

Federal Housing Rights for Persons with Limited English Proficiency: Resources for Advocates



August 2013

The National Housing Law Project has created this information packet that provides materials for advocates who work with limited English proficient (LEP) survivors accessing or maintaining federally assisted housing. This information packet gives an overview of the federal housing rights of LEP individuals and discusses how these protections apply to survivors of domestic violence, sexual assault, dating violence, and stalking.

In March of 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Local public housing authorities (PHAs) and other federally-assisted housing providers have obligations under VAWA 2013, Title VI of the Civil Rights of 1964, and other federal legal authorities to ensure that LEP individuals have access to safe, affordable, and decent housing. Readers should view the materials in this packet as a starting point for advocacy with local institutions such as housing providers, local police, and the courts to improve services for survivors who cannot communicate effectively in English.

We hope that you find these materials helpful in aiding your LEP clients. If you have any questions regarding the housing rights of LEP survivors of domestic and sexual violence, please contact:

Karlo Ng
National Housing Law Project
(415) 546-7000 x 3117
kng@nhlp.org

Renee Williams
National Housing Law Project
(415) 546-7000 x 3121
rwilliams@nhlp.org

Attachments: Materials related to housing rights of LEP survivors

This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Housing Rights for Survivors with Limited English Proficiency: An Information Packet for Advocates

Contents

I. Outlines and Articles

- a. LEP Outline (featuring links to online resources) (updated August 2013).
- b. NHLP, “Housing Protections for Survivors with Limited English Proficiency,” OVW Grantee Newsletter (August 2013).
- c. NHLP, “New Report Describes Obstacles for Limited English Proficient Survivors Seeking Police Protection,” OVW Grantee Newsletter (July 2013).

II. Administrative Guidance/Agency Statements

- a. U.S. Dep’t of Housing & Urban Dev., “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).
- b. U.S. Dep’t of Housing & Urban Dev., “List of Federally Assisted Programs,” 69 Fed. Reg. 68700 (Nov. 24, 2004).
- c. U.S. Dep’t of Agriculture, “Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency,” 77 Fed. Reg. 13980 (Mar. 8, 2012) (Proposed Final Guidance).
- d. HUD LEP Guidance Q&A (Feb. 28, 2007).
- e. Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, DOJ, Memorandum Re: “Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)” (Oct. 26, 2001).
- f. Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, HUD, “Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)” (Feb. 9, 2011).

III. Executive Orders

- a. Exec. Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 Fed. Reg. 50121 (Aug. 16, 2000).

IV. Administrative Advocacy

- a. Sample LEP Four-Factor Analysis: Vacaville Housing Authority, Vacaville, California.
- b. Sample LEP Plan: Vacaville Housing Authority, Vacaville, California.
- c. HUD Press Release and Conciliation Agreement with Virginia Realty of Tidewater (Jan. 2013).
- d. San Francisco Analysis of Impediments to Fair Housing Choice Comment Letter and Response.
- e. Sample Title VI LEP Complaint to HUD (Form 903 Questions).

Part I:
Outline and Articles

LIMITED ENGLISH PROFICIENCY OUTLINE (Updated August 2013)

I. WHO ARE LEP PERSONS?

A. A limited English proficient (“LEP”) person is anyone:

1. who does not speak English as his/her primary language and who has a limited ability to read, write, speak, or understand English;¹ or
2. who speaks English “less than very well.”²

II. LIST OF LEGAL AUTHORITY REQUIRING LANGUAGE ACCESS

A. Statutes

1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*
2. Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. Law 113-4, 127 Stat. 54 (2013), § 601 (to be codified at 42 U.S.C. § 14043e-11(d)) (housing protections).
3. Fair Housing Act, 42 U.S.C. § 3604, *et seq.*

B. *Lau v. Nichols*, 414 U.S. 563 (1974).

C. Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 F.R. 50121 (Aug. 16, 2000).

D. Administrative Guidance

1. **HUD Final LEP Guidance:** U.S. Dep’t of Housing and Urban Dev., “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).
2. **USDA (Rural Development) Proposed Final Guidance:** U.S. Dep’t of Agriculture, “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).

¹ U.S. Dep’t of Housing and Urban Dev., “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).

² Language proficiency category used in the U.S. Census and American Community Survey

III. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND LANGUAGE ACCESS

- A. Prohibits discrimination on the basis of **national origin**
 - 1. Must provide equal services in scope and quality as those provided in English
 - 2. Cannot require a LEP person to provide her own interpreter
 - 3. State and local “English-only” laws do not excuse federally assisted programs from LEP compliance.
- B. Covers all entities receiving “federal financial assistance”
 - 1. Examples of programs receiving federal financial assistance **include**
 - a. Federal agencies, such as HUD and USDA
 - b. Public housing authorities and project-based Section 8 owners
 - c. Recipients of CDBG, HOME, and HOPWA funds
 - d. USDA/Rural Development programs
 - e. 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).
 - 2. Entities **not covered** under Title VI
 - a. Private housing, including landlords who accept tenant-based Section 8 Housing Choice Vouchers (except if other covered federal funds are received)
 - 3. Programs **likely not covered** under Title VI
 - a. Low Income Housing Tax Credit (LIHTC) program
 - a. Exception: LIHTC properties that received American Reinvestment and Recovery Act (ARRA) of 2009 funds
 - 4. Entities that receive **any** “federal financial assistance” are subject to LEP administrative guidance.
 - a. Housing providers that receive some funding covered by Title VI as well as additional funding not covered by the statute would still have LEP obligations under Title VI.

IV. *LAU V. NICHOLS*, 414 U.S. 563 (1974)

- A. In this decision, the U.S. Supreme Court ruled that a school district's failure to provide English language instruction denied meaningful opportunity to participate in a public educational program. This failure to provide language access constituted a violation of the Title VI prohibition against **national origin discrimination**.
- B. This case established the link between language discrimination and national origin discrimination under Title VI.
 - a. In 2012, a district court reaffirmed the link between national origin discrimination and language discrimination (*United States v. Maricopa County*, 915 F. Supp. 2d 1073, 1079-81 (D. Ariz. 2012)).

V. EXECUTIVE ORDER 13166, “IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY”

- A. Reaffirms the relationship between national origin and limited English proficiency
- B. Orders federal agencies and federally assisted programs to create plans to ensure language access
- C. Directs agencies and programs to work with LEP persons and their representatives when creating language access plans

VI. ADMINISTRATIVE GUIDANCE

A. HUD Final LEP Guidance

- 1. Recipients of federal funds must:
 - a. conduct a four-factor analysis;
 - b. develop a Language Assistance Plan (LAP); and
 - c. provide appropriate language assistance.
- 2. Four-factor analysis in determining LEP needs
 - a. Number of LEP persons from a particular language group eligible to be served or encountered
 - i. Examples of types of data:
 - 1. U.S. Census data (available online at [American FactFinder](#));
 - 2. data from school systems;
 - 3. community organizations; and
 - 4. state and local governments
 - b. Frequency of contact with LEP persons
 - c. Importance and nature of the program, activity, or service to LEP individuals
 - d. Resources available, including costs of providing LEP services
- 3. Written translation
 - a. Safe harbor provision for written translation only
 - i. Must provide translation of vital documents for language groups making up more than 5 percent of the population
 - 1. Doing so is viewed as “strong evidence of compliance”
 - ii. If the language group that meets the 5 percent threshold constitutes fewer than 50 people, then must provide translated written notice indicating that free oral interpretation of the written documents is available
 - b. Must translate vital documents
 - i. Vital documents are documents that “those that are critical for ensuring meaningful access by beneficiaries or potential beneficiaries”; additionally, the LEP Guidance states that whether a

document is “vital” may “depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.”

ii. The Office of Public and Indian Housing has identified the following non-exhaustive list of “vital” documents:

1. the tenancy addendum for the Section 8 voucher program,
2. Housing Assistance Payment contract,
3. Request for Tenancy Approval,
4. Authorization for Release of Information,
5. Family Self Sufficiency (FSS) Escrow Account worksheet,
6. Voucher Program, Statement of Homeownership Obligations,
7. FSS contract of participation and the document entitled “A Good Place to Live,” and
8. HUD has already [translated](#) the “How Your Rent is Determined” fact sheet into Spanish, Chinese, Korean, and Vietnamese.

iii. The HUD LEP Guidance identified other documents that may be “vital”:

1. Consent/complaint forms
2. Notices of eviction
3. Notices advising LEP persons of free language assistance
4. Intake forms
5. Hearing notices
6. Written notices of rights, denial, or a decrease in services or benefits
7. Leases/tenant rules
8. Applications to receive benefits/services or to participate in a program
9. Notices of public hearings, particularly those meeting Community Planning and Development’s citizen participation requirements

4. Oral Interpretation

- a. Can use bilingual staff
- b. Strongly discourage use of friends and family (conflict of interest, problems with candidness, etc.)
- c. Cannot use minor child as interpreter

5. Developing a Language Assistance Plan

- a. Identifying LEP persons who need language assistance and the specific language assistance that is needed;
- b. Identifying the points and types of contact the agency and staff may have with LEP persons;

- c. Identifying ways in which language assistance will be provided;
 - d. Conducting effective outreach to the LEP community;
 - e. Training staff;
 - f. Determining which documents and informational materials are vital;
 - g. Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
 - h. Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
 - i. Providing interpreters for large, medium, small, and one-on-one meetings;
 - j. Developing community resources, partnerships, and other relationships to help with the provision of language services; and
 - k. Making 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.
6. Examples of services/practices that assist LEP persons:
- a. Oral interpretation services;
 - b. Bilingual staff;
 - c. Telephone service lines interpreter;
 - d. Written translation services;
 - e. Notices to staff and recipients of the availability of LEP services;
 - f. Referrals to community liaisons proficient in the language of LEP persons; and
 - g. Language identification cards invite LEP persons to identify their own language needs.

B. RD Proposed Final Guidance

- 1. The RD LEP Guidance largely mirrors the HUD LEP Guidance.
- 2. Directs funding recipients to conduct the four-factor analysis, develop an LEP plan, translate vital documents, and provide oral interpretation and written translations

VII. FAIR HOUSING ACT (FHA)

- A. The FHA prohibits discrimination on the basis of national origin in the sale, rental, or financing (and associated terms, conditions, and privileges) of dwellings. 42 U.S.C. § 3604.
- B. However, the courts have not uniformly accepted a link between national origin discrimination and language discrimination under the FHA.
- C. The FHA has a broader scope than Title VI because it applies to private dwellings, not just federally-funded housing.
 - 1. Applies to almost all housing, with few, narrow exceptions

VIII. ENFORCEMENT

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

1. No private right of action under disparate impact cases brought under Title VI
2. Can *still sue under discriminatory intent theory* under Title VI
3. Some have suggested that this decision threw into question the relationship between national origin discrimination and language access, *however*:
 - a. DOJ wrote a 2001 memo affirming federal agencies' language access obligations under E.O. 13166 and Title VI post-*Sandoval*. See Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, DOJ, Memorandum Re: "Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)" (Oct. 26, 2001), available at: <http://www.justice.gov/crt/about/cor/lep/Oct26memorandum.pdf>
 - b. Federal agencies have continued to construe language access as a form of national origin discrimination (e.g., HUD Final LEP Guidance, 2007); and
 - c. Recently, one federal district court including language reaffirming the link between national origin discrimination and language discrimination (*United States v. Maricopa County*, 915 F. Supp. 2d 1073, 1079-81 (D. Ariz. 2012)).

B. Advocates can still file an administrative complaint with HUD.

1. Title VI can still be enforced by HUD for acts of language discrimination.
2. Additionally, advocates can allege national origin discrimination under the Fair Housing Act (FHA) in a HUD complaint.
 - a. Example: Virginia Realty of Tidewater Conciliation Agreement available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=OPADOC.PDF> (HUD filed and settled a complaint alleging national origin discrimination under the FHA when private landlord had a written policy prohibiting LEP persons from renting.)

IX. ADDITIONAL RESOURCES

A. Federal Government LEP Materials

1. <http://www.lep.gov> (federal government clearinghouse for LEP information)
2. <http://www.lep.gov/selfassesstool.htm> (a self-assessment tool for federal grantees to use in preparing LEP implementation plans)
3. <http://www.lep.gov/ISpeakCards2004.pdf> ("I Speak" card that allows organizations that serve LEP clients identify the specific language spoken by an LEP person)

B. LEP Statistics

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

(selected Census data regarding English proficiency)

2. <http://www.migrationinformation.org/Feature/display.cfm?ID=960> (page includes link to Excel spreadsheet with LEP data at the county level for all 50 states and D.C.)

C. HUD LEP Resources

1. <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm> (HUD LEP webpage that includes important information such as centrally translated documents)
2. http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq#q10 (HUD FAQ section that discusses the agency's Final LEP Guidance issued in 2007 and includes topics such as: vital documents, language access plans, and what the Guidance requires of recipients of federal funds)

FOR MORE INFORMATION

Contact Karlo Ng, kng@nhlp.org or Renee Williams, rwilliams@nhlp.org.

HOUSING JUSTICE

National Housing Law Project

Newsletter August 2013

Housing Protections for Survivors with Limited English Proficiency

Many survivors of domestic violence are limited English proficient (LEP). The term “LEP” describes persons whose first language is not English and who experience difficulty in reading, writing, or speaking English. While many survivors face considerable hurdles in obtaining safe, affordable housing, LEP survivors also must contend with language barriers when trying to communicate with local housing authorities, the courts, or police officers responding to a domestic violence incident. Therefore, advocates should familiarize themselves with the legal protections for LEP survivors living in or seeking housing.

Protections under Title VI

The main source of protections for LEP individuals exists under Title VI of the Civil Rights Act of 1964. Title VI prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin. In 1974, the U.S. Supreme Court, in *Lau v. Nichols*, ruled that refusing to provide meaningful language access constituted national origin discrimination under Title VI. The *Lau* decision established a link between national origin discrimination and language discrimination. Decades later, the nexus between national origin discrimination and language access, as established in *Lau*, remains good law. For example, in 2012, in *United States v. Maricopa County*, a federal district court discussed and reaffirmed this link under Title VI in a case involving the jail condi-

tions of Latino inmates.

Given this nexus, entities such as public housing authorities (PHAs), which receive federal financial assistance, have a legal obligation to ensure that appropriate translations or interpretations are provided to LEP individuals. In 2000, President Clinton signed Executive Order 13166, entitled “Improving Access to Services for Persons with Limited English Proficiency.” This Executive Order requires federal agencies to devise plans as well as administrative guidance to ensure that their funding recipients—as well as the agencies themselves—comply with Title VI. In 2007, HUD issued its final LEP Guidance (HUD LEP Guidance), which outlined a series of steps that recipients of HUD funding, including PHAs, should take to ensure Title VI compliance. USDA issued similar proposed guidance for its funding recipients in 2012. These requirements include conducting a four-factor analysis to assess the need for language assistance; creating a language assistance plan based on the findings of the four-factor analysis; translating all vital documents (i.e., those documents necessary to ensure meaningful access); and always offering oral interpretation, if needed.

In addition, in 2004, HUD published a list of housing programs administered by the agency that must comply with Title VI. This list includes public housing, Section 8 vouchers, project-based Section 8, Housing Opportunities for Persons with AIDS (HOPWA), Shelter Plus Care, programs receiving Community Development Block Grant (CDBG) funds, Emergency Shelter Grants, and HOME funds, among others.

(Continued on page 2)

IN THIS ISSUE

Housing Protections for Survivors with Limited English Proficiency

Technical Assistance Question of the Month: Eviction or Subsidy Termination Due to Damage to Unit Caused by Abuser

(Continued from page 1)

Limitations of Title VI Protections

While Title VI protects LEP individuals by prohibiting discrimination on the basis of national origin, there are limits to this safeguard. In situations where there has been a general failure to provide language assistance to several language groups, a few courts have held that this did not constitute national origin discrimination because one nationality was not being singled out. For example, in 2012, in *Partida v. Page*, a federal district court in California found that the LEP plaintiff did not sufficiently allege national origin discrimination under Title VI, concluding that she failed to show that the defendants refused her medical treatment because she was LEP or born in Mexico. The court added that the plaintiff did not demonstrate that the defendants treated her differently from U.S.-born or English-speaking patients.

Furthermore, in 2001, the U.S. Supreme Court decided *Alexander v. Sandoval*, a case about the failure of a state to offer driver's license exams in languages other than English. In this case, the Supreme Court decided that private plaintiffs could only bring a lawsuit under Title VI by alleging intentional discrimination. Previously, private plaintiffs also could sue under Title VI by using a legal doctrine known as "disparate impact," in which a policy that does not explicitly discriminate could still be unlawful if it disproportionately discriminates against individuals based on race, color or national origin.

Therefore, after the *Sandoval* decision, if private plaintiffs wish to make a Title VI claim in court, they must allege that the defendant intentionally discriminated against them. Showing intentional discrimination can be difficult, as evidence demonstrating this intent is often hard to obtain. However, any person who believes that she has been subject to Title VI violations in the context of a HUD housing program can still file an administrative complaint with her regional HUD Office of Fair Housing and Equal Opportunity alleging either intentional discrimination or disparate impact under Title VI. As a federal agency,

HUD retains the authority to bring Title VI claims based on a disparate impact theory. HUD's LEP Guidance confirms that federal regulations prohibiting conduct that creates a disparate impact in violation of Title VI remain valid post-*Sandoval*.

Finally, there are limitations to the types of housing covered by Title VI, and, therefore, obligations for providing language access for LEP persons under this statute. Title VI only applies to housing that receives any sort of federal financial assistance. Thus, private landlords who do not receive federal financial assistance do not have obligations under Title VI. Additionally, according to HUD's LEP Frequently Asked Questions, landlords who accept Section 8 Housing Choice Program Vouchers are not bound by Title VI unless they receive additional federal funding from a program covered by the statute.

Furthermore, it is unclear whether Low Income Housing Tax Credit (LIHTC) units that do not receive Project-based Section 8, funds from the American Recovery and Reinvestment Act of 2009, or any other federal financial assistance, are subject to Title VI, since it is uncertain whether Tax Credits constitute "federal financial assistance." The Department of Treasury, which administers the LIHTC program, has not issued guidance on this question.

The Fair Housing Act

Title VIII of the Civil Rights Act of 1964, commonly known as the Fair Housing Act (FHA), also prohibits discrimination on the basis of national origin. Unlike Title VI, which has a scope beyond housing, the FHA specifically prohibits discrimination in the rental or sale, or in the terms, conditions, or privileges of the rental or sale of dwellings.

The courts have not firmly established the link between national origin discrimination and language access under the FHA. For example, in *Vialez v. New York Housing Authority*, a federal district court in New York reasoned that the housing authority's failure to provide Spanish translation

(Continued on page 3)

(Continued from page 2)

was not discrimination on the basis of national origin because “[a]ll non-English speaking people are equally affected by English-only forms,” and, therefore, there is “no distinct impact on those of Hispanic origin.” The court also found that in claiming language discrimination, the plaintiff did not allege discrimination against a category of persons protected by the FHA. According to the court, discrimination on the basis of language did not violate the FHA.

However, HUD is willing to recognize the relationship between national origin discrimination and language access under the FHA through administrative enforcement. In January 2013, HUD settled a complaint with a private realty company in Virginia based on allegations of discrimination against an LEP prospective tenant. During its investigation of the allegations, HUD found that the realty company had a written policy requiring potential renters to communicate in English without any outside assistance. In its complaint, HUD alleged that the realty company, by having such a policy in place, violated the FHA by discriminating on the basis of national origin. The conciliation agreement required the realty company to adopt an LEP plan under which the company must provide interpretation and translation services for both current tenants and rental applicants. The agreement also directed the company to pay over \$80,000 to settle the claims and to adopt a non-discrimination policy.

Protections under VAWA 2013

Congress recently took a step to address language barriers faced by domestic violence survivors by including a new language access provision in the 2013 reauthorization of the Violence Against Women Act (VAWA 2013). VAWA 2013’s housing provisions require that public housing agencies (PHAs) and owners and managers of programs covered by the statute provide a notice, developed by HUD, to applicants and tenants regarding VAWA housing rights (1) when an applicant is denied residency; (2) when an applicant is admitted; and (3) with any notification of eviction

Resources

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 \(Jan. 22, 2007\)](#).

HUD, [Questions and Answers from February 28, 2007 Limited English Proficiency Meeting](#).

HUD, [Limited English Proficiency \(LEP\) Frequently Asked Questions](#).

HUD, [List of Federally Assisted Programs, 69 Fed. Reg. 68700 \(Nov. 24, 2004\)](#).

Conciliation Agreement between HUD and Virginia Realty Company of Tidewater, [FHEO Case No. 03-11-0424-8 \(Jan. 3, 2013\)](#).

NHLP, DOJ-OVW Newsletter, [VAWA 2013 Continues Vital Housing Protections for Survivors and Provides New Safeguards \(April-May 2013\)](#).

or termination of assistance. This notice must be accompanied by an agency-approved self-certification form, must be available in multiple languages and be consistent with HUD’s LEP Guidance.

Conclusion

The information in this article provides a starting point for advocates working with LEP survivors experiencing difficulties with language access and housing rights. Advocates looking to enforce language access rights in the HUD housing context should consider the possibility of doing so administratively through HUD. This mechanism can be a particularly useful tool for challenging violations under VAWA, Title VI and the FHA. P

HOUSING JUSTICE

National Housing Law Project

Newsletter July 2013

New Report Describes Obstacles for Limited English Proficient Survivors Seeking Police Protection

A recent report issued by the National Immigrant Women's Advocacy Project (NIWAP), entitled "National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access," highlights the difficulties that limited English proficient, immigrant survivors of crimes such as domestic violence, dating violence, sexual assault, and stalking often experience in reporting abuse to the police and interacting with the justice system. Individuals who are "limited English proficient" (LEP) are people whose primary language is not English and who have a limited ability to communicate in English. The linguistic and cultural barriers between LEP immigrant survivors and local police departments can create serious safety concerns for survivors trying to protect themselves. Furthermore, NIWAP's report shows that immigrant survivors encounter difficulties in obtaining certification for U Visas, which confer temporary immigration status to survivors who cooperate with law enforcement. The report surveyed 722 service providers that assist immigrant survivors of crimes, including domestic violence, sexual assault, dating violence, stalking, kidnapping, and human trafficking. Survey respondents provided information from over 22,000 cases.

Lack of Language Access for LEP Survivors

NIWAP's survey found that police officers responding to calls made by immigrant survivors often encountered basic difficulties – including identifying the language spoken by the survivor. When LEP survivors called the police, the responding officer improperly identified the survivor's language in more than half of the cases analyzed. Because the police officers could not effectively communicate with survivors, these officers often failed to complete police reports when responding to calls, even in situations where the survivors bore visible injuries or other signs of abuse. For instance, in about 84 percent of the cases in which the police did not complete a report, service providers reported that survivors had visible injuries, torn clothing, or property in disarray.

Additionally, the report noted that language barriers between survivors and responding officers had other consequences. According to the report, when responding to a call from an LEP immigrant survivor, police officers would obtain a written statement in the survivor's native language; rely on the survivor's limited English, instead of obtaining qualified interpretation assistance; or not use an interpreter at all. The report identified one case in which a police officer told a survivor requesting an interpreter: "Come on, you can speak English, just tell me what happened." Furthermore, the report noted that in some instances where a qualified interpreter or language

(Continued on page 2)

IN THIS ISSUE

Survivor Sues Municipality for Enforcing Nuisance Ordinances Against Survivors

Report Shows Survivors with Limited English Proficiency Face Obstacles Seeking Police Protection

(Continued from page 1)

line was not utilized, the police would only converse with the English-speaking abuser and not the survivor.

The study also found that police officers sought interpretation assistance from the children of the victim or of the perpetrator, friends or neighbors, adult relatives, or other people claiming to know the victim's language. Language access advocates strongly discourage using friends or relatives (particularly minor children) as interpreters due to concerns about confidentiality, as well as concerns over the inability to ensure the accuracy of the translation. In addition, the report noted that the U.S. Department of Justice has cautioned against using children as interpreters in situations involving domestic violence because doing so can result in "psychological harm from having to recount details of the crime." The report also highlighted that unqualified interpreters can "generalize statements due to misunderstanding, lack of patience with the victims or because they did not understand the victim's dialect."

The report described other issues confronting LEP immigrant survivors, such as female survivors' discomfort in discussing sexual assault or domestic abuse with male interpreters. The survey found that male interpreters would often not believe the victim's statements or "generalize or leave out crucial information in the translation due to their own biases regarding issues of domestic violence or sexual assault." Respondents also reported that female interpreters were not sufficiently available. According to the report, the absence of effective language access for LEP immigrant survivors often impacted a survivor's decision to report crimes such as family violence, sexual assault, or human trafficking. The survey suggested that a lack of culturally appropriate interpretation made reporting crime considerably more difficult for the survivor. However, the report also noted that when service providers had ongoing relationships with law enforcement, the likelihood of survivors receiving necessary language assistance increased.

Resources

A copy of the NIWAP report is available at: http://www.njcbw.org/documents/PoliceResponseUVisasLanguageAccessReport-NIWAP41613FINAL_000.pdf

National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law
<http://www.wcl.american.edu/niwap/>

U.S. Department of Justice, "Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field," (Sept. 21, 2004), available at: <http://www.justice.gov/crt/about/cor/lep/Final%20Tips%20and%20Tools%20Document.%209%2021%2004.pdf>

New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 F.R. 53014 (Sept. 17, 2007), available at: <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-123038/0-0-0-133528/0-0-0-137708.html>

U.S. Department of Homeland Security, "U Visa Law Enforcement Certification Resource Guide," available at: <http://www.dhs.gov/xlibrary/assets/>

Misconceptions About U Visa Certification

NIWAP's report further focused on immigrant survivors obtaining U Visas, a type of temporary immigration status available to survivors of certain crimes who cooperate with authorities in the investigation and prosecution of those crimes. Such qualifying crimes include domestic violence, sexual assault, rape, incest and trafficking. To obtain a U Visa: (1) the survivor must have endured physical or mental abuse as a result of a qualifying

(Continued on page 3)

(Continued from page 2)

crime; (2) the survivor must have information about the qualifying crime; (3) the survivor must cooperate with law enforcement in the investigation and/or prosecution of the qualifying crime; and (4) the crime must have occurred in the United States, or violated U.S. law. Only certain entities, such as prosecutors or police departments, can provide U Visa certification. The report found that misinformation exists among entities eligible to certify U Visas, specifically concerning the reasons for denying certification. For example, some survey respondents stated that their clients were denied U Visa certification because the perpetrator was not prosecuted; however, Department of Homeland Security (DHS) policy maintained that no prosecution was required for the cooperating survivor to receive certification.

Advocates and Authorities Should Collaborate

A significant takeaway from this report was the importance of collaboration between survivor advocates and local authorities. Advocates should strive to establish working relationships with police and other government entities as means of beginning to address the many issues facing immigrant survivors outlined in the study. As the report states, "A working partnership between the law enforcement agencies and victim services programs is essential in ensuring that all parties are familiar with immigrant rights, and to ensure that immigrants have access to justice system assistance." P

Part II:

Administrative

Guidance/Agency Statements



Federal Register

**Monday,
January 22, 2007**

Part II

Department of Housing and Urban Development

**Final Guidance to Federal Financial
Assistance Recipients Regarding Title VI
Prohibition Against National Origin
Discrimination Affecting Limited English
Proficient Persons; Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4878-N-02]

**Final Guidance to Federal Financial
Assistance Recipients Regarding Title
VI Prohibition Against National Origin
Discrimination Affecting Limited
English Proficient Persons**

AGENCY: Office of the Assistant
Secretary for Fair Housing and Equal
Opportunity, HUD.

ACTION: Final notice.

SUMMARY: The Department of Housing
and Urban Development (HUD) is
publishing the final "Guidance to
Federal Financial Assistance Recipients
Regarding Title VI Prohibition Against
National Origin Discrimination
Affecting Limited English Proficient
(LEP) Persons" (Guidance) as required
by Executive Order (EO) 13166. EO
13166 directs federal agencies that
extend assistance, subject to the
requirements of Title VI, to publish
Guidance to clarify recipients'
obligations to LEP persons. This final
Guidance follows publication of the
proposed Guidance on December 19,
2003.

DATES: Effective Date: February 21,
2007.

FOR FURTHER INFORMATION CONTACT:
Pamela D. Walsh, Director, Program
Standards and Compliance Division,
Office of Fair Housing and Equal
Opportunity, Department of Housing
and Urban Development, 451 Seventh
Street SW., Room 5226, Washington, DC
20410, telephone: (202) 708-2904 (this
is not a toll-free number). Persons with
hearing or speech impairments may
access this number via TTY by calling
the toll-free Federal Information Relay
Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

**I. Background—December 19, 2003,
Proposed Guidance**

On December 19, 2003 (68 FR 70968),
HUD published proposed Guidance to
help recipients of federal financial
assistance take reasonable steps to meet
their regulatory and statutory
obligations to ensure that LEP persons
have meaningful access to HUD
programs and activities. Under Title VI
of the Civil Rights Act of 1964 (Title VI)
and its implementing regulations,
recipients of federal financial assistance
have a responsibility to ensure
meaningful access to programs and
activities by LEP persons. Specifically,
EO 13166, issued on August 11, 2000,
and reprinted at 65 FR 50121 (August
16, 2000), directs each federal agency

that extends assistance subject to the
requirements of Title VI to publish
guidance for its respective recipients
clarifying this obligation.

This Guidance must adhere to the
federal-wide compliance standards and
framework detailed in the Department
of Justice (DOJ) model LEP Guidance,
published at 67 FR 41455 (June 18,
2002). HUD's proposed Guidance
followed the established format used in
the DOJ model, and solicited comments
on the Guidance's nature, scope, and
appropriateness. Specific examples set
out in HUD's Guidance explain and/or
highlight how federal-wide compliance
standards are applicable to recipients of
HUD's federal financial assistance.

**II. Significant Differences Between the
December 19, 2003, Proposed Guidance
and This Final Guidance**

This final Guidance takes into
consideration the public comments
received on the December 19, 2003,
proposed Guidance. There are no
significant changes between the
proposed Guidance and this final
Guidance. However, for purposes of
clarification, several minor changes
were made in Appendix A, and a new
Appendix B has been added to the
Guidance. Appendix B, "Questions and
Answers (Q&A)," responds to frequently
asked questions (FAQs) related to
providing meaningful access to LEP
persons.

**III. Discussion of Public Comments
Received on the December 19, 2003,
Proposed Guidance**

The public comment period on the
December 19, 2003, proposed Guidance
closed on January 20, 2004. On January
20, 2004, the comment period was
extended to February 5, 2004. HUD
received 21 comments. Comments were
received from public housing agencies,
state housing agencies, private sector
housing providers, organizations serving
LEP populations, organizations
advocating that English be the official
U.S. language, and trade associations
representing public housing agencies.
HUD also received more than 7,000
postcards from concerned citizens who
opposed the Guidance as an "onerous
burden" on small and underfunded
organizations and groups that advocated
adoption of English as the official
language of the United States.

The comments expressed a wide
range of viewpoints. Many of the
comments identified areas of the
Guidance for improvement and/or
revision. Other comments objected to
sections of the Guidance or to the
Guidance in its entirety. The most
frequent dissenting comments involved:

(1) Opposition to the *Alexander v. Sandoval* Supreme Court decision [53 U.S. 275 (2001)]; (2) enforcement and compliance efforts (including legal enforceability, validity of housing-related legal documents, and vulnerability of recipients); (3) applicability of the Guidance (including HUD's provision of clearer standards regarding when the provision of language services are needed); (4) cost considerations; (5) competency of interpreters (including use of informal interpreters) and translators; (6) vulnerability of recipients as a result of this Guidance (including "safe harbors"); and (7) consistency of translations (including standardized translations of documents).

In addition, four commenters stated that HUD did not solicit the input of stakeholders for the proposed Guidance, despite the mandate of EO 13166. These and other comments are discussed in greater depth below. This preamble presents a more detailed review of the most significant concerns raised by the public in response to the December 19, 2003, proposed Guidance and HUD's response to each concern. The preamble's sections are:

- Section IV, which discusses comments regarding the *Sandoval* Supreme Court decision (including enforcement under Title VI);
- Section V, which discusses comments regarding enforcement and compliance efforts (including legal enforceability, validity of housing-related legal documents, and vulnerability of recipients);
- Section VI, which discusses comments regarding applicability of the Guidance (i.e., clearer standards regarding when language services can reasonably be expected to be provided);
- Section VII, which discusses comments regarding cost considerations;
- Section VIII, which discusses comments regarding competency of interpreters (including use of informal interpreters) and translators;
- Section IX, which discusses comments regarding vulnerability of recipients as a result of this Guidance (including "safe harbors");
- Section X, which discusses comments regarding consistency of translations (including standardized translations of documents); and
- Section XI, which discusses other comments.

**IV. Comments Regarding the *Sandoval*
Supreme Court Decision (Including
Enforcement Under Title VI)**

Comment: Several commenters wrote that the proposed Guidance was

unsupported by law and, therefore, urged its withdrawal. The commenters expressed disagreement with the HUD and DOJ positions on the holding in *Alexander v. Sandoval*. *Sandoval* precludes individuals from bringing judicial actions to enforce those agency regulations based on Title VI. The commenters wrote that federal agencies have no power to enforce such regulations through this Guidance because it would violate the *Sandoval* decision to use the Guidance to determine compliance with Title VI and Title VI's regulations.

