January 20, 2004

Regulation Division
Office of the General Counsel
Department of Housing and Urban Development
Room 10276
451 Seventh Street, SW
Washington, DC 20410-0500

RE: Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons [Docket No. FR-4878-N-01]

Dear Sir or Madam:

On December 19, 2003, HUD published in the Federal Register the *Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (Notice). Title VI of the Civil Rights Act of 1964 mandates that recipients of federal financial assistance ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). Executive Order 13166, as referenced in the Notice, directs each federal agency "to publish guidance for its respective recipients clarifying that obligation." Further, the Department of Justice has set forth federal-wide compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons.

In this Notice, HUD states that it is seeking comments on the nature, scope and appropriateness of examples. However, the Notice also states that while this is policy guidance, not a regulation, "the same analytical framework outlined in the Notice represents the criteria HUD *will* use in evaluating whether a recipient is in compliance with Title VI and Title VI regulations." The implication is that, though this Notice will allow comments, it is already considered to be in effect. What this Notice does not state, but the Executive Order 13166 specifically requires, is that "… agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input." Yet, stakeholder comment was not sought in the development of this Notice.

The undersigned national housing provider trade associations, representing both public and multifamily assisted housing, are supportive of Fair Housing and Civil Rights statutes, and independently work to keep our members informed of statutory developments and regulatory compliance obligations. We come together now to submit joint commentary as evidence of our unified concerns regarding this Notice, as well as to express our unified interest in being part of whatever working group might be developed on the issue going forward. We further request that HUD either withdraw this Notice or clarify that it is not in effect until such time as the issues described below have been satisfactorily addressed.

Overview of Comments

Due to the many issues that the Notice raises, we provide the following summary of our concerns, both to provide an overall explanation of our concerns and to outline the broad themes that shape our specific comments below. The rest of our comments are organized according to the order of presentation in the Notice. Where appropriate, we also propose ways that HUD can work collaboratively with us and other stakeholders and recommend particular resource development areas where HUD should most appropriately take the lead. The following topics, however, represent key concerns raised by the Notice:

1. **The Nature of Recipients' LEP Obligations Generally.** According to the Notice, each federal agency and each recipient of federal financial assistance must take "reasonable" steps to provide meaningful access to LEP individuals. Among the factors to be considered in determining what constitutes reasonable steps to ensure meaningful access are what HUD calls the "four-step analysis": (1) the number or proportion of LEP persons in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program; (3) the importance of the service provided by the program; and (4) the resources available to the recipient. (70970, col. 2)

   A broad array of "vital" facility documents would be required to be translated for the appropriate LEP persons under this Notice. A document will be considered vital if it contains information that is critical for obtaining the federal services and/or benefits, or is required by law. According to the Notice, some of the required written documents that could be expected to be translated, in potentially several languages (depending on the facility location and population mix), would include the facility application, lease, lease attachments, resident notice of recertification, the fair housing, facility rules and regulations, facility policies, facility marketing materials, the reasonable accommodations policy, portions of the tenant selection plan, portions of the fair housing plan, disclosure notices, notice of free interpretation services, and any termination/eviction notices and policies. In addition, these documents would need to be verbally translated to those who do not read in their native language. These documents would also need to be verbally interpreted to LEP applicants and residents where the written documents are not available at the facility in their native language.

   While neither HUD nor the recipients can alter the basic legal obligations imposed by Title VI, we believe that there are several ways for them to carry out their obligations under these rules. Fortunately, there are other alternatives that represent more practical and less burdensome alternatives than the approach adopted in the Notice, as explained below.

2. **HUD Should Bear The Burden of Translating Basic Program Documents**. The approach adopted in the Notice is to shift to recipients the primary burden for translating program documents into forms that are usable by persons with limited English proficiency ("LEP"). This is impractical, expensive and harmful to the HUD's ability to manage fair housing

