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Limited English Proficiency in Housing

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DISCRIMINATION
SAYS THEY
CAN'T BE
NEIGHBORS.



THE LAW
SAYS
THEY CAN.

LC Education
CR Fund



The Federal Fair Housing Act protects your right to live where you want. In fact, in any decision regarding rental, sales, or lending, it is against the law to consider race, color, national origin, religion, sex, disability, or family status.

If you think you've been denied housing, please call us. **Fair Housing. It's not an option. It's the law.**

HUD 1-800-669-9777

TDD 1-800-927-9275

www.fairhousinglaw.org

LA DISCRIMINACIÓN EN MATERIA DE
VIVIENDA NO TIENE CABIDA EN NUESTRA NACIÓN



RECONOZCA ALGUNOS INDICIOS PARA QUE USTED AYUDE A PARARLA.

- "No aceptamos los niños."
- "No aceptamos los adolescentes."
- "No puedo asignarle un estacionamiento para personas discapacitadas."
- "El apartamento del cual le hablé por teléfono ha sido alquilado."
- "Solo aceptamos a personas que hablen inglés."
- "El anuncio está mal — el alquiler es realmente \$75 más."

LA ÚNICA FORMA DE PARAR LA DISCRIMINACIÓN EN MATERIA DE VIVIENDA ES SI USTED LA REPORTA.

Visite www.hud.gov/fairhousing o llame a La Línea Directa de HUD al **1-800-669-9777** (voice) **1-800-927-9275** (TTY)



Para preguntas o quejas sobre discriminación local de la vivienda, contacte:
Piedmont Housing Alliance Programa Justo de Vivienda **(434) 817-2436**



Un mensaje de servicio público del Departamento de Vivienda y Desarrollo Urbano de los Estados Unidos en asociación con la Alianza Nacional de Equidad de Vivienda. La Ley Federal de Equidad de Vivienda prohíbe la discriminación por motivos de raza, color, religión, origen nacional, sexo, tipo de familia o discapacidad. Para más información, visite www.hud.gov/fairhousing.



They told us to "Live
someplace else."



We have rights. We called HUD.



SOLO HEREDAR
MERE HUD

We found a three-bedroom apartment we loved in a great neighborhood with good schools and a beautiful park. But the landlord told us to live someplace else that would be better for our family. We filed a complaint with HUD, and now we have a wonderful place to live.

Here are some telltale signs of housing discrimination against families with children:

- Allowing only one child per bedroom
- Charging a higher security deposit for families with kids
- Limiting families with children to the first floor or certain buildings
- Refusing to rent to families with children

Fair Housing Is Your Right. Use It.

Visit www.hud.gov/fairhousing or call the HUD Hotline
1-800-669-9777 (English/Español) **1-800-927-9275** (TTY)



A public service message from the U.S. Department of Housing and Urban Development in partnership with the National Fair Housing Alliance. The Federal Fair Housing Act prohibits discrimination because of race, color, religion, national origin, sex, familial status or disability. For more information, visit www.hud.gov/fairhousing.



Language Barriers as Civil Rights Concerns

- President Obama signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" in 2000; DOJ also issued guidance that year.
- Title VI of the 1964 Civil Rights Act covers discrimination against persons who don't read or speak English well. HUD Guidance issued in 2007.
 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq
- Fair Housing Act (and Equal Credit Opportunity Act) provisions apply to discrimination that is language-based as national origin discrimination
 - HUD Guidance issued in 2016 <https://archives.hud.gov/news/2016/pr16-135-lepmemo091516.pdf>
 - Discrimination based on language spoken or read=national origin discrimination
 - Discrimination based on language can have a discriminatory impact based on national origin



Title VI Applications



“No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.”

—Civil Rights Act of 1964



Title VI Basics

- Title VI of the 1964 Civil Rights Act addresses discrimination based on race, color or national origin
- Covers recipients of federal financial assistance
- It is enforced administratively by the federal agency that provides the funding: HUD, HHS, USDA, etc.
 - So if you have a Title VI complaint against a bus system, it is filed with DOT
 - Or against a city relating to actions that limit access based on language, it is filed with HUD



“Any Program or Activity”

- Includes ALL of the programs and activities of an entity, not just the ones funded
- Application is consistent with the Civil Rights Restoration Act of 1987



“Federal Financial Assistance”

- Federal financial assistance may include the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance
- **INCLUDES**
 - Public housing authorities, cities and states and their subrecipients, Section 8 project-based funding, RAD funding, and CDBG-Disaster Recovery recipients
- **DOES NOT INCLUDE**
 - Housing Choice Vouchers (“tenant-based vouchers”)
 - Tax credits, according to Treasury; others have different opinions



