

February 7, 2005

The Honorable Alphonso Jackson
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street S.W.
Washington, DC 20410

Dear Secretary Jackson:

We, the undersigned organizations representing owners and management agents involved in HUD's affordable housing programs, are writing to express our deep reservations about the Department's plans for implementing its Limited English Proficient (LEP) guidance, pursuant to Executive Order 13166. While we support HUD's goal of ensuring that persons with limited English proficiency have access to federal programs, we find *the methods* HUD has proposed to advance the goal highly problematic. We respectfully request that the Department refrain from issuing the final LEP guidance until concerns about its unfunded costs, its potential for unintended consequences at the local level and its legal liabilities for affordable housing providers are sufficiently addressed.

Under HUD's current implementation plan, the guidance calls on affordable housing operators to provide an unrealistic level of language services. Housing providers will be expected to supply written translations of vital documents and oral interpretation services free of charge to LEP applicants and/or tenants at the project's expense. HUD has proposed no additional funding sources to offset these substantial costs. It is appropriate for affordable housing providers to direct LEP persons to resources available to assist with translation and/or interpretation needs. Nevertheless, we believe the responsibility for bearing the associated costs, ensuring accuracy of translated documents, and ensuring the competency of interpreters should reside with HUD.

We also have a concern that implementation of the LEP guidance will provide one more impediment for companies participating in HUD programs, and an additional roadblock for companies considering participating in such programs. There is common ground between HUD and the affordable housing industry, and we remain hopeful that the guidance can be improved. We respectfully offer several constructive recommendations toward that goal.

The Department itself should provide translation and oral interpretation services directly to the LEP population in order to achieve cost effectiveness, uniformity in the delivery of service, and to minimize the burden on affordable housing providers. The suggested duplicative efforts across the country by small, medium or large housing providers will never reach the efficiency or sensitivity of a service which can be provided by HUD at a much more reasonable cost, with an assured level of quality control, and without subjecting housing providers to unnecessary and unduly expensive Fair Housing complaints.

Since releasing the draft guidance, HUD indicated it would provide some translated documents in a limited number of languages. Any standard regulatory or certification document that can reasonably be anticipated to be needed in an alternate language should be provided by the Department, either through the HUD Web Site, or directly as part of the standard library of forms and materials provided in the various Handbooks and HUD forms library. Likewise, it is imperative for HUD to place a disclaimer on their translated documents which stipulates they are HUD's translations, they are supplementary information only, they do not replace the official document executed in English and they are not word-for-word translations of the owner's documents. Furthermore, HUD's final LEP guidance should specify that using its translations satisfies owners' and agents' LEP obligations, and it should limit their role to directing LEP persons to available language assistance programs.

There must be an absolute "firewall" which separates the issuer of the document (HUD) from owners and management agents in terms of content and distribution of the materials so that their ability to conduct legal responsibilities is not

compromised. This could possibly be achieved if HUD provided translations for all “vital documents,” provided a disclaimer on all translated documents, and assumed responsibility for the costs of language services. We understand that HUD staff believes creating this firewall may not be possible because E.O. 13166 applies to recipients of federal assistance—in this case, the owner. Nevertheless, E.O. 13166 also says agencies should tailor their LEP guidance to their specific programs. We strongly encourage you to make the case that HUD’s rental assistance programs present unique circumstances which require flexibility in the Department’s approach.

The potential to complicate legal proceedings for evicting noncompliant tenants is another major concern. Practicing attorneys surmised that failure on the part of the owner /agent to provide all vital documents in the tenant’s native language would create a defense against eviction. Unless the final guidance and translated documents state otherwise, an expectation could be created at the local level in which courts would not rule against tenants who did not receive all relevant documents in their native language. The owner /agent is left to guess which documents would be considered “vital” in legal proceedings, and then incur substantial costs to translate them at the project’s expense. We also insist that federal guidelines emphatically state that the English document is the prevailing document in any legal proceedings.

The definition of who is LEP should not include any member of a household where at least one of the signatories to the lease in that household is proficient in English. Since all members of the family over eighteen years of age must sign the lease and related documents, which include all family income and background information, if any of those family members are capable in English, the standard for providing alternate language services to that family should not apply.

Finally, we strongly urge you to remove the document, “Know Your Rights Are You Limited English Proficient?” from HUD’s website. By suggesting that failure to understand a foreign language may constitute discrimination, this document is likely to prompt unwarranted fair housing complaints against owners and management agents. Among its highly questionable examples of situations that “may be” discrimination based on national origin are:

- “You call the landlord to report an emergency, but they cannot help you because they only speak English and they cannot understand your language.”
- “The landlord communicates important information to you only in English, but you do not read or understand English well enough to understand the information.”
- “A public housing or assisted housing provider sends important documents to you -- such as applications, letters regarding demolition, relocation, or termination of lease, or any letter that requires your reply -- in English only.”

Thank you for taking these important matters into consideration. We remain committed to working in good faith with the Department to ensure that people with limited English proficiency have meaningful access to HUD’s programs. Please feel free to contact Michelle Kitchen, Director of Government Affairs for the National Affordable Housing Management Association at 703-683-8630 if you have any questions about the recommendations proposed in this letter.

Sincerely,

American Association of Homes and Services for the Aging
Florida Apartment Association
Institute of Real Estate Management
National Affordable Housing Management Association
National Apartment Association
National Leased Housing Association
National Multi Housing Council
Texas Apartment Association

Cc: Jon Gant, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity
Stillman Knight, Deputy Assistant Secretary for Multifamily Housing, Office of Housing