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## Limited English Proficiency (LEP) Frequently Asked Questions

### FREQUENTLY ASKED QUESTIONS ON THE FINAL LEP GUIDANCE

(As found in the Federal Register dated January 22, 2007.)

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- ▶ What are the obligations of HUD recipients if they operate in jurisdictions in which English has been declared the official language?
- ▶ Where can I find more information on LEP?

**Question:** Who are limited English proficient (LEP) persons?

**Answer:** For persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write, or understand. For purposes of Title VI and the LEP Guidance, persons may be entitled to language assistance with respect to a particular service, benefit, or encounter.

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**Question:** What is Title VI and how does it relate to providing meaningful access to LEP persons?

**Answer:** Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who are LEP can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination.

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**Question:** What do Executive Order (EO) 13166 and the Guidance require?

**Answer:** EO 13166, signed on August 11, 2000, directs all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Pursuant to EO 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the Department of Justice (DOJ) LEP Guidance apply to the programs and activities of federal agencies, including HUD. In addition, EO 13166 requires federal agencies to issue LEP Guidance to assist their federally assisted recipients in providing such meaningful access to their programs. This Guidance must be consistent with the DOJ Guidance. Each federal agency is required to specifically tailor the general standards established in DOJ's Guidance to its federally assisted recipients. On December 19, 2003, HUD published such proposed Guidance.

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**Question:** Who must comply with the Title VI LEP obligations?

**Answer:** All programs and operations of entities that receive financial assistance from the federal government, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements. 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 (69 FR 68700). Sub-recipients must also comply (i.e., when federal funds are passed through a recipient to a sub-recipient). As an example, 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. [24 CFR 1.2 (e)].

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**Question:** Does a person's citizenship and immigration status determine the applicability of the Title VI LEP obligations?

**Answer:** United States citizenship does not determine whether a person is LEP. It is possible for a person who is a United States citizen to be LEP. It is also possible for a person who is not a United States citizen to be fluent in the English language. Title VI is interpreted to apply to citizens, documented non-citizens, and undocumented non-citizens. Some HUD programs require recipients to document citizenship or eligible immigrant status of beneficiaries; other programs do not. Title VI LEP obligations apply to every beneficiary who meets the program requirements, regardless of the beneficiary's citizenship status.

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**Question:** What is expected of recipients under the Guidance?

**Answer:** 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 the four-factor analysis;
- (2) develop a Language Access Plan (LAP); and
- (3) provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options. All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP. HUD recognizes that some projects' budgets and resources are constrained by contracts and agreements with HUD. These constraints may impose a material burden upon the projects. Where a HUD recipient can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, refusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI. The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

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**Question:** What is the four-factor analysis?

**Answer:** Recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial

burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors: · The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services); · The frequency with which LEP persons come into contact with the program; · The nature and importance of the program, activity, or service provided by the program; and · The resources available and costs to the recipient. Examples of applying the four-factor analysis to HUD-specific programs are located in Appendix A of the LEP Final Guidance.

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**Question:** What are examples of language assistance?

**Answer:** Language assistance that a recipient might provide to LEP persons includes, but is not limited to:

- ▶ Oral interpretation services;
- ▶ Bilingual staff;
- ▶ Telephone service lines interpreter;
- ▶ Written translation services;
- ▶ Notices to staff and recipients of the availability of LEP services; or
- ▶ Referrals to community liaisons proficient in the language of LEP persons.

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**Question:** What is a Language Access Plan (LAP) and what are the elements of an effective LAP?

**Answer:** After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient may develop an implementation plan or LAP to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include:

- ▶ Identifying LEP persons who need language assistance and the specific language assistance that is needed;
- ▶ Identifying the points and types of contact the agency and staff may have with LEP persons;
- ▶ Identifying ways in which language assistance will be provided; · Outreach effectively to the LEP community;
- ▶ Training staff;
- ▶ Determining which documents and informational materials are vital;
- ▶ Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
- ▶ Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);

- ▶ Providing interpreters for large, medium, small, and one-on-one meetings;
- ▶ Developing community resources, partnerships, and other relationships to help with the provision of language services; and
- ▶ Making provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.

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**Question:** What is a vital document?

**Answer:** A vital document is any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Whether or not a document (or the information it solicits) is "vital" may depend 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. For instance, applications for auxiliary activities, such as certain recreational programs in public housing, would not generally be considered a vital document, whereas applications for housing would be considered vital. However, if the major purpose for funding the recipient were its recreational program, documents related to those programs would be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

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**Question:** How may a recipient determine the language service needs of a beneficiary?

**Answer:** Recipients should elicit language service needs from all prospective beneficiaries (regardless of the prospective beneficiary's race or national origin). If the prospective beneficiary's response indicates a need for language assistance, the recipient may want to give applicants or prospective beneficiaries a language identification card (or "I speak" card). Language identification cards invite LEP persons to identify their own language needs. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both Vietnamese and English, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak" card can be downloaded. Download the "I speak" card [here](#). The State of Ohio Office of Criminal Justice Services, the National Association of Judiciary Interpreters and Translators, the Summit County Sheriff's Office, and the American Translators Association have made their language identification card available. View the language identification card [here](#).