HUD Response. HUD reiterates here, as it did in the proposed Guidance published on December 19, 2003, that its commitment to implement Title VI through regulations reaching language barriers is longstanding and is unaffected by the *Sandoval* decision. In its proposed Guidance, HUD stated that DOJ had disagreed with the interpretation voiced by the commenters, and in its final Guidance, HUD continues to take this position. The Guidance and the response to Appendix B, Q&As XV, XXIV, and XXV, state that the Supreme Court, in the *Sandoval* decision, did not strike down Title VI itself or Title VI's disparate impact regulations (at HUD, that would be its civil rights-related program requirements or "CRRPRs"), but only ruled that individuals could not enforce these Title VI regulations through the courts and could only bring such court action under the statute itself. The Guidance further states that because the Supreme Court did not address the validity of the regulations or EO 13166, that both remain in effect. Individuals may still file administrative complaints with HUD alleging Title VI and Title VI regulatory violations for failing to take reasonable steps to provide meaningful access to LEP persons.

Appendix B, Q&As II, III, and IV further clarify the requirements of both the EO and Title VI of the Civil Rights Act of 1964. These responses describe the obligations of federal agencies under the EO and how Title VI applies to situations involving discrimination against LEP persons. These Q&As explain that Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. Federally conducted programs and activities are required to meet the standards for taking reasonable steps to provide meaningful access to LEP persons under EO 13166. In addition, all programs and operations of entities that receive financial assistance from the

federal government, including, but not limited to, state agencies, local agencies, and for-profit and nonprofit entities, and all sub-recipients (those that receive funding passed through a recipient) must comply with the Title VI obligations (including those in the regulations). Programs that do not receive federal funding, such as those that receive Federal Housing Administration (FHA) insurance, are not required to comply with Title VI's obligations. (If the recipient received FHA insurance along with Rental Assistance, construction subsidy, or other federal assistance, it would be required to comply with Title VI requirements.) In certain situations, failure to ensure that LEP persons can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination. EO 13166, signed on August 11, 2000, directs all federal agencies, including HUD, to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Section 3 of the EO requires all federal agencies to issue LEP guidance to help federally assisted recipients in providing such meaningful access to their programs. This guidance must be consistent with DOJ Guidance, but tailored to the specific federal agency's federally assisted recipients. HUD has written its general Guidance and Appendices to meet these requirements.

V. Comments Regarding Enforcement and Compliance Efforts (Including Legal Enforceability and Validity of Housing-Related Legal Documents and Vulnerability of Recipients)

Comment: Two commenters who supported adoption of the proposed Guidance recommended that HUD provide more detailed Guidance to its staff on enforcement and compliance and encouraged collaboration with nonprofit organizations, such as fair housing groups funded by the Fair Housing Initiatives Program (FHIP). A number of commenters, while supportive of the Guidance and HUD's leadership in this area, suggested modifications that would, in their view, provide a more definitive statement of the minimal compliance standards or better describe how HUD would evaluate activities under a more flexible compliance standard. There were also comments that claimed the Guidance was actually a set of regulatory requirements masquerading as "Guidance"; one commenter stated that the Guidance would be used to determine compliance with Title VI and

its regulations, rather than as discretionary advice.

HUD Response. HUD's rule at 24 CFR 1.7(c) requires HUD to undertake "a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part 1." As explained further in Appendix B, Q&As XVI, XVIII, and XIX, FHEO will investigate or review complaints or other information that suggests a recipient is not in compliance with its Title VI obligations. HUD will determine whether the recipient has made reasonable efforts to ensure participation of LEP persons in programs or activities receiving federal financial assistance from HUD. Review of the evidence will include, but may not be limited to, application of the four-factor analysis identified in the LEP Guidance, which provides a framework for reviewing the totality of the circumstances and objectively balances the need to ensure meaningful access by LEP persons and without imposing undue burdens on recipients. HUD will also collect and evaluate evidence about whether the recipient has adopted a Language Access Plan (LAP) that reflects LEP needs (or addressed LEP needs in another official plan, such as the PHA or Consolidated Plan), implemented the Plan, and maintained Title VI compliance records that demonstrate services provided to LEP persons. HUD will inform the recipient of any findings of compliance or non-compliance in writing. If the investigation or review results in findings that the recipient has failed to comply with HUD's rules at 24 CFR part 1, HUD will inform the recipient and attempt to resolve the findings by informal means [24 CFR 1.7(d)]. HUD may use other means of voluntary cooperation, such as negotiation and execution of a voluntary compliance agreement. If HUD determines that compliance cannot be secured by voluntary means, HUD may use other means to enforce its rules under Title VI, such as the suspension or termination of approved funding or refusal to grant future funding [24 CFR 1.8(a), (c), and (d)]. HUD also may refer the matter to DOJ for enforcement action.

Appendix B, Q&A VII, provides additional guidance on the four-factor analysis by explaining that recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This standard is intended to be both flexible and fact-dependent and also to balance the need to ensure meaningful access by LEP persons to critical services while not imposing

undue financial burdens on small businesses, small local governments, or small nonprofit organizations. The recipient may conduct an individualized assessment that balances the following four factors: (1) Number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons were afforded adequate education and outreach); (2) frequency with which LEP persons come into contact with the program; (3) nature and importance of the program, activity, or service provided by the program; and (4) resources available to the recipient and costs to the recipient. It further refers recipients to examples of applying the four-factor analysis to HUD-specific programs in Appendix A of HUD LEP Guidance.

Appendix B, Q&A IX, explains that after completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient may develop a LAP or Implementation Plan to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include: (1) Identifying LEP persons who need language assistance and the specific language assistance that is needed; (2) identifying ways in which language assistance will be provided; (3) providing effective outreach to the LEP community; (4) training staff; (5) translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide); (6) providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans); (7) providing interpreters for large, medium, small, and one-on-one meetings; (8) developing community resources, partnerships, and other relationships to help with the provision of LEP services; and (9) making provisions for monitoring and updating the LAP.

However, HUD did not make changes to the Guidance itself. At this time, HUD does not feel that a specific separate statement of compliance standards is needed. HUD will continue to apply current Title VI investigative standards when conducting LEP investigations or compliance reviews. (See Appendix B, Q&A VI, for further discussion.)

Comment: Several commenters stated that housing documents of a legal nature, such as leases, sales contracts, etc., that are translated into foreign

languages might not be upheld in court as legally enforceable.

HUD Response. HUD appreciates this concern that the documents required by the Guidance would complicate possible eviction actions. State and local law govern contractual agreements between residents and landlords.

Comment: Commenters stated that questions could be raised about the accuracy of the translation and whether, for example, a tenant's signature on both English language and foreign language versions of a housing-related legal document would be upheld as valid in a judicial proceeding.

HUD Response. HUD recommends that when leases are translated into other languages than English, the recipient only ask the tenant to sign the English lease. The translated document would be provided to the tenant but marked "For information only." However, this recommendation in no way minimizes the need to ensure meaningful access, and therefore to take reasonable measures, such as second checks by professional translators, to ensure that the translation is accurate.

VI. Comments Regarding Applicability of the Guidance (i.e., HUD Should Provide Clearer Standards Regarding the Provision of Language Services)

Comment: Several commenters wrote that the statement "coverage extends to a recipient's entire program or activity * * * even if only one part of the recipient receives the federal assistance," places an unwarranted burden on an entire program. One commenter gave the example of a PHA that contracts with a Residents' Council that provides some level of LEP services. The commenter recommended that the PHA should not be required to enforce LEP requirements against the Residents' Council unless there is clear evidence of discriminatory intent.

HUD Response. With regard to the specific example of a Residents' Council that provides some level of LEP services, given the context, we assume that this comment intended to characterize the Council as a subrecipient of federal financial assistance. The proposed Guidance issued on December 19, 2003, states that "subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient." Recipients such as Community Development Block Grant (CDBG) Entitlement jurisdictions, CDBG state programs, and PHAs are required to monitor their subrecipients who receive federal financial assistance for a variety of purposes. Among these purposes are that such entities are also subject to the

requirements of Title VI of the Civil Rights Act of 1964, as amended by the Civil Rights Restoration Act of 1987. This final Guidance does not change the position taken on this issue as cited in the proposed Guidance. Therefore, the Resident Counsel in the above comment would be subject to Title VI if it received any funding from the PHA, although its analysis may indicate that it must provide little, if any, LEP services. The Guidance and Appendix B, Q&A IV, restate that Title VI's LEP obligations apply to (1) all programs and activities of entities that receive federal financial assistance, and (2) all subrecipients that receive federal funds that are passed through a recipient. Entities that are not recipients or subrecipients of federal financial assistance are not, themselves, subject to Title VI requirements (see 24 CFR 1.2), although recipients using contractors to carry out recipient activities remain obligated to ensure civil rights compliance in those activities. With regard to the comment that LEP requirements should only apply to subrecipients in the case of clear evidence of discriminatory intent, refer to Appendix B, Q&A IV, for a more in-depth response. Finally, this Guidance in no way expands the scope of coverage mandated by Title VI, as amended by the Civil Rights Restoration Act of 1987, which defined the terms "program" and "program or activity."

VII. Comments Regarding Cost Considerations

Comments: A number of comments focused on the cost considerations as an element of HUD's flexible four-factor analysis for identifying and addressing the language assistance needs of LEP persons. For example, several commenters said that implementing this Guidance would constitute an unfunded mandate and that the total costs nationally would exceed the \$100 million limit stipulated in the Unfunded Mandates Control Act. Commenters also stated that document translation is not a "one-time" cost, since laws, regulations, and Guidance all change over time. In addition, several commenters noted that private housing providers and PHAs would not be able to recover the costs of implementing LEP services through rent increases, since LEP services are not included in HUD formulae used to calculate and approve rent increases. A few comments suggested that the flexible fact-dependent compliance standard incorporated by the Guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large,

statewide recipients to incur unnecessary or inappropriate financial burdens in conjunction with already strained program budgets.

While no comments urged that costs be excluded from the analysis, some commenters wrote that a recipient could use cost as an inappropriate justification for avoiding otherwise reasonable and necessary language assistance to LEP persons.

HUD Response. HUD believes that costs are a material consideration in identifying the reasonableness of particular language assistance measures, and that the Guidance identifies an appropriate framework by which costs are to be considered. The Department recognizes that some projects' budgets and resources are constrained by contracts and agreements with the Department. These constraints may impose a material burden upon the projects. Where a recipient of HUD funds can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, where documents share common text, costs can be significantly decreased through pooling resources. For instance, many HUD recipients of HUD funds belong to national organizations that represent their interests. HUD recommends that these national groups set aside some funds from membership fees to offset the written translations. In addition, the same national groups may contract with a telephone interpreter service to provide oral interpretation on an as-needed basis. Appendix A discusses this issue in greater depth. Appendix B, Q&A VII, integrates the issue of cost as part of the discussion of the four-factor analysis described in the Guidance by advising the recipient to take into account both the costs and resources available to the recipient.

In addition, Appendix B, Q&A XII, explains how a recipient may supplement its limited resources to provide necessary language services without sacrificing quality and accuracy. The federal government's LEP Web site, <http://www.lep.gov/recv.html> (scroll to translator and interpreter organizations), lists some examples of associations and organizations whose members may provide translation and interpretation services. In addition, the General Services Administration maintains a language services database for both written translations and oral interpretation that can be accessed at: <http://www.gsa.ehlibmain/SinDetails?executeQuery=YES&scheduleNumber=738+II&flag&filter=&specialItemNumber=382+1>. Site

visitors may choose an interpreter or translator from among a list of language service providers. Language service providers are available through other means, as well, and the above list is in no way meant to be an exclusive list or recommendations, but rather is shared for information purposes only.

VIII. Comments Regarding Competency of Interpreters (Including Use of Informal Interpreters) and Translators

Comment: Several commenters wrote that written LAPs should include language strongly discouraging or severely limiting the use of informal interpreters, such as family members, guardians, or friends. Some recommended that the Guidance prohibit the use of informal interpreters except in limited or emergency situations. Commenters expressed concern that the technical and ethical competency of interpreters could jeopardize meaningful and appropriate access at the level and type contemplated under the Guidance.

HUD Response. HUD believes that the Guidance is sufficient to allow recipients to achieve the proper balance between the many situations where the use of informal interpreters is inappropriate, and the few where the transitory and/or limited use of informal interpreters is necessary and appropriate in light of the nature of the service or benefit being provided and the factual context in which that service or benefit is being provided. Appendix B, Q&A XIII, states that a recipient should generally discourage the use of family members or other informal interpreters, but should permit the use of interpreters of the LEP person's choosing when that LEP person rejects the recipient's free language assistance services. This Guidance further explains and clarifies all aspects of how a recipient can provide different types of interpretation services, including informal interpreters for different situations. To ensure the quality of written translations and oral interpretations, HUD encourages recipients to use professional interpreters and translators.

Comment: A number of commenters objected to requiring recipients to determine the competency of interpreters or translators, and strongly stated that such a requirement was too burdensome for the small- to medium-sized housing providers. A few commenters urged HUD to provide details on particular interpretation standards or approaches that would apply on a national basis.

HUD Response. HUD declines to set such professional or technical

standards. General guidelines for translator and interpreter competency are set forth in the Guidance. Recipients, beneficiaries, and associations of professional interpreters and translators could collaborate in identifying the applicable professional and technical interpretation standards that are appropriate for particular situations. For example, local, state, or national chapters of businesses or housing trade organizations can set up and enforce a set of rules and standards that will qualify interpreters and translators to participate in housing-related legal and other program-related transactions. Alternatively, PHAs may be able to find qualified interpreters and translators through associations representing that industry (e.g., American Translators Association, National Association of Judicial Interpreters and Translators, Translators and Interpreters Guild, and others) or even from for-profit organizations. Housing provider groups and/or individual housing providers can, as part of their LAPs, communicate with the state Attorney General's Office or the State Administrative Offices of the Courts regarding the regulations that govern the use of interpreters in most legal proceedings in state courts. Sections VI.A.1 and VI.B.4 of the general Guidance provide information on how to determine the competency of interpreters and translators. In addition, Appendix B, Q&A XII, re-emphasizes that the recipient should try to ensure the quality and accuracy of any interpretation or translation services provided.

IX. Comments Regarding Vulnerability of Recipients as a Result of This Guidance (Including "Safe Harbors")

Comments: Some comments focused on providing "safe harbors" for oral translations and provision of written translation for vital documents. The commenters stated that there should be a level below which there would be no need to provide language services where the numbers and proportions of the population that are LEP are insignificant. Another commenter recommended that the "safe harbor" standards be less stringent and that compliance be determined based on the total circumstances.

Comment: While not clearly stated in any of the comments, there appeared to be a misunderstanding about how the safe harbor requirements applied to the eligible population of the market area as opposed to current beneficiaries of the recipient.

HUD Response. This final Guidance makes no changes to the "safe harbor"

provisions found at Paragraph VI.B.3 or the Guidance in Appendix A.

Oral Interpretation v. Written Translation: The “safe harbor” provided in this Guidance is for written translations only. There is no “safe harbor” for oral interpretation. In fact, Q&As XXII and XXIII clarify that no matter how few LEP persons the recipient is serving, oral interpretation services should be made available in some form. Recipients should apply the four-factor analysis to determine whether they should provide reasonable and timely, oral interpretation assistance, free of charge, in all cases, to any beneficiary that is LEP. Depending on the circumstances, reasonable oral interpretation assistance might be an in-person or telephone service line interpreter.

Safe Harbor for Written Translations: Q&A XX explains how the four-factor analysis and the recipient’s subsequent actions may be used to provide a “safe harbor” for written translations. HUD LEP Guidelines in Paragraph VI(B)(3) explains how certain recipient activities would constitute a “safe harbor” against a HUD finding that the recipient had not made reasonable efforts to provide written language assistance. As has already been noted, this Guidance is not intended to provide a definitive answer governing the translation of written documents for all recipients, nor one that is applicable in all cases and for all situations. Rather, in drafting the “safe harbor” and vital documents provisions of the Guidance, HUD sought to provide one, but not necessarily the only point of reference for when a recipient should consider translations of documents (or the implementation of alternatives to translating such documents). The recipient should consider its particular program or activity, the document or information in question, and the potential LEP populations served.

Specific Safe Harbor Guidance: Appendix B, Q&A XXI, provides a helpful table that further clarifies the “safe harbors” for written translations based on the number and percentages of the market area-eligible population or current beneficiaries and applicants that speak a specific language. According to the table, HUD would expect translations of vital documents to be provided when the eligible LEP population in the market area or the current beneficiaries exceeds 1,000 persons or if it exceeds 5 percent of the eligible population or beneficiaries along with more than 50 persons. In cases where more than 5 percent of the eligible population speaks a specific language, but fewer than 50 persons are affected, there should be a translated

written notice of the person’s right to an oral interpretation. An oral interpretation should be made available in all cases.

Vital Documents: Q&A XX defines a “safe harbor” for written translations for purposes of this Guidance as one where the recipient has undertaken efforts to prevent a finding of non-compliance with respect to the needed translation of vital written materials. HUD’s Guidance follows DOJ’s Guidance that define a “safe harbor” only for the translation of vital documents. Q&A X describes how to determine if a document is a “vital document.” Vital documents are those that are critical for ensuring meaningful access by beneficiaries or potential beneficiaries generally and LEP persons specifically. If a recipient (1) undertakes the four-factor analysis, (2) determines a need for translated materials, and (3) translates vital documents to accommodate the primary languages of its LEP applicants, beneficiaries, and potential beneficiaries, then HUD will consider this strong evidence of compliance with respect to translation of vital documents.

The decision as to what program-related documents should be translated into languages other than English is a complex one. While documents generated by a recipient may be helpful in understanding a program or activity, not all are critical or vital to ensuring meaningful access by beneficiaries generally and LEP persons specifically. Some documents may create or define legally enforceable rights or responsibilities on the part of individual beneficiaries (e.g., leases, rules of conduct, notices of benefit denials, etc.). Others, such as applications or certification forms, solicit important information required to establish or maintain eligibility to participate in a federally assisted program or activity. For some programs or activities, written documents may be the core benefit or service provided. Moreover, some programs or activities may be specifically focused on providing benefits or services to significant LEP populations. Finally, a recipient may elect to solicit vital information orally as a substitute for written documents. Certain languages are oral rather than written, and thus a high percentage of such LEP speakers will likely be unable to read translated documents or written instructions. Each of these factors should play a role in deciding: (1) What documents should be translated; (2) what target languages other than English are appropriate; and (3) whether more effective alternatives exist, rather than continued reliance on written

documents to obtain or process vital information.

Eligible population in the housing market area vs. current beneficiaries and applicants: While the final Guidance makes no changes to the safe harbor provisions found in Section VI.B.3. of the Guidance or to that found in Appendix A, the latter has been changed to differentiate between how the results of the “safe harbor” will affect a recipient’s outreach efforts to eligible LEP populations as opposed to its LEP services for current beneficiaries and applicants of its programs. We have clarified in the “Housing” portion of Appendix A, as well as in Appendix B, Q&A XXI, that the “safe harbor” evaluation will differ depending on the population the recipient is considering. When conducting outreach to the eligible population in the housing market area, the number and percentage of the eligible LEP population in that housing market area should be evaluated. When working with a recipient’s own beneficiaries (e.g., residents of a specific housing development or applicants to the housing development), the number and percentage of LEP persons living in the housing and on the waiting list should be evaluated.

Guidance v. Requirements: Regarding written translations, the general HUD Guidance does identify actions that will be considered strong evidence of compliance with Title VI LEP obligations. However, the failure to provide written translations under these cited circumstances does not necessarily mean that the recipient is in non-compliance. Rather, the “safe harbors” provide a starting point for recipients to consider whether the following justify written translations of commonly used forms into frequently encountered languages other than English: (1) The importance of the service, benefit, or activity and the nature of the information sought; (2) the number or proportion of LEP persons served; (3) the frequency with which LEP persons need this particular information and the frequency of encounters with the particular language being considered for translation; and (4) resources available, including costs.

Comment: One comment pointed out that current demographic information based on the 2000 Census or other data was not readily available to assist recipients in identifying the number or proportion of LEP persons and the significant language groups among their otherwise eligible beneficiaries.

HUD Response. This information is now available at: <http://>

www.census.gov/main/www/com2000.html.

X. Comments Regarding Consistency of Translations (Including Standardized Translations of Documents)

Comment: One commenter stated that the concept of “safe harbors” should reflect an agreed-upon split of responsibilities between HUD and its private and public sector partners. Several commenters proposed that HUD provide standardized translations of basic programmatic and legal documents associated with HUD housing programs (e.g., public housing lease, housing discrimination complaint form, etc). They also recommended that HUD assume the cost of such translations as a means of reducing the costs of LEP services.

HUD Response. On an *ad hoc* basis, HUD’s individual program offices have translated “as needed” important documents that affect that particular office’s programs. This approach has been effective and will be continued.

XI. Other Comments

Comment: Several national organizations representing assisted housing providers said HUD should place a “disclaimer” on its translated documents that stipulates they are: (1) HUD translations, (2) provided as supplementary information, (3) not replacement for the official English document, and (4) not word-for-word translations of the housing providers documents.

HUD Response. After undertaking reasonable quality control measures to ensure the accuracy of the translation, HUD will use the following language as a disclaimer in its translated lease or other documents: “This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document.”

Comment: Recipients of HUD funds have commented on potential complications that may arise during legal proceedings on the eviction of non-compliant residents. Recipients noted that failure on the part of the housing providers to provide all vital documents in the resident’s native language would create a defense against eviction.

HUD Response. HUD appreciates this concern that the documents required by the Guidance would complicate

possible eviction actions. As stated in Appendix B, Q&A XIV, state and local laws control contractual agreements between residents and landlords. Notwithstanding, HUD is unaware of any state or local case law that would encumber the eviction process.

Comment: National organizations representing assisted housing providers commented that the definition of “Who is LEP?” is misleading. They pointed out that since all members of the family over 18 years of age must sign the lease and related documents, they, therefore, are all legally responsible for the terms and conditions of the lease. If a member of the family who signs the lease is English proficient, then this family should not be counted as LEP, and the standards for providing alternate language services to that family should not apply.

HUD response. HUD and its recipients do not determine who is LEP. The beneficiaries of the services and activities identify themselves as LEP.

Comment: HUD received more than 7,000 postcards from individual citizens who opposed the Guidance as an “onerous burden” on small and underfunded organizations and who advocated adoption of English as the official language of the United States.

HUD Response. As stated in Appendix B, Q&As II and III, the Guidance is based on Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on national origin in programs and activities receiving federal financial assistance, and is, therefore, not a new requirement. The Guidance requires that meaningful access to programs, activities, and services that receive such assistance are expected to be provided to LEP persons. As explained in Appendix B, Q&A XXVI, recipients operating in jurisdictions in which English has been declared the official language continue to be subject to Title VI federal nondiscrimination requirements, including those applicable to the provisions of federally assisted services to LEP persons.

Comment: Four commenters stated that HUD did not solicit the input of housing industry stakeholders in drafting the Guidance, despite the mandate of EO 13166. They recommended that HUD convene a stakeholder meeting to discuss issues relating to the final version of this Guidance.

HUD Response. HUD contends that the process of publishing the December 19, 2003, proposed Guidance, providing the public comment period, reviewing the issues raised by the comments, and issuing this final version of the

Guidance (with Appendices A and B) provided adequate opportunity for all housing industry stakeholders to review, discuss, and comment on the Guidance. HUD has determined that no separate housing industry stakeholder meetings are necessary.

Since publication of the proposed Guidance, HUD has provided several training sessions to industry groups. After this final Guidance is published, HUD plans to hold a series of public forums where PHAs, housing and service providers, and other HUD program recipients and beneficiaries may exchange ideas on how to implement this Guidance and discuss and identify “promising practices” in serving LEP persons.

In addition, the following clarifying comments have been added in Appendix B: (1) Q&A I defines LEP persons as “persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write or understand English;” (2) Q&A V describes the applicability of these requirements to immigration and citizenship by explaining that U.S. citizenship and LEP should not be used interchangeably. It is possible for a person to be a citizen *and* LEP, or for a person to be fluent in English but not a U.S. citizen. Some, but not all, HUD programs do require recipients to document the citizenship or eligible immigrant status of program beneficiaries. Title VI applies equally to citizens, documented non-citizens and undocumented non-citizens, based on the LEP status of those who meet program requirements; (3) Q&A VIII specifies the types of language assistance that may be used. These include, but are not limited to, oral interpretation services, bilingual staff, telephone service lines interpreters, written translation services, notices to staff and recipients of the availability of LEP services, and referrals to community liaisons proficient in the language of LEP persons; (4) Q&A XI helps to determine the language needs of a beneficiary. Recipients may ask about language service needs from *all* prospective beneficiaries (regardless of the prospective beneficiary’s race or national origin) and use language identification (or “I speak”) cards that invite LEP persons to identify their own language needs. To reduce costs of compliance, the Bureau of the Census has made a set of these cards available on the Internet at <http://www.usdoj.gov/crt/cor/13166.htm>; (5) Q&A XIII tells beneficiaries how to file a complaint; and (6) Q&A XXVII provides the address for the Web site to obtain further

information. The Web site also contains a link to another set of "I speak" cards in a different format. A recipient of DOJ funds and translator and interpreter organizations jointly created these. They are available at http://www.lep.gov/ocjs_languagecard.pdf. Other promising practices can also be found in the General Chapter (Chapter 1) of DOJ's Tips and Tools document, found at http://www.lep.gov/tips_tools_92104.pdf and at http://www.lep.gov/tips_tools_92104.htm.

In addition to addressing the concerns noted above, HUD has substituted, where appropriate, technical or stylistic changes that more clearly articulate, in HUD's view, the underlying principles, guidelines, or recommendations detailed in the final Guidance. Language has been added that clarifies the Guidance's application to activities undertaken by a recipient either voluntarily or under contract in support of a federal agency's functions. After appropriate revision based on an in-depth review and analysis of the comments, with particular focus on the common concerns summarized above, HUD adopts its final "Notice of Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons." The text of this final Guidance, along with Appendices A and B, are below. Title VI regulations that deal with discrimination based on national origin have not changed, and violations of the prohibition on national origin discrimination will continue to be enforced as in the past. Therefore, no substantive changes have been made to the general Guidance, although some editorial changes were made. A few substantive changes were made to the HUD-specific Guidance in Appendix A, from that which was published as proposed Guidance at 68 FR 70968 on December 19, 2003. The changes were made to provide clarity. Some editorial changes were also made.

Final Guidance

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited

English proficient, or "LEP." In the 2000 census, 28 percent of all Spanish and Chinese speakers and 32 percent of all Vietnamese-speakers reported that they spoke English "not well" or "not at all."

Language for LEP persons 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 federally funded programs and activities. The federal government funds an array of programs, services, and activities that can be made accessible to otherwise-eligible LEP persons. The federal government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan or Language Access Plan (LAP). However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government programs, services, and activities. HUD recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

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 of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP

persons by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons. The policy guidance is not a regulation, but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient. These are the same criteria HUD will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

As with most government initiatives, guidance on LEP requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, HUD must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, HUD must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profit entities that receive federal financial assistance.

There are many productive steps that the federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services, without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, HUD plans to continue to provide assistance and guidance in this important area. In addition, HUD plans to work with representatives of state and local governments, public housing agencies, assisted housing providers, fair housing assistance programs and other HUD recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, HUD intends to explore how language assistance measures, resources, and cost-containment approaches developed with respect to its own federally conducted programs and

activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profit entities. An interagency working group on LEP has developed a Web site, <http://www.lep.gov>, to assist in disseminating this information to recipients, federal agencies, and the communities being served.

Many persons who commented on the Department of Justice's (DOJ) proposed LEP guidance, published January 16, 2001 (66 FR 3834), later published for additional public comment on January 18, 2002 (67 FR 2671), and published as final on June 18, 2002 (67 FR 41455), have noted that some have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as implicitly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. DOJ and HUD have taken the position that this is not the case, for reasons explained below. Accordingly, HUD will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person 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." Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability" (42 U.S.C. 2000d-1).

HUD regulations promulgated pursuant to section 602 forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin" (24 CFR 1.4).

The Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of HUD, 24 CFR 1.4, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons

because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," was issued and published on August 16, 2000 (65 FR 50121). Under that order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. The DOJ document is titled, "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency," published on August 16, 2000 (65 FR 50123) ("DOJ LEP Guidance").

Subsequently, federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, the Assistant Attorney General for the Civil Rights Division issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*. This Guidance noted that some have interpreted *Sandoval* as implicitly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to

federally assisted programs and activities. See, e.g., *Sandoval*, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid."). This guidance, however, makes clear that the DOJ disagreed with this interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. The case did not address the validity of those regulations or Executive Order 13166, or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations. The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

This HUD policy is thus published pursuant to Title VI, Title VI regulations, and Executive Order 13166. It is consistent with the final DOJ "Guidance to Federal Financial Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," published on June 18, 2002 (67 FR 41455).

III. Who Is Covered?

HUD's regulation, 24 CFR Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development—Effectuation of Title VI of the Civil Rights Act of 1964," requires all recipients of federal financial assistance from HUD to provide meaningful access to LEP persons. Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in this LEP Guidance are to additionally apply to the programs and activities of federal agencies, including HUD. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of HUD assistance include, for example:

- State and local governments;
- Public housing agencies;
- Assisted housing providers;

- The Fair Housing Initiative Program and the Fair Housing Assistance Program; and

- Other entities receiving funds directly or indirectly from HUD.

Subrecipients and state grant recipients are likewise covered when federal funds are passed to them through the grantee. For example, Entitlement Community Development Block Grant, State Community Development Block Grant, and HOME Investment Partnership Program recipients' subrecipients are covered. Coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations. This is true even if only one part of the recipient receives federal assistance.

For example, HUD provides assistance to a state government's Department of Community Development, which provides funds to a local government to improve a particular public facility. All of the operations of the entire state Department of Community Development—not just the particular community and/or facility—are covered. However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated (42 U.S.C. 2000d-1). Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal nondiscrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

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, or "LEP," and may be entitled to language assistance with respect to a particular type of service, benefit, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by HUD recipients and should be considered when planning language services include, but are not limited to:

- Persons who are seeking housing assistance from a public housing agency or assisted housing provider or are current tenants in such housing;
- Persons seeking assistance from a state or local government for home rehabilitation;

- Persons who are attempting to file housing discrimination complaints with a local Fair Housing Assistance Program grantee;

- Persons who are seeking supportive services to become first-time homebuyers;

- Persons seeking housing-related social services, training, or any other assistance from HUD recipients; and

- Parents and family members of the above.

V. How Does a Recipient Determine the Extent of Its Obligation to Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofit entities.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. HUD recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they could take to ensure meaningful access for LEP persons.

A. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Area

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that have been approved by HUD as the recipient's jurisdiction or service area. However, where, for instance, a public housing project serves a large LEP population, the appropriate service area for LEP services is most likely the public housing project neighborhood, and not the entire population served by the PHA. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples to assist in determining the relevant service area. When considering the number or proportion of LEP persons in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the recipient.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data could be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments. The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language and who speak or understand English less than well. Some of the most commonly spoken

languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficiency persons. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English. Community agencies, school systems, grassroots and faith-based organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities if language services were provided.

B. The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely the need for enhanced language services in that language. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require extensive assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

C. The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the

greater the possible consequences of the contact to the LEP persons, the more likely the need for language services. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by HUD, another Federal, State, or local entity, or the recipient to make a specific activity compulsory in order to participate in the program, such as filling out particular forms, participating in administrative hearings, or other activities, can serve as strong evidence of the program's importance.

D. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their

resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services the recipient will provide. Recipients have two main ways to provide language services: Oral interpretation in person or via telephone interpretation service (hereinafter "interpretation") and through written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis, while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a public housing provider in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have already made such arrangements.) By contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary public tour of a recreational facility—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious

consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another (target language). Where interpretation is needed and is a reasonable service to provide, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

1. Competence of Interpreters

When providing oral assistance, recipients are expected to ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations. Formal certification as an interpreter is not necessary, although it would serve as documentation of competency to interpret. When using interpreters, recipients are expected to ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person; and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires. Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, there may be languages that do not have an appropriate direct interpretation of some courtroom or legal terms. The interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue when it arises and then work to develop

a consistent and appropriate set of descriptions of these terms so that the terms can be used again, when appropriate; and

- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged. For the many languages in which no formal certification assessments currently exist, other qualifications should be considered, such as whether the person has been deemed otherwise qualified by a state or federal court, level of experience and participation in professional trainings and activities, demonstrated knowledge of interpreter ethics, etc. Where such proceedings are lengthy, the interpreter will likely need breaks. Therefore, team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters and to allow for breaks.

While quality and accuracy of language services is critical, it should be evaluated as part of the appropriate mix of LEP services. The quality and accuracy of language services in an abused woman's shelter, for example, should be extraordinarily high, while the quality and accuracy of language services in a recreational program generally need not meet such exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as certain activities of HUD recipients in providing housing, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staff person available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly

greater than those for English-proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can be delayed for a reasonable period.

2. Hiring Bilingual Staff

When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as persons who take public housing or Section 8 applications, with staff who are bilingual and competent to communicate directly with LEP persons in the LEP persons' own language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual intake specialist would probably not be able to perform effectively the role of an administrative hearing interpreter and intake specialist at the same time, even if the intake specialist were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient would turn to other options.

3. Hiring Staff Interpreters

Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

4. Contracting for Interpreters

Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-

effective option for providing language services to LEP persons from those language groups.

5. Using Telephone Interpreter Line

Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English-proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video conferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion, and any logistical problems should be addressed.

