

Overview of the Housing Rights of Persons with Limited English Proficiency

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Who are Limited English Proficient (LEP) Persons?

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- “Persons 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.” (HUD LEP Guidance)
 - Limited ability to communicate in English is tied to one’s national origin
- Persons who speak English “less than very well”
 - Phrase that has been used by Census Bureau
- Census estimates place U.S. LEP population at 8.6% of individuals aged 5+
 - Approximately 25 million persons

Federal Legal Authority

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Federal Legal Authority

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- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
- *Lau v. Nichols*, 414 U.S. 563 (1974)
- Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 Fed. Reg. 50,121 (Aug. 16, 2000)
- HUD, List of Federally Assisted Programs, 69 Fed. Reg. 68,700 (Nov. 24, 2004)

Federal Legal Authority (cont.)

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- HUD, “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 72 Fed. Reg. 2732 (Jan. 22, 2007)
- USDA, “Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency,” 79 Fed. Reg. 70,771 (Nov. 28, 2014)

Title VI of the Civil Rights Act of 1964

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Title VI:

- Prohibits discrimination on the basis of race, color, or **national origin** in federally conducted or assisted programs or activities
- Applies to the federal government and entities receiving federal financial assistance
- Does not apply to private entities

Title VI: *Lau v. Nichols*

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- U.S. Supreme Court case
 - 414 U.S. 563 (1974)
- Court found that denial of language assistance to LEP students deprived them of opportunity to participate in educational programs.
- *Lau* established the link between the denial of meaningful language access and national origin discrimination under Title VI.

Title VI: Executive Order 13166

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- Signed by President Clinton in 2000
- Directs federal agencies to:
 - Create language access plans
 - Create guidance for federally assisted programs regarding implementation of meaningful language access policies
 - Work with LEP persons and their representatives when determining how to provide meaningful language access

Title VI: Who Has Language Access Obligations?

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- First question to ask: *Does this housing provider have a language access obligation under Title VI?*
- Answer depends on what kind of funding the housing receives (if any).
 - Federally subsidized programs (e.g., public housing, project-based Section 8 units) have Title VI language access obligations.
 - Private housing providers that receive no federal funding do not.
 - ✦ Voucher landlords that do not receive additional federal financial assistance are not subject to Title VI requirements.
- Applicability of Title VI when part of a development receives federal financial assistance

Title VI: Who Has Language Access Obligations?

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Title VI Mandate	No Title VI Mandate	Unclear
<ul style="list-style-type: none"> • Federal agencies (HUD, USDA) • PHAs/public housing • Project-based Section 8 owners • CDBG, HOME, & HOPWA • Programs listed at HUD's "List of Federally Assisted Programs," 69 Fed. Reg. 68,700 (Nov. 24, 2004) • USDA/RD programs 	<ul style="list-style-type: none"> • Private housing • Private landlords that only participate in tenant-based Section 8 voucher program (HUD's stated position) 	<ul style="list-style-type: none"> • Low-Income Housing Tax Credit (LIHTC) properties, except American Recovery and Reinvestment Act of 2009 (ARRA) recipients (which do have a Title VI obligation)

HUD LEP Guidance

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- Issued by HUD in 2007
- Directs recipients of federal funding under Title VI to:
 - conduct a four-factor analysis;
 - decide which language services are appropriate;
 - develop a Language Access Plan (LAP); and
 - provide language assistance.
- Requires funding recipients to take “reasonable steps to ensure meaningful access to their programs and activities” by LEP persons

HUD LEP Guidance: Four-Factor Analysis

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- Factor 1: Number of LEP persons in the area served, or that would be served if provided meaningful language access
- Factor 2: Frequency of contact with LEP persons
- Factor 3: Importance of program/activity
- Factor 4: Costs of providing language assistance and available resources

HUD LEP Guidance: Oral Interpretation

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- Reasonable oral interpretation should be available
- No “safe harbor” for oral interpretation
- If staffers are not available to provide oral interpretation, the housing provider should have a plan in place to acquire such assistance (i.e., connecting with a language hotline).
- Issues with utilizing family, friends, informal interpreters
 - Conflict of interest, competency, and privacy concerns

