

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR-4878-N-01]****Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons****AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.**ACTION:** Notice.

SUMMARY: HUD is publishing proposed "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (Guidance) as required by Executive Order 13166, which addresses assistance to recipients of federal financial assistance who have limited English proficiency.

DATES: *Comment Due Date:* January 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Pamela D. Walsh, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5226, 451 Seventh Street SW., Washington, DC 20410-2000, telephone (202) 708-2904 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the telephone number listed in this section through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Under Title VI of the Civil Rights Act of 1964 (Title VI) and implementing regulations, recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each federal agency that extends assistance subject to the requirements of Title VI to publish

guidance for its respective recipients clarifying that obligation. Because this guidance (42 U.S.C. 2000d) (Title VI) must adhere to the federal-wide compliance standards and framework detailed in the model LEP Guidance of the Department of Justice (DOJ) issued on June 18, 2002, HUD specifically solicits comments on the nature, scope, and appropriateness of the HUD-specific examples set out in this guidance explaining and/or highlighting how those consistent federal-wide compliance standards are applicable to recipients of federal financial assistance through HUD.

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost seven million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data from the 2000 census has not yet been released, 26 percent of all Spanish speakers, 29.9 percent of all Chinese speakers, and 28.2 percent of all Vietnamese speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally-funded programs and activities. The federal government funds an array of programs, services, and activities that can be made accessible to otherwise eligible LEP persons. The federal government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient.

Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government programs, services, and activities. HUD recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This Guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons. The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for LEP individuals. These are the same criteria HUD will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

As with most government initiatives, guidance on LEP requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, HUD must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally-assisted programs. Second, HUD must achieve this goal while finding constructive methods to reduce the costs of LEP

requirements on small businesses, small local governments, or small nonprofits that receive federal financial assistance.

There are many productive steps that the federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally-assisted programs, threatening the critical functions that the programs strive to provide. To that end, HUD plans to continue to provide assistance and guidance in this important area. In addition, HUD plans to work with representatives of state and local governments, public housing agencies, assisted housing providers, fair housing assistance programs, and other HUD recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, HUD intends to explore how language assistance measures, resources, and cost-containment approaches developed with respect to its own federally-conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small nonprofits. An interagency working group on LEP has developed a Web site, <http://www.lep.gov>, to assist in disseminating this information to recipients, federal agencies, and the communities being served.

Many persons who commented on the DOJ's proposed LEP guidance which was published January 16, 2001 (66 FR 3834), later published for additional public comment on January 18, 2002 (67 FR 2671), and published in final form on June 18, 2002 (67 FR 41455), have noted that some in the public have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as implicitly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. DOJ and HUD have taken the position that this is not the case, for the reasons explained below. Accordingly, HUD will strive to ensure that federally-assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with LEP.

II. Legal Authority

Section 601 of 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." Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability" (42 U.S.C. 2000d-1).

HUD regulations promulgated pursuant to section 602 forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin" (24 CFR 1.4).

The U.S. Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of HUD, 24 CFR 1.4, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally-funded educational programs.

On August 11, 2000, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," was issued and published on August 16, 2000, at 65 FR 50121. Under that order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights

Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Order. The DOJ document is titled, "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency," (DOJ LEP Guidance) published on August 16, 2000, at 65 FR 50123.

Subsequently, federal agencies raised questions regarding the requirements of the Order, especially in light of the U.S. Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, the Assistant Attorney General for the Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors," that clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*. This Guidance noted that some have interpreted *Sandoval* as implicitly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. See, e.g., *Sandoval*, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid."). This Guidance, however, makes clear that the DOJ disagreed with this interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations. The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities—the Executive Order remains in force.

This HUD policy is published pursuant to Title VI, Title VI regulations, and Executive Order 13166. It is consistent with the DOJ's, "Policy Guidance Document on Enforcement of National Origin Discrimination Against

Persons with Limited English Proficiency,” published on August 16, 2000, at 65 FR 50123, and the DOJ LEP Guidance issued on June 18, 2002, and published on June 18, 2002, at 67 FR 41457.

