

**Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual**

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Originating Office: Commerce Regulatory Compliance

Subject: Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency

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PROGRAM(S): Workforce Innovation and Opportunity Act (WIOA)

Purpose: To transmit state policy and guidance from the U.S. Department of Labor (USDOL) with respect to the responsibilities of entities that receive federal financial assistance related to serving persons having Limited English Proficiency, pursuant to the requirements of Title VI of the Act of 1964 and Section 188 of the Workforce Innovation and Opportunity Act of 2014.

References: Title VI of the Civil Rights Act of 1964, as amended; Section 188 of the Workforce Innovation and Opportunity Act of 2014; Executive Order 13166 [August 11, 2000]; Civil Rights Center: Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Federal Register, Volume 68, No. 103).

Background: All entities that receive federal financial assistance from the USDOL must take reasonable steps to ensure that individuals with limited English proficiency receive the language assistance necessary to afford meaningful access to programs, services and information. One-stop partners that receive financial assistance from a federal agency other than USDOL are also subject to the Title VI Civil Rights Act implementing regulations and guidance of that federal agency.

Action: All components of the workforce system should develop procedures to assure compliance with this policy.

Contact: Questions should be directed to WIOA EO Officer John M. Ybarra, Commerce Regulatory Compliance, (785) 296-5092; TTY: 711 e-mail: John.Ybarra@ks.gov.

Attachment: Civil Rights Center, Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.

**Prohibition Against National Origin Discrimination
as it Affects Persons With Limited English Proficiency**

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Prohibition Against National Origin Discrimination As it Affects Persons With Limited English Proficiency

Section 188 of the Workforce Innovation and Opportunity Act (WIOA) adopts the same prohibition against discrimination because of national origin that is found in Title VI of the Civil Rights Act:

"No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any such program because of race, color, national origin, sex, religion, disability, political affiliation or belief, citizenship, or age."

A significant number of the eligible population, and others directly affected, may need services or information in a language other than English to effectively participate in, or be informed about, programs or activities financially assisted by WIOA Title I. Service providers should make reasonable efforts to meet the particular language needs of individuals with limited English proficiency (LEP) who seeks services or information.

Definition of Limited English Proficient (LEP) Individual

An individual with LEP is one who has limited ability in speaking, reading, writing or understanding the English language and (a) whose native language is a language other than English or; (b) who lives in a family or community environment where a language other than English is the dominant language

Priority of Service to Persons with Limited English Proficiency (LEP)

Proposed WIOA regulations at 20 CFR 680.600 provides priority access to career services and training services funded under WIOA sec. 134(c)(2)(A)(xii) and adult title I. In § 678.430(b), the Department proposes to categorize these services as individualized career services. Proposed WIOA regulations at 20 CFR 680.600(a) explains that individualized career services and training services must be given on a priority basis to low-income adults, public assistance recipients, and individuals who are basic skills deficient in the local area under the WIOA adult program.

WIOA Section 3.5 states the term “basic skills deficient” means, with respect to an individual:

- (A) who is a youth, that the individual has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test: or
- (B) who is a youth or adult that the individual is unable to compute or solve problems, or read, write or speak English, at a level necessary to function on the job, in the individual’s family, or in society.

Persons Covered

All entities that receive federal financial assistance from the USDOL, either directly or indirectly, through a grant, contract or subcontract, are covered by this policy. One-stop partners that receive financial assistance from a federal agency other than USDOL are also subject to the Title VI Civil Rights Act implementing regulations and guidance of that federal agency. Covered entities include, but are not limited to:

1. Eligible training providers;

2. Local workforce development area administrative entities;
3. Local workforce development boards;
4. State workforce development board;
5. One-stop operators;
6. On-the-job training (OJT) employers;
7. State employment security agencies (American Job Centers);
8. State-level agencies that administer, or are financed in whole or in part, by WIOA Title I funds; and
9. Other national programs.

Entities may be receiving financial assistance through one or more USDOL administered statutes, including, but not limited to, the Mine Safety and Health Act, the Occupational Safety and Health Act; and Older Americans Act, the Social Security Act, the Wagner-Peyser Act, the Workforce Innovation and Opportunity Act, and Welfare-to-Work. One-stop partners that receive financial assistance from a federal agency other than USDOL are also subject to the Title VI Civil Rights Act implementing regulations and guidance of that federal agency.

