

Housing Rights of Limited English Proficient Survivors

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OCTOBER 20, 2015

HOUSING JUSTICE

National Housing Law Project

GoToWebinar Interface

1. Viewer Window

2. Control Panel

The screenshot displays the GoToWebinar interface. On the left is the 'Viewer Window' titled 'Give Online Punch' by 'CB Presentations'. It includes contact information: Dial: (805) 879-4135, Access Code: 105-748-644, and Audio PIN: 74. A video thumbnail shows 'Corena Bahr, CEO and Founder, CB Presentations'. On the right is the 'Control Panel' with 'Audio Mode' set to 'Use Telephone'. It lists the same dial and access code, and highlights the 'Audio PIN: 74'. Below is a 'Questions' section with a 'Questions Log' and an input field for questions. The Windows taskbar at the bottom shows the time as 4:11 PM.

Housekeeping

3

- Materials were previously e-mailed to participants, and will be sent again (along with evaluations) after the webinar.
- Materials and a recording of today's webinar will be posted online at: www.nhlp.org/OVWgrantees
- MCLE certificates will be emailed to California attorneys.
- **Poll: Which best describes you?**

Goals for Today

4

- Discuss language access in the context of domestic violence
- Review protections for limited English proficient (LEP) survivors who reside in federally subsidized housing
- Discuss cases and settlements
- Outline best practices

Language Access and Domestic Violence Survivors: An Overview

5



Who are Limited English Proficient (LEP) Persons?

6

- “Persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient.” (HUD LEP Guidance)
 - Limited ability to communicate in English is tied to one’s national origin
- Persons who speak English “less than very well”
 - Phrase that has been used by Census Bureau
- Census estimates place U.S. LEP population at 8.6% of individuals aged 5+
 - Approximately 25 million persons

Limited English Proficiency and DV Survivors

7

- Immigrant women are disproportionately impacted by domestic violence (HUD memo 2011)
 - <http://portal.hud.gov/hudportal/documents/huddoc?id=FHEODomesticViolGuidEng.pdf>
- Abusers have been known to prevent immigrant survivors from learning English in an attempt to maintain control.
 - *See, e.g.,* Safe Voices, “Refugee & Immigrant Communities,” available at: <http://www.safevoices.org/refugee.php>
- National Immigrant Women’s Advocacy Project issued a report detailing challenges faced by LEP survivors.
 - <http://www.niwap.org/reports/Police-Response-U-Visas-Language-Access-Report-4.6.13.pdf>

LEP and Domestic Violence Survivors: NIWAP Study (2013)

8

- Responding police officers could not communicate with LEP survivors and therefore would often fail to complete a police report despite visible signs of abuse.
- Responding officers would sometimes only converse with an English-speaking abuser and not the survivor.
- Responding officers would seek interpretation assistance from friends, relatives, neighbors, or minor children.

Examples of Housing Issues for LEP Survivors

9

- A building manager requires an LEP survivor's child to act as an interpreter.
- An LEP survivor is not provided with a translated domestic violence certification form.
- An LEP survivor is evicted without receiving translated notice of her rights under VAWA 2013.

Federal Legal Authority

10



Federal Legal Authority

11

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Fair Housing Act, 42 U.S.C. § 3601, *et seq.*
- *Lau v. Nichols*, 414 U.S. 563 (1974)
- Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 Fed. Reg. 50,121 (Aug. 16, 2000)
- HUD, List of Federally Assisted Programs, 69 Fed. Reg. 68,700 (Nov. 24, 2004)

Federal Legal Authority (cont.)

12

- HUD, “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 72 Fed. Reg. 2732 (Jan. 22, 2007)
- USDA, “Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency,” 79 Fed. Reg. 70,771 (Nov. 28, 2014)
- Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11(d) (federal housing protections)

Title VI of the Civil Rights Act of 1964

13

Title VI:

- 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

Title VI: *Lau v. Nichols*

14

- U.S. Supreme Court case
 - 414 U.S. 563 (1974)
- Court found that denial of language assistance to LEP students deprived them of opportunity to participate in educational programs.
- *Lau* established the link between the denial of meaningful language access and national origin discrimination under Title VI.

Title VI: Executive Order 13166

15

- Signed by President Clinton in 2000
- Directs federal agencies to:
 - Create language access plans
 - Create guidance for federally assisted programs regarding implementation of meaningful language access policies
 - Work with LEP persons and their representatives when determining how to provide meaningful language access

Title VI: Who Has Language Access Obligations?

16

- 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 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.
- Applicability of Title VI when part of a development receives federal financial assistance

Title VI: Who Has Language Access Obligations?

17

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 • 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)

Ana

18

- Over the past few months, Ana's abuser has been stealing the money she needs to make rent payments. As a result, Ana becomes several months behind on the rent for her apartment.
- Ana receives an eviction notice, in English, which she cannot read because she reads and speaks Spanish only.
- **Poll: Has a Title VI violation occurred?**

Ana (continued)

19

- Answer: It depends.
- You would need to find out whether Ana’s housing receives any federal financial assistance.
 - Recipients of federal financial assistance are subject to Title VI requirements.
- If Ana’s housing does receive federal financial assistance, it’s likely that a Title VI violation occurred here – but, this determination depends on additional factors, which we’ll discuss.
- If there is no federal financial assistance, check to see if there are any state or local protections that may apply.

