

Language Access Issues in Housing

1

RENEE WILLIAMS
NATIONAL HOUSING LAW PROJECT
N-LAAN MONTHLY CALL
MAY 12, 2016

HOUSING JUSTICE

National Housing Law Project

Today's Call

2

- 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

3

Title VI of the Civil Rights Act of 1964

4

- 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
- Link between the denial of meaningful language access and national origin discrimination under Title VI established in *Lau v. Nichols*, 414 U.S. 563 (1974)

Title VI: Who Has Language Access Obligations?

5

- 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?

6

Title VI Mandate	No Title VI Mandate	Unclear
<ul style="list-style-type: none">• Federal agencies (HUD, USDA)• PHAs/public housing• Project-based Section 8 owners• CDBG, HOME, & HOPWA recipients• Programs listed at HUD's "List of Federally Assisted Programs," 69 Fed. Reg. 68,700 (Nov. 24, 2004)• USDA/RD programs	<ul style="list-style-type: none">• Private housing• Private landlords participating in tenant-based Section 8 voucher program (HUD's stated position)	<ul style="list-style-type: none">• Low-Income Housing Tax Credit (LIHTC) properties, except American Recovery and Reinvestment Act of 2009 (ARRA) recipients (which do have a Title VI obligation)

HUD LEP Guidance

7

- 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

8

- 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

HUD LEP Guidance: Written Translation

9

- 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

10

- 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

11

- 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

12

- 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

13

Group Discussion

14

- 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

15

- 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 HUD/LEP Cases: Title VI

16

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

17

- 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

19

- 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

20

- 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

22

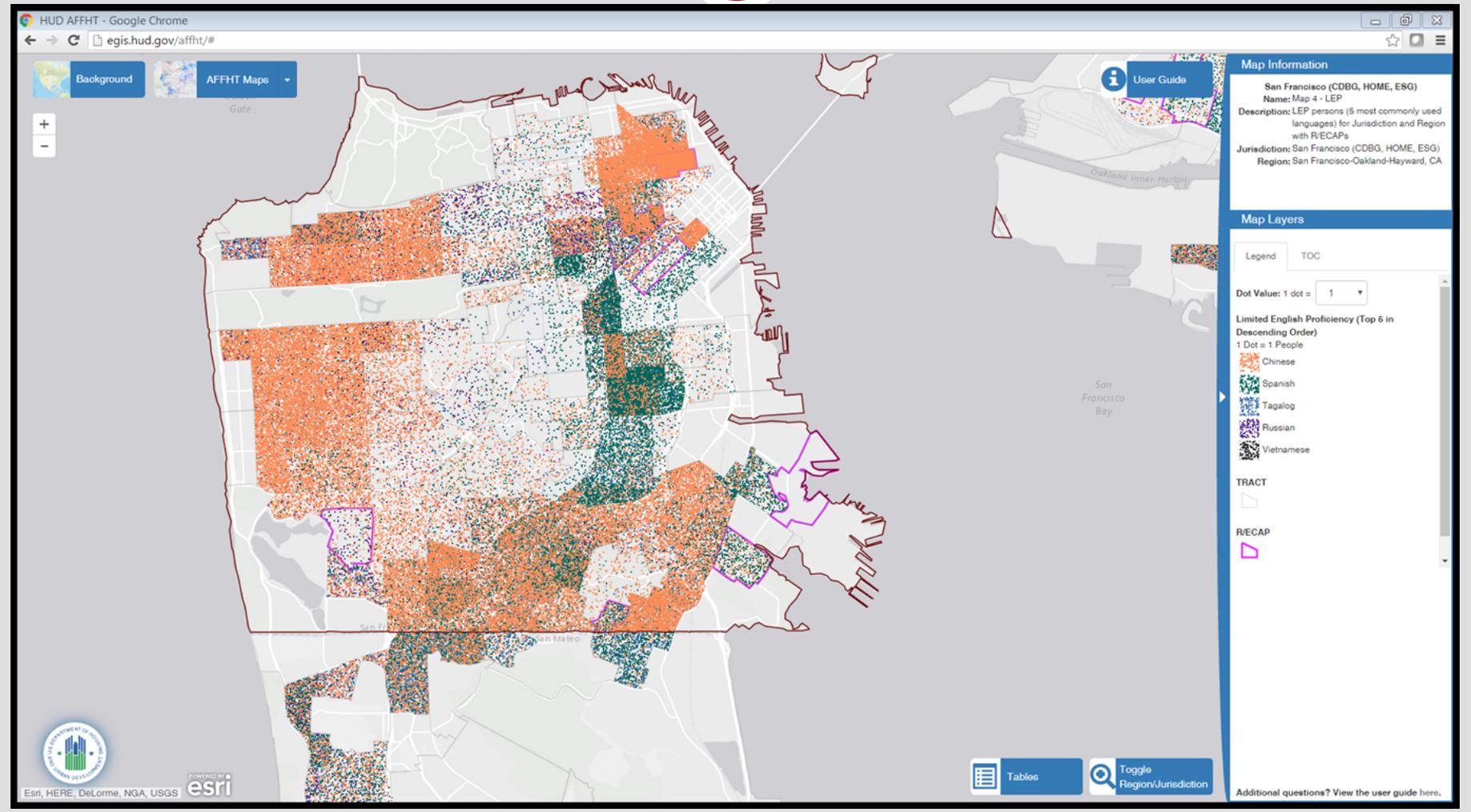
- Community participation process surrounding the AFH must comply with Title VI requirements.
 - HUD funding recipients “shall ensure **that all aspects of community participation** are conducted in accordance with fair housing and civil rights laws” including **Title VI**, Section 504, and the Americans 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.