Prohibited Practices Under HUD Regulations

- Directly or indirectly, because of race, color, national origin, to
 - Deny housing or other benefits (24 CFR 1.4(b)(1)(i))
 - Provide housing or services that are different (24 CFR 1.4 (b)(1)(ii))
 - Subject a person to segregation or separate treatment (24 CFR 1.4(b)(1)(iii))
 - Restrict access to housing or services (24 CFR 1.4 (b)(1)(iv))
 - Treat a person differently in admission or eligibility (24 CFR 1.4 (b)(1)(v))
 - Deny the opportunity to participate in a program or activity or provide a different opportunity than offered to others (24 CFR 1.4(b)(1)(vi))
 - Use methods of administration that have the effect of subjecting persons to discrimination (24 CFR 1.4(b)(2)(i) (Disparate impact))



Title VI and LEP

- Obligation created under the authority of Title VI; Language – based discrimination constitutes a form of national origin discrimination prohibited by Title VI
- Executive Order 13166
 - The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.
- Federal agencies require recipients of federal funds to ensure that LEP individuals have “meaningful access” to the “information and services they provide.” *Lau v. Nichols*, 414 U.S. 563 (1974)



HUD's Title VI Guidance on LEP

- Recipients must have a language access plan
- Must contain an analysis called “Four Factor Test”
 - The number or proportion of LEP persons served or encountered in the eligible service area
 - The frequency with which LEP individuals come into contact with the program
 - The nature and importance of the program, activity, or service provided by the program
 - The resources available to the recipient
- Applies to oral interpretations and written translations



Written Translation Safe Harbors

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.



Title VI Administrative Enforcement at HUD

- Successfully challenged the failure of the state of New Jersey to provide language access to nine language groups as part of the recovery from Superstorm Sandy.
- Complaint by FairShare New Jersey, NAACP, LULAC.
- Settlement included preparing a Language Access Plan, giving equal access to non-English speakers for all programs, repeated and increased outreach to language minorities and low and moderate income people, and translation of plans and at public hearings relating to recovery.
- <http://fairsharehousing.org/blog/entry/settlement-reached-in-sandy-civil-rights-case/>



Identifying Issues

- Identify language minorities by state and county: Link on this page provides easily accessible data
- <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states/>
- Examine agency or organizations
 - Website
 - Documents linked to website
 - Generated documents



Title VI Administrative Enforcement at HUD

- Failure by housing authority to provide recert notices in language
- Failure by housing authority to provide oral interpretation
- HUD has a website about language access
https://www.hud.gov/program_offices/fair_housing_equal_opportunity/limited_english_proficiency_0
- HUD has translated materials
https://www.hud.gov/program_offices/fair_housing_equal_opportunity/17lep
- HUD has fair housing materials in language
https://www.hud.gov/program_offices/fair_housing_equal_opportunity/marketing



Fair Housing Act and Language Barriers

- Key issues Covered by 2016 HUD Guidance on the Fair Housing Act:
 - Cannot use language limitations as an excuse for intentional discrimination
 - National origin discrimination includes discrimination against specific subgroups of people with a specific origin.
 - No English-only requirements; can't turn away applicants who don't speak English well
 - Not allowing time for translation opportunity
 - Can't refuse to deal with someone who needs an interpreter
 - Can't charge a fee for translation of a lease (HUD charge: <https://archives.hud.gov/news/2015/pr15-045-15chargeMinnNatOri.pdf>)



Improved Access

- Services to consider that would improve access:
 - “I Speak” Card
 - Language line access
 - Making materials available in common non-English languages
 - Using software to translate key documents
 - A fair housing case may be brought based on denial or limitation of access, different terms and conditions, or a non language-based policy that has a disparate impact on persons who don’t read or speak English well or at all
 - (but always argue intent)



I Speak

ISpeakCard_Courts_2018.pdf - Adobe Acrobat Pro 2017

File Edit View Window Help

Home Tools Initial Statement of ... 2019.01.22 - J. Kap... LEP Presentation 1... LEPMEMO091516... Arborwood FHA Re... ISpeakCard_Courts... x

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I speak...