6. Using Community Volunteers

In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations, may be a cost-effective way of providing supplemental language assistance under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

7. Use of Family Members or Friends as Interpreters

Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service, or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Confidentiality, privacy, or conflict-of-interest issues may also arise. LEP persons may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. For example, special circumstances may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of family members and friends as interpreters, particularly where an important right, benefit, service, disciplinary concern, or access to personal or law enforcement information is at stake. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether a beneficiary makes a knowing and voluntary choice to use another family member or friend as an interpreter. Furthermore, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect

themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients would generally offer competent interpreter services free of cost to the LEP person. For HUD-recipient programs and activities, this is particularly true in a courtroom or administrative hearing or in situations in which health, safety, or access to important housing benefits and services are at stake; or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when a property manager/or PHA security personnel or local police respond to a domestic disturbance. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children) or friends, often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary public tour of a community recreational facility built with CDBG funds. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. Extra caution should be exercised when the LEP person chooses to use a minor. The

recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that the recipient could provide a competent interpreter at no cost to the LEP person.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in the target language. It should be kept in mind that because many LEP persons may not be able to read their native languages, back-up availability of oral interpretation is always advantageous.

1. What Documents Should be Translated?

After applying the four-factor analysis, a recipient may determine that an effective LAP for its particular program or activity includes the translation of vital, or generic widely used written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. Such written materials could include, for example:

- Consent and complaint forms;
- Intake forms with the potential for important consequences;
- Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings;
- Notices of eviction;
- Notices advising LEP persons of free language assistance;
- Notices of public hearings, especially those that meet Community Planning and Development's citizen participation requirements;
- Leases and tenant rules; and/or
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for recreational activities would not generally be considered vital documents, relative to applications for housing. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials such as brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP persons meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it would regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, grassroots and faith-based organizations, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

2. Into What Languages Should Documents be Translated?

The languages spoken by the LEP persons with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and those less commonly encountered. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons speaking dozens and sometimes more than 100 different languages. To translate all written materials into all those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an

undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

3. Safe Harbor

Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations. The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is noncompliance. Rather, the circumstances provide a common starting point for recipients to consider the importance of the service, benefit, or activity involved; the nature of the information sought; and whether the number or proportion of LEP persons served call for written translations of commonly used forms into frequently encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

For example, even if the safe harbors are not used, should written translation of a certain document(s) be so burdensome as to defeat the legitimate objectives of its program, translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of vital documents, might

be acceptable under such circumstances.

The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The HUD recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials but instead provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These "safe harbor" provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable. For example, housing facilities should, where appropriate, ensure that leases have been explained to LEP residents, at intake meetings, for instance, prior to taking adverse action against such persons.

4. Competence of Translators

As with oral interpreters, all attempts should be made to ensure that translators of written documents are competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary. For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism. Having a second, independent translator "check" the work of the primary translator can often ensure competence. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes, direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. For instance, there may be languages that do not have an appropriate direct translation of some English language terms. In such cases, the translator should be able to provide an appropriate alternative. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art, and legal or other technical concepts. Creating or using already created glossaries of commonly used terms may be useful for LEP persons and translators and cost-effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful. Community organizations may be able to help consider whether a document is written at an appropriate level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts will help avoid confusion by LEP persons and may reduce costs.

While quality and accuracy of translation services is critical, they are part of the appropriate mix of LEP services. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may require translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, for example, information or documents of HUD recipients regarding safety issues and certain legal rights or programmatic or other obligations). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of an Effective LAP

After completing the four-factor analysis and deciding what language assistance services are appropriate, a

recipient would develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have flexibility in developing this plan. The development and maintenance of a periodically updated written plan on language assistance for LEP persons, or a LAP for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LAP their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain HUD recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LAP. However, the absence of a written LAP does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate, in some other reasonable manner, a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LAP and are typically part of effective implementation plans.

A. Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom they have contact. One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say, "I speak Spanish" in both Spanish and English, and "I speak Vietnamese" in both English and Vietnamese. To reduce costs of compliance, the federal

government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at <http://www.usdoj.gov/crt/cor/13166.htm>. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

B. Language Assistance Measures

An effective Language Assistance Plan (LAP) would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP persons who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

C. Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LAP would likely include training to ensure that:

- Staff knows about LEP policies and procedures; and
- Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of a Language Action Plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation.

D. Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in common areas, offices, and anywhere applications are taken. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in geographic areas with high volumes of LEP persons seeking access to the recipient's major programs and activities. For instance, signs in offices where applications are taken could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help. The Social Security Administration has made such signs available at <http://www.ssa.gov/multilanguage/langlist1.htm>. These signs could, for example, be modified for recipient use;
- Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents;
- Working with grassroots and faith-based community organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services;
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them;
- Including notices in local newspapers in languages other than English;
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them; and
- Presentations and/or notices at schools and grassroots and faith-based organizations.

E. Monitoring and Updating the LAP

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP persons, and recipients may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LAP. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LAP is to seek feedback from members of the community that the plan serves.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in the housing jurisdiction geographic area or population affected or encountered;
- Frequency of encounters with LEP language groups;
- The nature and importance of activities to LEP persons;
- The availability of resources, including technological advances and sources of additional resources, and the costs imposed;
- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff knows and understands the LAP and how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to these elements, effective plans set clear goals, make management accountable, and provide opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by HUD through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that HUD will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. The Office of Fair Housing and Equal Opportunity (FHEO) is responsible for conducting the investigation to ensure that federal program recipients are in compliance with civil rights-related program

requirements. If the investigation results in a finding of compliance, HUD will inform the recipient in writing of this determination, including the basis for the determination. HUD uses voluntary methods to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, HUD must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that should be taken to correct the noncompliance. HUD must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD must secure compliance through the termination of federal assistance after the HUD recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. At all stages of an investigation, HUD engages in voluntary compliance efforts and provides technical assistance to recipients. During such efforts, HUD proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, HUD's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP persons, HUD acknowledges that the implementation of a comprehensive system to serve LEP persons is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, HUD will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, HUD expects its recipients to ensure that the provision of appropriate assistance for

significant LEP populations or with respect to activities having a significant impact on the housing, health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

IX. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the meaningful access requirement of the Title VI regulations applies to HUD funded recipients. It further explains how recipients can apply the four factors to a range of situations, to determine their responsibility for providing language services in each of these situations. This Guidance helps recipients identify the population they should consider when determining the extent and types of services to provide. For instance, it gives examples on how to apply this guidance in situations like:

- Holding public meetings on Consolidated Plans for Community Planning and Development Programs [Community Development Block Grants (CDBG), HOME Investment Partnership Program (HOME), Housing Opportunities for Persons with AIDS (HOPWA), and Emergency Shelter Grants (ESG)];
- Interviewing victims of housing discrimination;
- Helping applicants to apply for public housing units;
- Explaining lease provisions; and
- Providing affirmative marketing housing counseling services.

X. Environmental Impact

This notice sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19 (c) (3), this notice is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Dated: August 16, 2006.

Kim Kendrick,

Assistant Secretary for Fair Housing, and Equal Opportunity.

Editorial Note: This document was received at the Office of the Federal Register on January 16, 2007.

Appendix A:—Application of Limited English Proficiency (LEP) Guidance for JUH Recipients

Introduction

A wide range of entities receives federal financial assistance through HUD. HUD provides assistance to the following types of recipients, among others: Assisted housing

providers; public housing agencies (PHAs); Indian tribes, state and local governments; nonprofit organizations, including housing counseling agencies, grassroots community-based organizations, and faith-based organizations; state and local fair housing agencies; and providers of a variety of services. Most organizations can check their status as to whether or not they are covered by reviewing the "List of Federally Assisted Programs," published in the **Federal Register** on November 24, 2004 (69 FR 68700). This list may not be all-inclusive or reflect newer programs. Subrecipients are also covered. All HUD-funded recipients, except for Indian tribes, are required to certify to nondiscrimination and affirmatively furthering fair housing, either through the Office of Community Planning and Development's (CPD) Consolidated Plan [24 CFR 91.225 (a)(1) and (b)(6), 92.325(a)(1), and 91.425(a)(i)]; the public housing agency plans [24 CFR 903.7(o)] or the certifications required in the competitive programs funded through the Super Notice of Funding Availability (SuperNOFA). HUD publishes the SuperNOFA on an annual basis. The nondiscrimination and the affirmatively furthering fair housing requirements are found in the General Section of the SuperNOFA. The Web site link to the SuperNOFA is: <http://www.hud.gov/library/bookshelf18/supernofa/nofa05/gensec.pdf>. This appendix does not change current civil rights-related program requirements contained in HUD regulations.

Appendix A provides examples of how HUD recipients might apply the four-factor analysis described in the general Guidance. The Guidance and examples in Appendix A are not meant to be exhaustive and may not apply in some situations. CPD's citizen participation plan requirement, in particular, specifically instructs jurisdictions that receive funds through the Consolidated Plan process to take appropriate actions to encourage the participation of " * * * non-English speaking persons * * *" [24 CFR 91.105(a)(2)(ii), 91.115(a)(2), 24 CFR 91.105(a)(2)(ii), and 91.115(a)(2)]. Such recipients may therefore have processes in place to address the needs of their LEP beneficiaries that already take into consideration the four-factor analysis and meet the Title VI and Title VI regulatory requirements described in this Guidance.

This Guidance does not supplant any constitutional, statutory, and/or regulatory provisions that may require LEP services. Rather, this Guidance clarifies the Title VI and Title VI regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP persons. The Guidance does not address those required by the Constitution or statutes and regulations other than Title VI and the Title VI regulations.

Tribes and tribally designated housing entities (TDHEs) are authorized to use federal housing assistance made available under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101–4212) (NAHASDA) for low-income housing programs or activities for the specific benefit of tribal members and/or other Native Americans. Programs or activities funded in

whole or in part with federal assistance and in compliance with NAHASDA are exempt from Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968. Although Title VI may not apply to housing programs undertaken by these entities under NAHASDA, recipients of NAHASDA funds are encouraged to use this Guidance as a technical assistance tool in determining whether and to what degree language assistance may be appropriate to ensure meaningful access by otherwise eligible low-income Native Americans.

Members of the public are most likely to come into contact with recipients of HUD funds when they need housing and/or housing-related services or when the recipients conduct education and community outreach activities. The common thread running through contacts between the public and recipients of HUD funds is the exchange of information. Recipients of HUD assistance, depending on circumstances, have an obligation to provide appropriate types and levels of LEP services to LEP persons to ensure that they have meaningful access to, and choice of, housing and other HUD-funded programs. Language barriers can, for instance, prevent persons from learning of housing opportunities or applying for and receiving such opportunities; learning of environmental or safety problems in their communities and of the means available for dealing with such problems; and/or effectively reporting housing discrimination to the local fair housing agency or HUD, thus hindering investigations of these allegations.

Many recipients already provide language services in a wide variety of circumstances to obtain information effectively and help applicants obtain suitable housing and/or support services. For example, PHAs may have leases available in languages other than English and has interpreters available to inform LEP persons of their rights and responsibilities. In areas where significant LEP populations reside, PHAs may have forms and notices in languages other than English or they may employ bilingual intake personnel, housing counselors, and support staff. Such recipients may, therefore have processes in place to address the needs of their LEP beneficiaries that already take into consideration the four-factor analysis and meet the Title VI and regulatory Title VI requirements described in this Guidance. These experiences can form a strong basis for applying the four-factor analysis and complying with the Title VI regulations.

General Principles

The touchstone of the four-factor analysis is reasonableness based upon: (a) The specific needs and capabilities of the LEP population among the beneficiaries of HUD programs (tenants, applicants, community residents, complainants, etc.); (b) the program purposes and capabilities of the HUD-funded recipients providing the services to the LEP population; and (c) local housing, demographics, and other community conditions and needs. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations or whether such

service need be provided at all. Each HUD recipient's evaluation of the need for, and level of LEP services must be highly individualized for each process in its services.

Before giving specific program examples, several general points should assist the wide variety of recipients of HUD funds in applying this analysis.

Factors (1) and (2): Target Audiences

In evaluating the target audience, the recipient should take into account the number and proportion of LEP persons served or eligible to be served in the target population, as well as the frequency with which this target audience will or should be served.

Factor (1): For most recipients, the target audience is defined in geographic rather than programmatic terms. In many cases, even if the overall number or proportion of LEP persons in the local area is low, the number of contacts with LEP persons may be high.

Recipients of HUD funds are required by existing regulations to outreach, educate, and affirmatively market the availability of housing and housing-related services to eligible persons in the geographic area that are least likely to apply for and/or receive the benefits of the program without such outreach and education activities and/or affirmative marketing [(24 CFR 200.625; 24 CFR 92.351; and 24 CFR 903.2(d)(1) and (2)]. In many cases, those least likely to apply for a benefit are LEP persons. In addition, in some cases where there are few LEP persons in the immediate geographic area, outreach, education, and affirmative marketing may require marketing to residents of adjoining areas, communities, or neighborhoods [(24 CFR 200.625; 24 CFR 92.351; 903.2(d)(1) and (2)].

The programs of many recipients require public meetings and input (24 CFR 91, subpart B; 24 CFR 903.13(a); 24 CFR part 964). Even within the large geographic area covered by a city government, certain target areas may have concentrations of LEP persons. These persons may be those who might be most affected by the issue being discussed. In addition, some programs are specifically targeted to reach a particular audience (e.g., persons with HIV/AIDS, elderly, residents of high crime areas, persons with disabilities, and minority communities). In some communities, these populations may disproportionately be LEP persons.

Factor (2): Frequency of contact should be considered in light of the specific program or the geographic area being served. Some education programs or complaint processing may only require a single or limited interaction with each LEP individual served. In contrast, housing, counseling, and housing supportive services programs require ongoing communication. In the former case, the type and extent of LEP services may be of shorter duration, even for a greater number of LEP persons, than in the latter case. Therefore, decisions must be made accordingly.

Factor (3): Importance of Service/Information/Program/Activity

Given the critical role housing plays in maintaining quality of life, housing and

complementary housing services rank high on the critical/non-critical continuum. However, this does not mean that all services and activities provided by recipients of HUD funds must be equally accessible in languages other than English. For instance, while clearly important to the quality of life in the community, certain recreational programs provided by a HUD-funded recipient may not require the same level of interpretive services as does the recipient's underlying housing service. Nevertheless, the need for language services with respect to these programs should be considered in applying the four-factor analysis. The recipient should always consider the basic activity for which it was funded as being of high importance.

Factor (4): Costs v. Resources and Benefits

The final factor that must be taken into account is the cost of providing various services balanced against the resources available to the HUD-funded recipient providing the service.

Type of Program: There are some programs for which translation and interpretation are such an integral part of the funded program that services would be provided in some way to any client that requires them. In important programs or activities (e.g., tenant selection and assignment, homeownership counseling, fair housing complaint intake, conflict resolution between tenants and landlords, etc.) that require one-on-one contact with clients, oral and written translations would be provided consistent with the four-factor analysis used earlier. Recipients could have competent bi- or multilingual employees, community translators, or interpreters to communicate with LEP persons in languages prevalent in the community. In some instances, a recipient may have to contract or negotiate with other agencies for language services for LEP persons.

Outreach: Affirmative marketing activities, as described above, require written materials in other languages, at a minimum [24 CFR 200.625; 24 CFR 92.351; and 24 CFR 903.2(d)(1) and (2)]. As with counseling, affirmative marketing in large LEP communities could be fruitless without translations of outreach materials. Preferably, outreach workers would speak the language of the people to whom they are marketing.

Size of Program: A major issue for deciding on the extent of translation/interpretation/bilingual services is the size of the program. A large PHA may be expected to have multilingual employees representing the languages spoken by LEP persons who may reside in the communities. These employees may be involved in all activities, including affirmative marketing, taking and verifying applications, counseling, explaining leases, holding and/or interpreting at tenant meetings, and ongoing tenant contact, as well as translating documents into applicable languages. Similarly, a funded recipient receiving millions of dollars in CDBG Program funds may be expected to provide translation/interpretation services in major local languages and have bilingual staff in those languages. Recipients with limited resources (e.g., PHAs with a small number of units, or small nonprofit organizations) would not be expected to provide the same

level and comprehensiveness of services to the LEP population, but should consider the reasonable steps, under the four-factor analysis, they should take in order to provide meaningful access.

Outreach v. Size of the Program: When the same recipient conducts a range of activities, even within the same community, translation needs for each activity may differ. The translation needs may also be mandated according to the number of LEP persons being served. For instance, a housing provider doing outreach and marketing to an eligible population may have to provide written translations of materials because the target population itself is large. Within that target population, there could be an LEP population that exceeds 1,000 persons for one language, or a specific language group that exceeds 5 percent of the population. Outreach materials to that LEP population should be provided in translation to that language. Written translations may not be necessary if, within a housing development, there is no LEP population that meets the "safe harbor" threshold for written translation. In these situations, housing providers need only arrange for oral interpretation.

Relevance of Activity to the Program: A program with monthly information sessions in a community with many LEP persons speaking the same language should consider employing a bilingual employee who can hold these sessions in the LEP language. Alternatively, if a community's major LEP language does not have many applicants to the program, having an interpreter at sessions only when needed (by, for instance, announcing in major languages in any public notice of the meeting that anyone in need of an interpreter should call a certain number before the meeting to request one, and ensuring that someone at that number can communicate with the person) may be sufficient.

Availability/Costs of Services: A HUD recipient with limited resources and located in a community with very few LEP persons speaking any one language should target interpretation and translation to the most important activities. The recipients may decide, as appropriate, to provide those services through agreements with competent translators and interpreters in the community-based organizations, or through telephonic interpretation services. Costs may also be reduced if national organizations pool resources to contract with oral interpretation/written translation services.

Services Provided: HUD recipients have a variety of options for providing language services. Under certain circumstances, when interpreters are needed and recipients should provide competent interpreter services free of cost to the LEP person, LEP persons should be advised that they may choose either to use a competent interpreter provided by the recipient or to secure the assistance of an interpreter of the LEP person's own choosing, at his or her own expense. If the LEP person decides to provide his/her own interpreter, the LEP person's election of this choice would be documented. The Guidance doesn't preclude the use of family members or friends as oral interpreters. However, HUD

recommends that the recipient use caution when family members or friends are used. While an LEP person may prefer bilingual family members, friends, or other persons with whom they are comfortable, there are many situations where recipient-supplied interpretative services may be better. Family and friends may not be available when and where they are needed, or may not have the ability to interpret program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, family, or financial information to a family member, friend, or member of the local community.

Similarly, there may be situations where a HUD-funded recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his/her own interpreter. For example, where precise, complete, and accurate translations of information are critical for lease enforcement, a recipient might decide to provide its own, independent interpreter, even if several LEP persons use their own interpreter(s) as well. In group meetings dealing with vital issues, such as explanations of pending displacement, having the recipient provide interpretation services among multiple interpreters may be preferable, even if the LEP person brings his/her own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Reliance on children is especially discouraged unless there is an extreme emergency and no competent interpreters are available.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters of legal concepts be highly competent to translate legal and lease enforcement concepts, as well as be extremely accurate in their interpretation when discussing relocation and displacement issues. It may be sufficient, however, for a desk clerk who is fully bilingual but not skilled at interpreting to help an LEP person fill out an application in the language shared by the LEP person and bilingual person.

Applying the Four-Factor Analysis

While all aspects of a recipient's programs and activities are important, the four-factor analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular activity involved. In addition, because of the "reasonableness" standard, and frequency of contact and resources/costs factors, the obligation to provide language services increases where the importance of the programs and activities is greater.

HUD has translated generic documents into some of the most frequently encountered languages (i.e., Spanish, and depending on circumstances, Russian, Chinese, Korean, Vietnamese, and Arabic). Recipients should not interpret this to mean that these translations are the total universe of

documents and languages requiring translations. HUD translations are intended to help recipients. However, the recipient-responsibility is determined by the four-factor analysis and the documents that are vital to their programs. Since most documents are not generic and there are so many languages spoken throughout the country, HUD cannot provide all applicable translations.

"Promising Practices." This section provides hypothetical examples of "promising practices" in which recipients may engage. Grantees or funded recipients are responsible for ensuring meaningful access to all portions of their program or activity, not just those portions to which HUD funds are targeted. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in meeting the meaningful access requirements of Title VI and the Title VI regulations.

Office of Fair Housing and Equal Opportunity

1. *The Fair Housing Initiatives Program (FHIP):* FHIP assists fair housing activities that promote compliance with the Fair Housing Act or with substantially equivalent fair housing laws administered by state and local government agencies under the Fair Housing Assistance Program. FHIP awards funds competitively and these funds enable recipients to carry out activities to educate and inform the public and housing providers of their fair housing rights and responsibilities.

For example, a community organization in a large metropolitan area has received FHIP funds to develop an education curriculum to assist newly arrived immigrants. Data showed that non-English speaking persons were having difficulty in applying and securing housing in that geographic area. The organization has identified a large Hispanic clientele in the area who need this service, and has a well-developed program for this LEP population. However, the community's population was changing. The recipient found that there was also a large community of recent immigrants from Cambodia who are also in need of this service. To address this need, the FHIP partnered with Asian Action Network, a community-based social service agency, to translate materials and to present free seminars at the local public library. In addition, if needed, the Asian Action Network has on its staff a Cambodian-speaking counselor who is able to provide interpretation services.

2. *The Fair Housing Assistance Program (FHAP):* FHAP provides funds to state and local agencies that administer fair housing laws that are substantially equivalent to the federal Fair Housing Act.

A local FHAP is located in a small metropolitan area that has a population that is 3 percent Korean-speaking, 25 percent Spanish-speaking and 72 percent English-speaking. One of the FHAP agency's primary responsibilities is to process fair housing discrimination complaints. The FHAP Office has many Hispanic complainants who are LEP and Spanish-speaking; therefore, it has hired a Hispanic intake clerk who is

proficient in Spanish and English. The Fair Housing Poster and the complaint form have been translated into Spanish. The FHAP Office has a contract with a nonprofit Hispanic organization for interpreters on an as-needed basis, for its education and outreach activities to the Hispanic community. Some of the FHAP's organizations are small and have limited resources. In competing for the available resources, the FHAP chooses not to translate the material into the language of the Korean population this year. However, it has plans to translate material into Korean in coming years to address the accessibility needs of the LEP population.

Office of Public and Indian Housing

1. *HOPE VI*: The HOPE VI Revitalization of Distressed Public Housing Program provides revitalization and demolition-only grants on a competitive basis for eligible PHAs that operate public housing units. During the HOPE VI lifecycle, PHAs are required to communicate with all tenants, including LEP tenants, through informational meetings that describe both the proposed project and the rights of the tenants during every stage of the application and implementation process. All residents need to be educated about both the HOPE VI project and their rights to be relocated into decent, safe, and sanitary housing and how they can return to the new project once it is completed.

A housing agency is planning to demolish a 400-unit public housing project and construct a 375-unit HOPE VI mixed-finance development and other amenities on the site. The 400-unit building is still occupied by a tenant population, of which 55 percent are Spanish-speaking LEP families. For a number of years, the PHA has had bilingual employees in its occupancy office, as well as copies of leases and other written documents translated into Spanish. The PHA would now need to translate public notices and other documents into Spanish.

2. *Public Housing (leases and other vital documents)*: There are approximately 3,400 PHAs in the United States that provide a majority of the housing to very low income and low-income families. A PHA in a large metropolitan area has a large number of Hispanic, Chinese, and Vietnamese LEP tenants such that they would translate vital documents into all three languages under the "safe harbor." All tenants must sign a lease before they can live in public housing. The lease clearly states the rules and requirements that the PHA and tenants must follow. Therefore, the PHA should have its lease and rental notices translated into Spanish, Chinese, and Vietnamese. The documents should be clearly labeled "for information purposes only." PHAs should have a procedure to access interpreters for these languages if oral discussions of the lease are necessary.

3. *Public Housing (outreach for waiting list)*: The same PHA is preparing to re-open its waiting list for its Low-Income Public Housing (LIPH) after having it closed for over a year. The PHA must affirmatively market the availability of its units to all eligible families living in its jurisdiction. It should place a public service announcement in English, Spanish, Chinese, and Vietnamese

in the local general circulation Spanish, Chinese, and Vietnamese newspapers and/or radio and TV stations.

Office of Community Planning and Development

1. *Consolidated Plan*: Consolidated planning means developing a Consolidated Plan based upon public participation and input. When planning the required public hearings, jurisdictions must identify how the needs of LEP residents will be met, if a significant number of LEP residents can be reasonably expected to participate (24 CFR 91, Subpart B, "Citizen Participation and Consultation"). In addition, there are activities surrounding citizen participation where the needs of the LEP population are expected to be met, such as: (1) Translation of the notification of the public hearings; and (2) translation of draft and final action, and consolidated plans, and dissemination of those documents to individuals and the appropriate organization(s) in the LEP community.

2. *Housing Opportunities for Persons with AIDS (HOPWA)*: A major city has been providing permanent supportive housing to persons living with AIDS, and such assistance has been an integral part of its Consolidated Plan. However, it recently learned from a national study that 20 percent of its 2,000 HIV-infected persons are LEP persons. The city previously had not contacted these people about their needs. In formulating its Consolidated Plan, the city's Community Development Department contacted both the Department of Health and the city's leading AIDS-related housing provider for assistance in reaching out to this population. The city offered to provide funding for housing information services through its HOPWA formula grant to fund bilingual interpreters and health outreach workers who would contact the LEP persons living with HIV to assist eligible persons to locate, acquire, and maintain housing. In addition, as part of fulfilling the citizen participation requirements under the Consolidated Plan provisions, the city offered to conduct a multilingual meeting in which local government officials and local AIDS housing and service providers would participate and inform the public at large of the resources available to assist those living with HIV/AIDS.

3. *HOME Investment Partnership Program (HOME)*: In general, under the HOME Program, HUD allocates funds by formula among eligible state and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing. Families, including LEP families, may obtain homeownership and rental housing opportunities from participating jurisdictions (PJs). Under the program requirements, PJs are required to implement affirmative marketing strategies, under which they identify groups within the eligible population that are least likely to apply and to conduct special outreach efforts through advertising in local media, including media targeted at LEP citizens (24 CFR 92.351).

A small HOME participating jurisdiction is using its HOME formula-based funds to implement a tenant-based rental assistance

(TBRA) program. Under TBRA, the assisted tenant may move from a dwelling unit, but retains the right to continued assistance. The rental assistance also includes the security deposit. The HOME PJ, as part of its affirmative marketing strategy, has submitted advertising to the local Spanish language newspapers and radio station that serve the community's small but growing Hispanic population. Since the costs of implementing the affirmative marketing strategy are eligible costs under the program regulations, the PJ is increasing its budget to train occupancy staff to address issues faced by LEP applicants and to hire a bilingual staff member.

Office of Housing

1. *Single-Family Housing Counseling Program*: HUD provides funds to housing counseling agencies that assist persons and families in specific geographic areas to enable them to buy homes and to keep homes already purchased. This requires one-on-one and group counseling on home-selection skills, understanding mortgages, understanding legal ramifications of various documents, establishing a budget, housekeeping and maintenance skills, understanding fair housing rights, etc.

In a majority-Hispanic community, La Casa has been the only HUD-funded counseling agency, and has been providing these services for many years. It has bilingual staff to serve the largely Hispanic population. Frequently, clients from a neighboring, low-income and primarily African-American community also use its services, since La Casa is well known in the area. However, over the past few years, many low-income LEP Iranian-Americans have been moving into the neighboring community, so that they now constitute almost 5 percent of the population. A housing counseling agency is required to provide one-on-one counseling services as the nature of its program. It is also required to outreach to those who are least likely to apply for its services. As a relatively small Agency, La Casa employs at least one person or has regular access to a person who can speak Farsi and interpret English to Farsi. This person should contact the Iranian communities and work through the local agencies to affirmatively market La Casa's program. La Casa should arrange to get key materials translated to Farsi and provide counseling and interpretation services, as needed.

2. *Single-Family Property Disposition Program*: When developers or organizations buy HUD-held housing to renovate and resell, they are required to affirmatively market the properties. Such developers or organizations are required to provide language assistance to attract eligible LEP persons who are least likely to apply as does any other housing provider.

3. *Supportive Housing for the Elderly and Persons with Disabilities*: The Section 202 Supportive Housing for the Elderly Program funds the construction of multifamily projects that serve elderly persons. Project sponsors are required to affirmatively market their services and housing opportunities to those segments of the elderly population that are identified as least likely to apply for the housing without special outreach. Even more

importantly, many LEP elderly may require care from bilingual medical or support services staff, and recipients may devote considerable financial and other resources to provide such assistance.

The sponsor of a Section 202 Supportive Housing for the Elderly Project identifies in its Affirmative Fair Housing Marketing Plan the city's large numbers of East and South Asian immigrants as least likely to apply for the new housing without special outreach. After examining Census and other data and consulting with the city's Office of Immigrant Affairs, the sponsor learns that more than 1,000 of the city's 5,000 South and East Asian families have at least one elderly relative that may be eligible for the new units. The sponsor hires translators fluent in Hindi, Urdu, Dari, Vietnamese, and Chinese to translate written materials and advertising for the local press in those languages. The recipient also partners with community-based organizations that serve the city's East and South Asian immigrants to arrange for interpreters at meetings.

4. *Assisted Housing:* An assisted housing development is located in a city of 20,000 people, about 2,000 of whom are recent immigrants from Korea. Few of the 2,000 have applied for assisted housing. Only eight of the development's 200 residents and no applicants among the 20 on the waiting list are LEP speakers of Korean. Koreans constitute about 10 percent of the eligible population of the community but only 4 percent of the development's residents.

In its Affirmative Fair Housing Marketing Plan for the development, the management agent specified Asian (Korean) as the population least likely to apply for housing and to whom it would outreach. Under the safe-harbor guidelines, the housing provider should outreach to the Korean community using written Korean language materials. However, even after extensive outreach, only one Korean family applied for the waiting list, although during that time the total waiting list increased by eight families to 38. Even after extensive outreach, the occupancy of the project is 4 percent, and its waiting list is less than 3 percent, LEP Korean.

Therefore, under safe-harbor guidelines, no translation of occupancy documents into Korean is necessary. However, the housing provider should be prepared to provide for oral interpretation, when needed. In addition, outreach to the eligible Korean community should continue using written Korean language materials.

Appendix B—Questions and Answers

I. Who are limited English proficient (LEP) persons?

For persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write, or understand. For purposes of Title VI and the LEP Guidance, persons may be entitled to language assistance with respect to a particular service, benefit, or encounter.

II. What is Title VI and how does it relate to providing meaningful access to LEP persons?

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from

discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who are LEP can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination.

III. What do Executive Order (EO) 13166 and the Guidance require?

EO 13166, signed on August 11, 2000, directs all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Pursuant to EO 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the Department of Justice (DOJ) LEP Guidance apply to the programs and activities of federal agencies, including HUD. In addition, EO 13166 requires federal agencies to issue LEP Guidance to assist their federally assisted recipients in providing such meaningful access to their programs. This Guidance must be consistent with the DOJ Guidance. Each federal agency is required to specifically tailor the general standards established in DOJ's Guidance to its federally assisted recipients. On December 19, 2003, HUD published such proposed Guidance.

IV. Who must comply with the Title VI LEP obligations?

All programs and operations of entities that receive financial assistance from the federal government, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements. A listing of most, but not necessarily all, HUD programs that are federally assisted may be found at the "List of Federally Assisted Programs" published in the *Federal Register* on November 24, 2004 (69 FR 68700). Sub-recipients must also comply (i.e., when federal funds are passed through a recipient to a sub-recipient). As an example, Federal Housing Administration (FHA) insurance is not considered federal financial assistance, and participants in that program are not required to comply with Title VI's LEP obligations, unless they receive federal financial assistance as well. [24 CFR 1.2 (e)].

V. Does a person's citizenship and immigration status determine the applicability of the Title VI LEP obligations?

United States citizenship does not determine whether a person is LEP. It is possible for a person who is a United States citizen to be LEP. It is also possible for a person who is not a United States citizen to be fluent in the English language. Title VI is interpreted to apply to citizens, documented non-citizens, and undocumented non-citizens. Some HUD programs require recipients to document citizenship or eligible immigrant status of beneficiaries; other programs do not. Title VI LEP obligations apply to every beneficiary who meets the program requirements, regardless of the beneficiary's citizenship status.

VI. What is expected of recipients under the Guidance?

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities. To do this, the recipient should: (1) Conduct the four-factor analysis; (2) develop a Language Access Plan (LAP); and (3) provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options. All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP. HUD recognizes that some projects' budgets and resources are constrained by contracts and agreements with HUD. These constraints may impose a material burden upon the projects. Where a HUD recipient can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, refusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI. The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

VII. What is the four-factor analysis?

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

- The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services);
- The frequency with which LEP persons come into contact with the program;
- The nature and importance of the program, activity, or service provided by the program; and
- The resources available and costs to the recipient.

Examples of applying the four-factor analysis to HUD-specific programs are located in Appendix A of this Guidance.

VIII. What are examples of language assistance?

Language assistance that a recipient might provide to LEP persons includes, but is not limited to:

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.

IX. What is a Language Access Plan (LAP) and what are the elements of an effective LAP?

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient may develop an implementation plan or LAP to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include:

- Identifying LEP persons who need language assistance and the specific language assistance that is needed;
- Identifying the points and types of contact the agency and staff may have with LEP persons;
- Identifying ways in which language assistance will be provided;
- Outreaching effectively to the LEP community;
- Training staff;
- Determining which documents and informational materials are vital;
- Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
- Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
- Providing interpreters for large, medium, small, and one-on-one meetings;
- Developing community resources, partnerships, and other relationships to help with the provision of language services; and
- Making 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.

X. What is a vital document?

A vital document is any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for auxiliary activities, such as certain recreational programs in public housing, would not generally be considered a vital document, whereas applications for housing would be considered vital. However, if the major purpose for funding the recipient were its

recreational program, documents related to those programs would be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

XI. How may a recipient determine the language service needs of a beneficiary?

Recipients should elicit language service needs from all prospective beneficiaries (regardless of the prospective beneficiary's race or national origin). If the prospective beneficiary's response indicates a need for language assistance, the recipient may want to give applicants or prospective beneficiaries a language identification card (or "I speak" card). Language identification cards invite LEP persons to identify their own language needs. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both Vietnamese and English, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak" card can be found and downloaded at <http://www.usdoj.gov/crt/cor/13166.htm>. The State of Ohio Office of Criminal Justice Services, the National Association of Judiciary Interpreters and Translators, the Summit County Sheriff's Office, and the American Translators Association have made their language identification card available at http://www.lep.gov/ocjs_languagecard.pdf.

