Language Access Issues in Housing

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NATIONAL HOUSING LAW PROJECT
N-LAAN MONTHLY CALL
MAY 12, 2016
Today’s Call

- A few key basics
- Facilitated discussion about language access issues in housing, particularly federally assisted housing
- HUD’s new AFFH rule and how it relates to language access
- Using planning processes as an avenue for advocacy on behalf of LEP populations
LEP and Housing Basics
Title VI of the Civil Rights Act of 1964

- Prohibits discrimination on the basis of race, color, or national origin in federally conducted or assisted programs or activities
- Applies to the federal government and entities receiving federal financial assistance
- Does not apply to private entities
First question to ask: *Does this housing provider have a language access obligation under Title VI?*

Answer depends on what kind of funding the housing provider receives (if any):

- Federally subsidized programs (*e.g.*, public housing, project-based Section 8 units) have Title VI language access obligations.
- Private housing providers that receive no federal funding do not.
  - Voucher landlords that do not receive additional federal financial assistance are not subject to Title VI requirements.
## Federally Subsidized Housing Programs: Title VI Obligation?

<table>
<thead>
<tr>
<th>Title VI Mandate</th>
<th>No Title VI Mandate</th>
<th>Unclear</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Federal agencies (HUD, USDA)</td>
<td>• Private housing</td>
<td>• Low-Income Housing Tax Credit (LIHTC) properties, except American Recovery and Reinvestment Act of 2009 (ARRA) recipients (which do have a Title VI obligation)</td>
</tr>
<tr>
<td>• PHAs/public housing</td>
<td>• Private landlords participating in tenant-based Section 8 voucher program</td>
<td></td>
</tr>
<tr>
<td>• Project-based Section 8 owners</td>
<td>(HUD’s stated position)</td>
<td></td>
</tr>
<tr>
<td>• CDBG, HOME, &amp; HOPWA recipients</td>
<td></td>
<td></td>
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<tr>
<td>• USDA/RD programs</td>
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</table>
HUD LEP Guidance

- Issued by HUD in 2007
- Directs recipients of federal funding under Title VI to:
  - conduct a four-factor analysis;
  - decide which language services are appropriate;
  - develop a Language Access Plan (LAP); and
  - provide language assistance.
- Requires funding recipients to take “reasonable steps to ensure meaningful access to their programs and activities” by LEP persons
HUD LEP Guidance: Oral Interpretation

- Reasonable oral interpretation should be available
- No “safe harbor” for oral interpretation
- If staffers are not available to provide oral interpretation, the housing provider should have a plan in place to acquire such assistance (i.e., connecting with a language hotline).
- Issues with utilizing family, friends, informal interpreters
  - Conflict of interest, competency, and privacy concerns
    - Example: Having to assert VAWA housing protections
Four-factor analysis informs what documents should be translated.

“Vital documents”: documents that are “critical for ensuring meaningful access by beneficiaries or potential beneficiaries generally and LEP persons specifically” (HUD LEP Guidance).

Whether a document is “vital” depends on facts such as importance of the program and consequences for the LEP individual if accurate, timely information is not provided.

Basically, will this document impact the tenant’s ability to obtain or remain in housing?

- Recreation activity notice versus eviction notice
HUD LEP Guidance: Safe Harbor

- Only applies to written translations
- Gives funding recipients some leeway where an LEP population is particularly small/resources are limited
  - Vital documents translated for language groups that constitute 5% of or 1,000 individuals (whichever is less) within the eligible service population
  - If there are fewer than 50 individuals but 5% threshold is met, recipient provides written notification in non-English language that free oral interpretation is available
- Reasonable oral interpretation should be available, regardless of LEP population numbers
# Examples of Vital Documents

- **Leases**
  - HUD: multifamily program model leases ARE vital documents.
- **Eviction/termination notices**
- **Consent/complaint forms**
- **Intake forms**
- **Notices detailing rights, or the loss/denial/decrease in benefits or services**
- **Hearing notices**
- **Notices informing LEP persons that free language assistance is available**
- **Section 8 opt-out notices to tenants**
- **Tenant rules**
- **Recertification forms**
- **HUD Tenancy Addendum**
- **Briefing packets**
Fair Housing Act

- Prohibits discrimination based on race, color, sex, religion, familial status, disability, and **national origin** in a wide range of housing-related transactions
- Applies to most housing, including private housing providers, with few limited exceptions
- The FHA can be asserted in the courts, as well as through the HUD administrative complaint process.
  - There is no requirement to exhaust administrative remedies before filing an FHA complaint in court.
Language Access Issues in Housing
Group Discussion

- **Language access issues in:**
  - Public housing
  - Project-based Section 8/other HUD multifamily housing
  - Low-Income Housing Tax credit units
  - Private housing
Enforcement of LEP Housing Rights

- Administrative complaints
- HUD compliance reviews
- Affirmative defense to eviction
- Filing a case in court
  - Title VI (intentional discrimination only for private litigants)
  - Fair Housing Act
Recent agreements to settle Title VI complaints:

- **Hazleton (PA) Housing Authority (2015)**
  - Agreement to settle allegations that the housing authority, despite having a language access plan, was not providing interpreters/providing language assistance to LEP program participants and applicants.

