

Federal Housing Rights of Survivors with Limited English Proficiency: An Information Packet



September 2015

The National Housing Law Project has created this information packet for individuals serving limited English proficient (LEP) survivors of domestic violence, sexual assault, dating violence, and stalking who are seeking to access or maintain federally assisted housing. An LEP person is anyone who, due to national origin, does not speak English as his/her primary language and who has a limited ability to read, write, speak, or understand English or who speaks English “less than very well.” This information packet gives an overview of the federal housing rights of LEP individuals and discusses how these protections apply to survivors.

Public housing authorities (PHAs) and other federally-assisted housing providers have obligations under the Violence Against Women Reauthorization Act of 2013 (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. For example, VAWA 2013 requires that the HUD-created notice of VAWA rights be provided in multiple languages, consistent with HUD guidance regarding serving LEP individuals.

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

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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.

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II. Other Documents

- a. HUD, Questions and Answers from February 28, 2007, Limited English Proficiency Meeting.
- b. Sample LEP Four-Factor Analysis: Vacaville Housing Authority, Vacaville, California.
- c. Sample LEP Plan: Vacaville Housing Authority, Vacaville, California.

Part I:
Outline and Articles

LANGUAGE ACCESS IN HOUSING OUTLINE

SEPTEMBER 2015

I. WHO ARE LEP PERSONS?

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.”

II. LIST OF LEGAL AUTHORITY REQUIRING LANGUAGE ACCESS IN HOUSING

A. Statutes

1. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*
2. Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
3. Violence Against Women Reauthorization Act of 2013 (VAWA 2013), 42 U.S.C. § 14043e-11(d) (housing rights notice provision)

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

C. Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 Fed. Reg. 50,121 (Aug. 16, 2000), available at:

<http://www.gpo.gov/fdsys/pkg/FR-2000-08-16/pdf/00-20938.pdf>

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 Fed. Reg. 2732 (Jan. 22, 2007), available at: <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>
2. **USDA (Rural Development) 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.” 79 Fed. Reg. 70,771 (Nov. 28, 2014), available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-11-28/pdf/2014-27960.pdf>

E. State and Local Laws

1. State and local laws may provide additional housing protections for LEP individuals.

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).

III. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

- A. Prohibits discrimination on the basis of race, color, or **national origin**
 - 1. Must provide equal services in terms of scope and quality
 - 2. Cannot unreasonably delay services
 - 3. Cannot require a LEP person to provide her own interpreter
 - 4. Cannot limit participation in a program
 - 5. State and local “English-only” laws do not excuse federally assisted programs from LEP compliance.
- B. Covers all entities receiving “federal financial assistance”
 - 1. Programs receiving federal financial assistance **include**
 - a. Public housing, project-based Section 8, CDBG funds, HOME funds
 - b. For a more complete listing of federally assisted housing programs subject to Title VI, *see* U.S. Dep’t of Housing and Urban Dev., “List of Federally Assisted Programs,” 69 Fed. Reg. 68,700 (Nov. 24, 2004), available at: <http://www.gpo.gov/fdsys/pkg/FR-2004-11-24/pdf/04-25986.pdf>
 - 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
 - i. Exception: American Reinvestment and Recovery Act (ARRA) of 2009; *see e.g.*, Eric Holder, Attorney General, Memorandum for Heads of Executive Departments and Agencies Providing Federal Financial Assistance re: Enforcement of Nondiscrimination Laws in Programs and Activities that Receive American Recovery and Reinvestment Act Funding (Sept. 27, 2010), available at: http://www.justice.gov/sites/default/files/crt/legacy/2011/01/20/arra_mem_o.pdf
 - 4. Entities that receive **any** “federal financial assistance” are subject to LEP administrative guidance.
 - a. Thus, housing that receives 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 found that a school district’s failure to provide English language instruction denied meaningful opportunity to participate in a public educational program.
- B. This failure to provide language access constituted a violation of the Title VI prohibition against national origin discrimination. This case established the link between language discrimination and national origin discrimination under Title VI.

