

HUD > Program Offices > Fair Housing > Promoting Fair Housing > LEP Final Guidance - MFH FAQs

Limited English Proficiency (LEP) Frequently Asked Questions

LIMITED ENGLISH PROFICIENCY FREQUENTLY ASKED QUESTIONS FROM THE MULTI-FAMILY HOUSING INDUSTRY GROUPS

- ▶ The Guidance refers to "vital documents." Has HUD made any determination of what documents would be considered "vital"? If not, when can we expect such a list?
- ▶ The Office of Multifamily Housing has indicated that it will translate the Section 8 model lease in 9 languages - when is HUD planning to post these model leases on the HUD website?
- ▶ What data is considered adequate for use in determining the lesser of 5 percent or 1000?
- ▶ **Would voucher administrators (who do not own or administer other federal subsidy programs) be subject to LEP?**
- ▶ **Which specific HUD programs are subject to LEP?**
- ▶ **Is there a minimum amount of HOME or CDBG assistance received by a project before the project is subject to LEP?**
- ▶ **How did HUD/FHEO determine into which languages it would translate the various documents posted on the HUD Translated Materials webpage?**
- ▶ **Is FHEO working with the various program offices to identify vital documents in their respective program area?**
- ▶ **What training, if any, does FHEO intend to provide to HUD funding recipients on performing a four-factor self analysis?**
- ▶ **What, if any, 2007 or longer-range plans does FHEO or specific program offices have for translation of additional documents -- which documents, which languages?**
- ▶ **What are the minimum levels of competency and/or certification requirements to be considered when Language Assistance Plans are reviewed?**
- ▶ **Will the operating costs associated with complying with LEP be incorporated in the development of the Operating Cost Adjustment Factor (OCAF)?**

Question: The Guidance refers to "vital documents." Has HUD made any determination of what documents would be considered "vital"? If not, when can we expect such a list? This is particularly important in the Section 8 project-based program where there are numerous documents/forms that HUD requires be used.

Answer: Generally, whether a document (or the information it contains or solicits) is "vital" depends 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 has not undertaken to define or list what documents are vital because given the breadth of HUD programs and recipients, what constitutes a vital document varies widely from recipient to recipient. All recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are "vital" to the meaningful access of the LEP populations they serve. Thus, vital documents could include: consent and complaint forms; application forms for housing; written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services; and notices advising LEP persons of free language assistance.

HUD program offices, including the Office of Multifamily Housing, have started evaluating translation needs for HUD documents, as part of HUD's obligations under E.O. 13166 pertaining to federally conducted programs. The Office of Multifamily Housing has translated the Section 8 model lease into Spanish, and is currently translating the lease into additional language. If an owner or an industry group feels that additional documents used by all multifamily projects should be translated, forward a list of those documents to **Carolyn Cockrell**. A determination of which documents to translate will be made based on need and available resources.

As clarified by the guidance, recipients may use the four-factor test to fully evaluate Title VI/LEP obligations.

Back to top

Question: The Office of Multifamily Housing has indicated that it will translate the Section 8 model lease in 9 languages - when is HUD planning to post these model leases on the HUD website?

Answer: HUD expects to post the following translated versions of the model lease, with appropriate disclosures by June 30, 2007:

1. Amharic
2. Chinese
3. Vietnamese
4. French
5. Russian
6. Portuguese
7. Korean
8. Spanish (updated with disclosures)

We are also considering translating the model lease into Arabic.

Back to top

Question: What data is considered adequate for use in determining the lesser of 5 percent or 1000? Can Census data regarding language prevalence and ability in a specific area be used to make a determination of the proportion of the LEP "eligible population."

Answer: Recipients should review a variety of sources to determine whether the threshold of 5 percent or 1000 is met. When the housing provider is conducting outreach, the housing provider may look at its own current approved Affirmative Fair Housing Marketing Plan (AFHMP) as a starting point. This shows the market area to be

used, the population that is income-eligible (and eligible under other eligibility requirements) to live in assisted housing, and the demographic group(s) least likely to apply for the housing. The data used to develop the AFHMP is the same data an assisted housing provider would use to determine the five percent or 1,000-person threshold.