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**Question:** How may a recipient's limited resources be supplemented to provide the necessary LEP services?

**Answer:** A recipient should be resourceful in providing language

assistance as long as quality and accuracy of language services are not compromised. The recipient itself need not provide the assistance, but may decide to partner with other organizations to provide the services. In addition, local community resources may be used if they can ensure that language services are competently provided. In the case of oral interpretation, for example, demonstrating competency requires more than self-identification as bilingual. Some bilingual persons may be able to communicate effectively in a different language when communicating information directly in that language, but may not be competent to interpret between English and that language.

In addition, the skill of translating is very different than the skill of interpreting and a person who is a competent interpreter may not be a competent translator. To ensure the quality of written translations and oral interpretations, HUD encourages recipients to use members of professional organizations. Examples of such organizations are: national organizations, including American Translators Association (written translations), National Association of Judicial Interpreters and Translators, and International Organization of Conference Interpreters (oral interpretation); state organizations, including Colorado Association of Professional Interpreters and Florida Chapter of the American Translators Association; and local legal organizations such as Bay Area Court Interpreters.

While HUD recommends using the list posted on the official LEP website, its limitations must be recognized. Use of the list is encouraged, but not required or endorsed by HUD. It does not come with a presumption of compliance. There are many other qualified interpretation and translation providers, including in the private sector.

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**Question:** May recipients rely upon family members or friends of the LEP person as interpreters?

**Answer:** Generally, recipients should not rely on family members, friends of the LEP person, or other informal interpreters. In many circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Therefore, such language assistance may not result in an LEP person obtaining meaningful access to the recipients' programs and activities. However, when LEP persons choose not to utilize the free language assistance services expressly offered to them by the recipient but rather choose to rely upon an interpreter of their own choosing (whether a professional interpreter, family member, or friend), LEP persons should be permitted to do so, at their own expense. Recipients may consult HUD LEP Guidance for more specific information on the use of family members or friends as interpreters. While HUD guidance does not preclude use of friends or family as interpreters in every instance, HUD recommends that the recipient use caution when such services are provided.

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**Question:** Are leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts when they are in languages other than English?

**Answer:** Generally, the English language document prevails. The HUD translated documents may carry the disclaimer, "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document."

Where both the landlord and tenant contracts are in languages other than English, state contract law governs the leases and rental agreements. HUD does not interpret state contract law. Therefore, questions regarding the enforceability of housing documents of a legal nature that are in languages other than English should be referred to a lawyer well-versed in contract law of the appropriate state or locality. Neither EO 13166 nor HUD LEP Guidance grants an individual the right to proceed to court alleging violations of EO 13166 or HUD LEP Guidance.

In addition, current Title VI case law only permits a private right of action for intentional discrimination and not for action based on the discriminatory effects of a recipient's practices. However, individuals may file administrative complaints with HUD alleging violations of Title VI because the HUD recipient failed to take reasonable steps to provide meaningful access to LEP persons.

The local HUD office will intake the complaint, in writing, by date and time, detailing the complainant's allegation as to how the HUD recipient failed to provide meaningful access to LEP persons. HUD will determine jurisdiction and follow up with an investigation of the complaint.

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**Question:** Who enforces Title VI as it relates to discrimination against LEP persons?

**Answer:** Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act of 1964. To the extent that a recipient's actions violate Title VI obligations, then such federal agencies will take the necessary corrective steps. The Secretary of HUD has designated the Office of Fair Housing and Equal Opportunity (FHEO) to take the lead in coordinating and implementing EO 13166 for HUD, but each program office is responsible for its recipients' compliance with the civil-rights related program requirements (CRRPRs) under Title VI.

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**Question:** How does a person file a complaint if he/she believes a HUD recipient is not meeting its Title VI LEP obligations?

**Answer:** If a person believes that a HUD federally assisted recipient is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD's local Office of FHEO. For contact information of the local HUD office, go to the HUD website or call the housing discrimination toll free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY).

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**Question:** What will HUD do with a complaint alleging noncompliance with

## Title VI obligations?

**Answer:** HUD's Office of FHEO will conduct an investigation or compliance review whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI obligations by one of HUD's recipients. If HUD's investigation or review results in a finding of compliance, HUD will inform the recipient in writing of its determination. If an investigation or review results in a finding of noncompliance, HUD also will inform the recipient in writing of its finding and identify steps that the recipient must take to correct the noncompliance. In a case of noncompliance, HUD will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD may then secure compliance by:

- (1) terminating the financial assistance of the recipient only after the recipient has been given an opportunity for an administrative hearing; and/or
- (2) referring the matter to DOJ for enforcement proceedings.

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**Question:** How will HUD evaluate evidence in the investigation of a complaint alleging noncompliance with Title VI obligations?

