

Limited English Proficiency (LEP) and HUD Programs

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Limited English Proficiency (LEP) refers to a people 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 in English. This can be a major barrier when applying for admission to HUD housing programs, as well as maintaining HUD-assisted housing if problems arise. HUD's Office of Fair Housing and Equal Opportunity (FHEO) and the U.S. Department of Justice (DOJ) are responsible for LEP monitoring and enforcement.

Title VI of the "Civil Rights Act of 1964" is interpreted to apply to citizens, documented non-citizens, and to undocumented non-citizens. Title VI LEP obligations apply to every HUD beneficiary who meets a program's requirements, regardless of the beneficiary's citizenship status.

The Legal Authority

Title VI of the "Civil Rights Act of 1964" protects people from discrimination on the basis of race, color, or national origin in programs or activities that receive "federal financial assistance," which includes HUD's programs. This means that people cannot be "excluded from participation in, be denied the benefits of, or be subject to discrimination" under HUD's programs. Title VI also requires all recipients and subrecipients of federal financial assistance to take reasonable steps to ensure that people with Limited English Proficiency have meaningful access to a recipient's programs or activities, including by ensuring meaningful access to information, benefits, services and other vital aspects of a recipient's programs or activities. 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.

Title VIII of the "Civil Rights Act of 1968," also known as the "Fair Housing Act," makes it illegal to discriminate in the sale or rental of housing, mortgage lending, and other housing-related transactions on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, family status (having minor children or being pregnant), or religion. Regarding national origin discrimination, for example, a housing provider may not impose less favorable terms or conditions on a group of residents of a certain national origin by taking advantage of their limited ability to read, write, speak, or understand English. Title VIII imposes additional requirements on recipients of HUD funding, which includes taking reasonable steps to provide meaningful access to their programs and activities to people who do not speak, read, write, or understand English proficiently.

HUD's Office of General Council issued LEP guidance on September 15, 2016 discussing how the Fair Housing Act applies to a housing provider's consideration of an LEP person. The Fair Housing Act not only prohibits intentional housing discrimination, it also prohibits housing policies and practices that have an unjustified discriminatory effect. People with limited English proficiency are not a protected class under the Fair Housing Act. However, there is a close link between LEP and certain national origin groups. Because of this close link, selective application of a language-related policy, or use of LEP as a pretext for unequal treatment of individuals based on national origin violates the Fair Housing Act.

[Executive Order 13166: https://bit.ly/3RxtWnm](https://bit.ly/3RxtWnm), "Improving Access to Services for Persons with

Limited English Proficiency,” issued in 2000, requires federal agencies and recipients of federal financial assistance to provide meaningful access to all programs and services. The Executive Order (EO) also ordered federal agencies to prepare a plan to ensure language access to their programs. HUD’s *Language Access Plan: 2021-2026* is [here: https://bit.ly/4ixOtDo](https://bit.ly/4ixOtDo). Finally, in compliance with EO 13166, HUD published a [notice: https://bit.ly/4ixOtTU](https://bit.ly/4ixOtTU) in the *Federal Register* on January 22, 2007 providing guidance regarding LEP compliance for HUD-funded recipients.

Key Features of LEP

WHO MUST COMPLY WITH TITLE VI LEP OBLIGATIONS?

All programs and operations of entities that receive financial assistance from the federal government must comply with the Title VI requirements, including but not limited to state agencies, local agencies, public housing agencies, assisted housing providers, and for-profit and nonprofit entities. Sub-recipients must also comply (i.e., when federal funds are passed through a recipient to a sub-recipient). Unfortunately, HUD has decided that private landlords participating in the Housing Choice Voucher program are not subject to Title VI. In addition, the U.S. Department of the Treasury does not consider the \$14 billion annual loss of federal taxes from the Low Income Housing Tax Credit (LIHTC) program to be “federal financial assistance,” meaning LIHTC-assisted properties are not subject to Title VI LEP compliance, unless other federal funds are also used to help finance a LIHTC project, such as the HOME Investment Partnerships program.

