

HOUSING JUSTICE

National Housing Law Project

Newsletter April 2010

Survivors and Language Access

Battered immigrants face a number of unique barriers to accessing housing; one such barrier is limited English proficiency (LEP). Limited or no ability to speak English can impede the ability to access important benefits or services, understand and exercise vital rights, comply with accompanying responsibilities, or understand other information provided by federally funded housing programs or private landlords. In the domestic violence context, LEP survivors may have trouble accessing help from police, or complying with housing authority requirements.

This article overviews the federal requirements to provide access to LEP speakers and how they apply in the housing context.

Overview

Congress passed Title VI of the Civil Rights Act of 1964 to prevent discrimination in federally assisted programs. Title VI provides: “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.” Courts have interpreted Title VI’s prohibition against national origin discrimination to mean that no federally con-

ducted or assisted entity can provide services that are more limited in scope or lower in quality, limit participation in a program, or require persons to pay for or provide their own interpreters, based solely on the fact that they are LEP.

Additionally, Title VIII of the Civil Rights Act of 1968, commonly referred to as the Fair Housing Act, prohibit discriminatory practices by stating that: “It shall be unlawful—(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” While HUD enforces language access requirements under Title VIII, we currently know of no successful published civil court cases addressing the issue.

In 2000, President Clinton issued Executive Order 13166, reasserting the Federal Government’s commitment to improving the accessibility of its services to LEP individuals. The Order affirmed the relationship between national origin and limited English proficiency and ordered federal agencies and federally assisted programs to create plans to ensure language access. The Order directs federal agencies to prepare a plan to improve access

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to programs provided to LEP individuals and to work with LEP persons and their representatives when creating these language access plans. As a result, federal agencies have been implementing, in varying degrees, language access plans over the past decade.

Federally Assisted Housing and LEP

Pursuant to the Executive Order HUD issued, in 2007, a final guidance to those entities receiving federal financial assistance regarding their obligation to ensure LEP access under Title VI. The guidance enumerates steps that recipients should take to meet their regulatory and statutory obligations to ensure that LEP persons have meaningful access to HUD programs and activities. Recipients of HUD assistance include state and local governments, public housing agencies, and assisted housing providers. Subrecipients are also covered by this regulation when federal funds are passed to them, and coverage extends to the recipient's entire program even if only one part of the recipient's operation receives federal assistance.

The central piece of the guidance is the requirement that a recipient of federal funds conduct a four-factor analysis to determine its language accessibility obligations, develop a Language Access Plan (LAP) to meet those obligations, and provide appropriate language

assistance according to the plan.

The four-factor analysis requires analyzing: 1) the number of LEP persons from a particular language group eligible to be served or likely to be encountered by the program, 2) the frequency of contact with LEP persons, 3) the nature and importance of the program, activity, or services to the LEP individuals, and 4) resources available to the recipient and costs of providing LEP services.

Advocates should note that language services should be provided for both the communities housing providers are already serving, and communities that it should be serving.

After a housing authority has assessed its language needs, it should develop its language access plan. Basic components of these plans include: a list of the languages for which interpretation and translation are needed, the points and types of contact the agency and staff may have with LEP persons, the ways in which language assistance will be provided, procedures for staff training, a list of vital documents, goals for developing community resources, partnerships, and other relationships to help with the provision of language services, and provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.

The types of services that a housing provider may utilize include trained bilingual staff, telephone service lines interpreters, or language identification cards inviting LEP persons to identify their own language needs. The exact types of services will vary by the needs of the community.

Statistic of the Month

Of the 7.1 million people living in federally funded housing, 29,570 people (or 0.4%) are ineligible noncitizens. At least half of these ineligible noncitizens—about 15,000—are immigrants with U.S.-born children.

Sources: U.S. Department of Housing and Urban Development; University of California, Irvine, Center for Research on Immigration, Population, and Public Policy

When providing oral interpretation, recipients are expected to ensure the competency of the language service provider. For example, the fact that an employee is bilingual does not mean that a person has the ability to interpret. Housing providers must be especially careful to discourage the use of children, family members, or friends as interpreters. These groups may not have the ability to interpret properly, and may even intentionally misinterpret, for a variety of reasons. Where domestic violence is involved, this becomes even more crucial, as the interpreter may in fact be involved in the abuse, or the survivor may not want to reveal the abuse in front of someone she knows. Advocates should ensure that the local housing provider's language access plan clearly states that such categories of informal interpreters will be strongly discouraged.

The requirement that housing authorities translate vital documents is especially important to ensuring that survivors can maintain their tenancies. Some general examples of vital documents include the tenancy addendum for the Section 8 voucher program, Vouchers, eviction notices, and documents laying out requirements of the tenancy. The Violence Against Women Act self-certification form should also be translated. Note that HUD has translated several of these documents, including the self-certification form, into various languages. These documents can be found at the links provided in this newsletter. Note that for written translation, the guidance provides a safe harbor provision, indicating that if a recipient provides written translation under certain circumstances it will be considered strong evidence of the compliance with the recipient's written translation obligations. This safe harbor, which applies to written documents *only*, instructs recipients to provide written translations for language

groups making up more than 5% or 1,000 persons, whichever is less, of the population eligible to be served or likely to be encountered. For language groups that reach the 5% trigger but compose fewer than 50 people, the guidance states that the recipient does not need to translate vital documents but can instead provide written notice, in the primary language of the LEP group, of the right to receive competent oral interpretation of the written material free of cost.

