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Region VII, OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY
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Kansas City, KS 66101-2406

May 31, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Catherine D. Lang, Department Director
Nebraska Department of Economic Development
301 Centennial Mall South
P.O. Box 94666
Lincoln, NE 68509-4666

Dear Ms. Lang:

SUBJECT: Civil Rights Compliance Review: Title VI, Section 504, and Section 109
Project Name: State of Nebraska
Title VI Review Number: 07-11-R002-6
Section 109 Review Number: 07-11-R002-9
Section 504 Review Number: 07-11-R002-4

The U.S. Department of Housing and Urban Development's (HUD's) Office of Fair Housing and Equal Opportunity (FHEO) and Office of Community Planning and Development (CPD) completed a review of the Community Development Block Grant (CDBG) Program and HOME Program administered by the State of Nebraska Department of Economic Development (DED) (hereinafter referred to as the State). The review was conducted under the authorities of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, and the implementing regulations at 24 C.F.R. Part 1 (Title VI); Section 109 of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309, and the implementing regulations at 24 C.F.R. Part 6 (Section 109); and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the implementing regulations at 24 C.F.R. Part 8 (Section 504). HUD also assessed the extent to which the State is meeting its obligation to affirmatively further fair housing (AFFH) pursuant to Section 104 of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. § 5304, and the implementing regulations at 24 C.F.R. Part 570¹, and whether the State is complying with other civil rights requirements of HUD's CDBG and HOME Program regulations at 24 C.F.R. Parts 91, 92, and 570.²

Title VI states that "... no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance."

¹ See also 42 U.S.C. § 12705 and 24 C.F.R. Part 91 (consolidated plan requirements related to AFFH).

² Nondiscrimination issues related to age were not a part of the review.

Section 109 states that "... no person in the United States shall, on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance."³

Section 504 states that "... no otherwise qualified individual with disabilities shall, solely on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives Federal financial assistance."

Section 104 of Title I of the Housing and Community Development Act of 1974 (Title I), states that "... the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. § 2000a et seq.] and the Fair Housing Act [42 U.S.C. § 3601 et seq.], and the grantee will affirmatively further fair housing ..." In addition, the regulations for the CDBG program at 24 C.F.R. § 570.487(b) provide: "The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The Act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by: (1) Conducting an analysis to identify impediments to fair housing choice within the State; (2) Taking appropriate actions to overcome the effects of any impediments identified through that analysis; (3) Maintaining records reflecting the analysis and actions in this regard; and (4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing."

The compliance review team conducted the reviews on-site during the week of July 25, 2011. The on-site review included an examination of grant records for eight pre-selected CDBG/HOME sub-recipients during the past three years. The review team also conducted several interviews with program and management staff. A limited Section 504 review was conducted of the entrance of the State Office Building and business transaction area located at the front of the State DED's office space. The review process also included an analysis of the data provided by the State prior to and during the on-site visit, including State and sub-recipient files, reports, and information in HUD's Integrated Disbursement and Information System (IDIS). Specific areas examined included: affirmatively furthering fair housing; limited English proficient (LEP) services; citizen participation; benefits, services and methods of administration; Section 504, including a limited physical accessibility analysis; and record-keeping. In addition, HUD reviewed whether the State has monitored its CDBG sub-recipients/grantees, as required by 24 C.F.R. § 570.492, in the aforementioned areas plus Minority Business Enterprise/Women's Business Enterprise (MBE/WBE).

³ Although Section 109 does not directly prohibit discrimination on the basis of disability in Title I programs, Section 109 directs that the prohibitions against discrimination on the basis of disability under Section 504 apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the Section 504 regulations at 24 C.F.R. Part 8 apply to Title I programs. See 24 C.F.R. §§ 6.1 and 6.4(a)(3)(iv)(B).

Summary of Findings:

The review identified findings of noncompliance with specific civil rights related program requirements related to accessibility under Section 504 and limited English proficient services under Title VI. Additionally, HUD made several other observations concerning the State's AFFH-related policies, procedures, and monitoring operations that should be addressed to ensure that sub-recipients are affirmatively furthering fair housing. HUD's findings and observations are set forth below, as well as appropriate corrective action.

1. Section 504 Requirements and Limited Analysis of Site Accessibility

Under Section 504, the State is required to provide programs and facilities that are generally accessible to and usable by people with disabilities. The State's Section 504 obligations include, but are not limited to, effective communications with persons with disabilities, making reasonable accommodations for persons with disabilities, designation of a Section 504 Coordinator, publication of a non-discrimination notice, adoption of grievance procedures, and completing a self-evaluation, needs assessment, and transition plan. The accessibility standard under Section 504 is the Uniform Federal Accessibility Standard (UFAS).

The limited accessibility review included an evaluation of the exterior and interior of the building in which the State DED office is located. The only accessibility deficiency identified was in the public area where citizens conduct business.

Finding: The State has a window for the public to speak to State personnel, but the height of the State's business counter at the DED office was not compliant with UFAS requirements. The counter was not at a height between 28 and 36 inches. (*See* UFAS § 7.2 Service Counters).

Corrective Action: The State shall modify the height of the business counter to comply with UFAS § 7.2.

Additionally, the State could not produce its Section 504 Transition Plan during the review. While the State does have a Section 504 Coordinator, the duties of the position are not in writing. The review revealed the State's CDBG Manual contains an Attachment entitled Section 504 at pages 5-24 through 5-27. In summary, the Attachment identified several specific requirements for sub-recipients regarding Section 504 including self-evaluations and transition plans; communication accessibility such as TDD; housing accessibility pursuant to UFAS; non-housing accessibility; and required nondiscrimination language in public notices and contracts. The review revealed the Section 504 portion of the State's CDBG Manual addresses the requirement for sub-recipients with over 15 employees to have a Section 504 Coordinator. Additionally, the State's monitoring checklist also indicates that the State monitors are to inquire about whether a sub-recipient has a Section 504 Coordinator.

The review revealed that the State's CDBG and HOME Administrative Manuals did not specifically require sub-recipients to have a reasonable accommodation policy. The Manuals reference the requirement to provide reasonable accommodations in employment and generally refer to the obligations to make programs and facilities accessible. In addition, a review of the

State of Nebraska and DED's individual websites indicated that they did not include information about how to request a reasonable accommodation regarding either the CDBG or HOME Programs. HUD recommends the State adopt a reasonable accommodation policy and encourage sub-recipients to adopt such policies as well. The State should also provide sub-recipients any needed training or technical assistance on this matter.

In addition to the corrective action specified above, HUD recommends stating that the HUD discrimination complaint process discussed in the Compliance and Complaints portion of the Section 504 attachment in the CDBG Manual (p. 5-26) is pursuant to HUD's Section 504 regulations at 24 C.F.R. Part 8 to avoid confusion with HUD's housing discrimination complaint process under the Fair Housing Act.

2. State's Monitoring of Sub-recipients for Section 504 Requirements

Documents provided by the State, including the State's monitoring checklist, indicated the State monitors CDBG sub-recipients to "ensure that Section 504, ADA, and Fair Housing Act requirements affecting persons with disabilities are met." However, in at least one instance, the documents which the State provided to show that it had monitored a sub-recipient, the City of Grand Island, regarding Section 504, referred to funds from the Federal Highway Administration and the Nebraska Department of Roads rather than HUD. The State must ensure that CDBG and HOME sub-recipients submit appropriate documents pertinent to compliance with civil rights requirements, including but not limited to those under Section 504 and the Fair Housing Act.

During the review, State staff reported that new construction projects are required to be "visitable." HUD does not require that new residential construction projects be "visitable" (see <http://concretechange.org/>). The State needs to ensure that new construction multifamily buildings with four or more units meet the seven design and construction requirements of the Fair Housing Act. If there is any confusion on when the accessibility standards of the Fair Housing Act or UFAS pursuant to Section 504 apply, HUD will provide technical assistance upon request. HUD did not evaluate the accessibility of any sub-recipient sites during this review.

3. Title VI Limited English Proficient (LEP) Services

Title VI prohibits discrimination on the basis of national origin. Under Title VI and Executive Order 13166, recipients and sub-recipients of federal financial assistance are required to take reasonable steps to ensure meaningful access to their programs and activities for LEP persons. HUD published LEP Guidance in the Federal Register on January 22, 2007, which became effective on March 5, 2007. See 72 Fed. Reg. 2732 (enclosed).

According to the 2000 and 2010 census, Nebraska's Hispanic population increased by 77 percent in ten years. In non-entitlement areas of the State, the increase was 71.7 percent. In 2010, 9.17 percent of the total population in the State identified as Hispanic. In 2000, 32 percent of the State's Spanish population had limited English proficiency. Although not specifically represented in the census data, the review revealed the State also has growing Sudanese and Somali populations.

The figures below are recent estimates for the population⁴ with limited English proficiency in the State of Nebraska and in select cities in Nebraska.

- In the State of Nebraska, 10 percent of the population speaks a language other than English. Of the population who speak another language, 45 percent have limited English proficiency.⁵
- In the city of Fremont, 12 percent of the population speaks a language other than English. Of the population who speak another language, 56 percent have limited English proficiency.
- In the city of Columbus, 15 percent of the population speaks a language other than English. Of the population who speak another language, 39 percent have limited English proficiency.
- In the city of Grand Island, 21 percent of the population speaks a language other than English. Of the population who speak another language, 57 percent have limited English proficiency.
- In the city of Lexington, 65 percent of the population speaks a language other than English. Of the population who speak another language, 55 percent have limited English proficiency.
- In the city of Lincoln, 11 percent of the population speaks a language other than English. Of the population who speak another language, 39 percent have limited English proficiency.
- In the city of Norfolk, 12 percent of the population speaks a language other than English. Of the population who speak another language, 48 percent have limited English proficiency.
- In the city of Omaha, 14 percent of the population speaks a language other than English. Of the population who speak another language, 49 percent have limited English proficiency.
- In the city of Scottsbluff, 16 percent of the population speak a language other than English. Of the population who speak another language, 29 percent have limited English proficiency.

These statistics indicate a need for the State and its sub-recipients to assess whether LEP persons have meaningful access to their federally funded programs. File reviews and interviews with State staff indicated that the State and its sub-recipients have not undertaken any activities to analyze the need for language assistance or implemented strategies to address those needs – for example, as recommended in HUD’s LEP Guidance. The review revealed that the State has not conducted a Four-Factor Analysis or developed a language assistance plan. HUD issued the LEP Guidance, which includes the Four-Factor Analysis to provide an analytical framework for recipients to determine their obligations to provide LEP services and, therefore, to comply with

⁴ Source: HUD calculations of American Community Survey (ACS) 2007-2011 Five Year Estimates, Table B16001, “Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over.”

⁵ This refers to the population who speak less than “very well”, as reported in the ACS.

Title VI requirements to ensure that programs or activities receiving federal financial assistance are accessible to persons on the basis of national origin. The review revealed that the State and its sub-recipients have not assessed the potential needs of LEP persons to ensure access to federally funded programs. The State's management staff acknowledged the State has not translated program documents in other languages and does not have bilingual staff that is proficient in Spanish to provide translation or interpretation, if needed. A review of the State's website indicated the content is available only in English.

HUD's website at <http://www.hud.gov/offices/fheo/lep.xml> includes HUD translated documents in several languages, including Arabic, Cambodian, Chinese, Korean, Spanish, Vietnamese, and Russian, that are available to print. Additional LEP information, resources, and training materials can also be found on HUD's website. HUD brochures translated in non-English languages can also be obtained by calling the Distribution Center at 1-800-767-7468.

Finding: The State has not taken reasonable steps to provide meaningful access to federally funded programs for LEP persons pursuant to the nondiscrimination requirements of Title VI at 24 C.F.R. § 1.4. The review team found that the State has not implemented any of the actions recommended in HUD's LEP Guidance pursuant to Title VI.

Corrective Action: The State must take reasonable steps to provide meaningful access to its federally funded programs for LEP persons to comply with Title VI and 24 C.F.R. Part 1. To this end, the State may conduct the Four-Factor Analysis set out in the LEP Guidance, and develop a language assistance plan. It is recommended the State review the enclosed HUD LEP Guidance for specific comprehensive steps to fully implement all requirements and advise and monitor its grantees in this area.

4. State's Monitoring of Sub-recipients for Title VI Requirements

As set out above, file reviews and interviews with State staff revealed the State's sub-recipients have not assessed the potential needs of LEP persons to ensure access to federally funded programs and the State has failed to monitor sub-recipients in this area.

Finding: The State has not monitored its sub-recipients, as required by 24 C.F.R. § 570.492, to ensure reasonable steps are taken to provide access for LEP persons in accordance with Title VI and 24 C.F.R. § 1.4. The review team found that the State's sub-recipients have not implemented any of the actions recommended in HUD's LEP Guidance pursuant to Title VI.

Corrective Action: The State shall direct its sub-recipients to assess the needs of LEP persons in their communities and take reasonable steps to provide meaningful access to its federally funded programs for LEP persons pursuant to Title VI and 24 C.F.R. Part 1. The State shall monitor its sub-recipients in accordance with 24 C.F.R. § 570.492 and maintain appropriate records and documentation pursuant to 24 C.F.R. § 570.490.

5. State's Citizen Participation Plan

Pursuant to 24 C.F.R. § 91.115, the State must develop a Citizen Participation Plan that assures that all members of the community, including racial and ethnic minorities, LEP persons, and people with disabilities, are encouraged to participate in the consolidated planning and performance review process. The Citizen Participation Plan must provide that public hearings will be held at a time and location convenient to potential and actual beneficiaries, with accommodations for persons with disabilities and the needs of non-English speaking persons must be met. The Citizen Participation Plan must identify the plan to meet these participation needs.