HOW TO COMPLY WITH TITLE VI LEP OBLIGATIONS

Federally assisted recipients are required to make reasonable efforts to provide LEP persons language assistance to ensure meaningful access

to their programs and activities. To do this, a recipient should: conduct a “four-factor analysis,” develop a Language Access Plan (LAP), and provide appropriate language assistance.

The Four-Factor Analysis

To conduct a four-factor analysis, a recipient should consider:

1. The number or proportion of LEP people from a particular language group is eligible to be served by a program or that is likely to be encountered by a program;
2. The frequency LEP people come into contact with a program;
3. The nature and importance of a program, activity, or service to LEP people; and
4. The resources available to the recipient and the costs of providing LEP services.

Language Access Plans (LAPs)

After conducting a four-factor analysis, a recipient should develop and implement a Language Access Plan (LAP) to address the identified needs of the LEP people a program serves. Components of an LAP include:

- Identifying LEP people who need language assistance and the specific language assistance needed;
- Identifying the points and types of contact a recipient or subrecipient might have with LEP people (for example at the front desk, at a leasing office, over the telephone);
- Identifying the ways language assistance will be provided, such as oral interpretation with an in-person interpreter;
- Identifying how frequently staff training will need to take place; and
- Identifying which documents and informational materials are vital.

There should be a policy for updating an LAP according to a specific timetable. Advocates should review a recipient’s existing LAP and

work to improve or update the LAP. For example, advocates can take advantage of a jurisdiction's required annual planning obligations such as their Consolidated Plan's Annual Action Plan public comment periods and a public housing agency's annual PHA Plan comment periods.

Types of Language Assistance

Language access assistance a recipient might provide to LEP people includes oral interpretation service, bilingual staff, telephone service line interpreters, written translation services, notices to staff and recipients about the availability of LEP services, and referrals to community liaisons who are proficient in the language of an LEP person. HUD's guidance indicates that a recipient does not need to provide language access assistance itself, instead it can partner with other organizations. Generally, recipients should not rely on an LEP person's family or friends as interpreters, especially children.

Vital Documents

HUD's LEP Guidance defines vital documents as those that are critical for ensuring meaningful access by beneficiaries or potential beneficiaries generally and by LEP people specifically. Whether a document is considered vital might depend on the importance of the program, information, encounter, or service and the consequence to an LEP person if information is not provided accurately and in a timely manner. While there is no exhaustive or definitive list of documents, HUD's guidance suggests some documents that might be considered vital, such as: intake forms, applications, and leases; tenant rules; consent and complaint forms; written notices concerning rights, or the denial, loss, or decrease in benefits or services; notices, forms, summaries, and decisions pertaining to grievance hearings; eviction notices; and notices about public hearings. HUD's Office of Multifamily Housing Programs has model leases in various languages that private owners could use. HUD's Office of Public and Indian Housing

has [translated versions: https://bit.ly/4ixOuaq](https://bit.ly/4ixOuaq) of the Housing Choice Voucher form and the voucher lease Tenancy Addendum. In general, advocates should argue that any document that relates to a tenant's rights, responsibilities, and access to housing is a vital document.

Safe Harbor Provision

HUD's LEP Guidance provides a "safe harbor" that will be considered strong evidence that a recipient is complying with its Title VI LEP obligations. However, the safe harbor only applies to written language access; it does not apply to oral interpretation. According to HUD's guidance, a recipient should provide written translations of vital documents for language groups that make up more than 5% or 1,000 people, whichever is less, of the population eligible to be served or that is likely to be encountered.

While there is no safe harbor provision regarding oral interpretation, HUD's guidance indicates that recipients should use the four-factor analysis to determine whether they should provide reasonable and timely oral language assistance at no cost to the LEP person(s). A public housing agency should take affirmative steps to ensure a tenant has meaningful access during a grievance hearing, if it is to comply with EO 13166 and HUD's LEP Guidance.