Creating a language access plan is the first step in ensuring that housing providers are adequately serving LEP communities. Advocates should ensure that their local federally assisted housing providers all have such a

Helpful LEP LINKS

National Housing Law Project

<http://nhlp.org/resourcecenter?tid=88>

Government clearinghouse for LEP information:

www.lep.gov

Selected census data regarding English proficiency:

<http://www.census.gov/population/www/cen2000/briefs/phc-t37/index.html>

Legal Services of Northern California:

http://www.lsn.net/?page_id=94

Migration Policy Institute Language Portal:

http://www.migrationinformation.org/integration/language_portal/

Empire Justice Center

http://onlineresources.wnylc.net/pb/orcdocs/LARC_Resources/LEPTopics/HO/HO.htm

National Language Access Advocates Network <http://www.probono.net/nlaan/>

Department of Housing and Urban Development

<http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>

plan in place and that they are following it. This can help eliminate needless evictions and terminations, and help ensure that survivors are able to remain in their housing. Once the language access plan has been created, the housing provider must implement it. We will discuss enforcement of language access requirements in future issues of this newsletter. ■

Upcoming Trainings

What: NHLP will present **“Housing Rights and Remedies for Sexual Assault Victims”** as part of the National Sexual Assault Law Conference, hosted by the Victim Rights Law Center.

When: May 18-20, 2010

Where: Marriott at the McDowell Mountains in Scottsdale, Arizona

Who: The training is open to (and free for) all OVW grantees and subgrantees.

Contact: Victim Rights Law Center, (617) 399-6720 x. 18

What: NHLP will host a webinar entitled **“Access to Housing: Survivors with Criminal Records.”**

When: May 25, 2010, 2:00pm– 3:00pm EST

Where: Webinar

Who: The training is open to (and free for) all OVW grantees and subgrantees. One hour of MCLE credit will be offered to all California attorneys.

Contact: Meliah Schultzman, (510)251-9400 ext. 3116

Housing Assistance and Mixed Immigration Status Families

As discussed in the January edition of this newsletter, certain types of federally assisted housing have immigration restrictions. Under Section 214 of the Housing and Community Development Act (“Section 214”), only United States citizens and certain categories of non-citizens are eligible for many of the Department of Housing and Urban Development’s programs, including public housing, Section 8 vouchers, and project-based Section 8. This article addresses the housing assistance that may be provided to households that contain members with both eligible and ineligible immigration statuses.

Who in the Household Has To Be a Citizen or an Eligible Immigrant?

To qualify for admission to HUD housing covered by Section 214, at least one household member must be a citizen or a noncitizen with eligible immigration status as defined in Section 214. The eligible member does not need to be the head of household. Any household member, including a minor child, who is a citizen or eligible immigrant will qualify the household for admission to housing covered by Section 214.

What If One of the Members of the Household Is Not a Citizen or Eligible Immigrant?

A household that has at least one eligible household member, as well as ineligible household members, is called a “mixed” household. Mixed households are permitted to live in housing covered by the Section 214 restrictions. However, they will not receive the full amount of rent subsidy. They will

therefore pay a higher rent. The amount of assistance they receive will be “prorated.” The rent is thus adjusted based on the number of household members, the total household income, the number of eligible members of the household, and the type of rent subsidy in the covered unit.

Which Applicant Households Are Eligible for Proration?

All “mixed” households that are applying for a housing program covered by Section 214 are eligible for prorated assistance. However, households with no eligible members are not permitted to move into the housing or to pay prorated rents.

How Is Prorated Assistance Calculated?

Prorated assistance is calculated differently for each program. The calculations have several steps. They are not too complicated if you take them step by step, but mistakes can easily occur. Because prorated rents are higher than normal subsidized rents, it is important for advocates and housing staff to double-check the calculations to be sure “mixed” households are not overcharged. For assistance in calculating prorated rents, contact the National Housing Law Project.

In general, the amount of rent the household would pay if all members were eligible is adjusted for mixed households by multiplying the usual rent subsidy by a formula based on the number of eligible household members divided by the entire number of household members.

For example, if a four-member Section 8 household has two eligible members, the subsidy will be pro-rated by 50%. If the total rent is \$1,100, the family’s rent contribution would be prorated as follows:

Total rent:	\$1,100
Section 8 voucher worth:	\$800
Family’s portion <i>before</i> proration:	\$300
Section 8 voucher worth:	\$800
Voucher is prorated by 50%:	\$400
Family pays 50%:	\$400
Family’s portion <i>after</i> proration:	\$700

Calculations for the public housing program are figured somewhat differently, but the general concept is the same: prorated rent is significantly higher and depends on the proportion of the household that is eligible. Families who cannot afford the prorated rent should consider applying for housing programs that are not restricted by Section 214. ■

For technical assistance or requests for trainings or materials, please contact:

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