XII. How may a recipient's limited resources be supplemented to provide the necessary LEP services?

A recipient should be resourceful in providing language assistance as long as quality and accuracy of language services are not compromised. The recipient itself need not provide the assistance, but may decide to partner with other organizations to provide the services. In addition, local community resources may be used if they can ensure that language services are competently provided. In the case of oral interpretation, for example, demonstrating competency requires more than self-identification as bilingual. Some bilingual persons may be able to communicate effectively in a different language when communicating information directly in that language, but may not be competent to interpret between English and that language. In addition, the skill of translating is very different than the skill of interpreting and a person who is a competent interpreter may not be a competent translator. To ensure the quality of written translations and oral interpretations, HUD encourages recipients to use members of professional organizations. Examples of such organizations are: National organizations, including American Translators Association (written translations), National Association of Judicial Interpreters and Translators, and International Organization of Conference Interpreters (oral interpretation); state organizations, including Colorado Association of Professional Interpreters and Florida Chapter of the American Translators Association; and local legal organizations

such as Bay Area Court Interpreters. While HUD recommends using the list posted on <http://www.LEP.gov>, its limitations must be recognized. Use of the list is encouraged, but not required or endorsed by HUD. It does not come with a presumption of compliance. There are many other qualified interpretation and translation providers, including in the private sector.

XIII. May recipients rely upon family members or friends of the LEP person as interpreters?

Generally, recipients should not rely on family members, friends of the LEP person, or other informal interpreters. In many circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Therefore, such language assistance may not result in an LEP person obtaining meaningful access to the recipients' programs and activities. However, when LEP persons choose not to utilize the free language assistance services expressly offered to them by the recipient but rather choose to rely upon an interpreter of their own choosing (whether a professional interpreter, family member, or friend), LEP persons should be permitted to do so, at their own expense. Recipients may consult HUD LEP Guidance for more specific information on the use of family members or friends as interpreters. While HUD guidance does not preclude use of friends or family as interpreters in every instance, HUD recommends that the recipient use caution when such services are provided.

XIV. Are leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts when they are in languages other than English?

Generally, the English language document prevails. The HUD translated documents may carry the disclaimer, "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document." Where both the landlord and tenant contracts are in languages other than English, state contract law governs the leases and rental agreements. HUD does not interpret state contract law. Therefore, questions regarding the enforceability of housing documents of a legal nature that are in languages other than English should be referred to a lawyer well-versed in contract law of the appropriate state or locality.

XV. Are EO 13166 and HUD LEP Guidance enforceable by individuals in a court of law?

Neither EO 13166 nor HUD LEP Guidance grants an individual the right to proceed to court alleging violations of EO 13166 or HUD LEP Guidance. In addition, current Title VI case law only permits a private right of action for intentional discrimination and not for action based on the discriminatory effects of a recipient's practices. However, individuals may file administrative complaints with HUD alleging violations of Title VI because the HUD recipient failed to take reasonable steps

to provide meaningful access to LEP persons. The local HUD office will intake the complaint, in writing, by date and time, detailing the complainant's allegation as to how the HUD recipient failed to provide meaningful access to LEP persons. HUD will determine jurisdiction and follow up with an investigation of the complaint.

XVI. Who enforces Title VI as it relates to discrimination against LEP persons?

Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act of 1964. To the extent that a recipient's actions violate Title VI obligations, then such federal agencies will take the necessary corrective steps. The Secretary of HUD has designated the Office of Fair Housing and Equal Opportunity (FHEO) to take the lead in coordinating and implementing EO 13166 for HUD, but each program office is responsible for its recipients' compliance with the civil-rights related program requirements (CRRPRs) under Title VI.

XVII. How does a person file a complaint if he/she believes a HUD recipient is not meeting its Title VI LEP obligations?

If a person believes that a HUD federally assisted recipient is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD's local Office of FHEO. For contact information of the local HUD office, go to <http://www.hud.gov> or call the housing discrimination toll free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY).

XVIII. What will HUD do with a complaint alleging noncompliance with Title VI obligations?

HUD's Office of FHEO will conduct an investigation or compliance review whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI obligations by one of HUD's recipients. If HUD's investigation or review results in a finding of compliance, HUD will inform the recipient in

writing of its determination. If an investigation or review results in a finding of noncompliance, HUD also will inform the recipient in writing of its finding and identify steps that the recipient must take to correct the noncompliance. In a case of noncompliance, HUD will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD may then secure compliance by: (1) Terminating the financial assistance of the recipient only after the recipient has been given an opportunity for an administrative hearing; and/or (2) referring the matter to DOJ for enforcement proceedings.

XIX. How will HUD evaluate evidence in the investigation of a complaint alleging noncompliance with Title VI obligations?

Title VI is the enforceable statute by which HUD investigates complaints alleging a recipient's failure to take reasonable steps to ensure meaningful access to LEP persons. In evaluating the evidence in such complaints, HUD will consider the extent to which the recipient followed the LEP Guidance or otherwise demonstrated its efforts to serve LEP persons. HUD's review of the evidence will include, but may not be limited to, application of the four-factor analysis identified in HUD LEP Guidance. The four-factor analysis provides HUD a framework by which it may look at all the programs and services that the recipient provides to persons who are LEP to ensure meaningful access while not imposing undue burdens on recipients.

I. What is a "safe harbor"?

A "safe harbor," in the context of this guidance, means that the recipient has undertaken efforts to comply with respect to the needed translation of vital written materials. If a recipient conducts the four-factor analysis, determines that translated documents are needed by LEP applicants or beneficiaries, adopts an LAP that specifies the translation of vital materials, and makes the necessary translations, then the recipient

provides strong evidence, in its records or in reports to the agency providing federal financial assistance, that it has made reasonable efforts to provide written language assistance.

XXI. What "safe harbors" may recipients follow to ensure they have no compliance finding with Title VI LEP obligations?

HUD has adopted a "safe harbor" for translation of *written* materials. The Guidance identifies actions that will be considered strong evidence of compliance with Title VI obligations. Failure to provide written translations under these cited circumstances does not mean that the recipient is in noncompliance. Rather, the "safe harbors" provide a starting point for recipients to consider:

- Whether and at what point the importance of the service, benefit, or activity involved warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the nature of the information sought warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the number or proportion of LEP persons served warrants written translations of commonly used forms into frequently encountered languages other than English; and
- Whether the demographics of the eligible population are specific to the situations for which the need for language services is being evaluated. In many cases, use of the "safe harbor" would mean provision of written language services when marketing to the eligible LEP population within the market area. However, when the actual population served (e.g., occupants of, or applicants to, the housing project) is used to determine the need for written translation services, written translations may not be necessary.

The table below sets forth "safe harbors" for written translations.

Size of language group	Recommended provision of written language assistance
1,000 or more in the eligible population in the market area or among current beneficiaries.	Translated vital documents.
More than 5% of the eligible population or beneficiaries <i>and</i> more than 50 in number.	Translated vital documents.
More than 5% of the eligible population or beneficiaries <i>and</i> 50 or less in number.	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries <i>and</i> less than 1,000 in number.	No written translation is required.

When HUD conducts a review or investigation, it will look at the total services the recipient provides, rather than a few isolated instances.

XXII. Is the recipient expected to provide any language assistance to persons in a language group when fewer than 5 percent of the eligible population and fewer than 50 in number are members of the language group?

HUD recommends that recipients use the four-factor analysis to determine whether to provide these persons with oral

interpretation of vital documents if requested.

XXIII. Are there "safe harbors" provided for oral interpretation services?

There are no "safe harbors" for oral interpretation services. Recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP (depending on the circumstances, reasonable oral language

assistance might be an in-person interpreter or telephone interpreter line).

XXIV. Is there a continued commitment by the Executive Branch to EO 13166?

There has been no change to the EO 13166. The President and Secretary of HUD are fully committed to ensuring that LEP persons have meaningful access to federally conducted programs and activities.

XXV. Did the Supreme Court address and reject the LEP obligation under Title VI in Alexander v. Sandoval [121 S. Ct. 1511 (2001)]?

The Supreme Court did not reject the LEP obligations of Title VI in its *Sandoval* ruling. In *Sandoval*, 121 S. Ct. 1511 (2001), the Supreme Court held that there is no right of action for private parties to enforce the federal agencies' disparate impact regulations under Title VI. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates Title VI regulations, a private party may not bring a lawsuit under those regulations to enjoin Alabama's policy. *Sandoval* did not invalidate Title VI or the Title VI disparate impact regulations, and federal agencies'

(versus private parties) obligations to enforce Title VI. Therefore, Title VI regulations remain in effect. Because the legal basis for the Guidance required under EO 13166 is Title VI and, in HUD's case, the civil rights-related program requirements (CRRPR), dealing with differential treatment, and since *Sandoval* did not invalidate either, the EO remains in effect.

XXVI. What are the obligations of HUD recipients if they operate in jurisdictions in which English has been declared the official language?

In a jurisdiction where English has been declared the official language, a HUD recipient is still subject to federal nondiscrimination requirements, including Title VI requirements as they relate to LEP persons.

XXVII. Where can I find more information on LEP?

You should review HUD's LEP Guidance. Additional information may also be obtained through the federal-wide LEP Web site at <http://www.lep.gov> and HUD's Web site, <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>. HUD also intends to issue a Guidebook to help HUD recipients develop an LAP. A HUD-funded recipient who has questions regarding providing meaningful access to LEP persons may contact Pamela D. Walsh, Director, Program Standards Division, HUD/FHEO, at (202) 708-2288 or 800-877-8339 (TTY). You may also email your question to limitedenglishproficiency@hud.gov.

[FR Doc. 07-217 Filed 1-16-07; 4:01 pm]

BILLING CODE 4210-67-P



Federal Register

**Wednesday,
November 24, 2004**

Part VI

Department of Housing and Urban Development

**List of Federally Assisted Programs;
Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4893-N-01]

List of Federally Assisted Programs

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice announces a list of HUD programs that are subject to the nondiscrimination provisions in Title VI of the Civil Rights Act of 1964.

FOR FURTHER INFORMATION CONTACT:

Pamela Walsh, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-2000, telephone (202) 708-2288, extension 7017 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On September 11, 1995, HUD published a final rule (60 FR 47260) that removed from Title 24 of the Code of Federal Regulations any regulation determined unnecessary or obsolete. Among the numerous changes, HUD removed Appendix A from 24 CFR part 1. The regulations in 24 CFR part 1 effectuate the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-7), which provides that "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." Appendix A was a list of HUD's programs that provide Federal financial assistance and, therefore, are subject to the nondiscrimination provisions of Title VI and 24 CFR part 1.

In the September 11, 1995, final rule, HUD determined that Appendix A was unnecessary because no regulatory requirement is included and the information can be provided through other non-rulemaking means. To that end, HUD is publishing, and will publish periodically, a list of HUD programs that are subject to the provisions of Title VI. This notice is provided for information and reference; therefore applicability of Title VI and Title VI regulations is not affected by inclusion on or omission from this list.

HUD Programs Subject to Title VI

Community Planning and Development

1. *Community Development Block Grant (Entitlement Program)*, Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), 24 CFR part 570: Provides annual grants on a formula basis to entitled communities to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services.

2. *Community Development Block Grant (State Program)*, Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), 24 CFR part 570: Provides annual grants on a formula basis to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services to states and units of local government in no-entitled areas.

3. *Community Development Block Grant (HUD-Administered Small Cities Program)*, Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), 24 CFR part 570: Provides annual grants on a formula basis to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services. HUD's Honolulu Office administers the funds to non-entitled areas in the state of Hawaii (Kauai, Maui and Hawaii).

4. *Community Development Block Grant Section 108 Loan Guarantee Program*, Section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308), 24 CFR part 570, subpart M: Provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale physical development projects.

5. *Community Development Block Grant (Disaster Recovery Assistance)*, Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), Public Laws: 107-206, 107-117, 107-73, 107-38, 106-31, 105-277, 105-276, 105-174, 105-18, 104-134, 104-19, 103-327, 103-211, 103-75, and 103-50: Provides flexible grants to help cities, counties, and states recover from presidentially declared disasters, especially in low- and moderate-income areas.

6. *Community Development Block Grant—Section 107 (Insular Areas Grants)*, Section 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307), 24 CFR part 570:

Provides annual grants on a formula basis to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services. HUD's Honolulu and Caribbean field offices administer the funds to non-entitled areas in the insular areas of American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands.

7. *The HOME Investment Partnerships (HOME) Program*, Cranston-Gonzalez National Affordable Housing Act, Title II (1990) (42 U.S.C. 12701 *et seq.*), 24 CFR part 92: Provides grants to state and local governments to implement local housing strategies designed to increase homeownership and affordable housing opportunities for low- and very low-income Americans, including homeownership downpayment, tenant-based assistance, housing rehabilitation, assistance to homebuyers, and new construction of housing.

8. *Shelter Plus Care (S+C)*, Cranston-Gonzales National Affordable Housing Act (Pub. L. 101-625), which amended Title IV of the McKinney-Vento Homeless Assistance Act by adding subtitle F authorizing the Shelter Plus Care Program, 24 CFR part 582: Provides rental assistance for homeless people with disabilities, primarily those with serious mental illness, chronic problems with alcohol or drugs or both, or acquired immunodeficiency syndrome (AIDS) and related diseases. Each dollar of rental assistance must be matched by dollar provided by the grantee from federal or private sources to be used for supportive services.

9. *Emergency Shelter Grants Program*, Title IV, McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378), as amended by Public Law 100-77, Public Law 101-625, Public Law 104-330, and Public Law 106-377, 24 CFR part 576: Provides grants to help increase the number and quality of emergency shelters for homeless individuals and families, to operate these facilities and provide essential supportive services, and to help prevent homelessness.

10. *Surplus Property for Use to Assist the Homeless*, Title V, McKinney-Vento Homeless Assistance Act, Section 501 of Title V, Public Law 101-645 (42 U.S.C. 11411), 24 CFR parts 581 and 586: Makes unutilized, underutilized, excess, or surplus Federal properties available to states, local governments, and nonprofit organizations for use to assist homeless persons.

11. *Supportive Housing Program—Transitional Housing Component*, Subtitle C of Title IV of the McKinney-

Vento Homeless Assistance Act (42 U.S.C. 11381): Provides grants for new construction, acquisition, rehabilitation, or leasing of buildings to house and provide supportive services to assist homeless persons to move into independent living; grants to fund a portion of annual operating costs and supportive services; and grants for technical assistance.

12. *Supportive Housing Program—Permanent Housing Component*, Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381), 24 CFR part 583: Provides grants for new construction, acquisition, rehabilitation, or leasing of buildings to develop community-based, long-term housing with support services for homeless persons with disabilities; grants to fund a portion of annual operating costs and supportive services; and grants for technical assistance.

13. *Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program*, Title IV, subtitle E, McKinney-Vento Homeless Assistance Act (42 U.S.C. 11401), 24 CFR part 882, subpart H: Assists very low-income, single, homeless individuals in obtaining decent, safe, and sanitary housing in privately-owned rehabilitated buildings through Section 8 rental assistance payments to participating landlords.

14. *Brownfields Economic Development Initiative (BEDI)*, Section 108(q) of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(q)): Provides competitive economic development grants to CDBG recipients for enhancing either the security of guaranteed loans or the viability of projects financed under Section 108. Grants are used to redevelop industrial or commercial sites known as brownfields due to the presence or potential presence of environmental contamination.

15. *Economic Development Initiative (EDI) Grants*, Section 108(q) of the Housing and Community Development Act of 1974, as added by Section 232(a)(1) of the Multifamily Property Disposition Reform Act of 1994 (42 U.S.C. 5308(q)): Provides economic development grants to CDBG recipients for the purpose of enhancing either the security of guaranteed loans or the viability of projects financed by those loans. EDI enables localities to carry out eligible economic development activities, especially for low- and moderate-income persons, and reduce the risk of potential defaults on Section 108 loan guarantee-assisted projects.

16. *Round II Urban Empowerment Zones*, Provides grants for economic development activities in economically disadvantaged areas.

17. *Youthbuild*, Subtitle D of Title IV of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12899 *et seq.*), 24 CFR part 585: Provides economically disadvantaged young adults with opportunities to obtain education, employment skills, and meaningful on-site work experience and expands the supply of affordable housing for homeless and low- and very low-income persons.

18. *Rural Housing and Economic Development*, The "Rural Housing and Economic Development" heading in the appropriations acts for Fiscal Years 1999, 2000, 2001, 2002, and 2003: Provides grants to meet rural communities' economic and housing needs.

19. *Self-Help Homeownership Opportunity Program (SHOP)*, Section 11 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note): Provides competitive grants to national and regional organizations and consortia that provide or facilitate self-help housing opportunities. Under the program, homebuyers and volunteers contribute a significant amount of sweat equity toward home construction.

20. *Capacity Building for Community Development*, Section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103-120; 42 U.S.C. 9816 note, as amended by Section 10004 of Pub. L. 105-118): Provides grants to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs.

21. *Housing Opportunities for Persons With AIDS (HOPWA)*, The AIDS Housing Opportunity Act (42 U.S.C. 12901 *et seq.*), Subtitle D of Title VIII of the Cranston-Gonzalez National Affordable Housing Act, 24 CFR part 574: Provides grants to eligible states and cities to provide housing assistance and related supportive services to meet the needs of low-income persons with HIV/AIDS or related diseases and their families.

22. *Neighborhood Initiatives Program*, The appropriations acts for Fiscal Years 1998, 1999, 2000, 2001, 2002, and 2003: Provides funding for neighborhood initiatives that improve the conditions of distressed and blighted areas and neighborhoods; to stimulate investment, economic diversification, and community revitalization in areas with population outmigration or a stagnating or declining economic base; or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives.

23. *Technical Assistance Programs—HOME, CHDO (HOME), McKinney-*

Vento Homeless Assistance, and HOPWA: Funds are available to provide technical assistance, under cooperative agreements with HUD, for four separate programs: (1) HOME Investment Partnerships Program; (2) HOME Investment Partnerships Program for Community Housing Development Organizations; (3) McKinney-Vento Homeless Assistance; and (4) Housing Opportunities for Persons with AIDS (HOPWA).

Single Family Housing Programs

24. *Single Family Property Disposition (204(g))*, Section 203, National Housing Act (12 U.S.C. 1709(b)), 24 CFR part 203: Disposes of one-to four-family FHA properties, either through the competitive, sealed-bid process or direct sale, and constitutes Federal financial assistance where such sales are to nonprofit organizations, states, or local governments and are discounted below fair market value.

25. *Counseling for Homebuyers, Homeowners, and Tenants (Section 106)*, Section 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x): Awards housing counseling grants on a competitive basis to approved counseling agencies.

Multifamily Housing Programs

26. *Supportive Housing for the Elderly (Section 202)*, Section 202, Housing Act of 1959 (12 U.S.C. 1701q), as amended by Section 801 of the Cranston-Gonzalez National Affordable Housing Act, 24 CFR part 891: Provides interest-free capital advances to eligible private, nonprofit organizations to finance the development of rental housing with supportive services for the elderly. In addition, project rental assistance contract (PRAC) funds are used to cover the difference between the tenants' contributions toward rent and the HUD-approved expense to operate the project. PRAC funds may also be used to provide supportive services and to hire a service coordinator in projects serving frail elderly residents.

27. *Assisted Living Conversion Program (ALCP)*, Section 202(b), Housing Act of 1959 (12 U.S.C. 1701q): Provides grants to private, nonprofit owners of eligible developments to convert some or all of the dwelling units in the development into an assisted living facility for the frail elderly.

28. *Multifamily Housing Service Coordinators*, Section 808, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8012), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102-550) and the American Homeownership and Economic Opportunity Act of 2000

(Pub. L. 106-569): Provides funding for service coordinators that assist elderly individuals and persons with disabilities who live in federally assisted multifamily housing to obtain needed supportive services from community agencies.

29. *Supportive Housing for Persons with Disabilities (Section 811)*, Section 811, Cranston-Gonzalez National Affordable Housing Act, 24 CFR part 891: Provides interest-free capital advances to eligible nonprofit sponsors to finance the development of rental housing with the availability of supportive services for persons with disabilities. PRAC funds are used to cover the difference between the tenants' contributions toward rent and the HUD-approved cost to operate the project.

30. *Self-Help Housing Property Disposition*, Public Law 105-50; approved October 6, 1997: Makes surplus federal properties available through sale at less than fair market value to states, their subdivisions and instrumentalities, and nonprofit organizations for self-help housing for low-income persons. Residents of the property make a substantial contribution of labor toward the construction, rehabilitation, or refurbishment of the property.

31. *Mark to Market: Outreach and Training Assistance*, Multifamily Assistance and Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note), 24 CFR parts 401 and 402: Provides funding for technical assistance for tenant groups in properties with project-based rental assistance contracts that are nearing expiration and properties whose tenants have been notified that the owner intends to prepay its HUD-insured mortgage. The funding supports outreach, organizing, and training activities for tenants in units receiving HUD assistance.

Public and Indian Housing

32. *Housing Choice Voucher Program*, Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), Section 8(o) for vouchers (tenant-based and project-based) and Section 8(t) for enhanced vouchers, 24 CFR part 5 (certain cross-cutting requirements); 24 CFR part 982, Tenant-based Housing Choice Voucher Program; 24 CFR part 983, Project-based Voucher Program; 24 CFR part 984, Section 8 Family Self-Sufficiency Program; and 24 CFR part 985, Section 8 Management Assessment Program (SEMAP): Provides tenant-based housing assistance subsidies for units that are (in general) chosen by the tenant in the private market.

33. *Mainstream Program*, Consolidated Appropriations Act, 2004 (Pub. L. 108-199, approved January 23, 2004): Provides tenant-based housing assistance for persons with disabilities living in units chosen by the tenant in the private market.

34. *Housing Voucher Homeownership Assistance*, Section 8(y) of the United States Housing Act of 1937, Section 302 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569), 24 CFR part 982, subpart M: Provides monthly assistance to families who are current voucher participants and are purchasing homes in an amount that otherwise would have been provided to that family as tenant-based voucher assistance.

35. *Project-Based Voucher Program*, Section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1473f(o)(13)), as amended by Section 232 of the Fiscal Year 2001 appropriations act (Pub. L. 106-377, approved October 27, 2000), 66 FR 3605—Regulations will be codified at 24 CFR part 983: Provides rental assistance for eligible families who live in specific housing developments or units.

36. *Renewal of Section 8 Project-Based Rental Assistance*: Assists low- and very low-income families in obtaining decent, safe, and sanitary housing in private accommodations. Rental assistance was originally used in conjunction with both existing properties and new construction (Section 8 New Construction/Substantial Rehabilitation, and Loan Management and Property Disposition Set Aside programs). Funding no longer is available for new commitments beyond renewing expiring contracts on units already receiving project-based Section 8 rental assistance.

37. *Public Housing Operating Fund*, Section 9(e) of the United States Housing Act of 1937 (42 U.S.C. 1437g(e)), 24 CFR part 990: Provides an annual subsidy to public housing agencies (PHAs) for operations and management.

38. *Public Housing Capital Fund*, Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g(d)), 24 CFR parts 905 and 968: Provides capital and management funding for PHAs.

39. *Public Housing/Section 8 Moving to Work*, Section 204 of the Fiscal Year 1996 Appropriations Act (Pub. L. 104-134), and Section 599H(e) of the Quality Housing and Work Responsibility Act (Pub. L. 105-276): Provides incentives to PHAs to design and test approaches for providing and administering housing assistance that save money, give incentives to families with children to become economically self-sufficient,

and increase housing choices for low-income families; also provides training and technical assistance to identify replicable program models.

40. *Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI)*, appropriations acts for Fiscal Year 1993 through 1999; Section 24 of the United States Housing Act of 1937, as amended by Section 535 of the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437v): Provides competitive grants to PHAs to eradicate severely distressed public housing through demolition, major reconstruction, rehabilitation, and other physical improvements; the provision of replacement housing; management improvements; planning and technical assistance; and the provision of supportive services.

41. *Public Housing Homeownership—Section 32*, Section 32 of the United States Housing Act of 1937 (42 U.S.C. 1437z-4), 24 CFR part 906: Sells public housing units to low-income families.

42. *Resident Opportunity and Self-Sufficiency (ROSS)*, Section 34 of the United States Housing Act of 1937 (42 U.S.C. 1437z-6), as amended by Section 221 of the Fiscal Year 2001 Appropriations Act: Provides grants to PHAs for supportive services and resident empowerment activities.

43. *Family Self-Sufficiency Program*, Section 23 of the United States Housing Act of 1937 (42 U.S.C. 1437u), 24 CFR 984: Promotes the development of local strategies to coordinate the use of public housing and Housing Choice Voucher program assistance with public and private resources to enable eligible families to achieve economic independence and self-sufficiency.

44. *Indian Housing Block Grant (IHBG) Program*, Titles I-V of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*), 24 CFR part 1000: Provides housing assistance under a single block grant to eligible Indian tribes or their tribally designated housing entities. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) apply to Indian tribes that are not covered by the Indian Civil Rights Act. **Note:** the Title VI and Title VIII nondiscriminatory requirements do not apply to actions by Indian tribes under Section 201(b) of the Native American Housing Assistance and Self-Determination Act of 1996.

45. *Native Hawaiian Housing Block Grant (NHHBG) Program*, Title VIII of NAHASDA, as added by Section 513 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569) and Section 203 of the

Omnibus Indian Advancement Act (Pub. L. 106–568): Provides block grants to address the housing needs and circumstances of Native Hawaiians.

Fair Housing and Equal Opportunity

46. *Fair Housing Initiatives Program (FHIP)*, Section 561, Housing and Community Development Act of 1987 (42 U.S.C. 3616(a)), 24 CFR part 125: Provides funding to private not-for-profit and for-profit fair housing organizations and Fair Housing Assistance Program (FHAP) agencies for carrying out educational and enforcement programs to prevent or eliminate discriminatory housing practices.

Policy Development and Research

47. *Doctoral Research Grant Programs*, Title V of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 *et seq.*): Provides competitive grants to Ph.D. candidates to enable them to complete their dissertations, to Ph.D. students early in their studies to complete research projects, and to Ph.D.s early in their academic careers to undertake research on issues related to HUD's priorities.

48. *Bridges to Work*, Supportive services program authorized under the CDBG heading in the Fiscal Year 1996 appropriations act (Pub. L. 104–134): Provides grants to link low-income, inner-city residents with suburban jobs by providing job placement, transportation, and supportive services, such as child care and counseling.

49. *Research on Socioeconomic Change in Cities*: Provides grants to academic institutions, nonprofit organizations, and municipalities for research dealing with trends in urban areas, including social, economic, demographic, and fiscal changes.

50. *Community Outreach Partnership Program (COPC)*, Section 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307), 24 CFR part 570: Assists in establishing or implementing outreach and applied research activities that address problems of urban areas and encourages structural change, both within institutions of higher education and in the way institutions relate to their neighbors.

51. *Historically Black Colleges and Universities Program (HBCU)*, Section 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307), 24 CFR part 570: Assists HBCUs in expanding their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development,

principally for persons of low and moderate income.

52. *Hispanic-Serving Institutions Assisting Communities Program (HSIAC)*, Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004): Provides grants to assist Hispanic-serving institutions in expanding their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development.

53. *Alaska Native/Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC)*, Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004): Assists Alaska Native/Native Hawaiian Institutions of higher education in expanding their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, principally for persons of low and moderate income.

54. *Tribal Colleges and Universities Program (TCUP)*, Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004): Assists tribal colleges and universities in building, expanding, renovating, and equipping their own facilities. Title VI applies only to tribal colleges and universities that are not a part or instrumentality of a tribe.

Healthy Homes and Lead Hazard Control

55. *Lead Hazard Control*, Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*), Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, 42 U.S.C. 4851 *et seq.*), Sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 and 1701z–2), 24 CFR part 35: Provides grants to state and local governments to evaluate and reduce lead-based paint hazards in privately owned, low-income housing and to nonprofit and for-profit entities to leverage private sector resources to eliminate lead poisoning as a major public health threat to children.

56. *Lead-based Paint Hazard Control Program*, Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*), Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992, 42 U.S.C. 4851 *et seq.*), Sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 and 1701z–2), 24 CFR part 35: Provides grants to government

entities that will formally partner with faith-based and community organizations to reduce lead hazards in eligible privately owned rental and owner-occupied housing

57. *Healthy Homes Demonstration Program*, Sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 and 1701z–2): Provides grants to state and local governments, federally recognized Indian tribes, and nonprofit applicants for controlling a variety of environmentally unhealthy housing conditions, especially for children.

58. *Operation Lead Elimination Action Program (LEAP)*, Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004): Provides grants to nonprofit and for-profit organizations and universities that can leverage HUD funds with private resources and who will reallocate resources to other entities to eliminate lead in residential buildings, especially for low-income, privately owned or owner-occupied housing.

59. *Lead Outreach Grant Program*, Sections 1011(e)(8) and (g)(1) of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992), Consolidated Appropriations Resolution of 2004, Public Law 108–199, approved January 23, 2004): Provides funding to nonprofit and for-profit organizations to develop and distribute outreach and educational materials.

60. *Healthy Homes and Lead Technical Studies*, Sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 and 1701z–2), Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004): Funds research to find improved methods for detecting and controlling lead-based paint and other residential health and safety hazards.

Inactive HUD Programs

(Programs With No New Funding, But That May Still Fund Previous Contracts)

61. *Rent Supplements*: Provided federal payments to reduce rents for certain low-income persons. New rent supplement contracts are no longer available.

62. *Congregate Housing Services*: Provided federal grants to eligible housing projects for the elderly and disabled. No activity in recent years except to extend previously funded grants.

63. *HOPE 2 Homeownership of Multifamily Units*: Provided grants to assist in developing and carrying out

homeownership programs for low-income families and individuals through the use of multifamily rental properties. No new commitments are being made.

64. *HOPE for Homeownership of Single Family Homes (HOPE 3) Program*: Provided grants to assist in developing and carrying out homeownership programs for low-income families and individuals through the rehabilitation of existing single-family homes. No new commitments since 1995.

65. *Emergency Low-Income Housing Preservation (Title II) (except for FHA-mortgage insurance)*: Addressed the preservation of Section 221(d)(3) and Section 236 projects whose low-income use restrictions could otherwise expire 20 years after the final mortgage endorsement. No new commitments are being made.

66. *Low-Income Housing Preservation and Resident Homeownership (Title VI) (except for FHA-mortgage insurance)*: Addressed the preservation of Section 221(d)(3) and Section 236 projects whose low-income use restrictions could otherwise expire 20 years after the

final mortgage endorsement. No new commitments are being made.

67. *Flexible Subsidy (Section 201)*: Provided federal aid for troubled multifamily housing projects as well as capital improvement funds for both troubled and stable subsidized projects. No new commitments are being made.

68. *Direct Loans for Housing for the Elderly or Handicapped (Section 202)*: Provided housing and related facilities for the elderly or handicapped. This program was replaced in Fiscal Year 1999 by the Supporting Housing Program for the Elderly (Section 202 Capital Advances) and Housing for Persons with Disabilities (Section 811).

69. *Section 8 Moderate Rehabilitation Program*: Assisted very low-income families in obtaining decent, safe, and sanitary housing in privately owned, rehabilitated buildings. Funding is no longer available for new commitments beyond renewing expiring contracts.

70. *Section 8 Welfare to Work*: Provided rent assistance for families moving from welfare dependency to self-sufficiency. No funding has been appropriated since Fiscal Year 1999.

71. *Homeownership and Opportunity for People Everywhere (HOPE I)*: Made available grants to provide affordable homeownership to the residents of public housing. No funding has been appropriated since Fiscal Year 1995.

72. *Moving to Opportunity for Fair Housing*: Assisted certain low-income families with children to move to areas of low concentrations of persons living in poverty. No funding has been appropriated since Fiscal Year 1992.

73. *Regional Opportunity Counseling Programs*: Provided funds to PHAs that partner with other PHAs and nonprofit organizations to provide counseling to holders of tenant-based vouchers to help them understand the benefits of de-concentrated areas.

74. *Public and Indian Housing Drug Elimination Program*: Grants to fund drug elimination activities in public, assisted, and Indian housing.

Dated: November 18, 2004.

Carolyn Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 04-25986 Filed 11-23-04; 8:45 am]

BILLING CODE 4210-28-P

Proposed Rules

Federal Register

Vol. 77, No. 46

Thursday, March 8, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

7 CFR Part 15

Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency

AGENCY: Office of the Assistant Secretary for Civil Rights, USDA.

ACTION: Proposed final guidance.

SUMMARY: The United States Department of Agriculture (USDA) is publishing the proposed guidance on the Title VI prohibition against national origin discrimination as it affects limited English proficient persons. Consistent with Title VI of the Civil Rights Act of 1964, as amended, Title VI regulations, and Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency (LEP)," the guidance clarifies the obligations of entities that receive Federal financial assistance from USDA. The guidance does not create new obligations, but rather, provides guidance for USDA recipients in meeting their existing obligations to provide meaningful access for LEP persons.

DATES: Comments must be received in writing on or before May 7, 2012.

ADDRESSES: Written comments via letter and facsimile are invited from interested persons and organizations. Comments should be sent to Kenneth Baisden, Chief, Policy Division, or Anna G. Stroman, Team Leader, Policy Division, 300 7th Street SW., Washington, DC 20250. Fax: (202) 690-2345. Comments may also be submitted by email at Kenneth.Baisden@ascr.usda.gov or Anna.Stroman@ascr.usda.gov.