The State's Citizen Participation Plan states that public meetings will be held at times and locations considered convenient to potential and actual beneficiaries and that are accessible to persons with disabilities. The Plan further states DED will offer bilingual communications at public meetings upon advance request, when non-English speaking individuals make up a significant percentage of the proposed or actual beneficiaries of the programs.

Observation: As discussed above, the review revealed that the State has not assessed the needs of LEP persons and has not been providing LEP services in its programs. HUD observes that due to lack of assessment of LEP needs in the State, the needs of LEP persons may not be adequately addressed in the Citizen Participation Plan or process.

During the review, HUD also identified a State policy which requires persons with complaints about the CDBG or HOME Programs to put those complaints in writing. Such a requirement is not always appropriate when dealing with persons with disabilities or persons with LEP. The State should revise this policy stating that the State will assist persons with disabilities or persons with LEP in reducing a verbal complaint into a written complaint.

6. State's Monitoring of Sub-recipients for Citizen Participation

Pursuant to 24 C.F.R. § 570.486, each unit of local government that receives funds through the State CDBG program shall encourage citizen participation; ensure citizens reasonable access to local meetings, information and records regarding CDBG; and furnish citizens with information regarding CDBG funds and the range of funded activities. The Citizen Participation Plan must provide that the hearing be held at a time and location convenient to potential and actual beneficiaries, with accommodations for persons with disabilities and conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate. The Citizen Participation Plan must specify how the sub-recipient will meet these needs.

In the State's CDBG Administrative Manual, sub-recipients are directed to follow a Citizen Participation Plan. The Manual does not provide guidance on the required contents of such Plan. The review revealed that the Manual and the State's monitoring procedures indicate that the State will check whether a sub-recipient has created a Citizen Participation Plan, but the State's procedure does not include "looking for specifics." The extent of the State's monitoring process is checking a box 'yes' or 'no' as to whether the sub-recipient has a Citizen Participation

Plan. The monitoring does not include reviewing the content of the sub-recipient's Citizen Participation Plan. Further, no Plans were contained in any of the State's grant files. The grant files did contain the sub-recipients' newspaper announcements of public hearings relative the grant application. The public notices contain language regarding accommodations for persons with disabilities. The announcements did not indicate whether the location of the hearing/public meeting was accessible to persons with disabilities. The review indicated the State does not monitor this area.

The review found the "Applicant's Statement of Assurance and Certifications" submitted to the State for grantee applications for CDBG funds includes Citizen Participation Plan requirements including making accommodations for disabled persons and that hearings will be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate. However, the State does not monitor whether sub-recipients are providing LEP services. The review revealed that the State does not require sub-recipients to evaluate the communications needs of LEP persons.

Observation: As noted above for the State, HUD observes that due to lack of assessment of LEP needs in the sub-recipient communities, the needs of LEP persons may not be adequately addressed in the Citizen Participation Plan or process. Consequently, persons who are LEP may not have access to or benefit from sub-recipients' CDBG programs or projects to which they may have qualified. In addition, the State should ensure that sub-recipients hold public meetings and hearings at locations that are accessible to persons with disabilities.

7. Affirmatively Furthering Fair Housing (AFFH)

Grantees of the State CDBG program must certify that they will affirmatively further fair housing. 42 U.S.C. § 5304(b)(2). The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by: (1) conducting an analysis to identify impediments to fair housing choice within the State; (2) taking appropriate actions to overcome the effects of any impediments identified through that analysis; (3) maintaining records reflecting the analysis and actions in this regard; and (4) assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing. 24 C.F.R. § 570.487(b).

In 2005, the State completed an Analysis of Impediments to Fair Housing Choice (AI), identifying seven impediments which it planned to mitigate through implementing three strategies. The review revealed that the State has not taken sufficient action on the majority of impediments, actions and strategies that it identified in the 2005 AI. In several of its Consolidated Annual Performance Evaluation Reports (CAPERs), the State reported it addressed strategy number one, enhancing statewide understanding of fair housing law through outreach and education, by providing fair housing education to community representatives/sub-recipients. The State did not provide such training to the general public but DED noted it supports the annual civil rights conference in Lincoln. The review revealed the State's CDBG Administrative Manual used to train community representatives/sub-recipients contained the State's Fair

Housing Memorandum, which identifies the affirmatively furthering fair housing requirement for sub-recipients.

While the review revealed that State personnel discusses the content of the Manual at the annual one-day training for community representatives/sub-recipients, the review did not indicate whether participants circulated the fair housing information within their communities. The review also did not reveal documents or reports identifying who participated in the training. Based on the foregoing, HUD was unable to observe the reach, effectiveness and impact of the State's efforts to promote statewide understanding of fair housing law by providing nominal fair housing information to community representatives/sub-recipients.

The review also found the State reported no accomplishments on the other two strategies: strategy number two, enhance consumer understanding of credit markets and the importance of establishing good credit; and strategy number three, enhance the efficiency and geographic distribution of the fair housing complaint and enforcement system.

The State previously requested, and HUD provided, technical assistance on AFFH matters, including a technical assistance letter regarding its 2005 AI dated March 15, 2011. The State was in the process of updating its AI in 2011 during the HUD compliance review. The final version of the State's 2011 AI is dated January 10, 2012. When the updated draft 2011 AI was released for comment in October 2011, HUD conducted a limited review and found the new AI did not address all of HUD's previous comments. The final 2011 AI addresses some but not all of HUD's comments provided in March 2011. It includes more specific actions and measurable outcomes as HUD suggested. However, there are several areas the State must take action to address to ensure its AI is comprehensive and accurate. HUD has provided specific comments and technical assistance on improving the AI in a separate letter dated May 31, 2013.

Observation: The 2011 AI failed to sufficiently address the Fremont immigration Ordinance, discussed at length below, despite notice from HUD in the March 15, 2011 letter that the State must develop actions in its updated AI to address impediments to fair housing choice related to the Ordinance. At this time, HUD is not issuing a finding of noncompliance or determining that the State's certification that it will affirmatively further fair housing is unsatisfactory. It is hoped that, by undertaking corrective action outlined in this letter and by revising its AI consistent with technical assistance HUD has provided to the State, HUD will not have to take further action to ensure that the State's AFFH obligations are met.

8. State's Monitoring of Sub-recipients for Affirmatively Furthering Fair Housing

Each unit of general local government that receives CDBG funds from the State must also certify that it will affirmatively further fair housing. 42 U.S.C. § 5306(d)(7)(B). Pursuant to the State's certification to affirmatively further fair housing, the State must assure that units of local government funded by the State comply with their certifications to affirmatively further fair housing. 24 C.F.R. § 570.487(b). The State must make reviews and audits of units of general local government as may be necessary and appropriate to ensure compliance with CDBG requirements. See 24 C.F.R. § 570.492(a).

The review revealed that the State issued a policy memorandum dated September 28, 2010, titled Contract Special Condition: Affirmatively Further Fair Housing Action. In the memorandum, the State provided sub-recipients with a non-exhaustive list of fair housing actions, which sub-recipients may select and implement to demonstrate that each sub-recipient is affirmatively furthering fair housing. The memorandum requires sub-recipients to select and pledge one or more fair housing actions prior to receiving grant payments from the State and to submit a written response to the State. While the State's memorandum requires all sub-recipients to affirmatively further fair housing, HUD's review revealed deficiencies exist with the State's monitoring and follow-through with sub-recipients. The State's grant files contained the sub-recipients' signed certifications that each would comply with civil rights laws, however, HUD's review of the State's grant files revealed that sub-recipients' AFFH declarations were not always present in the grant files. HUD also notes and emphasizes that sub-recipients' actions to affirmatively further fair housing must include more than minimal actions such as displaying a poster.

The review also indicated that the State's monitoring of whether a sub-recipient carried out its selected AFFH actions was inconsistent and undocumented. The State does not require the sub-recipient to submit documentation or a report showing that it actually carried out its' AFFH actions, nor does the State follow up with the sub-recipient to ensure that it did. For the most part, the sub-recipient files lacked documentation of if, when, where, and to whom the sub-recipient carried out the AFFH activities. The State's files on sub-recipient grants did not contain information about or documents supporting whether each sub-recipient carried out the AFFH activity each had pledged at the beginning of the grant award process. Further, the State did not monitor whether sub-recipients maintained records, or identified outcomes or successes of the AFFH activity, despite the requirement for sub-recipients to do so pursuant to the State's September 28, 2010 memorandum.

Observation: The State's current monitoring process indicates a lack of follow up and documentation regarding a sub-recipient's activities to affirmatively further fair housing. The State's process also does not address whether the sub-recipients' AFFH activities ameliorate or mitigate any of the State's identified impediments. The review revealed that the State has a requirement for sub-recipients to perform AFFH activities in its funding agreements, but no reporting requirement on the activities, the participation, its success and/or outcome. Therefore, the State is unable to report the full extent of sub-recipients' AFFH activities in its CAPERs, such as measurable numeric data on the demographics and location of the populations reached.

The State's 2011 AI identified the lack of AFFH actions by sub-recipients as an impediment. The State should improve its monitoring of sub-recipients and maintain documentation of its efforts to address the impediment. HUD suggests that the State provide more training, examples, and technical assistance to sub-recipients on affirmatively furthering fair housing, and that the State implement more stringent monitoring policies to ensure proper follow up and recordkeeping.

City of Fremont, Nebraska

The City of Fremont, population 26,397, is a sub-recipient of the State's CDBG program. For several years, Fremont has been at the center of a controversy regarding an anti-illegal immigrant ordinance. Interest in immigration issues and the local ordinance followed an increase in Hispanic immigrants in Fremont. Data from the 2010 U.S. Census indicates that White, non-Hispanics make up 85.3% of the total population in the City of Fremont. Hispanics represent the second largest ethnic group of the city with 11.9% of the total population. Fremont experienced a 190% increase in the Hispanic population between 2000 and 2010.

Around July 2008, the Fremont City Council considered but did not pass a proposed ordinance addressing illegal immigration in Fremont. Thereafter, a group of residents initiated a successful petition drive to force a special election on proposed Ordinance No. 5165 (Ordinance) to prohibit the harboring and hiring of illegal aliens in Fremont. In March 2009, the City filed suit in state court to prevent the special election requesting a declaratory judgment that the Ordinance was unconstitutional and violated the state's single subject rule. On April 20, 2009, the state district court ruled against the City and found the special election should be held. The City appealed and on April 23, 2010, the Nebraska Supreme Court affirmed the district court decision allowing the special election to go forward.

On June 21, 2010, 57 percent of the Fremont voters who went to the polls voted to pass the Ordinance. The Ordinance requires renters to obtain an occupancy license from the Fremont Police Department prior to renting a dwelling in Fremont, requires Fremont employers to use the federal E-Verify program, and imposes penalties for failing to comply with the Ordinance.

On July 21, 2010, the American Civil Liberties Union (ACLU) and the Mexican American Legal Defense and Educational Fund (MALDEF) each filed lawsuits against the City in federal court on behalf of several Plaintiffs, alleging the Fremont Ordinance was invalid on several grounds, including that it was preempted by federal law and violated the Fair Housing Act. The Plaintiffs requested the City be enjoined from enforcing the Ordinance. On July 27, 2010, the City Council agreed not to implement the Ordinance, which was to take effect on July 29, 2010, until 14 days after a final decision resolving the lawsuits. The lawsuits were consolidated by the federal district court on September 2, 2010. The City is defending the validity of the Ordinance in the lawsuits. HUD is not a party to this litigation.

On February 20, 2012, the U.S. District Court for the District of Nebraska held that several provisions of the Fremont Ordinance related to prohibiting the harboring of illegal aliens and revoking occupancy licenses were preempted due to conflict with federal immigration law and enjoined the City from enforcing those provisions.⁶ The Court also found the same provisions of the Ordinance violated the Fair Housing Act by discriminating on the basis of national origin because they would have a disparate impact on Hispanics. The Court rejected the Plaintiffs' claims of intentional discrimination under the Fair Housing Act. The District Court upheld the employment provisions of the Ordinance that prohibit hiring unauthorized aliens and require Fremont employers to use the federal E-Verify program. Both Plaintiffs and the City appealed the District Court's decision and the case is currently pending before the U.S. Court of

⁶ See *Keller v. City of Fremont*, 853 F. Supp. 2d 959 (D. Neb. 2012)

Appeals for the Eighth Circuit.⁷ Per resolution dated February 28, 2012, the Fremont City Council stayed the implementation of the housing provisions of the Ordinance until a decision is made by the Court of Appeals. The employment provisions of the Ordinance went into effect on March 5, 2012.

Around September 2010, City of Fremont officials inquired with the State of Nebraska what the City could do to affirmatively further fair housing. The State recommended to the City of Fremont that it conduct an AI and the State awarded CDBG funds to Fremont to pay the costs associated with conducting the AI. The City of Fremont also amended its Fair Housing Ordinance in November 2010.⁸

The Fremont AI was conducted between January and July 2011 and released in July 2011. Although the Fremont AI mentioned that the Ordinance could be an impediment to fair housing choice, it failed to recognize the Ordinance as a significant impediment and did not identify any actions or strategies to address the effects the Ordinance has already had on fair housing choice in the City. HUD's review further revealed that the Fremont AI did not sufficiently focus on barriers to fair housing choice based on protected classes but instead focused on affordable housing. Although a deficient AI is not a direct violation of HUD's regulations for CDBG sub-recipients, because an AI is not required of such sub-recipients, it may be considered in HUD's review of the sub-recipient's actions to affirmatively further fair housing. Additional comments and observations about Fremont's AI are included in the separate correspondence to the State regarding the State's AI.

