

Housing Rights of Limited English Proficient Survivors

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HOUSING JUSTICE

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GoToWebinar Interface

1. Viewer Window

2. Control Panel

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Housekeeping

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- Materials were previously e-mailed to participants, and will be sent again (along with evaluations) after the webinar.
- Materials and a recording of today's webinar will be posted online at: www.nhlp.org/OVWgrantees
- MCLE certificates will be emailed to California attorneys.
- **Poll: Which best describes you?**

Goals for Today

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- Discuss language access in the context of domestic violence
- Review protections for limited English proficient (LEP) survivors who reside in federally subsidized housing
- Discuss cases and settlements
- Outline best practices

Language Access and Domestic Violence Survivors: An Overview

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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

Limited English Proficiency and DV Survivors

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- Immigrant women are disproportionately impacted by domestic violence (HUD memo 2011)
 - <http://portal.hud.gov/hudportal/documents/huddoc?id=FHEODomesticViolGuidEng.pdf>
- Abusers have been known to prevent immigrant survivors from learning English in an attempt to maintain control.
 - *See, e.g.,* Safe Voices, “Refugee & Immigrant Communities,” available at: <http://www.safevoices.org/refugee.php>
- National Immigrant Women’s Advocacy Project issued a report detailing challenges faced by LEP survivors.
 - <http://www.niwap.org/reports/Police-Response-U-Visas-Language-Access-Report-4.6.13.pdf>

LEP and Domestic Violence Survivors: NIWAP Study (2013)

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- Responding police officers could not communicate with LEP survivors and therefore would often fail to complete a police report despite visible signs of abuse.
- Responding officers would sometimes only converse with an English-speaking abuser and not the survivor.
- Responding officers would seek interpretation assistance from friends, relatives, neighbors, or minor children.

Examples of Housing Issues for LEP Survivors

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- A building manager requires an LEP survivor's child to act as an interpreter.
- An LEP survivor is not provided with a translated domestic violence certification form.
- An LEP survivor is evicted without receiving translated notice of her rights under VAWA 2013.

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)
- Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11(d) (federal housing protections)

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 participating 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)

Ana

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- Over the past few months, Ana's abuser has been stealing the money she needs to make rent payments. As a result, Ana becomes several months behind on the rent for her apartment.
- Ana receives an eviction notice, in English, which she cannot read because she reads and speaks Spanish only.
- **Poll: Has a Title VI violation occurred?**

Ana (continued)

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- Answer: It depends.
- You would need to find out whether Ana’s housing receives any federal financial assistance.
 - Recipients of federal financial assistance are subject to Title VI requirements.
- If Ana’s housing does receive federal financial assistance, it’s likely that a Title VI violation occurred here – but, this determination depends on additional factors, which we’ll discuss.
- If there is no federal financial assistance, check to see if there are any state or local protections that may apply.

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).
- Guidance states that the quality/accuracy of language assistance in a women’s shelter should be “extraordinarily high.”
- Issues with utilizing family, friends, informal interpreters
 - Conflict of interest, competency, and privacy concerns
 - Example of DV incident: Guidance calls use of family/informal interpreters inappropriate

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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| <ul style="list-style-type: none"> • Leases <ul style="list-style-type: none"> • Multifamily program model leases • Eviction/termination notices • Consent/complaint forms • Intake forms • Notices detailing rights, or the loss/denial/decrease in benefits or services | <ul style="list-style-type: none"> • 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/resources are limited
 - 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

VAWA 2013 LEP Housing Protections

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- VAWA 2013 provides expanded housing protections for survivors.
- Housing providers covered by VAWA 2013 will be required to provide notice describing VAWA rights, along with a VAWA self-certification form, in three instances:
 - Denial
 - Admission
 - Termination/Eviction
- Notice, together with the self-certification form, must be provided “in multiple languages” consistent with HUD LEP Guidance and E.O. 13166.
- HUD is currently finalizing the notice.
- Each federal agency with VAWA-covered housing programs is responsible for developing its own self-certification form.

USDA (RD) LEP Guidance

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- Largely mirrors the HUD LEP Guidance
- 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 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, 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:

- Hazelton (PA) Housing Authority (2015)
 - Agreement to settle allegations that the housing authority, despite having a language access plan, 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 audit
- State of Nebraska (2014)
 - Agreement to address finding that state had not monitored its sub-recipients for Title VI compliance
- Additional examples in materials.

LEP Cases: Fair Housing Act

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- Page Edmunds III (2015)
 - Discrimination charge by HUD where landlord did not want to rent to family with a household member perceived to be LEP
 - DOJ has 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 told plaintiff to “learn English.” However, court granted motion to dismiss on disparate impact claims.
- Additional examples in the materials.

Fay

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- Fay, who is LEP, needs to request a transfer from her current public housing unit because of threats by her abusive ex-husband.
- When Fay arrives at the housing authority to inquire about moving units, a staff member tells her to ask her 12-year-old son, who speaks English fluently, to act as an interpreter.
- The staff person then told the son that his mother should really learn to speak English.
- **What LEP legal protections have been violated here, if any?**

Fay (cont.) – Likely Violations

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- **Title VI violation**
 - HUD LEP Guidance
 - ✦ “In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate translations.”
 - Generally speaking, oral interpretation in some form should be made available.
- **FHA violation**
 - The staffer’s remark is likely a violation of the Fair Housing Act’s prohibition of national origin discrimination.

Best Practices for Serving LEP Survivors

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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**
 - Some survivors 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**

Thank You!

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