III. Who Is Covered?

HUD’s regulation, 24 CFR part 1, “Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development—Effectuation of Title VI of the Civil Rights Act of 1964,” requires all recipients of federal financial assistance from HUD to provide meaningful access to LEP persons. Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in this LEP Guidance are to additionally apply to the programs and activities of federal agencies, including HUD. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of HUD assistance include, for example:

- State and local governments;
 - Public housing authorities;
 - Assisted housing providers;
 - Profit and nonprofit organizations;
- and
- Other entities receiving funds directly or indirectly from HUD.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient (e.g., Entitlement Community Development Block Grant, State Block Grant, State Community Development Block Grant, and HOME Recipients’ subrecipients are covered).

Coverage extends to a recipient’s entire program or activity, (i.e., to all parts of a recipient’s operations). This is true even if only one part of the recipient receives the federal assistance.

Example: HUD provides assistance to a state government’s Department of Community Development to improve a particular public facility. All of the operations of the entire state Department of Community Development—not just the particular facility—are covered. However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated (42 U.S.C. 2000d–1). Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those

applicable to the provision of federally-assisted services to LEP persons.

IV. Who Is a Limited English Proficient Individual?

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 LEP, entitled to language assistance with respect to a particular type of service, benefit, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by HUD recipients and should be considered when planning language services include, but are not limited to:

- Persons who are seeking housing assistance from a public housing agency or assisted housing provider or are current tenants in such housing;
- Persons seeking assistance from a state or local government for a rehabilitation grant for their home;
- Persons who are attempting to file a housing discrimination complaint with a local Fair Housing Assistance Program grantee;
- Persons who are seeking supportive services to become first-time homebuyers;
- Persons seeking housing related social services, training, or any other assistance from HUD recipients; and
- Parents and family members of the above.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it

engages. For instance, some of a recipient’s activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. HUD recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

A. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons “eligible to be served, or likely to be directly affected, by” a recipient’s program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by HUD as the recipient’s jurisdiction or service area. However, where, for instance, a public housing project serves a large LEP population, the appropriate service area for LEP services is most likely the public housing project neighborhood, and not the entire population served by the public housing agency. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples to assist in determining the relevant service area. When considering the number or proportion of LEP persons in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the recipient.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority

populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from State and local governments. The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by LEP persons. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English. Community agencies, school systems, grassroots and faith-based organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

B. The Frequency With Which LEP Individuals Come Into Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine

what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

C. The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely language services are needed. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by HUD, another federal, state, or local entity, or the recipient to make a specific activity compulsory in order to participate in the program, such as filling out particular forms, participating in administrative hearings, or other activities, can serve as strong evidence of the program's importance.

D. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that

inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation"); and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a public housing provider in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary public tour of a recreational

facility—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral, and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

1. Competence of Interpreters

When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person and understand and follow confidentiality and impartiality rules to the same extent the recipient employee

for whom they are interpreting or to the extent their position requires or both. Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate; and

- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged. For those languages in which no formal accreditation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in an abused woman's shelter, for example, must be extraordinarily high, while the quality and accuracy of language services in a recreational program need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or

services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of HUD recipients providing housing, health, and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staff person available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

2. Hiring Bilingual Staff

When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as persons who take public housing or Section 8 applications, with staff who are bilingual and competent to communicate directly with LEP persons in their own language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual intake specialist would probably not be able to perform effectively the role of an administrative hearing interpreter and intake specialist at the same time, even if the intake specialist were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

3. Hiring Staff Interpreters

Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

4. Contracting for Interpreters

Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

5. Using Telephone Interpreter Services

Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

6. Using Community Volunteers

In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English

speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

7. Use of Family Members or Friends as Interpreters

Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP persons may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. For example, special circumstances may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of family members and friends as interpreters, particularly where an important right, benefit, service, disciplinary concern, or access to personal or law enforcement information is at stake. In addition to

ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether a beneficiary makes a knowing and voluntary choice to use another family member or friend as an interpreter. Furthermore, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For HUD recipient programs and activities, this is particularly true in a courtroom, an administrative hearing, or situations in which health, safety, or access to important housing benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when a property manager/or housing authority security or local police respond to a domestic disturbance. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children) or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary tour of a community recreational facility built with Community Development Block Grant (CDBG) funds offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his/her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for legal reasons,

or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language). It should be kept in mind that many LEP persons may not be able to read their native languages and back-up availability of oral interpretation is always advantageous.