Although the City has not implemented the housing provisions of the Ordinance, the citizen initiated petition and passage of the Ordinance have created an atmosphere of tension for minorities and promoted the idea that Hispanics are not welcome in the City and must be recognized as an impediment to fair housing choice in the community. Community members have reported that the Ordinance has promoted attitudes, behaviors and actions that are contrary to the principal purpose of the Fair Housing Act. In September 2010, community representatives informed the Nebraska Advisory Committee to the U. S. Commission on Civil Rights about the negative effects the Ordinance had already had on the community, including Fremont's Hispanic residents experiencing harassment and threats. Community representatives think that the Ordinance will discourage Hispanics from contacting law enforcement to report that they have been victimized, regardless of legal status. Community members have reported that Fremont is different than before the Ordinance passed and that incidents of discrimination and harassment from fellow residents have increased, even towards U.S. citizens.

The State's 2011 AI concluded the Fremont Ordinance has "potentially unlawful race and national origin restrictions in the rental housing market in the City of Fremont." However, as noted above, the State's AI did not list the Fremont Ordinance as an impediment to fair housing choice in the State and did not develop any strategies to address the effect the Ordinance has had on fair housing choice in the State. To the extent that the Ordinance's passage discourages housing providers from serving persons on the basis of national origin or discourages persons on

⁷ The Eighth Circuit Court heard oral arguments in the case on December 13, 2012.

⁸ HUD has not certified Fremont's local fair housing ordinance as substantially equivalent to the Fair Housing Act.

the basis of national origin from seeking housing, the Ordinance's housing provisions can be seen as an impediment rather than a potential impediment.

Observation: The State is responsible for monitoring the actions of the City regarding affirmatively furthering fair housing and ensuring the City's compliance with civil rights certifications pursuant to 24 C.F.R. §§ 570.487(b) and 570.492. The review revealed that the State has not issued any advisories to the City or issued any critical analysis of the City of Fremont's immigration Ordinance. Further, the State's monitoring review of the City of Fremont did not mention how the Ordinance might affect the State's acceptance of the City's certification to affirmatively further fair housing. Pursuant to its monitoring obligations, the State should notify the City of Fremont that if the City fully implements the Ordinance, its civil rights certifications may not be satisfactory and that the City may risk termination or suspension of CDBG funds, as set out below. In addition, if the Court of Appeals for the Eighth Circuit strikes down the Fremont Ordinance, the State is responsible for notifying the City of the steps it must take to maintain compliance with its civil rights certifications as a sub-recipient of the State CDBG program.

Observation: If the City of Fremont implements the housing provisions of Ordinance 5165, the City could be at risk of being found in violation of the Fair Housing Act and in noncompliance with its civil rights certifications to the State. CDBG funds may not be distributed by any State to any unit of general local government unless such unit of local government certifies its program will be conducted and administered in conformity with the Civil Rights Act of 1964 and the Fair Housing Act, and that it will affirmatively further fair housing. 42 U.S.C. § 5306(d)(7)(B). The State is required to address a sub-recipient's noncompliance with the civil rights requirements of the CDBG program. The State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and prevent a recurrence and shall establish remedies for units of general local government noncompliance. 24 C.F.R. § 570.492(b). If HUD determines that the State has failed to ensure that one of its sub-recipients is complying with its certifications, it could result in a funding sanction against the State. 24 C.F.R. § 570.496.

If HUD determines that a state or unit of general local government has failed to comply with CDBG program requirements, HUD will notify the state and the state will have an opportunity to respond and submit a plan for corrective action. HUD may take corrective or remedial actions including issuing a letter of warning of deficiencies, requiring additional assurances before accepting certifications, and imposing funding sanctions including suspension, termination or reimbursement of funds. 24 C.F.R. § 570.495(a).

If Fremont implements the housing provisions of the Ordinance, HUD may also find the City has failed to comply with Title VI and Section 109 due to national origin discrimination and will take appropriate action to address noncompliance pursuant to the regulations at 24 C.F.R. Parts 1 and 6. If HUD determines a recipient of CDBG funds has failed to comply with Section 109's nondiscrimination requirements, HUD shall attempt to secure compliance within 60 days. If the recipient does not agree to comply within that time, HUD may refer the matter to the U.S. Department of Justice to initiate civil action, take compliance actions under Title VI, and impose funding sanctions including termination or reduction of payments to the state. Regarding CDBG grants awarded by the State to a unit of local government, HUD may

withhold, reduce or withdraw the grant or may require the State to withhold, reduce or withdraw the grant or take other appropriate action. 24 C.F.R. §§ 570.495(b) and 570.496.

Observation: At this time, HUD has not found the City to be in noncompliance with its nondiscrimination or equal opportunity requirements or determined that the City's certification that it will affirmatively further fair housing is unsatisfactory to HUD. This statement does not preclude HUD from taking additional actions to ensure that the City affirmatively furthers fair housing. The City should take concrete actions to mitigate any adverse effect the Ordinance has had on limiting fair housing choice with respect to national origin, specifically to Hispanics. The City should report its AFFH activities to the State and the State shall actively monitor the City's AFFH efforts and obtain appropriate documentation of such efforts. Such actions may include but not be limited to:

- Revise the City's AI to address the comments above and in the separate technical assistance AI letter to the State. To have an effective AI, the Ordinance should be recognized as an impediment in the AI and concrete actions and strategies to address the Ordinance with specific timelines and measurable outcomes should be outlined in the City's AI.
- Gather information through studies or testing on the effect the Ordinance has had on minority rental applications in the City, particularly Hispanics.
- Convene meetings with interested community groups to gather input on how minorities and immigrant groups have been affected by the Ordinance. Interested groups could include One Fremont, One Future, ACLU Nebraska, Legal Aid of Nebraska, Local Bar Association, Dodge County Collaborative Team, Nebraska Appleseed Center, Employment Unions, United Food & Commercial Workers Union – Local 22 in Fremont, and the Fremont Ministerial Alliance.
- Identify incidents of housing discrimination taking place in the community by contacting tenant or immigration advocates and refer potential complainants to HUD or NEOC.
- Conduct targeted fair housing testing based on reports of discrimination by certain landlords.
- Create a stronger countywide or regional network of organizations that may hear about instances of housing discrimination.
- Develop and implement a fair housing education and outreach program for the City and/or partner with surrounding communities or the State to ensure that City officials, real estate professionals, landlords, tenants and all residents are knowledgeable about fair housing laws.
- Conduct outreach and education with businesses, banks, residential insurance salespersons and brokers, residential landlords and real estate professionals, including the Fremont Chamber of Commerce, Fremont Area Board of Realtors, Nebraska Real Estate Commission, Nebraska Realtors Association, Fremont landlord associations, Fremont Housing Authority, and HUD-assisted multifamily properties.
- Implement a fair housing and diversity education program in local schools. HUD recommends the City partner with the U.S. Department of Justice Community Relations Services (DOJCRS) staff in Kansas City, Missouri, and NEOC to conduct outreach in

schools.⁹ Mr. Pascual Marquez is the Regional Director of DOJCRS and may be contacted at (816) 426-7433 or Pascual.Marquez@usdoj.gov.

- Use media outlets, such as the Fremont Tribune, Nuestro Mundo, the Spanish language newspaper in Omaha, and local radio stations, as part of fair housing outreach efforts.
- Coordinate education and outreach efforts with NEOC or organizations such as the Fair Housing Center of Nebraska-Iowa (FHC), a program of Family Housing Advisory Services, Inc. (FHAS), and High Plains Community Development Corporation.

9. Minority Business Enterprise and Women Business Enterprise (MBE/WBE)

HUD regulations at 24 C.F.R. § 85.36(e)(2)(i)-(vi) provide that HUD grantees, sub-grantees, and prime contractors shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible, including, but not limited to including MBE/WBE on solicitation lists and ensuring they are solicited. CDBG regulations at 24 C.F.R. § 570.490 describe the recordkeeping requirements for states and require that records be kept that will permit the audit of states in accordance with 24 C.F.R. Part 85, which includes MBE/WBE requirements. The regulations further require states to establish recordkeeping requirements for units of general local government that are sufficient to facilitate reviews and audits.

HUD's general program requirement regulations at 24 C.F.R. § 5.105(a) include equal opportunity requirements concerning MBEs and WBEs, and HUD's HOME program regulations at § 92.508(a)(7)(ii)(B) describe the records that must be maintained to demonstrate compliance with MBE/WBE requirements. The regulations at 24 C.F.R. § 92.509(a) set forth the requirement for submission of reports in such format and at such time as HUD may prescribe. The review revealed that the State submitted a HUD Form 2516 (Contractor and Subcontractor Activity Report), which HUD uses to monitor and evaluate MBE/WBE activities against the total program activity and the designated MBE/WBE goals. The information provided by the State revealed it was not representative of the amount of grants it distributed for each reporting year. The review of the sub-recipient files revealed that sub-recipients are not reporting whether they solicited or used MBE/WBE.

The review revealed certification of MBE/WBE is not a consideration in the State's grant award or procurement process. The State pointed out that Nebraska law prohibits preferences based on protected classes. In an effort to work through this issue, the State sought and received a U.S. Department of Treasury grant to create a contractor directory, without the appearance of promoting individual businesses and/or companies. Ms. Huskey, Director of Community and Rural Development Division, indicated that in the future, the State would add whether the listed contractors qualify as MBE/WBE.

Chapter 7 of the State's CDBG Administrative Manual identifies that grantees are required to solicit and use MBE/WBE. It states sub-recipients shall:

- a. Incorporate such businesses (MBE/WBE) in solicitation lists whenever they are potential sources;

⁹ The DOJ Community Relations Staff in Kansas City, MO also serves the State of Nebraska.

- b. Ensure that such businesses are solicited when identified as potential sources;
- c. Divide procurement requirements, when economically feasible, to permit maximum participation of such businesses; and,
- d. Require prime contractors, when subcontracts are let, to take affirmative steps to select such firms.

Further, the State's monitoring worksheet identifies MBE/WBE as a monitoring area. If correctly used, monitored, and reported, the State would be able to properly report (including recordkeeping obligations) MBE/WBE data. Proper reporting would allow the State to assess whether sub-recipients are taking affirmative steps to assure that MBE/WBE have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

Interviews with State staff revealed that they think that the Nebraska Constitution prohibits or inhibits DED and/or its sub-recipients from fulfilling HUD's MBE/WBE regulatory requirements. They cited the following provision:

Neb. Const. Art. I, § 30 (Initiative Measure No. 424) states, in part, "(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting ... (5) Nothing in this section prohibits action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state ... (8) This section shall be self executing. If any part or parts of this section are found to be in conflict with federal law or the Constitution of the United States, this section shall be implemented to the maximum extent that federal law and the Constitution of the United States permit. Any provision held invalid shall be severable from the remaining portions of this section."

Observation: As a recipient of federal funds, the State is required to comply with HUD's MBE/WBE regulations and to maintain records to demonstrate compliance. The Nebraska Constitution provision cited above does not prohibit action required to maintain eligibility for any federal program. The review revealed that sub-recipients are under-reporting their efforts and/or uses of MBE/WBE contractors. It is recommended the State provide sub-recipients guidance on the reporting requirements which would allow the State to properly report to HUD.

10. CDBG/HOME Monitoring Checklists

The State's CDBG monitoring checklist addresses most of the Department's civil rights requirements. The State's checklists, if executed correctly, allow the State to determine a sub-recipient's compliance with the Department's nondiscrimination regulations and requirements in all areas, but two. The monitoring checklist does not thoroughly address limited English proficiency or Section 504 as it relates to citizen participation and accessibility.

The State's HOME monitoring checklist 6-A addresses most of the Department's civil rights requirements. If the State executed the checklist correctly, the State could determine a

sub-recipient's compliance with the Department's nondiscrimination regulations and requirements in all areas, but two. The checklist does not thoroughly address limited English proficiency and Section 504 as it relates to citizen participation and accessibility. The HOME Rental Project Completion Checklist 6-A does not address MBE/WBE or Section 504 interior/or exterior accessibility (UFAS). However, the Nebraska Affordable Housing Program Contract Negotiations Checklist – HOME Rental w/ LIHTCs does. This particular checklist included inquiry regarding (1) "visit-ability" and (2) "handicapped" unit number. The review team did not find this checklist in 100 percent of the HOME files that were reviewed.

11. Recordkeeping

The State is required to maintain records and establish recordkeeping requirements for its sub-recipients that are sufficient to facilitate reviews and audits by the State or HUD. 24 C.F.R. §§ 570.490, 570.492 and 570.493. For fair housing and equal opportunity purposes, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

The State CDBG and HOME Manuals contain recordkeeping requirements for their sub-recipients. The review of the State's files indicated that when a sub-recipient does not produce its records during an on-site review by the State, or its records fail to contain numerical documentation required in the State's various monitoring checklists, the State fails to follow up with the sub-recipient, in many cases, for the remainder of the grant term (often one-year grants). The lack of follow up was most evident in the absence of any mention of the deficiency in the State's monitoring letter to the sub-recipient. There was no evidence in the State's files that the State required the sub-recipient to produce the missing records or information the State identified during the on-site monitoring. HUD recommends the State implement more stringent monitoring policies to ensure proper recordkeeping and follow up with sub-recipients.