- **Housing Authority of Independence, MO (2015)**
  - Agreement to settle issues of Title VI noncompliance discovered during HUD audit.

- **State of Nebraska (2014)**
  - Agreement to address finding that state had not monitored its sub-recipients for Title VI compliance.
LEP Cases: Fair Housing Act

- **Page Edmunds III (2015)**
  - Discrimination charge by HUD where landlord allegedly did not want to rent to tenant he perceived to be LEP
  - DOJ filed suit in federal court (*United States v. Page Edmunds III*).

- **Virginia Realty Co. of Tidewater (2013)**
  - Agreements to settle HUD administrative complaints alleging national origin discrimination where private landlord had written policy requiring applicants to communicate in English without assistance
    - Agreements with HUD and an LEP individual

- **Cabrera v. Alvarez, 977 F. Supp. 2d 969 (N.D. Cal. 2013)**
  - Court denied motion to dismiss on intentional discrimination claim under the FHA in case where landlord allegedly failed to provide translation and interpretation and allegedly told plaintiff to “learn English.” However, court granted motion to dismiss on FHA disparate impact claim.
Limited English Proficiency and the Duty to Affirmatively Furthering Fair Housing
HUD’s New AFFH Rule

- HUD’s AFFH rule creates a new fair housing analysis framework, called the Assessment of Fair Housing (AFH)
  - Advocates from all sectors should get involved.
- For advocates, this new AFH process presents an opportunity to ensure that issues affecting LEP communities are heard.
  - However, LEP communities must be brought into this process!
- Many communities (those receiving funding directly from HUD), states, and housing authorities will be required to conduct an AFH, and submit it to HUD.
Assessment of Fair Housing

• Very generally, the AFH is an in-depth analysis that involves:
  ○ Identification of barriers to fair housing choice and broader opportunity;
  ○ Identification of what’s driving these barriers; and
  ○ Setting goals to overcome these barriers.

• The AFH process will help inform fair housing priorities and commitment of resources by local governments, housing authorities, and states.

• HUD is providing national data, but community participation will be critical.

• HUD funding recipients will use Assessment Tools to complete these assessments.
Implications for LEP Communities

- **Fair housing choice for LEP communities**
  - Assessment Tool for Local Governments: “Identify areas with relatively high segregation and integration by race/ethnicity, national origin, or LEP group, and indicate the predominant groups living in each area.”

- **Ensuring that LEP communities are meaningfully involved in the community participation process:**
  - Interpretation is provided at public meetings and hearings
  - Documents related to the AFH are translated
  - Events related to the community participation process are publicized in non-English media
  - Citizen participation plans are inclusive of LEP communities
Community Participation

- Community participation process surrounding the AFH must comply with Title VI requirements.
  - HUD funding recipients “shall ensure that all aspects of community participation are conducted in accordance with fair housing and civil rights laws” including Title VI, Section 504, and the Americans with Disabilities Act, as well as applicable federal regulations. 24 C.F.R. § 5.158(a) (emphasis added).

- Funding recipients should use communications “designed to reach the broadest audience.” 24 C.F.R. § 5.158(a).

- Generally, documents “related to public participation would be considered vital based on HUD’s LEP Guidance.” 80 Fed. Reg. at 42,297.
HUD’s new AFFH Data and Mapping Tool provides easily accessible information about LEP populations and where these communities live.

- **Link:** [http://egis.hud.gov/affht/#](http://egis.hud.gov/affht/#)

- Map 4 shows the distribution of LEP communities within a particular jurisdiction/region.

