

Questions and Answers from February 28, 2007.
Limited English Proficiency Meeting

PART I. General Questions:

Question: What is the definition of the eligible service area?

Answer: Depending on the HUD and local program, the "eligible service area" could be the Metropolitan Statistical Area (MSA), the "local market area," the recipient's jurisdiction, the local neighborhood or a number of other localities with defined boundaries (e.g., highways, lakes, etc.). It is the area from which the program would expect to draw its applicants and beneficiaries. In a multifamily housing program, it would be the market area approved by HUD for the Affirmative Fair Housing Marketing Plan; for a Public Housing Agency (PHA), it would be the geographic area approved by HUD as the recipients' jurisdiction; for a Community Development Block Grant Program (CDBG), it would be the Entitlement Jurisdiction (EJ). For subrecipients in these programs, it would depend on their contract with the recipient organization.

Question: Is there a deadline to develop an LEP plan?

Answer: There is no requirement to develop an LEP Plan or Language Assistance Plan (LAP). Therefore, there is no official deadline for developing one. However, the guidance became effective on March 5, 2007. Whether a HUD federally-assisted recipient has an LAP or not, they are responsible for serving LEP persons in accordance with Title VI of the Civil Rights Act of 1964. A HUD review of a recipient will look at the *totality* of its program to date; whether the recipient has taken "reasonable steps" in providing equal access to persons who are LEP, and whether they have conducted a four-factor analysis to determine need.

Question: Are housing providers allowed to ask individuals or families if they are LEP?

Answer: Housing providers may ask individuals or families whether they are LEP so long as the questions are ***asked consistently of everyone***. HUD strongly encourages recipients to allow individuals or families identify themselves as LEP.

Question: Which lease is executed; the English or translated lease?

Answer: The English lease is the "official" lease. Whether or not a translated lease is signed (for instance, as evidence that it was provided to the tenant), it should be clearly noted, "This lease is for information purposes only. The English lease is operative."

Question: What documentation is required to demonstrate undue administrative or financial burden in regard to translations?

Answer: Some documentation that may demonstrate undue administrative or financial burden may include:

- Four Factor Analysis;
- LAP;
- Comparison of the estimated cost of providing written translations to persons who are LEP with your organization's operating budget for outreach;
- Efforts in collaboration with local housing providers in providing language services; and
- Organization's annual budget along with income and expense plans.

Question: What is the consideration for those states or localities that require all documents to be provided in an alternative language if one document is provided in an alternative language? Will there be any consideration due to undue financial burden?

Answer: Under normal circumstances, Federal statute and regulations would trump the state or local statutes and requirements. Therefore, HUD will have to evaluate these kinds of statutes and requirements on a case by case basis to determine whether there are any conflicts.

Question: Are private landlords required to follow the LEP guidelines?

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 it would be advisable for them to follow HUD's LEP guidance.

The LEP guidance would also apply to 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.

PART II. Questions for the Office of Fair Housing and Equal Opportunity:

Question: Can a person file a housing discrimination complaint based on national origin because the landlord did not translate notices sent to all tenants in their native language(s)?

Answer: There is nothing to stop anyone from filing a housing discrimination complaint. If such a complaint were investigated, any decision would be based on the recipient's total program. Factors that would be considered in the investigation include whether the four-factor analysis was conducted, what the results of that analysis were, whether the safe harbor for translations was met for the specific language of concern, whether the notice is vital to the tenant's interests, and what other interpretations and translations the recipient is providing.

Question: Do FHAP agencies have the responsibility to serve as interpreters or to translate documents into the native language of the complainant filing a complaint with their agency?

Answer: FHAP Agencies are HUD recipients. They are subject to the requirements of Title VI, including LEP requirements.

Question: Will HUD provide translated compliance agreements when a complaint has been made based on failure of a recipient to provide translation and/or interpretation?

Answer: HUD will not be providing translations of voluntary compliance agreements (VCA) because the VCA is the legal document between HUD and the recipient. However, a summary of the VCA may be provided by the recipient in the affected languages.

PART III. Questions for the Office of Community Planning and Development:

Question: What are the requirements for subrecipients of CDBG and HOME funds? As a participating jurisdiction, must we require our sub-recipients to have an LEP Plan?

Answer: CDBG and State fund recipients are obligated under 24 CFR 91.105 (a) (2)(ii), and 24 CFR 91.115 (b)(3)(iii) to provide language services for the citizen participation process. The regulations provide that for CDBG recipients, "...[a] jurisdiction also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities." For State recipients, "the citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of a public hearing where a significant number of non-English speaking residents can be reasonably expected to participate."

The obligations ensuring equal access to services by non-English speaking residents are transferred to CDBG and State subrecipients.

Developing an LAP is one of the steps that recipients and subrecipients could take to demonstrate that they have taken "reasonable steps" to provide language services to persons who are LEP. Therefore, HUD highly encourages you and your subrecipients to have a written LAP.

