

The Limited English Proficiency Plan (LEPP) (for Housing that is NOT Federally-Assisted)

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental or financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex, disability, familial status or national origin.

A person's accent and his or her national origin are "inextricably intertwined." It is inconceivable that a housing decision that treats someone differently because he or she speaks English fluently but with an accent is anything but intentional discrimination because of national origin in violation of the Act. The same is true for housing-related policies or practices that treat persons with certain accents differently than persons with other accents.

Introduction

On September 15, 2016, the U.S. Department of Housing and Urban Development's (HUD's) Office of General Council issued **Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency**. This guidance examines how the Fair Housing Act applies to a housing provider's consideration of a person's limited ability to read, write, speak or understand English, or limited English proficiency (LEP), and how complaints of discrimination or disparate treatment concerning adverse housing actions will be evaluated.

Link to the **Guidance**: <https://www.hud.gov/sites/documents/LEPMEMO091516.PDF>

NOTE:

- The **Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency** applies to **ALL** housing covered under the Fair Housing Act, including federally-assisted housing that must fulfill these and additional requirements (see below).
- There may be state or local fair housing and/or consumer laws that impose additional requirements on housing providers. Examples:
 - The **California Translation Act** requires the translation of certain housing-related documents into specific languages.
 - **Massachusetts General Law G. L. c. 151B, § 4(6)(c)**, prohibits a managing agent from making "written or oral inquiry" into a person's National Origin. In one case, a leasing agent, intrigued by a person's accent simply asked, "Where are you from?" A complaint was filed, and the financial penalty was \$61,000.

Background

Limited English proficiency (LEP) is not a protected class under the Fair Housing Act. But, there is a close nexus between LEP, race and national origin because nearly all LEP persons are from non-English speaking countries and are Hispanic or non-white. Therefore, housing decisions that are based on a person's LEP generally relate to race or national origin.

In many cases brought by HUD's Office of Fair Housing and Equal Opportunity that involve LEP, the housing provider is compelled to adopt a **Limited English Proficiency Plan (LEPP)**. The LEPP is a policy and procedures document that defines measures a housing provider will take to prevent future discrimination against persons that are LEP. Logic suggests that housing providers should adopt a **Limited English Proficiency Plan** that describes how staff will appropriately address LEP persons as a preventative measure to avoid discrimination.

Additional Requirements for Federally-Assisted Housing

Programs and activities that receive federal financial assistance must also comply with the Fair Housing Act (Title VIII of the Civil Rights Act) regarding LEP. In addition, there is a host of additional documentation/planning steps and a requirement for ‘no cost’ meaningful access by LEP applicants and beneficiaries per Title VI of the Civil Rights Act of 1964. See 42 U.S.C. § 2000d et seq.; 24 C.F.R. § 1.4; Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 Fed. Reg. 50121 (Aug. 16, 2000).

HUD. See HUD’s 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. See U.S. Department of Agriculture’s (USDA’s) Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency, 79 Fed. Reg. 229 (Nov. 28, 2014). Also see USDA Rural Development’s Limited English Proficiency (LEP) Implementation Strategy for Federally Assisted Programs, published in 2016.

Examples of ‘assisted’ and ‘non-assisted’ housing (subject to change):

ASSISTED HOUSING NON-ASSISTED HOUSING

Public housing
Project-based Section 8
CDBG, HOME, HOPWA
National Housing Trust Fund
Continuum of Care
USDA/RD Programs Private housing
Private landlords with Section 8 tenants
FHA Project mortgage insurance
LIHTC

Some Examples of Practices to Avoid

1. Requirements involving citizenship or immigration status when it has the purpose or effect of discriminating on the basis of national origin.
2. Requiring all applicants and tenants to speak or learn English.
3. Banning tenants from speaking non-English languages on the property.
4. Terminating a conversation or telephone call because a person is not proficient in English.
5. Making disparaging statements concerning tenants speaking non-English languages.
6. Refusing to access free/low-cost language assistance or not allowing the client to have a friend or family member assist.
7. Refusing to provide translated documents that are readily available.
8. Refusing to allow a reasonable time for a person to have documents translated or interpreted.
9. Refusing to allow bilingual staff to provide language assistance.
10. Refusing to rent to or showing preference for speakers of certain non-English languages or speakers of English with certain accents.
11. Targeting individuals for unfair or illegal housing-related services who are limited English proficient or speak a particular language.