programs on a nationwide basis. Long ago, HUD adopted model lease forms that provide a reliable, well-understood and nation-wide document that establishes the rights and duties of both owners and tenants. The Notice threatens this uniform system by requiring owners to create their own translations of these documents. As a result, leases in two neighboring buildings will not necessarily carry the same legal rights and obligations; indeed, given the variations in translations that the Notice acknowledges, it is possible that tenants in the same building may not have the same rights and obligations. The legal implications and incongruity of passing on to owners/agents the obligation to develop independent translations of several core housing program documents, many of which originate from HUD itself, are obvious: since HUD created many of these "model" English-language documents in the first place, it is manifestly HUD's responsibility to provide "model" versions of those documents in other languages, for LEP purposes. The Notice should be overhauled so that HUD takes the lead in establishing such LEP "model" documents and appropriate LEP documents providing general guidance on its programs. Owners and other stakeholders could then make these documents available to tenants and applicants as needed, and would bear at most the obligation of translating or interpreting their project-specific documents. This would provide a great cost savings for owners and other stakeholder and avoid the fragmentation of HUD's documentation system, which is critical for the operation of a national affordable housing program.

3. **Owners Should Not Bear Responsibility For Assuring Competency Of Translators/Interpreters**. The absurdity, and potentially chilling effect, of requiring that owners assure the competency of translators/interpreters as well as the quality and accuracy of translated documents, is equally clear, especially because owners themselves will usually lack any special abilities to assess such competency, quality or accuracy. Again, placing the primary burden on HUD to provide LEP versions of its critical documents will place the burden where it belongs in the first place and minimize the owners' potential exposure for errors.

4. **The Notice Should Not Be Used As a Compliance Standard Because It Fails To Provide Reliable And Uniform Standards That Owners Can Use To Verify Their Compliance.** The Notice provides vague, imprecise and sometimes ambiguous guidance on what owners and other stakeholders must do to assure their compliance with LEP obligations. For example, the Notice indicates that the comparative resources of recipients are relevant to measure their respective obligations. (pg. 70791, col. 2.) But the Notice fails to provide clear guidance on who is a "smaller recipient" or a "larger recipient." (id.) An owner or other recipient has almost no way of knowing whether, if questioned, it will be deemed "smaller" or "larger," and therefore no way to determine what, in fact, its obligations are until it is accused of violating those obligations. The lack of information on how compliance shall reasonably be documented by owners and the lack of information on the types of compliance reviews that may be conducted, when and by whom, all underscore that the Notice should not be used as a compliance test. If HUD wishes to use the Notice as a compliance standard, it should either (a) specify particular conduct that would be deemed to

violate LEP requirements or (b) expand the safe harbor provisions to provide meaningful protection against good faith errors in interpreting the Notice's guidance.

5. **HUD Has Not Performed An Adequate Analysis Of The Actual Cost of Complying With the LEP Requirements Outlined In The Notice.** The Notice reflects an unrealistic expectation of owners' ability to cover costs of providing significant language assistance services. Specifically, there are bona fide concerns that the LEP translation obligations could well exceed the $100,000,000 threshold established under the Unfunded Mandates Reform Act of 1995. By retaining the primary obligation to translate its own documents, HUD could reduce these costs substantially, but until some analysis is performed, the Notice should not be put into effect.

Based on these thematic concerns, our specific comments follow:

Assuring Meaningful Access; Obligation to Translate

While seeking to facilitate better participation by persons with LEP is a laudable goal, it is unclear that Title VI actually requires translation of documents or interpreter services, and constitutional foundations for these kinds of requirements have been shifting in recent years. Despite the fact that the concept is more explicitly addressed in 28 CFR 42.405, the statute does not define discrimination based on national origin, and generally case law deals with intentional discrimination - but failure to translate has not so far been considered intentional discrimination.

Although federal agencies can condition receipt of funds on preventing discrimination based on disparate impact, holding owners/operators responsible for providing translations of potentially so many source documents originating from HUD or other agencies, as well as unspecified other documents developed by the providers themselves, is overly burdensome. For translation of vital documents to be reasonably accomplished, we believe it is HUD's responsibility to pay for, produce and distribute the documents it mandates be used and engage stakeholders to identify and prioritize other documents which may be program, project or provider specific. Because there are a large number of other documents used at rental properties, it would be advantageous for HUD and stakeholders to have a dialogue about what other documents should be that might be subject to LEP obligations and how those obligations can most effectively be carried out.

