

# Kimball, Tirey & St. John LLP

## Legal Alert

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

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On September 15, 2016, HUD's General Counsel released new Guidance on Fair Housing Protections for people with Limited English Proficiency (LEP).<sup>1</sup> This Guidance applies to all housing, not just federally funded housing.<sup>1</sup>

The Guidance discusses the correlation between language barriers and national origin discrimination. HUD concludes, "*Where a policy or practice that restricts access to housing on the basis of LEP has a discriminatory effect based on national origin, race, or other protected characteristic, such policy or practice violates the act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.*"

In other words, Landlords cannot have policies or practices in place that have a negative impact on LEP individuals (such as refusing to work with people who don't speak English well) unless there is a legitimate business need for the practice *and* no less discriminatory way to achieve it.

This HUD Guidance raises questions about what obligations a Landlord has to LEP individuals, including whether landlords are required to provide translation services. While the Guidance confirms that it is a violation of the Fair Housing Act to refuse to deal with anyone who does not speak English, it does not specify what services a Landlord must provide to LEP applicants. The Guidance does state that allowing an LEP applicant a reasonable amount of time to have a document (such as a lease) translated, obtaining written and oral translation services or allowing the LEP applicant to obtain their own translator are reasonable and less discriminatory alternatives. However, the Guidance also states that if a Landlord or resident "*can access free or low-cost language assistance services, any cost based justifications for refusing to deal with LEP persons would be immediately suspect*". This implies that if low cost translation or interpretation services are available, a landlord may be required to provide them to the applicant upon request.

The Guidance also states that avoiding compliance with a state law, such as California Civil Code §1632, "*would not be considered a substantial, legitimate, non-discriminatory interest*" that would justify refusing to serve LEP persons. California Civil Code §1632 provides that if a California residential lease is primarily negotiated in Spanish, Chinese, Tagalog, Vietnamese or Korean, a copy of the lease must be provided to the tenant in that language prior to lease signing.

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<sup>1</sup> Properties receiving federal financial assistance have heightened obligations to provide access to LEP applicants under Title VI of the Civil Rights Act of 1964. It is important for properties that receive federal financial assistance to note that this new HUD Guidance states that a failure to comply with these heightened LEP obligations will be considered a violation of fair housing laws prohibiting discrimination on the basis of national origin. This makes it more important than ever for such properties to make sure they have a written LEP plan in place and that the plan is regularly implemented and followed.

This statement in the Guidance suggests that a Landlord's policy of refusing to negotiate with applicants in a foreign language for the sole purpose of avoiding triggering the legal requirement to provide translated documents may be a violation of the Fair Housing Act.

Moreover, the Guidance further suggests that Landlords may be required to draw upon any multi-lingual skills that staff members may have in order to accommodate LEP persons. As such, Landlords who currently have a policy that requires all lease negotiations with staff to be conducted in English (to avoid having to provide translated leases and notices to tenants in Spanish, Chinese, Tagalog, Vietnamese or Korean) may not be in compliance with the Guidance.

In conclusion, the new HUD Guidance will require Landlords to make certain risk management decisions about their business practices relative to LEP applicants. Landlords will have to decide whether to have readily accessible translation services available to LEP applicants upon request (possibly at the landlord's cost) or to continue to require LEP applicants provide their own translation services. Landlords will also need to consider whether to continue requiring lease negotiations to be conducted in English or to allow any multi-lingual staff to engage in lease discussions in a language other than English and provide the applicant with translated lease documents in the corresponding language as required by Civil Code section 1632.

As this guidance raises risk management decisions on the part of owners and management companies, it is strongly recommended that any new policies being considered be reviewed by an attorney with expertise in fair housing before implementation. Incidents or complaints involving LEP issues should also be reviewed with legal counsel.

*To answer any questions that you may have regarding this topic, please contact our Fair Housing Practice Group at [KTSFairHousing@kts-law.com](mailto:KTSFairHousing@kts-law.com).*

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