

Federal Housing and Language Access Rights of Limited English Proficient Survivors

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NATIONAL HOUSING LAW PROJECT
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HOUSING JUSTICE

National Housing Law Project

GoToWebinar Interface

1. Viewer Window

2. Control Panel

The screenshot displays the GoToWebinar interface. On the left is the 'Viewer Window' titled 'Give Online Punch' by 'CB Presentations'. It includes contact information: Dial: (805) 879-4135, Access Code: 105-748-644, and Audio PIN: 74. A small video thumbnail shows 'Corena Bahr, CEO and Founder, CB Presentations'. On the right is the 'Control Panel' with 'Audio Mode' set to 'Use Telephone'. It lists the same dial and access code, and highlights the 'Audio PIN: 74'. Below the audio settings is a 'Questions' section with a 'Questions Log' and an input field for questions. The Windows taskbar at the bottom shows the time as 4:11 PM.

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
- Provide an overview of existing legal authority for federal housing protections for limited English proficient (LEP) survivors, including the new LEP housing protections in VAWA 2013
- Discuss who must provide language assistance
- Describe best practices for advocates

Language Access and Domestic Violence Survivors: An Overview

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Language Access

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- The term “language access” generally describes efforts to bridge language barriers for persons with limited English proficiency (“LEP” persons).
- One primary goal of language access is to ensure that people can obtain essential services (such as housing) despite difficulties communicating in English.

“Limited English Proficiency” (LEP) Defined

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- 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.”
 - A limited ability to communicate in English is directly tied to one’s national origin.
- The term “LEP” has also been used to define people who speak English “less than very well.”
 - Term used in relation to Census /American Community Survey data

LEP and Domestic Violence Survivors

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- 2011 U.S. Census estimates that approximately 25 million Americans speak English “less than very well.” This comprises about 8.7 percent of the U.S. population.
- 2011 HUD FHEO Memo: Immigrant women are disproportionately impacted by domestic violence.
- 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>

LEP and Domestic Violence Survivors (cont.)

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- 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>
 - Responding police officers could not communicate with LEP survivors and, as a result, officers would often fail to complete a police report despite visible signs of abuse.
 - In cases where there was an English-speaking abuser, responding officers would at times only converse with the 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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- An LEP survivor is not provided with a translated domestic violence certification form.
- A project-based Section 8 manager requires an LEP survivor's child to act as a translator.
- A survivor who only understands Spanish 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
- *Lau v. Nichols*, 414 U.S. 563 (1974)
- Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 F.R. 50121 (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 F.R. 2732 (Jan. 22, 2007)

Federal Legal Authority (cont.)

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- USDA, “Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency,” 77 F.R. 13980 (Mar. 8, 2012) (Proposed Guidance).
- Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013), § 601 (to be codified at 42 U.S.C. § 14043e-11(d)) (housing protections).
- Fair Housing Act, 42 U.S.C. § 3604, *et seq.*

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.
- 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

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- U.S. Supreme Court case from 1974
 - 414 U.S. 563 (1974)
- The Court ruled 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

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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 creating language access plans

Who Must Provide Language Access

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- Title VI applies to all “federally conducted or assisted programs.”
- Examples of recipients of federal financial assistance include
 - Federal agencies, such as HUD and USDA (*See lep.gov*)
 - Public housing authorities and project-based Section 8 owners
 - Recipients of CDBG, HOME, and HOPWA funds
 - USDA/Rural Development programs
 - HUD programs listed at: U.S. Dep’t of Housing and Urban Dev., “List of Federally Assisted Programs,” 69 F.R. 68700 (Nov. 24, 2004).
- Title VI applies to the whole entity if one part receives federal financial assistance.

Who Must Provide Language Access (cont.)

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- Places/programs where Title VI does not apply:
 - Private housing
 - Private landlords participating in the tenant-based Section 8 voucher program (HUD’s stated position)
- However, if a housing provider receives any funding that is covered by Title VI, then that provider must ensure language access.

Who Must Provide Language Access (cont.)

