Federal Agencies Regarding the Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13166 (February 17, 2011), [https://www.lep.gov/sites/lep/files/resources/AG\\_021711\\_EO\\_13166\\_Memo\\_to\\_Agencies\\_with\\_Supplement.pdf](https://www.lep.gov/sites/lep/files/resources/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf).
- Civil Rights Act of 1964 (Title VI). 42 U.S.C. §2000d et seq., <https://www.justice.gov/crt/fcs/TitleVI-Overview>.
- Congressional Research Service, *Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of 1964*, R45665, April 4, 2019, <https://fas.org/sgp/crs/misc/R45665.pdf>.
- EPA, *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs*, 2006 (Recipient Guidance), <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>.
- EPA LEP Guidance, 2004, <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>.
- EPA, *Assisting People with Limited English Proficiency*, <https://www.epa.gov/ogc/assisting-people-limited-english-proficiency>.
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- DOJ, *Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons with Limited English Proficiency*, 65 Fed. Reg. 50123 (August 16, 2000), <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20867.pdf>.
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- DOJ, *Common Language Access Questions, Technical Assistance and Guidance for Federally Conducted and Federally Assisted Programs* (August 2011), [https://www.lep.gov/sites/lep/files/resources/081511\\_Language\\_Access\\_CAQ\\_TA\\_Guidance.pdf](https://www.lep.gov/sites/lep/files/resources/081511_Language_Access_CAQ_TA_Guidance.pdf).
- DOJ, Limited English Proficiency, <https://www.lep.gov/>.
- DOJ, *ADA Requirements: Effective Communication*, <https://www.ada.gov/effective-comm.htm>
- DOJ, *ADA Update: Primer for State and Local Governments*, [https://www.ada.gov/regs2010/titleII\\_2010/title\\_ii\\_primer.html](https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html).
- Digital.Gov, *Information on Best Practices for Web Content Managers*, <https://digital.gov/2012/10/01/automated-translation-good-solution-or-not/>
- U.S. Census Bureau American Community Survey, <https://www.census.gov/programs-surveys/acs/about.html>. [https://www.lep.gov/maps/lma2015/Final\\_508/](https://www.lep.gov/maps/lma2015/Final_508/).
- U.S. Census Bureau, American Community Survey Data 2020 ACS 5-Year Estimates, Table S1601, Population 5 Years and over, <https://data.census.gov/cedsci/table?g=0400000US50&tid=ACSST5Y2020.S1601>.
- U.S. Census Bureau, “I Speak” Language Identification Card, <https://www.lep.gov/sites/lep/files/resources/ISpeakCards2004.pdf>.
- Vermont Department of Disabilities, Aging & Independent Living, *Hearing Terminologies*, <https://dail.vermont.gov/sites/dail/files/documents/HearingTerminology.pdf>.



## Appendix C: Legal Background

### A. Federal Recipients Must Comply with Civil Rights and Accessibility Laws

Under federal law, recipients of federal financial assistance, including ANR, are required to comply with federal civil rights and accessibility requirements. ANR receives federal funds from EPA, the Department of the Interior (DOI), and Department of Agriculture (USDA).

Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance.<sup>22</sup> EPA's implementing regulations and courts have interpreted Title VI's prohibition of discrimination on the basis of national origin to include discrimination based on limited English proficiency.<sup>23</sup>

EPA's Title VI implementing regulations define a recipient as, "any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance."<sup>24</sup>

Federal assistance includes but is not limited to grants and loans of federal funds, grants or donations of federal property, or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.<sup>25</sup> Federal law indicates that Title VI covers the recipients' entire program or activity, even if only one part of the recipient's organization receives federal financial assistance.

### B. Requirements and Guidance for Improving Access for People with LEP

President Clinton signed federal Executive Order 13166 (EO 13166) on August 11, 2000, entitled *Improving Access to Services for Persons with Limited English Proficiency*, to ensure that the federal government provides programs and services to "otherwise eligible persons who are not proficient in the English language."<sup>26</sup> EO 13166 requires all federal agencies to evaluate the programs and services they provide and identify needs of members of the public with limited English proficiency (persons with LEP) to participate in those programs and services. The

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<sup>22</sup> 42 U.S.C. § 2000d et seq. Retrieved from: <https://www.govinfo.gov/content/pkg/USCODE-2008-title42/html/USCODE-2008-title42-chap21-subchapV.htm>; 40 CFR §7: <https://www.epa.gov/sites/production/files/2013-09/documents/40p0007.pdf>

<sup>23</sup> The United States Supreme Court held that discrimination against persons with limited English proficiency is a form of discrimination based on national origin, in violation of Title VI and thus prohibited. *Lau v. Nichols*, 414 U.S. 563 (1974).

<sup>24</sup> 40 C.F.R. § 7.25.