This initiative is fraught with legal uncertainties. It is unclear whether leases written in foreign languages would be upheld in court. In addition, translations vary by translator, and there will be multiple versions of the same document if they are not centrally produced. For example, we suggest that HUD should clarify how foreign language and English language leases would be simultaneously enforceable. Does HUD propose having a resident sign both foreign and English leases at the same time, or is some form of side-by-side document going to be required? Or will a foreign language lease now become independently enforceable by a resident or the owner without an equivalent English-language lease? The possibility of confusion is obvious and manifold. Indeed, the process envisioned by the Notice – a proliferation of alternative leases for

many possible LEP tenants – means that no two leases in a building may be alike. This raises the real possibility that tenants and owners may not, in fact, achieve an actual meeting of the minds on key contract terms, rendering the lease unenforceable. Given HUD's interest in assuring both sides of a lease are aware of their mutual obligations, HUD should focus its LEP compliance activities on developing as broad an array of "model" LEP documents as possible, fully vetted by experienced translators and interpreters at the national level, before requiring owners and other stakeholders to assume responsibility for LEP compliance at a project-specific level.

Owner Obligation to Assure Competence of Interpreters/Translations

The Notice emphasizes that quality and accuracy of language services is critical, placing the burden on the recipient to ensure the competence of the translator and/or interpreters and the accuracy and quality of the translations/interpretations.

Many housing providers having frequent contact with substantial numbers of persons of one or more different national origins already undertake a range of good-faith translation and/or interpretation efforts seeking universal promotion of, awareness about, or participation in their specific programs and services and are providing language assistance services according to varied resource availability or limitation. Some providers certainly have employed bi- or multi-lingual staff, and/or coordinate such services as having an interpreter at facility sponsored resident meetings; provide translations of facility newsletters (sometimes in multiple languages at one site); and offer training and or space to provide English as a Second Language programs, among other things. However, many (perhaps the vast majority of) language-proficient employees often are not qualified to translate legally enforceable documents with representations and warranties that bind the housing provider.

Given that housing providers themselves likely will not be proficient in the range of potential target languages, recipients lack any particular skills or abilities to assess the competency of translators or interpreters. Unless there are independently qualified third-parties universally available in the marketplace ready to certify to the competence and/or HUD can establish some form of minimum required qualifications for interpreters and translators, placing such obligations on project owners and agents could threaten the continuation of efforts that are currently being made to less-formally facilitate inclusiveness and provide access to programs/information.

And, despite the thresholds set in the Notice for when translation is required, owners /agents fear they will be open to lawsuits as well as fair housing complaints if document translation and/or interpretation services are not available in every language.

Oversight/Affirmative Compliance Reviews

The Notice states that while this is policy guidance, not a regulation, it represents the criteria HUD *will* use in evaluating whether a recipient is in compliance with Title VI and Title VI regulations." The Notice is positioned to serve as criteria for the evaluation of a current

complaint, fair housing compliance review, or possibly even as part of the regular management review. Enforcement actions are clearly outlined in such a way that penalties for noncompliance can be severe. According to the Notice, "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. 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 Department of Justice litigation section to seek injunctive relief or pursue other enforcement proceedings" (p. 70976). However, the timing, types and responsibilities for performing compliance reviews are not detailed.

Cost Burden for Providing Language Services

One of the chief structural problems posed by the Notice is that it fails to permit owners and other stakeholders to recapture the costs for the extraordinary expenses the Notice imposes upon them. We have grave concerns about implied expectations that owners will be able to cover the costs of potentially extensive language assistance services within their operating budgets. No provisions are made in the Notice for assuring that current rents or future rent increases will be sufficient. This structural defect provides another ground to require HUD to bear the initial LEP burden of creating a battery of model LEP documents.

Owners and agents receive funding from HUD to subsidize the cost of rental housing for the benefit of qualified low-income tenants. In recent years, the Department has significantly increased the volume and cost of regulatory requirements on owners and agents who provide affordable housing, while at the same time holding rents to "market" level. The current paperwork burdens and reporting requirements are becoming a financial challenge for affordable properties. These properties are being required to comply with costly regulatory requirements that are not imposed on the conventional unsubsidized properties being used to determine "comparable rents."

Costs for language assistance services will not be able to be incorporated through the contract renewals process because renewals are based on comparable rents. As comparable non-federally funded properties don't have this expense, it is not in their rent structure. Generally speaking, housing providers report that properties eligible for budget-based rent increases are held to a 5 percent rent increase; and even when the need is documented higher, it is quite difficult to get. Properties that have gone through mortgage restructure have no way to cover the costs because rent increases are set strictly by Operational Cost Adjustment Factor (OCAFs). OCAFs are not going to cover this expense. OCAFs are determined by analyzing data related to: wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer costs. Costs of complying with increasing regulatory requirements are not specifically factored into the equation.