HUD LEP Guidance: Written Translation

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- Four-factor analysis informs what documents should be translated
- “Vital documents”: documents that are “critical for ensuring meaningful access by beneficiaries or potential beneficiaries generally and LEP persons specifically” (HUD LEP Guidance)
- Whether a document is “vital” depends on facts such as importance of the program and consequences for the LEP individual if accurate, timely information is not provided.
- Basically, will this document impact the tenant’s ability to obtain or remain in housing?
 - Recreation activity notice versus eviction notice

Examples of Vital Documents

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- Leases
 - Multifamily program model leases
- Eviction/termination notices
- Consent/complaint forms
- Intake forms
- Notices detailing rights, or the loss/denial/decrease in benefits or services
- Hearing notices
- Notices informing LEP persons that free language assistance is available
- Section 8 opt-out notices (Landlords leaving the Section 8 program)
- Tenant rules

HUD LEP Guidance: Safe Harbor

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- Only applies to written translations
- Gives funding recipients some leeway where an LEP population is particularly small
 - Vital documents translated for language groups that constitute 5% of or 1,000 individuals (whichever is less) within the eligible service population
 - If there are fewer than 50 individuals but 5% threshold is met, recipient provides written notification in non-English language that free oral interpretation is available
- Reasonable oral interpretation should be available, regardless of LEP population numbers

HUD LEP Guidance: Language Access Plans

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- Language access plans (LAPs) address the following issues:
 - Identifying LEP individuals
 - How language assistance will be provided
 - Training
 - Notice regarding language assistance, outreach
 - Updates to the LAP

USDA (RD) LEP Guidance

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- Instructs funding recipients to:
 - Conduct a four-factor analysis
 - Develop a language access plan (LAP)
 - Translate vital documents
 - Provide oral interpretation
- Contains safe harbor provision for written translation

Fair Housing Act

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- Prohibits discrimination based on race, color, sex, religion, familial status, disability, and **national origin** in a wide range of housing-related transactions
- Applies to most housing, including private housing providers, with few limited exceptions
- The FHA can be asserted in the courts, as well as through the HUD administrative complaint process.
 - There is no requirement to exhaust administrative remedies before filing an FHA complaint in court.

Cases and Enforcement Related to Limited English Proficiency

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Enforcement of LEP Housing Rights

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- Individual administrative complaints
 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint
- Secretary-initiated administrative complaints
- HUD compliance reviews
- Affirmative defense to eviction
- Filing a case in court
 - Title VI (intentional discrimination only for private litigants)
 - Fair Housing Act

Sandoval and Title VI

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Alexander v. Sandoval, 532 U.S. 275 (2001)

- U.S. Supreme Court case involving question of whether Alabama had to translate driver's license exams.
- Court found that there was no private right of action to enforce disparate impact regulations issued pursuant to Title VI.
- Opinion did not reach merits of language access issue.
- Due to *Sandoval*, private plaintiffs cannot bring disparate impact claims under Title VI; however, private plaintiffs can still bring intentional discrimination claims under Title VI post-*Sandoval*.
- The federal government can still bring disparate impact claims.

Language Access Obligations Post-Sandoval

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- In October 2001, the Justice Department (DOJ) issued a memo affirming the validity of federal agencies' language access obligations under Title VI and E.O. 13166
 - Stated that E.O. 13166 remained in effect despite *Sandoval* decision
 - Memo:
 - <http://www.lep.gov/13166/Oct26memorandum.pdf>
- DOJ has issued subsequent memos regarding Title VI obligations.

Recent HUD/LEP Cases: Title VI

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Recent agreements to settle Title VI complaints:

- Hazleton (PA) Housing Authority (2015)
 - Agreement to settle allegations that the housing authority was not providing interpreters/providing language assistance to LEP program participants and applicants
- Housing Authority of Independence, MO (2015)
 - Agreement to settle issues of Title VI noncompliance discovered during HUD compliance review
- State of Nebraska Dept. of Economic Dev. (2014)
 - Agreement to address finding arising out of compliance review that state had not monitored its sub-recipients for Title VI compliance, nor had taken sufficient steps to provide language access
- Additional examples in the accompanying outline.