<sup>25</sup> DOJ, Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs, Federal Coordination and Compliance Section, Civil Rights Division, August 2011, p. 2. Retrieved from: [https://www.lep.gov/sites/lep/files/resources/081511\\_Language\\_Access\\_CAQ\\_TA\\_Guidance.pdf](https://www.lep.gov/sites/lep/files/resources/081511_Language_Access_CAQ_TA_Guidance.pdf).

<sup>26</sup> EO 13166, *supra* note 8.

Executive Order directs those federal agencies to ensure that recipients of federal assistance provide persons with LEP meaningful access to programs and services.

The United States Department of Justice (DOJ) is responsible for government-wide coordination of the Civil Rights Act of 1964 and EO 13166.<sup>27</sup> The DOJ first issued general guidance on EO 13166 in 2000<sup>28</sup> and its current guidance on June 18, 2002.<sup>29</sup> The guidance is designed to assist federal agencies and recipients in complying with statutory and regulatory obligations to provide persons with LEP meaningful access to federal agencies' programs, services, and activities.

The DOJ guidance defines persons with LEP as, "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."<sup>30</sup> The DOJ guidance describes a four-factor test for recipients to use "as the starting point" in providing for meaningful access of programs by persons with LEP:

- 1) The number or proportion of persons with LEP from a language group eligible to be served or likely to be encountered by the program or grantee in the eligible service population.
- 2) The frequency with which persons with LEP from specific language groups who come into contact with the program seeking assistance.
- 3) The nature and importance of the program, activity, information, or service provided by the program to people's lives; and
- 4) The resources available to the grantee/recipient and costs.

EPA released guidance on June 25, 2004 entitled, *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (EPA LEP Guidance).<sup>31</sup> The EPA LEP Guidance incorporates the DOJ four-factor test and provides a framework for recipients to use to persons with LEP meaningful access to programs, services and activities. EPA also released on February 10, 2017 an updated EPA Order 1000.32 entitled, *Compliance with Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency* (EPA Order).<sup>32</sup> The EPA Order sets forth expectations, requirements, and further guidance to ensure compliance with EO 13166.<sup>33</sup> Other federal agencies also provide guidance for their recipients of federal

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<sup>27</sup> Refer to the DOJ website to aid federal agencies and recipients to provide meaningful access to persons with LEP: <https://www.lep.gov/>.

<sup>28</sup> EO 13166, *supra* note 8 at 50123.

<sup>29</sup> DOJ LEP Guidance, *supra* note 13.

<sup>30</sup> *Id.*, p.3 41459.

<sup>31</sup> EPA LEP Guidance, *supra* note 9.

<sup>32</sup> EPA Order No. 1000.32, "Compliance with Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency." Retrieved from: [https://www.epa.gov/sites/production/files/2017-03/documents/epa\\_order\\_1000.32\\_compliance\\_with\\_executive\\_order\\_13166\\_02.10.2017.pdf](https://www.epa.gov/sites/production/files/2017-03/documents/epa_order_1000.32_compliance_with_executive_order_13166_02.10.2017.pdf).

<sup>33</sup> *Id.*

assistance, including state agencies, that is consistent with DOJ guidance.<sup>34</sup> For guidance and other information on requirements persons with LEP, visit the federal government Limited English Proficiency website: <https://www.lep.gov/>.

### C. Requirements and Guidance for Effective Communication

Section 504 of the Rehabilitation Act (“Section 504”) requires that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>35</sup> The Americans with Disabilities Act (ADA) extends Section 504’s broad obligation to prevent discrimination on the basis of disability to all public entities regardless of federal financial assistance.<sup>36</sup>

Title II of the ADA applies to all State and local governments and all departments, agencies, special purpose districts, and other instrumentalities of State or local government (“public entities”). It applies to all programs, services, or activities of public entities. Title II entities that contract with other entities to provide public services also have an obligation to ensure that their contractors do not discriminate against people with disabilities.

DOJ guidance states that covered entities must provide “aids and services” when needed to communicate effectively with “people who have vision, hearing, or speech disabilities,” referred to in the LAP as people who use various modes of communication.<sup>37</sup> Deciding what aid or service is needed to communicate effectively is based on the nature, length, complexity, and context of the communication as well as the person’s normal method(s) of communication. For guidance and other information on requirements for people with communication needs, visit the federal government Americans with Disabilities Act website: <https://ada.gov/>.

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<sup>34</sup> DOJ LEP Guidance, *supra* note 13. Retrieved from <https://www.lep.gov/title-vi-guidance-for-recipients>.

<sup>35</sup> Pub. L. No. 93-112, 97 Stat. 394 (Sept. 26, 1973), 29 U.S.C. § 701 et seq.

<sup>36</sup> 29 U.S.C. § 794.

<sup>37</sup> DOJ, *ADA Requirements: Effective Communication*, <https://www.ada.gov/effective-comm.htm>; DOJ, *ADA Update: Primer for State and Local Governments*, [https://www.ada.gov/regs2010/titleII\\_2010/title\\_ii\\_primer.html](https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html).