For the reasons above, we urge the Department to reconsider its assumptions which, as written, would impose substantial compliance costs on owners and agents and prohibit them from recovering those costs. The uncalculated (but assuredly substantial) and uncompensated operating costs HUD expects housing providers to be able to absorb with this rule may further discourage voluntary participation in HUD subsidy programs and encourage the exit of firms now in those programs

Cost of Compliance Represents an Unfunded Mandate

Under the Unfunded Mandates Reform Act of 1995, there are a number of requirements with which Federal agencies must comply before promulgating any general Notice of proposed rulemaking that is likely to result in a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general Notice of proposed rulemaking was published. Listed below is a very conservative estimate demonstrating of how the Notice obligations could well exceed the $100,000,000 threshold established under the Unfunded Mandates Reform Act of 1995.

National Average of Students with Limited English Proficiency

A 2001 study by the U.S. Department of Education found that *6 percent of all students* are considered LEP. Further information is available from the 1993-94 Schools and Staffing Survey, which found over 2.1 million public school students in the United States are identified as LEP students. They account for 5 percent of all public school students and 31 percent of all American Indian/Alaska Native, Asian/Pacific Islander, and Hispanic students enrolled in public schools. Forty-two percent of all public school teachers have at least one LEP student in their classes.

Number of Households Assisted Through HUD Programs

HUD provides housing assistance funds under various grant and subsidy programs to multifamily project owners (both nonprofits and for profit) and Local Housing Agencies (LHAs). These intermediaries, in turn, provide housing assistance to benefit primarily low-income households. HUD spent about $24.6 billion in fiscal year 2003 to provide rent and operating subsidies that benefited over 4.8 million households. This figure *does not* include the millions of applicant households currently on waiting lists for various forms of federal housing assistance.

Number of LEP Households Assisted Through HUD Programs

Within the Section 8 tenant-based program for example, 16 percent of the households are Hispanic, 2 percent are Asian, and 1 percent Native American for a total of 19 percent; 19 percent of 4.8 million assisted households equals 912,000 households. Based on the U.S. Census statistics in the introduction of the proposed rule, a conservative estimate of the percentage of LEP households is 25 percent; 25 percent of 912,000 households equals 228,000.

Estimating the number of households that have LEP by other means, using the U.S. Department of Education's figure of 6 percent of all households with LEP, as a basis to determine the percent of all HUD assisted households that may have LEP, the total number would equal 288,000 households.

Average Cost of Translating Documents

A recent NAHMA survey of multifamily assisted housing provider owners / agents, found that the average cost to translate the Section 8 model lease agreement from English to Spanish was approximately $1,500 (2,666 words x 56 cents per word). These numbers were substantially the same as reported anecdotally by AAHSA members, with translation cost estimates ranging between $1200 and $1800.

Obviously, there is likely to be a wide range of estimated document translation costs depending on a range of variables. However, in an attempt to project national costs for complying with the proposed rule, NAHRO surveyed a number of translation companies to determine modest national rates. Asian languages cost approximately 30 cents per word and up, depending on degree of difficulty and technical content with European language translations costing approximately 15 cents per word and up, depending on degree of difficulty and technical content; averaging 23 cents per word. Please note that 23 cents per word is half the average cost for translating the Section 8 model lease addendum into one language. In Los Angeles, several providers report serving LEP persons of varied national origins, including Spanish, Russian, Korean, Nigerian, Vietnamese, Cambodian, Japanese, and Chinese speaking peoples. In Boston, it is projected that LEP persons would require assistance in no less than 9 languages. It is reasonable to assume other large metropolitan areas would similarly encounter numerous LEP persons representing a wide range of national origin languages and dialects.

Average Number of Documents and Words to Translate

There are untold number of forms and notices for applicants and participants of each HUD program. Take for example the 3 page form "Tenancy Addendum: Section 8 Tenant-Based Assistance Housing Choice Voucher Program" (form HUD-52641-A) which has 2,666 words (2666 words divided by 3 pages averages 889 words per page). In review of most HUD forms for the Section 8 tenant-based program, the average length was 800 words per page.