ARABIC	أنا أتحدث العربية	GUJARATI	હું ગુજરાતી બોલું છું	ROMANIAN	Vorbesc românește
ARMENIAN	Ես խոսում եմ հայերեն	HEBREW	אני מדבר עברית	RUSSIAN	Я говорю по-русски
BENGALI	আমি বাংলা বলতে	HINDI	मैं हिंदी बोलते हूँ।	SERBIAN	Ja govorim српски
BOSNIAN	Ja govorim bosanski	HMONG	Kuv hais lus Hmoob	SOMALI	Waxan ku hadlaa af Soomaali
BULGARIAN	Аз говоря български	HUNGARIAN	Beszélek magyarul	SPANISH	Hablo español
BURMESE	ကျွန်ုပ် မြန်မာစကား ပြောပါသည်။	ITALIAN	Parlo italiano	SWAHILI	Ninaongea Kiswahili
CAMBODIAN	ខ្ញុំនិយាយភាសាខ្មែរ	JAPANESE	私は日本語を話す	SWEDISH	Jag talar svenska
CANTONESE	我說粵語	KOREAN	저는 한국어를 사용합니다	TAGALOG	Marunong akong mag-Tagalog
CROATIAN	Gavorim hrvatski	LAO	ຂ້ອຍເວົ້າລາວ	THAI	พูดภาษาไทย
CZECH	Mluvim česky	LITHUANIAN	Aš kalbu lietuviškai	TURKISH	Türkçe konuşurum
DUTCH	Ik spreek het Nederlands	MANDARIN	我讲汉语普通话	UKRAINIAN	Я розмовляю українською
FARSI (PERSIAN)	من فارسی صحبت می کنم	NORWEGIAN	Jeg snakker norsk	URDU	میں اردو بولتا ہوں
FRENCH	Je parle français	POLISH	Mówi´ po polsku	VIETNAMESE	Tôi nói tiếng Việt
HAITIAN CREOLE	M pale kreyòl ayisyen	PORTUGUESE	Eu falo português do Brasil (Brazil) Eu falo português do Portugal (Europe)	YORUBA	Mo nso Yooba
GERMAN	Ich spreche Deutsch	PUNJABI	ਮੈਂ ਪੰਜਾਬੀ ਬੋਲਦਾ/ਬੋਲਦੀ ਹਾਂ।		
GREEK	Μιλω ελληνικά				

Transcend 2018

Transcend
www.transcend.net 530-756-5834
Plain Language & Translation Services



Title VI Enforcement

- Individual cases can be considered aside from the HUD guidance
- LEP cases are generally considered to involve INTENTIONAL discrimination, not disparate impact. Cabrera v. Alvarez, 977 F.Supp.2d 969 (N.D. CA 2013), Title VI and Fair Housing Act (requests for translator assistance and hostile comments about needing to learn English is evidence of intentional discrimination)



LEP Cases are Mostly Intentional Discrimination

- LEP cases are generally considered to involve INTENTIONAL discrimination, not disparate impact. That means claims that can be litigated under Title VI and the Fair Housing Act
- Cabrera v. Alvarez, 977 F.Supp.2d 969 (N.D. CA 2013), Title VI and Fair Housing Act (denial of requests for translator assistance and hostile comments about needing to learn English are evidence of intentional discrimination; false allegations of undocumented status also point to national origin discrimination)
- Evidence failed to support an impact claim or a differential treatment claim



Other Examples of Intentional Discrimination

- Requiring residents or applicants only to communicate with landlord in English, including notices and advertisement
- Prioritizing requests from English speakers
- Providing key notices (including new rules and recertification documents) only in English
- Failing to translate effectively
- Requirement that only English be spoken on the property
- Preferring transactions with persons speaking one language but not another language
- Lack of access to important information on websites and otherwise publicly available, e.g. announcements that waiting lists are opening



Emerging Issue: Website Access

- Address the language preference correctly—does the translation make sense and offer a culturally relevant communication?
- How easy is access to locate? (upper right side of English page)
- Translate documents linked to website
- Offer the same or similar experience regardless of language including content and functionality; integrate operations
- Provide info that tells user navigation is to an English only site or needs special program or access (“en ingles”)
- Market in language, reach out in language
 - <https://digital.gov/resources/top-10-best-practices-for-multilingual-websites/>



Emerging Issue: Lending Transactions and Language Access

- Lending transactions, where the loan is secured by a dwelling, are covered by the Fair Housing Act and by the Equal Credit Opportunity Act
- ECOA includes discrimination based on national origin and is be interpreted consistently with the Fair Housing Act interpretations
- Emerging issues relating to how lenders treat people who do not read or speak English well or at all.
- Westchester Residential Opportunities report summarizes barriers to Latino borrowers with LEP: <https://wroinc.org/report-raises-concerns-about-the-availability-of-mortgage-lending-to-hispanic-borrowers-with-limited-english-proficiency/>



Best Practices for Lenders

- Best practices for lenders:
 - Language line access at local or regional level depending on language(s) served
 - Bi-lingual staff
 - Make some materials available in non-English languages in community served for marketing
 - Provide equal access to products on request or based on need
 - Use software to translate key documents not otherwise available
 - Use of disclaimers if lending journey begins in language but can't be completed in language



Mortgage Lending Clearinghouse

- Federal Housing Finance Agency has a mortgage language translation clearinghouse
<https://www.fhfa.gov/MortgageTranslations>
- Uniform Residential Loan Application in English and Spanish (Fannie Mae 1003/Freddie Mac 065)
- Mortgage Assistance Application in English and Spanish (Fannie Mae/Freddie Mac Form 710)
- CFPB Home Loan Toolkit



Glossary

- Expanded glossary of English to Spanish and Spanish to English lending terms agreed to by CFPB, FHFA, Fannie Mae, and Freddie Mac
 - Word and term searchable
 - <https://www.fhfa.gov/MortgageTranslations/Pages/glossary.asp>
X



Consumer Borrower Information in Language

- Website includes downloadable consumer materials in English and Spanish
- <https://www.fhfa.gov/MortgageTranslations/Pages/EducationMaterials.aspx>