AFFH Data and Mapping Tool

23

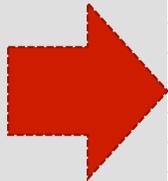
- HUD's new AFFH Data and Mapping Tool provides easily accessible information about LEP populations and where these communities live.
- Link: <http://egis.hud.gov/affht/#>
- Map 4 shows the distribution of LEP communities within a particular jurisdiction/region.
- Observations
 - Map 4 only shows the 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 LEP Data – San Francisco (Table 1)

Table 1 - Demographics						
	(San Francisco, CA CDBG, HOME, ESG) Jurisdiction			(San Francisco-Oakland-Hayward, CA CBSA) Region		
Race/Ethnicity	#	%		#	%	
White, Non-Hispanic	337,451	41.91		1,840,372	42.45	
Black, Non-Hispanic	46,781	5.81		349,895	8.07	
Hispanic	121,774	15.12		938,794	21.65	
Asian or Pacific Islander, Non-Hispanic	268,828	33.39		1,024,377	23.63	
Native American, Non-Hispanic	1,828	0.23		10,657	0.25	
Other, Non-Hispanic	2,494	0.31		13,550	0.31	
National Origin	Country			Country		
#1 country of origin	China excl. Hong Kong & Taiwan	85,853	10.66	Mexico	256,611	5.92
#2 country of origin	Philippines	26,263	3.26	China excl. Hong Kong & Taiw	187,949	4.34
#3 country of origin	Mexico	23,349	2.90	Philippines	160,156	3.69
#4 country of origin	Vietnam	16,572	2.06	India	85,837	1.98
#5 country of origin	Hong Kong	13,483	1.67	Vietnam	55,635	1.28
#6 country of origin	El Salvador	11,515	1.43	El Salvador	52,767	1.22
#7 country of origin	Korea	6,417	0.80	HongKong	39,414	0.91
#8 country of origin	India	6,067	0.75	Korea	29,806	0.69
#9 country of origin	Japan	5,106	0.63	Guatemala	27,004	0.62
#10 country of origin	Taiwan	4,773	0.59	Taiwan	26,766	0.62
Limited English Proficiency (LEP)	Language			Language		
Language	Language	#	%	Language	#	%
#1 LEP Language	Chinese	92,565	11.85	Spanish	310,669	7.17
#2 LEP Language	Spanish	39,228	5.02	Chinese	203,434	4.69
#3 LEP Language	Tagalog	10,208	1.31	Tagalog	53,027	1.22
#4 LEP Language	Russian	7,696	0.99	Vietnamese	26,667	0.62
#5 LEP Language	Vietnamese	5,992	0.77	Korean	16,910	0.39
#6 LEP Language	Korean	3,593	0.46	Russian	15,321	0.35
#7 LEP Language	Japanese	3,045	0.39	Other Asian languag	13,968	0.32
#8 LEP Language	Other Asian Language	1,634	0.21	Other Indic languag	11,716	0.27
#9 LEP Language	Other Pacific Island Language	1,513	0.19	Persian	10,565	0.24
#10 LEP Language	Thai	1,405	0.18	Japanese	9,891	0.23