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- **Unclear** as to whether Title VI applies:
 - Low Income Housing Tax Credit (LIHTC) program
 - There has been no clear guidance from the U.S. Treasury Department, which administers the program. HUD has indicated that Title VI likely does not apply, but defers to the Treasury Dept.
 - Exception: American Recovery and Reinvestment Act of 2009 (ARRA) funds are subject to Title VI requirements.

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
 - Private plaintiffs cannot bring disparate impact claims under Title VI; however, private plaintiffs can still bring intentional discrimination claims under Title VI post-*Sandoval*.
 - Opinion did not reach merits of language access issue.

Sandoval and Title VI (cont.)

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- As language discrimination claims under Title VI are often disparate impact claims, advocates post-*Sandoval* should consider alternatives to litigation, such as filing HUD administrative complaints.

Language Access Obligations Post-*Sandoval*

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- In October 2001, DOJ released 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

Hypo 1 - Marie

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- Marie, an LEP DV survivor who speaks Spanish, is a project-based Section 8 tenant.
- James, the abuser, controls their joint bank account, and has made Marie's money inaccessible.
- Marie receives an eviction notice, in English, which she cannot read.
- Upon going to the property office, staff tells her that bilingual staffers are unavailable, and, therefore, she should bring in her son to translate.
- **Has a Title VI violation occurred here?**

Answer

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- Yes, it is very likely that the landlord violated Title VI.
- Project-based Section 8 landlords are obligated to provide meaningful language assistance under Title VI.
- The eviction notice is a "vital document" and should have been translated.
- The HUD LEP Guidance disfavors the use of family members as translators, especially minor children.
- Additionally, the landlord may have violated VAWA 2013 by not advising Marie of her rights in her language upon receipt of the eviction notice.

HUD LEP Guidance

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- Pursuant to E.O. 13166, HUD issued its Final LEP Guidance in 2007
 - HUD “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 72 F.R. 2732 (Jan. 22, 2007).

HUD LEP Guidance (cont.)

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- 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: Four-Factor Analysis

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- **Factor #1**
Number of LEP persons in the area served/eligible service population
- **Factor #2**
Frequency of contact with LEP persons, including an assessment of potential clients not currently served
- **Factor #3**
Importance of program/activity
- **Factor #4:**
Costs of providing language access, given available resources

HUD LEP Guidance: Oral Interpretation

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- **Must always be available**
 - The absence of a large language community in a given area does not matter.
- **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 (i.e., connecting with a language hotline).**

HUD LEP Guidance: Vital Documents

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- Provide written translation of “vital documents”
- “Vital documents” - 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 the program, information, encounter, or service involved” and
 - “consequence to the LEP person if the information in question is not provided accurately or in a timely manner”
 - Ex: Notice sent to residents about a recreational activity considered less vital than notice of eviction

Vital Documents (cont.)

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- HUD has labeled these documents as “vital”:
 - HUD Model Leases
 - Model Lease for Subsidized Programs (Family Model Lease)
 - Model Lease for Section 202/8 or Section 202 PACS
 - Model Lease for Section 202 PRACS
 - Model Lease for Section 811 PRACS
- HUD has stated that the following documents *can* be “vital,” depending on the circumstances:
 - Consent and Complaint forms
 - Housing application forms
 - Written notices of eligibility criteria, rights, denial, loss, or decrease in benefits/services
 - Notices that advise LEP persons of free language assistance

HUD LEP Guidance: Safe Harbor

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

HUD LEP Guidance: Safe Harbor (cont.)

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- Funding recipient demonstrates “strong evidence of compliance” with written translation obligations if:
 - The recipient provides written translation of vital documents for all LEP language groups that make up 5 percent of the target population (or 1,000 persons, whichever is less), while orally interpreting other documents; OR
 - In the event that fewer than 50 LEP persons in a given language group constitute 5 percent of the target population, the funding recipient does not translate vital documents but provides written notice that free oral interpretation is available.