12. Requiring an English-speaker to cosign a lease.

Suggested Best Management Practices

1. Display the HUD Fair Housing poster in English and Spanish (and, other languages, as appropriate).

Because the Fair Housing poster is available in 19 languages [*Arabic, Bengali, Cambodian, Chinese, English, Farsi, French, Haitian Creole, Hindi, Hmong, Japanese, Khmer, Korean, Lao, Polish, Russian, Spanish, Tagalog, and Vietnamese*], it may be displayed in additional languages depending on the languages in a market and/or those encountered among applicants and tenants.

Go to: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/marketing

2. Have available language identification posters to assist a person in identifying their language if it is necessary.

Go to:

- A Census “**Language Identification Flashcard**” from which a client can select their language. <http://www.lep.gov/resources/ISpeakCards2004.pdf>
- Department of Homeland Security’s “**I speak...**” **Language Identification Guide**. <https://www.dhs.gov/xlibrary/assets/crcl/crcl-i-speak-booklet.pdf>

<https://www.dhs.gov/sites/default/files/publications/blue-campaign/materials/posters/bc-poster-18x24-ispeak.pdf>

3. Locate free or low-cost interpreters in the project area. [Contact local service organizations, colleges, schools, public offices, etc. for referrals.] Consider networking with other property managers and professional associations to compile lists of interpreters. Also, catalog the language skills of your own staff.
4. Consider adding bilingual abilities as a desirable skill when hiring new staff.
5. Allow LEP persons to have family members or friends to interpret. HOWEVER, this comes with an admonishment about using children as interpreters. A child’s knowledge of language and the full meaning of the words used in a lease, for example, would be limited and could trigger provisions of consumer protection laws.
6. Consider the cost-benefit of subscribing to a telephonic language service vendor (i.e. Language Line, Certified Languages International, CTS Language Link, etc.) that can assist in over 200 languages. While the per minute cost are very high, economical use of an interpreter’s time could help convert an LEP caller or visitor into a rent-paying tenant at a relatively low cost. At least, it would help eliminate terminating a call or conversation as the only other option. Most of these services offer a pay-per-use option.

A housing provider may want to limit telephonic interpreter use to a simple welcome and clarifying that a person should provide their own interpreter. In some markets that are more competitive, it may be worth investing more interpreter time into converting an applicant into a tenant or keeping a good tenant. Housing providers should consider using an interpreter when the discussion involves a lease violation. Yet, in these and other situations, housing providers may simply see the use of the interpreter as a way to offer good customer service.

7. Use a machine interpretation/translation option such as Google Translate, Microsoft, or other apps available for mobile smart devices. Some of these apps can assist in over 100 languages with speech output in several languages. While the output of these apps is not considered to be ‘competent’, it may help you communicate simple information including the option for a client to invite an interpreter to assist with communication.
8. Add a translation “tool” (such as Google Translate) to the website where your projects are marketed. This provides some level of translation so an LEP person might find information about a property more easily. Another, no-cost option in 34 states is to include information about a property (including vacant units) on www.socialserve.com that uses this translation feature. The Idaho Housing and Finance Association sponsors this as www.housingidaho.com.
9. Provide the “Please repair...” or a “Welcome to your new home!” pamphlet to LEP tenants that may help them communicate repair needs: <https://ifhcidaho.org/language-access-guide/helpful-language-assistance-tools-for-managers-of-assisted-and-non-assisted-housing/>.
10. Inform staff of the **Limited English Proficiency Plan**, reinforce it in corporate training, and support staff attendance at sponsored fair housing training.

Another best management practice would be to ask your staff to sign-off and acknowledge the **Limited English Proficiency Plan**. This will document efforts to implement these policies/procedures and can be helpful in establishing your intent in the event of a related fair housing complaint.

Intent

The following LEPP template is provided as a starting point for housing providers wishing to initiate appropriate actions and policies to help avoid discrimination and manage risk. It should be modified to suit the user’s needs.

