

with the community. It further provides various factors that recipients may want to consider while reviewing the LEP plan.⁴²

Enforcement

USDA acknowledges that full compliance with Title VI in all areas of a recipient's activities for all potential language groups may require a series of actions over a period of time. However, this acknowledgement will not excuse a recipient's noncompliance. USDA will investigate a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, then USDA will inform the recipient in writing of this determination, including the basis for the determination. However, if a full investigation of a case leads to a finding of noncompliance, then USDA will inform the recipient of the noncompliance through a letter of findings, setting out the areas of noncompliance and steps that must be taken to correct the noncompliance. USDA will attempt to achieve voluntary compliance through informal means. If the matter cannot be resolved informally, then the recipient must be given an opportunity for an administrative hearing. Otherwise, USDA must seek compliance by terminating federal assistance, by referring the matter to DOJ for injunctive relief or by pursuing other enforcement proceedings.⁴³ ■

DOJ Finds North Carolina Courts Failed to Provide Adequate Language Access Services

An investigation by the Department of Justice (DOJ) recently found that the North Carolina state court system has failed to provide meaningful access to limited English proficient (LEP) individuals in violation of federal civil rights laws.¹ According to DOJ, the North Carolina Administrative Office of the Courts (AOC) impermissibly restricted the types of court proceedings in which interpreters are provided. The AOC's policies and practices resulted in court proceedings moving forward without language assistance for LEP individuals, who were unable to meaningfully participate in their cases. The investigation is of particular interest to housing advocates, because several of the violations identified by DOJ involved eviction cases.

Background

Title VI of the Civil Rights Act prohibits discrimination on the basis of national origin by recipients of federal financial assistance.² Failure of a recipient to provide LEP individuals with meaningful access to its programs can violate Title VI's prohibition of national origin discrimination.³ Accordingly, federal funding recipients, including state courts, must take reasonable steps to provide LEP individuals with meaningful access to their programs. DOJ guidance states that recipients of federal financial assistance should undertake every effort to ensure competent interpretation for LEP individuals during all hearings, trials and motions.⁴

DOJ initiated a Title VI investigation of the North Carolina AOC based on a complaint alleging the AOC failed to provide LEP individuals with meaningful access to their programs and treated Hispanics unequally as a result of AOC's mandatory policies.⁵ The complaint also alleged that AOC does not provide interpreters for LEP Spanish speakers facing eviction. A second complaint alleged that the AOC intentionally refused to provide free interpreters to LEP individuals litigating civil claims.

¹Department of Justice, Report of Findings, Compl. No. 171-54M-8 (Mar. 8, 2012), http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf [hereinafter DOJ Report].

²42 U.S.C. § 2000d (Westlaw Apr. 4, 2012).

³Lau v. Nichols, 414 U.S. 563, 568-69 (1974).

⁴Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455, 41,471 (June 18, 2002).

⁵DOJ Report, *supra* note 1, at 5.

⁴²*Id.* at 13,989-90.

⁴³*Id.* at 13,990.

Findings

DOJ's investigation concluded that AOC's interpretation policies resulted in an impermissible discriminatory impact based on national origin. The policies provided that an interpreter would *not* be provided in many types of cases, including eviction proceedings; foreclosure proceedings; child custody hearings; child support hearings; divorce proceedings; and restraining order proceedings involving non-intimate partner stalking or sexual assault.⁶ These policies resulted in severe consequences for LEP individuals, including loss of housing.

Even in cases where AOC's policies mandated interpretation services, the courts did not consistently provide language services. DOJ found instances of interpreters not being appointed in a timely manner and use of friends and family members to interpret. DOJ also uncovered several instances where judicial officials proceeded with hearings without interpreters present. Further, DOJ found inconsistent interpreter coverage, absence of translated forms necessary for many court proceedings, and systemic failures to provide notice to LEP individuals of their right to language services.

DOJ provides several examples demonstrating gaps in access to competent interpreters. One court regularly proceeded with domestic violence restraining order hearings without an interpreter for either party. The clerk of another court stated that individuals petitioning for domestic violence restraining orders were not provided with interpreters. A victim advocate reported that litigants in domestic violence restraining order proceedings used friends, family members, and advocates to interpret during these proceedings.

DOJ's investigation revealed harmful consequences resulting from courts proceeding with hearings without interpreters present. A tenant who was denied an interpreter in her eviction hearing was evicted but did not know this until it was explained to her after the hearing. Another tenant who was being sued for outstanding rent payments knew she could not afford an interpreter for the hearing, so she worked with a local advocacy organization to prepare a translated written statement of facts. However, the magistrate refused to read the statement, and she lost her case.

Budget Constraints

AOC identified fiscal constraints as one reason for its failure to provide greater access to court proceedings for LEP individuals. However, DOJ determined that financial constraints would not preclude AOC from taking steps to comply with its federal nondiscrimination obligations. DOJ noted that the estimated cost of expanding interpreter services would be approximately \$1.4 million per

year, which would have been only 0.3% of AOC's budget.⁷ Further, DOJ found that AOC refused to provide interpreter services even where the budget impact was nonexistent or limited. Additionally, DOJ noted that there were resources available to AOC to improve access to court proceedings for LEP individuals, and provided AOC a list of federal funding resources.

Conclusion

Based on its investigation, DOJ concluded that AOC's policies and practices violated the nondiscrimination provisions of Title VI. DOJ has requested immediate negotiations to remedy AOC's violations of federal law. If AOC does not voluntarily agree to remedy the violations, DOJ may initiate civil litigation, which could result in termination of AOC's federal financial assistance. Advocates in jurisdictions where courts, public housing agencies or other federal funding recipients are failing to provide meaningful access to LEP individuals can file complaints with DOJ. A complaint form and filing instructions are available at <http://www.justice.gov/crt/about/cor/complaint.php>. ■

⁶*Id.* at 7-8.

⁷*Id.* at 3.