**Observations**
- Map 4 only shows the five most commonly spoken languages in the jurisdiction/region
- Maps geared toward jurisdictions that directly receive HUD funds

**State and housing authority maps not yet available, but will be**
HUD AFFH Mapping Tool (Map 4 - LEP) – San Francisco
HUD AFFH Mapping Tool (Map 4 - LEP) - Atlanta
### HUD LEP Data – San Francisco (Table 1)

#### Table 1 - Demographics

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>(San Francisco, CA CDBG, HOME, ESG) Jurisdiction</th>
<th>(San Francisco-Oakland-Hayward, CA CBSA) Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>White, Non-Hispanic</td>
<td>337,451</td>
<td>1,840,372</td>
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<tr>
<td>Black, Non-Hispanic</td>
<td>46,781</td>
<td>349,895</td>
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<tr>
<td>Hispanic</td>
<td>121,774</td>
<td>938,794</td>
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<tr>
<td>Asian or Pacific Islander, Non-Hispanic</td>
<td>268,828</td>
<td>1,024,377</td>
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<tr>
<td>Native American, Non-Hispanic</td>
<td>1,828</td>
<td>10,657</td>
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<tr>
<td>Other, Non-Hispanic</td>
<td>2,494</td>
<td>13,550</td>
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</table>

<table>
<thead>
<tr>
<th>National Origin</th>
<th>Country</th>
<th>Country</th>
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<tr>
<td>#1 country of origin</td>
<td>China excl. Hong Kong &amp; Taiwan</td>
<td>Mexico</td>
</tr>
<tr>
<td>#2 country of origin</td>
<td>Philippines</td>
<td>China excl. Hong Kong &amp; Taiwan</td>
</tr>
<tr>
<td>#3 country of origin</td>
<td>Mexico</td>
<td>Philippines</td>
</tr>
<tr>
<td>#4 country of origin</td>
<td>Vietnam</td>
<td>India</td>
</tr>
<tr>
<td>#5 country of origin</td>
<td>Hong Kong</td>
<td>Vietnam</td>
</tr>
<tr>
<td>#6 country of origin</td>
<td>El Salvador</td>
<td>El Salvador</td>
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<tr>
<td>#7 country of origin</td>
<td>Korea</td>
<td>Hong Kong</td>
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<tr>
<td>#8 country of origin</td>
<td>India</td>
<td>Korea</td>
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<tr>
<td>#9 country of origin</td>
<td>Japan</td>
<td>Guatemala</td>
</tr>
<tr>
<td>#10 country of origin</td>
<td>Taiwan</td>
<td>Taiwan</td>
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#### Limited English Proficiency (LEP) Language

<table>
<thead>
<tr>
<th>Language</th>
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<th>#</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1 LEP Language</td>
<td>Chinese</td>
<td>#2 LEP Language</td>
<td>Spanish</td>
</tr>
<tr>
<td>#2 LEP Language</td>
<td>Spanish</td>
<td>#3 LEP Language</td>
<td>Tagalog</td>
</tr>
<tr>
<td>#3 LEP Language</td>
<td>Tagalog</td>
<td>#4 LEP Language</td>
<td>Russian</td>
</tr>
<tr>
<td>#4 LEP Language</td>
<td>Russian</td>
<td>#5 LEP Language</td>
<td>Vietnamese</td>
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<tr>
<td>#5 LEP Language</td>
<td>Vietnamese</td>
<td>#6 LEP Language</td>
<td>Korean</td>
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<td>#6 LEP Language</td>
<td>Korean</td>
<td>#7 LEP Language</td>
<td>Japanese</td>
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<td>#7 LEP Language</td>
<td>Japanese</td>
<td>#8 LEP Language</td>
<td>Other Asian Language</td>
</tr>
<tr>
<td>#8 LEP Language</td>
<td>Other Asian Language</td>
<td>#9 LEP Language</td>
<td>Other Indic Language</td>
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<td>#9 LEP Language</td>
<td>Other Pacific Island Language</td>
<td>#10 LEP Language</td>
<td>Persian</td>
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<tr>
<td>#10 LEP Language</td>
<td>Thai</td>
<td></td>
<td>Japanese</td>
</tr>
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### HUD LEP Data – San Francisco (Table 2)

**Table 2 - Demographic Trends**

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>(San Francisco, CA CDBG, HOME, ESG) Jurisdiction</th>
<th>(San Francisco-Oakland-Hayward, CA CBSA) Region</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>#</td>
<td>%</td>
</tr>
<tr>
<td>White, Non-Hispanic</td>
<td>336,595</td>
<td>46.53</td>
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<tr>
<td>Black, Non-Hispanic</td>
<td>76,147</td>
<td>10.53</td>
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<td>Hispanic</td>
<td>100,557</td>
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<td>Asian or Pacific Islander, Non-Hispanic</td>
<td>205,564</td>
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<td>Native American, Non-Hispanic</td>
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<td>National Origin</td>
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<td>Foreign-born</td>
<td>245,997</td>
<td>34.01</td>
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<td>LEP</td>
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<tr>
<td>Sex</td>
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<td></td>
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<tr>
<td>Male</td>
<td>361,600</td>
<td>49.99</td>
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<tr>
<td>Female</td>
<td>361,770</td>
<td>50.01</td>
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<tr>
<td>Age</td>
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<tr>
<td>18-64</td>
<td>501,357</td>
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<td>65+</td>
<td>105,263</td>
<td>14.55</td>
</tr>
<tr>
<td>Family Type</td>
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<td></td>
</tr>
<tr>
<td>Families with children</td>
<td>53,878</td>
<td>37.46</td>
</tr>
</tbody>
</table>

**Note 1:** All % represent a share of the total population within the jurisdiction or region for that year, except family type, which is out of total families.