**Answer:** Title VI is the enforceable statute by which HUD investigates complaints alleging a recipient's failure to take reasonable steps to ensure meaningful access to LEP persons. In evaluating the evidence in such complaints, HUD will consider the extent to which the recipient followed the LEP Guidance or otherwise demonstrated its efforts to serve LEP persons. HUD's review of the evidence will include, but may not be limited to, application of the four-factor analysis identified in HUD LEP Guidance. The four-factor analysis provides HUD a framework by which it may look at all the programs and services that the recipient provides to persons who are LEP to ensure meaningful access while not imposing undue burdens on recipients.

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**Question:** What is a "safe harbor"?

**Answer:** A "safe harbor," in the context of this guidance, means that the recipient has undertaken efforts to comply with respect to the needed translation of vital written materials. If a recipient conducts the four-factor analysis, determines that translated documents are needed by LEP applicants or beneficiaries, adopts an LAP that specifies the translation of vital materials, and makes the necessary translations, then the recipient provides strong evidence, in its records or in reports to the agency providing federal financial assistance, that it has made reasonable efforts to provide written language assistance.

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**Question:** What "safe harbors" may recipients follow to ensure they have no compliance finding with Title VI LEP obligations?

**Answer:** HUD has adopted a "safe harbor" for translation of

written materials. The Guidance identifies actions that will be considered strong evidence of compliance with Title VI obligations. Failure to provide written translations under these cited circumstances does not mean that the recipient is in noncompliance.

Rather, the "safe harbors" provide a starting point for recipients to consider:

- ▶ Whether and at what point the importance of the service, benefit, or activity involved warrants written translations of commonly used forms into frequently encountered languages other than English;
- ▶ Whether the nature of the information sought warrants written translations of commonly used forms into frequently encountered languages other than English;
- ▶ Whether the number or proportion of LEP persons served warrants written translations of commonly used forms into frequently encountered languages other than English; and
- ▶ Whether the demographics of the eligible population are specific to the situations for which the need for language services is being evaluated. In many cases, use of the "safe harbor" would mean provision of written language services when marketing to the eligible LEP population within the market area. However, when the actual population served (e.g., occupants of, or applicants to, the housing project) is used to determine the need for written translation services, written translations may not be necessary.

The table below sets forth "safe harbors" for written translations.

<b>Size of Language Group</b>	<b>Recommended Provision of Written Language Assistance</b>
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 <i>and</i> more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries <i>and</i> 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.

When HUD conducts a review or investigation, it will look at the total services the recipient provides, rather than a few isolated instances.

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**Question:** Is the recipient expected to provide any language assistance to

persons in a language group when fewer than 5 percent of the eligible population and fewer than 50 in number are members of the language group?

**Answer:** HUD recommends that recipients use the four-factor analysis to determine whether to provide these persons with oral interpretation of vital documents if requested.

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**Question:** Are there "safe harbors" provided for oral interpretation services?

**Answer:** There are no "safe harbors" for oral interpretation services. Recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP (depending on the circumstances, reasonable oral language assistance might be an in-person interpreter or telephone interpreter line).

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**Question:** Is there a continued commitment by the Executive Branch to EO 13166?

**Answer:** There has been no change to the EO 13166. The President and Secretary of HUD are fully committed to ensuring that LEP persons have meaningful access to federally conducted programs and activities.

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**Question:** Did the Supreme Court address and reject the LEP obligation under Title VI in *Alexander v. Sandoval* [121 S. Ct. 1511 (2001)]?

**Answer:** The Supreme Court did not reject the LEP obligations of Title VI in its *Sandoval* ruling. In *Sandoval*, 121 S. Ct. 1511 (2001), the Supreme Court held that there is no right of action for private parties to enforce the federal agencies' disparate impact regulations under Title VI. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates Title VI regulations, a private party may not bring a lawsuit under those regulations to enjoin Alabama's policy. *Sandoval* did not invalidate Title VI or the Title VI disparate impact regulations, and federal agencies' (versus private parties) obligations to enforce Title VI. Therefore, Title VI regulations remain in effect. Because the legal basis for the Guidance required under EO 13166 is Title VI and, in HUD's case, the civil rights-related program requirements (CRRPR), dealing with differential treatment, and since *Sandoval* did not invalidate either, the EO remains in effect.

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**Question:** What are the obligations of HUD recipients if they operate in jurisdictions in which English has been declared the official language?

**Answer:** In a jurisdiction where English has been declared the official language, a HUD recipient is still subject to federal nondiscrimination requirements, including Title VI requirements as they relate to LEP persons.

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**Question:** Where can I find more information on LEP?

**Answer:** You should review HUD's LEP Guidance. Additional information may also be obtained through the federal-wide LEP website and HUD's LEP website. HUD also intends to issue a Guidebook to help HUD recipients develop an LAP.

A HUD-funded recipient who has questions regarding providing meaningful access to LEP persons may contact Pamela D. Walsh, Director, Program Standards and Compliance Division, HUD/FHEO, at (202) 402-2288. You may also email your question.

Content updated May 4, 2007

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