The Limited English Proficiency Plan template was created in the spirit of helping all stakeholders impacted by the Fair Housing Act and related laws. We recognize that perceptions and interpretation of these laws vary. Ultimately, we are committed to a better understanding of real-world impediments, practices and opportunities to reduce injury, violations and related costs.

Waiver of Liability

This information is made available to housing providers by Intermountain Fair Housing Council for the general understanding of the Fair Housing Law regarding limited English proficiency and not for specific legal advice. By using the Limited English Proficiency Plan template and its guidance, you agree that 1) it is done solely at your discretion; 2) that no contractual relationship exists between you and the Intermountain Fair Housing Council; and, 3) that there is no substitute for seeking your own competent legal advice in these matters.

[for housing that is not federally-assisted]

LIMITED ENGLISH PROFICIENCY PLAN
for
(insert name of housing provider)

Limited English Proficiency Non-Discrimination Policy

(insert housing provider name) supports a welcoming climate and respect for all applicants and tenants, including those that are limited English proficient. It is the policy of (insert name of housing provider) to comply with the Fair Housing Act, 42 U.S.C. §§3601-19, by ensuring that dwellings owned, rented, managed and /or operated by (insert name of housing provider) are available for rent to all persons without regard to national origin. (insert name of housing provider) and its agents, contractors, and/or employees will not:

- A. Prohibit any person from renting a property because that person or someone in the person's household has limited proficiency in English.
- B. Provide different housing services or facilities, or offer different terms, conditions, or privileges when renting a property to a person because that person or a person in his or her household has limited proficiency in English.
- C. Advertise or make any statement that indicates a limitation or preference based on national origin.
- D. Intimidate, coerce, or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

Within five days after new employees, agents, or other persons acting under the direction of (insert name of housing provider) in the management or rental operations or in enforcing rules or regulations, will be provided with a copy of the **Limited English Proficiency Plan**.

Optional: Each principal, agent, employee or other person who acts under the direction of (insert name of housing provider) will sign a statement acknowledging that s/he has received and read this policy.

Definitions

Limited English proficiency - A person whose primary language is not English and who has a limited ability to read, write, speak, or understand English may be considered limited English proficient or LEP. A person may be conversational in English, but not proficient when the subject is legal issues or lease provisions.

Language assistance - There are two kinds of language assistance: interpretation and translation. *Interpretation* is the oral conversion of one language into another. *Translation* is the written conversion of one language into another.

Procedures

To implement the **Limited English Proficiency Non-Discrimination Policy**, (*insert name of housing provider*) has adopted the following procedures as a guide:

[*add, delete or modify items below to tailor procedures to fit your needs*]

1. Property managers will display the HUD Fair Housing poster in at least both English and Spanish in a public area of the project. (*if there are additional languages in the market area or encountered among LEP applicants and/or tenants at a project, add this: The Fair Housing poster will also be displayed in these languages: _____, _____, etc.*)
2. Property managers will have available at least one language identification tool to assist, when necessary, to help LEP persons identify their own language.
3. Property managers will permit LEP applicants and/or tenants to provide their own interpreter.
4. Property managers will seek low- and no-cost interpreters and maintain a list of providers with contact information.
5. (*insert name of housing provider*) has subscribed to a telephonic interpretation service, (*insert name of vendor*), that offers interpretation in over 100 languages and is available 24 hours a day 7 days a week. Call: (*insert telephone number*), user password: (*insert code*)

(and/or)

The following (*insert name of housing provider*) staff member(s) can provide language assistance:

STAFF PERSON	LANGUAGE	PHONE

6. (*insert name of housing provider*) has chosen to market its properties and vacant units through the Idaho Housing and Finance Association’s website: www.housingidaho.com (in Idaho) or www.socialserve.com where the service is available. Property managers will provide timely updates. User name: (*insert user name*) Password: (*insert password*)
7. By (*insert date*), (*insert name of housing provider*) will add a translation “tool” (e.g. Google Translate) to its website where property information and a downloadable application is provided.
8. Property managers will provide a “Please repair...” or a “Welcome to your new home!” pamphlet to LEP tenants (if it is available in their language): <http://www.acf.hhs.gov/orr/resource/publications>.
9. ...(*add additional LEP policies and procedures to be followed and/or those to avoid*)