Filing a Complaint

If someone thinks that a recipient is not taking reasonable steps to ensure meaningful access to LEP people, that person may file a complaint with the [regional office: https://bit.ly/4ixOuHs](https://bit.ly/4ixOuHs) of HUD's Office of Fair Housing and Equal Opportunity (FHEO), or the person can call HUD's housing discrimination toll-free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY). In addition, FHEO has a [webpage: https://bit.ly/4ixOuXY](https://bit.ly/4ixOuXY) for reporting housing discrimination in other languages that includes LEP resources.

LEP in Public Housing and Housing Choice Voucher Program

HUD's Office of Public and Indian Housing (PIH) issued [Notice PIH 2024-04: https://bit.ly/4ix-Ovw0](https://bit.ly/4ix-Ovw0) on January 31, 2024. Congress, through the FY22 appropriations act, directed PIH to develop guidance of using PIH program funds for LEP-related activities and to identify best practices (NLIHC has not found any best practices on the PIH websites). Notice PIH 2024-04 provides a nice overview of LEP as well as how public housing agencies (PHAs) can use federal funds available to them.

PUBLIC HOUSING OPERATING FUND

PHAs can use their public housing Operating Fund to ensure meaningful language access for LEP people. The Notice gives an example pertaining to eviction proceedings, an event that would warrant providing appropriately translated eviction notices. PIH states that "In-person interpretation assistance is necessary for termination and eviction hearings, and a PHA should provide qualified and trained interpretation services." The Notice also states that a PHA should use their public housing Operating Fund to create a greeting message for telephone numbers with options in multiple languages.

PUBLIC HOUSING CAPITAL FUND

PHAs can use up to 20% of their public housing Capital Fund for any cost that would be eligible under the Operating Fund – instead of using Capital Funds for public housing building maintenance and repair. In addition, PHAs can also use up to 10% of their Capital Fund for "Management Improvement Activities." If a PHA does use Capital Funds for Management Improvement Activities, the PHA must identify LEP requirements as a "management deficiency" in the PHA's Capital Fund 5-Year Action Plan. Some possible uses under Management

Improvements include:

- Upgrading the PHA's online systems to enable future residents to apply for public housing in languages other than English.
- Training PHA staff to enable them to better serve LEP people.
- Facilitating communication during resident consultation for the development, financing, or modernization of public housing, such as hiring or contracting a qualified interpreter or translator. NLIHC imagines this would apply to applications for converting public housing to Project-Based Vouchers or to Project-Based Rental Assistance under the Rental Assistance Demonstration (RAD), or applications to demolish or dispose of public housing through the Section 18 process (see the *Rental Assistance Demonstration and Repositioning of Public Housing* entries in this *Advocates' Guide*).

HOUSING CHOICE VOUCHER ADMINISTRATIVE FEES

PHAs can use their Housing Choice Voucher Administrative Fees or unrestricted net position (UNP) to address LEP requirements for Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) program activities and materials. The Notice offers several possible uses:

- Facilitating communication through on-site or remote translation during the required HCV oral briefing for HCV applicants and for informal review and informal hearings.
- Providing software upgrades to enable LEP households to use on-line application or recertification systems in languages other than English.
- Translating program resources such as written materials in the HCV household information packet and other key forms, notices, and policies.

For More Information

FHEO's LEP website, https://www.hud.gov/program_offices/fair_housing_equal_opp/limited_english_proficiency_0.

File a complaint, https://www.hud.gov/program_offices/fair_housing_equal_opp/complaint_filing_languages_other_english.

HUD LEP FAQs, https://www.hud.gov/program_offices/fair_housing_equal_opp/promotingfh/lep-faq.

Executive Order 13166, <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>.

HUD's translated documents, https://www.hud.gov/program_offices/fair_housing_equal_opp/17lep.

Notice PIH 2024-04, <https://bit.ly/4ixOvv0>.