FOR FURTHER INFORMATION CONTACT: This document is available for review on the USDA web site at www.usda.gov/da/cr.html. Arrangements to receive this guidance in an alternative format may be made by calling (202) 205-5953 or TTY at 1 (800) 877-8642 or (202) 720-

2600. Upon request, USDA will supply appropriate aids, such as readers or print magnifiers, to persons with disabilities who need assistance to review the comments or other documents in the public record for this guidance.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-2000d-6, and the USDA implementing regulations at 7 CFR part 15, Subpart A, "Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture Effectuation of Title VI of the Civil Rights Act of 1964," provide that no person shall be discriminated against on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture or any Agency thereof. The purpose of this guidance is to clarify the responsibilities of recipients and sub-recipients (recipients) who receive financial assistance from USDA and to assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act of 1964, as amended, and the implementing regulations. This guidance does not impose any new requirements, but reiterates longstanding Title VI and regulatory principles and clarifies USDA's position that in order to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress entitled, "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the Department of Justice (DOJ) published LEP Guidance for DOJ recipients, which was drafted and organized to function as a model for

similar guidance by other Federal agencies. See 67 FR 41455 (June 18, 2002). Consistent with this directive, USDA has developed this proposed guidance, which is designed to reflect the application of the DOJ Guidance standards to the programs and activities of USDA recipients.

This guidance sets out the policies, procedures, and steps that USDA recipients can take to ensure that LEP persons have meaningful access to federally assisted programs and activities and provides examples of policies and practices that USDA may find violative of Title VI and Title VI regulations.

It also sets out the general parameters for recipients in providing translations of written materials, provides examples that illustrate the importance of such translations, and describes the flexibility that recipients have in meeting this obligation. For recipients who desire greater specificity regarding written translations for LEP persons, the guidance contains population thresholds. Use of these population thresholds is not mandatory. The guidance explicitly states that the failure to meet these population thresholds will not result in a finding of noncompliance, but that USDA will review a number of other factors in determining compliance.

The guidance also describes some of the methods recipients can use to meet their obligation to provide, under certain circumstances, competent oral interpretative services to LEP persons. It has been determined that this guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act.

Background

Most people living in the United States read, write, speak, and understand English. There are many people, however, for whom English is not their primary language. For instance, based on the 2000 Census, over 26 million individuals speak Spanish, over 10 million speak Indo-European languages,¹ and almost 7 million speak an Asian or Pacific Island language at home. If these people have

¹ Other Indo-European languages include most languages of Europe and the Indic languages of India, such as German, Yiddish, Dutch, Swedish, Norwegian, French, Italian, Portuguese, Russian, Polish, Serbo-Croatian, Hindi, Gujarati, Punjabi, Urdu, Greek, Baltic and Iranian languages.

a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." According to the 2000 Census data, 28.3 percent of all Spanish speakers, 27.2 percent of all Russian speakers, 28.2 percent of all Chinese speakers, and 32.4 percent of all Vietnamese speakers reported that they spoke English "not well" or "not at all" in response to the 2000 Census.²

Language for LEP persons 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 federally funded programs and activities. The Federal Government funds an array of services that are accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help people learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs along with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. The fact that ESL classes are made available, however, does not obviate the statutory and regulatory requirements to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.³

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 of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful

access to LEP persons under existing law. This policy guidance clarifies existing legal requirements by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.⁴ These are the same criteria USDA has been using and will continue to use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

Under Executive Order 13166, DOJ is responsible for providing LEP Guidance to all Federal agencies and for ensuring consistency among the agency-specific guidance documents issued by Federal agencies. Consistency among the agency-specific guidance documents issued by Federal agencies is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small nonprofits that receive Federal financial assistance.

There are many productive steps the Federal Government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller potential recipients may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, USDA plans to continue to provide assistance and guidance in this important area. In addition, USDA plans to work with potential and actual recipients, other Federal agencies, and LEP persons to identify and share model plans,

examples of best practices, and cost-saving approaches.

Moreover, USDA intends to explore how language assistance measures, resources, and cost-containment approaches developed with respect to its own federally-conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, local governments, and small nonprofit organizations. An interagency working group on LEP has developed a Web site, <http://www.lep.gov>, to assist in disseminating this information to recipients, other Federal agencies, and the communities being served.

Some have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. We have taken the position that this is not the case and will continue to do so. Accordingly, we will strive to ensure that federally-assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

I. Legal Authority.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, states:

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.

Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] by issuing rules, regulations, or orders of general applicability" 42 U.S.C. 2000d-1.

In addition to Title VI, some USDA recipients must implement a statutory provision of the Food Stamp Act of 1977, 7 U.S.C. 2011 et seq., which requires them to use appropriate bilingual personnel and printed materials in the administration of the Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program, in areas where a substantial number of potentially eligible households speak a language other than English. The Food Stamp Act also requires recipients to establish procedures governing the operation of SNAP offices that best serve households in each State, including households in

² Other languages include Hungarian, Arabic, Hebrew, languages of Africa, native North American languages, including the American Indian, Alaska native languages, and some indigenous languages of Central and South America.

³ USDA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

⁴ The policy guidance is not a regulation but rather a guide. Title VI and implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for persons who are limited English proficient.

areas where a substantial number of potentially eligible households speak a language other than English.

USDA regulations at 7 CFR 15.3b(1)–(2) provide in part:

(1) A recipient under any program to which the regulations in this part apply may not, directly or through contractual or other arrangements on the ground of race, color, or national origin:

(i.) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii.) Provide any service, financial aid, or other benefit, to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii.) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv.) Restrict an individual in any way in the enjoyment of any advantage or privilege, enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v.) Treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition that individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi.) Deny an individual an opportunity to participate in the program through the provisions of services or otherwise or afford him or her an opportunity to do so that is different from that afforded others under the program; or

(vii.) Deny a person the opportunity to participate as a member of a planning or advisory body that is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits or facilities that will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects to individuals of a particular race, color, or national origin.

In addition, USDA regulations implementing the Food Stamp Act of 1977, published at 7 CFR 15.3(6)(i)–(ii), provide in part:

Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters * * *.

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court interpreted regulations promulgated by the former Department of Health, Education, and Welfare, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau*, a San Francisco school district, which had a significant number of non-English speaking students of Chinese origin, was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” was issued; 65 FR 50121 (August 16, 2000). Under that Order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from “restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program” or from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”

On that same day, DOJ issued a general guidance document addressed to “Executive Agency Civil Rights Officers” setting forth general principles for agencies to apply in developing guidance documents for their recipients pursuant to the Executive Order, “Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination against Persons with Limited English Proficiency” 65 FR 50123 (August 16, 2000). (DOJ LEP Guidance).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light

of the Supreme Court’s decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for “Heads of Departments and Agencies, General Counsels and Civil Rights Directors.” This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*.⁵ The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

This guidance clarifies the responsibilities of recipients and will assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act of 1964, as amended, and Title VI regulations. It is consistent with Executive Order 13166 and DOJ LEP guidance. To avoid discrimination against LEP persons on the ground of national origin, USDA recipients should take reasonable steps to ensure that such persons receive the language assistance necessary to afford them meaningful access to recipient programs or activities, free of charge.

II. Who is covered?

USDA regulations require all recipients of Federal financial assistance from USDA to provide meaningful access to LEP persons.⁶ Federal financial assistance includes grants, below-market loans, training, and use of equipment, donations of surplus

⁵ The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. See, e.g., *Sandoval*, 532 U.S. at 286, 286 n.6 (“[We] assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are inspired by, at the service of, and inseparably intertwined with § 601, when § 601 permits the very behavior that the regulations forbid.”) The memorandum, however, made clear that DOJ disagreed with the commentators’ interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal agencies to enforce their own implementing regulations.

⁶ Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to USDA federally conducted programs and activities.

property, and other assistance. Covered entities include, but are not limited to:

- State and County agencies, offices, and their subdivisions;
- Private vendors, agents, contractors, associations, and corporations;
- Colleges, universities, and elementary and secondary schools;
- County, district, and regional committees/councils;
- Nursing homes, summer camps, food banks, and housing authorities;
- Research and promotion boards;

and

- Other entities receiving, directly or indirectly, Federal financial assistance provided by USDA.

Sub-recipients likewise are covered when Federal funds are passed through from a recipient to a sub-recipient.

Coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations.⁷ This is true even if only one part of the recipient receives the Federal financial assistance.⁸ For example, USDA provides assistance to a University's outreach department to provide business development services to local farmers and ranchers. In such a case, all operations of the University—not just those of the University's outreach department—are covered.

Some recipients operate in jurisdictions in which English has been declared the official language. These recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of federally assisted services and benefits to persons with limited English proficiency.⁹

III. Who is a limited english proficient person?

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, or "LEP," and entitled to language assistance with

⁷ What constitutes a program or activity covered by Title VI was clarified by Congress in 1988, when the Civil Rights Restoration Act of 1987 (CRRRA) was enacted. The CRRRA provides that, in most cases, when a recipient receives Federal Financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program or activity that uses the federal assistance.

⁸ However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated (42 U.S.C. 2000d-1).

⁹ Recipients should also be mindful of their responsibilities under the Americans with Disabilities Act of 1990 and § 504 of the Rehabilitation Act of 1973 in meeting their obligation to ensure access to LEP individuals with disabilities.

respect to a particular type of benefit, service, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by USDA recipients and should be considered when planning language services include, but are not limited to, for example:

- Persons seeking access to or needing assistance to obtain SNAP benefits or other food assistance from a recipient;
- Persons seeking information, seeking to enforce rights, or seeking benefits or services from recipient State and County agencies, offices, and their subdivision;
- Persons encountering recipient private vendors, agents, contractors, associations, and corporations;
- Students, community members, and others encountering recipient extension programs, colleges, universities, and elementary and secondary schools;
- Persons seeking to participate in public meetings or otherwise participate in the activities of county, district, and regional committees/councils;
- Persons seeking access to, or services, or information from, nursing homes, summer camps, food banks, and housing authorities;
- Persons subject to the work of research and promotion boards;
- Persons encountering other entities or persons who receive, directly or indirectly, Federal financial assistance provided by USDA; and
- Parents and family members of the above.

IV. How does a recipient determine the extent of its obligation to provide LEP services?

In order to ensure compliance with Title VI and Title VI regulations, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs and activities. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

I. The number or proportion of LEP persons eligible to be served or likely to be encountered within the area serviced by the recipient;

II. The frequency with which LEP persons come in contact with the program or activity;

III. The nature and importance of the program, activity, or service to people's lives; and

IV. The resources available to the recipient, and costs.

As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP

persons to critical services while avoiding undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus might require more in the way of language assistance. However, the flexibility that recipients have to address the needs of the LEP populations they serve does not diminish and should not be used to minimize their obligation to address those needs. USDA recipients should apply the following four factors to the various kinds of contacts with the public to assess language needs and decide which reasonable steps should be taken to ensure meaningful access for LEP persons.

I. The Number or Proportion of LEP Persons Eligible To Be Served or Likely To Be Encountered Within the Area Served by the Recipient

One factor in determining which language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of LEP persons within the eligible service population, the more likely language services are needed.

Ordinarily, persons "eligible to be served or likely to be directly affected by" a recipient's program or activities are those who are served or encountered in the eligible service population. The eligible service population is program/activity-specific and includes persons who are in the recipient's geographic service area as established by USDA, State or local authorities, or the recipient, as appropriate, provided that those designations do not themselves discriminatorily exclude certain populations. For instance, if a statewide conservation district serves a large LEP population within a particular county, the appropriate service area will be the county, and not the entire population eligible to participate in the program or activity within the State. Below are additional examples of how USDA would determine the relevant service areas when assessing who is eligible to be served or likely to be directly affected.

Example A: A complaint filed with USDA alleges that a local SNAP certification office

discriminates against Hispanic and Chinese LEP applicants by failing to provide such persons with language assistance in connection with its programs and activities, including written translations. The certification office identifies its service area as the geographic area identified in its plan of operations. USDA determines that a substantial number of the recipient's food stamp applicants and beneficiaries are drawn from the area identified in the plan of operations and that no area with concentrations of racial, ethnic, or other minorities is discriminatorily excluded from the plan. USDA is likely to accept the area identified in the plan of operations as the relevant service area.

Example B: A privately owned limited-profit housing corporation enters into an agreement with USDA to provide low-income rural rental housing that will serve beneficiaries in three counties. The agreement is reviewed and approved by USDA. In determining the persons eligible to be served or likely to be affected, the relevant service area would generally be that designated in the agreement. However, if one of the counties has a significant population of LEP persons and the others do not, consideration of that particular county as a service population for purposes of determining the proportion of LEP persons in the population served by that portion of the recipient's program or activity would be appropriate.

When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter or participate in a portion of a recipient's program or activity.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers.

Other data should be consulted to refine or validate a recipient's prior experience, including the latest Census data for the area served, data from school and from community organizations, and data from State and local governments.¹⁰ Community

¹⁰ The focus of the analysis is on the lack of English proficiency, not the ability to speak more than one language. Note that demographic data might indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English might be spoken by people who are also overwhelmingly proficient in English. Thus, they might not be the languages spoken most frequently by limited English proficient persons. When using demographic data, it is important to focus in on the

agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

II. The Frequency With Which LEP Persons Come in Contact With the Program or Activity

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP persons from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves LEP persons on a one-time basis will be very different from those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contact with Spanish-speaking people who are LEP might require certain assistance in Spanish. Less frequent contact with different language groups might suggest a different and less intensified solution. If an LEP person accesses a program or service on a daily basis, a recipient has greater duties than if the same person's program or activity contact is unpredictable or infrequent. However, even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP person seeks services under the program in question. This plan need not be intricate; it can be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

III. The Nature and Importance of the Program, Activity or Service

The more important the information, service, or benefit provided in a program or activity, or the greater the possible consequences of the contact to LEP persons, the more likely language services are needed. For instance, in determining importance, the obligation to communicate information on the availability of emergency food assistance in a designated disaster area

languages spoken by those who are not proficient in English.

might differ significantly from the obligation to communicate information on the opportunity to attend a one-time free luncheon at a community recreation center. A recipient needs to determine whether denial or delay of access to services, benefits or information could have serious or even life-threatening implications for an LEP person. For example, the failure to translate consent forms and applications for important benefits or services could have serious or life-threatening implications for LEP persons in need of food, shelter, emergency services, and many other important benefits. Also, a recipient needs to determine if the media used to publicize a benefit or service, or a delay in providing information on a program, service, or benefit might have serious, negative implications for LEP persons. Further, decisions by a Federal, State, or local entity, or by the recipient, to make an activity compulsory, such as educational programs and notifications of the right to a hearing or appeal can serve as strong evidence of the program's importance.

IV. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as those with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances: the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal agencies; and reasonable business practices. Where appropriate, the following might help reduce costs: Training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, or centralizing interpreter and translator services to achieve economies of scale; the formalized use of qualified community volunteers can also help reduce costs.¹¹

¹¹ Small recipients with limited resources might find that entering into a bulk telephonic

Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance. Such recipients might find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

The four-factor analysis necessarily implicates the "mix" of appropriate LEP services. Recipients have two main ways to provide language services: (1) Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and (2) written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to commercially available telephonic interpretation services that are accessed by a high volume of LEP persons. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis, while in others, the LEP person may be referred to another recipient office for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, social service recipients having a service area with a significant Hispanic LEP population might need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many social services have already made such arrangements.) In contrast, there might be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services might be high—such as in the case of a voluntary general public tour of a recreational facility—in which pre-arranged language services for the particular service might not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to LEP persons and to recipients.

interpretation service contract will prove cost effective.

Recipients have substantial flexibility in determining the appropriate mix.

V. Selecting Language Assistance Services

Recipients have two main ways to provide language assistance to LEP persons—oral interpretation and written translations. Quality and accuracy of the language service is critical in order to avoid serious consequences to LEP persons and to recipients.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Assessment of competency involves more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, might be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they might not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts particular to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person who is being assisted;¹²

¹² Many languages have "regionalisms," or differences in usage. For instance, a word that might be understood to mean something in Spanish for someone from Cuba might not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of some programmatic terms, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue, and the interpreter and recipient can

- Understand and follow confidentiality and impartiality rules to the same extent as the recipient for whom he or she is interpreting; and
- Understand and adhere to their role as interpreters, without deviating into a role as counselor, advisor, or other inappropriate roles.

Some recipients might have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly where ambiguous, incomplete, or inaccurate information can result in the denial or reduction of services or benefits, the use of certified interpreters is strongly encouraged.¹³ Where such proceedings are lengthy, the interpreter will likely need breaks, and team interpreting might be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of appropriate LEP services. The quality and accuracy of language services in a hearing regarding the reduction of benefits, for example, must be extraordinarily high, while the quality and accuracy of language services in a voluntary recreational program might not need to meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be effective, language assistance should be timely. While there is no single definition for "timely" that is applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service or benefit at issue or the imposition of an undue burden on or delay in the provision of important information rights, benefits, or services to the LEP person. For example, when the timelines of information, benefits, or services is important, such as with certain activities related to various types of emergency assistance by way of nutrition or housing services, or emergency loans, grants, etc., a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to

then work to develop a consistent and appropriate set of descriptions of these terms in that language so that these terms can be used again, when appropriate.

¹³ For those languages in which no formal accreditation or certification exist, recipients should consider a formal process for establishing the credentials of the interpreter.

provide language assistance. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to information, services, or benefits is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical options. Recipients can, for example, fill public contact positions, such as receptionists, secretaries, program specialists, and/or program aides, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staffs are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee might conflict with the role of an interpreter (for instance, a bilingual program specialist would probably not be able to perform effectively the role of an interpreter in a benefits hearing and also carry out his or her duties to administer requirements of the program or activity at the same time, even if the program specialist were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staffs are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters can be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters can be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with interpreters and providing training regarding the

recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They can be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program or activity that might be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the documents prior to the discussion and any logistical problems that should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers working with, for instance, community-based organizations can provide a cost-effective supplemental language assistance strategy under appropriate circumstances. These types of volunteers can be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information, services, or benefits of the program or activity and who can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and be knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and help ensure that services are readily available.

Use of Family Members, Friends, or Others as Interpreters. Although

recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, or other person of their choosing) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other person acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family members, friends, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service, or activity, including protection of the recipient's own administrative or regulatory interest in accurate interpretation.

In many circumstances, family members (especially children), friends, or others identified by LEP persons, are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP persons may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing family, medical, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For USDA recipient programs and activities, this is particularly true in an administrative hearing or in situations in which health, safety, or access to sustenance or important benefits and services are at stake, or when credibility and accuracy are important to protect an LEP person's rights or access to important benefits and services. An example of such a case is when an LEP recipient applies for food stamps or a low-interest farm loan. The recipient should not rely on friends or family members of the LEP recipient or other informal interpreters.

While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or other informal interpreters often make their use inappropriate, their use as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary tour of a recipient's farmland offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information are critical for, adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters.

The recipient should ensure that the LEP person's choice is voluntary, the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that the recipient could provide a competent interpreter at no cost (to the LEP person).

Written Language Services (Translation). Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should Be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, but are not limited to:

- Applications to participate in a recipient's program or activity or to receive recipient benefits or services;
- Consent forms, complaint forms, intake forms, letters containing important information related to participation (such as cover letters outlining conditions of participation in a loan program or committee election);
- Written notices pertaining to eligibility requirements, rights, losses, denials, decreases in benefits or services, foreclosures, or terminations of services or benefits and/or the right to appeal such actions;
- Notices advising LEP persons of the availability of free language assistance;
- Written tests that do not assess English language proficiency, but test competency for a particular license, job, or skill for which knowing English is not required;
- Outreach materials; and
- Any documents that require a response from applicants, beneficiaries, and other participants.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program or activity, information, encounter, service, or benefit involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for voluntary credit management courses should not generally be considered vital (so long as they are not a prerequisite to obtaining or maintaining better credit), whereas, applications for rural rental housing would be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exist may effectively deny LEP persons meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program

or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents Be Translated? The languages spoken by the LEP persons with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor

analysis. Because translation is a one-time expense, consideration should be given to whether the up-front costs of translating a document (as opposed to oral interpretation) should be amortized over the likely life span of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" which means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of a recipient's program or activity, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor Provisions. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

a. The USDA recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents if needed, can be provided orally; or

b. If there are fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary

language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These Safe Harbor Provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable. For example, recipients should, where appropriate, ensure that program rules have been explained to LEP program participants prior to taking adverse action against them.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators, though certification or accreditation may not always be possible or necessary.¹⁴ Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Recipients should ensure that translators understand the expected reading level of their audiences and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.¹⁵

¹⁴ For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

¹⁵ For instance, there may be languages that do not have an appropriate direct translation of some program-specific terms of art or technical concepts and the translator should be able to provide an appropriate translation. The translator also should likely make the recipient aware of this. Recipients can work with translators to develop a consistent and appropriate set of descriptions of these terms. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost-effective

Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, or technical concepts helps avoid confusion by LEP persons and may reduce costs. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services. For instance, documents that are simple and have no legal or other negative consequence for LEP persons may be translated by individuals who are less skilled than those who translate documents with legal or other important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VI. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain USDA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan.

for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans:

(1) Identifying LEP Persons Who Need Language Assistance

The first two factors in the four-factor analysis are an assessment of the number of proportion of LEP persons eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom they have contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at <http://www.usdoj.gov/crt/cor/13166.htm>. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available;
- How staff can obtain those services;

- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP persons who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures; and
- Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors that it will provide language services, it is important to let LEP persons know that those services are available and they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to important programs, activities, services, or benefits provided by USDA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should

explain how to get the language help;¹⁶

- Stating in outreach documents that language services are available from the recipient. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and "tagged" onto the front of common documents;
- Working with community-based organizations and other stakeholders to inform LEP persons of the recipients' services, including the availability of language assistance services;
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them;
- Including notices in local newspapers in languages other than English. Providing notices on non-English-language radio and television stations about the available language assistance services and benefits and how to get them; and
- Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, activities, services, and benefits need to be made accessible for LEP persons, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered;
- Frequency of encounters with LEP language groups;
- Nature and importance of activities to LEP persons;
- Availability of resources, including technological advances and sources of

¹⁶ The Social Security Administration has made such signs available at <http://www.ssa.gov/multilanguage/langlist1.htm>. These signs could, for example, be modified for recipient use.

additional resources, and the costs imposed;

- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff know and understand the LEP plan and how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to the five elements above, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by USDA through its regulations at 7 CFR part 15, Departmental Regulation 4330-2, "Nondiscrimination in Programs and Activities Receiving Federal Financial Assistance From USDA," and Departmental Manual 4330-1, "Procedures for Processing Discrimination Complaints and Conducting Civil Rights Compliance Reviews in USDA Assisted Programs and Activities." These documents contain USDA requirements and procedures for discrimination complaints processing, complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

USDA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, USDA will inform the recipient in writing of this determination, including the basis for the determination. USDA uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, USDA must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means, if necessary. If the matter cannot be resolved informally, USDA must secure compliance through the termination of Federal assistance after the USDA recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ to seek injunctive relief or pursue other enforcement proceedings. USDA

engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, USDA proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, USDA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP persons, USDA acknowledges that the implementation of a comprehensive system to serve LEP persons is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, USDA will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups might reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, USDA recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to programs or activities having a significant impact on important benefits, and services, are addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

VIII. Effect on State and Local Laws

Some State and local laws might identify language access obligations/requirements. Recipients might meet these obligations, as long as they do not conflict with or set a lower standard than is required under Title VI and Title VI regulations. Finally, as noted above, some recipients operate in a jurisdiction in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of federally

assisted benefits and services to persons with limited English proficiency.

Dated: January 30, 2012.

Thomas J. Vilsack,
Secretary.

[FR Doc. 2012-4377 Filed 3-7-12; 8:45 am]

BILLING CODE 3410-99-P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 20

RIN 0551-AA70

Export Sales Reporting Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add reporting for pork (fresh, chilled, and frozen box/primal cuts) and distillers dried grain (DDG) to the Export Sales Reporting Requirements. Under this proposed rule, all exporters of U.S. pork and DDG would be required to report on a weekly basis, information on the export sales of pork and DDGs to the Foreign Agricultural Service (FAS).
DATES: Submit comments on or before May 7, 2012.

ADDRESSES: Address all comments concerning this proposed rule to Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250-1021, STOP 1021; or by email at Pete.Burr@fas.usda.gov; or by telephone at (202) 720-3274; or fax to (202) 720-0876. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720-2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250-1021, STOP 1021; or by email at Pete.Burr@fas.usda.gov; or by telephone on (202) 720-3274; or by fax (202) 720-0876.

SUPPLEMENTARY INFORMATION:

Background

In 1973, Congress mandated an export sales reporting requirement to ensure that all parties involved in the production and export of U.S. grain

Questions and Answers from February 28, 2007.
Limited English Proficiency Meeting

PART I. General Questions:

Question: What is the definition of the eligible service area?

Answer: Depending on the HUD and local program, the "eligible service area" could be the Metropolitan Statistical Area (MSA), the "local market area," the recipient's jurisdiction, the local neighborhood or a number of other localities with defined boundaries (e.g., highways, lakes, etc.). It is the area from which the program would expect to draw its applicants and beneficiaries. In a multifamily housing program, it would be the market area approved by HUD for the Affirmative Fair Housing Marketing Plan; for a Public Housing Agency (PHA), it would be the geographic area approved by HUD as the recipients' jurisdiction; for a Community Development Block Grant Program (CDBG), it would be the Entitlement Jurisdiction (EJ). For subrecipients in these programs, it would depend on their contract with the recipient organization.

Question: Is there a deadline to develop an LEP plan?

Answer: There is no requirement to develop an LEP Plan or Language Assistance Plan (LAP). Therefore, there is no official deadline for developing one. However, the guidance became effective on March 5, 2007. Whether a HUD federally-assisted recipient has an LAP or not, they are responsible for serving LEP persons in accordance with Title VI of the Civil Rights Act of 1964. A HUD review of a recipient will look at the *totality* of its program to date; whether the recipient has taken "reasonable steps" in providing equal access to persons who are LEP, and whether they have conducted a four-factor analysis to determine need.

Question: Are housing providers allowed to ask individuals or families if they are LEP?

Answer: Housing providers may ask individuals or families whether they are LEP so long as the questions are ***asked consistently of everyone***. HUD strongly encourages recipients to allow individuals or families identify themselves as LEP.

Question: Which lease is executed; the English or translated lease?

Answer: The English lease is the "official" lease. Whether or not a translated lease is signed (for instance, as evidence that it was provided to the tenant), it should be clearly noted, "This lease is for information purposes only. The English lease is operative."

Question: What documentation is required to demonstrate undue administrative or financial burden in regard to translations?

Answer: Some documentation that may demonstrate undue administrative or financial burden may include:

- Four Factor Analysis;
- LAP;
- Comparison of the estimated cost of providing written translations to persons who are LEP with your organization's operating budget for outreach;
- Efforts in collaboration with local housing providers in providing language services; and
- Organization's annual budget along with income and expense plans.

Question: What is the consideration for those states or localities that require all documents to be provided in an alternative language if one document is provided in an alternative language? Will there be any consideration due to undue financial burden?

Answer: Under normal circumstances, Federal statute and regulations would trump the state or local statutes and requirements. Therefore, HUD will have to evaluate these kinds of statutes and requirements on a case by case basis to determine whether there are any conflicts.

Question: Are private landlords required to follow the LEP guidelines?

Answer: Landlords who *only* participate in the Housing Choice Voucher (HCV) program are not subject to Title VI. Therefore, the LEP obligations would not apply to them. However, if landlords who participate in the HCV program also receive other HUD financial assistance (e.g. HOME funds), they would be subject to Title VI and it would be advisable for them to follow HUD's LEP guidance.

The LEP guidance would also apply to public housing agencies or other administrators of HCVs are subject to Title VI, as are housing providers who participate in the Project-Based Section 8 program.

PART II. Questions for the Office of Fair Housing and Equal Opportunity:

Question: Can a person file a housing discrimination complaint based on national origin because the landlord did not translate notices sent to all tenants in their native language(s)?

Answer: There is nothing to stop anyone from filing a housing discrimination complaint. If such a complaint were investigated, any decision would be based on the recipient's total program. Factors that would be considered in the investigation include whether the four-factor analysis was conducted, what the results of that analysis were, whether the safe harbor for translations was met for the specific language of concern, whether the notice is vital to the tenant's interests, and what other interpretations and translations the recipient is providing.

Question: Do FHAP agencies have the responsibility to serve as interpreters or to translate documents into the native language of the complainant filing a complaint with their agency?

Answer: FHAP Agencies are HUD recipients. They are subject to the requirements of Title VI, including LEP requirements.

Question: Will HUD provide translated compliance agreements when a complaint has been made based on failure of a recipient to provide translation and/or interpretation?

Answer: HUD will not be providing translations of voluntary compliance agreements (VCA) because the VCA is the legal document between HUD and the recipient. However, a summary of the VCA may be provided by the recipient in the affected languages.

PART III. Questions for the Office of Community Planning and Development:

Question: What are the requirements for subrecipients of CDBG and HOME funds? As a participating jurisdiction, must we require our sub-recipients to have an LEP Plan?

Answer: CDBG and State fund recipients are obligated under 24 CFR 91.105 (a) (2)(ii), and 24 CFR 91.115 (b)(3)(iii) to provide language services for the citizen participation process. The regulations provide that for CDBG recipients, "...[a] jurisdiction also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities." For State recipients, "the citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of a public hearing where a significant number of non-English speaking residents can be reasonably expected to participate."

The obligations ensuring equal access to services by non-English speaking residents are transferred to CDBG and State subrecipients.

Developing an LAP is one of the steps that recipients and subrecipients could take to demonstrate that they have taken "reasonable steps" to provide language services to persons who are LEP. Therefore, HUD highly encourages you and your subrecipients to have a written LAP.

Question: Is an owner of a project with HOME and/or CDBG funds required to do the analysis to determine how many LEP individuals are in its jurisdiction, or should that come from the funding city or county? For example, there are likely to be many owners within a particular city, and it does not seem cost effective for each to do a separate population analysis.

Answer: Many states and local jurisdictions receive funding from other Federal agencies. HUD recipients should work collaboratively with state and local governments to determine whether there are LEP persons to be served. If there are, this information should be part of your jurisdiction's "Citizen Participation Plan." 24 CFR 91.115(b)(3)(iii) requires recipients to "...identify how the needs of non-English speaking residents will be met in case of a public hearing..." The recipients could provide this data to their subrecipients to use in administering their own programs.

Question: We have non-profit organizations that we fund with both CDBG and HOME dollars to do capital construction and rehabilitation. What are the limitations to these nonprofits in the population groups they serve – especially when it comes to serving undocumented residents?

Answer: If an applicant or beneficiary is determined to meet the regulatory program requirements, the recipient or subrecipient is not responsible for any further review.

PART IV. Questions for the Office of Multifamily Housing

Question: If a private developer has multiple projects and only one project receives HUD funds, will the guidelines apply to those projects that do not receive HUD funds?

Answer: The answers to all questions of this type are the same. If a project is subject to Title VI of the Civil Rights Act of 1964, which applies to recipients of federal funding, it is subject to LEP. If it is not subject to Title VI, it is not subject to LEP. Title VI is applicable to programs with HUD funding. Multifamily Housing Projects that receive absolutely no benefit from federal funding would not be subject to Title VI, including LEP. Adequate separation of funds for the HUD-assisted project is already required.

Question: For properties that operate at a break-even status, how will funds be obtained to pay for the cost of interpreters? Unfortunately rent increases are not possible at many properties due to Rent Comparability Study (RCS) limitations.

Answer: The starting point for any recipient is to conduct an individualized self-assessment that balances the following four factors: (1) the number or proportion of LEP persons served or encountered in the eligible service area; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the grantee/recipient and costs. Recipients should keep in mind that available financial resources are one of the factors that they will analyze in determining their LEP obligations. It is possible that based on this four-factor assessment, *the recipients may not need to provide written translation of documents.*

Question: During a mass re-certification, is it the intent of the LEP regulation to provide interpreters for up to two hours per tenant, especially when there are three or more languages spoken? Due to privacy issues, it is not feasible to have translations with a group take place for certification of income and assets. Will the 120-day time period for re-certifications be extended to accommodate this additional requirement?

Answer: First, let's clarify that there is no LEP **regulation**; there is HUD **guidance**. The owner/agent's own four-factor analysis and LAP would determine the answer to this question. For example, it may be feasible to have one public meeting for each LEP language in the project to explain the re-certification process. The recipient could then work with each tenant for a much shorter period of time.

Question: Will contract administrators such as local finance agencies be responsible for translating their documents that they identify as vital documents?

Answer: The criteria are the same for all agencies. If the agency is a recipient or subrecipient of federal funds, it is subject to Title VI and is advised to follow the LEP guidance. Whether or not it is advisable for them to translate specific documents depends on the four-factor analysis, whether they have met the safe harbor, and whether they have outside resources with which they can share translations.

Question: Is the Guide now available in Spanish (which includes the standard income/family verification forms)?

Answer: HUD assumes that you are referring to the Multifamily Occupancy Guidebook. HUD has no plan to translate this Guidebook into Spanish because the guidance is used by recipients, not by the beneficiaries. In the future, HUD may consider translating the income/verification forms, over time, into other languages.

Question: Please specify all vital documents that must be translated for annual certifications.

Answer: Thus far, the Office of Multifamily Housing Programs has identified its four model leases as vital documents: 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.

Question: Does HUD plan to incorporate its LEP guidance into the next revision of HUD Handbook 4350.3, Rev. 1 and other occupancy handbooks and guidebooks?

Answer: Reference to LEP will be made in the forthcoming Change 3 of the Handbook. Additional guidance will be provided in future Handbook changes as we learn what issues need further explanation.