Question: Is an owner of a project with HOME and/or CDBG funds required to do the analysis to determine how many LEP individuals are in its jurisdiction, or should that come from the funding city or county? For example, there are likely to be many owners within a particular city, and it does not seem cost effective for each to do a separate population analysis.

Answer: Many states and local jurisdictions receive funding from other Federal agencies. HUD recipients should work collaboratively with state and local governments to determine whether there are LEP persons to be served. If there are, this information should be part of your jurisdiction's "Citizen Participation Plan." 24 CFR 91.115(b)(3)(iii) requires recipients to "...identify how the needs of non-English speaking residents will be met in case of a public hearing..." The recipients could provide this data to their subrecipients to use in administering their own programs.

Question: We have non-profit organizations that we fund with both CDBG and HOME dollars to do capital construction and rehabilitation. What are the limitations to these nonprofits in the population groups they serve – especially when it comes to serving undocumented residents?

Answer: If an applicant or beneficiary is determined to meet the regulatory program requirements, the recipient or subrecipient is not responsible for any further review.

PART IV. Questions for the Office of Multifamily Housing

Question: If a private developer has multiple projects and only one project receives HUD funds, will the guidelines apply to those projects that do not receive HUD funds?

Answer: The answers to all questions of this type are the same. If a project is subject to Title VI of the Civil Rights Act of 1964, which applies to recipients of federal funding, it is subject to LEP. If it is not subject to Title VI, it is not subject to LEP. Title VI is applicable to programs with HUD funding. Multifamily Housing Projects that receive absolutely no benefit from federal funding would not be subject to Title VI, including LEP. Adequate separation of funds for the HUD-assisted project is already required.

Question: For properties that operate at a break-even status, how will funds be obtained to pay for the cost of interpreters? Unfortunately rent increases are not possible at many properties due to Rent Comparability Study (RCS) limitations.

Answer: The starting point for any recipient is to conduct an individualized self-assessment that balances the following four factors: (1) the number or proportion of LEP persons served or encountered in the eligible service area; (2) the frequency with which LEP persons come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the grantee/recipient and costs. Recipients should keep in mind that available financial resources are one of the factors that they will analyze in determining their LEP obligations. It is possible that based on this four-factor assessment, *the recipients may not need to provide written translation of documents.*

Question: During a mass re-certification, is it the intent of the LEP regulation to provide interpreters for up to two hours per tenant, especially when there are three or more languages spoken? Due to privacy issues, it is not feasible to have translations with a group take place for certification of income and assets. Will the 120-day time period for re-certifications be extended to accommodate this additional requirement?

Answer: First, let's clarify that there is no LEP **regulation**; there is HUD **guidance**. The owner/agent's own four-factor analysis and LAP would determine the answer to this question. For example, it may be feasible to have one public meeting for each LEP language in the project to explain the re-certification process. The recipient could then work with each tenant for a much shorter period of time.

Question: Will contract administrators such as local finance agencies be responsible for translating their documents that they identify as vital documents?

Answer: The criteria are the same for all agencies. If the agency is a recipient or subrecipient of federal funds, it is subject to Title VI and is advised to follow the LEP guidance. Whether or not it is advisable for them to translate specific documents depends on the four-factor analysis, whether they have met the safe harbor, and whether they have outside resources with which they can share translations.

Question: Is the Guide now available in Spanish (which includes the standard income/family verification forms)?

Answer: HUD assumes that you are referring to the Multifamily Occupancy Guidebook. HUD has no plan to translate this Guidebook into Spanish because the guidance is used by recipients, not by the beneficiaries. In the future, HUD may consider translating the income/verification forms, over time, into other languages.

Question: Please specify all vital documents that must be translated for annual certifications.

Answer: Thus far, the Office of Multifamily Housing Programs has identified its four model leases as vital documents: Model Lease for Subsidized programs (Family Model Lease); Model Lease for Section 202/8 or Section 202 PACS; Model Lease for Section 202 PRACS; Model Lease for Section 811 PRACS.

Question: Does HUD plan to incorporate its LEP guidance into the next revision of HUD Handbook 4350.3, Rev. 1 and other occupancy handbooks and guidebooks?

Answer: Reference to LEP will be made in the forthcoming Change 3 of the Handbook. Additional guidance will be provided in future Handbook changes as we learn what issues need further explanation.

Question: Does HUD plan to translate the HUD 9887 and HUD 9887a?

Answer: These have not been determined to be “vital documents” and so there are no plans to translate these forms at this time.

PART V. Questions for the Office of Public and Indian Housing

Question: Is the Federal Privacy Act Notice and Authorization of Release of Information (HUD 9886) already translated and made available by HUD?

Answer: This form has been translated and will be made available shortly. ¹

¹ Call PIH to learn when it will be available.