LEP Cases: Fair Housing Act

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- **Page Edmunds III (2015)**
 - Discrimination charge by HUD where landlord allegedly did not want to rent to family with a household member perceived to be LEP
 - DOJ filed suit in federal court (*United States v. Page Edmunds III*).
- **Virginia Realty Co. of Tidewater (2013)**
 - Agreements to settle HUD administrative complaints alleging national origin discrimination where private landlord had written policy requiring applicants to communicate in English without assistance
 - Agreements with HUD and an LEP individual
- ***Cabrera v. Alvarez*, 977 F. Supp. 2d 969 (N.D. Cal. 2013)**
 - Court denied motion to dismiss on intentional discrimination claim under the FHA where landlord allegedly told plaintiff to “learn English.” However, court granted motion to dismiss on disparate impact claims.
- **Additional examples in the accompanying outline.**

Best Practices

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LEP Best Practices for Housing & Service Providers

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- **Avoiding asking family (especially minor children), friends, or untrained members of the community to provide interpretation or translation**
 - Serious concerns exist about accuracy of translation, translator bias, and confidentiality.
- **Having awareness of how cultural norms may impact interpretation**
 - Ex: In the housing and domestic violence context, a survivor may be unwilling to discuss domestic violence or sexual assault with a male interpreter, or at all.

LEP Best Practices for Housing & Service Providers

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- **Using free resources like “I Speak” cards to identify LEP individuals of non-widely spoken languages, or materials already translated by HUD**
- **Completing a four-factor analysis and written LAP**
- **Regularly updating and revisiting current language access policies based on changing populations and language needs**

Advocating for Better Policies with Your Local Housing Authority

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Title VI Advocacy with PHAs

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- Language access plans (LAPs)
- PHA planning documents, such as:
 - PHA Plan
 - Admission and Continued Occupancy Policy (ACOP)
 - ✦ Public housing program
 - Section 8 Administrative Plan
 - ✦ Section 8 Housing Choice Voucher program
 - Analysis of Impediments to Fair Housing Choice/future Assessment of Fair Housing

Sample LAP

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VACAVILLE HOUSING AUTHORITY'S LANGUAGE ASSISTANCE PLAN

I. Introduction

The Vacaville Housing Authority (VHA) is committed to providing equal opportunity housing in a non-discriminatory manner, and in complying fully with all Federal, State and local nondiscrimination laws and with the rules and regulations governing Fair Housing and Equal Opportunity in housing and employment. This includes complying with Title VI of the Civil Rights Act of 1964 to ensure meaningful access to programs and activities by Limited English Proficient (LEP) persons.

The purpose of this Language Assistance Plan (LAP) is to identify how the VHA will ensure its methods of administration will not have the effect of subjecting LEP persons to discrimination because of their national origin, and to ensure LEP persons have full access to VHA programs and services.

II. Who is LEP?

For purposes of this LAP, anyone whose primary language is not English, and has a limited ability to read, write, speak or understand English may be LEP.

The VHA will not identify anyone as LEP; the beneficiaries of the services and activities must identify themselves as LEP (Federal Register Vol. 72, No. 13, January 22, 2007).

III. Identification of Language Needs Within the Jurisdiction

It was determined through review of the U.S. Census Bureau's American Fact Finder for the city of Vacaville, as recommended by the U. S. Department of Housing and Urban Development (HUD), that Spanish was the only language to meet the 4 factor analysis criteria (1 – Number or proportion of LEP persons served or encountered in the eligible service area; 2 – Frequency of contact with the program; 3 – Importance of service, information, program or activity; 4 – Costs versus resource and benefits) requiring translation of vital documents. This was supported by the volume of encounters with LEP persons where virtually all were Spanish speaking. According to Fact Finder, there are 3,118 Spanish-speaking persons over the age of five years in Vacaville who speak English less than very well.

Sample LAP (cont.)