Basic Requirements

To ensure compliance with Title VI Civil Rights Act and WIOA Section 188, service providers must take steps to ensure that LEP persons eligible to be served or likely to be directly or significantly affected (e.g., LEP parents of non-LEP students) have meaningful access to the programs and services during all hours of operation. The key to providing meaningful access is to ensure that the service provider and the LEP person can communicate effectively. The most important step in meeting this obligation is to provide the language assistance, at no cost to the LEP person, necessary to ensure such access. The term *persons eligible to be served or likely to be directly or significantly affected* relates to the issue of the provider's service area for purposes of meeting the Title VI Civil Rights Act and WIOA Section 188 obligation. Ordinarily, persons eligible to be served or likely to be directly or significantly affected by a provider's program or activity are those persons who are in the geographic area that has been approved by a federal grant agency as the provider's service delivery area, and who are either eligible for the provider's services or benefits, or otherwise might be directly or significantly affected by the provider's conduct. The service provider must take reasonable steps to ensure that the LEP person is able to do the following:

1. Receive adequate information about programs and activities;
2. Understand the benefits of the programs and activities available;
3. Receive the benefits of programs and activities for which he or she is eligible at no charge and;
4. Effectively communicate the relevant circumstances of his or her situation to the service provider.

Meaningful access is contingent on a number of factors. Failure to take all the steps outlined will not necessarily mean that a service provider has not made meaningful access available to LEP persons. The Civil Right Center (CRC) will make a determination on a case-by-case basis and will consider several factors in determining whether the steps taken by a service provider make meaningful access available. The following are considered the most pivotal in determining the nature of the language assistance that the service provider should make available:

1. Frequency of contact a participant or beneficiary is required to have with the program or activity;
2. Nature and importance of the program or activity to the participant or beneficiary;

3. Number or proportion of LEP persons eligible to be served or likely to be directly or significantly affected by the program or activity; and
4. Resources available to the service provider to carry out the program or activity.

Providing Meaningful Access

Effective programs that provide meaningful access usually consist of the following elements:

1. Assessment;
2. Written policy on language assistance;
3. Staff training;
4. Regular monitoring; and
5. Providing notice.

Failure to implement one or more of these elements does not necessarily mean the service provider is not in compliance with Title VI Civil Rights Act and WIOA Section 188. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a provider's program or activity, and if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services, the provider will not be found in noncompliance. However, in reviewing the service provider's compliance, documentation and evidence will be sought that the provider considered and incorporated appropriate elements into its language assistance program. The following is a detailed description of the elements of an effective language assistance program:

Assessment

The first step to ensuring meaningful access is for the service provider to evaluate the language needs of the affected population. A provider assesses language needs by accomplishing the following:

1. Identify languages, other than English, that are likely to be encountered in delivering the program or activity and estimate the number of LEP persons who are eligible to be served or likely to be directly or significantly affected by the program or activity (see *Basic Requirements* section of this policy). This may include reviewing data from a combination of sources, including U.S. Census data, state labor market information, client files, and statistics from school systems and community agencies and organizations. **Note:** When a provider believes that the provision of aid, services, benefits, or training to LEP persons has not been effective in the past, the primary source of data from which estimates of the eligible LEP population is made should not be from client files.
2. Determine the language needs of LEP persons, keeping in mind that some will not self-identify because they fear that their level of participation will be curtailed by their inability to communicate in the English language.
3. Record appropriate notes in the client files to ensure LEP persons are consistently communicated with in an appropriate language as they navigate all stages of the provider's program.
4. Review points of contact in all stages of the program or activity where language assistance is likely to be needed.

5. Review delivery systems to determine whether any program system denies or limits participation by LEP persons. For example, many states have implemented telephone systems for receiving Unemployment Insurance (UI) claims. Telephone systems often provide instructions only in English, or in some cases, Spanish. Programs offering computer-based technologies may encounter circumstances that similarly limit meaningful participation.
6. Understand circumstances in which assistance may be needed when interacting with other pertinent individuals, even though the LEP person can communicate effectively in English. For example, if a student under the age of eighteen needs the signature of his/her LEP parent to participate in a summer employment program, both written and oral language assistance may be necessary for the parent to obtain information and provide the necessary permission.
7. Assess the resources that will be needed to provide effective language assistance, and identify the location and availability of these resources.

