

# LANGUAGE ACCESS & THE LAW

A Summary of Federal Legal Protections for Persons  
of Limited English Proficiency & the Deaf and  
Hard-of-Hearing

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# Background

According to the U.S. Census Bureau, in 2013, approximately 61.6 million individuals—both foreign and native born—spoke a language other than English at home. While the majority of these individuals also spoke English either fluently or very well, nearly 41 percent (25.1 million) were considered Limited English Proficient (LEP). Limited English proficiency refers to anyone above the age of 5 who reported speaking English less than “very well,” as classified by the Census Bureau. Though most LEP individuals are immigrants, nearly 19 percent (4.7 million) were born in the United States.

Figures for the Deaf and hard-of-hearing are likewise substantial. One in eight people in the United States (13 percent, or 30 million) aged 12 years or older has hearing loss in both ears, according to the National Institute on Deafness and Other Communication Disorders, an agency of the U.S. Department of Health & Human Services. Approximately 2 percent of adults aged 45 to 54 have disabling hearing loss. This rate increases to 8.5 percent for adults aged 55 to 64, nearly 25 percent for those aged 65 to 74, and 50 percent for those who are 75 and older.

Both of these groups face significant language barriers to accessing health care, public education, emergency response services, the courts, the workplace, and countless other areas of public life. However, an existing framework of federal laws aims to minimize these barriers and promote language access through the spoken word, the written, and the signed. Although by no means comprehensive, this guide covers a few of the most important laws and regulations that serve to accommodate those who are limited in their proficiency of English as well as the the Deaf and hard-of-hearing.

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# Legal Protections for LEP Persons

## Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

*Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color, or national origin] discrimination.*

-Pres. John F. Kennedy (1963)

Language is often considered a proxy for national origin. In *Lau v. Nichols*, decided in 1974, the U.S. Supreme Court held that a federal fund recipient's denial of education to a group of non-English speaking students violated Title VI and its implementing regulations.

## Executive Order 13166

To enforce the prohibition against national origin discrimination under Title VI, President Clinton, on August 11, 2000, issued Executive Order 13166. The directive requires federal agencies and recipients of federal financial assistance to take “**reasonable steps**” to ensure “**meaningful access**” to LEP beneficiaries of federally-funded programs and activities.

“Meaningful access” is defined as language assistance services that result in accurate, timely, and effective communication at no cost to the LEP individual. To fulfill its mandate, the Executive Order requires federal agencies to examine the services they provide, identify whether LEP individuals need the agencies' services, and develop and implement a system to provide appropriate language assistance services to LEP persons.

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## Department of Justice Guidance

The Department of Justice is the federal agency that, by law, interprets and enforces Title VI. On June 18, 2002, the DOJ issued Title VI regulatory guidance, establishing compliance standards for all federal agencies and their financial assistance recipients.

The guidance outlines a 4-factor analysis on how to ensure that LEP persons have “meaningful access” to federally-funded programs and activities. These factors include (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the recipient; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the federally-funded program to people’s lives; and (4) the resources available to the recipient and the costs involved.

## Other Statutory and Regulatory Requirements

Federal laws and regulations protecting LEP persons apply to a variety of specific topics. The following examples cover healthcare, housing, and disaster relief.

### Section 1557 of the Affordable Care Act

Section 1557 of the Affordable Care Act makes it unlawful for healthcare entities receiving federal financial assistance to refuse to treat, or otherwise discriminate against, an individual on the basis of race, color, national origin (including language), sex, age, or disability.

On May 18, 2016, the U.S. Department of Health and Human Services issued a final rule requiring covered entities receiving federal financial assistance to provide language assistance services and to take other reasonable steps to ensure “meaningful access” to their programs and activities by LEP persons.

### The Fair Housing Act

The Fair Housing Act (FHA) prohibits discrimination in the sale, rental, or financing of dwellings on the grounds of race, color, religion, sex, disability, familial status, or national origin.

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On September 15, 2016, the U.S. Department of Housing and Urban Development (HUD) issued guidance on the application of nondiscrimination provisions under the FHA to limited-English proficient persons in housing transactions. The guidance refers to several “suspect practices” which may be deemed discriminatory, such as declining to serve all housing applicants not fluent in English. “If the housing provider or resident can access free or low-cost language assistance services,” the guidance adds, “any cost-based justifications for refusing to deal with LEP persons would also be immediately suspect.”

### The Stafford Act

The Robert T. Stafford Disaster Relief and Emergency Assistance Act requires that the Administrator of the Federal Emergency Management Agency (FEMA) lead efforts to prevent discrimination against LEP individuals in emergency management and assistance. The statute directs the Administrator to (1) identify and consider population groups with limited English proficiency in planning for an emergency or major disaster, (2) ensure the availability of information to LEP individuals in understandable formats, and (3) develop and maintain an informational clearinghouse of model language assistance programs and best practices for state and local governments in providing services related to a major disaster or emergency.

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# Legal Protections for the Deaf and Hard-of-Hearing

## Americans with Disabilities Act of 1990

Passed in 1990, the ADA is the nation’s first comprehensive civil rights law addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations, and telecommunications. The ADA requires state and local governments (under Title II) and privately-owned businesses serving the public (under Title III) to provide “auxiliary aids and services” to ensure “effective communication” with people

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who have vision, hearing, and speech disabilities. These aids and services may include, for example, a qualified sign language interpreter.

## **Section 504 of the Rehabilitation Act of 1973**

Section 504 of the Rehabilitation Act of 1973 forbids public and private entities that receive federal financial assistance from excluding qualified individuals with disabilities or denying them an equal opportunity to receive program benefits and services. As with the ADA, Section 504 of the Rehabilitation Act requires covered entities to ensure “effective communication” with people who have communication disabilities.

## **Other Statutory and Regulatory Requirements**

### **Section 1557 of the Affordable Care Act**

As noted above, Section 1557 of the Affordable Care Act makes it unlawful for healthcare entities to refuse to treat, or otherwise discriminate against, an individual on the basis of disability, among other things. The HHS final rule requires covered healthcare entities to take appropriate steps in ensuring “effective communications” with deaf persons and others with communication disabilities. Appropriate steps include the provision of auxiliary aids and services, such as alternative formats and sign language interpreters, where necessary.

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## Resources

The website of **LEP.gov**, an agency of the DOJ's Civil Rights Division, is as a clearinghouse of information, tools, and technical assistance regarding limited English proficiency and language services for federal agencies, recipients of federal funds, users of federal programs and federally assisted programs, and other stakeholders.

The National Association for the Deaf (NAD) is a nonprofit organization with a mission “to preserve, protect and promote the civil, human and linguistic rights of deaf and hard of hearing people in the United States.” The Resources section of their website includes summaries of various civil rights laws affecting the Deaf and hard-of-hearing.

The Association of Late-Deafened Adults (ALDA) is a nonprofit organization with the general objectives of providing Education, Advocacy, Role models and Support (EARS) for people with adventitious hearing loss. The Resources section of their website includes, among other things, tips for communicating with late-deafened adults.

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