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A. Vital Documents

HUD has defined "vital documents" to be those documents that are critical for ensuring meaningful access, or awareness of rights or services, by beneficiaries or potential beneficiaries generally and LEP persons specifically. In general, the VHA will attempt to translate all letters sent to program applicants and participants to Spanish. However, the following is a list of documents the VHA has determined to be vital and has committed to translating into or providing HUD-approved versions in Spanish:

Already Translated or Have Translations Provided by HUD

- Housing Choice Voucher, including Family Obligations
- Letter of Informal Hearing
- Informal Hearing Procedures
- Informal Hearing Results
- Instructions on Moving After Receiving/Giving Notice to Move
- Notification of Pro-ration of Assistance Based on Non-Eligible Household Members
- Repayment Agreement
- Denial of Unit
- Notification of Social Security Number Discrepancy
- Proposal of Termination of Program Participation
- Letter Confirming Voluntary Termination
- Brochure Explaining Rights Under the Americans with Disabilities Act
- Brochure Explaining Family Self-Sufficiency Program
- Brochure Explaining Housing Choice Voucher Home Ownership Program

- Family Obligations Checklist
- Authorization to Release Information with Privacy Act Statement
- Brochure Regarding Housing Discrimination
- Family Self-Sufficiency Contract
- Request for Tenancy Approval

To Be Translated

- Brochure Explaining Wait List

Excerpt from Administrative Plan

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2-III.H. DENIAL OR TERMINATION OF ASSISTANCE

A PHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of the PHA's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

When a participant family's assistance is terminated, the notice of termination must inform them of the PHA's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, the PHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the PHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the PHA must make the accommodation.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin



Excerpt (cont.)

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2-III.B. ORAL INTERPRETATION

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, the PHA will generally offer, or ensure that the family is offered through other sources, competent services free of charge to the LEP person.

HACB Policy

The HACB will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible, the HACB will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other HACBs, and will standardize documents. Where feasible and possible, the HACB will encourage the use of qualified community volunteers.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The interpreter may be a family member or friend.



Standard text from template

Specific PHA policies



Title VI Advocacy with PHAs: LAPs

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- Find out if your PHA has a language access plan (LAP).
Look at:
 - PHA website
 - Inside other planning documents (e.g., appendix to Administrative Plan)
 - Make a records request
- If not, try to work with the PHA to complete the four-factor analysis and create a language access plan.
- If so, evaluate the plan to see where it could be strengthened.
 - Has the plan been updated recently? Updated statistics?
 - Are all language groups accounted for?
 - Are vital documents listed?
 - Language access coordinator?

Title VI Advocacy: PHA Planning Docs

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- Local PHAs administer programs such as public housing and the Section 8 Housing Choice Voucher program
- These programs have a series of planning documents that can be good avenues for language access advocacy.
- Each time these documents undergo a public comment period, take the opportunity to evaluate existing language access policies.
 - Do not only look at the written policies, but think about day-to-day experiences of your clients.
- Meaningful language access will be crucial for upcoming AFFH implementation/AFH process.

Title VI Advocacy: Planning Docs (cont.)

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- PHAs often use templates for their planning documents; therefore, make sure the documents actually reflect local LEP needs and populations.
- Gather input and feedback from a range of LEP service providers and stakeholders (residents, legal services, community activists, etc.).
- Make sure the PHA has a listing of the documents it considers to be “vital.”
- Ensure that planning documents acknowledge that free interpretation services are available for PHA proceedings where the tenant may lose benefits (i.e., termination hearings).
- Make sure Census data are up-to-date, or that other relevant data sources are considered.
- Advocate for provisions stating that waitlist openings will be publicized in non-English media.

Issues to Watch for in PHA Documents/LAPs

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- Outdated references
- Minors and interpretation
- Use of friends, community volunteers as interpreters
- Proactive offering of free language assistance?
- Outreach to non-English media (advertising waitlist openings)
- Vital documents
 - Listed? Timeline for translation?
- Interpreters at hearings, provided free of charge
- Identifying LEP individuals
- Training staff
- Is there a language access coordinator?
- Inclusion of smaller, less widely spoken languages

Contact Information

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