Question: Does HUD plan to translate the HUD 9887 and HUD 9887a?

Answer: These have not been determined to be “vital documents” and so there are no plans to translate these forms at this time.

PART V. Questions for the Office of Public and Indian Housing

Question: Is the Federal Privacy Act Notice and Authorization of Release of Information (HUD 9886) already translated and made available by HUD?

Answer: This form has been translated and will be made available shortly. ¹

¹ Call PIH to learn when it will be available.



Office of the Assistant Attorney General

Washington, D.C. 20035

October 26, 2001

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES
GENERAL COUNSELS AND CIVIL RIGHTS DIRECTORS

FROM:

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

SUBJECT:

Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)

Federal agencies have recently raised several questions regarding the requirements of Executive Order 13166. This Memorandum responds to those questions. As discussed below, in view of the clarifications provided in this Memorandum, agencies that have issued Limited English Proficiency ("LEP") guidance for their recipients pursuant to Executive Order 13166 and Title VI of the Civil Rights Act should, after notifying the Department of Justice ("DOJ"), publish a notice asking for public comment on the guidance documents they have issued. Based on the public comment it receives and this Memorandum, an agency may need to clarify or modify its existing guidance. Agencies that have not yet published guidance documents should submit agency-specific guidance to the Department of Justice. Following approval by the Department of Justice and before finalizing its guidance, each agency should obtain public comment on their proposed guidance documents. With regard to plans for federally conducted programs and activities, agencies should review their plans in light of the clarifications provided below.

BACKGROUND OF EXECUTIVE ORDER 13166

The legal basis for Executive Order 13166 is explained in policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency." 65 F.R. 50123 (August 16, 2000). This "DOJ LEP Guidance" was referenced in and issued concurrently with the Executive Order.

As the DOJ LEP Guidance details, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Department of Justice regulations enacted to effectuate this prohibition bar recipients of federal financial assistance from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination” because of their race, color, or national origin. These regulations thus prohibit unjustified disparate impact on the basis of national origin.

As applied, the regulations have been interpreted to require foreign language assistance in certain circumstances. For instance, where a San Francisco school district had a large number of non-English speaking students of Chinese origin, it was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs. *Lau v. Nichols*, 414 U.S. 563 (1974).¹

The Supreme Court most recently addressed the scope of the Title VI disparate impact regulations in *Alexander v. Sandoval*, 121 S. Ct. 1511 (2001). There, the Court held that there is no private right of action to enforce these regulations. It ruled that, even if the Alabama Department of Public Safety’s policy of administering driver’s license examinations only in English violates the Title VI regulations, a private party could not bring a case to enjoin Alabama’s policy. Some have interpreted *Sandoval* as impliedly striking down Title VI’s disparate impact regulations and thus that part of Executive Order 13166 that applies to federally assisted programs and activities.²

The Department of Justice disagrees. *Sandoval* holds principally that there is no private right of action to enforce the Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166. Because the legal basis for Executive Order 13166 is the Title VI disparate impact regulations and because *Sandoval* did not invalidate those regulations, it is the position of the Department of Justice that the Executive Order remains in force.

¹“It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the education program – all earmarks of the discrimination banned by the regulations.” 414 U.S. at 568.

²*See Sandoval*, 121 S. Ct. at 1519 n.6 (“[W]e assume for purposes of this decision that § 602 confers the authority to promulgate disparate-impact regulations; . . . We cannot help observing, however, how strange it is to say that disparate-impact regulations are ‘inspired by, at the service of, and inseparably intertwined with’ § 601 . . . when § 601 permits the very behavior that the regulations forbid.”).

REQUIREMENTS OF EXECUTIVE ORDER 13166

Federally Assisted Programs and Activities. The DOJ LEP Guidance explains that, with respect to federally assisted programs and activities, Executive Order 13166 “does not create new obligations, but rather, clarifies existing Title VI responsibilities.” Its purpose is to clarify for federal-funds recipients the steps those recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin in violation of the Title VI disparate impact regulations. To this end, the Order requires each Federal Agency providing federal financial assistance to explain to recipients of federal funds their obligations under the Title VI disparate impact regulations.

In developing their own LEP guidance for recipients of federal funds, an agency should balance the factors set forth in the DOJ LEP Guidance. These factors include, but are not limited to (i) the number or proportion of LEP individuals, (ii) the frequency of contact with the program, (iii) the nature and importance of the program, and (iv) the resources available.

As the DOJ LEP Guidance explains, “a factor in determining the reasonableness of a recipient’s efforts is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers.” Similarly, the frequency of contact must be considered. Where the frequency and number of contacts is so small as to preclude any significant national origin based disparate impact, agencies may conclude that the Title VI disparate impact regulations impose no substantial LEP obligations on recipients.

The nature and importance of the program is another factor. Where the denial or delay of access may have life or death implications, LEP services are of much greater importance than where denial of access results in mere inconvenience.

Resources available and costs must likewise be weighed. A small recipient with limited resources may not have to take the same steps as a larger recipient. *See* DOJ LEP Guidance at 50125. Costs, too, must be factored into this balancing test. “Reasonable steps” may cease to be reasonable where the costs imposed substantially exceed the benefits in light of the factors outlined in the DOJ LEP Guidance. The DOJ LEP Guidance explains that a small recipient may not have to take substantial steps “where contact is infrequent, where the total costs of providing language services is relatively high and where the program is not crucial to an individual’s day-to-day existence.” By contrast, where number and frequency of contact is high, where the total costs for LEP services are reasonable, and where the lack of access may have life and death implications, the availability of prompt LEP services may be critical. In these latter cases, claims based on lack of resources will need to be well substantiated.

Finally, consideration of resources available naturally implicates the “mix” of LEP services required. While on-the-premise translators may be needed in certain circumstances, written translation, access to centralized translation language lines or other means may be appropriate in the majority of cases. The correct balance should be based on what is both necessary to eliminate unjustified disparate impact prohibited by the Title VI regulations and reasonable in light of the factors outlined in the DOJ LEP Guidance.

Federally Conducted Programs and Activities. Executive Order 13166 also applies to federally conducted programs and activities. With respect to these, the Order requires each Federal Agency to prepare a plan to improve access to federally conducted programs and activities by eligible LEP persons. These plans, too, must be consistent with the DOJ LEP Guidance. Federal agencies should apply the same standards to themselves as they apply to their recipients.

PROCEDURAL CONSIDERATIONS

Administrative Procedure Act: Agency action taken pursuant to Executive Order 13166 and the DOJ LEP Guidance may be subject to the Administrative Procedure Act’s (“APA”) rulemaking requirements. 5 U.S.C. § 553. Although interpretive rules, general statements of policy, and rules of agency organization and procedure are not subject to section 553, courts have ruled that any final agency action that carries the force and effect of law must comply with section 553’s notice and comment requirements. *See Paralyzed Veterans of America v. D. C. Arena*, 117 F.3d 579, 588 (D. C. Cir. 1997). Agencies, therefore, should consider whether the action they have taken or that they propose to take to implement Executive Order 13166 and Title VI of the Civil Rights Act is subject to the APA’s requirements. If it is, they must comply with these statutory obligations. Agencies must bear in mind, however, that Executive Order 13166 “does not create new obligations, but rather, clarifies existing Title VI responsibilities.” Accordingly, agency action taken pursuant to Executive Order 13166 must not impose new obligations on recipients of federal funds, but should instead help recipients to understand their existing obligations.

Executive Order 12866: Agency action taken pursuant to Executive Order 13166 and the DOJ LEP Guidance may also be subject to requirements set forth in Executive Order 12866 (*Regulatory Review and Planning*, Sept. 30, 1993). That Order directs agencies to submit to the Office of Management and Budget for review any “significant regulatory actions” the agency wishes to take. *See* § 6(a). Agencies, therefore, should consider whether the action they have taken or that they propose to take to implement Executive Order 13166 and Title VI of the Civil Rights Act is subject to Executive Order 12866’s requirements. If it is, they should ensure that the action or proposed action complies with Executive Order 12866’s obligations. With regard to federally conducted programs and activities, agencies should review their plans for their federally conducted programs in light of the clarifications below and make any necessary modifications.

FURTHER AGENCY ACTION

Existing LEP Guidance and Plans for Federally Conducted Programs and Activities:

Agencies that have already published LEP guidance pursuant to Executive Order 13166 or Title VI of the Civil Rights Act should obtain public comment on the guidance documents they have issued. Agencies should then review their existing guidance documents in view of public comment and for consistency with the clarifications provided in this Memorandum. The Justice Department's Civil Rights Division, Coordination and Review Section ((202) 307-2222), is available to assist agencies in making this determination. Should this review lead an agency to conclude that it is appropriate to clarify or modify aspects of its LEP guidance documents, it should notify the Department of Justice of that conclusion within 60 days from the date of this Memorandum. Any agency effort to clarify or modify existing LEP guidance should be completed within 120 days from the date of this Memorandum. Agencies likewise should review plans for federally conducted programs and activities in light of the above clarification.

New LEP Guidance and Plans for Federally Conducted Programs and Activities:

Agencies that have not yet published LEP guidance pursuant to Executive Order 13166 and Title VI of the Civil Rights Act should submit to the Department of Justice, within 60 days from the date of this Memorandum, agency-specific recipient guidance that is consistent with Executive Order 13166 and the DOJ LEP Guidance, including the clarifications set forth in this Memorandum. In preparing their guidance, agencies should ensure that the action they propose to take is consistent with the requirements of the Administrative Procedure Act and Executive Order 12866. The Justice Department's Civil Rights Division, Coordination and Review Section, is available to assist agencies in preparing agency-specific guidance. Following approval by the Department of Justice and before finalizing its guidance, each agency should obtain public comment on its proposed guidance documents. Final agency-specific LEP guidance should be published within 120 days from the date of this memorandum. Agencies likewise should submit to the Department of Justice plans for federally conducted programs and activities. The Department of Justice is the central repository for these agency plans.

* * *

Federally assisted programs and activities may not be administered in a way that violates the Title VI regulations. Each Federal Agency is responsible for ensuring that its agency-specific guidance outlines recipients' obligations under the Title VI regulations and the steps recipients can take to avoid violating these obligations. While Executive Order 13166 requires only that Federal Agencies take steps to eliminate recipient discrimination based on national origin prohibited by Title VI, each Federal Agency is encouraged to explore whether, as a matter of policy, additional affirmative outreach to LEP individuals is appropriate. Federal Agencies likewise must eliminate national origin discrimination in their own federally conducted programs and activities. The Department of Justice is available to help agencies in reviewing and preparing agency-specific LEP guidance and federally conducted plans.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

February 9, 2011

MEMORANDUM FOR: FHEO Office Directors
FHEO Regional Directors

FROM: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs

SUBJECT: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)

I. Purpose

This memorandum provides guidance to Fair Housing and Equal Opportunity (FHEO) headquarters and field staff on assessing claims by domestic violence victims of housing discrimination under the Fair Housing Act (FHA). Such claims are generally based on sex, but may also involve other protected classes, in particular race or national origin. This memorandum discusses the legal theories behind such claims and provides examples of recent cases involving allegations of housing discrimination against domestic violence victims. This memorandum also explains how the Violence Against Women Act (VAWA)¹ protects some domestic violence victims from eviction, denial of housing, or termination of assistance on the basis of the violence perpetrated by their abusers.

II. Background

Survivors of domestic violence often face housing discrimination because of their history or the acts of their abusers. Congress has acknowledged that “women and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.”² Housing authorities and landlords evict victims under zero-tolerance crime policies, citing the violence of a household member, guest, or other person under the victim’s “control.”³ Victims are often evicted after repeated calls to the police for domestic violence incidents because of allegations of disturbance to other tenants. Victims are also evicted because of property damage caused by their abusers. In many of these

¹ This guidance refers to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), which included provisions in Title VI (“Housing Opportunities and Safety for Battered Women and Children”) that are applicable to HUD programs. The original version of VAWA, enacted in 1994, did not apply to HUD programs. Note also that HUD recently published its VAWA Final Rule. *See* HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246 (October 27, 2010).

² 42 U.S.C. § 14043e(3) (findings published in the Violence Against Women Act). Note that VAWA also protects male victims of domestic violence. *See* HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246, 66251 (“VAWA 2005 does protect men. Although the name of the statute references only women, the substance of the statute makes it clear that its protections are not exclusively applicable to women.”).

³ *See* 24 CFR § 5.100.

cases, adverse housing action punishes victims for the violence inflicted upon them. This “double victimization”⁴ is unfair and, as explained in this guidance, may be illegal.

Statistics show that women are overwhelmingly the victims of domestic violence.⁵ An estimated 1.3 million women are the victims of assault by an intimate partner each year, and about 1 in 4 women will experience intimate partner violence in their lifetimes.⁶ The U.S. Bureau of Justice Statistics found that 85% of victims of domestic violence are women.⁷ In 2009, women were about five times as likely as men to experience domestic violence.⁸ These statistics show that discrimination against victims of domestic violence is almost always discrimination against women. Thus, domestic violence survivors who are denied housing, evicted, or deprived of assistance based on the violence in their homes may have a cause of action for sex discrimination under the Fair Housing Act.⁹

In addition, certain other protected classes experience disproportionately high rates of domestic violence. For example, African-American and Native American women experience higher rates of domestic violence than white women. Black women experience intimate partner violence at a rate 35% higher than that of white females, and about 2.5 times the rate of women of other races.¹⁰ Native American women are victims of violent crime, including rape and sexual assault, at more than double the rate of other racial groups.¹¹ Women of certain national origins and immigrant women also experience domestic violence at disproportionate rates.¹² This means that victims of domestic violence may also have a cause of action for race or national origin discrimination under the Fair Housing Act.

III. HUD’s “One Strike” Rule and The Violence Against Women Act (VAWA)

In 2001, the Department issued a rule allowing housing authorities and landlords to evict tenants for criminal activity committed by any household member or guest, commonly known as the “one strike” rule.¹³ The rule allows owners of public and Section 8 assisted housing to terminate a tenant’s lease because of criminal activity by “a tenant, any member of the tenant’s household, a

⁴ See Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 J. GENDER, SOC. POL’Y & L. 377 (2003).

⁵ We recognize that men also experience domestic violence. However, because of the wide disparity in victimization, and because many FHAct claims will be based on the disparate impact of domestic violence on women, we use feminine pronouns throughout this guidance.

⁶ Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States* (2003).

⁷ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* (2003).

⁸ Jennifer R. Truman & Michael R. Rand, U.S. Department of Justice, *Criminal Victimization, 2009* (2010).

⁹ Domestic violence by same-sex partners would be analyzed in the same manner and would be based on sex and any other applicable protected classes.

¹⁰ *Id.*, (Repeat of reference above)

¹¹ Steven W. Perry, U.S. Dep’t of Justice, NCJ 203097, *A Bureau of Justice Statistics Statistical Profile, 1992-2002: American Indians and Crime* (2004).

¹² For statistics on specific groups, see American Bar Association Commission on Domestic Violence, Survey of Recent Statistics, <http://new.abanet.org/domesticviolence/Pages/Statistics.aspx>.

¹³ Screening and Eviction for Drug Abuse and Other Criminal Activity, 66 Fed. Reg. 28776 (May 24, 2001) (amending 24 CFR pts. 5, 200, 247, 880, 884, 891, 960, 966, and 982) (often referred to as the “one strike” rule).

guest or another person under the tenant's control"¹⁴ that "threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or... threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises."¹⁵ This policy would seem to allow evictions of women for the violent acts of their spouses, cohabiting partners, or visitors. However, the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA)¹⁶ prohibits such evictions in public housing, voucher, and Section 8 project-based programs. VAWA protects victims of domestic violence, dating violence, sexual assault, and stalking.¹⁷

VAWA provides that being a victim of domestic violence, dating violence, or stalking is not a basis for denial of assistance or admission to public or Section 8 tenant-based and project-based assisted housing. Further, incidents or threats of abuse will not be construed as serious or repeated violations of the lease or as other "good cause" for termination of the assistance, tenancy, or occupancy rights of a victim of abuse. Moreover, VAWA prohibits the termination of assistance, tenancy, or occupancy rights based on criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking.¹⁸

VAWA also allows owners and management agents to request certification from a tenant that she is a victim of domestic violence, dating violence, or stalking and that the incidence(s) of threatened or actual abuse are bona fide in determining whether the protections afforded under VAWA are applicable.¹⁹ The Department has issued forms for housing authorities and landlords to use for such certification requests,²⁰ but tenants may also present third-party documentation of the

¹⁴ 24 CFR § 5.100.

¹⁵ 24 CFR § 5.859.

¹⁶ Pub. L. 109-162, 119 Stat. 2960 (2006). For the Department's final rule on VAWA, see HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246 (Oct. 27, 2010) (amending 24 CFR pts. 5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 966, 982, and 983).

¹⁷ Each of these terms is defined in VAWA and HUD's corresponding regulations. See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246, 66258.

¹⁸ Note the exception to these provisions at 24 C.F.R. § 5.2005(d)(2), which states that VAWA does not limit the authority of a public housing agency (PHA), owner, or management agent to evict or terminate a tenant's assistance if they can demonstrate an actual and imminent threat to other tenants or those employed or providing services at the property if that tenant is not terminated. However, this exception is limited by §5.2005(d)(3), which states that a PHA, owner, or management agent can terminate assistance only when there are no other actions that could reduce or eliminate the threat. Other actions include transferring the victim to different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or developing other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat.

¹⁹ 42 U.S.C. §1437d(u)(1)(A) (public housing program), 42 U.S.C. §1437f(ee)(1) (voucher programs).

²⁰ HUD Housing Notice 09-15 transmits Form HUD-91066, Certification of Domestic Violence, Dating Violence or Stalking for use by owners and management agents administering one of Multifamily Housing's project-based Section 8 programs and Form HUD-91067, the HUD-approved Lease Addendum, for use with the applicable HUD model lease for the covered project-based Section 8 program. HUD Public and Indian Housing Notice 2006-42 transmits form HUD-50066, Certification of Domestic Violence, Dating Violence or Stalking, for use in the Public Housing Program, Housing Choice Voucher Program (including project-based vouchers), Section 8 Project-Based Certification Program, and Section 8 Moderate Rehabilitation Program. See also PIH Notice 2006-23, Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005.

abuse, including court records, police reports, or documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional from whom the victim has sought assistance in addressing the abuse or the effects of the abuse.²¹ Finally, VAWA allows housing authorities and landlords to bifurcate a lease in a domestic violence situation in order to evict the abuser and allow the victim to keep her housing.²²

While VAWA provides important protections for victims of domestic violence, it is limited in scope. For example, it does not provide for damages.²³ In addition, VAWA does not provide an explicit private cause of action to women who are illegally evicted. Moreover, VAWA only protects women in public housing, voucher, and Section 8 project-based programs, so domestic violence victims in private housing have no similar protection from actions taken against them based on that violence. VAWA also may not protect a woman who does not provide the requisite documentation of violence,²⁴ while a claim of discrimination under the Fair Housing Act is not dependent on compliance with the VAWA requirements. In short, when a victim is denied housing, evicted, or has her assistance terminated because she has been a victim of domestic violence, the FHAct might be implicated and we may need to investigate whether that denial is based on, for example, race or sex.

IV. Legal Theories under the Fair Housing Act: Direct Evidence, Unequal Treatment, and Disparate Impact

Direct evidence. In some cases, landlords enforce facially discriminatory policies. These policies explicitly treat women differently from men. Such policies are often based on gender stereotypes about abused women. For example, if a landlord tells a female domestic violence victim that he does not accept women with a history of domestic violence as tenants because they always go back to the men who abuse them, his statement is direct evidence of discrimination based on sex. Investigations in direct evidence cases should focus on finding evidence about whether or not the discriminatory statement was made, whether the statement was applied to others to identify other potential victims, and whether it reflects a policy or practice by the landlord. The usual questions that address jurisdiction also apply.

Unequal treatment. In some cases, a landlord engages in unequal treatment of victims of domestic violence in comparison to victims of other crimes. Or a landlord's seemingly gender-neutral policy may be unequally applied, resulting in different treatment based on sex. For example, a policy of evicting households for criminal activity may be applied selectively against women who have been abused by their partners and not against the male perpetrators of the domestic violence. If there is evidence that women are being treated differently because of their status as victims of domestic violence, an unequal treatment theory applies. If an investigator finds evidence of unequal treatment, the investigation shifts to discovering the respondent's reasons for the differences and

²¹ 42 U.S.C. §1437d(u)(1)(C); 42 U.S.C. § 1437f(ee)(1)(c).

²² 42 U.S.C. §1437d(l)(6)(B); 42 U.S.C. § 1437f(c)(9)(C) .

²³ Remedies available under VAWA include, for example, the traditional PIH grievance process. *See* HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246, 66255.

²⁴ While VAWA 2005 allows owners and PHAs to request certification of domestic violence from victims, the law also provides that owners and PHAs “[a]t their discretion . . . may provide benefits to an individual based solely on the individual’s statement or other corroborating evidence.” 42 U.S.C.A. § 1437d(u)(1)(D); 42 U.S.C.A. § 1437f(ee)(1)(D).

investigating each reason to determine whether the evidence supports or refutes each reason. If a nondiscriminatory reason(s) is articulated, the investigation shifts again to examining the evidence to determine whether or not the reason(s) given is supported by the evidence or is a pretext for discrimination.²⁵

Disparate impact. In some cases, there is no direct evidence of unequal treatment, but a facially neutral housing policy, procedure, or practice disproportionately affects domestic violence victims. In these cases, a disparate impact analysis is appropriate. Disparate impact cases often arise in the context of “zero-tolerance” policies, under which the entire household is evicted for the criminal activity of one household member. The theory is that, even when consistently applied, women may be disproportionately affected by these policies because, as the overwhelming majority of domestic violence victims, women are often evicted as a result of the violence of their abusers.

There are four steps to a disparate impact analysis. First, the investigator must identify the specific policy, procedure, or practice of the landlord’s that is allegedly discriminatory. This process means both the identification of the policy, procedure, or practice and the examination of what types of crimes trigger the application of the policy. Second, the investigator must determine whether or not that policy, procedure, or practice was consistently applied. This step is important because it reveals the correct framework for the investigation. If the policy is applied unequally, then the proper analysis is unequal treatment, not disparate impact. If, however, the policy was applied consistently to all tenants, then a disparate impact analysis applies, and the investigation proceeds to the next step.

Third, the investigation must determine whether or not the particular policy, procedure, or practice has a significant adverse impact on domestic violence victims and if so, how many of those victims were women (or members of a certain race or national origin). Statistical evidence is generally used to identify the scope of the impact on a group protected against discrimination. These statistics should be as particularized as possible; they could demonstrate the impact of the policy as to applicants for a specific building or property, or the impact on applicants or residents for all of the landlord’s operations. For example, in a sex discrimination case, the investigation may uncover evidence that women in one apartment complex were evicted more often than men under a zero-tolerance crime policy. It would not matter that the landlord did not intend to discriminate against women, or that the policy was applied consistently. Proof of disparate impact claims is not an exact science. Courts have not agreed on any precise percentage or ratio that conclusively establishes a prima facie case. Rather, what constitutes a sufficiently disparate impact will depend on the particular facts and circumstances of each case.

If the investigation reveals a disparate impact based on sex, race, or national origin, the investigation then shifts to eliciting the respondent’s reasons for enforcing the policy. It is critical to thoroughly investigate these reasons. Why was the policy enacted? What specific outcome was it meant to achieve or prevent? Were there any triggering events? Were any alternatives considered, and if so, why were they rejected? Is there any evidence that the policy has been effective? What constitutes a sufficient justification will vary according to the circumstances. In general, the investigation will examine whether or not the offered justification is real and supported by a substantial business justification. For the purposes of this memorandum, it is important to

²⁵ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) for an explanation of the burden-shifting formula.

understand that an investigation must identify and evaluate the evidence supporting and refuting the justification.

Even if there is sufficient justification for the policy, there may be a less discriminatory alternative available to the respondent. A disparate impact investigation must consider possible alternative policies and analyze whether each policy would achieve the same objective with less discriminatory impact. For example, in a case of discriminatory eviction under a zero-tolerance policy, a landlord could adopt a policy of evicting only the wrongdoer and not innocent victims. This policy would protect tenants without unfairly penalizing victims of violence.

In summary, an investigation of a disparate impact case must seek evidence that a specific policy of the landlord's caused a substantial, disproportionate, adverse impact on a protected class of persons. Proving a disparate impact claim will generally depend on statistical data demonstrating the disparity and a causal link between the policy and the disparity; discriminatory intent is irrelevant.

V. Fair Housing Cases Involving Domestic Violence

Eviction Cases. Victims are often served with eviction notices following domestic violence incidents. Landlords cite the danger posed to other tenants by the abuser, property damage caused by the abuser, or other reasons for eviction. Several cases have challenged these evictions as violations of VAWA or the Fair Housing Act.

Alvera v. CBM Group, Case No. 01-857 (D. Or. 2001).²⁶ The victim was assaulted by her husband in their apartment. She obtained a restraining order against her husband, and he was subsequently arrested and jailed for the assault. She provided a copy of the restraining order to the property manager. The property manager then served her with a 24-hour eviction notice based on the incident of domestic violence. The notice specified: "You, someone in your control, or your pet, has seriously threatened to immediately inflict personal injury, or has inflicted personal injury upon the landlord or other tenants." The victim then submitted an application for a one-bedroom apartment in the same building. Management denied the application and refused to accept her rent. After a second application, management finally approved her for a one-bedroom apartment, but warned her that "any type of recurrence" of domestic violence would lead to her eviction.

The victim filed a complaint with HUD, which investigated her case and issued a charge of discrimination against the apartment management group. She elected to pursue the case in federal court. The parties later agreed to settle the lawsuit. The consent decree, approved by the Oregon district court in 2001, requires that the management group agree not to "evict, or otherwise discriminate against tenants because they have been victims of violence, including domestic violence" and change its policies accordingly. Employees of the management group must participate in education about discrimination and fair housing law. The management group also agreed to pay compensatory damages to the victim.

Warren v. Ypsilanti Housing Authority, Case No. 4:02-cv-40034 (E.D. Mich. 2003). The victim's ex-boyfriend broke into her house and physically abused her. She called the police to

²⁶ A copy of the determination is attached to this memo.

report the attack. When the Ypsilanti Housing Authority (YHA) learned of the attack, it attempted to evict the victim and her son under its zero-tolerance crime policy. The ACLU sued the YHA for discrimination, arguing that because victims of domestic violence are almost always women, the policy of evicting domestic violence victims based on the violence perpetrated against them had a disparate impact based on sex in violation of the federal Fair Housing Act and state law. The parties reached a settlement, under which the YHA agreed to cease evicting domestic violence victims under its “one-strike” policy and pay money damages to the victim.

Bouley v. Young-Sabourin 394 F. Supp. 2d 675 (D. Vt. 2005). The victim called the police after her husband attacked her in their home. She obtained a restraining order against her husband and informed her landlord. The landlord spoke to the victim about the incident, encouraging her to resolve the dispute and seek help through religion. The victim told her landlord that she would not let her husband return to the apartment and was not interested in religious help. The landlord then served her with a notice of eviction, stating that it was “clear that the violence would continue.” In a ruling on the parties’ cross-motions for summary judgment, the court held that the victim had presented a prima facie case of sex discrimination under the Fair Housing Act. The case later settled.

T.J. v. St. Louis Housing Authority (2005). The victim endured ongoing threats and harassment after ending her relationship with her abusive boyfriend. He repeatedly broke the windows of her apartment when she refused to let him enter. She obtained a restraining order and notified her landlord, who issued her a notice of lease violation for the property damage caused by the ex-boyfriend and required her to pay for the damage, saying she was responsible for her domestic situation. Her boyfriend finally broke into her apartment and, after she escaped, vandalized it. The housing authority attempted to evict her based on this incident. The victim filed a complaint with HUD, which conciliated the case. The conciliation agreement requires the housing authority to relocate her to another apartment, refund the money she paid for the broken windows, ban her ex-boyfriend from the property where she lived, and send its employees to domestic violence awareness training.

Lewis v. North End Village, Case No. 2:07-cv-10757 (E.D.Mich. 2007). The victim obtained a personal protection order against her abusive ex-boyfriend. Months later, the ex-boyfriend attempted to break into the apartment, breaking the windows and front door. The management company that owned her apartment evicted the victim and her children based on the property damage caused by the ex-boyfriend. With the help of the ACLU of Michigan, she filed a complaint against the management company in federal court, alleging sex discrimination under the FHAct. The case ultimately settled, with the management company agreeing to new, nondiscriminatory domestic violence policies and money damages for the victim.

Brooklyn Landlord v. R.F. (Civil Court of Kings County 2007). The victim’s ex-boyfriend continued to harass, stalk, and threaten her after she ended their relationship. In late April 2006, he came to her apartment in the middle of the night, banging on the door and yelling. The building security guard called by the victim was unable to reason with her abuser, who left before the police arrived. One week later, the abuser came back to the building, confronted the same security guard, and shot at him. The victim was served an eviction notice from her Section 8 landlord based on this incident. The victim filed a motion for summary judgment which asserted defenses to eviction

under VAWA and argued that the eviction constituted sex discrimination prohibited by the FHAct. The parties reached a settlement under which the landlord agreed to take measures to prevent the ex-boyfriend from entering the property.

Jones v. Housing Authority of Salt Lake County (D. Utah, filed 2007). The victim applied for and received a Section 8 voucher in 2006. She and her children moved into a house in Kearns, Utah later that year. She allowed her ex-husband, who had previously been abusive, to move into the house. Shortly after he moved in, the victim discovered that he had begun drinking again. After he punched a hole in the wall, the victim asked him to move out. When he refused, she told the Housing Authority that she planned to leave the home with her children to escape the abuse. The Housing Authority required her to sign a notice of termination of her housing assistance. The victim requested a hearing to protest the termination, and the Housing Authority decided that termination of her assistance was appropriate, noting that she had never called the police to report her husband's violent behavior. With the help of Utah Legal Services, she filed a complaint in federal court against the Housing Authority, alleging that the termination of her benefits violated VAWA and the FHAct.

Cleaves-Milan v. AIMCO Elm Creek LP, 1:09-cv-06143 (N.D. Ill., filed October 1, 2009). In 2007, the victim moved into an Elmhurst, Illinois apartment complex with her fiancé and her daughter. Her fiancé soon became abusive, and she ended the relationship. He became upset, produced a gun, and threatened to shoot himself and her. She called police to remove him, obtained an order of protection, and removed him from the lease with the consent of building management. When she attempted to pay her rent, however, building management told her that she was being evicted because "anytime there is a crime in an apartment the household must be evicted." With the help of the Sargent Shriver National Center on Poverty Law, she filed a complaint against the management company for sex discrimination under the Fair Housing Act.

Transfer Cases. Victims will also sometimes request transfers within a housing authority in order to escape an abuser. Two recent cases have challenged the denial of these transfers as sex discrimination under the Fair Housing Act, with mixed results.

Blackwell v. H.A. Housing LP, Civil Action No. 05-cv-01225-LTB-CBS (D. Colo. 2005). The victim's ex-boyfriend broke into her apartment and, over the course of several hours, raped, beat, and stabbed her. She requested a transfer to another complex. Building management refused to grant her the transfer, forcing her and her children into hiding while police pursued her ex-boyfriend. With the help of Colorado Legal Services, the victim filed a complaint in federal court, alleging that the failure to grant her transfer request constituted impermissible discrimination on the basis of sex based on a disparate impact theory. The case eventually settled. The landlord agreed to institute a new domestic violence policy, prohibiting discrimination against domestic violence victims and allowing victims who are in imminent physical danger to request an emergency transfer to another Section 8 property.

Robinson v. Cincinnati Metropolitan Housing Authority, Case No. 1:08-CV-238 (S.D. Ohio 2008). The victim moved into a Cincinnati public housing unit with her children in 2006. She began dating a neighbor, who physically abused her repeatedly. When she tried to end the relationship, he beat her severely and threatened to kill her if she ever returned to the apartment.

She obtained a protection order and applied to the Cincinnati Metropolitan Housing Authority (CMHA) for an emergency transfer, but was denied. The victim was paying rent on the apartment but lived with friends and family for safety reasons. With the help of the Legal Aid Society of Southwest Ohio, the victim filed a complaint against CMHA in federal court, alleging that by refusing to grant her occupancy rights granted to other tenants based on the acts of her abuser, CMHA intentionally discriminated against her on the basis of sex. The court denied her motion for a temporary restraining order and preliminary injunction, finding that CMHA policy allows emergency transfers only for victims of federal hate crimes, not for victims of domestic violence. The court also distinguished cases of domestic violence-based eviction from the victim's case,²⁷ saying that CMHA did not violate her rights under the FHAct by denying her a transfer.

VI. Practical Considerations When Working with a Victim of Domestic Violence

When working with a victim of domestic violence, an investigator must be sensitive to the victim's unique circumstances. She is not only a potential victim of housing discrimination, she is also a victim of abuse. Often, a victim who is facing eviction or other adverse action based on domestic violence also faces urgent safety concerns. She may fear that the abuser will return to harm her or her children. An investigator should be aware of resources available to domestic violence victims and may refer a victim to an advocacy organization or to the police.²⁸ Investigators should also understand that a victim may be hesitant to discuss her history. Victims are often distrustful of "the system" after negative experiences with housing authorities, police, or courts. In order to conduct an effective investigation, investigators should be patient and understanding with victims and try not to appear judgmental or defensive.²⁹

VII. Conclusion

The Violence Against Women Act provides protection to some victims of domestic violence who experience housing discrimination but it does not protect them from discrimination based on sex or another protected class. Thus, when a victim is denied housing, evicted, or has her assistance terminated because she has experienced domestic violence, we should investigate whether that denial or other activity violates the Fair Housing Act. Victims may allege sex discrimination, but may also allege discrimination based on other protected classes, such as race or national origin.

