

Language Access Rights in Federal Housing Programs



NHLP SUMMER LAW CLERK TRAINING
JUNE 3, 2014

HOUSING JUSTICE

National Housing Law Project

Limited English Proficiency/Applicable Law



What does LEP Mean?



- “LEP” stands for “Limited English Proficient.”
- HUD LEP Guidance: “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.”
- LEP also been defined as people who speak English “less than very well.”

Why is Language Access Important?



- According to 2011 U.S. Census estimates, approximately 25 million Americans speak English “less than very well.” This comprises about 8.7 percent of the U.S. population.
- For California, the percentage is higher, with an estimated 6.8 million Californians (or nearly 20 percent of the state’s population) who speak English “less than very well.”

Examples of Language Access Issues in Housing



- Waiting list openings are not advertised in ethnic language media.
- A housing authority employee asks a housing choice voucher participant's son to read the program rules to her and then asks her to sign a form saying she understood them.
- A tenant is denied a request for an interpreter for a hearing before the housing authority.
- A public housing eviction notice is sent in English only to a person who only speaks Spanish.

Federal Legal Authority

6

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- *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, “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 72 Fed. Reg. 2,732 (Jan. 22, 2007)

Federal Legal Authority (cont.)

7

- Fair Housing Act, 42 U.S.C. § 3604, *et seq.*
- USDA, “Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency,” 77 Fed. Reg. 13,980 (Mar. 8, 2012) (Proposed Guidance).
- Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11(d) (notice of housing protections).

A Brief Note: California Laws



- The following two state laws prohibit national origin discrimination and may also require language access:
 - California Fair Employment and Housing Act (FEHA), Cal. Govt. Code § 12955
 - Unruh Civil Rights Act, Cal. Civ. Code § 51
- Additionally, California law requires that persons who negotiate leases primarily in certain non-English languages provide a translated copy of the lease to the tenant. Cal. Civ. Code § 1632

Language Access & Title VI

9



Title VI

10

- Title VI prohibits discrimination on the basis of race, color, or national origin in federally-conducted or federally-assisted programs.
- Under Title VI, the federal government and entities receiving federal financial assistance have an obligation to provide meaningful language access to the public.

Lau v. Nichols

11

- U.S. Supreme Court case from 1974
 - 414 U.S. 563 (1974)
- The Supreme Court determined that denying language instruction to LEP students constituted national origin discrimination under Title VI.
- *Lau* established a link between language access and national origin discrimination under Title VI.

Executive Order 13166

12

- 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 creating language access plans

Title VI: Who Must Provide Language Access?

13

- Title VI applies to all “federally conducted or assisted programs.”
- If housing provider receives any funding that is covered by Title VI, then that provider must ensure language access.

Title VI: Who Must Provide Language Access? (cont.)

14

Title VI Mandate	No Title VI Mandate	Unclear
<ul style="list-style-type: none">• Federal agencies (HUD, USDA)• PHAs• Project-based section 8 owners• CDBG, HOME, & HOPWA recipients• 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 participating in tenant-based Section 8 voucher program (HUD's stated position)	<ul style="list-style-type: none">• LIHTC properties, <i>except American Recovery and Reinvestment Act of 2009 (ARRA) recipients</i> (which do have a Title VI obligation)

HUD LEP Guidance

15

- 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.



HUD LEP Guidance

16

- Federal funding recipients should balance these four factors in creating a plan:
 - (1) Number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
 - (2) Frequency with which LEP individuals come in contact with the program;
 - (3) Nature and importance of the program, activity, or service provided by the program to people's lives; and
 - (4) Resources available to the grantee/recipient and costs

HUD LEP Guidance: Oral Interpretation

17

- Reasonable assistance should be available
- There is no “safe harbor” for oral interpretation.
- If staffers are not available to provide oral interpretation, the office should have a plan in place to acquire such assistance.

HUD LEP Guidance: Written Translation

18

- HUD LEP guidance calls for written translation of “vital documents”
- Vital documents are documents “that are critical for ensuring meaningful access by beneficiaries or potential beneficiaries generally and LEP persons specifically.”
- Determining whether a document is vital may depend on
 - Importance of information or program
 - Potential consequences if information is not received in a timely manner
- Best Practice Tip: When considering whether a document is vital, think generally about whether the document impacts a tenant’s rights.

Examples of Vital Documents

19

- HUD has labeled these documents as “vital”:
 - HUD Model Leases for:
 - Subsidized Programs (Form HUD 90105-a)
 - Section 202/8 or Section 202 PACS
 - Section 202 PRACS
 - Section 811 PRACS
- HUD says these documents that *can* be vital, depending on facts:
 - Consent and Complaint forms
 - Housing application forms
 - Written notices of eligibility criteria, rights, denial, loss, or decrease in benefits/services
 - Notices regarding free language assistance
- HUD Model Leases have been translated in many languages, and are available at:
<http://www.hud.gov/offices/fheo/lep.xml>

HUD LEP Guidance: Safe Harbor

20

- Applies to written translation only
- Gives funding recipients some leeway where an LEP population is particularly small/resources are limited
- Reasonable oral interpretation should always be available

HUD LEP Guidance: Language Assistance/Access Plans

21

- Have a written plan when possible
- Solicit input from organizations such as schools, grassroots, and community groups
- Outlines five steps:
 - (1) Find ways to identify people who need language assistance
 - (2) Outline means by which language assistance will be provided (e.g., phone, in person, by certain staffers)
 - (3) Include provisions for training on a regular basis/for new employees
 - (4) Alert the LEP community that language services are available
 - (5) Monitor and update the plan as needed

USDA (RD) Proposed LEP Guidance

22

- Unlike HUD, not final guidance, but most current guidance from USDA
- Largely mirrors the HUD LEP Guidance
- Instructs funding recipients to:
 - Conduct a four-factor analysis
 - Develop a language assistance plan (LAP)
 - Translate vital documents
 - Provide oral interpretation
- Contains same safe harbor provision as the HUD LEP Guidance

Title VI Enforcement

23

- **Judicial**
 - Involves filing a lawsuit in court
 - Private plaintiffs can only bring intentional discrimination claims under Title VI; they cannot bring disparate impact claims. *See Alexander v. Sandoval*, 532 U.S. 275 (2001).
 - Federal government can bring both intentional and disparate impact claims under Title VI.
- **Administrative**
 - Involves filing an administrative complaint
 - Anyone who experiences discrimination (as defined by Title VI) can file an administrative.
- **Only recipients of federal financial assistance are subject to Title VI.**

Language Access & the Fair Housing Act

24



Fair Housing Act



- Prohibits discrimination based on national origin – applies to most housing providers, including private
- Case law unsettled on question of whether it covers language as national origin discrimination.
- However, HUD recently filed and settled a complaint against a private housing company for having a written policy requiring prospective tenants to speak English unassisted. HUD based the complaint on national origin discrimination under the Fair Housing Act.

http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-006

Contact



Renee Williams
Staff Attorney
National Housing Law Project
rwilliams@nhlp.org
(415) 546-7000, ext. 3121