HUD LEP Guidance: Language Assistance/Access Plans

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- 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

VAWA 2013 LEP Housing Protections

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- Under VAWA 2013, PHAs and other housing programs covered by the statute must provide a notice developed by HUD describing VAWA rights “in multiple languages.” The translated notice must be provided to an applicant/tenant in the following three instances:
 - (1) Denial.**
When an application for a program covered by VAWA is denied
 - (2) Admission.**
When an applicant is admitted to a housing program covered by VAWA
 - (3) Termination of assistance/Eviction.**
When a tenant is notified of termination of housing benefits or eviction from a housing program covered by VAWA

VAWA 2013 LEP Housing Protections (cont.)

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- This notice under VAWA 2013 must be translated in accordance with both the HUD LEP Guidance as well as Executive Order 13166.
- Note: VAWA 2013 covers more housing programs than the HUD LEP Guidance or E.O. 13166.
 - Unclear how this issue will be resolved

Hypo 2 - Sandi

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- Sandi is an LEP public housing tenant who speaks Vietnamese and has an abusive ex-boyfriend, Abe.
- Abe repeatedly broke into Sandi's apartment and damaged the unit when Sandi tried to break up with him.
- Sandi received a notice of eviction in Vietnamese due to the damage to the unit, but no other documentation.
- **Has a violation of VAWA 2013 occurred here?**

Answer

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- Assuming HUD has published the Notice describing VAWA rights, then yes, a violation of VAWA 2013 has occurred.
- The landlord should have provided a notice in Vietnamese advising Sandi of her housing rights under VAWA 2013 when she received her eviction notice.
- Furthermore, under VAWA, Sandi cannot be evicted due to damage in the unit that resulted from acts of domestic violence.

USDA (RD) Proposed LEP Guidance

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- 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

Fair Housing Act

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- Prohibits discrimination based on national origin, and applies to most housing providers, **including private**
- Can be asserted in the courts, as well as through the HUD administrative complaint process

Courts

- Case law remains unsettled on whether language discrimination constitutes national origin discrimination.

HUD Administrative Process

- HUD recently filed and settled a complaint against a private housing company for having a written policy requiring prospective tenants to speak English unassisted.
http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-006

Best Practices for Survivor Advocates

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Advocating Best Practices

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- **Avoid 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.
 - Work with your local PHA and police department to minimize the use of untrained translators.
- **Be aware of how cultural norms may impact translation.**
 - For example, some survivors may not be willing to discuss domestic abuse or sexual assault with a male interpreter, or at all.

Advocating Best Practices (cont.)

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- **Encourage your local PHA to use free resources like “I Speak” cards to identify LEP individuals of non-widely spoken languages, or materials already translated by HUD (available on HUD’s website).**
 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep
- **Work with your PHA to establish a “language assistance plan” (LAP). Also, ensure that your shelter or transitional housing provider has engaged in the four-factor analysis and established a LAP.**

Advocating Best Practices (cont.)

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- Check to see what protections for LEP persons exist under state and local law. These protections may be more protective than federal law, or provide additional enforcement mechanisms.
- Use the current AI (future AFH) and other housing-related planning processes to submit comments about how jurisdictions are handling language access issues.
 - San Francisco AI comment letter example in Information Packet

Advocating Best Practices (cont.)

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- Work with your local PHA to ensure that the language access provisions in VAWA 2013 are appropriately implemented.
 - Starting point: VAWA 2005 already required a notice of rights as well. 24 C.F.R. § 5.2005(a).
- Reference legal authority such as the HUD LEP Guidance and E.O. 13166 at informal hearings with your housing authority if you have an LEP client who did not receive appropriate language assistance.
- Consider filing an administrative complaint with HUD if a PHA or other housing provider refuses to provide language access.

Resources

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- NHLP's website for OVW grantees:
<http://nhlp.org/OVWgrantees>
- Webinar information packet:
 - Outline with an overview of federal LEP housing protections
 - Articles regarding language access and domestic violence
 - Administrative guidance text
 - Documents related to administrative advocacy

Contact Information

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