1. What Documents Should Be Translated?

After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Consent and complaint forms;
- Intake forms with the potential for important consequences;
- Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings;
- Notices of eviction;
- Notices advising LEP persons of free language assistance;
- Leases and tenant rules; and/or
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

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 certain recreational

activities should not generally be considered vital documents, whereas applications for housing could 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.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP persons meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, grassroots and faith-based organizations, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

2. Into What Languages Should Documents Be Translated?

The languages spoken by the LEP persons with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly

encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

3. Safe Harbor

Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations. The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider: whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Therefore, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be

provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The HUD recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the 5 percent trigger in (a), the recipient does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and are reasonable. For example, housing facilities should, where appropriate, ensure that leases have been explained to LEP residents, at intake meetings, for instance, prior to taking adverse action against them.

4. Competence of Translators

As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary. For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of

professionalism. Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. For instance, there may be languages that do not have an appropriate direct translation of some English language terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost-effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful. Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP persons and may reduce costs.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may require translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., information or documents of HUD recipients regarding certain safety issues

and certain legal rights or programmatic or other obligations). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain HUD recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP

individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom they have contact. One way to determine the language of communication is to use language identification cards (or "I speak" cards), which invite LEP persons to identify their language needs to staff. 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 found and downloaded at <http://www.usdoj.gov/crt/cor/13166.htm>. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP persons who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures; and
- Staff having contact with the public is trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of their orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are

properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language that LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in common areas, offices, and anywhere applications are taken. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in geographic areas with high volumes of LEP persons seeking access to the recipient's major programs and activities. For instance, signs in offices where applications are taken could state that free language assistance is available. The signs should be translated into the most common languages encountered. The signs should explain how to receive language assistance. The Social Security Administration has made such signs available at <http://www.ssa.gov/multilanguage/langlist1.htm>. These signs could, for example, be modified for recipient use;
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents;
- Working with grassroots and faith-based community organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services;
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should

provide information about available language assistance services and how to get them;

- Including notices in local newspapers in languages other than English;
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them; and
- Presentations and/or notices at schools and grassroots and faith-based organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP persons, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community that the plan serves.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in the housing jurisdiction geographic area or population affected or encountered;
- Frequency of encounters with LEP language groups;
- Nature and importance of activities to LEP persons;
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed;
- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff knows and understands the LEP plan and how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by HUD through the procedures identified in the Title VI regulations. These procedures include complaint

investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that HUD will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. The Office of Fair Housing and Equal Opportunity is responsible for conducting the investigation to ensure that recipients are in compliance with civil rights related programs requirements. If the investigation results in a finding of compliance, HUD will inform the recipient in writing of this determination, including the basis for the determination. HUD uses voluntary methods to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, HUD must inform the recipient of the noncompliance through a "Letter of Findings" that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD must secure compliance through the termination of federal assistance after the HUD recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. HUD engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, HUD proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, HUD's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP persons, HUD acknowledges that the implementation of a comprehensive system to serve LEP persons is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally-assisted programs and activities for LEP persons, HUD will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or

schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, HUD recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the housing, health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally-assisted programs and activities.

IX. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the meaningful access requirement of the Title VI regulations applies to HUD-funded recipients. It further explains how recipients can apply the four factors to a range of situations to determine their responsibility for providing language services in each of these situations. This Guidance helps recipients identify the population they should consider when determining the extent and types of services to provide. For instance, it gives examples on how to apply this guidance in situations like:

- Holding public meetings on the Consolidated Plans for Community Planning and Development Programs (CDBG, HOME, Housing Opportunity for Persons With AIDS (HOPWA), and Emergency Shelter Grants (ESG));
- Interviewing victims of housing discrimination;
- Helping applicants to apply for public housing units;
- Explaining lease provisions; and
- Providing affirmative marketing housing counseling services.

Dated: November 10, 2003.