Additional sources should be reviewed, including any published or other "official" data. Census data is an excellent source, since it will now be updated on a regular basis through the American Community Surveys and contains information specific to ability to speak English. Other acceptable sources of data include data from school systems and from community organizations and data from state and local governments.

If the document is only intended for use by current beneficiaries (e.g., current tenants of a housing project), current recipient data for those beneficiaries should be used.

For an individual multifamily housing project conducting an LEP analysis for outreach, individual decisions would have to be made. This would vary based on community and project size.

Back to top

Question: We understand that Landlords who accept Housing Choice Vouchers are not subject to the LEP guidance. It has also been indicated that Title VI does not apply to the tenant-based subsidy programs. Accordingly, would voucher administrators (who do not own or administer other federal subsidy programs) be subject to LEP?

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 HUD's LEP guidance would apply.

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. Therefore, the LEP guidance would also apply to them.

Back to top

Question: We also understand that properties with FHA mortgage insurance but no rental subsidies or other housing assistance are NOT required to comply with LEP. We also assume that properties that raise equity through the Low Income Housing Tax Credit program are also not subject to LEP as the tax credit program. Please clarify what specific HUD programs are subject to LEP.

Answer: Federal Housing Administration (FHA) insurance is not considered federal financial assistance, and participants in that program are not required to comply with Title VI's LEP obligations, unless they receive federal financial assistance as well. The Low Income Housing Tax Credit (LIHTC) program is operated by the Internal Revenue Service, and the IRS is the federal agency responsible for determining if LIHTC meet the definition of federal financial assistance. HUD understands that the IRS does not consider LIHTC to be federal financial assistance. However, a definitive answer should be obtained from the IRS. However, if any LIHTC units also received Project-Based Section 8, or any other federal financial assistance, they would be subject to Title VI, and HUD's LEP guidance would apply.

All programs and activities of entities that receive federal financial assistance must comply with the Title VI requirements including LEP obligations. In addition when federal funds are passed through a recipient to a sub-recipient, the sub-recipient must also comply with Title VI, including LEP obligations. A listing of most, but not necessarily all, HUD programs that are federally-assisted may be found at the "List of Federally-Assisted Programs" published in the Federal Register on November 24, 2004 at Volume 69, Number 226, Page 68700.

Back to top

Question: Is there a minimum amount of HOME or CDBG assistance received by a project before the project is subject to LEP?

Answer: Any federal financial assistance granted to a recipient or sub-recipient triggers the applicability of Title VI and the LEP Guidance to the programs and activities of the recipient or sub-recipient. This is true irrespective of the amount of federal financial assistance.

Back to top

Question: How did HUD/FHEO determine into which languages it would translate the various documents posted on the **HUD Translated Materials webpage**?

Answer: HUD has a language assistance line that is used nationwide by HUD staff. Using 2003-2004 data from the language assistance line, HUD evaluated which languages received the most requests for oral interpretation. This analysis showed that Spanish was the most requested language, followed by Russian, Chinese, Vietnamese, and Korean. After September 11, 2001, HUD decided to translate documents into Arabic even though it was not one of the most requested languages.

Back to top

Question: Is FHEO working with the various program center offices to identify vital documents in their program area?

Answer: Consistent with HUD's obligations under Section 2 of E.O. 13166 to improve access to its federally conducted programs and activities, each program office, in cooperation with FHEO, is currently identifying vital documents in their programs and determining which documents to translate based on available resources.

Back to top

Question: What if any training does FHEO intend to provide to HUD funding recipients on performing a 4-factor self-analysis?

Answer: HUD is prepared to work with recipients to help them meet their obligations under Title VI. As part of its technical assistance services, HUD can help recipients identify best practices and successful strategies to implement the Guidance, as well as sources for translation services and other resources. In addition, the Department is committed to assisting recipients of HUD financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964.