CONCLUSION

The review revealed findings of noncompliance with an accessibility requirement under Section 504 and the provision of LEP services under Title VI. The Department would like to resolve the noncompliant matters under Section 504 and Title VI by informal means as soon as possible. The terms of an informal resolution will be reduced to a written Voluntary Compliance Agreement (VCA) with a clear timetable for implementation. See 24 C.F.R. §§ 1.7(d)(1) and 8.56(j)(2). The review did not reveal specific findings of noncompliance with Section 109 at this time. The State should, however, take action to address the observations set out above, particularly regarding monitoring of sub-recipients such as the City of Fremont. The Department will be reviewing ongoing compliance with affirmatively furthering fair housing and civil rights certifications when the State submits Annual Plans and CAPERs for review.

Pursuant to 24 C.F.R. § 8.56(h), a recipient may request that a complete review be made of the letter of findings under Section 504 within 30 days of receipt, by mailing or delivering to the reviewing civil rights official, Office of Fair Housing and Equal Opportunity, 451 Seventh Street, SW, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information, with a complete copy also mailed to

Betty J. Bottiger, FHEO Director, Region VII, HUD Office, 400 State Avenue, Kansas City, Kansas 66101-2406.

In the interim, please contact Kitty Amaya, Equal Opportunity Specialist, Omaha HUD Office at (402) 492-3197, if you have any questions or to coordinate the VCA negotiations between the Department and the State of Nebraska.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon a third party's request. In the event that the Department receives such a request, we will protect, to the extent provided by law, personal information, which if released, would constitute an unwarranted invasion of privacy.

In conclusion, this office would like to thank you and your staff for the cooperation and assistance extended to the Compliance Review Team throughout our review. We look forward to a prompt resolution of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Betty J. Bottiger", written in a cursive style.

Betty J. Bottiger
Director
Region VII Office of Fair Housing
and Equal Opportunity

Enclosure:

1. "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice" dated January 22, 2007.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4878-N-02]

Final Guidance to Federal Financial 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: Final notice.

SUMMARY: The Department of Housing and Urban Development (HUD) is publishing the final "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons" (Guidance) as required by Executive Order (EO) 13166. EO 13166 directs federal agencies that extend assistance, subject to the requirements of Title VI, to publish Guidance to clarify recipients' obligations to LEP persons. This final Guidance follows publication of the proposed Guidance on December 19, 2003.

DATES: Effective Date: February 21, 2007.

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

SUPPLEMENTARY INFORMATION:

I. Background—December 19, 2003, Proposed Guidance

On December 19, 2003 (68 FR 70968), HUD published proposed Guidance to help recipients of federal financial assistance take reasonable steps to meet their regulatory and statutory obligations to ensure that LEP persons have meaningful access to HUD programs and activities. Under Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, recipients of federal financial assistance have a responsibility to ensure meaningful access to programs and activities by LEP persons. Specifically, EO 13166, issued on August 11, 2000, and 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 this obligation.

This Guidance must adhere to the federal-wide compliance standards and framework detailed in the Department of Justice (DOJ) model LEP Guidance, published at 67 FR 41455 (June 18, 2002). HUD's proposed Guidance followed the established format used in the DOJ model, and solicited comments on the Guidance's nature, scope, and appropriateness. Specific examples set out in HUD's Guidance explain and/or highlight how federal-wide compliance standards are applicable to recipients of HUD's federal financial assistance.

II. Significant Differences Between the December 19, 2003, Proposed Guidance and This Final Guidance

This final Guidance takes into consideration the public comments received on the December 19, 2003, proposed Guidance. There are no significant changes between the proposed Guidance and this final Guidance. However, for purposes of clarification, several minor changes were made in Appendix A, and a new Appendix B has been added to the Guidance. Appendix B, "Questions and Answers (Q&A)," responds to frequently asked questions (FAQs) related to providing meaningful access to LEP persons.

III. Discussion of Public Comments Received on the December 19, 2003, Proposed Guidance

The public comment period on the December 19, 2003, proposed Guidance closed on January 20, 2004. On January 20, 2004, the comment period was extended to February 5, 2004. HUD received 21 comments. Comments were received from public housing agencies, state housing agencies, private sector housing providers, organizations serving LEP populations, organizations advocating that English be the official U.S. language, and trade associations representing public housing agencies. HUD also received more than 7,000 postcards from concerned citizens who opposed the Guidance as an "onerous burden" on small and underfunded organizations and groups that advocated adoption of English as the official language of the United States.

The comments expressed a wide range of viewpoints. Many of the comments identified areas of the Guidance for improvement and/or revision. Other comments objected to sections of the Guidance or to the Guidance in its entirety. The most frequent dissenting comments involved:

(1) Opposition to the *Alexander v. Sandoval* Supreme Court decision [53 U.S. 275 (2001)]; (2) enforcement and compliance efforts (including legal enforceability, validity of housing-related legal documents, and vulnerability of recipients); (3) applicability of the Guidance (including HUD's provision of clearer standards regarding when the provision of language services are needed); (4) cost considerations; (5) competency of interpreters (including use of informal interpreters) and translators; (6) vulnerability of recipients as a result of this Guidance (including "safe harbors"); and (7) consistency of translations (including standardized translations of documents).

In addition, four commenters stated that HUD did not solicit the input of stakeholders for the proposed Guidance, despite the mandate of EO 13166. These and other comments are discussed in greater depth below. This preamble presents a more detailed review of the most significant concerns raised by the public in response to the December 19, 2003, proposed Guidance and HUD's response to each concern. The preamble's sections are:

- Section IV, which discusses comments regarding enforcement and compliance efforts (including legal enforceability, validity of housing-related legal documents, and vulnerability of recipients);
- Section V, which discusses comments regarding applicability of the Guidance (i.e., clearer standards regarding when language services can reasonably be expected to be provided);
- Section VI, which discusses comments regarding cost considerations;
- Section VII, which discusses comments regarding competency of interpreters (including use of informal interpreters) and translators;
- Section VIII, which discusses comments regarding vulnerability of recipients as a result of this Guidance (including "safe harbors");
- Section IX, which discusses comments regarding consistency of translations (including standardized translations of documents); and
- Section X, which discusses other comments.

IV. Comments Regarding the *Sandoval* Supreme Court Decision (Including Enforcement Under Title VI)

Comment: Several commenters wrote that the proposed Guidance was

unsupported by law and, therefore, urged its withdrawal. The commenters expressed disagreement with the HUD and DOJ positions on the holding in *Alexander v. Sandoval*. *Sandoval* precludes individuals from bringing judicial actions to enforce those agency regulations based on Title VI. The commenters wrote that federal agencies have no power to enforce such regulations through this Guidance because it would violate the *Sandoval* decision to use the Guidance to determine compliance with Title VI and Title VI's regulations.

HUD Response. HUD reiterates here, as it did in the proposed Guidance published on December 19, 2003, that its commitment to implement Title VI through regulations reaching language barriers is longstanding and is unaffected by the *Sandoval* decision. In its proposed Guidance, HUD stated that DOJ had disagreed with the interpretation voiced by the commenters, and in its final Guidance, HUD continues to take this position. The Guidance and the response to Appendix B, Q&As XV, XXIV, and XXV, state that the Supreme Court, in the *Sandoval* decision, did not strike down Title VI itself or Title VI's disparate impact regulations (at HUD, that would be its civil rights-related program requirements or "CRRPRs"), but only ruled that individuals could not enforce these Title VI regulations through the courts and could only bring such court action under the statute itself. The Guidance further states that because the Supreme Court did not address the validity of the regulations or EO 13166, that both remain in effect. Individuals may still file administrative complaints with HUD alleging Title VI and Title VI regulatory violations for failing to take reasonable steps to provide meaningful access to LEP persons.

Appendix B, Q&As II, III, and IV further clarify the requirements of both the EO and Title VI of the Civil Rights Act of 1964. These responses describe the obligations of federal agencies under the EO and how Title VI applies to situations involving discrimination against LEP persons. These Q&As explain that Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. Federally conducted programs and activities are required to meet the standards for taking reasonable steps to provide meaningful access to LEP persons under EO 13166. In addition, all programs and operations of entities that receive financial assistance from the

federal government, including, but not limited to, state agencies, local agencies, and for-profit and nonprofit entities, and all sub-recipients (those that receive funding passed through a recipient) must comply with the Title VI obligations (including those in the regulations). Programs that do not receive federal funding, such as those that receive Federal Housing Administration (FHA) insurance, are not required to comply with Title VI's obligations. (If the recipient received FHA insurance along with Rental Assistance, construction subsidy, or other federal assistance, it would be required to comply with Title VI requirements.) In certain situations, failure to ensure that LEP persons can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination. EO 13166, signed on August 11, 2000, directs all federal agencies, including HUD, to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Section 3 of the EO requires all federal agencies to issue LEP guidance to help federally assisted recipients in providing such meaningful access to their programs. This guidance must be consistent with DOJ Guidance, but tailored to the specific federal agency's federally assisted recipients. HUD has written its general Guidance and Appendices to meet these requirements.

V. Comments Regarding Enforcement and Compliance Efforts (Including Legal Enforceability and Validity of Housing-Related Legal Documents and Vulnerability of Recipients)

Comment: Two commenters who supported adoption of the proposed Guidance recommended that HUD provide more detailed Guidance to its staff on enforcement and compliance and encouraged collaboration with nonprofit organizations, such as fair housing groups funded by the Fair Housing Initiatives Program (FHIP). A number of commenters, while supportive of the Guidance and HUD's leadership in this area, suggested modifications that would, in their view, provide a more definitive statement of the minimal compliance standards or better describe how HUD would evaluate activities under a more flexible compliance standard. There were also comments that claimed the Guidance was actually a set of regulatory requirements masquerading as "Guidance"; one commenter stated that the Guidance would be used to determine compliance with Title VI and

its regulations, rather than as discretionary advice.

HUD Response. HUD's rule at 24 CFR 1.7(c) requires HUD to undertake "a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part 1." As explained further in Appendix B, Q&As XVI, XVIII, and XIX, FHEO will investigate or review complaints or other information that suggests a recipient is not in compliance with its Title VI obligations. HUD will determine whether the recipient has made reasonable efforts to ensure participation of LEP persons in programs or activities receiving federal financial assistance from HUD. Review of the evidence will include, but may not be limited to, application of the four-factor analysis identified in the LEP Guidance, which provides a framework for reviewing the totality of the circumstances and objectively balances the need to ensure meaningful access by LEP persons and without imposing undue burdens on recipients. HUD will also collect and evaluate evidence about whether the recipient has adopted a Language Access Plan (LAP) that reflects LEP needs (or addressed LEP needs in another official plan, such as the PHA or Consolidated Plan), implemented the Plan, and maintained Title VI compliance records that demonstrate services provided to LEP persons. HUD will inform the recipient of any findings of compliance or non-compliance in writing. If the investigation or review results in findings that the recipient has failed to comply with HUD's rules at 24 CFR part 1, HUD will inform the recipient and attempt to resolve the findings by informal means [24 CFR 1.7(d)]. HUD may use other means of voluntary cooperation, such as negotiation and execution of a voluntary compliance agreement. If HUD determines that compliance cannot be secured by voluntary means, HUD may use other means to enforce its rules under Title VI, such as the suspension or termination of approved funding or refusal to grant future funding [24 CFR 1.8(a), (c), and (d)]. HUD also may refer the matter to DOJ for enforcement action.

Appendix B, Q&A VII, provides additional guidance on the four-factor analysis by explaining that recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This standard is intended to be both flexible and fact-dependent and also to balance the need to ensure meaningful access by LEP persons to critical services while not imposing

undue financial burdens on small businesses, small local governments, or small nonprofit organizations. The recipient may conduct an individualized assessment that balances the following four factors: (1) Number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons were afforded adequate education and outreach); (2) frequency with which LEP persons come into contact with the program; (3) nature and importance of the program, activity, or service provided by the program; and (4) resources available to the recipient and costs to the recipient. It further refers recipients to examples of applying the four-factor analysis to HUD-specific programs in Appendix A of HUD LEP Guidance.

Appendix B, Q&A IX, explains that after completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient may develop a LAP or Implementation Plan to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include: (1) Identifying LEP persons who need language assistance and the specific language assistance that is needed; (2) identifying ways in which language assistance will be provided; (3) providing effective outreach to the LEP community; (4) training staff; (5) translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide); (6) providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans); (7) providing interpreters for large, medium, small, and one-on-one meetings; (8) developing community resources, partnerships, and other relationships to help with the provision of LEP services; and (9) making provisions for monitoring and updating the LAP.

However, HUD did not make changes to the Guidance itself. At this time, HUD does not feel that a specific separate statement of compliance standards is needed. HUD will continue to apply current Title VI investigative standards when conducting LEP investigations or compliance reviews. (See Appendix B, Q&A VI, for further discussion.)

Comment: Several commenters stated that housing documents of a legal nature, such as leases, sales contracts, etc., that are translated into foreign

languages might not be upheld in court as legally enforceable.

HUD Response. HUD appreciates this concern that the documents required by the Guidance would complicate possible eviction actions. State and local law govern contractual agreements between residents and landlords.

Comment: Commenters stated that questions could be raised about the accuracy of the translation and whether, for example, a tenant's signature on both English language and foreign language versions of a housing-related legal document would be upheld as valid in a judicial proceeding.

HUD Response. HUD recommends that when leases are translated into other languages than English, the recipient only ask the tenant to sign the English lease. The translated document would be provided to the tenant but marked "For information only." However, this recommendation in no way minimizes the need to ensure meaningful access, and therefore to take reasonable measures, such as second checks by professional translators, to ensure that the translation is accurate.

