

Puget Sound Chapter – NAHRO
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Limited English Proficiency (LEP)

Is your agency in compliance
with the HUD guidance?

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Bon jour madames et monsieurs.

Comment-etes vous, aujourd'hui?

Nous dirigerons la séance d'aujourd'hui en français. Nous faisons ceci parce qu'il vous donnera une meilleure compréhension personnelle de comment important les mots "l'access significatif" sont a ceux-la aux Etats-Unis qui ne parlent pas l'anglais.

Comment vous sentez de cela?

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Good day, ladies and gentlemen.

How are you today?

We will be conducting today's session in French.

We are doing this because it will give you a better personal understanding of how important the words "meaningful access" are to those in the United States who do not speak English.

How do you feel about that?

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How many of you have traveled to another country where English was not the language spoken?

Were you able to go where you wanted and do what you wanted to do?

If you were successful, why was that?

Do the words “**meaningful access**” have anything to do with your successful trip?

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What does the term

“MEANINGFUL ACCESS”

mean in the context of
Limited English Proficiency?

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Meaningful Access

=

the ability to participate in and benefit from any federally assisted agency's programs & services in a manner no different than that of others, whose national origin is not at issue (i.e. English speakers), who could participate and benefit from such programs.

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So how did we get to this point?

Title VI (Section 601)

Civil Rights Act of 1964

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.”

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Civil Rights Act of 1964 in effect 41 years.

HUD long ago adopted regulations
(24 CFR) 1.4 to enforce that law.

The law and HUD regs. regarding
discrimination on the basis of “national
origin” were not applied to LEP persons
until...

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Executive Order 13166 (8/11/00)
“Improving Access to Services for Persons
with Limited English Proficiency”
(issued in Federal Register 8/16/00 at 65 FR 50121)

Required federal agencies to give guidance
to recipients of federal funding that they
must not deny access, discriminate
against, prevent enjoyment of benefits
due to race, color, or **national origin**

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Also on 8/16/00, Dept of Justice issued
“Enforcement of Title VI of Civil Rights Act
of 1964 National Origin Discrimination
Against Persons with Limited English
Proficiency
(65 FR 50123)

“This policy guidance does not create new
obligations but, rather, clarifies existing
Title VI responsibilities.”

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Dept. of Justice subsequently issued another notice on LEP Guidance on 6/18/02 in the Federal Register (67 FR 41455)

Finally on 12/19/03 HUD published its Proposed Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (68 FR 70968)

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Why bother to go through this documentation & citations of the law, Executive Orders, and regulations etc.?

- The Feds are serious about this.
- Expect it to be vigorously enforced.
- PHAs need to promptly develop & implement LEP policies & procedures.

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The **bottom line** is this:

If persons of different national origins cannot read or speak English & if they do not get assistance translating or interpreting into a language that they do understand, then they are effectively denied “meaningful access” to programs & services to which they are otherwise entitled under the law.

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Three important points from HUD Guidance

1. Nature of LEP language assistance will vary based on demographics & needs of LEP persons in a PHA's jurisdiction.

Your agency may or may not develop a LEP Plan, but in either case, document everything that is done in terms of language assistance to LEP persons.

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Three important points from HUD Guidance

2. However LEP language services are provided, under a Plan or not, courts likely to insist on **demonstrating** “meaningful access” and if you can’t then????

This is why documentation is so important
(if it ain't written down, it didn't happen)

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Three important points from HUD Guidance

3. Receipt of any Federal financial assistance obligates the agency to provide LEP persons with appropriate language assistance for the entirety of the agency's programs & services, even if that includes non-Federally funded programs.

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What steps should be taken to address LEP needs?

1. Post notices that are translated into languages known to be used, saying “if you need assistance with interpretation or translation, you may contact _____. Language assistance will be provided at no cost to you.”
2. Obtain demographic data about applicants, tenants, and participants through an internal survey or other method. Research, through Census Bureau and local sources, information about the various nationalities/ language groups in your community.

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What steps should be taken to address LEP needs?

3. Find services that can provide interpretation & translation; determine which you will use; and use them when requested or needed.
4. Document everything done in writing

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What steps should be taken to address LEP needs?