As an additional example, the total number of pages for the standard forms, notices and other "vital" facility documents used in the Section 8 tenant-based program by the Sioux Falls Housing Authority (Sioux Falls, SD) for applicants and participants is approximately 91 pages. To allow for variances between agencies around the country and the different degrees of "vital" facility documents by HUD program, we've used a much more conservative estimate of 45 pages instead.

Calculating Document Translation Costs Per Program

At 800 words per page, 45 pages equals 36,000 words. At an average document translation cost of 23 cents per page, 36,000 words would cost $8,280 *per agency* to translate program documents into *one foreign language* just for the Section 8 tenant-based program.

Number of Owners/Agents Administering HUD Programs

There are approximately 3,100 Local Housing Agencies that administer the Public Housing program and approximately 2,500 LHAs that administer the Section 8 tenant-based program. There are approximately 1,110 CDBG entitlement communities and approximately, 650 Participating Jurisdictions (PJs) under the HOME program. These calculations indicate that, with 7,350 owners/agents administering these four HUD programs, at a per agency expenditure of $8,280 to translate "vital" documents into *one foreign language*, implementing the proposals contained in the Notice would cost approximately $60,858,000. Using the Notice's preamble making the case for Spanish, Chinese and Vietnamese (without taking into account distinctions of dialect), translation into just three languages for the programs named above equates to $182,574,000, using conservative assumptions as to cost and page-total averages, $182,574,000 would well exceed the $100,000,000 threshold established under the Unfunded Mandates Reform Act of 1995. And that doesn't include the privately owned and operated project-based multifamily assisted housing programs.

There are approximately 22,767 unique, privately owned and operated project-based multifamily assisted housing programs from the Section 8 NC/SR, 202/8, 202/811, 236, BMIR, LMSA and PD properties. Using the same conservative figures for translation of "vital documents" into just *one language*, the project-based Section 8 owner/operator cost would rise to $188,510,760, without taking into account the likelihood that multiple languages may be needed in many settings.

Estimating Document Translation Services for HUD's Owners/Agents

Without even attempting to estimate owners/agents projected costs for oral language services / interpretation for some portion of approximately 228,000 to 288,000 households for whom there are no translated documents, or for document translation of *additional foreign languages* beyond the costs of translating documents as indicated above, the total costs for document translation to comply with the LEP proposed rule would well exceed the $100,000,000 threshold established under the Unfunded Mandates Reform Act of 1995. And translating industry-standard documents and collateral materials that often accompany the HUD model lease provisions in Sec. 8 transactions would represent more pages for many firms and thus significantly greater costs than the estimate here.

Appropriateness of Nature, Scope and Examples

We appreciate the fact that the Notice acknowledges the difficulties inherent in providing language services such as: problems with LEP literacy in their native tongue, let alone English; the lack of direct translation equivalents for legal or program specific terminology ("terms of art"); the problem of assessing and addressing dialect distinctions and comprehension levels required to understand the original as well as the translated or interpreted materials; the lack of financial and/or community resources for translation/interpretation resources; and the unpredictability of frequency of contact with LEP persons with common language service needs. We also appreciate that the Notice references the need for a "flexible and fact-dependent standard" (pp. 70970 column 1; 70975 column 3) and recognizes that "[translation of] all written materials into all encountered languages is unrealistic" (p. 70974), and that implementation is a process that must evolve over time and incorporate a series of steps (p. 70977).

Following the general order of the Notice as published, here are selected additional comments.

Section III - Applicability

The Notice says, "recipients of HUD assistance include, for example …other *entities* receiving funds directly or *indirectly* from HUD." (p. 70970) Does this mean that HUD foresees applicability extending to recipients' consultants and contractors? If so, how might the obligation to "ensure meaningful access" be reasonably construed where a housing provider contracts with an individual or organization for services meant to aid the initial recipient organization, not the residents? Or are "other entities" limited to the example of subrecipients in the paragraph immediately following, such as the various block grant programs or HOME subrecipients?

Likewise, the Notice states, "coverage extends to a recipient's *entire program or activity (i.e., to all parts of a recipient's operations)* even if only one part of the recipient receives the federal assistance." Again, how, if at all, are services not specifically targeted at end-users of the federal financial assistance (the public, including LEP persons) separate and distinct for purely administrative functions within the recipients administrative program and operations?

Section IV - Who is a Limited English Proficiency Individual?