VI. Comments Regarding Applicability of the Guidance (i.e., HUD Should Provide Clearer Standards Regarding the Provision of Language Services)

Comment: Several commenters wrote that the statement "coverage extends to a recipient's entire program or activity * * * even if only one part of the recipient receives the federal assistance," places an unwarranted burden on an entire program. One commenter gave the example of a PHA that contracts with a Residents' Council that provides some level of LEP services. The commenter recommended that the PHA should not be required to enforce LEP requirements against the Residents' Council unless there is clear evidence of discriminatory intent.

HUD Response. With regard to the specific example of a Residents' Council that provides some level of LEP services, given the context, we assume that this comment intended to characterize the Council as a subrecipient of federal financial assistance. The proposed Guidance issued on December 19, 2003, states that "subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient." Recipients such as Community Development Block Grant (CDBG) Entitlement jurisdictions, CDBG state programs, and PHAs are required to monitor their subrecipients who receive federal financial assistance for a variety of purposes. Among these purposes are that such entities are also subject to the

requirements of Title VI of the Civil Rights Act of 1964, as amended by the Civil Rights Restoration Act of 1987. This final Guidance does not change the position taken on this issue as cited in the proposed Guidance. Therefore, the Resident Counsel in the above comment would be subject to Title VI if it received any funding from the PHA, although its analysis may indicate that it must provide little, if any, LEP services. The Guidance and Appendix B, Q&A IV, restate that Title VI's LEP obligations apply to (1) all programs and activities of entities that receive federal financial assistance, and (2) all subrecipients that receive federal funds that are passed through a recipient. Entities that are not recipients or subrecipients of federal financial assistance are not, themselves, subject to Title VI requirements (see 24 CFR 1.2), although recipients using contractors to carry out recipient activities remain obligated to ensure civil rights compliance in those activities. With regard to the comment that LEP requirements should only apply to subrecipients in the case of clear evidence of discriminatory intent, refer to Appendix B, Q&A IV, for a more in-depth response. Finally, this Guidance in no way expands the scope of coverage mandated by Title VI, as amended by the Civil Rights Restoration Act of 1987, which defined the terms "program" and "program or activity."

VII. Comments Regarding Cost Considerations

Comments: A number of comments focused on the cost considerations as an element of HUD's flexible four-factor analysis for identifying and addressing the language assistance needs of LEP persons. For example, several commenters said that implementing this Guidance would constitute an unfunded mandate and that the total costs nationally would exceed the \$100 million limit stipulated in the Unfunded Mandates Control Act. Commenters also stated that document translation is not a "one-time" cost, since laws, regulations, and Guidance all change over time. In addition, several commenters noted that private housing providers and PHAs would not be able to recover the costs of implementing LEP services through rent increases, since LEP services are not included in HUD formulae used to calculate and approve rent increases. A few comments suggested that the flexible fact-dependent compliance standard incorporated by the Guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large,

statewide recipients to incur unnecessary or inappropriate financial burdens in conjunction with already strained program budgets.

While no comments urged that costs be excluded from the analysis, some commenters wrote that a recipient could use cost as an inappropriate justification for avoiding otherwise reasonable and necessary language assistance to LEP persons.

HUD Response. HUD believes that costs are a material consideration in identifying the reasonableness of particular language assistance measures, and that the Guidance identifies an appropriate framework by which costs are to be considered. The Department recognizes that some projects' budgets and resources are constrained by contracts and agreements with the Department. These constraints may impose a material burden upon the projects. Where a recipient of HUD funds can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, where documents share common text, costs can be significantly decreased through pooling resources. For instance, many HUD recipients of HUD funds belong to national organizations that represent their interests. HUD recommends that these national groups set aside some funds from membership fees to offset the written translations. In addition, the same national groups may contract with a telephone interpreter service to provide oral interpretation on an as-needed basis. Appendix A discusses this issue in greater depth. Appendix B, Q&A VII, integrates the issue of cost as part of the discussion of the four-factor analysis described in the Guidance by advising the recipient to take into account both the costs and resources available to the recipient.

In addition, Appendix B, Q&A XII, explains how a recipient may supplement its limited resources to provide necessary language services without sacrificing quality and accuracy. The federal government's LEP Web site, <http://www.lep.gov/recip.html> (scroll to translator and interpreter organizations), lists some examples of associations and organizations whose members may provide translation and interpretation services. In addition, the General Services Administration maintains a language services database for both written translations and oral interpretation that can be accessed at: <http://www.gsa.eLibrary.gov/ELibMain/SinDetails?executeQuery=YES&scheduleNumber=738+II&flag&filter=&specialItemNumber=382+1>. Site

visitors may choose an interpreter or translator from among a list of language service providers. Language service providers are available through other means, as well, and the above list is in no way meant to be an exclusive list or recommendations, but rather is shared for information purposes only.

VIII. Comments Regarding Competency of Interpreters (Including Use of Informal Interpreters) and Translators

Comment: Several commenters wrote that written LAPs should include language strongly discouraging or severely limiting the use of informal interpreters, such as family members, guardians, or friends. Some recommended that the Guidance prohibit the use of informal interpreters except in limited or emergency situations. Commenters expressed concern that the technical and ethical competency of interpreters could jeopardize meaningful and appropriate access at the level and type contemplated under the Guidance.

HUD Response. HUD believes that the Guidance is sufficient to allow recipients to achieve the proper balance between the many situations where the use of informal interpreters is inappropriate, and the few where the transitory and/or limited use of informal interpreters is necessary and appropriate in light of the nature of the service or benefit being provided and the factual context in which that service or benefit is being provided. Appendix B, Q&A XIII, states that a recipient should generally discourage the use of family members or other informal interpreters, but should permit the use of interpreters of the LEP person's choosing when that LEP person rejects the recipient's free language assistance services. This Guidance further explains and clarifies all aspects of how a recipient can provide different types of interpretation services, including informal interpreters for different situations. To ensure the quality of written translations and oral interpretations, HUD encourages recipients to use professional interpreters and translators.

Comment: A number of commenters objected to requiring recipients to determine the competency of interpreters or translators, and strongly stated that such a requirement was too burdensome for the small- to medium-sized housing providers. A few commenters urged HUD to provide details on particular interpretation standards or approaches that would apply on a national basis.

HUD Response. HUD declines to set such professional or technical

standards. General guidelines for translator and interpreter competency are set forth in the Guidance. Recipients, beneficiaries, and associations of professional interpreters and translators could collaborate in identifying the applicable professional and technical interpretation standards that are appropriate for particular situations. For example, local, state, or national chapters of businesses or housing trade organizations can set up and enforce a set of rules and standards that will qualify interpreters and translators to participate in housing-related legal and other program-related transactions. Alternatively, PHAs may be able to find qualified interpreters and translators through associations representing that industry (e.g., American Translators Association, National Association of Judicial Interpreters and Translators, Translators and Interpreters Guild, and others) or even from for-profit organizations. Housing provider groups and/or individual housing providers can, as part of their LAPs, communicate with the state Attorney General's Office or the State Administrative Offices of the Courts regarding the regulations that govern the use of interpreters in most legal proceedings in state courts. Sections VI.A.1 and VI.B.4 of the general Guidance provide information on how to determine the competency of interpreters and translators. In addition, Appendix B, Q&A XII, re-emphasizes that the recipient should try to ensure the quality and accuracy of any interpretation or translation services provided.

IX. Comments Regarding Vulnerability of Recipients as a Result of This Guidance (Including "Safe Harbors")

Comments: Some comments focused on providing "safe harbors" for oral translations and provision of written translation for vital documents. The commenters stated that there should be a level below which there would be no need to provide language services where the numbers and proportions of the population that are LEP are insignificant. Another commenter recommended that the "safe harbor" standards be less stringent and that compliance be determined based on the total circumstances.

Comment: While not clearly stated in any of the comments, there appeared to be a misunderstanding about how the safe harbor requirements applied to the eligible population of the market area as opposed to current beneficiaries of the recipient.

HUD Response. This final Guidance makes no changes to the "safe harbor"

provisions found at Paragraph VI.B.3 or the Guidance in Appendix A.

Oral Interpretation v. Written Translation: The "safe harbor" provided in this Guidance is for written translations only. There is no "safe harbor" for oral interpretation. In fact, Q&As XXII and XXIII clarify that no matter how few LEP persons the recipient is serving, oral interpretation services should be made available in some form. Recipients should apply the four-factor analysis to determine whether they should provide reasonable and timely, oral interpretation assistance, free of charge, in all cases, to any beneficiary that is LEP. Depending on the circumstances, reasonable oral interpretation assistance might be an in-person or telephone service line interpreter.

Safe Harbor for Written Translations: Q&A XX explains how the four-factor analysis and the recipient's subsequent actions may be used to provide a "safe harbor" for written translations. HUD LEP Guidelines in Paragraph VI(B)(3) explains how certain recipient activities would constitute a "safe harbor" against a HUD finding that the recipient had not made reasonable efforts to provide written language assistance. As has already been noted, this Guidance is not intended to provide a definitive answer governing the translation of written documents for all recipients, nor one that is applicable in all cases and for all situations. Rather, in drafting the "safe harbor" and vital documents provisions of the Guidance, HUD sought to provide one, but not necessarily the only point of reference for when a recipient should consider translations of documents (or the implementation of alternatives to translating such documents). The recipient should consider its particular program or activity, the document or information in question, and the potential LEP populations served.

Specific Safe Harbor Guidance: Appendix B, Q&A XXI, provides a helpful table that further clarifies the "safe harbors" for written translations based on the number and percentages of the market area-eligible population or current beneficiaries and applicants that speak a specific language. According to the table, HUD would expect translations of vital documents to be provided when the eligible LEP population in the market area or the current beneficiaries exceeds 1,000 persons or if it exceeds 5 percent of the eligible population or beneficiaries along with more than 50 persons. In cases where more than 5 percent of the eligible population speaks a specific language, but fewer than 50 persons are affected, there should be a translated

written notice of the person's right to an oral interpretation. An oral interpretation should be made available in all cases.

Vital Documents: Q&A XX defines a "safe harbor" for written translations for purposes of this Guidance as one where the recipient has undertaken efforts to prevent a finding of non-compliance with respect to the needed translation of vital written materials. HUD's Guidance follows DOJ's Guidance that define a "safe harbor" only for the translation of vital documents. Q&A X describes how to determine if a document is a "vital document." Vital documents are those that are critical for ensuring meaningful access by beneficiaries or potential beneficiaries generally and LEP persons specifically. If a recipient (1) undertakes the four-factor analysis, (2) determines a need for translated materials, and (3) translates vital documents to accommodate the primary languages of its LEP applicants, beneficiaries, and potential beneficiaries, then HUD will consider this strong evidence of compliance with respect to translation of vital documents.

The decision as to what program-related documents should be translated into languages other than English is a complex one. While documents generated by a recipient may be helpful in understanding a program or activity, not all are critical or vital to ensuring meaningful access by beneficiaries generally and LEP persons specifically. Some documents may create or define legally enforceable rights or responsibilities on the part of individual beneficiaries (e.g., leases, rules of conduct, notices of benefit denials, etc.). Others, such as applications or certification forms, solicit important information required to establish or maintain eligibility to participate in a federally assisted program or activity. For some programs or activities, written documents may be the core benefit or service provided. Moreover, some programs or activities may be specifically focused on providing benefits or services to significant LEP populations. Finally, a recipient may elect to solicit vital information orally as a substitute for written documents. Certain languages are oral rather than written, and thus a high percentage of such LEP speakers will likely be unable to read translated documents or written instructions. Each of these factors should play a role in deciding: (1) What documents should be translated; (2) what target languages other than English are appropriate; and (3) whether more effective alternatives exist, rather than continued reliance on written

documents to obtain or process vital information.

Eligible population in the housing market area vs. current beneficiaries and applicants: While the final Guidance makes no changes to the safe harbor provisions found in Section VI.B.3. of the Guidance or to that found in Appendix A, the latter has been changed to differentiate between how the results of the "safe harbor" will affect a recipient's outreach efforts to eligible LEP populations as opposed to its LEP services for current beneficiaries and applicants of its programs. We have clarified in the "Housing" portion of Appendix A, as well as in Appendix B, Q&A XXI, that the "safe harbor" evaluation will differ depending on the population the recipient is considering. When conducting outreach to the eligible population in the housing market area, the number and percentage of the eligible LEP population in that housing market area should be evaluated. When working with a recipient's own beneficiaries (e.g., residents of a specific housing development or applicants to the housing development), the number and percentage of LEP persons living in the housing and on the waiting list should be evaluated.

Guidance v. Requirements: Regarding written translations, the general HUD Guidance does identify actions that will be considered strong evidence of compliance with Title VI LEP obligations. However, the failure to provide written translations under these cited circumstances does not necessarily mean that the recipient is in non-compliance. Rather, the "safe harbors" provide a starting point for recipients to consider whether the following justify written translations of commonly used forms into frequently encountered languages other than English: (1) The importance of the service, benefit, or activity and the nature of the information sought; (2) the number or proportion of LEP persons served; (3) the frequency with which LEP persons need this particular information and the frequency of encounters with the particular language being considered for translation; and (4) resources available, including costs.

Comment: One comment pointed out that current demographic information based on the 2000 Census or other data was not readily available to assist recipients in identifying the number or proportion of LEP persons and the significant language groups among their otherwise eligible beneficiaries.

HUD Response. This information is now available at: <http://>

www.census.gov/main/www/com2000.html.