Carolyn Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A: Application of Limited English Proficiency (LEP) Guidance for HUD Recipients

Introduction

A wide range of entities receives federal financial assistance through HUD. HUD provides assistance to the following types of recipients, among others: assisted housing providers; public housing agencies; state and local governments; nonprofit organizations, including housing counseling agencies and

grassroots community-based and faith-based organizations; state and local fair housing agencies; and providers of a variety of services. All HUD-funded recipients are required to certify to nondiscrimination and affirmatively furthering fair housing, either through the Office of Community Planning and Development's (CPD's) Consolidated Plan, (24 CFR 91.225 (a)(1) and (b)(6), 91.325(a)(1), 91.425(a)(i)); the public housing agency plans processes (24 CFR 903.7(o)); or the certifications required in the competitive programs funded through the Super Notice of Funding Availability (SuperNOFA). [Note: HUD publishes the SuperNOFA on an annual basis. The non-discrimination and the affirmative furthering fair housing requirements are found in the General Section of the SuperNOFA]. The website for the SuperNOFA is: <http://www.hud.gov/library/bookshelf18/supernofa/index.cfm>. This LEP Guidance does not change current civil rights related program requirements contained in HUD regulations.

This Appendix provides examples of how HUD recipients might apply the four-factor analysis described in the general guidance. The Guidance and examples in this Appendix are not meant to be exhaustive and may not apply in some situations. CPD's citizen participation plan requirement, in particular, specifically instructs jurisdictions that receive funds through the Consolidated Plan process to take appropriate actions to encourage the participation of " * * * non-English speaking persons * * *" (24 CFR 91.105(a)(2)(ii), 91.115(a)(2)). Such recipients may, therefore, have processes in place to address the needs of their LEP beneficiaries that already take into consideration the four-factor analysis and meet the Title VI and regulatory requirements described in this Guidance.

This Guidance does not supplant any constitutional, statutory, or regulatory provisions that may require LEP services. Rather, this Guidance clarifies the Title VI and regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP persons beyond those required by the Constitution or by statutes and regulations other than Title VI and the Title VI regulations.

Tribes and tribally-designated housing entities (TDHEs) are authorized to use federal housing assistance made available under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA, 25 U.S.C. 4101–4212) for low-income housing programs or activities for the specific benefit of tribal members or other Native Americans. Programs or activities funded in whole or in part with federal assistance made available under NAHASDA are exempt from Title VI and Title VIII of the Civil Rights Act of 1968. Although Title VI may not apply to housing programs undertaken by these entities under NAHASDA, this Guidance may be a helpful technical assistance tool in determining whether and to what degree language assistance may be appropriate to ensure meaningful access by otherwise eligible low-income Native Americans.

For many members of the public, exposure to housing and social service programs

begins and ends with their interactions with HUD recipients that are responding to a request for services or assistance or are conducting education and community outreach activities. The common thread running through interactions between the public and HUD recipients is the exchange of information. Recipients of HUD assistance, dependant on circumstances, have an obligation to provide appropriate types and levels of language services to LEP persons to ensure that they have meaningful access to, and choice of, housing and other HUD-funded programs. Language barriers can, for example, prevent persons from learning of housing opportunities or applying for and receiving such opportunities, learning of environmental or safety problems in their communities and of the means available for dealing with such problems, or effectively reporting housing discrimination to the local fair housing agency or HUD, thus hindering investigation of these allegations.

Many recipients already provide language services in a wide variety of circumstances to obtain information effectively and help applicants obtain suitable housing or support services. For example, public housing agencies may have leases available in languages other than English as well as interpreters available to inform LEP persons of their rights and responsibilities. In areas where significant LEP populations reside, agencies may have forms and notices in languages other than English or they may employ bilingual intake personnel, housing counselors, and support staff. Such recipients may therefore have processes in place to address the needs of their LEP beneficiaries that meet the Title VI and regulatory requirements described in this Guidance. Such existing processes and their observed results can form a strong basis for applying the four-factor analysis and complying with the Title VI regulations.

General Principles

The touchstone of the four-factor analysis is reasonableness based upon: (a) The specific needs and capabilities of the LEP population among the beneficiaries of HUD programs (tenants, applicants, community residents, complainants, *etc.*); (b) the program purposes and capabilities of the HUD-funded recipients providing the services to the LEP population; and (c) local housing, demographic, and other community conditions and needs. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations or whether such service need be provided at all. Each HUD recipient's evaluation of the need and level of LEP services for each process in its services must be highly individualized.

