

Limited English Proficiency Outline

Limited English Proficiency and National Origin Discrimination

I. Definition

- A. LEP persons include anyone “who does not speak English as their primary language and who have a limited ability to read, write, speak, or understand English . . .” (HUD LEP Guidance, 72 Fed. Reg. 2732) (Jan. 22, 2007)).

II. Rules and Regulations Requiring Language Access

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*).
B. Title VIII - the Fair Housing Act prohibits discrimination based on national origin.
C. *Lau v. Nichols*, 414 U.S. 563 (1974).
D. Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 Fed. Reg. 50121 (August 16, 2000).
E. HUD “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 72 FR 2732 (January 22, 2007).

III. Title VI of the Civil Rights Act of 1964

- A. Prohibits discrimination on the basis of race, color, or **national origin**.
 - Must provide equal services in terms of scope and quality.
 - Cannot unreasonably delay services.
 - Cannot require a LEP person to provide her own interpreter.
 - Cannot limit participation in a program.
 - State and local “English-only” laws do not excuse federally assisted programs from LEP compliance.
- B. Covers all entities receiving federal financial assistance (i.e. PHAs, subsidized housing providers, etc.).
- C. For the complete list of federally assisted housing programs subject to Title VI, see HUD List of Federally Assisted Programs, 69 Fed. Reg. 68700 (Nov. 24, 2004).

IV. *Lau v. Nichols*

- A. Supreme Court case found that school district's failure to provide English language instruction denied meaningful opportunity to participate in public educational program, resulting in a violation of the Title VI prohibition against **national origin discrimination** Civil Rights Act of 1964.

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. 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 (January 22, 2007).
- A. Recipients of Federal Funds Must:
 - a. conduct the four-factor analysis;
 - b. develop a Language Access Plan (LAP); and
 - c. provide appropriate language assistance.
 - B. 4-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. census data (available online at American Factfinder)
 - 2. data from school systems,
 - 3. community organizations,
 - 4. state and local governments.
 - b. Frequency of Contact with LEP Persons.
 - c. Nature and Importance of the Program, Activity or Service to the LEP Individuals.
 - d. Resources Available, Including Costs of Providing LEP Services.
 - C. Written Translation
 - a. Safe Harbor provision for written translation only
 - i. Must provide language assistance for language groups making up more than 5% of the population.
 - b. The Office of Public and Indian Housing has identified the following nonexhaustive list of “vital” documents:
 - i. the tenancy addendum for the Section 8 voucher program,
 - ii. Housing Assistance Payment contract,
 - iii. Request for Tenancy Approval,
 - iv. Authorization for Release of Information,
 - v. Family Self Sufficiency (FSS) Escrow Account worksheet,
 - vi. Voucher, Statement of Homeownership Obligations,
 - vii. FSS contract of participation and the document entitled “A Good Place to Live.”
 - viii. HUD has already translated the “How Your Rent is Determined” fact sheet.
 - D. Oral Interpretation
 - a. Can use bilingual staff.
 - b. Strongly discourage use of friends and family (conflict of interest, candidness, etc.).
 - c. Can not use minor child as interpreter.
 - E. 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; · Outreaching effectively to the LEP community;
 - d. Training staff;
 - e. Determining which documents and informational materials are vital;

- f. 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);
- g. Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
- h. Providing interpreters for large, medium, small, and one-on-one meetings;
- i. Developing community resources, partnerships, and other relationships to help with the provision of language services; and
- j. 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.

F. Examples of services

- 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; or
- f. Referrals to community liaisons proficient in the language of LEP persons.
- g. Language identification cards invite LEP persons to identify their own language needs.

VII. Enforcement

A. *Alexander v. Sandoval*

- No private right of action under discriminatory impact cases
- Can sue under discriminatory intent theory
- Some suggested that this decision threw into question the relationship between national origin discrimination and language access, but federal agencies have continued to construe language access as a form of national origin discrimination.

B. Can file an administrative complaint with HUD

RESOURCES

- www.lep.gov – Government clearinghouse for LEP information
- <http://www.census.gov/population/www/cen2000/briefs/phc-t37/index.html> -- Selected census data regarding English proficiency.
- <http://www.usdoj.gov/crt/cor/federalfundingsources.htm> – Chart showing possible federal funding sources for various local programs.
- <http://www.lep.gov/selfassesstool.htm> -- A self-assessment tool for federal grantees to use in preparing LEP implementation plans.