The Notice includes "parents and family members" in the list of populations likely to include LEP persons who might have limited abilities to read, write, speak, or understand English and should be considered when planning language services. (p. 70970) Trying to count and make assessments of the potential needs of "family members, parents and children" is simply impossible. Housing providers have no reasonable method for determining the number, location and likely language literacy abilities of family members, whether younger or older than the immediate LEP contact. As pointed out in the Notice, while census tract data may show

language prevalence of persons living in the United States or specific localities, indicators of language or national origin implies neither fluency in that language nor need for assistance in understanding the English language. And parents and family members are not necessarily living within a given census track or within proximity of the various housing providers. We recommend that the example, extending the obligation to assess needs of family members and parents, be removed.

Section V – Determining Obligation to Provide Services

The Notice urges, "[w]hen using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English" (Section V. A, p. 70971). The Notice itself points out the problems of over reliance on basic demographic data as such figures do not address proficiency in English or the lack of it. How owners should demonstrate their best effort to assess and address those needs is not specified in the Notice. However, the list of recommendations of organizations and institutions provided at the end of Section A is useful as a starting point. The local HUD offices should likely be tasked with facilitating the identification and dissemination of information on such groups and organizations as part of a local resources clearinghouse.

When assessing frequency of contact, the example indicates that daily contact will result in "greater duties [for language assistance services] than if the…contact is unpredictable or infrequent" (Section V. B, p. 70971). And the example continues with the assertion that even in unpredictable or infrequent contacts, owners should have plans to use "one of the commercially available telephonic interpretation services to obtain immediate interpreter services." If HUD is aware of particularly qualified services of this type nationwide, then the Notice should provide details on the programs that are available or how they can be located, and/or local HUD offices should be tasked to facilitate identification and sharing of such information on a state or local basis.

The Notice gives only the most general of examples about the nature and importance of a program, activity or service, but raises the expectation of languages services when there are greater "possible consequences of the contact to the LEP person" (Section V.C, p. 70971). We feel that better parameters should be developed in consultation with us and other stakeholders so more specific examples may be provided illustrating how language assistance measures should be prioritized for multifamily and public housing providers.

Addressing recipient level of resources, the Notice states that "'reasonable steps' may cease to be reasonable where the costs imposed substantially exceed the benefits." (Section V.D., p. 70971) But this section of the Notice attempts to incorporate a range of problems in assessing cost, need, and reasonableness, and begins to introduce concepts of "qualified translators and interpreters," accuracy of interpretations, competence and accuracy of language services, distinctions between translation and interpretation. A variety of conflicting concepts are introduced without providing any substantial guidance to recipients on how to resolve the

conflict. Moreover, the Department has provided no cost/benefit analysis of its own, or any evidence that it has estimated costs of compliance for owners / agents. (For more on particular concerns about cost, see general comments above.)

Section VI – Selecting Language Assistance Services

This section focuses largely on the distinctions between oral/interpretation and written/translation services, but emphasizes that "recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used" (p. 70972, column 1) and suggests that "recipients should consider a formal process for establishing the credential of the interpreter" (p. 70972, column 2). As described in our major thematic concerns (see pg. 3, above), this obligation to ensure competency is virtually impossible to carry out without some independent third-party assessment or certification program, and only a very small number of employees/contractors that are able to do some translation are likely to be appropriately qualified to translate legally enforceable documents with representations and warranties that bind the housing provider.

An example provided by HUD recommends hiring bi-lingual staff as one possible way to accommodate LEP interpretation needs as a cost effective measure. However, placing the responsibility on the owner/agent to again ensure competency throws this potential solution into question. Housing providers report that it is very difficult to find good managers for affordable housing that speak another language and can translate it well. In many instances, properties may have bilingual staff who can speak a foreign language may have no formal "foreign language" interpretation or translation training.

This section also references use of family members or friends as interpreters, but again places on recipients the obligation to "take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate" and suggests that "in many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations" (p. 70973). The examples given here are very valid, but the conflicting recommendations in the face of continued obligations on the owner to assure competency or appropriateness are not very realistic.