Questions regarding this memorandum should be directed to Allison Beach, Office of the Deputy Assistant Secretary for Enforcement and Programs, at (202) 619-8046, extension 5830.

²⁷ In its order denying Robinson's request for a temporary restraining order and a preliminary injunction, the court cites *Bouley, Lewis, Warren, and Alvera* as cases that "recognized that to evict the women in these situations had the effect of victimizing them twice: first they are subject to abuse and then they are evicted." Order, page 6.

²⁸ Nationwide resources include the National Domestic Violence Hotline, at 1-800-799-SAFE (7233) or www.thehotline.org, and www.womenslaw.org. Either resource can refer victims to local advocates and shelters and provide safety planning advice.

²⁹ For more advice on working with domestic violence survivors, see Loretta M. Frederick, *Effective Advocacy on Behalf of Battered Women*, The Battered Women's Justice Project, available at http://www.bwjp.org/files/bwjp/articles/Effective_Advocacy_Battered_Women.pdf.

DETERMINATION OF REASONABLE CAUSE

CASE NAME: Alvera v Creekside Village Apartments

CASE NUMBER: 10-99-0538-8

I. JURISDICTION

A complaint was filed with the Department on October 22, 1999, alleging that Ms. Tiffani Ann Alvera, the complainant, was injured by a discriminatory act by the respondents, Creekside Village Apartments, a California Limited Partnership; General Partners Edward and Dorian Mackay; The CBM Group, Inc.; and CBM Group employees Karen Mock, Resident Manager of Creekside Village Apartments, and Inez Corenevsky, Supervising Property Manager. It is alleged that the respondents were responsible for a discriminatory refusal to rent and discriminatory terms, conditions, privileges, or services and facilities, in violation of Sections 804 (a) and (b) of the Fair Housing Act. The most recent discriminatory act was alleged to have occurred on September 7, 1999. The property is Creekside Village Apartments, 1953 Spruce Drive, Seaside, Oregon. The property is not exempt under the Act.

The respondents receive federal financial assistance from the United States Department of Agriculture, Rural Development.

II. COMPLAINANT'S ALLEGATIONS

Ms. Alvera alleged that on August 2, 1999, her husband physically assaulted her in their home, apartment 21 in Creekside Village Apartments. Her husband was jailed and Ms. Alvera obtained a temporary restraining order against him. On August 4, 1999, Ms. Alvera alleged, she received a 24 hour notice to vacate from management that stated that, pursuant to Oregon law: "You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted substantial personal injury upon the landlord or other tenants." The notice specified that the incident was the assault on Ms. Alvera by her husband. Ms. Alvera alleged further that after issuing the notice, the managers refused to accept her rent for September. The managers also refused to move her to a one bedroom apartment; since her husband was not to live with her any more, she believed that she no longer qualified for a two bedroom apartment in this USDA subsidized complex. Ms. Alvera alleged that management discriminated against her because of her sex because the way they interpret and enforce Oregon state law toward domestic violence victims has a greater negative impact on women. She also alleged that management would not have treated men the same way as she was treated.

III. RESPONDENTS' DEFENSES

The respondents defended that they gave Ms. Alvera a 24 hour notice to vacate because it is their policy to evict tenants who pose a threat to the safety and well-being of other tenants in the complex. When one person in the household poses a threat, the entire household is evicted.

IV. FINDINGS AND CONCLUSIONS

The investigation revealed that the subject property consists of forty units and is funded by the USDA Rural Development program. The property is intended to serve lower income residents.

The investigation found that Ms. Alvera and her former husband, Mr. Humberto Mota, signed a lease and moved into a two bedroom unit at the complex in November, 1998. Until the incident from which this complaint arises, Ms. Alvera received no warnings or admonitions concerning her tenancy from the respondents. During this period Mr. Mota assaulted Ms. Alvera, who called the police. However, the respondents apparently were not aware of this incident and no action was taken with respect to their tenancy. In March, 1999, respondent Karen Mock became the resident manager of Creekside Village Apartments.

The evidence shows that on August 2, 1999, at approximately 5:30 am, Mr. Mote physically assaulted Ms. Alvera, causing Ms. Alvera to go to the hospital. Her mother, Tamie Alvera, who resided in unit 30 in the complex, at approximately 6:00 am, went to Ms. Mock in order to get a key to her daughter's apartment so that she could see whether Mr. Mota was still in the apartment. At the time, Tamie Alvera told Ms. Mock that Ms. Alvera had been beaten by Mr. Mota. Ms. Mock wrote up an incident report and sent it to respondent Corenevsky. The investigation revealed that immediately after she was released from the hospital, Ms. Alvera obtained a restraining order against her husband, which she showed to Ms. Mock. The restraining order stated that Mr. Mota could not contact Ms. Alvera at her residence, place of business, or within 100 feet of Ms. Alvera and could not contact her by phone or mail. The order also stated that Mr. Mota would move from and not return to their residence. Ms. Alvera discussed with Ms. Mock removing Mr. Mota from the lease.

The investigation revealed further that Ms. Mock was instructed by Ms. Corenevsky to terminate Ms. Alvera's tenancy and issue a 24 hour for cause eviction notice. On August 4, 1999, CBM Group issued a 24 hour notice to Ms. Alvera and Mr. Mota. The notice stated: "You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted substantial personal injury upon the landlord or other tenants." The notices specified: "On August 2, 1999 at approximately 6 a.m. Humberto Mota reportedly physically attacked Tiffani Alvera in their apartment. Subsequently, Police were called in."

The investigation established that on August 4, 1999, Ms. Alvera made an application for a one bedroom unit at the complex because there was then only one member of the household. The evidence shows that this application was rejected by the respondents because of the incident of domestic violence for which Ms. Alvera received the 24 hour notice. The evidence showed that unit 18, a one bedroom apartment into which Ms. Alvera eventually moved, was available as of August 4, 1999. On October 8, 1999, Ms. Alvera submitted a second application for a one bedroom apartment. On November 2, Ms. Alvera signed a lease for a one bedroom apartment, where she resided until she was later evicted for reasons not directly related to the allegations of this complaint.

The evidence further revealed that on August 6, 1999, Ms. Mock refused to accept Ms. Alvera's rent for the month of August. The respondents communicated to Ms. Alvera up through early September, 1999 that they intended to pursue an FED action against her. On October 26, 1999, an attorney representing the respondents wrote Ms. Alvera “concerning your Rental Agreement of [unit 21].” The letter stated:

“As you know, there was a recent incident of violence that took place between you and another member of your household. It is our understanding that you have taken steps to ensure that such an incident will not occur again.

This letter is to advise that Creekside is very concerned about the effect of such conduct on other tenants of the premises. Your conduct and the conduct of the other tenant would probably have been grounds for termination of your tenancy. Obviously, Creekside would not desire to take this action.

This letter is to advise that if there is any type of reoccurrence of the past events described above, that Creekside would have no other alternative but to-cause an eviction to take place. We solicit your cooperation in continuing to maintain a restraining order or for you to take whatever action is necessary to make certain that the rules of your tenancy are followed.”

There is no dispute that the sole reason for the 24 hour notice was respondents’ response to this incident of domestic violence. The evidence shows that none of the other tenants complained to the respondents that their tenancy had been disrupted or that they had been injured or feared injury because of the incident. Ms. Mock stated that after Ms. Alvera vacated the apartment a hole in the wall, which might have been caused by an assault by Mr. Mota, was discovered, but that she learned of this damage long after the 24 hour notice had been issued and that she did not report the hole to her superiors.

The investigation did not establish that Ms. Alvera was treated differently than similarly situated male tenants. There were no similarly situated male tenants. The evidence also revealed that there were at least three incidents of domestic violence at Creekside Village Apartments, all involving female victims, but respondents knew only about the August, 1999 incident involving Ms. Alvera. The evidence showed that the respondents issued three other 24 hour notices. One notice was for criminal activity, one was because the INS took the entire family away, and one was because a tenant threatened other tenants with a baseball bat. The evidence also showed that the resident manager filed six incident reports with upper management during the period June 1, 1999 to January 31, 2000. The only incident report involving violence, domestic or otherwise, was that involving Ms. Alvera.

It is the respondents' policy, expressed by respondent Corenevsky, that where there is any threat or act of violence by a tenant or, their guest, the household is terminated. She stated that the subject property has a "zero tolerance" for violence or threats of violence, and this policy was affirmed by the ADA/504 Coordinator for CBM Group. Ms. Corenevsky stated: "As is often the case in a domestic violence situation the victim does not take steps to prevent a reoccurrence of violent acts, subjecting other tenants to witness the scene play out time and time again. The reasons we take such a hard stance on the issue of violence is to maintain a peaceful living environment for all tenants."

Nationally, each year from 1992 to 1996 about 8 in 1,000 women and 1 in 1,000 men experienced a violent victimization by an intimate—a current or former spouse, girlfriend or boyfriend. National statistics also showed that, although less likely than males to experience violent crime overall, females are 5 to 8 times more likely than males to be victimized by an intimate. Other national studies have found that women are as much as ten times more likely than men to be victimized by an intimate.

National statistics show that 90% to 95% of victims of domestic violence are women. National estimates are that at least one million women a year are victims of domestic violence. A 1998 Oregon Domestic Violence Needs Assessment stated that more than one in eight (13.3 %) women in the state were the victims of physical abuse by an intimate in the prior year. Evidence obtained during the investigation showed that 93% of the victims of domestic violence reported to Clatsop County in 1999 were women. The 1998 Oregon Domestic Violence Needs Assessment compared the Oregon statistics to national statistics on the prevalence of domestic violence and found them to be comparable. National studies using a similar methodology reported that 1 out of every 9 to 1 out of every 12 women had been victims of physical assault by an intimate partner within the previous year. This compares to the Oregon study's finding that 1 of every 10 Oregon women have been victims of physical assault.

These statistics demonstrate that the respondents' policy of evicting all members of a household because of an incident of domestic violence, regardless of whether the household member is a victim or a perpetrator of the domestic violence, has an adverse impact based on sex, because of the disproportionate number of women victims of domestic violence.

The respondents have raised several reasons for their policy. One rationale advanced by the respondents is the need to protect other tenants both from threats of violence or violence and from being disturbed in their tenancy. However, the evidence fails to support this rationale. In the case of Ms. Alvera, no other tenants complained about the incident in question and the evidence shows that the only tenant who was aware of the incident was Ms. Alvera's mother. There were no other records of tenant complaints or incident reports involving domestic violence though the evidence shows that incidents of domestic violence were occurring at the complex. Further, there was no evidence in the investigation to support an assumption that there is a greater probability that persons living in the immediate vicinity of a household that has incidents of domestic violence will themselves become victims of that violence.

The respondents also argued that their policy is consistent with and mandated by rules of Rural Development concerning properties funded by that agency. Rural Development has implemented regulations and procedures providing that: "Action or conduct of the tenant or member which

disrupts the livability of the project by being a direct threat to the health or safety of any person, or the right of any tenant or member to the quiet enjoyment of the premises..." is grounds for termination of tenancy. However, Rural Development's rules and policies also provide: "It is not the intent that this provision of material lease violation apply to innocent members of the tenant's household who are not engaged in the illegal activity, nor are responsible for control of another household member or guest." The Rural Development representative responsible for monitoring Creekside Village Apartments stated that the rule protects innocent parties.

Respondent Corenevsky also stated that a reason that the respondents evict the entire household is because a TRO doesn't stop violence, and many men are not afraid of TROs. The results of national studies on the effectiveness of restraining orders in preventing future incidents of domestic violence are mixed. One study showed that in the six months after a restraining order is issued, 65% of the women who obtained the order reported no further domestic violence problems. Another study showed that future incidents of violence did occur even after a restraining order was obtained. However, the respondents' rationale is based on overbroad generalizations that do not take into account either the individual circumstances of the female victim tenant or all of the actions that she may have taken to prevent a recurrence of the violence. For example, in the case of Ms. Alvera, Mr. Mota was jailed, apparently subsequently left the country, and has had no further contact with Ms. Alvera.

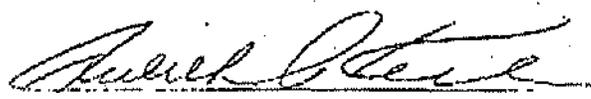
In issuing a 24 hour notice, the respondents apparently also were relying on an Oregon State law, ORS 90.400(3), which permits landlords to issue a notice for a tenant to vacate the property within 24 hours if there is substantial personal injury to the landlord or other tenants. However, that law, and the legislative history behind it, were not intended to apply to innocent victims of violence. During the legislative process witnesses testified that: "There are special concerns about battered women who might be evicted under this provision because of the outrageous conduct of an abusive boyfriend; they would be punished twice; beaten by the boyfriend, then evicted because of the boyfriend's abuse."

The evidence taken as a whole establishes that a policy of evicting innocent victims of domestic violence because of that violence has a disproportionate adverse impact on women and is not supported by a valid business or health or safety reason by the respondents.

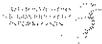
V. CONCLUSION

For the foregoing reasons, the Department finds reasonable cause to believe that the complainant has been discriminated against because of her sex in violation of the Fair Housing Act. A copy of the Final Investigative Report is available by requesting the Report in writing addressed to the Fair Housing Hub, Northwest/Alaska Area, U.S. Department of Housing and Urban Development, 909 First Avenue, Suite 205, Seattle, Washington 98104.

4/13/01
Date


Judith A. Keeler
Director, Seattle Fair Housing Hub

Part III:
Executive Orders



Presidential Documents

Title 3—

Executive Order 13166 of August 11, 2000

The President

Improving Access to Services for Persons With Limited English Proficiency

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. Goals.

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Sec. 2. Federally Conducted Programs and Activities.

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Sec. 3. Federally Assisted Programs and Activities.

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order,

each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the **Federal Register** for public comment.

Sec. 4. Consultations.

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Sec. 5. Judicial Review.

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.



THE WHITE HOUSE,
August 11, 2000.

Part IV:
Administrative Advocacy

VACAVILLE HOUSING AUTHORITY'S LANGUAGE ASSESSMENT FOUR – FACTOR ANALYSIS

In order to determine the estimated needs of Limited English Proficient (LEP) persons in the jurisdiction of the Vacaville Housing Authority (VHA), the VHA conducted the following analysis:

Factor 1 – Number or proportion of LEP persons served or encountered in the eligible service area

The VHA obtained information from the U.S. Census Bureau's American Factfinder website as recommended by HUD in order to gather data about the jurisdiction's overall population, as well as the population of LEP persons within the jurisdiction and the primary languages spoken. This data indicated the following:

Total population 5 years and over	76,380
Total LEP population 5 years and over	4,672
Spanish speaking LEP population 5 years and over	3,118
Asian and Pacific Islander language speaking LEP population 5 years and over	964
Other Indo-European language speaking LEP population 5 years and over	518
Other language speaking LEP population 5 years and over	72

The above data demonstrates that more than two-thirds of the jurisdiction's LEP population is Spanish speaking and that no other language meets the 5% or 1,000 person threshold for requiring written translation of vital documents. While the Asian and Pacific Islander language speaking LEP population is close to the threshold, the above numbers represent persons 5 years of age and older, and the VHA is confident that the actual number of potential clients is significantly lower due to the fact that children would not be seeking VHA services.

The VHA also completed in an informal, in-office survey to determine how many LEP persons visited or called the office, and what was their primary language, over a one-month period. This informal survey revealed that while there was a significant number of Spanish-speaking LEP persons contacting the VHA, there were no LEP persons who spoke languages other than Spanish.

In addition, the VHA is part of the City of Vacaville's Department of Housing and Redevelopment, which has conducted two Customer Service surveys in the last six years. The

surveys were available in the main lobby of the VHA's office for anyone to complete. The VHA did not receive any comments indicating a lack of LEP assistance. In addition, the VHA has never received any complaints regarding lack of availability of LEP assistance.

Factor 2 – Frequency of contact with the program

Through past experience, the VHA determined that on average, there are 2-3 Spanish speaking LEP persons contacting the VHA on a daily basis for information or assistance. Because of this, the VHA is committed to maintaining bilingual staff serving in both reception and case management. The VHA also has bilingual management staff in order to resolve higher lever concerns of Spanish speaking LEP persons.

Contacts with LEP persons who speak other languages are infrequent.

Factor 3 – Importance of service, information, program or activity

The services provided by the VHA are important as they relate to a client's need for, or continued provision of, affordable housing.

Factor 4 – Costs versus resources and benefits

Because the VHA has Spanish speaking staff, it is cost effective for the VHA to provide Spanish language translation of all vital documents and many others that while not vital, may be beneficial to a client.

The VHA will utilize any documents provided by HUD in languages other than English.

The VHA will seek to retain the services of a professional interpretation service to provide oral interpretation in languages other than Spanish as needed.

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. Guidance provided by HUD states that written translations of vital documents should be provided for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be effected or encountered. The VHA has determined that because there are more than 1,000 Spanish-speakers in Vacaville who speak English less than very well, the VHA will translate vital documents into Spanish.

The next largest LEP population were persons who speak Asian and Pacific Islander languages and identified themselves as speaking English "less than very well". This is a population of 964, which is 1% of the Vacaville population of 76,380 of people over the age of five years, and less than 1,000 people. In addition, this number is a combination of many different languages, which signifies that

when each individual language is separated from this group, the percentage of LEP persons in this language group is even less than 1%. The VHA also took into consideration that while there are 964 LEP persons in this population, not all of them will seek assistance from VHA programs and services as some of them are children and others will not need the type of services provided by the VHA. The VHA has determined that because there are less than 1% or 1,000 people in any of the Asian or Pacific Islander languages, it will not translate vital documents into these languages. However, the VHA will provide oral interpretation as needed to LEP persons requesting such services.

Other language groups in Vacaville had few LEP persons and therefore did not meet the threshold to require written translation of vital documents into those languages. The VHA will provide oral interpretation as needed to LEP persons requesting such services.

IV. Written Translation

As stated above in Section III, the VHA has determined that because there are more than 1,000 Spanish-speakers in Vacaville who speak English less than very well, the VHA will translate vital documents into Spanish. As of the date of the creation of this LAP, Spanish is the only language into which vital documents will be translated. This is subject to change upon review of the LAP as discussed below.

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

V. Oral Interpretation

The VHA will make every effort to provide oral interpretation for all its clients who have identified themselves as LEP and request services.

A. *Bilingual Staff*

The VHA employs bilingual, Spanish-speaking staff in several positions, including program management, to ensure there are sufficient personnel available to assist Spanish-speaking LEP persons when needed. Currently the VHA has four full-time Spanish-speaking staff and two part-time Spanish speaking staff. In addition, as part of the City of Vacaville, the VHA has access to other bilingual City employees, including numerous Spanish-speaking staff, as well as staff who speak German, Hindi, Punjabi, Urdu, Lithuanian, Tagalog, Ilokano and American Sign Language.

VHA staff, as well as other City of Vacaville bilingual employees, must take and pass a competency test in the other language in order to be designated as a bilingual person. This test includes being required to answer questions in the other language as in an interview setting, serve as an interpreter in a role-play scenario, and to translate written documents from English to the foreign language and from the foreign language to English. The current Program Administrator for the VHA has also received training on professional interpretation.

B. *Interpreter Services*

When there is not a VHA/City staff person who speaks the LEP person's primary language, the VHA will seek interpretation through a professional interpreter service.

In the event that the LEP person's primary language is not widely spoken and the VHA is unable to locate a suitable interpreter through a professional interpreter service, the VHA may resort to other methods such as seeking community volunteers. As a last resort in cases where the VHA is unable to find an acceptable interpreter within a time frame to effectively assist the client, the VHA may use an online translation website, such as Babelfish, in order to communicate via an in-office computer.

C. *Informal Interpreters*

The VHA will generally discourage the use of family members or other informal interpreters, but will allow the use of an interpreter of the LEP person's choosing (including family members or a

professional interpreter at the LEP person's own expense) when the LEP person rejects the VHA's free language assistance services. The VHA will document the offer and the LEP person's subsequent rejection.

VI. Outreach

The VHA will conduct outreach in a method that is inclusive of LEP persons identified through its bi-annual analysis. All Public Notices and marketing advertisements, such as notification of the availability of wait list applications, shall be published in Spanish as well as English, and the VHA will publish these in local Spanish media. The VHA may also participate in community-sponsored events, and make presentations through community organizations to target LEP persons and ensure they are aware of the availability of LEP assistance.

For clients, reception service is provide in Spanish, flyers and other communications posted in the lobby are translated into Spanish, and interviews and program briefings are conducted in Spanish. Brochures advertising other available programs within the organization are also available in Spanish.

For clients who are LEP but are not Spanish-speaking, the VHA's Receptionist has a document created by the US Census Bureau translated into 38 different languages to use as a tool to identify the client's primary language. The VHA will also seek translation of a notice announcing the availability of primary language assistance into as many languages as possible to be posted in the lobby. Until this is achieved, the VHA will post the notice in English.

VII. Staff Training

The VHA will provide a copy of this LAP to all existing staff, and will also provide training as to its contents and what is required of them under its policies. This training shall include the types of services available to clients and how to access them. New employees will receive this LAP and the same training as part of their orientation.

VIII. Monitoring and Updating of This LAP

The VHA will review/revise this LAP on an as needed basis, but no less than every two years to ensure the populations of the various language groups within the jurisdiction and their needs are reflected in the provision of primary-language services. At that point the Plan will be reviewed to determine if the existing LEP services are sufficient to meet the needs of LEP clients.

Events that will be considered indicators of the need for a review of the LAP and will also be utilized to identify the need for LEP assistance in other languages include but are not limited to LEP populations within the jurisdiction encountered or affected; frequency of encounters with LEP populations; and continued availability of existing resources and the addition of new resources.

HUD > Press Room > Press Releases > 2013 > HUDNo.13-006

HUD No. 13-006
Shantae Goodloe
(202) 708-0685

FOR RELEASE
Wednesday
January 16, 2013

**HUD AND VIRGINIA PROPERTY MANAGEMENT
COMPANY SETTLE ALLEGATIONS THE
COMPANY DENIED OPPORTUNITIES TO NON-ENGLISH
SPEAKERS**

*Company will pay over \$82,000 and develop
non-discrimination policy*

WASHINGTON – The U.S. Department of Housing and Urban Development (HUD) announced today that Virginia Realty Company of Tidewater, Inc., a property management company based in Virginia Beach, VA, will pay \$82,500 to settle allegations that it refused to allow a Hispanic woman to apply for an apartment because she did not speak fluent English. Virginia Realty had a policy of not renting to persons with limited English proficiency.

The [Fair Housing Act](#) prohibits discrimination in the rental of housing on the basis of national origin.

“Denying housing because a person does not speak English well violates the Fair Housing Act,” said John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “This settlement reaffirms HUD’s commitment to combating discrimination against a person because of their national origin or the language they speak.”

The case came to HUD’s attention when a Hispanic woman filed a complaint alleging that Virginia Realty, a property management company that manages over 500 rental units throughout Virginia Beach and Norfolk, refused to provide her a rental application because she could not speak English well and refused the translation assistance of the bilingual person she brought with her. Based on her experience, HUD launched a Secretary-initiated Investigation to determine whether the alleged discrimination was systemic. In the course of the investigation, HUD discovered that Virginia Realty had a written policy expressly requiring all prospective tenants

to be able to communicate with management staff in English without assistance from others, and to complete rental applications only while they were in the management office.

As a result of HUD's investigation, Virginia Realty entered into [two agreements](#): one with the individual who brought the initial complaint and the other with HUD. Under the first agreement, Virginia Realty will pay the prospective tenant \$7,500. Under the second agreement, the company will donate \$25,000 each to the Piedmont Housing Alliance, Hampton Roads Hispanic Chamber of Commerce, and Nueva Vida (New Life) Outreach International Church to support fair housing initiatives. In addition, Virginia Realty will adopt a non-discrimination policy, which it will distribute to current residents and prospective tenants; adopt a plan to more effectively serve Limited English Proficient residents and prospective tenants by providing translation and interpretation services; and require its employees to undergo fair housing training.

HUD's Office of Fair Housing and Equal Opportunity, with its partners in the Fair Housing Assistance Program, investigates almost 10,000 housing discrimination complaints annually. People who believe they have experienced or witnessed unlawful housing discrimination should contact HUD at (800) 669-9777 (voice), or (800) 927-9275 (TTY). More information about fair housing rights is available at HUD's website, www.hud.gov/fairhousing.

###

HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way HUD does business. More information about HUD and its programs is available on the Internet at www.hud.gov and <http://espanol.hud.gov>. You can also follow HUD on twitter @HUDnews, on

facebook at

www.facebook.com/HUD, or sign up for news alerts on [HUD's News Listserv](#).

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII

CONCILIATION AGREEMENT

Between

**U.S. Department of Housing and Urban Development
Assistant Secretary for the Office of Fair Housing and Equal Opportunity, John Trasvina,
(Complainant)**

And

**Virginia Realty Company of Tidewater, Inc., Thomas Gale, Jr., and Penny Rupert
(Respondents)**

FHEO CASE NUMBERS: 03-11-0424-8

A. PARTIES

Complainant

John D. Trasvifa
Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Respondents

Virginia Realty Company of Tidewater, Inc.
/a Virginia Realty Co
9646 Granby St.
Norfolk, VA 23503

Thomas Gale, Jr.
Virginia Realty Company of Tidewater, Inc.
/a Virginia Realty Company
9646 Granby Street
Norfolk, VA 23503

Penny Ruperti
Virginia Realty Company of Tidewater, Inc.
/a Virginia Realty Company
9646 Granby Street
Norfolk, VA 23503

B. PARTIES' POSITION STATEMENTS

1. Complainant's Position

On August 18, 2011, the Assistant Secretary for Fair Housing and Equal Opportunity ("Assistant Secretary") of the U.S. Department of Housing and Urban Development ("HUD" or "Department") filed a timely complaint (herein, the "Complaint") against Respondents Virginia Realty Company of Tidewater, Inc. (Virginia Realty), Thomas Gale, Jr., and Penny Ruperti (collectively, "Respondents") pursuant to authority granted under 42 U.S.C. § 3610(a)(1)(A)(i).

The Complaint alleges that Respondents violated § 804(a) and (b) of the Fair Housing Act ("Act"), 42 U.S.C. 3604(a) and (b), by establishing a written policy that requires competency in English as a prerequisite of tenancy for all residential properties managed by Respondents. The Complaint arose from the preliminary investigation of a complaint filed by [REDACTED] which alleges that Respondents refused to provide [REDACTED] with a rental application because she was Hispanic and did not speak English well.

Subsection 804(a) of the Act makes it unlawful to refuse to rent or otherwise make unavailable a dwelling because of national origin.

Subsection 804(b) of the Act makes it unlawful to discriminate in the terms and conditions of renting a dwelling because of national origin.

2. Respondents' Position

Respondents deny Complainant's allegations, and deny discriminating against individuals based on national origin. Respondents contend that they complied with the requirements of the Act on the date of the alleged violation and remain in compliance with the Act.

3. Conciliation

It is understood that the execution of this Agreement does not constitute an admission by the Respondents of any violation of the Fair Housing Act alleged in the Complaint.

C. TERM OF AGREEMENT

This Agreement shall be in effect for a period of two (2) years from the effective date of the Agreement, unless an extension is necessary to complete the actions mandated by the Agreement.

D. EFFECTIVE DATE

This Agreement shall become effective on the date on which it is signed by Respondents and the Assistant Secretary, or his or her designee, and shall constitute a binding contract under state or federal law, and a conciliation agreement pursuant to the Act.

E. GENERAL PROVISIONS

1. The parties acknowledge that this Agreement is a voluntary and full settlement of the Complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
2. Respondents acknowledge that the Act makes it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement and a statutory violation of the Act.
3. This Agreement is binding upon Respondents; Respondents' agents and employees authorized to sell, rent, manage, or market residential rental properties; Respondents' heirs, successors and assigns; and all others in active concert with Respondents in the sale, rental, management or marketing of residential properties.

4. Pursuant to Section 810(b)(4) of the Act, this Agreement is a public document.
5. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondents made pursuant to the Act, or any other complaint within the Department's jurisdiction.
6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved, in writing by the Assistant Secretary, or his or her designee.
7. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.
8. John Trasviña, Assistant Secretary, FHEO hereby waives, releases, and covenants not to sue Respondents, their heirs, executors, assigns, agents, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the allegations presented in the Complaint.

F. RELIEF IN THE PUBLIC INTEREST

1. General Remedial Provisions

Respondents, their agents, employees, successors, members and assigns, and all other persons in active concert or participation with any of them in the sale, rental and/or management of residential properties, are hereby enjoined from:

- a. Discriminating in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of national origin, as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(a);
 - b. Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of nation origin, as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(b);
 - c. Making statements with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on national origin, or an intention to make any such preference, limitation, or discrimination, as prohibited by the Fair Housing Act, 42 U.S.C. § 3604(c);
 - d. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Fair Housing Act, 42 U.S.C. § 3617
2. Adoption and Implementation of a Non-Discrimination Policy
- a. Within thirty (30) days of the effective date of this Agreement, Respondents shall adopt and implement, a Non-Discrimination Policy regarding the rental of dwelling units at all properties owned, rented, managed, or operated in whole or in part by Respondents at any time during the term of this Agreement. The text of the Non-Discrimination Policy shall be published as set forth in Appendix A of this Agreement.

- b. Respondents shall, no later than ten (10) days after its adoption, notify in writing each resident of all properties owned, rented, managed, or operated in whole or in part by Respondents of the adoption and implementation of the Non-Discrimination Policy and shall provide a copy of the Non-Discrimination Policy, in both English and Spanish, with such notification.
- c. Respondents shall promptly provide a copy of the Non-Discrimination Policy, in both English and Spanish, to any prospective tenants who request an application to rent any property owned, rented, managed, or operated by Respondents.
- d. Respondents shall promptly post the Non-Discrimination Policy, in both English and Spanish, in each and every office utilized by Respondents in the operation of managing and/or renting residential properties. The Non-Discrimination Policy must be in a conspicuous location, easily viewable to prospective renters and current tenants. The Non-Discrimination Policy shall be displayed during the term of this Agreement.
- e. Respondents shall provide a statement, consistent with the Non-Discrimination Policy, in all published advertisements for the rental and/or management of residential properties that Respondents do not discriminate in the rental of housing on the basis of national origin in violation of the Fair Housing Act. The Respondent shall publish the nondiscrimination notice in English and Spanish. Respondents shall provide to the Department a copy of such advertisements within 20 days of each publication on a quarterly basis. The nondiscrimination statement shall read as follows:

"Virginia Realty Company of Tidewater is an equal housing opportunity provider. We do not discriminate on the basis of race, color, religion, sex, disability, familial status, or national origin."

3. Limited English Proficiency Standards

Within ninety (90) days from the effective date of this Agreement Respondents agree to develop or adopt a Limited English Proficiency Plan (LEPP) that shall be applicable to Respondents' rental housing-related services and activities. The proposed plan shall be submitted to the Department for review and approval. The LEPP shall include at a minimum, provisions for translation and interpretation services for use by residents and applicants for residency. Respondents may partner with profit and/or nonprofit agencies to provide the services developed in the LEPP.

4. Education and Training

- a. Within thirty (30) days of the effective date of the Agreement, Respondents shall provide a copy of this Agreement and the Non-Discrimination Policy to each of their principals, agents, and employees involved in the management or rental operations of Respondents or involved in enforcing any of Respondents' rules or regulations.
- b. Within five days after new employees, agents, or other persons acting under their direction become involved in the management or rental operations of Virginia Realty, or involved in enforcing any of Respondents' rules or regulations, Respondents shall provide a copy of this Agreement and Non-Discrimination Policy to each such person.
- c. Respondents shall secure a signed statement, in the form set forth in Appendix B, from each principal, agent, employee, or other person who acts under their direction acknowledging that he or she has received and read this Agreement and the Non-Discrimination Policy.

- d. Within ninety (90) days of the effective date of this agreement, Respondents shall require all of their principals, employees, and agents involved in the management or rental operations of Virginia Realty, and interact with residents and/or the general public to complete a minimum of two hours of training pertaining to their obligations under the Fair Housing Act and applicable state and local non-discrimination laws.
- e. Respondents must obtain written approval of the trainer from Sylvia Berry, FHEO Field Director, U.S. Department of Housing and Urban Development, 600 E. Broad Street, Richmond, VA 23219, at least 30 days prior to the commencement of the training. All costs of the training shall be borne by Respondents. Respondents shall require all attendees to sign a certification of attendance. Respondents shall make such certifications available to HUD upon request.
- f. Within 30 days prior to the training, Respondents shall provide to HUD a list of each person required to receive training.

5. Commitment to Fair Housing

- a. Within thirty (30) days of the effective date of this Agreement, Respondents shall donate Twenty Five Thousand Dollars (\$25,000.00) to the Piedmont Housing Alliance to support bilingual programs and activities that create housing opportunities and further fair housing in the state of Virginia.
- b. Within thirty (30) days of the effective date of this Agreement, Respondents shall donate the sum of Twenty Five Thousand Dollars (\$25,000.00) to the Nueva Vida Church to support outreach initiatives to bilingual speakers in Virginia.
- c. Within thirty (30) days of the effective date of this Agreement, Respondents shall donate the sum of Twenty Five Thousand Dollars (\$25,000.00) to the Hampton

Hispanic Chamber of Commerce, which supports the interests of the local Hispanic communities.

G. MONITORING REQUIREMENTS

It is understood that HUD shall determine compliance with the provisions of this Agreement. At any time during the term of this Agreement, HUD may review the Respondents' compliance with this Agreement. During the course of a review, HUD may interview witnesses, and, upon reasonable notice, may inspect and copy pertinent records of Respondents. Respondents agree to fully cooperate with all monitoring reviews that HUD may conduct for the purpose of verifying the Respondents' compliance with this Agreement.