5. Develop & implement a Language Access Plan (LAP) (policies and procedures). Make organizational changes, assign responsibilities.
6. Review the effectiveness of the LAP, making adjustments to ensure meaningful access and participation.

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Key Components of a Language Access Plan (LAP)

- Identification of LEP persons needing assistance
- Description of language assistance measures
- Type & frequency of notice to LEP persons
- Training of staff on LEP policies & procedures
- Implementation of policies & procedures
- Monitoring of compliance & revisions as needed
- Maintenance of records documenting actions

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Four Factors That Determine Scope & Detail of LAPs
(for use by agencies in deciding what to
provide & by HUD to judge compliance)

1. Number or proportion of LEP persons likely to be served or encountered
2. Frequency of contact by LEP persons with your agency
3. Nature & importance of the program, activity, or service
4. Resources available to your agency and the costs

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What is the “Safe Harbor” Provision?

Compliance with “safe harbor” criteria may be considered strong evidence of compliance for translation (only) obligations.

1. Written translation of vital documents for each LEP group that is 5% or 1000 persons whichever is less of those eligible to served or encountered.
2. If fewer than 50 persons in a language group reaches the 5% threshold, then only provide written notice of right to receive oral translation of written materials at no cost.

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How will HUD monitor compliance?

- Have reasonable efforts been made to ensure participation by LEP persons?
- Evidence will include but not be limited to the four factor analysis.
- A balance of need for meaningful access without undue burden on recipients of funding.
- Has recipient adopted a LAP (or addressed needs in another official plan), implemented the plan, & kept Title VI compliance records that demonstrate services to LEP persons?

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Resources

www.lep.gov

Final Guidance to Federal Financial Assistance Recipients
Regarding Title VI Prohibition Against National Origin
Discrimination Affecting Limited English Proficient Persons
(Federal Register; Vol 72, No 13 Monday, January 22,
2007 pp. 2732 – 2754)

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Selecting Language Assistance Services

- Interpretation (oral language services)
 - Competence of interpreters
 - Bilingual staff
 - Staff interpreters
 - Contract interpreters
 - Telephone interpreters
 - Community volunteers
 - Family members or friends

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Selecting Language Assistance Services

- Translation (written language services)
 - What should be translated?
 - Vital or generically used documents
 - Into what languages?
 - Safe harbor - if recipient provides translations under these circumstances, it shall be considered strong evidence of compliance with obligations

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Selecting Language Assistance Services

- Translation (written language services)
 - Safe harbor continued...
 - Written translations to each language group that constitutes 5% or 1000 whichever is less of population eligible to be served or likely to be encountered, or
 - There are fewer than 50 in the language group that reaches the 5% trigger (agency must then provide oral interpretation).
 - Safe harbor applies only to translation not interpretation

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Selecting Language Assistance Services

- Translation (written language services), seek to insure:
 - Competence of translators
 - Certification or accreditation
 - Professional affiliation
 - Have a 2nd party “back translate” in English
 - Understand the reading level of the audience
 - Community based organizations

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Elements of an Effective Language Assistance Plan

- Identifying LEP persons who need assistance
 - Language assistance measures
 - Training staff
 - Providing notice to LEP persons
 - Monitoring & updating the Language Assistance Plan (LAP)
- * HUD intends to publish a Guidebook to help HUD recipients to develop a LAP

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Possible Consequences of Non-Compliance

- If investigation finds non-compliance, then a Letter of Findings is issued
- Compliance is sought via voluntary means including technical assistance
- If informal resolution fails then termination of federal assistance may be required after administrative hearing or DOJ litigation

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- HUD expects all recipients to work towards building systems ensuring meaningful access to LEP persons, but also that a comprehensive system must evolve over time.
- HUD will look favorably on intermediate steps consistent with Guidance.
- Does not excuse non-compliance but recognizes that full compliance will take time.

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Provide appropriate language assistance for significant LEP populations with respect to activities having significant impact on housing, health, safety, legal rights, or livelihood of beneficiaries, and

Document, Document, Document.