**Note 2:** Data Sources: Decennial Census; ACS

**Note 3:** Refer to the Data Documentation for details [here](www.hudexchange.info).
Using Planning Processes to Advocate on Behalf of LEP Communities
LEP Advocacy and Planning Processes

- Language access plans (LAPs)
- PHA planning documents, such as:
  - PHA Plan
    - Annual Plan and Five-Year Plan
  - Admission and Continued Occupancy Policy (ACOP)
    - Public housing program
  - Section 8 Administrative Plan
    - Section 8 Housing Choice Voucher program
- Assessments of Fair Housing
sample LAP

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.
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-rating 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
2-ILII. DENIAL OR TERMINATION OF ASSISTANCE

A PHA’s decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of the PHA’s informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

When a participant family’s assistance is terminated, the notice of termination must inform them of the PHA’s informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, the PHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the PHA’s decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the PHA must make the accommodation.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin
2-IIIB. ORAL INTERPRETATION

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, the PHA will generally offer, or ensure that the family is offered through other sources, competent services free of charge to the LEP person.

HACB Policy

The HACB will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. “Reasonable steps” may not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible, the HACB will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other HACBs, and will standardize documents. Where feasible and possible, the HACB will encourage the use of qualified community volunteers.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The interpreter may be a family member or friend.
Find out if your PHA has a language access plan (LAP). Look at:
- PHA website
- Make a records request

Sometimes, you’ll find language access policies in other planning documents (e.g., appendix to Administrative Plan)

If no LAP exists, try to work with the PHA to complete the four-factor analysis and create a language access plan.

If so, evaluate the plan to see where it could be strengthened.
- Has the plan been updated recently? Updated statistics?
- Are all language groups accounted for?
- Are vital documents listed?
- Language access coordinator?
- Does the plan prohibit the use of child interpreters?
Title VI Advocacy: Planning Docs

- PHAs often use templates for their planning documents; therefore, make sure the documents actually reflect local LEP needs and populations.
- Gather input and feedback from a range of LEP service providers and stakeholders (residents, legal services, community activists, etc.).
- Make sure the PHA has a listing of the documents it considers to be “vital.”
- Ensure that planning documents acknowledge that free interpretation services are available for PHA proceedings where the tenant may lose benefits (i.e., termination hearings).
- Make sure Census data are up-to-date, or that other data is considered.
- Advocate for provisions stating that waitlist openings will be publicized in non-English media.
<table>
<thead>
<tr>
<th>Issues to Watch for in PHA Documents/LAPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Outdated references</td>
</tr>
<tr>
<td>o No reference to HUD’s 2007 LEP Guidance</td>
</tr>
<tr>
<td>o Old data used</td>
</tr>
<tr>
<td>2. Minors and interpretation</td>
</tr>
<tr>
<td>3. Use of friends, community volunteers as interpreters</td>
</tr>
<tr>
<td>4. Proactive offering of free language assistance</td>
</tr>
<tr>
<td>5. Outreach to non-English media (advertising waitlist openings)</td>
</tr>
<tr>
<td>6. Vital documents</td>
</tr>
<tr>
<td>7. Interpreters at hearings, provided free of charge</td>
</tr>
<tr>
<td>8. Identifying LEP individuals</td>
</tr>
<tr>
<td>9. Training staff</td>
</tr>
<tr>
<td>10. Is there a language access coordinator?</td>
</tr>
<tr>
<td>11. Smaller, less widely spoken languages</td>
</tr>
</tbody>
</table>
Assessment of Fair Housing

- Consider the relationship between limited English proficiency and fair housing choice in your communities.
  - Are LEP communities encountering fair housing issues such as segregation, racially/ethnically concentrated areas of poverty, disproportionate housing needs, disparities in access to opportunity?

- Coordinate with local jurisdictions that must complete the AFH, PHAs, and states to ensure that LEP communities have the opportunity to meaningfully engage in the AFH process.
Contact Information

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