Before giving specific program examples, several general points should assist the wide variety of HUD recipients in applying this analysis.

Factors (1) and (2): Target Audiences

In evaluating the target audience, the recipient should take into account the number and proportion of LEP persons served or to be served in the target

population as well as the frequency with which this target audience will or should be served.

Factor (1): For most recipients, the target audience is defined in geographic rather than programmatic terms. In many cases, even if the overall number or proportion of LEP persons in the local area is low, the actual number of LEP persons served by the program may be high.

HUD recipients are required to reach out to, educate, and affirmatively market their services to potential beneficiaries in the geographic area who are least likely to apply for or receive the benefits of the program without such affirmative marketing (24 CFR 200.625, 24 CFR 92.351, 24 CFR 903.2(d)(1) and (2)). In many cases, those least likely to apply for a benefit are LEP persons. In addition, in some cases where there are few LEP persons in the immediate geographic area, affirmative marketing may require marketing to residents of adjoining areas, communities, or neighborhoods (24 CFR 200.625, 24 CFR 92.351, 903.2(d)(1) and (2)).

The programs of many recipients require public meetings and input (24 CFR 91, subpart B; 24 CFR 903.13 (a); 24 CFR, part 964). Even within the large geographic area covered by a city government, certain target areas may have concentrations of LEP persons. These persons may be those who might be most affected by the issue being discussed.

In addition, some programs are specifically targeted to reach a particular audience (*e.g.*, persons with HIV, the elderly, residents of high crime areas, persons with disabilities, and minority communities). In some communities, these populations may disproportionately be LEP persons.

Factor (2): Frequency of contact should be considered in light of the specific program or the geographic area being served. Some education programs or complaint processing may only require a single or limited interaction with each LEP individual served. Housing, counseling, and supportive services programs require on-going communication. In the former case, the type and extent of LEP services may be of shorter duration, even for a greater number of LEP persons, than in the latter case and decisions must be made accordingly.

Factor (3): Importance of Service/Information/Program/Activity

Given the critical role housing plays in maintaining quality of life, housing and complementary housing services rank high on the critical/non-critical continuum. However, this does not mean that all services and activities provided by HUD recipients must be equally accessible in languages other than English. For example, while clearly important to the quality of life in the community, certain recreational programs provided by a HUD recipient may not require the same level of interpretive services as does the recipient's underlying housing service. Nevertheless, the need for language services with respect to these programs should be considered in applying the four-factor analysis.

Factor (4): Costs vs. Resources and Benefits

The final factor that must be taken into account is the cost of providing various services as opposed to the resources available to the HUD recipient providing the service.

Type of Program: There are some programs for which translation and interpretation are an integral part of the funded program such that services should be provided in some way to any client that requires them. In important programs or activities (*i.e.*, tenant selection and assignment, homeownership counseling, fair housing complaint intake, conflict resolution between tenant and landlords, *etc.*) that require one-on-one contact with clients, written translation and verbal interpretation services should be provided consistent with the four-factor analysis used earlier. Recipients could have competent bilingual or multilingual employees or community translators or interpreters to communicate with LEP persons in languages prevalent in the community. In some instances, a recipient may have to contract or negotiate with other agencies for services for LEP persons.

Outreach: Affirmative marketing activities, as described above, require, at a minimum, written materials in other languages (24 CFR 200.625, 24 CFR 92.351, 24 CFR 903.2 (d)(1) and (2)). As with counseling, affirmative marketing in large LEP communities could be fruitless without translation of outreach materials. Preferably, outreach workers would speak the language of the people to whom they are marketing.

Size of Program: A major issue for deciding on the extent of translation/interpretation services is the size of the program. A large public housing agency (PHA) may be expected to have multilingual employees representing the LEP persons who may reside in the communities they serve. These employees may be involved in all activities: affirmative marketing, taking and verifying applications, counseling, explaining leases, holding tenant meetings, and on-going tenant contact, as well as translating documents into applicable languages. Similarly, a funded recipient receiving millions of dollars in CDBG Program money may be expected to provide translation/interpretation services in major local languages and have bilingual staff in those languages. Recipients with limited resources (*i.e.*, PHAs with a small number of units, or small nonprofit organizations) should not be expected to provide the same level and comprehensiveness of services to the LEP population, but should consider reasonable steps, under the four-factor analysis, they can take in order to provide meaningful access.

