

U.S. Department of Housing and Urban Development

Limited English Proficiency

Policy...Plan...Practice

Presentation by:

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Limited English Proficiency

- Most individuals living in the U.S. read, write, speak and understand English. There are many, however, for whom English is NOT their primary language.
- Think about how you would feel if you lived in a place where your ability to obtain housing, financial assistance, assistance from law enforcement or other important life benefits were cut off only because you could not speak, read or understand the language.

Overview

- POLICY – Applicable Laws
- PLAN – 4 Factor Analysis & Safe Harbor
- PRACTICE – Monitoring and Updating

Part 1

POLICY

Section 601 of Title VI the Civil Rights Act of 1964 (LEP Statutory Authority)

- “No person in the United States 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 financial assistance.”

Lau vs. Nichols (1974)

- The U.S. Supreme Court stated that one type of national origin discrimination *is* discrimination based on a person's *inability* to speak, read, write, or understand English.
- Note: The case relied on Section 601 of the Civil Rights Act of 1964 and not the 14th amendment.

Executive Order 13166

(Issued in the Federal Register 65 FR 50121 on August 16, 2000)

- Mandated improved access to federally assisted programs and activities for individuals who, as a result of national origin, are limited in their English proficiency.
- Directed Federal agencies to publish guidance on how their recipients can provide access to LEP persons.

U.S. Department of Justice

- Supported implementation of E.O 13166 and issued guidance regarding “Enforcement of Title VI of the Civil Rights Act of 1964, National Origin Discrimination Against Persons with Limited English Proficiency.” (Aug. 16, 2000)
- USDOJ adopts final guidance, Federal Register at 65 FR 41455, June 18, 2002.

WHO Does LEP Apply To?

- All Federal Agencies (including HUD).
- Recipients of Federal Financial Assistance (FFA).
- FFA is broad and includes grants, training, use of equipment, donations of surplus property and more.
- Nearly all State and Local governments.
- Public Housing Authorities (PHAs).

WHO Does LEP Apply To? (cont.)

- Assisted Housing providers
- Fair Housing Initiative Program (FHIP)
- Fair Housing Assistance Program (FHAP)
- Other entities receiving funds directly, or indirectly, from HUD and other Federal agencies (i.e. sub-recipients, state grant recipients, etc.).

WHAT Does This Mean?

- Entities that are recipients of Federal Financial Assistance must develop a plan for persons of different national origins that cannot speak or read English to ensure that they have meaningful access to all portions of their program or activity, not just those portions that receive HUD funds (e.g. non-Federally funded programs).

Part 2

PLAN

HOW to Ensure Compliance?

- Federally Assisted Recipients...
- Are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities.
- To do this the recipient should:
 - (1) Conduct a four-factor analysis;
 - (2) Develop a written Language Assistance Plan (LAP) (optional); and
 - (3) Provide appropriate language assistance.

Four Factor Analysis

(Federal Register/Vol. 72, No. 13/January 22, 2007, p. 2748)

- Federally Assisted Recipients should conduct a four (4) factor analysis that will assist in determining the reasonableness of language assistance based on:
 1. Number or proportion of LEP persons in the population to be served.
 2. Frequency with which LEP persons come into contact with the program activity or service.
 3. Importance of the service, information, program, and/or activity.
 4. Resources, financial and human, available to the recipient.

Developing the Plan...

- Obtain demographic data about applicants, tenants, and participants through census information, survey or other methods.
- Utilize local advocacy groups and organizations.
- Find services that provide interpretation and translation.
- Make organizational changes and assign responsibilities.

Developing the Plan (Cont.)

- Written policy with clear goals.
- Seek staff involvement.
- Establish performance and accountability measures for management and staff.
- Provide opportunity for input in the planning and revision stages.
- Document **EVERYTHING**.

Language Assistance Plan

- Written plan is not *required*, but is strong evidence of compliance.
- Identify LEP persons who need assistance (after four factor analysis).
- Adopt language assistance measures.
- Training of staff, especially those who have frequent contact with the public.
- Providing notice to LEP persons.
- Monitoring & updating the Language Assistance Plan (LAP).

Translation Safe Harbor

- What should be translated?
 - Vital and generic widely used written materials (intake forms, complaint/hearing forms, eviction notices, decrease in benefits, leases, etc.).
 - In languages of targeted LEP groups.
 - If a recipient provides written translations under these circumstances, it shall be considered strong evidence of compliance with its obligations.
 - Failure to provide written translations DOES NOT necessarily mean there is noncompliance.

Safe Harbor (cont.)

- **It shall be strong evidence of compliance when recipient provides:**
- Written translations in each language that constitutes 5% or 1000 persons, whichever is less, of the population of eligible persons to be served or likely to be encountered; or
- If there are fewer than 50 persons in a language group that reaches the 5% trigger, then recipient provides written notice of their right to receive competent oral interpretation of the written materials, free of cost.
- There is **NO** safe harbor for oral interpretation. Reasonable availability is expected based on the four factor analysis.

LEP/LAP Considerations

- Competence of interpreter or translation services (certifications, age, relation to LEP person, etc.).
- Training of staff/Bilingual staff.
- Posting signs in common areas.
- Advertising language services in outreach documents.
- Partnering with LEP grassroots, faith-based organizations, and schools.
- Using telephone voicemail menu.
- Providing notice on Non-English radio and TV.

Part 3

PRACTICE

Monitoring and Updating

- Recipients should have a process for:
 - Determining whether new documents, changes in programs, services and activities need to be made accessible to LEP persons;
 - Determining whether changes in demographics, services or needs require annual reevaluation of LAP; and
 - Seeking feedback from the community the plan serves (advocacy groups serve vital role).

Reasonableness

- HUD expects grantees to extend reasonable efforts to afford persons with limited English proficiency meaningful access to its programs and services.
- HUD has issued *guidance*, not regulations in this area. This means that there is no list of specific things that *must* always be done.
- Bottom Line: In looking at the totality of the efforts taken in this area, would a reasonable person believe that the grantee is seriously attempting to fulfill its obligations under Title VI.

Advocacy Organizations

- Partnering with local governments can make translations services more responsive to the populations you serve.
- Ensure that local governments are aware of their obligations to provide meaningful access for persons with limited English proficiency.
- Assist local government with determining what populations are in need of assistance. Many times these groups may not be adequately reflected in “official” numbers such as census data.

Brochures and Information on LEP

Link to HUD website for Single Family
<http://www.hud.gov/offices/ftheo/lep.xml#SingleFamily22>



Technical Assistance

- For information regarding LEP obligations, resources, training materials and more, go to:
<http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>
- For technical assistance contact: Michele Roundtree, Equal Opportunity Specialist, Office of Fair Housing and Equal Opportunity, Louisville Field Office, 502-618-8148

POLICY...

PLAN...

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