Translation of documents, as stated previously, is one of our major concerns. This section specifies a number of documents which should generally be translated. For consistency and cost savings, particularly when it comes to documents promulgated in English by HUD, we feel that translation of documents including the leases, fair housing statements, residents' rights and responsibilities, and RHIIP generated "Fact Sheets" regarding income declarations and rental assistance procedures should be the primary responsibility of HUD. In order to further assist housing providers in compliance, other independently-developed but related "vital documents" could be identified and prioritized as part of the collaborative effort between the agencies and stakeholders required by the Executive Order.

Section 6. B. 3 - Safe Harbor

Because we believe that the basic structure of the Notice needs to be overhauled to put the primary burden on HUD to provide model LEP documents, the concept of a "safe harbor" also needs to be reformed to match the final split of responsibilities between HUD and its private sector partners. Even if those responsibilities are not recast, however, the safe harbor provisions of the Notice should be rewritten. Specifically, the Notice establishes a "safe harbor" which will be considered strong evidence of compliance with the recipient's written-translation obligations (p. 70974 column 3). According to the Notice, the "safe harbor" would be met if the HUD recipient provides written translation of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of person eligible to be served or likely to be affected or encountered, with a minimum threshold of providing written Notice of right to receive competent oral interpretation of vital documents free of cost, if there are fewer than 50 person in a language group that reaches the 5 percent trigger. But there is no minimum floor, leaving the potential implication that language assistance services are expected for *all* individuals (meaning one, two, three or some other statistically insignificant number). What is needed here is clear guidance that provision of information in other languages is not required where there is not some significant number or proportion of the population eligible to be served or likely to be affected having similar language needs and abilities.

Appendix A - Outreach

The Notice exceeds what we understand the responsibilities of owners and agents to be with respect to affirmative fair marketing. Under Factor 1, the Notice says that HUD recipients are "required to reach out to, *educate* and affirmatively market potential beneficiaries" (p. 70978, column 2). We are unaware of any such requirement to "educate" in the current body of law.

With respect to the portions of Appendix A applicable to the Office of Housing concerning Supportive Housing for the Elderly, the example offered by HUD includes an inappropriate reference to operator responsibility for LEP language assistance needs in the provision of medical care. The Section 202 program does not involve medical care overseen by the housing provider. The example should be modified to remove the medical care reference.

Key Recommendations

As noted above, we believe the Notice should be overhauled to provide a more realistic and less burdensome division of LEP responsibilities between HUD and its private sector partners. Gratifyingly, the Notice indicates that HUD plans to continue to provide assistance and guidance in this important area, and plans to work with a range of potential stakeholders to "identify and share model plans, examples of best practices, and cost-saving approaches." The undersigned groups look forward to being invited to participate in such discussions, and make the following initial recommendations on ways to leverage resources:

In addition to the recommendations made above, HUD should better define parameters for "meaningful access" and "vital documents" (p. 70975) as related to multifamily and public housing. For example, HUD may determine that the lease is a vital document and, if so, HUD should take the lead in developing translations of the model lease in many of the most frequently encountered languages. Likewise, if HUD determines that access to general program information such as explanations of the core housing programs subsidized by the federal government must be communicated by owners, then HUD is perhaps best placed to take the lead in translating and placing on the public HUD webpages information to uniformly describe the Section 8 program(s); application process; and other documents such as those currently residing on the HUD "renting" pages at *http://www.hud.gov/renting/index.cfm*, including explanations of resident fair housing rights and the tenant's rights and responsibilities brochures, as well as the RHIIP program-specific rental assistance fact sheets on income and expense disclosures and calculations.

Working collaboratively, HUD and housing providers might be able to jointly identify and prioritize development of translation materials suitable for an archive of web-assisted audio conferences in a range of languages that providers can access to link up LEP individuals and/or their representatives with consistent explanations of vital documents and key programs or services.

For cost savings, perhaps HUD would also be able to negotiate blanket translation arrangements that sponsors could opt into for additional legal document purposes, such as owner specific modifications to the lease, or other programs or services requiring HUD program familiarity or terminology that may be somewhat common among various housing providers nationwide.

For questions regarding this joint comment, please feel free to contact Colleen Bloom at (202) 508-9483 or *cbloom@aahsa.org*.

American Association of Homes and Services for the Aging
Council of Affordable and Rural Housing
Council of Large Public Housing Authorities
Institute of Real Estate Management
National Apartment Association
National Affordable Housing Management Association
National Association of Housing and Redevelopment Officials
National Leased Housing Association
National Multi Housing Council