HUD LEP Guidance

20

- 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: Four-Factor Analysis

21

- Factor 1: Number of LEP persons in the area served, or that would be served if provided meaningful language access
- Factor 2: Frequency of contact with LEP persons
- Factor 3: Importance of program/activity
- Factor 4: Costs of providing language assistance and available resources

HUD LEP Guidance: Oral Interpretation

22

- 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).
- Guidance states that the quality/accuracy of language assistance in a women’s shelter should be “extraordinarily high.”
- Issues with utilizing family, friends, informal interpreters
 - Conflict of interest, competency, and privacy concerns
 - Example of DV incident: Guidance calls use of family/informal interpreters inappropriate

HUD LEP Guidance: Written Translation

23

- 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

Examples of Vital Documents

24

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| <ul style="list-style-type: none"> • Leases <ul style="list-style-type: none"> Multifamily program model leases • Eviction/termination notices • Consent/complaint forms • Intake forms • Notices detailing rights, or the loss/denial/decrease in benefits or services | <ul style="list-style-type: none"> • Hearing notices • Notices informing LEP persons that free language assistance is available • Section 8 opt-out notices (Landlords leaving the Section 8 program) • Tenant rules |
|--|--|

HUD LEP Guidance: Safe Harbor

25

- 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

HUD LEP Guidance: Language Access Plans

26

- Language access plans (LAPs) address the following issues:
 - Identifying LEP individuals
 - How language assistance will be provided
 - Training
 - Notice regarding language assistance, outreach
 - Updates to the LAP

VAWA 2013 LEP Housing Protections

27

- VAWA 2013 provides expanded housing protections for survivors.
- Housing providers covered by VAWA 2013 will be required to provide notice describing VAWA rights, along with a VAWA self-certification form, in three instances:
 - Denial
 - Admission
 - Termination/Eviction
- Notice, together with the self-certification form, must be provided “in multiple languages” consistent with HUD LEP Guidance and E.O. 13166.
- HUD is currently finalizing the notice.
- Each federal agency with VAWA-covered housing programs is responsible for developing its own self-certification form.

USDA (RD) LEP Guidance

28

- Largely mirrors the HUD LEP Guidance
- Instructs funding recipients to:
 - Conduct a four-factor analysis
 - Develop a language access plan (LAP)
 - Translate vital documents
 - Provide oral interpretation
- Contains safe harbor provision for written translation

Fair Housing Act

29

- 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.

Cases Related to Limited English Proficiency

30



Enforcement of LEP Housing Rights

31

- Individual administrative complaints
 - http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint
- Secretary-initiated 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

Sandoval and Title VI

32

Alexander v. Sandoval, 532 U.S. 275 (2001)

- U.S. Supreme Court case involving question of whether Alabama had to translate driver's license exams.
- Court found that there was no private right of action to enforce disparate impact regulations issued pursuant to Title VI.
- Opinion did not reach merits of language access issue.
- Due to *Sandoval*, private plaintiffs cannot bring disparate impact claims under Title VI; however, private plaintiffs can still bring intentional discrimination claims under Title VI post-*Sandoval*.
- The federal government can still bring disparate impact claims.

Language Access Obligations Post-*Sandoval*

33

- In October 2001, Justice Department (DOJ) issued a memo affirming the validity of federal agencies' language access obligations under Title VI and E.O. 13166
 - Stated that E.O. 13166 remained in effect despite *Sandoval* decision
 - ✦ Memo:
 - <http://www.lep.gov/13166/Oct26memorandum.pdf>
- DOJ has issued subsequent memos regarding Title VI obligations.

Recent HUD/LEP Cases: Title VI

34

Recent agreements to settle Title VI complaints:

- Hazelton (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
- Additional examples in materials.

LEP Cases: Fair Housing Act

35

- Page Edmunds III (2015)
 - Discrimination charge by HUD where landlord did not want to rent to family with a household member perceived to be LEP
 - DOJ has 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 where landlord told plaintiff to “learn English.” However, court granted motion to dismiss on disparate impact claims.
- Additional examples in the materials.

Fay

36

- Fay, who is LEP, needs to request a transfer from her current public housing unit because of threats by her abusive ex-husband.
- When Fay arrives at the housing authority to inquire about moving units, a staff member tells her to ask her 12-year-old son, who speaks English fluently, to act as an interpreter.
- The staff person then told the son that his mother should really learn to speak English.
- **What LEP legal protections have been violated here, if any?**

Fay (cont.) – Likely Violations

37

- **Title VI violation**
 - HUD LEP Guidance
 - ✦ “In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate translations.”
 - Generally speaking, oral interpretation in some form should be made available.
- **FHA violation**
 - The staffer’s remark is likely a violation of the Fair Housing Act’s prohibition of national origin discrimination.

Best Practices for Serving LEP Survivors

38



LEP Best Practices for Housing & Service Providers

39

- **Avoiding asking family (especially minor children), friends, or untrained members of the community to provide interpretation or translation**
 - Serious concerns exist about accuracy of translation, translator bias, and confidentiality.
- **Having awareness of how cultural norms may impact interpretation**
 - Some survivors may be unwilling to discuss domestic violence or sexual assault with a male interpreter, or at all.

LEP Best Practices for Housing & Service Providers

40

- **Using free resources like “I Speak” cards to identify LEP individuals of non-widely spoken languages, or materials already translated by HUD**
- **Completing a four-factor analysis and written LAP**
- **Regularly updating and revisiting current language access policies based on changing populations and language needs**

Thank You!

41

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This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.