




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

April 13, 2009

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

MEMORANDUM FOR: All FHEO Staff
FROM: 
Bryan Greene, General Deputy Assistant Secretary for
Fair Housing and Equal Opportunity, E1
SUBJECT: Guidance on the Rights Provided by Title VI of the Civil Rights
Act and the Fair Housing Act to Persons who are Limited English
Proficient

INTRODUCTION

The purpose of this memorandum is to provide guidance to FHEO staff on the rights provided by Title VI of the Civil Rights Act of 1964 (Title VI) and the Fair Housing Act to persons who, as a result of national origin, are limited in their English proficiency (LEP).

As background, the term “national origin” refers to the country where a person was born or the country from which his or her ancestors came. National origin discrimination occurs when individuals from some countries are treated differently than those from other countries. In the LEP context, national origin discrimination occurs when an individual is treated differently because of his/her limited English proficiency. National origin should not be confused with race or color, although national origin discrimination may occur in conjunction with race or color discrimination. National origin is a protected class under both the Fair Housing Act and Title VI.

The term “limited English proficient,” or “LEP,” refers to persons who do not speak English as their primary language and have a limited ability to read, write, speak, or understand English. The term is related to Executive Order 13166 and the LEP Guidance, which rest on the authority of Title VI. However, as discussed below, a person who, as a result of national origin, is LEP, may be protected under the Fair Housing Act’s national origin provisions with additional investigation.

There has been some confusion about the differences between Title VI and the Fair Housing Act and their prohibitions of discrimination against persons who, as a result of national origin, are LEP. This guidance will explain the protections that these statutes provide to persons who are LEP.

LEGAL AUTHORITIES

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act applies to recipients of Federal financial assistance. Title VI provides that no person shall “on the ground 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.” HUD’s Title VI regulations prohibit recipients of Federal financial assistance not only from committing intentional discrimination, but also from “...utilize[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin...” Thus, even if a policy or practice is neutral on its face, it may still be unlawful if it has the effect of discriminating against persons on one of those bases.

Fair Housing Act

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) makes it unlawful to discriminate because of race, color, religion, national origin, sex, disability, or familial status in the sale, rental or advertising of housing. Unlike Title VI, the Fair Housing Act applies to most housing and real estate-related transactions regardless of whether Federal financial assistance is involved.

Executive Order 13166

On August 11, 2000, President Clinton issued Executive Order (EO) 13166 based upon Title VI and its regulations and their prohibition of national origin discrimination and discriminatory effects. EO 13166 directs federal agencies that provide Federal financial assistance to improve access to federally conducted and federally assisted programs for persons who, as a result of national origin, are LEP. EO 13166 directs each agency to issue guidance to its recipients that is consistent with the U.S. Department of Justice (DOJ) General Policy Guidance that was issued pursuant to the EO.

The DOJ General Policy Guidance contained no new requirements. Rather, the guidance clarified “existing statutory and regulatory requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.”

HUD’s LEP GUIDANCE

Overview

On January 22, 2007, HUD issued its Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance). The LEP Guidance provides a procedure for recipients to identify how they can ensure meaningful access to HUD programs for persons who, as a result of national origin, are LEP. The LEP Guidance provides four factors that recipients should balance as they assess the needs of LEP persons:

1. The number or proportion of LEP persons served or encountered in the eligible service area.
2. The frequency with which LEP individuals come into contact with the program.
3. The nature and importance of the program, activity, or service provided by the program.
4. The resources available to the recipient.

Based upon the four-factor analysis, a recipient decides what language assistance it is able to

provide and develops an implementation plan. The LEP Guidance suggests that a recipient write a Language Assistance Plan (LAP), and provides steps for designing an effective LAP. The LEP Guidance does not require that a recipient write a LAP as long as it can demonstrate that it is providing LEP persons with meaningful access to its programs.

GUIDANCE TO FHEO INVESTIGATORS

Since Title VI and the Fair Housing Act both prohibit national origin discrimination, there has been some confusion regarding how a LEP person's complaint is handled under each statute. This section provides FHEO field staff with some general principles for managing cases of alleged national origin discrimination when the facts involve LEP persons. This is intended as a brief supplement to previously issued HUD documents including, but not limited to, all relevant handbooks, bulletins and notices.

Overview

Because the LEP Guidance flows from Title VI, the obligation to provide meaningful access to programs and activities to persons who are limited in their English proficiency as a result of national origin applies only to recipients of Federal financial assistance. Title VIII's prohibition of national origin discrimination does not incorporate the recommendations found in the LEP Guidance. In instances where no Federal financial assistance is involved neither Title VI nor the LEP Guidance apply. Therefore, the LEP Guidance does not apply in a case involving a purely private landlord.