X. Comments Regarding Consistency of Translations (Including Standardized Translations of Documents)

Comment: One commenter stated that the concept of "safe harbors" should reflect an agreed-upon split of responsibilities between HUD and its private and public sector partners. Several commenters proposed that HUD provide standardized translations of basic programmatic and legal documents associated with HUD housing programs (e.g., public housing lease, housing discrimination complaint form, etc.). They also recommended that HUD assume the cost of such translations as a means of reducing the costs of LEP services.

HUD Response. On an *ad hoc* basis, HUD's individual program offices have translated "as needed" important documents that affect that particular office's programs. This approach has been effective and will be continued.

XI. Other Comments

Comment: Several national organizations representing assisted housing providers said HUD should place a "disclaimer" on its translated documents that stipulates they are: (1) HUD translations, (2) provided as supplementary information, (3) not replacement for the official English document, and (4) not word-for-word translations of the housing providers documents.

HUD Response. After undertaking reasonable quality control measures to ensure the accuracy of the translation, HUD will use the following language as a disclaimer in its translated lease or other documents: "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document."

Comment: Recipients of HUD funds have commented on potential complications that may arise during legal proceedings on the eviction of non-compliant residents. Recipients noted that failure on the part of the housing providers to provide all vital documents in the resident's native language would create a defense against eviction.

HUD Response. HUD appreciates this concern that the documents required by the Guidance would complicate

possible eviction actions. As stated in Appendix B, Q&A XIV, state and local laws control contractual agreements between residents and landlords. Notwithstanding, HUD is unaware of any state or local case law that would encumber the eviction process.

Comment: National organizations representing assisted housing providers commented that the definition of "Who is LEP?" is misleading. They pointed out that since all members of the family over 18 years of age must sign the lease and related documents, they, therefore, are all legally responsible for the terms and conditions of the lease. If a member of the family who signs the lease is English proficient, then this family should not be counted as LEP, and the standards for providing alternate language services to that family should not apply.

HUD response. HUD and its recipients do not determine who is LEP. The beneficiaries of the services and activities identify themselves as LEP.

Comment: HUD received more than 7,000 postcards from individual citizens who opposed the Guidance as an "onerous burden" on small and underfunded organizations and who advocated adoption of English as the official language of the United States.

HUD Response. As stated in Appendix B, Q&As II and III, the Guidance is based on Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on national origin in programs and activities receiving federal financial assistance, and is, therefore, not a new requirement. The Guidance requires that meaningful access to programs, activities, and services that receive such assistance are expected to be provided to LEP persons. As explained in Appendix B, Q&A XXVI, recipients operating in jurisdictions in which English has been declared the official language continue to be subject to Title VI federal nondiscrimination requirements, including those applicable to the provisions of federally assisted services to LEP persons.

Comment: Four commenters stated that HUD did not solicit the input of housing industry stakeholders in drafting the Guidance, despite the mandate of EO 13166. They recommended that HUD convene a stakeholder meeting to discuss issues relating to the final version of this Guidance.

HUD Response. HUD contends that the process of publishing the December 19, 2003, proposed Guidance, providing the public comment period, reviewing the issues raised by the comments, and issuing this final version of the

Guidance (with Appendices A and B) provided adequate opportunity for all housing industry stakeholders to review, discuss, and comment on the Guidance. HUD has determined that no separate housing industry stakeholder meetings are necessary.

Since publication of the proposed Guidance, HUD has provided several training sessions to industry groups. After this final Guidance is published, HUD plans to hold a series of public forums where PHAs, housing and service providers, and other HUD program recipients and beneficiaries may exchange ideas on how to implement this Guidance and discuss and identify "promising practices" in serving LEP persons.

In addition, the following clarifying comments have been added in Appendix B: (1) Q&A I defines LEP persons as "persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write or understand English;" (2) Q&A V describes the applicability of these requirements to immigration and citizenship by explaining that U.S. citizenship and LEP should not be used interchangeably. It is possible for a person to be a citizen *and* LEP, or for a person to be fluent in English but not a U.S. citizen. Some, but not all, HUD programs do require recipients to document the citizenship or eligible immigrant status of program beneficiaries. Title VI applies equally to citizens, documented non-citizens and undocumented non-citizens, based on the LEP status of those who meet program requirements; (3) Q&A VIII specifies the types of language assistance that may be used. These include, but are not limited to, oral interpretation services, bilingual staff, telephone service lines interpreters, written translation services, notices to staff and recipients of the availability of LEP services, and referrals to community liaisons proficient in the language of LEP persons; (4) Q&A XI helps to determine the language needs of a beneficiary. Recipients may ask about language service needs from *all* prospective beneficiaries (regardless of the prospective beneficiary's race or national origin) and use language identification (or "I speak") cards that invite LEP persons to identify their own language needs. To reduce costs of compliance, the Bureau of the Census has made a set of these cards available on the Internet at <http://www.usdoj.gov/crt/cor/13166.htm>; (5) Q&A XIII tells beneficiaries how to file a complaint; and (6) Q&A XXVII provides the address for the Web site to obtain further

information. The Web site also contains a link to another set of "I speak" cards in a different format. A recipient of DOJ funds and translator and interpreter organizations jointly created these. They are available at http://www.lep.gov/ocjs_languagecard.pdf. Other promising practices can also be found in the General Chapter (Chapter 1) of DOJ's Tips and Tools document, found at http://www.lep.gov/tips_tools_92104.pdf and at http://www.lep.gov/tips_tools_92104.htm.

In addition to addressing the concerns noted above, HUD has substituted, where appropriate, technical or stylistic changes that more clearly articulate, in HUD's view, the underlying principles, guidelines, or recommendations detailed in the final Guidance. Language has been added that clarifies the Guidance's application to activities undertaken by a recipient either voluntarily or under contract in support of a federal agency's functions. After appropriate revision based on an in-depth review and analysis of the comments, with particular focus on the common concerns summarized above, HUD adopts its final "Notice of Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons." The text of this final Guidance, along with Appendices A and B, are below. Title VI regulations that deal with discrimination based on national origin have not changed, and violations of the prohibition on national origin discrimination will continue to be enforced as in the past. Therefore, no substantive changes have been made to the general Guidance, although some editorial changes were made. A few substantive changes were made to the HUD-specific Guidance in Appendix A, from that which was published as proposed Guidance at 68 FR 70968 on December 19, 2003. The changes were made to provide clarity. Some editorial changes were also made.

Final Guidance

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 7 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." In the 2000 census, 28 percent of all Spanish and Chinese speakers and 32 percent of all Vietnamese-speakers reported that they spoke English "not well" or "not at all."

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 or Language Access Plan (LAP). 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 policy 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 of the Civil Rights Act of 1964, 42 U.S.C. 2000d, 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 policy guidance clarifies existing legal requirements for LEP

persons by describing 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 individuals who are limited English proficient. 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 non-profit entities 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 non-profit entities. 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 Department of Justice's (DOJ) proposed LEP guidance, published January 16, 2001 (66 FR 3834), later published for additional public comment on January 18, 2002 (67 FR 2671), and published as final on June 18, 2002 (67 FR 41455), have noted that some 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 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 limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, 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 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 (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 Executive 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," published on August 16, 2000 (65 FR 50123) ("DOJ LEP Guidance").

Subsequently, federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the 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." This memorandum 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. The case 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 thus published pursuant to Title VI, Title VI regulations, and Executive Order 13166. It is consistent with the final DOJ "Guidance to Federal Financial Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," published on June 18, 2002 (67 FR 41455).

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 agencies;
- Assisted housing providers;

- The Fair Housing Initiative Program and the Fair Housing Assistance Program; and

- Other entities receiving funds directly or indirectly from HUD.

Subrecipients and state grant recipients are likewise covered when federal funds are passed to them through the grantee. For example, Entitlement Community Development Block Grant, State Community Development Block Grant, and HOME Investment Partnership Program 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 federal assistance.

For example, HUD provides assistance to a state government's Department of Community Development, which provides funds to a local government to improve a particular public facility. All of the operations of the entire state Department of Community Development—not just the particular community and/or 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 nondiscrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

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 limited English proficient, or "LEP," and may be 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 home rehabilitation;

- Persons who are attempting to file housing discrimination complaints 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 in 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 nonprofit entities.

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 could take to ensure meaningful access for LEP persons.

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

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 have 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 PHA. 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 could 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 and 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 limited English proficiency 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 if language services were provided.

B. The Frequency With Which LEP Individuals Come in 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 the need for enhanced language services in that language. 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 extensive 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 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 the need for language services. 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; 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 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 the recipient will provide. Recipients have two main ways to provide language services: Oral interpretation in person or via telephone interpretation service (hereinafter "interpretation") and through written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons 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.) By 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 (target language). Where interpretation is needed and is a reasonable service to provide, 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 are expected to 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. Formal certification as an interpreter is not necessary, although it would serve as documentation of competency to interpret. When using interpreters, recipients are expected to 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 and/or to the extent their position requires. 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, there may be languages that do not have an appropriate direct interpretation of some courtroom or legal terms. The interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue when it arises and then work to develop

a consistent and appropriate set of descriptions of these terms so that the terms 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 the many languages in which no formal certification assessments currently exist, other qualifications should be considered, such as whether the person has been deemed otherwise qualified by a state or federal court, level of experience and participation in professional trainings and activities, demonstrated knowledge of interpreter ethics, etc. Where such proceedings are lengthy, the interpreter will likely need breaks. Therefore, team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters and to allow for breaks.

While quality and accuracy of language services is critical, it should be evaluated as part of the appropriate mix of LEP services. The quality and accuracy of language services in an abused woman's shelter, for example, should be extraordinarily high, while the quality and accuracy of language services in a recreational program generally need not meet such 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 certain activities of HUD recipients in 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 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 the LEP persons' 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 would 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 Line

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 conferencing 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 be a cost-effective way of providing supplemental language assistance 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, 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 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. Confidentiality, privacy, or conflict-of-interest issues 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 would 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 or administrative hearing or in 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 PHA security personnel 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 public tour of a community recreational facility built with CDBG funds. 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 chooses to provide his or 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. 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. Extra caution should be exercised when the LEP person chooses to use a minor. 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 the recipient could provide a competent interpreter at no cost to the LEP person.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in the target language. It should be kept in mind that because many LEP persons may not be able to read their native languages, 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 LAP for its particular program or activity includes the translation of vital, or generic widely used 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;
- Notices of public hearings, especially those that meet Community Planning and Development's citizen participation requirements;
- 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 recreational activities would not generally be considered vital documents, relative to applications for housing. 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 such as 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 would 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 those less commonly encountered. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons speaking dozens and sometimes more than 100 different languages. To translate all written materials into all 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) below 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 noncompliance. Rather, the circumstances provide a common starting point for recipients to consider the importance of the service, benefit, or activity involved; the nature of the information sought; and whether the number or proportion of LEP persons served call for written translations of commonly used forms into frequently encountered languages other than English. Thus, 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.

For example, even if the safe harbors are not used, should written translation of a certain document(s) be so burdensome as to defeat the legitimate objectives of its program, translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of 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, 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 instead 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 such persons.

4. Competence of Translators

As with oral interpreters, all attempts should be made to ensure that translators of written documents are 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. Having a second, independent translator "check" the work of the primary translator can often ensure competence. 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. In such cases, the translator should be able to provide an appropriate alternative. 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 an appropriate level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts will help avoid confusion by LEP persons and may reduce costs.

While quality and accuracy of translation services is critical, they are part of the appropriate mix of LEP services. 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, for example, information or documents of HUD recipients regarding 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 an Effective LAP

After completing the four-factor analysis and deciding what language assistance services are appropriate, a

recipient would develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have flexibility in developing this plan. The development and maintenance of a periodically updated written plan on language assistance for LEP persons, or a LAP 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 LAP 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 LAP. However, the absence of a written LAP 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 LAP and are typically part of effective implementation plans.

A. 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, and "I speak Vietnamese" in both English and Vietnamese. 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.

B. Language Assistance Measures

An effective Language Assistance Plan (LAP) 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.

C. Training Staff

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

- Staff knows 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 the 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 a Language Action 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.

D. 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. They should explain how to get the language help. 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 recipient. 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.

E. Monitoring and Updating the LAP

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 recipients 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 LAP. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LAP is to seek feedback from members of 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;
- The nature and importance of activities to LEP persons;
- The 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 LAP and how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to these elements, effective plans set clear goals, make management accountable, and provide 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 (FHEO) is responsible for conducting the investigation to ensure that federal program recipients are in compliance with civil rights-related program

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 should be taken to correct the noncompliance. HUD 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. At all stages of an investigation, HUD engages in voluntary compliance efforts and provides technical assistance to recipients. During such 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 expects its recipients to 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 Consolidated Plans for Community Planning and Development Programs [Community Development Block Grants (CDBG), HOME Investment Partnership Program (HOME), Housing Opportunities 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.

X. Environmental Impact

This notice sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19 (c) (3), this notice is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Dated: August 16, 2006.

Kim Kendrick,

Assistant Secretary for Fair Housing, and Equal Opportunity.

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Appendix A:—Application of Limited English Proficiency (LEP) Guidance for JUH 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 (PHAs); Indian tribes, state and local governments; nonprofit organizations, including housing counseling agencies, grassroots community-based organizations, and faith-based organizations; state and local fair housing agencies; and providers of a variety of services. Most organizations can check their status as to whether or not they are covered by reviewing the "List of Federally Assisted Programs," published in the Federal Register on November 24, 2004 (69 FR 68700). This list may not be all-inclusive or reflect newer programs. Subrecipients are also covered. All HUD-funded recipients, except for Indian tribes, are required to certify to nondiscrimination and affirmatively further fair housing, either through the Office of Community Planning and Development's (CPD) Consolidated Plan [24 CFR 91.225 (a)(1) and (b)(6), 92.325(a)(1), and 91.425(a)(i)]; the public housing agency plans [24 CFR 903.7(o)] or the certifications required in the competitive programs funded through the Super Notice of Funding Availability (SuperNOFA). HUD publishes the SuperNOFA on an annual basis. The nondiscrimination and the affirmatively furthering fair housing requirements are found in the General Section of the SuperNOFA. The Web site link to the SuperNOFA is: <http://www.hud.gov/library/bookshelf/8/supernofa/nofa05/gensec.pdf>. This appendix does not change current civil rights-related program requirements contained in HUD regulations.