HUD LEP Data – San Francisco (Table 2)

Table 2 - Demographic Trends

Race/Ethnicity	(San Francisco, CA CDBG, HOME, ESG) Jurisdiction						(San Francisco-Oakland-Hayward, CA CBSA) Region					
	1990		2000		2010		1990		2000		2010	
	#	%	#	%	#	%	#	%	#	%	#	%
White, Non-Hispanic	336,595	46.53	338,878	43.63	337,451	41.91	2,157,395	58.65	2,025,815	49.12	1,840,372	42.45
Black, Non-Hispanic	76,147	10.53	64,038	8.24	46,781	5.81	411,437	11.19	418,830	10.16	349,895	8.07
Hispanic	100,557	13.90	109,472	14.09	121,774	15.12	505,217	13.74	733,049	17.78	938,794	21.65
Asian or Pacific Islander, Non-Hispanic	205,564	28.41	252,342	32.49	268,828	33.39	578,189	15.72	876,048	21.24	1,024,377	23.63
Native American, Non-Hispanic	2,527	0.35	4,528	0.58	1,828	0.23	16,266	0.44	30,058	0.73	10,657	0.25
National Origin												
Foreign-born	245,997	34.01	285,542	36.76	290,752	36.11	778,388	21.17	1,127,959	27.35	1,310,790	30.23
LEP												
Limited English Proficiency	162,124	22.41	186,401	24.00	176,248	21.89	449,197	12.21	667,712	16.19	735,980	16.98
Sex												
Male	361,600	49.99	395,011	50.86	408,462	50.73	1,808,731	49.18	2,037,408	49.41	2,137,801	49.31
Female	361,770	50.01	381,722	49.14	396,773	49.27	1,868,981	50.82	2,086,329	50.59	2,197,590	50.69
Age												
Under 18	116,749	16.14	115,554	14.88	107,524	13.35	806,480	21.93	953,037	23.11	920,636	21.24
18-64	501,357	69.31	554,220	71.35	587,869	73.01	2,434,697	66.20	2,687,478	65.17	2,868,275	66.16
65+	105,263	14.55	106,958	13.77	109,842	13.64	436,536	11.87	483,222	11.72	546,480	12.61
Family Type												
Families with children	53,878	37.46	47,476	37.92	55,212	36.56	390,296	43.68	357,466	47.23	459,242	45.61

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 (www.hudexchange.info).

Using Planning Processes to Advocate on Behalf of LEP Communities

28



LEP Advocacy and Planning Processes

29

- 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

30

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.

Sample LAP (cont.)

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

Excerpt from Administrative Plan

32

2-II.H. 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



Excerpt (cont.)

33



Standard
text from
template

2-III.B. 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.

Specific PHA
policies



Title VI Advocacy with PHAs: LAPs

34

- 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

35

- 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.

Issues to Watch for in PHA Documents/LAPs

36

- Outdated references
 - No reference to HUD's 2007 LEP Guidance
 - Old data used
- Minors and interpretation
- Use of friends, community volunteers as interpreters
- Proactive offering of free language assistance
- Outreach to non-English media (advertising waitlist openings)
- Vital documents
- Interpreters at hearings, provided free of charge
- Identifying LEP individuals
- Training staff
- Is there a language access coordinator?
- Smaller, less widely spoken languages

Assessment of Fair Housing

37

- 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

38

Renee Williams

Staff Attorney

National Housing Law Project

rwilliams@nhlp.org

415-546-7000, ext. 3121