Relevance of Activity to the Program: A program with monthly information sessions in a community with many LEP persons speaking the same language should consider employing a bilingual employee who can hold these sessions in the LEP language. Alternatively, if a community's major LEP language does not have many applicants for the program, having an interpreter at sessions only when needed may be sufficient. (For example, the program could announce in major languages in any public notice of the meeting that anyone in need of an interpreter should call a certain number before the

meeting to request one—and ensure that someone at that number can communicate with the person.)

Availability/Costs of Services: In a community with very few LEP persons speaking a particular language, interpretation/translation into a specific language and a HUD recipient with very few resources, the provision of service should be targeted at the most important activities. Recipients may decide, as appropriate, to provide those services through agreements with competent translators and interpreters in community-based organizations or through telephonic interpretation services.

Services Provided: HUD recipients have a variety of options for providing language services. Under certain circumstances, when interpreters are required and recipients should provide competent interpreter services free of cost to the LEP person, LEP persons should be advised that they may choose either to use a competent interpreter provided free by the recipient or, at their own expense, secure the assistance of an interpreter of their own choosing. If the LEP person decides to provide his or her own interpreter, the provision of this choice to the LEP person and the LEP person's election should be documented in any written record generated with respect to the LEP person. Although LEP persons may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. Family and friends may not be available when and where they are needed, or they may not have the ability to interpret program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, family, or financial information to a family member, friend, or member of the local community.

Similarly, there may be situations where a HUD recipient's own interests justify program provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete, and accurate interpretation of information is critical for lease enforcement, or at group meetings dealing with vital issues, such as pending displacement, a recipient might provide its own, independent interpreters, regardless of what recipients choose. This should ensure that information has been interpreted completely and is legally accurate.

In emergency situations that are not reasonably foreseeable, the recipient may have to rely temporarily on non-professional language services. However, reliance on children is especially discouraged unless there is an extreme emergency and no language proficient adults are available.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For example, it is important that interpreters of legal concepts be highly competent to translate legal and lease enforcement

concepts as well as be extremely accurate in their interpretation when discussing relocation and displacement issues. It may be sufficient, however, for a desk clerk who is fully bilingual, but not skilled at interpreting, to help an LEP person complete an application in the language the LEP person and bilingual person have in common.

Applying the Four-Factor Analysis

While all beneficiaries are important, the four-factor analysis requires prioritizing so that language services are targeted where most needed because of the nature and importance of the particular activity involved in relation to the costs of providing the service.

This section provides examples of promising practices in which recipients may engage. Grantees or funded recipients are responsible for ensuring meaningful access to all portions of their program or activity, not just the portions to which HUD funds are targeted. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in meeting the meaningful access requirements of Title VI and the Title VI regulations.

Office of Fair Housing and Equal Opportunity

The Fair Housing Assistance Program (FHAP): FHAP provides funds to state and local agencies that administer fair housing laws that are substantially equivalent to the federal Fair Housing Act.

A local FHAP serves a small metropolitan area that has a population that is 3 percent Korean speaking, 25 percent Spanish-speaking, and 72 percent English speaking. One of the FHAP agency's primary responsibilities is to process fair housing discrimination complaints. The FHAP office has many Hispanic complainants who are LEP and Spanish-speaking; therefore, it has hired a Hispanic intake clerk who is bilingual in Spanish and English. The Fair Housing Poster and the complaint form have been translated into Spanish. The office has a contract with a nonprofit Hispanic organization for interpreters on an as-needed basis its education and outreach activities to the Hispanic community. FHAP organizations are small and have limited resources. In competing for the available resources, the FHAP chose not to translate the material into the language of the Korean population this year. However, it has plans to translate material into the Korean language in coming years to address the accessibility needs of the LEP population.

The Fair Housing Initiatives Program (FHIP): FHIP assists fair housing activities that increase compliance with the Fair Housing Act and with the substantially equivalent fair housing laws administered by state and local government agencies under the Fair Housing Assistance Program (FHAP). FHIP awards funds competitively, and these funds enable the recipients to carry out activities to educate and inform the public and housing providers of their fair housing rights and responsibilities.