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/programs to work with LEP persons and their representatives when creating language access plans

VI. ADMINISTRATIVE GUIDANCE

A. HUD Final LEP Guidance

- 1. Directs recipients of federal funds to:
 - a. conduct a four-factor analysis;
 - b. develop a Language Assistance/Access Plan (LAP); and
 - c. provide language assistance, in accordance with that plan
- 2. Four-factor analysis in determining LEP needs
 - a. Number of LEP persons from a particular language group in the area served/encountered, or number that would be served if provided meaningful language access
 - i. Examples of types of data:
 - 1. U.S. Census data (available online at American FactFinder);
 - a. American Factfinder, available at:
<http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>
 - 2. data from school systems;
 - 3. community organizations; and
 - 4. state and local governments
 - b. How often funding recipient interacts with LEP persons
 - c. Importance/nature of the program, service, or activity to LEP persons
 - i. Housing is critical!
 - d. Resources available, as well as the costs of providing language access
- 3. Written translation
 - a. Safe harbor provision for written translation only
 - i. Provide translation of vital documents for language groups making up 5 percent of the population, or 1,000 individuals (whichever is less) in the eligible service 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, provide translated written notification that free oral interpretation of the written documents is available
 - b. Directs recipients to translate vital documents
 - i. Vital documents are documents that “those that are critical for ensuring meaningful access by beneficiaries or potential beneficiaries generally and LEP persons specifically”; 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.” HUD LEP Guidance at 2,752.

- ii. The Office of Public and Indian Housing has identified the following non-exhaustive list of “vital” documents:
 - 1. 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.
 - a. http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/factsheet
- 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, candidness, etc.)
 - c. Cannot use minor child as interpreter
- 5. Developing a Language Assistance Plan (HUD LEP Guidance at 2,734)
 - 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/other relationships to assist 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 (HUD LEP Guidance at 2,752):
 - a. Bilingual staff;
 - b. Oral interpretation services;
 - c. Written translation services;
 - d. Telephone service lines interpreter;
 - 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 (“I Speak” cards).
- B. USDA Final LEP Guidance
 - 1. Includes a four-factor analysis
 - a. Number of LEP individuals served/encountered
 - b. Frequency of contact with LEP individuals
 - c. Importance of activity/program
 - d. Costs and available resources
 - 2. Includes a safe-harbor provision for written translation (no safe harbor for oral interpretation)
 - a. Funding recipient translates vital documents for each LEP group that comprises 5% of eligible service population or 1,000 persons (whichever is lower).
 - b. If there are fewer than 50 LEP individuals, but the 5% threshold is met, then the funding recipient provides written notification that free oral written language assistance is available.
 - 3. Instructs funding recipients to create a language assistance plan

VII. FAIR HOUSING ACT

- A. The Fair Housing Act (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. § 3601, *et seq.*
- B. However, the courts have not uniformly accepted a link between national origin discrimination and language discrimination under the FHA.
 - 1. *Cabrera v. Alvarez*, 977 F. Supp. 2d 969 (N.D. Cal. 2013). The court denied housing authority’s motion to dismiss intentional discrimination claim under FHA, but granted PHA’s motion to dismiss disparate impact claim under the FHA. In this case, the landlord allegedly refused to translate documents or provide interpretation, and told plaintiff to “learn English.”
 - 2. *Pomales v. Hous. Auth. of City of Dania Beach*, 2013 WL 8115425 (S.D. Fla. Mar. 27, 2013). The court found plaintiffs sufficiently pleaded FHA claim against PHA employee who refused to provide language assistance to LEP applicants.

3. *Veles v. Lindow*, 243 F.3d 552 (9th Cir. 2000) (Table) The Ninth Circuit concluded that any lower court errors regarding jury instructions about disparate treatment or disparate impact theory were harmless in a Fair Housing Act case in which the landlord required one person in each household to speak English. The court noted that the plaintiffs failed to prove that the defendants “intended to discriminate on the basis of national origin,” and “also provided virtually no evidence to prove disparate impact and inexplicably failed to object to the district court’s exclusion of statistical evidence in support of their claim.”
 4. *Vialez v. N.Y.C. Hous. Auth.*, 783 F. Supp. 109 (S.D.N.Y. 1991). The court found that the failure to translate a notice of housing authority charges against tenant or the hearing officer’s decision does not violate the FHA, reasoning that all non-English speakers were equally affected. The court also rejected claims that failure to translate documents including the notice of charges against the tenant and the hearing officer’s decision violated tenant’s right to due process, or that such failure to translate these documents (notice of charges against tenant and the hearing officer’s decision) violated Title VI.
 5. For more discussion, see NHLP, *HUD Housing Programs: Tenants’ Rights* (2014 Supplement), § 13.14.3.3
- 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 a 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 called the scope of Title VI LEP obligations for recipients of federal financial recipients into question, *however*:
 - a. Ralph Boyd, Assistant AG Civil Rights Division, Memorandum for Heads of Departments and Agencies, General Counsels and Civil Rights Directors re: Executive 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. Eric Holder, Attorney General, Memorandum for Heads of Department Components, re: Language Access Obligations Under Executive Order 13166 (June 28, 2010), available at: http://www.justice.gov/sites/default/files/crt/legacy/2012/05/04/language_access_memo.pdf
 - c. Eric Holder, Attorney General, Memorandum for Heads of Federal Agencies, General Counsels and Civil Rights Heads re: Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13166 (Feb. 17, 2011), available at: http://www.justice.gov/sites/default/files/crt/legacy/2011/02/25/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf

- d. Federal agencies have continued to construe language access as a form of national origin discrimination (*e.g.*, HUD Final LEP Guidance, 2007); and
- e. Relatively recent opinion contains 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)).
 - i. However, despite cases such as *Lau* and *Maricopa County*, some courts have previously concluded that the failure to provide translated documents (*e.g.*, notice of charges against tenant by housing authority; hearing officer’s decision) does not constitute national origin discrimination under Title VI, but rather a preference for English. *See e.g., Vialoz v. N.Y. City Hous. Auth.*, 783 F. Supp. 109 (S.D.N.Y. 1991), citing *Soberal-Perez v. Heckler*, 717 F.2d 36 (2d Cir. 1983).

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

- 1. Title VI can still be enforced by HUD for acts of language discrimination or failure to provide language access.
- 2. For example, HUD can conclude that certain housing authorities are non-compliant with Title VI.
 - a. Example: In 2015, HUD concluded Reading Housing Authority (PA) was non-compliant with Title VI obligations.
- 3. Additionally, complainants can allege national origin discrimination under the Fair Housing Act (FHA) in a HUD complaint.
 - a. HUD recently issued a discrimination charge against a private housing provider that did not want to rent to a family of Hmong descent because the landlord perceived an adult family member as LEP:
 - i. Discrimination charge in *HUD v. Page Edmunds III*, available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=15chargeMinnNatOri.pdf>; HUD press release: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-045
 - ii. DOJ has filed a complaint in federal court. *See* Complaint, *United States v. Page Edmunds III*, 0:15-cv-02705 (D. Minn. filed June 10, 2015), available at: <http://www.justice.gov/sites/default/files/crt/legacy/2015/06/11/edmundscomp.pdf>

C. Prior Settlement Agreements

- 1. The following housing providers, housing authorities, jurisdictions, and agencies have entered into agreements with HUD regarding language access:
 - a. City of Hazleton Housing Authority (Pa. 2015) (Title VI and FHA).
 - i. PHA entered into this agreement to settle claims that it was not providing meaningful language assistance to LEP individuals participating in and applying for the public housing and Section 8 Housing Choice Voucher programs. LEP tenants and applicants also alleged that the PHA discriminated on the basis of national origin. Such discrimination included subjecting individuals to “different terms and conditions, posting signs and

- posters with discriminatory statements, and denying full benefits of housing to persons of a specific national origin.” As part of the relief, two complainants will be permitted to use Title VI as a defense in new Section 8 termination hearings granted under the agreement. Additionally, the PHA will provide “a competent interpreter” free of charge at the new hearings. The PHA is also required to remove signage that asks LEP individuals to bring their own interpreter, and replace it with signage advertising the availability of language assistance. The PHA will also hire staff to accommodate the need for language assistance, update its language access plan to include items such as a prohibition on requiring family/friends/other informal interpreters to interpret for an LEP person, and conduct community outreach.
- ii. *See* Conciliation Agreement with Housing Authority of the City of Hazleton, available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=HAZLETONHSGAUTHENG.PDF>; HUD press release: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-055
- b. Housing Authority of Independence (Mo. 2015) (Title VI)
 - i. HUD audit discovered non-compliance with Title VI.
 - ii. *See* Voluntary Compliance Agreement between HUD and Housing Authority of Independence, available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=07-13-R001-6-VCASigned.pdf>; HUD press release: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2015/HUDNo_15-042
 - c. Coronado Terrace/Related Management (Ca. 2015) (Title VI and FHA)
 - i. Tenant alleged that the owner failed to translate vital documents, despite large monolingual Spanish-speaking population. Conciliation agreement/voluntary compliance agreement was reached between the parties; relief included allowing tenant to remain at the property, required translation of forms, and adoption of a LAP.
 - d. Nebraska Department of Economic Development (DED) (Neb. 2014) (Title VI)
 - i. HUD audit discovered DED’s non-compliance with Title VI, including a failure to monitor sub-recipient compliance with Title VI. Per the voluntary compliance agreement, the DED must conduct a four-factor analysis, create a language access plan, and notify as well as train sub-recipients regarding their Title VI obligations.
 - ii. *See* Voluntary Compliance Agreement between HUD and State of Nebraska Department of Economic Development, available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=VCA3-4-2014.pdf>; HUD press release: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo.14-033
 - e. State of New Jersey (N.J. 2014)