Appendix A provides examples of how HUD recipients might apply the four-factor analysis described in the general Guidance. The Guidance and examples in Appendix A 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), 24 CFR 91.105(a)(2)(ii), and 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 Title VI regulatory requirements described in this Guidance.

This Guidance does not supplant any constitutional, statutory, and/or regulatory provisions that may require LEP services. Rather, this Guidance clarifies the Title VI and Title VI regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP persons. The Guidance does not address those required by the Constitution or 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 (25 U.S.C. 4101–4212) (NAHASDA) for low-income housing programs or activities for the specific benefit of tribal members and/or other Native Americans. Programs or activities funded in

whole or in part with federal assistance and in compliance with NAHASDA are exempt from Title VI of the Civil Rights Act of 1964 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, recipients of NAHASDA funds are encouraged to use this Guidance as a 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.

Members of the public are most likely to come into contact with recipients of HUD funds when they need housing and/or housing-related services or when the recipients conduct education and community outreach activities. The common thread running through contacts between the public and recipients of HUD funds is the exchange of information. Recipients of HUD assistance, depending on circumstances, have an obligation to provide appropriate types and levels of LEP 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 instance, 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; and/or effectively reporting housing discrimination to the local fair housing agency or HUD, thus hindering investigations 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 and/or support services. For example, PHAs may have leases available in languages other than English and has interpreters available to inform LEP persons of their rights and responsibilities. In areas where significant LEP populations reside, PHAs 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 already take into consideration the four-factor analysis and meet the Title VI and regulatory Title VI requirements described in this Guidance. These experiences 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, demographics, 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 for, and level of LEP services must be highly individualized for each process in its services.

Before giving specific program examples, several general points should assist the wide variety of recipients of HUD funds 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 eligible 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 number of contacts with LEP persons may be high.

Recipients of HUD funds are required by existing regulations to outreach, educate, and affirmatively market the availability of housing and housing-related services to eligible persons in the geographic area that are least likely to apply for and/or receive the benefits of the program without such outreach and education activities and/or affirmative marketing [(24 CFR 200.625; 24 CFR 92.351; and 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, outreach, education, and 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/AIDS, 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. In contrast, housing, counseling, and housing supportive services programs require ongoing 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. Therefore, 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 recipients of HUD funds must be equally accessible in languages other than English. For instance, while clearly important to the quality of life in the community, certain recreational programs provided by a HUD-funded 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. The recipient should always consider the basic activity for which it was funded as being of high importance.

Factor (4): Costs v. Resources and Benefits

The final factor that must be taken into account is the cost of providing various services balanced against the resources available to the HUD-funded recipient providing the service.

Type of Program: There are some programs for which translation and interpretation are such an integral part of the funded program that services would be provided in some way to any client that requires them. In important programs or activities (e.g., tenant selection and assignment, homeownership counseling, fair housing complaint intake, conflict resolution between tenants and landlords, etc.) that require one-on-one contact with clients, oral and written translations would be provided consistent with the four-factor analysis used earlier. Recipients could have competent bi- or multilingual employees, 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 language services for LEP persons.

Outreach: Affirmative marketing activities, as described above, require written materials in other languages, at a minimum [24 CFR 200.625; 24 CFR 92.351; and 24 CFR 903.2(d)(1) and (2)]. As with counseling, affirmative marketing in large LEP communities could be fruitless without translations 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/bilingual services is the size of the program. A large PHA may be expected to have multilingual employees representing the languages spoken by LEP persons who may reside in the communities. These employees may be involved in all activities, including affirmative marketing, taking and verifying applications, counseling, explaining leases, holding and/or interpreting at tenant meetings, and ongoing tenant contact, as well as translating documents into applicable languages. Similarly, a funded recipient receiving millions of dollars in CDBG Program funds may be expected to provide translation/interpretation services in major local languages and have bilingual staff in those languages. Recipients with limited resources (e.g., PHAs with a small number of units, or small nonprofit organizations) would not be expected to provide the same

level and comprehensiveness of services to the LEP population, but should consider the reasonable steps, under the four-factor analysis, they should take in order to provide meaningful access.

Outreach v. Size of the Program: When the same recipient conducts a range of activities, even within the same community, translation needs for each activity may differ. The translation needs may also be mandated according to the number of LEP persons being served. For instance, a housing provider doing outreach and marketing to an eligible population may have to provide written translations of materials because the target population itself is large. Within that target population, there could be an LEP population that exceeds 1,000 persons for one language, or a specific language group that exceeds 5 percent of the population. Outreach materials to that LEP population should be provided in translation to that language. Written translations may not be necessary if, within a housing development, there is no LEP population that meets the "safe harbor" threshold for written translation. In these situations, housing providers need only arrange for oral interpretation.

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 to the program, having an interpreter at sessions only when needed (by, for instance, announcing 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 ensuring that someone at that number can communicate with the person) may be sufficient.

Availability/Costs of Services: A HUD recipient with limited resources and located in a community with very few LEP persons speaking any one language should target interpretation and translation to the most important activities. The recipients may decide, as appropriate, to provide those services through agreements with competent translators and interpreters in the community-based organizations, or through telephonic interpretation services. Costs may also be reduced if national organizations pool resources to contract with oral interpretation/written translation services.

Services Provided: HUD recipients have a variety of options for providing language services. Under certain circumstances, when interpreters are needed 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 by the recipient or to secure the assistance of an interpreter of the LEP person's own choosing, at his or her own expense. If the LEP person decides to provide his/her own interpreter, the LEP person's election of this choice would be documented. The Guidance doesn't preclude the use of family members or friends as oral interpreters. However, HUD

recommends that the recipient use caution when family members or friends are used. While an LEP person may prefer bilingual family members, friends, or other persons with whom they are comfortable, there are many situations where recipient-supplied interpretative services may be better. Family and friends may not be available when and where they are needed, or 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-funded recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his/her own interpreter. For example, where precise, complete, and accurate translations of information are critical for lease enforcement, a recipient might decide to provide its own, independent interpreter, even if several LEP persons use their own interpreter(s) as well. In group meetings dealing with vital issues, such as explanations of pending displacement, having the recipient provide interpretation services among multiple interpreters may be preferable, even if the LEP person brings his/her own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Reliance on children is especially discouraged unless there is an extreme emergency and no competent interpreters 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 instance, 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 fill out an application in the language shared by the LEP person and bilingual person.

Applying the Four-Factor Analysis

While all aspects of a recipient's programs and activities are important, the four-factor analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular activity involved. In addition, because of the "reasonableness" standard, and frequency of contact and resources/costs factors, the obligation to provide language services increases where the importance of the programs and activities is greater.

HUD has translated generic documents into some of the most frequently encountered languages (i.e., Spanish, and depending on circumstances, Russian, Chinese, Korean, Vietnamese, and Arabic). Recipients should not interpret this to mean that these translations are the total universe of

documents and languages requiring translations. HUD translations are intended to help recipients. However, the recipient-responsibility is determined by the four-factor analysis and the documents that are vital to their programs. Since most documents are not generic and there are so many languages spoken throughout the country, HUD cannot provide all applicable translations.

"Promising Practices." This section provides hypothetical 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 those 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

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

For example, a community organization in a large metropolitan area has 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 that geographic area. The organization has identified a large Hispanic clientele in the area who need this service, and has 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 are also in need of this service. 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 has on its staff a Cambodian-speaking counselor who is able to provide interpretation services.

2. 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 is located in 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

proficient in Spanish and English. The Fair Housing Poster and the complaint form have been translated into Spanish. The FHAP Office has a contract with a nonprofit Hispanic organization for interpreters on an as-needed basis, for its education and outreach activities to the Hispanic community. Some of the FHAP's organizations are small and have limited resources. In competing for the available resources, the FHAP chooses not to translate the material into the language of the Korean population this year. However, it has plans to translate material into Korean in coming years to address the accessibility needs of the LEP population.

Office of Public and Indian Housing

1. *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 rights to be relocated into decent, safe, and sanitary housing and how they can return to the new project once it is completed.

A housing agency 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 LEP families. For a number of years, the PHA has had bilingual employees in its occupancy office, as well as copies of leases and other written documents translated into Spanish. The PHA would now need to translate public notices and other documents into Spanish.

2. *Public Housing (leases and other vital documents)*: There are approximately 3,400 PHAs in the United States that provide a majority of the housing to very low income and low-income families. A PHA in a large metropolitan area has a large number of Hispanic, Chinese, and Vietnamese LEP tenants such that they would translate vital documents into all three languages under the "safe harbor." All tenants must sign a lease before they can live in public housing. The lease clearly states the rules and requirements that the PHA and tenants must follow. Therefore, the PHA should have its lease and rental notices translated into Spanish, Chinese, and Vietnamese. The documents should be clearly labeled "for information purposes only." PHAs should have a procedure to access interpreters for these languages if oral discussions of the lease are necessary.

3. *Public Housing (outreach for waiting list)*: The same PHA is preparing to re-open its waiting list for its Low-Income Public Housing (LIPH) after having it closed for over a year. The PHA must affirmatively market the availability of its units to all eligible families living in its jurisdiction. It should place a public service announcement in English, Spanish, Chinese, and Vietnamese

in the local general circulation Spanish, Chinese, and Vietnamese newspapers and/or radio and TV stations.

Office of Community Planning and Development

1. *Consolidated Plan*: Consolidated planning means developing a Consolidated Plan based upon public participation and input. When planning the required public hearings, jurisdictions must identify how the needs of LEP residents will be met, if a significant number of LEP residents can be reasonably expected to participate (24 CFR 91, Subpart B, "Citizen Participation and Consultation"). In addition, there are activities surrounding citizen participation where the needs of the LEP population are expected to be met, such as: (1) Translation of the notification of the public hearings; and (2) translation of draft and final action, and consolidated plans, and dissemination of those documents to individuals and the appropriate organization(s) in the LEP community.

2. *Housing Opportunities for Persons with AIDS (HOPWA)*: A major city has been providing permanent supportive housing to persons living with AIDS, and such assistance has 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 housing provider for assistance in reaching out to this population. The city offered to provide funding for housing information services through its HOPWA formula grant to fund bilingual interpreters and health outreach workers who would contact the LEP persons living with HIV to assist eligible persons to locate, acquire, and maintain housing. In addition, as part of fulfilling the citizen participation requirements under the Consolidated Plan provisions, the city offered to conduct a multilingual meeting in which local government officials and local AIDS housing and service providers would participate and inform the public at large of the resources available to assist those living with HIV/AIDS.

3. *HOME Investment Partnership Program (HOME)*: In general, under the HOME 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 to 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 formula-based 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 rental 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

1. *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 already 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, and has been providing these services for many years. It has bilingual staff to serve the largely Hispanic population. Frequently, clients from a neighboring, low-income and primarily African-American community also use its services, since La Casa is well known in the area. However, over the past few years, many low-income LEP Iranian-Americans have been moving into the neighboring community, so that they now constitute almost 5 percent of the population. 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 who are least likely to apply for its services. As a relatively small Agency, La Casa employs at least one person or has regular access to a person who can speak Farsi and interpret English to Farsi. This person should contact the Iranian communities and work through the local agencies to affirmatively market La Casa's program. La Casa should arrange to get key materials translated to Farsi and provide counseling and interpretation services, as needed.

2. *Single-Family Property Disposition Program*: When developers or organizations buy HUD-held housing to renovate and resell, they are required to affirmatively market the properties. Such developers or organizations are required to provide language assistance to attract eligible LEP persons who are least likely to apply as does any other housing provider.

3. *Supportive Housing for the Elderly and Persons with Disabilities*: 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 more than 1,000 of the city's 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.

4. *Assisted Housing:* An assisted housing development is located in a city of 20,000 people, about 2,000 of whom are recent immigrants from Korea. Few of the 2,000 have applied for assisted housing. Only eight of the development's 200 residents and no applicants among the 20 on the waiting list are LEP speakers of Korean. Koreans constitute about 10 percent of the eligible population of the community but only 4 percent of the development's residents.

In its Affirmative Fair Housing Marketing Plan for the development, the management agent specified Asian (Korean) as the population least likely to apply for housing and to whom it would outreach. Under the safe-harbor guidelines, the housing provider should outreach to the Korean community using written Korean language materials. However, even after extensive outreach, only one Korean family applied for the waiting list, although during that time the total waiting list increased by eight families to 38. Even after extensive outreach, the occupancy of the project is 4 percent, and its waiting list is less than 3 percent, LEP Korean.

Therefore, under safe-harbor guidelines, no translation of occupancy documents into Korean is necessary. However, the housing provider should be prepared to provide for oral interpretation, when needed. In addition, outreach to the eligible Korean community should continue using written Korean language materials.

Appendix B—Questions and Answers

I. Who are limited English proficient (LEP) persons?

For persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write, or understand. For purposes of Title VI and the LEP Guidance, persons may be entitled to language assistance with respect to a particular service, benefit, or encounter.

II. What is Title VI and how does it relate to providing meaningful access to LEP persons?

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from

discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who are LEP can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination.

III. What do Executive Order (EO) 13166 and the Guidance require?

EO 13166, signed on August 11, 2000, directs all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Pursuant to EO 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the Department of Justice (DOJ) LEP Guidance apply to the programs and activities of federal agencies, including HUD. In addition, EO 13166 requires federal agencies to issue LEP Guidance to assist their federally assisted recipients in providing such meaningful access to their programs. This Guidance must be consistent with the DOJ Guidance. Each federal agency is required to specifically tailor the general standards established in DOJ's Guidance to its federally assisted recipients. On December 19, 2003, HUD published such proposed Guidance.

IV. Who must comply with the Title VI LEP obligations?

All programs and operations of entities that receive financial assistance from the federal government, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements. A listing of most, but not necessarily all, HUD programs that are federally assisted may be found at the "List of Federally Assisted Programs" published in the Federal Register on November 24, 2004 (69 FR 68700). Sub-recipients must also comply (i.e., when federal funds are passed through a recipient to a sub-recipient). As an example, Federal Housing Administration (FHA) insurance is not considered federal financial assistance, and participants in that program are not required to comply with Title VI's LEP obligations, unless they receive federal financial assistance as well. [24 CFR 1.2 (e)].

V. Does a person's citizenship and immigration status determine the applicability of the Title VI LEP obligations?

United States citizenship does not determine whether a person is LEP. It is possible for a person who is a United States citizen to be LEP. It is also possible for a person who is not a United States citizen to be fluent in the English language. Title VI is interpreted to apply to citizens, documented non-citizens, and undocumented non-citizens. Some HUD programs require recipients to document citizenship or eligible immigrant status of beneficiaries; other programs do not. Title VI LEP obligations apply to every beneficiary who meets the program requirements, regardless of the beneficiary's citizenship status.

VI. What is expected of recipients under the Guidance?

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities. To do this, the recipient should: (1) Conduct the four-factor analysis; (2) develop a Language Access Plan (LAP); and (3) provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options. All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP. HUD recognizes that some projects' budgets and resources are constrained by contracts and agreements with HUD. These constraints may impose a material burden upon the projects. Where a HUD recipient can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, refusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI. The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

VII. What is the four-factor analysis?

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

- The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services);
- The frequency with which LEP persons come into contact with the program;
- The nature and importance of the program, activity, or service provided by the program; and
- The resources available and costs to the recipient.

Examples of applying the four-factor analysis to HUD-specific programs are located in Appendix A of this Guidance.

VIII. What are examples of language assistance?

Language assistance that a recipient might provide to LEP persons includes, but is not limited to:

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.

IX. What is a Language Access Plan (LAP) and what are the elements of an effective LAP?

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient may develop an implementation plan or LAP to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include:

- Identifying LEP persons who need language assistance and the specific language assistance that is needed;
- Identifying the points and types of contact the agency and staff may have with LEP persons;
- Identifying ways in which language assistance will be provided;
- Outreaching effectively to the LEP community;
- Training staff;
- Determining which documents and informational materials are vital;
- Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
- Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
- Providing interpreters for large, medium, small, and one-on-one meetings;
- Developing community resources, partnerships, and other relationships to help with the provision of language services; and
- Making provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.

X. What is a vital document?

A vital document is any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically. 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 auxiliary activities, such as certain recreational programs in public housing, would not generally be considered a vital document, whereas applications for housing would be considered vital. However, if the major purpose for funding the recipient were its

recreational program, documents related to those programs would 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.

XI. How may a recipient determine the language service needs of a beneficiary?

Recipients should elicit language service needs from all prospective beneficiaries (regardless of the prospective beneficiary's race or national origin). If the prospective beneficiary's response indicates a need for language assistance, the recipient may want to give applicants or prospective beneficiaries a language identification card (or "I speak" card). Language identification cards invite LEP persons to identify their own language needs. 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>. The State of Ohio Office of Criminal Justice Services, the National Association of Judiciary Interpreters and Translators, the Summit County Sheriff's Office, and the American Translators Association have made their language identification card available at http://www.lep.gov/ocjs_languagecard.pdf.

XII. How may a recipient's limited resources be supplemented to provide the necessary LEP services?

A recipient should be resourceful in providing language assistance as long as quality and accuracy of language services are not compromised. The recipient itself need not provide the assistance, but may decide to partner with other organizations to provide the services. In addition, local community resources may be used if they can ensure that language services are competently provided. In the case of oral interpretation, for example, demonstrating competency requires more than self-identification as bilingual. Some bilingual persons may be able to communicate effectively in a different language when communicating information directly in that language, but may not be competent to interpret between English and that language. In addition, the skill of translating is very different than the skill of interpreting and a person who is a competent interpreter may not be a competent translator. To ensure the quality of written translations and oral interpretations, HUD encourages recipients to use members of professional organizations. Examples of such organizations are: National organizations, including American Translators Association (written translations), National Association of Judiciary Interpreters and Translators, and International Organization of Conference Interpreters (oral interpretation); state organizations, including Colorado Association of Professional Interpreters and Florida Chapter of the American Translators Association; and local legal organizations

such as Bay Area Court Interpreters. While HUD recommends using the list posted on <http://www.LEP.gov>, its limitations must be recognized. Use of the list is encouraged, but not required or endorsed by HUD. It does not come with a presumption of compliance. There are many other qualified interpretation and translation providers, including in the private sector.

XIII. May recipients rely upon family members or friends of the LEP person as interpreters?

Generally, recipients should not rely on family members, friends of the LEP person, or other informal interpreters. In many circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Therefore, such language assistance may not result in an LEP person obtaining meaningful access to the recipients' programs and activities. However, when LEP persons choose not to utilize the free language assistance services expressly offered to them by the recipient but rather choose to rely upon an interpreter of their own choosing (whether a professional interpreter, family member, or friend), LEP persons should be permitted to do so, at their own expense. Recipients may consult HUD LEP Guidance for more specific information on the use of family members or friends as interpreters. While HUD guidance does not preclude use of friends or family as interpreters in every instance, HUD recommends that the recipient use caution when such services are provided.

XIV. Are leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts when they are in languages other than English?

Generally, the English language document prevails. The HUD translated documents may carry the disclaimer, "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document." Where both the landlord and tenant contracts are in languages other than English, state contract law governs the leases and rental agreements. HUD does not interpret state contract law. Therefore, questions regarding the enforceability of housing documents of a legal nature that are in languages other than English should be referred to a lawyer well-versed in contract law of the appropriate state or locality.

XV. Are EO 13166 and HUD LEP Guidance enforceable by individuals in a court of law?

Neither EO 13166 nor HUD LEP Guidance grants an individual the right to proceed to court alleging violations of EO 13166 or HUD LEP Guidance. In addition, current Title VI case law only permits a private right of action for intentional discrimination and not for action based on the discriminatory effects of a recipient's practices. However, individuals may file administrative complaints with HUD alleging violations of Title VI because the HUD recipient failed to take reasonable steps

to provide meaningful access to LEP persons. The local HUD office will intake the complaint, in writing, by date and time, detailing the complainant's allegation as to how the HUD recipient failed to provide meaningful access to LEP persons. HUD will determine jurisdiction and follow up with an investigation of the complaint.

XVI. Who enforces Title VI as it relates to discrimination against LEP persons?

Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act of 1964. To the extent that a recipient's actions violate Title VI obligations, then such federal agencies will take the necessary corrective steps. The Secretary of HUD has designated the Office of Fair Housing and Equal Opportunity (FHEO) to take the lead in coordinating and implementing EO 13166 for HUD, but each program office is responsible for its recipients' compliance with the civil-rights related program requirements (CRRPRs) under Title VI.

XVII. How does a person file a complaint if he/she believes a HUD recipient is not meeting its Title VI LEP obligations?

If a person believes that a HUD federally assisted recipient is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD's local Office of FHEO. For contact information of the local HUD office, go to <http://www.hud.gov> or call the housing discrimination toll free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY).

XVIII. What will HUD do with a complaint alleging noncompliance with Title VI obligations?

HUD's Office of FHEO will conduct an investigation or compliance review whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI obligations by one of HUD's recipients. If HUD's investigation or review results in a finding of compliance, HUD will inform the recipient in

writing of its determination. If an investigation or review results in a finding of noncompliance, HUD also will inform the recipient in writing of its finding and identify steps that the recipient must take to correct the noncompliance. In a case of noncompliance, HUD will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD may then secure compliance by: (1) Terminating the financial assistance of the recipient only after the recipient has been given an opportunity for an administrative hearing; and/or (2) referring the matter to DOJ for enforcement proceedings.

XIX. How will HUD evaluate evidence in the investigation of a complaint alleging noncompliance with Title VI obligations?

Title VI is the enforceable statute by which HUD investigates complaints alleging a recipient's failure to take reasonable steps to ensure meaningful access to LEP persons. In evaluating the evidence in such complaints, HUD will consider the extent to which the recipient followed the LEP Guidance or otherwise demonstrated its efforts to serve LEP persons. HUD's review of the evidence will include, but may not be limited to, application of the four-factor analysis identified in HUD LEP Guidance. The four-factor analysis provides HUD a framework by which it may look at all the programs and services that the recipient provides to persons who are LEP to ensure meaningful access while not imposing undue burdens on recipients.

I. What is a "safe harbor?"

A "safe harbor," in the context of this guidance, means that the recipient has undertaken efforts to comply with respect to the needed translation of vital written materials. If a recipient conducts the four-factor analysis, determines that translated documents are needed by LEP applicants or beneficiaries, adopts an LAP that specifies the translation of vital materials, and makes the necessary translations, then the recipient

provides strong evidence, in its records or in reports to the agency providing federal financial assistance, that it has made reasonable efforts to provide written language assistance.

XXI. What "safe harbors" may recipients follow to ensure they have no compliance finding with Title VI LEP obligations?

HUD has adopted a "safe harbor" for translation of written materials. The Guidance identifies actions that will be considered strong evidence of compliance with Title VI obligations. Failure to provide written translations under these cited circumstances does not mean that the recipient is in noncompliance. Rather, the "safe harbors" provide a starting point for recipients to consider:

- Whether and at what point the importance of the service, benefit, or activity involved warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the nature of the information sought warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the number or proportion of LEP persons served warrants written translations of commonly used forms into frequently encountered languages other than English; and
- Whether the demographics of the eligible population are specific to the situations for which the need for language services is being evaluated. In many cases, use of the "safe harbor" would mean provision of written language services when marketing to the eligible LEP population within the market area. However, when the actual population served (e.g., occupants of, or applicants to, the housing project) is used to determine the need for written translation services, written translations may not be necessary.

The table below sets forth "safe harbors" for written translations.

Size of language group	Recommended provision of written language assistance
1,000 or more in the eligible population in the market area or among current beneficiaries.	Translated vital documents.
More than 5% of the eligible population or beneficiaries <i>and</i> more than 50 in number.	Translated vital documents.
More than 5% of the eligible population or beneficiaries <i>and</i> 50 or less in number.	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries <i>and</i> less than 1,000 in number.	No written translation is required.

When HUD conducts a review or investigation, it will look at the total services the recipient provides, rather than a few isolated instances.

XXII. Is the recipient expected to provide any language assistance to persons in a language group when fewer than 5 percent of the eligible population and fewer than 50 in number are members of the language group?

HUD recommends that recipients use the four-factor analysis to determine whether to provide these persons with oral

interpretation of vital documents if requested.

XXIII. Are there "safe harbors" provided for oral interpretation services?

There are no "safe harbors" for oral interpretation services. Recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP (depending on the circumstances, reasonable oral language

assistance might be an in-person interpreter or telephone interpreter line).

XXIV. Is there a continued commitment by the Executive Branch to EO 13166?

There has been no change to the EO 13166. The President and Secretary of HUD are fully committed to ensuring that LEP persons have meaningful access to federally conducted programs and activities.

XXV. Did the Supreme Court address and reject the LEP obligation under Title VI in Alexander v. Sandoval [121 S. Ct. 1511 (2001)]?

The Supreme Court did not reject the LEP obligations of Title VI in its *Sandoval* ruling. In *Sandoval*, 121 S. Ct. 1511 (2001), the Supreme Court held that there is no right of action for private parties to enforce the federal agencies' disparate impact regulations under Title VI. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates Title VI regulations, a private party may not bring a lawsuit under those regulations to enjoin Alabama's policy. *Sandoval* did not invalidate Title VI or the Title VI disparate impact regulations, and federal agencies'

(versus private parties) obligations to enforce Title VI. Therefore, Title VI regulations remain in effect. Because the legal basis for the Guidance required under EO 13166 is Title VI and, in HUD's case, the civil rights-related program requirements (CRRPR), dealing with differential treatment, and since *Sandoval* did not invalidate either, the EO remains in effect.

XXVI. What are the obligations of HUD recipients if they operate in jurisdictions in which English has been declared the official language?

In a jurisdiction where English has been declared the official language, a HUD recipient is still subject to federal nondiscrimination requirements, including Title VI requirements as they relate to LEP persons.

XXVII. Where can I find more information on LEP?

You should review HUD's LEP Guidance. Additional information may also be obtained through the federal-wide LEP Web site at <http://www.lep.gov> and HUD's Web site, <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm>. HUD also intends to issue a Guidebook to help HUD recipients develop an LAP. A HUD-funded recipient who has questions regarding providing meaningful access to LEP persons may contact Pamela D. Walsh, Director, Program Standards Division, HUD/FHEO, at (202) 708-2288 or 800-877-8339 (TTY). You may also email your question to limitedenglishproficiency@hud.gov.

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