A community organization in a large metropolitan area had received FHIP funds to

develop an education curriculum to assist newly arrived immigrants. Data showed that non-English speaking persons were having difficulty in applying and securing housing in the area. The organization had identified a large Hispanic clientele in the area that needed this service. It had a well-developed program for this LEP population. However, the community's population was changing. The recipient found that there was also a large community of recent immigrants from Cambodia who were also in need of language services. To address this need, the FHIP partnered with Asian Action Network, a community-based social service agency, to translate materials and to present free seminars at the local public library. In addition, if needed, the Asian Action Network had on its staff a Cambodian-speaking counselor who was able to provide interpretation services.

Office of Public and Indian Housing

HOPE VI: The HOPE VI Revitalization of Distressed Public Housing Program provides revitalization and demolition-only grants on a competitive basis for eligible PHAs that operate public housing units. During the HOPE VI lifecycle, PHAs are required to communicate with all tenants, including LEP tenants, through informational meetings that describe both the proposed project and the rights of the tenants during every stage of the application and implementation process. All residents need to be educated about both the HOPE VI project, and their right to be relocated into decent, safe and sanitary housing, and how they can return to the new project once it is completed.

A PHA is planning to demolish a 400-unit public housing project and construct a 375-unit HOPE VI mixed-finance development and other amenities on the site. The 400-unit building is still occupied by a tenant population of which 55 percent are Spanish-speaking families. For a number of years, the PHA had in place bilingual employees in its occupancy office, as well as leases and other written documents translated into Spanish. Under the new requirements, the PHA now needs to translate public notices and other documents into Spanish, since many of the families are newly arrived immigrants from Latin America.

Public Housing: There are approximately 3,400 PHAs in the United States that provide a majority of the housing to low and very low-income families. For example, a PHA in a large metropolitan area has Hispanic, Chinese, and Vietnamese tenants. All tenants sign a lease before they can live in public housing. The lease details the rules and requirements that the PHA and tenants must follow and ensures that the PHA and tenants are provided all the protections to which they are entitled. Additionally, the written lease ensures that all tenants are treated fairly. The PHA makes every effort to ensure that tenants understand the rules and requirements. The PHA has its lease and rental notices translated into Spanish, Chinese, and Vietnamese and it has a procedure to access interpreters for these languages if oral discussions of the lease are necessary.

Housing Choice Voucher Program: The Housing Choice Voucher Program is the

federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.

For example, a PHA administers a Housing Choice Voucher Program and has recently received an additional 100 vouchers. The PHA affirmatively markets the availability of the housing choice vouchers to all families living in its jurisdiction. It places a public service announcement in English, Spanish, Chinese, or Vietnamese in the local general circulation, Spanish, Chinese, or Vietnamese newspapers and radio and TV stations, as applicable.

Office of Community Planning and Development

Consolidated Plan: Consolidated Planning is a strategy for holistic community planning. Each community's Consolidated Plan is built upon public participation and input. When planning the required public hearings, jurisdictions must also identify how the needs of LEP residents will be met in the case of public hearings where a significant number of LEP residents can be reasonably expected to participate (24 CFR 91, Subpart B, "Citizen Participation and Consultation"). Other activities surrounding public hearings should also be made available to persons with LEP, such as (a) publication of translated notification of the public hearings, and (b) translation of draft and final action and consolidated plans and dissemination of these documents to persons and appropriate organizations in the LEP community.

The State Community Development Block Grant (CDBG) program is designed to assist small communities and rural areas in funding a wide variety of activities intended to promote community economic development. In the State CDBG program, HUD makes grants to states, which then distribute funds to units of general local government.

All eligible activities in the State CDBG program must meet one of three statutory objectives specified in the CDBG authorizing legislation: principally benefit low- and moderate-income persons, aid in the prevention of elimination of slums or blight, or meet other community development needs having a particular urgency.

State CDBG grant recipients are encouraged to reach out to LEP persons through local alternative language newspapers. In addition, expenses associated with providing interpretive services to LEP persons may be considered program delivery or administration costs and, therefore, may be paid with CDBG funds. For instance, one state CDBG grant recipient chooses to provide case management services to homeless families and individuals, and allocates part of these funds to provide advocacy and interpretative services for LEP persons.