HUD provides a variety of practical technical assistance to recipients to assist them in serving LEP persons. This technical assistance includes providing training about best practices in serving persons with limited English proficiency. HUD believes that, on the whole, its recipients genuinely desire to comply with their obligations, and that increased understanding of compliance responsibilities and knowledge about cost-effective resources will assist recipients in meeting Title VI obligations. Accordingly, HUD is committed to providing outreach to its recipients and to being responsive to queries from its recipients. It is also committed to working with representatives of state and local housing agencies, assisted housing providers, and community and faith-based organizations, to identify and share model plans, examples of best practices, cost-saving approaches, and information on other available resources, and to mobilize these organizations to educate their members on these matters.

FHEO, in conjunction with the OGC Office of Fair Housing, and other HUD programs, will continue to provide technical assistance and outreach to HUD recipients to assist them in understanding and complying with their obligations under Title VI and to provide information to recipients on its LEP guidance.

Back to top

Question: What, if any, 2007 or longer-range plans does FHEO or specific program offices have for translation of additional documents - which documents, which languages?

Answer: As noted before, each HUD program office is currently identifying vital documents and assessing the need to translate these vital documents. Documents will be translated

based on available resources.

Back to top

Question: As FHEO discourages use of volunteers and family members for bridging language gaps, what are the minimum levels of competency and/or certification requirements to be considered when Language Assistance Plans are reviewed?

Answer: Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. When an LEP person attempts to access the services of a HUD recipient that has determined it should provide interpreter services based upon application of the four factor analysis, the recipient should make the LEP person aware that he or she has the option of having the recipient provide interpretative services for him/her without charge. If the beneficiary still prefers to use his/her own interpreter, recipients should consider the special circumstances discussed in the guidance that may affect whether a family member or friend should serve as an interpreter (e.g., whether the situation is an emergency, or whether there are concerns regarding competency, confidentiality, privacy, or conflict of interest.)

While interpreters and translators must be competent, HUD has not undertaken to define specific certification requirements or professional and technical standards of competency. However, the Guidance provides several suggestions for locating qualified interpreters and translators, including contacting associations that represent the interpretation/translation industry.

HUD enforcement of its LEP guidance is governed by the Title VI implementing regulations under 24 CFR Part 1. The methods and procedures used to investigate and resolve complaints, and conduct compliance reviews are no different for LEP than for other Title VI issues.

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to take reasonable steps to provide meaningful access to LEP persons is enforced and implemented by FHEO through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. Therefore, FHEO will investigate if it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations.

Throughout an investigation, FHEO engages in voluntary compliance efforts and provides technical assistance to recipients. FHEO proposes reasonable timetables for achieving compliance and consults with, and assists, recipients in exploring cost-effective ways of coming into compliance. *This is all done to try to ensure that the recipient's policies and procedures contain reasonable steps to provide meaningful access for LEP persons to the recipient's programs, activities or services.* As a result, most complaints are resolved through such voluntary and informal efforts.

Only if a case is fully investigated and results in a finding of noncompliance that cannot be settled through voluntary and informal means will FHEO secure compliance through the termination of federal assistance or refer the matter to the Department of Justice.

Back to top

Question: HUD's Office of Multifamily Housing has indicated that translation costs would be an approved project expense in project-based assisted housing. However, most rent increases are determined by a cost adjustment factor and are capped at a comparable market rent. Therefore, there is little chance of owners being able to cover their costs. As these properties are single asset entities owned by partnerships, choices will have to be made about paying the mortgage, utilities and maintenance costs versus spending thousands of dollars to translate one document in one language - or converting the property to market use. Is HUD intending on providing any funding to offset the costs of translation/interpretation. In other words, will the operating costs associated with complying with LEP be incorporated in the development of the Operating Cost Adjustment Factor (OCAF)?

Answer: HUD encourages owners that require documents to be translated to work together to offset the costs. At the present time OCAF is adjusted on a statewide basis. Since the LEP Guidance that relates to the needs of written translations is focused on small markets, it is impossible to use OCAF to cover necessary operating costs.