Determining the Existence of Federal Financial Assistance

When investigating either a Title VI or a Title VIII complaint with a LEP fact pattern, the investigator should make an initial determination of whether the respondent is a recipient of Federal financial assistance or a participant in a HUD program. As a threshold matter, this determines the applicability of Title VI and the LEP Guidance. The FHEO investigator should be able to trace this through sources within the Department, particularly the Offices of Public and Indian Housing (PIH) and Community Planning and Development (CPD). Other helpful resources include Programs of HUD: Major Grant, Assistance, and Regulatory Programs (available at <http://www.huduser.org>) or the Catalog of Federal Domestic Assistance (available at <http://www.cfda.gov>). The investigator may also determine whether the complainant is a beneficiary of a federally assisted program by asking the complainant questions such as: "Is your rent subsidized by any federal program?", "Are you required to verify your income in order to participate in this program?", or "Do you know if your housing provider receives funding from the federal government?" Because it is not always readily apparent whether a respondent receives federal assistance, investigators should seek assistance from OGC in appropriate circumstances.

Fair Housing Act Complaints

If the investigator determines that the respondent receives no Federal financial assistance, then Title VI and the LEP Guidance do not apply. However, even in cases involving private housing providers, there may be a violation of the Fair Housing Act's prohibition of national origin

discrimination involving an LEP complainant. Consider the following examples:

Example 1: The resident manager of an apartment complex harasses Hispanic families because of their inability to speak English and subjects them to higher rents.

Example 2: A landlord typically allows building residents to reserve the community room for activities. There are several languages spoken in the complex, and the landlord imposes an “English only” policy for use of the room when Russian speakers use the facility, but not when speakers of other languages use the facility.

Example 3: A landlord provides a Spanish-language rental application, but processes them differently from the English-language applications and requires a higher application fee from Hispanics.

In the above examples, the housing providers who do not receive HUD assistance may have violated the Fair Housing Act because they treated applicants or tenants from certain countries differently from those from other countries. Whereas a Title VI complaint involving LEP persons may be based solely on allegations that the respondent refused to translate vital documents or provide interpreters, a Title VIII complaint involving LEP persons would require other allegations of national origin discrimination and additional investigation in order to be actionable, and would not be based on the LEP Guidance. Investigators should not assume, however, that a Title VIII complaint of national origin discrimination is not actionable just because it starts with allegations of lack of translation or interpretation services.

Title VI Complaints

The existing Title VI regulations govern the Department’s LEP compliance efforts and enforcement scheme. When conducting a Title VI compliance review or investigating a complaint from an LEP person alleging that a recipient has not provided meaningful access to its programs, HUD will look at the totality of the circumstances. The investigator should examine: (1) evidence that the recipient considered the 4 factors described above in the LEP Guidance in determining how to serve their population; (2) what translation and interpretation services are available to the recipient; (3) whether the recipient has a language assistance plan or has otherwise articulated a process for providing meaningful access to its programs to persons who are LEP because of national origin; (4) what documents the recipient considered to be vital documents, and whether they are translated; (5) whether the recipient complies with the “safe harbor” provisions of the LEP Guidance; and (6) other pertinent information from a recipient. Whenever possible, Title VI violations should be resolved through informal voluntary means, with HUD providing technical assistance to the fullest extent practicable.

HUD Procedures

In cases where both Title VI and Title VIII apply, FHEO’s Processing Notice on Multi-Jurisdictional Complaints (Notice FHEO 96-1) requires that complaints be filed under all of the Department’s statutory authorities. Where a complaint is investigated under both authorities, and the parties enter into both a Voluntary Compliance Agreement (VCA) pursuant to Title VI and a

Conciliation Agreement pursuant to Title VIII, provisions related to language assistance should ordinarily be included in the VCA, but may also appear in the Conciliation Agreement. For example, if the parties agree that the respondent/recipient will conduct the four-factor analysis and develop a Language Assistance Plan, as described in the LEP Guidance, that agreement would be required to be memorialized in the VCA, and could be added to the Conciliation Agreement. While Title VI and the LEP Guidance do not apply in cases where there is no Federal financial assistance, parties who agree to include language assistance provisions in a Title VIII Conciliation Agreement may use the LEP Guidance as a resource for structuring such remedies.

Proper Characterization of HUD's LEP Guidance

The LEP Guidance was promulgated under the authority of EO 13166, which in turn is based upon the statutory authority of Title VI. The LEP Guidance merely provides additional assistance to recipients in meeting their pre-existing obligation under Title VI not to discriminate on the basis of national origin. The LEP Guidance does not contain new requirements, does not introduce a new theory of discrimination and does not create a new protected class. HUD staff should refer to the LEP Guidance and its provisions as "guidance," not as "requirements," "regulations" or "mandates," or similar terminology that mischaracterizes the document as a new directive. When conducting a Title VI investigation or compliance review that involves LEP, HUD staff should be clear that they are enforcing Title VI and its regulations, not the LEP Guidance.

CONCLUSION

For further information about Limited English Proficiency, see www.lep.gov. For further questions about this notice or HUD's LEP Guidance, please contact Pamela D. Walsh, Director, Office of Policy, Legislative Initiatives and Outreach, at 202-402-7017.