Housing Opportunities for Persons With AIDS (HOPWA): HOPWA is a tenant-based

rental voucher program specifically designed for persons who are HIV positive or who have AIDS. A major city has been operating services affecting persons with AIDS and such services have been an integral part of its Consolidated Plan. However, it recently learned from a national study that 20 percent of its 2,000 HIV-infected persons are LEP persons. The city previously had not contacted these people about their needs. In formulating its Consolidated Plan, the city's Community Development Department contacted both the Department of Health and the city's leading AIDS-related service provider for assistance in reaching out to this population. The city offered to allocate additional sums from its HOPWA formula grant to fund bilingual interpreters and health outreach workers who would contact the LEP persons living with HIV and minister to their housing-related needs. Also, as part of its citizen participation plan, the city offered to conduct a multilingual meeting at which institutions involved in AIDS-related housing and services would participate.

HOME Investment Partnership Program: In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible state and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing. Families, including LEP families, may obtain homeownership and rental housing opportunities from participating jurisdictions (PJs). Under the program requirements, PJs are required to implement affirmative marketing strategies, under which they identify groups within the eligible population that are least likely to apply and conduct special outreach efforts through advertising in local media, including media targeted at LEP citizens (24 CFR 92.351).

A small HOME participating jurisdiction is using its HOME funds to implement a tenant-based rental assistance (TBRA) program. Under TBRA, the assisted tenant may move from a dwelling unit, but retains the right to continued assistance. The TBRA assistance also includes the security deposit. The HOME PJ, as part of its affirmative marketing strategy, has submitted advertising to the local Spanish language newspapers and radio station that serve the community's small but growing Hispanic population. Since the costs of implementing the affirmative marketing strategy are eligible costs under the program regulations, the PJ is increasing its budget to train occupancy staff to address issues faced by LEP applicants and to hire a bilingual staff member.

Office of Housing

Single-Family Housing Counseling Program: HUD provides funds to housing counseling agencies that assist persons and families in specific geographic areas to enable them to buy homes and to keep homes they already have purchased. This requires one-on-one and group counseling on home-

selection skills, understanding mortgages, understanding legal ramifications of various documents, establishing a budget, housekeeping and maintenance skills, understanding fair housing rights, etc.

In a majority-Hispanic community, *La Casa* has been the only HUD-funded counseling agency, providing these services for many years. It has bilingual staff to serve the largely Hispanic population. Frequently clients from a neighboring low-income community, which is primarily African-American, also uses its services, since the agency is well-known in the area. However, over the past few years, many low-income Iranians have been moving into the neighboring community. A housing counseling agency is required to provide one-on-one counseling services as the nature of its program. It is also required to outreach to those potential beneficiaries who are least likely to apply for its services. As a relatively small agency, *La Casa* should employ at least one person or have regular access to a person who can interpret between English and Farsi. This person should be visiting the Iranian communities, and contacting and working through the local agencies to affirmatively market *La Casa's* program. This person should also arrange to get key materials translated and provide counseling and interpretation services, as needed.

Supportive Housing for the Elderly: The Section 202 Supportive Housing for the Elderly Program funds the construction of multifamily projects that serve elderly persons. Project sponsors are required to affirmatively market their services and housing opportunities to those segments of the elderly population that are identified as least likely to apply for the housing without special outreach. Even more importantly, many LEP elderly may require care from bilingual medical or support services staff, and recipients may devote considerable financial and other resources to provide such assistance.

The sponsor of a Section 202 Supportive Housing for the Elderly project identifies in its Affirmative Fair Housing Marketing Plan the city's large numbers of East and South Asian immigrants as least likely to apply for the new housing without special outreach. After examining census and other data and consulting with the city's Office of Immigrant Affairs, the sponsor learns that the 1,000 of the 5,000 South and East Asian families have at least one elderly relative that may be eligible for the new units. The sponsor hires translators fluent in Hindi, Urdu, Dari, Vietnamese, and Chinese to translate written materials and advertising for the local press in those languages. The recipient also partners with community-based organizations that serve the city's East and South Asian immigrants to arrange for interpreters at meetings.

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