H. REPORTING AND RECORD KEEPING

1. During the term of this Agreement, Respondents shall notify the Department of any formal complaint filed against them with a local, state, or federal agency regarding equal opportunity or discrimination in housing within ten days of receipt of any such complaint. Respondents shall provide a copy of the complaint with the notification to the Department. Respondents shall also promptly provide the Department with all information it may request concerning any such complaint and its actual or attempted resolution.
2. For the Duration of this Agreement, Respondents shall maintain all records relating to Respondents' obligations under the Agreement. HUD shall have the right to review and copy such records upon request.
3. Respondents shall maintain an Application Log regarding the rental of all residential properties owned and/or managed by Respondents. The Application Log shall note that it is being kept for the purposes of compliance with this Agreement. The Application Log

shall include the applicant's name(s), address, phone number and shall indicate the national origin of the applicant (if known). This information shall be provided to HUD twice a year, beginning 180 days from the effective date of this Agreement. If an applicant declines to provide the requested information, Respondents shall note this refusal in the Application Log.

4. All required notifications and documentations of compliance, as provided for in this Agreement, must be submitted to HUD as follows, unless otherwise indicated:

Melody Taylor-Blancher, FHEO Regional Director
U.S. Department of Housing and Urban Development
100 Penn Square East
The Wanamaker Building
Philadelphia, PA 19107

I. BREACH OF CONCILIATION AGREEMENT

Whenever HUD has reasonable cause to believe that Respondents have breached this Agreement, HUD shall within thirty (30) days, provide notice to Respondents and provide thirty (30) days to comply. If such breach is not cured to HUD's satisfaction, the Department may pursue judicial enforcement of this Agreement, as provided in 42 U.S.C. §§ 3610(c), 3614(b)(2), and may pursue administrative remedies available to the Department. Each Party to this Agreement shall bear its own costs and attorney's fees associated with this matter.

APPENDIX A

**NON-DISCRIMINATION POLICY OF VIRGINIA REALTY COMPANY OF
TIDEWATER, INC.**

It is the policy of Virginia Realty Company of Tidewater, Inc., to comply with the Fair Housing Act, 42 U.S.C. §§ 3601-19, by ensuring that dwellings owned, rented, managed and/or operated by Virginia Realty Company of Tidewater, Inc., are available for rent to all persons without regard to national origin. Virginia Realty Company of Tidewater, Inc., and its agents, contractors, and/or employees will not:

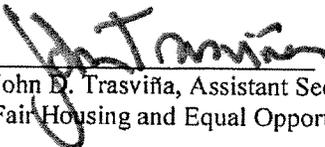
- A. Prohibit any person from renting a property because that person or someone in the person's household has limited proficiency in English.
- B. Provide different housing services or facilities, or offer different terms, conditions, or privileges, when renting a property to a person because that person or a person in his or her household has limited proficiency in English.
- C. Advertise or make any statement that indicates a limitation or preference based on national origin.
- D. Intimidate, coerce, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

If an individual believes that he or she has been unlawfully discriminated against because of nation origin, he or she may file a complaint with:

U.S. Department of Housing and Urban Development
Office of Fair Housing & Equal Opportunity
451 7th St. SW, Washington, DC 20410
Telephone: 1-800-669-9777
Website: <http://hud.gov/complaints/>

J. SIGNATURES

WHEREFORE, the parties hereto have duly executed this Agreement:



John D. Trasvifa, Assistant Secretary for
Fair Housing and Equal Opportunity

1-3-13
DATE

Virginia Realty Company of Tidewater, Inc., by
Tommy Gale

DATE

Tommy Gale

DATE

Penny Rupperti

DATE

J. SIGNATURES

WHEREFORE, the parties hereto have duly executed this Agreement:

John D. Trasvina, Assistant Secretary for
Fair Housing and Equal Opportunity

DATE

Tommy Gale
Virginia Realty Company of Tidewater, Inc., by
Tommy Gale

12/28/12
DATE

Tommy Gale
Tommy Gale

12/28/12
DATE

Penny Rupert

DATE

J. SIGNATURES

WHEREFORE, the parties hereto have duly executed this Agreement:

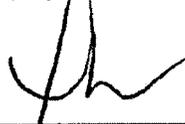
**John D. Trasvifia, Assistant Secretary for
Fair Housing and Equal Opportunity**

DATE

**Virginia Realty Company of Tidewater, Inc., by
Tommy Gale**

DATE

Tommy Gale



Penny Ruperti

DATE

DATE

12/28/12



703 Market St., Suite 2000
San Francisco, CA 94103
Telephone: 415-546-7000
Fax: 415-546-7007
nhlp@nhlp.org
www.nhlp.org

January 4, 2013

DELIVERED BY HAND

San Francisco Mayor's Office of Housing
Analysis of Impediments to Fair Housing Staff
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Re: 2012-2017 Analysis of Impediments to Fair Housing Choice and the Issues of Limited English Proficiency and National Origin Discrimination

This letter is written on behalf of the National Housing Law Project (NHLP); Bay Area Legal Aid; the Housing Rights Committee of San Francisco; and the Asian Law Caucus.

NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for racial and ethnic minorities. Additionally, NHLP provides technical assistance and policy support on language access issues to housing advocates nationwide. Bay Area Legal Aid is the largest provider of legal services to the poor in the Bay Area. Bay Area Legal Aid's housing practice includes full representation at unlawful detainer (eviction) proceedings, enforcement of the rights of indigent individuals to fair housing, representation at grievance hearings for both subsidized units and Section 8 tenants, and affirmative litigation, including representation of low-income families wrongfully evicted by banks after foreclosure. The Housing Rights Committee of San Francisco is a tenants' rights organization that offers free counseling to over 5,000 San Francisco tenants a year. The Asian Law Caucus is the nation's oldest legal and civil rights organization serving the Asian Pacific American communities.

Our organizations seek to comment on San Francisco's Draft Analysis of Impediments to Fair Housing Choice, specifically addressing how the Analysis of Impediments (AI) covers issues facing San Francisco's limited English proficient (LEP) residents and related concerns over national origin discrimination.¹ We applaud the City and County of San Francisco for acknowledging that LEP

¹ The link between discrimination against LEP individuals and discrimination on the basis of national origin is long-established in the law. *See e.g., Lau v. Nichols*, 414 U.S. 563, 566-69 (1974) (not providing language assistance to non-English-speaking Chinese students constituted national origin discrimination under Title VI), *abrogated on other grounds by Regents of the University of California v. Bakke*, 438 U.S. 265, 352 (1978); *United States of America v. Maricopa County*, 2:12-cv-00981-ROS at 6 (D. Ariz. Dec. 12, 2012) (noting that "longstanding case law, federal regulations and agency interpretation of those regulations hold language-based discrimination constitutes a form of national origin discrimination"); *see also* Exec. Order 13166, 65 Fed. Reg. 159 (Aug. 11, 2000) (noting that providing language assistance to LEP individuals ensures that federally-funded entities do not discriminate on the basis of national origin under Title VI).

individuals face unique barriers to obtaining housing. The following recommendations address areas where we believe that the AI could be strengthened or expanded regarding language access issues so that the AI more clearly reflects the realities faced by the City's LEP residents and immigrants.

Generally, the AI needs to include more specifics about the actual impediments faced by LEP individuals in San Francisco. Federal regulations require that jurisdictions "conduct an analysis to identify impediments to fair housing choice within the jurisdiction" and "*take appropriate actions* to overcome the effects of any impediments identified through that analysis."² However, the AI does not provide a complete picture of the specific ways in which limited English proficiency impedes fair housing choice much beyond a general recognition that certain transactions related to housing (such as completing paperwork) can be particularly challenging for LEP persons. Furthermore, the AI should include clearly-delineated goals regarding how the City plans to address the challenges faced by residents with limited English proficiency and a timeframe for meeting these goals.

Additionally, there are specific portions of the AI that could include a more complete discussion of issues related to language and national origin discrimination in housing. We organized our comments by the specific section of the AI being discussed.

Section 2.2.5: Seniors

As the AI rightly points out, a significant proportion of the City's growing senior population is LEP.³ The AI uses Census data from the year 2000 when discussing LEP seniors.⁴ However, using more updated information would be more accurate in demonstrating that limited English proficiency remains an important issue within the senior community. For example, the American Community Survey 2011 1-year estimates (ACS) indicate that approximately 40.6 percent of San Francisco residents over 60 are LEP (speaking English "less than very well"), compared with 23.2 percent of the total City/County population.⁵ However, the 2000 Census data cited in the AI estimated that only 28 percent of seniors in San Francisco were LEP. The updated data show that language barriers have become substantially more problematic for seniors over the last decade. Therefore, the City and County must consider a much larger LEP senior community than originally anticipated. Furthermore, any measures taken to address language access issues must account for considerations specific to the senior community, such as technological divides between older and younger generations. By recognizing the current scope of the language access problems facing seniors, the AI would help ensure that such considerations are part of any broader effort to improve language assistance in the housing context.

Section 2.2.8: Limited English Proficient Individuals

The AI begins its discussion about LEP individuals without defining the term "limited English proficient." To provide context for the reader, the AI should include a definition of what level of English skill is included in the classification of "limited English proficient." HUD provides one possible definition in its LEP administrative guidance, defining LEP individuals as those "who do not

² 24 C.F.R. § 91.225(a)(1) (Westlaw Jan. 3, 2013) (emphasis added).

³ AI at 28.

⁴ *Id.*

⁵ See U.S. Census Bureau, "Population 60 Years and Over in the United States: 2011 American Community Survey 1-Year Estimates," available at: http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/11_1YR/S0102/0500000US06075, with geography set to San Francisco, County, California.

speaking English as a primary language and who have a limited ability to read, write, speak, or understand English.”⁶

Additionally, the AI could present a more dynamic illustration of which languages other than English are being spoken in San Francisco. Instead of grouping languages into the Census-defined categories such as “Asian or Pacific Islander” languages, it would be more useful to list specific language groups. For example, the *2010-2014 Five-Year Consolidated Plan* for the City and County of San Francisco states that 46 percent of San Franciscans over age five speak a language other than English at home, noting that in these households, Chinese, Spanish, Tagalog, and Russian comprise the most commonly-spoken languages.⁷ Figures detailing the relative sizes of language groups in the City and County would be helpful to include in the AI.⁸ Having more specific, updated numbers would better inform an assessment of the particular needs of individual language communities within the City.

Furthermore, the AI states, “LEP households were far more likely to be low-income, and thus they were less likely to own their homes.”⁹ This statement appears to suggest that income is the sole impediment to homeownership among low-income LEP individuals. However, another section of the AI points out, “Housing-related transactions that are easy for a high-school educated native-born American, such as filling out an application form[], can pose a substantial barrier to entry for anyone who cannot speak, write or read English.”¹⁰ While the passage addresses issues in rental housing, these impediments would likely also manifest themselves in the homeownership context as well. Thus, the AI should aim to clarify this assertion to prevent minimizing the importance of language access in obtaining a home.

Section 3.4: Recommendations for Assisted Housing Programs

The AI mentions an existing database of restricted housing units, and proposes making existing information about affordable housing opportunities and the accompanying application processes more centralized.¹¹ However, the AI does not specifically point out whether such centralized information would be accessible in languages other than English. This section acknowledges the fact that limited English proficiency hinders access to affordable housing opportunities and information.¹² Therefore, this section needs to address how centralizing the information would assist LEP individuals, and what steps the City/County is taking to ensure that LEP individuals will have the same sort of access to centralized information about these affordable housing opportunities. Such steps could include working with local non-profit organizations and community groups that serve LEP communities, or by translating the centralized information made available to the general public.

Section 3.5.3: Recommendations to Reduce Substandard Housing

⁶ 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, 2740 (Jan. 22, 2007).

⁷ San Francisco Mayor’s Office of Housing, “2010-2014 Five-Year Consolidated Plan,” at 2, *available at*: <http://sf-moh.org/Modules/ShowDocument.aspx?documentid=4605>.

⁸ A good resource that includes a snapshot of the language diversity within California’s political districts is the report *California Speaks: Language Diversity and English Proficiency by Legislative District*, published by the Asian Pacific American Legal Center of Southern California and the Asian and Pacific Islander American Health Forum, *available at*: http://www.apiahf.org/sites/default/files/APIAHF_Report05_2009.pdf.

⁹ AI at 41.

¹⁰ *Id.* at 159.

¹¹ *Id.* at 95.

¹² *Id.*

LEP individuals, as the AI notes, have difficulties accessing information about rights as tenants, particularly about the right to live in safe, habitable housing. To address this problem, the AI proposes publishing materials on the Mayor's Office of Housing website,¹³ but does not specify whether these materials would be translated. Thus, the AI should recommend that these materials concerning tenants' rights be translated, and specify for which languages the translations would be made. It is our recommendation that, as a starting point, translations should be provided in the following languages (those noted in the 2010-2014 Consolidated Plan as being the most widely spoken): Chinese, Spanish, Tagalog, and Russian.

Section 4.3.2: Direct Discrimination Programs & Recommendations: Recommendations

The AI recommends that the City consider utilizing fair housing testing as a means of assessing the scope of housing discrimination within San Francisco, correctly noting that such an assessment cannot be solely based upon reported incidents.¹⁴ The AI does not specify whether such testing and accompanying research would have any component that would focus on testing for language discrimination against San Francisco residents. Given the traditional link between language discrimination and discrimination on the basis of national origin,¹⁵ the testers would also be gathering information about national origin discrimination in San Francisco housing. Thus, the AI should include a recommendation that the partners mentioned in this section—such as the Mayor's Office of Housing, the Human Rights Commission, and community-based organizations—conduct citywide testing for discrimination against LEP individuals.

Additionally, the AI references the need for fair housing education and outreach to address information gaps that exist among landlords and tenants regarding the fair housing laws that apply in the City of San Francisco.¹⁶ To ensure that landlords and tenants in all language communities benefit from any outreach efforts, the AI should recommend that any educational activities be conducted in languages other than English. The City can maximize the effectiveness of reaching non-English speakers by collaborating with housing advocacy and community groups that already conduct trainings and disseminate fair housing information to specific populations.

Section 5.4.1: Immigration Status - Barriers to Affordable Housing Access

The AI states that “undocumented immigrants are ineligible for Public Housing and Section 8 voucher assistance, two of the largest housing assistance programs in San Francisco.”¹⁷ This language, while technically accurate, requires additional clarification. While undocumented immigrants cannot apply for these forms of assistance, undocumented immigrants can still reside in the same home as someone who is eligible for these forms of assistance.¹⁸ The housing assistance is then prorated to

¹³*Id.* at 103.

¹⁴*Id.* at 120.

¹⁵ See Note 1.

¹⁶ AI at 120.

¹⁷*Id.* at 158.

¹⁸ See generally 42 U.S.C. § 1436a (Westlaw Jan. 3, 2013) (restricting housing assistance based on legal status); see also 24 C.F.R. § 5.506 (b)(2) (Westlaw Jan. 3, 2013) (mixed families possibly eligible for housing assistance); 24 C.F.R. § 5.512 (a) (Westlaw Jan. 3, 2013) (at least one family member must be eligible before family receives assistance); 24 C.F.R. § 5.516(a)(iii) & (b) (Westlaw Jan. 3, 2013) (prorated assistance available to both tenant and applicant families, respectively).

include only eligible individuals living in the household.¹⁹ The eligible person can be the minor child of undocumented immigrant parents.²⁰ Thus, while undocumented immigrants cannot directly receive housing assistance in the form of Section 8 vouchers or public housing, they may still be able to reside in a home that receives these types of assistance. This clarification should be made in the AI.

Section 5.4.2: Immigration Status – Recommendations to Remove Barriers to Affordable Housing Access

This section of the AI raises the issue of landlords asking for Social Security numbers as part of the rental application process, as undocumented immigrants do not have Social Security numbers.²¹ California law forbids both discrimination in housing on the basis of national origin,²² and landlords from making “any written or oral inquiry” concerning national origin from prospective tenants.²³ Thus, the practice of asking for Social Security numbers, if not mandatory for verification purposes, could be construed as violating California law. As the AI rightly points out, the City should work with landlords to promote understanding that providing a Social Security number can be optional under certain circumstances, and to allow other forms of identification so that undocumented immigrants will not be forced to forego housing or to provide a false Social Security number. The City should make sure that this information is disseminated in non-English languages and conduct targeted outreach to landlords—who themselves may be LEP—serving large immigrant and LEP populations, where this issue is most likely to arise.

Section 5.5.1: Language Status: Impediments to Housing Access

As noted above, the AI should more fully describe the specific impediments that LEP individuals face in obtaining safe, affordable housing. For example, the AI should discuss issues such as tenants not receiving important notices that impact the status of their housing (“vital documents”),²⁴ leaving them uninformed about decisions or actions that substantially affect their rights. While the AI acknowledges that language barriers can make lease requirements difficult to understand,²⁵ the AI could expand this statement to discuss the lack of information about rules concerning maintenance or upkeep for LEP tenants—as such information could prevent future eviction issues. By including more specificity in the AI, the City can hone in on particular issues facing LEP tenants, and collaborate with various community stakeholders to increase language access for San Francisco residents.

¹⁹ 24 C.F.R. 5.506(b)(2) (Westlaw Jan. 3, 2013); *see also* 24 C.F.R. 5.520(c)(2)(i)-(iv) (Westlaw Jan. 3, 2013) (proration calculation for Section 8 Voucher program); 24 C.F.R. 5.520(d)(1)-(5) (Westlaw Jan. 3, 2013) (proration calculation for public housing).

²⁰ *See* 24 C.F.R. § 5.504 (Westlaw Jan. 3, 2013) (defining a child under 18 years of age as “member of the family”).

²¹ AI at 159.

²² *See* Cal. Gov. Code § 12955(a) (Westlaw Jan. 3, 2013).

²³ *See id.* § 12955(b).

²⁴ HUD LEP Guidance defines a “vital document” as “any document that is critical for ensuring meaningful access to the recipients’ major activities and programs by beneficiaries generally and LEP persons specifically.” The Guidance also notes that determining whether a document is vital “may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.” 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, 2752 (Appendix B) (Jan. 22, 2007).

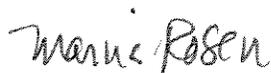
²⁵ AI at 159.

Section 5.5.2: Language Status: Recommendations to Remove Barriers to Affordable Housing Access

The AI briefly addresses the requirement that recipients of funding by the Mayor's Office of Housing are required to have language access plans (LAPs) in place.²⁶ While the AI acknowledges the need, this section should include stronger language emphasizing that these entities serving LEP individuals should develop effective LAPs. In addition, SFHA should work with organizations such as NHLP to assess and improve the LAPs adopted by affordable housing developers and management companies. If standardized housing forms are translated, SFHA should post these forms on its website so that housing applicants and residents may have access to them. City departments receiving federal funding²⁷ should adopt their own LAPs and determine what vital documents need to be translated.

In sum, the draft AI represents a promising foundation upon which to build further discussion concerning the important issues of language access and national origin discrimination. Our organizations look forward to continuing a dialogue about the housing concerns of San Francisco's LEP and immigrant populations, and working to increase affordable housing opportunities for all City and County residents. If you have any questions or would like to discuss this further, please contact Renee Williams at rwilliams@nhlp.org or (415) 546-7000, ext. 3121.

Sincerely,



Marcia Rosen, Executive Director
National Housing Law Project

Bay Area Legal Aid

Housing Rights Committee of San Francisco

Asian Law Caucus

²⁶*Id.* at 159-60.

²⁷ See Exec. Order 13166, 65 Fed. Reg. 159 (August 11, 2000), requiring federal agencies to produce guidance aimed at increasing language access in entities receiving federal funding; *see also* 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, 2740 and 2745 (Jan. 22, 2007), instructing housing entities that receive federal funds to conduct a four-factor assessment to determine language access needs, and, based on this assessment, to address the individualized needs of LEP populations using tools such as language access plans.

**MAYOR'S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO**



EDWIN M. LEE
MAYOR

OLSON LEE
DIRECTOR

Marcia Rosen
National Housing Law Project

February 28, 2013

Dear Ms. Rosen,

Thank you for your comments on the draft 2013-2018 Analysis of Impediments to Fair Housing. Please find our responses below.

Comment

Using more updated information would be more accurate in demonstrating that limited English proficiency remains an important issue within the senior community. For example, the American Community Survey 2011 1-year estimates (ACS) indicate that approximately 40.6 percent of San Francisco residents over 60 are LEP (speaking English “less than very well”) compared with the 23.2 percent of the total City/County population.⁵... The updated data show that language barriers have become substantially more problematic for seniors over the last decade. Therefore, the City and County must consider a much larger LEP senior community than originally anticipated.”

Response

Your comment has been incorporated into the AI in the following paragraph.

Many seniors in San Francisco also experience impediments to fair housing related to language access. The American Community Survey 2011 1-year estimates indicate that approximately 40.6% of San Francisco residents over 60 are LEP (speaking English “less than very well”) compared with the 23.2% of the total City/County population. Nearly three quarters of those seniors speak Asian or Pacific Island languages. As Chinese seniors make up by far the largest number of Asian/Pacific Island seniors overall (71%), it is likely that the majority of these individuals are Cantonese-or Mandarin-speaking.

Comment

The AI should include a definition of what level of English skill is included in the classification of “limited English proficient.” HUD provides on possible definition in its LEP administrative guidance, defining LEP individuals as those “who do not speak English as a primary language and who have a limited ability to read, write, speak, or understand English.”⁶

Response

Your suggestion has been incorporated into the AI in the following paragraph.

HUD defines Limited English Proficiency (LEP) individuals as those “who do not speak English as a primary language and who have a limited ability to read, write, speak, or understand English.”¹ However, for purposes of this analysis, LEP households are those in which the householder either does not speak English well or does not speak English at all and the remaining households are considered English-speaking households.

Comment

Instead of grouping languages into the Census-defined categories such as “Asian or Pacific Islander” languages, it would be more useful to list specific language groups. For example, the 2010-2014 Five-year Consolidated Plan for the City and County of San Francisco states that 46 percent of San Franciscans over age five speak a language other than English at home, noting that in these households Chinese, Spanish, Tagalog, and Russian comprise the most commonly-spoken languages.⁷ Figures detailing the relative sizes of language groups in the City and county would be helpful to include in the AI.⁸

Response

Per your suggestion, we have inserted a new chart with detailed data from the 2009-1011 ACS 3year estimates. Find that chart below.

Language Spoken at Home	Population 5yrs and Over Speaking English less than "very well"
Chinese	95,160
Spanish or Spanish Creole	40,849
Tagalog	10,115
Russian	8,363
Vietnamese	5,699
Korean	3,992
Japanese	3,046
Other Asian languages	1,726
Other Pacific Island languages	1,480
French (incl. Patois, Cajun)	1,197
Arabic	1,107
Thai	1,056
Mon-Khmer, Cambodian	875
Italian	826
Other Indic languages	581

¹ HUD, “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficiency Persons,” 72 Fed. Reg. 2732,2740 (Jan. 22, 2007).

Serbo-Croatian	498
Persian	486
Portuguese or Portuguese Creole	467
Other Slavic languages	434
Hindi	404
Other Indo-European languages	389
Gujarati	355
German	346
Polish	335
Armenian	312
Urdu	259
African languages	202
Laotian	199
Hebrew	134
Other and unspecified languages	120
Other West Germanic languages	73
Greek	71
Hungarian	69
Scandinavian languages	47
Hmong	44
Total	181,316

Comment

Furthermore, the AI states, “LEP households were far more likely to be low-income and thus they were less likely to own their homes.”⁹ This statement appears to suggest that income is the sole impediment to homeownership among low-income LEP individuals... the AI should aim to clarify this assertion to prevent minimizing the importance of language access in obtaining a home.

Response

Per your suggestion, the following addition was made to the AI Report:

On the whole, LEP households were far more likely to be low-income. Because adequate income is a prerequisite for homeownership, income status is one reason that LEP individuals are less likely to be homeowners. LEP households face additional barriers to homeownership to the extent that applications, forms, information, and negotiations are in English only.

Comment

The AI mentions an existing database of restricted housing units, and proposes making existing information about affordable housing opportunities and the accompanying application processes more centralized.¹¹ However, the AI does not specifically point out whether such centralized information would be accessible in languages other than English... this section needs to address how centralizing the information would assist LEP individual, and what steps the City/County is taking to ensure that LEP individuals will have the same sort of access to centralized information about these affordable housing opportunities. Such steps could include working with local non-

profit organizations and community groups that serve LEP communities, or by translating the centralized information made available to the general public.

Response

Per your recommendation, we have made the following insertion in the AI Report:

Centralized information made available to the general public should also be translated to ensure fair access for LEP individuals.

Comment

LEP individuals, as the AI notes, have difficulties accessing information about rights as tenants, particularly about the right to live in safe, habitable housing. To address this problem, the AI proposes publishing materials on the Mayor's Office of Housing website,¹³ the AI should recommend that these materials concerning tenants' rights be translated, and specify for which languages the translations would be made. It is our recommendation that, as a starting point, translations should be provided in the following languages...: Chinese, Spanish, Tagalog, and Russian.

Response

Per your recommendation, we have made the following insertion in the AI Report:

These materials concerning tenants' rights should also be translated into languages commonly spoken by LEP individuals, including Chinese, Spanish, Tagalog, and Russian.

Comment

The AI should include a recommendation that the partners mentioned in this section – such as the Mayor's Office of Housing, the Human Rights Commission, and community based organizations – conduct citywide testing for discrimination against LEP individuals.

Response

The AI recommendation to conduct additional research on housing discrimination encompasses all varieties of discrimination, including discrimination against LEP individuals. Calling out LEP individuals specifically would imply that this population should be a priority above other victims of discrimination. However, we have included English language proficiency as one of the examples used to describe the potential of "testing" as a research method. That addition is copied below.

Research may include "testing" - an established research tactic that involves hiring individuals with various characteristics (race, disability, English language proficiency etc.) to pose as applicants for housing. With testing, research and enforcement can be conducted in tandem, yielding both estimates of the incidence of discrimination and case-specific evidence of individual violations.²

² Fix & Turner, 1998

Comment

The AI references the need for fair housing education and outreach to address information gaps that exist among landlords and tenants regarding the fair housing laws that apply in the City of San Francisco.¹⁶ To ensure that landlords and tenants in all language communities benefit from any outreach efforts, the AI should recommend that any educational activities be conducted in languages other than English. The City can maximize the effectiveness of reaching non-English speakers by collaborating with housing advocacy and community groups that already conduct trainings and disseminate fair housing information to specific populations.

Response

Your recommendation has been incorporated into the AI in the paragraph below.

To ensure that landlords and tenants in all language communities benefit from any outreach efforts, educational activities be conducted in languages other than English. One respondent to the AI request for public input pointed out that “the City could maximize the effectiveness of reaching non-English speakers by collaborating with housing advocacy and community groups that already conduct trainings and disseminate fair housing information to specific populations.”

Comment

Any measures taken to address language access issues must account for considerations specific to the senior community, such as technological divides between older and younger generations.

Response

Your recommendation has been incorporated into the AI in the paragraph below.

Furthermore, because a high proportion of Limited English Proficient individuals in San Francisco are seniors, any measures taken to address language access issues must account for considerations specific to the senior community, such as technological divides between older and younger generations.

Comment

The AI states that “undocumented immigrants are ineligible for Public Housing and Section 8 voucher assistance, two of the largest housing assistance programs in San Francisco.”¹⁷ This language, while technically accurate, requires additional clarification. While undocumented immigrants cannot apply for these forms of assistance, undocumented immigrants can still reside in the same home as someone who is eligible for these forms of assistance.¹⁸ The housing assistance is then prorated to include only eligible individuals living in the household.¹⁹ The eligible person can be the minor child of undocumented immigrant parents.²⁰ Thus, while undocumented immigrants cannot directly receive housing assistance in the form of Section 8 vouchers or public housing, they may still be able to reside in a home that receives these types of assistance. This clarification should be made in the AI.

Response

A clarifying footnote has been inserted into the AI, the text is copied below.

103- Important to note, however, is the fact that while undocumented immigrants cannot apply for these forms of assistance, undocumented immigrants can still reside in the same home as someone who is eligible for these forms of assistance. The housing assistance is then prorated to include only eligible individuals living in the household. The eligible person can be the minor child of undocumented immigrant parents. Thus, while undocumented immigrants cannot directly receive housing assistance in the form of Section 8 vouchers or public housing, they may still be able to reside in a home that receives these types of assistance.

Comment

California law forbids both discrimination in housing on the basis of national origin,²² and landlords from making “any written or oral inquiry” concerning national origin from perspective tenants.²³ Thus, the practice of asking for Social Security numbers, if not mandatory for verification purposes, could be construed as violating California law. As the AI rightly points out, the City should work with landlords to promote understanding that providing a Social Security number can be optional under certain circumstances, and to allow other forms of identification so that undocumented immigrants will not be forced to forego housing or to provide a false Social Security number.

Response

Per your suggestion, the following additions were made to the AI.

Social security numbers are used to conduct background checks and credit checks on applicants to affordable housing and market rate housing. However, undocumented immigrants do not have a social security number. California law forbids both discrimination in housing on the basis of national origin, and landlords from making “any written or oral inquiry” concerning national origin from perspective tenants. Thus, the practice of asking for Social Security numbers, if not mandatory for verification purposes, could be construed as violating California law. To avoid intimidating applicants or forcing them to falsify a Social Security number, it is recommended that forms make it clear that Social Security numbers are optional or allow applicants to provide an alternate ID, such as an Individual Tax Payer Identification (ITIN) number. The City should work with landlords to promote understanding that providing a Social Security number can be optional, and to allow other forms of identification so that undocumented immigrants will not be forced to forego housing or to provide a false Social Security number.

Comment

The AI should discuss issues such as tenants not receiving important notices that impact the status of their housing (“vital documents”),²⁴ leaving them uninformed about decisions or actions that substantially affect their rights.”

“While the AI acknowledges that language barriers can make lease requirements difficult to understand,²⁵ the AI could expand this statement to discuss the lack of information about rules concerning maintenance or upkeep for LEP tenants—such information could prevent future eviction issues.

Response

These two points have been incorporated into the AI in a new paragraph, copied below:

When LEP tenants cannot read or interpret important notices that impact the status of their housing, it leaves them uninformed about decisions or actions that substantially affect their rights. Furthermore, when LEP tenants lack information about rules in the lease concerning maintenance or upkeep, it places them at risk for eviction.

Thank you, once again, for taking the time to provide comments on the draft Analysis of Impediments to Fair Housing, your input is appreciated. If you have any questions, do not hesitate to contact me directly.

Sincerely,

Sasha Hauswald
Public Policy Manager
Mayor's Office of Housing

SAMPLE Housing Discrimination Information-HUD FORM 903

Personal Information:

First Name: Resident/Applicant

Last Name:

Anytime Phone No:

Address:

E-mail:

City: State: State Zip Code:

Who else can we call if we cannot reach you?

Contact's First Name: Legal Advocate

Contact's Last Name:

Daytime Phone No:

Evening Phone No:

Organization: Legal Services Organization

Best time to Call: M-F

1. What happened to you? How were you discriminated against? For example: were you refused an opportunity to rent or buy housing? Denied a loan? Told that housing was not available when in fact it was? Treated different from others seeking housing? State briefly what happened.

Housing Authority terminated my Section 8 voucher without providing me with adequate notice. As noted in my Housing Authority file, my primary language is Spanish and on prior occasions Housing Authority had communicated with me in writing in Spanish. In addition, Housing Authority provided me with a Spanish speaking case advisor. Nevertheless, Housing Authority terminated my Section 8 assistance without providing me a notice of Housing Quality Standards Inspection failure in Spanish as required by Housing Authority's 2007 Administrative Plan. *See attached: Housing Authority Section 8 Administrative Plan 2007, Section 1.5.* In addition Housing Authority also failed to provide me with a Notice of Termination in Spanish. *Id.*

On [date], Housing Authority sent me a notice solely in English, which I later learned, indicated that my unit had failed the Housing Quality Standards Inspection because, though I did not know it, two smoke detectors in my apartment needed batteries.

On [date], my Section 8 Advisor mailed me a Notice of Termination in English. The notice advised me to request a new voucher no later than [date]. However, because this critical document was in English I did not understand the vital information within the document and thus the period which I had to request a new voucher lapsed. The failure by Housing Authority to provide the notice in Spanish resulted in the loss of my Section 8 voucher.

2. Why do you believe you are being discriminated against? It is a violation of the law to deny you your housing rights for any of the following factors: race, color, religion, sex, national origin, familial status, disability.

Both Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) and Title VI of the Civil Rights Act of 1964 prohibit discrimination on the basis of national origin. Executive Order 13166 makes it clear that federal agencies must be language accessible.

Under the HUD LEP Final Guidance (72 FR 2732), when an eligible LEP language group makes up 5% of the population, “vital” documents must be translated. In the City of Anytown, 23.4% of the population speaks only Spanish. (*Census American Community Survey, 2008*). Both a Housing Quality Standard Inspection notice and a Termination notice are vital documents because both result in the loss of subsidized housing. Yet despite notice that I did not speak English and having the resources to provide the notice of termination in Spanish (my case worker speaks Spanish), Housing Authority failed to provide proper notice in Spanish, amounting to national origin discrimination.

3. Who do you believe discriminated against you? Was it a landlord, owner, bank, real estate agent, broker, company, or organization?

Organization: Housing Authority

Address: Anytown, USA

4. Where did the alleged act of discrimination occur? Provide the address.

Organization: Housing Authority

Address: Anytown, USA

5. When did the last act of discrimination occur?

Is the alleged discrimination continuous or on going?

Note to Advocates--

HUD Form 903 is available in Somali, Spanish, Chinese, Arabic, Cambodian, Vietnamese, Korean, and Russian on HUD's website:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud9