

New HUD Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency

PHFA is reminding all management agents and property owners to review their admission screening policies and practices carefully.

HUD recently issued [guidance](#) regarding the applicability of the Fair Housing Act (FHA) to a housing provider's consideration of a person's limited English Proficiency (LEP). LEP refers to a person's limited ability to read, write, speak or understand English. Although LEP individuals are not a protected class under the FHA, there is a close nexus between LEP and national origin which is a protected class under the FHA. Because a person's primary language usually derives from his or her national origin, the FHA prohibits housing providers from using an individual's LEP as a basis for an adverse housing decision. A housing provider can violate the FHA from either intentionally discriminating against persons with LEP or using LEP in a way that causes an unjustified discriminatory effect.

Examples of intentional discriminatory practices include using advertisements that containing blanket statements such as, "all tenants must speak English", or turning away all applicants who are not fluent in English. In addition, a person's accent and his or her national origin are generally indivisible and therefore a housing provider may not apply housing-related policies or practices in a way that discriminates against persons based on their accents. Intentional discrimination can also occur if a housing provider is required to provide housing-related language assistance services to LEP individuals, under any law or by contract, and the provider fails to comply with that requirement. There are no cognizable justifications under the FHA to refuse to accommodate non-English speakers because the language a resident speaks does not affect the housing provider or other tenants in any legitimate way.

A housing provider could also violate the FHA when the provider's policy or practice has an unjustified discriminatory effect, even though the provider had no intent to discriminate. When determining whether a policy is discriminatory in effect, a three part factual analysis is conducted. First it must be shown that the policy concerning LEP results in a disparate impact on a group of persons because of the group's national origin, race or other protected characteristic. Census data and other evidence such as the characteristics of the actual applicants or residents affected can be used to show disparate impact. If there is a disparate impact on a protected class the housing provider must justify their policy and show that it is necessary to achieve a substantial, legitimate and nondiscriminatory interest of the provider. In a scenario involving a person with limited English proficiency, it is unlikely a housing provider will be able to provide a legitimate justification because of the nature of the landlord-tenant relationship. If, however, a landlord provided a legitimate interest, a determination must be made about whether a less discriminatory alternative was available. Less discriminatory alternatives in LEP cases could include translation services or utilizing the language skills of staff members.

PHFA will require owners and management agents to follow this HUD guidance. We encourage having a written policy that applies consistently to each potential tenant to ensure compliance with the Fair Housing Act. Questions about the HUD guidance may be directed to your housing management representative.