- i. Advocates submitted complaints regarding New Jersey’s failure to provide LEP access to Sandy recovery funds, both to HUD and to the State of New Jersey. In a letter to state, the Latino Action Network cited state’s failure to provide the same information in English and Spanish; failure to provide necessary documents in Spanish; and failure inform Spanish speakers of the denial appeals process, as well as important deadlines. Eventually, an agreement was reached to settle broader complaints filed by several civil rights groups. The agreement requires establishment of language access policies.
 - ii. *See* Voluntary Compliance Agreement and Conciliation Agreement between HUD, Latino Action Network, N.J. State Conference of the NAACP, Fair Share Housing Center and the State of New Jersey and N.J. Dept. of Community Affairs, available at:
<http://portal.hud.gov/hudportal/documents/huddoc?id=NewJerseyAgreementSigned.pdf>; HUD press release:
http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-062
- f. County of Marin (Ca. 2010)
 - i. As part of voluntary compliance agreement, jurisdiction was required to develop a LAP to ensure meaningful outreach to LEP populations; while HUD found that Marin was in general compliance with Title VI, HUD did find noncompliance with other fair housing regulations.
 - ii. *See* Voluntary Compliance Agreement between HUD and the County of Marin CDBG Program, available at:
<http://www.hud.gov/offices/fheo/library/10-Marin-VCA-final-12-21-2010.PDF>; HUD press release:
http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-002
- g. Ontario Townhouses (Md. 2007) (Title VI and FHA)
 - i. HUD entered into a series of agreements with this housing provider arising out of the alleged discriminatory actions based on national origin by the former resident manager. Remedies for these complaints included interpretation assistance for LEP individuals. Two agreements that referenced discrimination on the basis of limited English proficiency/language use are included below. The remaining agreements can be located at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opportunity/enforcement/conciliations
 - ii. Cuevas Conciliation (2007) (Title VI and FHA)
 - i. Complainants alleged that the resident manager “refused to allow them to speak Spanish.” Agreement required that oral interpretation assistance be made available for LEP individuals. Agreement available at:
http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14746.pdf

- iii. Ochoa Conciliation (2007) (Title VI and FHA)
 - i. Complainants alleged that resident manager “yelled at them because of their inability to communicate in English...[,]refused to communicate with them (as well as other tenants) in Spanish or accommodate them because of their limited English proficiency (LEP)”; agreement required oral interpretation assistance be made available for LEP individuals. Agreement available at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14757.pdf
- h. Nashua Housing Authority (N.H. 2007) (Title VI and FHA)
 - i. Complainants alleged discrimination on the basis of national origin under the FHA and Title VI; relief included compensation to the complainants and required development of a LAP.
 - ii. *See* Conciliation Agreement between HUD, Rafael and Ana Rodriguez, and Nashua Housing Authority, available at: https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_7563.pdf
- i. Revere Housing Authority (Ma. 2004) (Title VI)
 - i. Complainant alleged that the PHA denied complainant and other program participants/applicants language access; relief included adoption of a LAP.
 - ii. *See* Conciliation Agreement with Revere Housing Authority, available at: http://nhlp.org/files/MA_2004_RHA_Compliance_Agreement.pdf
- j. Housing Authority of the City of Las Vegas (Title VI)
 - i. HUD review resulted in a preliminary letter of findings of noncompliance with Title VI; PHA required to develop language assistance plans.
 - ii. *See* Voluntary Compliance Agreement between HUD and the Housing Authority of Las Vegas, available at: <https://nhlp.org/files/LVHA-vca.pdf>
- k. Virginia Realty of Tidewater (Va. 2012) (FHA)
 - i. 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. A separate settlement was reached between the individual complainant and the landlord.
 - ii. Conciliation Agreement between HUD and Virginia Realty of Tidewater, Inc., Thomas Gale, and Penny Ruperti, available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=OPADOC.PDF>; HUD press release: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-006

ADDITIONAL ONLINE RESOURCES

Federal Government LEP materials

- <http://www.lep.gov> (federal government clearinghouse for LEP information)
- <http://www.lep.gov/selfassesstool.htm> (a self-assessment tool for federal grantees to use in preparing LEP implementation plans)

- <http://www.lep.gov/ISpeakCards2004.pdf> (“I Speak” card that allows organizations who serve LEP clients identify the specific language spoken by an LEP person)

LEP Statistics

- <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.)

HUD LEP Resources

- <http://www.hud.gov/offices/fheo/lep.xml> (HUD LEP webpage that includes important information such as select centrally translated documents)
- http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotion/ngfh/lep-faq (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

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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.

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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

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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

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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

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Survivor Sues Municipality for Enforcing Nuisance Ordinances Against Survivors

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

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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

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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:

Other Documents

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.

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.