

**E-NAHMA Analysis 2007-0301:
Summary of HUD's February 28th LEP Briefing LEP Briefing & Recommendations**

What we know for certain:

- The guidance becomes effective on March 7.
- Of the HUD Office of Housing's Multifamily forms, Multifamily has determined that only the Model Lease will be considered a vital HUD document.
 - However, owners are responsible for translating property-specific documents and presumably HUD model leases that fall outside the 8 languages identified by HUD Multifamily.
- HUD Multifamily is only translating the Model Leases into 8 languages.
 - This represents a change from their previous plans to also translate the Resident Rights and Responsibilities Brochure into the same languages.
- There is not uniformity in the languages different HUD offices (Housing, PIH, FHEO) have chosen for document translation.
- Mixed subsidy properties have LEP obligations if HUD funding (CDBG / HOME / Project Based Section 8) was part of the deal.
 - An OGC representative said if the deal would not have happened without HUD funding, LEP should apply.
- Low Income Housing Tax Credit Properties with no HUD funding are not subject to HUD's LEP guidance, but should refer to Treasury's guidance.
 - At this time, we do not believe Treasury is treating owners of LIHTC properties as "recipients" of federal assistance with LEP obligations.
- The LEP guidance is not applicable to the private landlord in the Section 8 Housing Choice Voucher Program, but it is applicable to the public housing agency.
- The multifamily HUD model lease will include an information-only disclaimer.
 - NAHMA strongly advocated for the disclaimer.
 - The English language lease will be the only version executed and the only version legally binding.
- Costs of translations, interpretation, and "reasonable" staff training are an eligible project expense for owners.
- Translation and interpretation costs are not covered by OCAF, and will NOT result in adjustment of market rents.
 - While it is *possible* budget-based properties will be able to get rent increases to cover additional LEP expenses, the 80 percent of the affordable portfolio now under OCAF has no way to offset these costs.
- HUD has NOT requested additional funding in the FY 08 appropriations to cover LEP-related project expenses.

- Contract administrators have no authority to enforce LEP obligations.
- Owners should do the 4-factor analysis and develop a Language Assistance Plan as soon as possible as evidence of compliance.

What we *believe* based on the discussion:

- Removing official HUD documents from those which the owner must translate will help reduce *translation* costs.
- HUD might translate more of its own documents over time.
- Interpretation services may be even more important than the written documents;
 - The discussion emphasized “communication” and reading documents;
 - There is no safe harbor for interpretation; and
 - The guidance notes some LEP persons cannot read their native language.
- There is a disconnect between what HUD Multifamily considers a “vital HUD document” and what FHEO & OGC consider “vital documents” specific to the property.
- Documents do not have to be translated into all languages at the same time.

Where there is still ambiguity:

- What are the property-specific translation-worthy vital documents?
- How much money is “reasonable” for the owner to spend to provide translations, interpretations, and staff training, and over what timeframe?
- If LEP-related costs are an eligible project expense, how are owners supposed to offset these costs in the absence of additional funding, and considering HUD has not requested additional appropriations to cover LEP-related expenses?

Conclusion: Costs for translating unspecified property-specific “vital” documents and interpretation are still an issue. OCAF properties (representing 80% of the portfolio) are hardest hit, since translation / interpretation costs are not included in the OCAF, and will not result in adjustment of market rents. There is still ambiguity about which property-specific documents owners must translate and when interpreters are required. Therefore, a legislative solution is still necessary.

NAHMA’s Recommended Course of Action:

- Delay effective date to resolve outstanding concerns;
- HUD translates its own documents into all languages that may be necessary;

- HUD provides a 1-800 Interpreter hotline;
- HUD provides a definitive list of remaining property-specific vital documents the owner must translate (pursuant to the safe-harbor for written documents in the guidance); and
- Adjust HUD's rent setting mechanisms (particularly for OCAF) to offset any additional LEP translation or interpretation costs owners incurred for translations or interpretations not provided by HUD.