Another important step to ensuring continued meaningful access is for the service provider to conduct an annual assessment of its overall language assistance program. A provider should annually assess its local eligible population. If a significant number or percentage of LEP persons eligible to be served or likely to be directly or significantly affected by the program or activity need information or services in a language other than English to communicate effectively, then the provider must develop and implement a plan to provide written materials in languages other than English. Translation of written materials is required as a reasonable step to ensure that LEP persons are effectively informed about, or able to participate in, DOL financially assisted programs or activities. An effective language assistance program ensures that written materials that are routinely provided in English to applicants, clients and the public are available in languages (other than English) that are regularly encountered in the local area.

Written Policy on Language Assistance

The service provider should develop and implement a comprehensive written policy on Language Assistance that will ensure meaningful communication. This policy should be amended on an annual basis, or as needed, depending on the changing needs of the local population.

All service providers are required to ensure effective communication by developing and implementing a comprehensive language assistance program that includes written policies and procedures to identify and determine the language needs of eligible LEP persons. At a minimum, the policy should provide for the following:

1. Notification of the right to free language assistance, in appropriate languages;
2. Periodic staff training;
3. Range of interpreter assistance;
4. Regular program monitoring; and
5. Translation of written materials, as applicable.

Staff Training

The service provider must take steps to ensure that all staff understand its policy and procedures on language assistance and are capable of carrying it out. A vital element in ensuring that the policy and procedures are followed is disseminating it to all employees who are likely to have contact with LEP persons. Staff should receive periodic training to ensure that they are knowledgeable and aware of the program operator's language assistance policies and procedures, are trained to work effectively with interpreters, and understand the dynamics of interpretation.

It is important that training be part of orientation for new employees and that all employees in client contact positions be properly trained. If there is high turnover among employees, service providers may find it useful to maintain a training registry that records the names and dates of employee training. Over the years, CRC has observed that providers often develop effective language assistance policies and procedures but employees are unaware of the policies, or do not know the procedures for providing available assistance. Effective training is one means of ensuring that there is not a gap between the provider's written policies and procedures, and the actual practices of employees who are on the front line interacting with LEP persons.

Regular Monitoring

The provider should conduct a thorough annual assessment of the language needs of the population to be served to ensure that LEP persons can meaningfully access the program or activity. It is crucial that a service provider monitor its language assistance program to review the following:

1. Assess the current languages spoken in the service area;
2. Assess the current communication needs of LEP persons;
3. Determine if existing assistance is meeting the needs of such persons;
4. Determine if staff is knowledgeable about policies and procedures and how to implement them; and
5. Determine if sources of and arrangements for assistance are still current and viable.

One element of such an assessment is for a provider to seek feedback from clients and advocates. Service providers should consider involving community groups in their monitoring processes, which can aid in assessing local demographics, as well as obtaining feedback on the effectiveness of language assistance policies and procedures. CRC believes that compliance with the Title VI Civil Rights Act and WIOA Section 188 language assistance obligation is most likely when a provider continuously monitors its program, makes modifications where necessary, and periodically trains employees in implementation of policies and procedures.

Providing Notice

A vital part of a well-functioning compliance program includes effective methods for notifying LEP persons of their rights to receive or participate in the services to which they may be eligible. Outreach materials should notify LEP persons of their rights to language assistance, and the availability of such assistance free of charge. These methods include but are not limited to, the following:

1. Advertising and providing outreach to communicate the rights of individuals to services to which they may be eligible, which could include public service announcements in appropriate languages on television or radio, newspaper advertisements, or the distribution of materials to organizations that serve LEP persons.
2. Using language identification cards that allow LEP persons to identify their language needs to staff and for staff to identify the language needs of applicants and clients. To be effective, the cards (e.g., *I speak* cards) must invite the LEP person to identify the language he or she speaks. This identification must be recorded in the LEP person's file.
3. Posting and maintaining signs in waiting rooms, reception areas and other initial points of entry that are written in regularly encountered languages. In order to be effective, these signs must inform LEP persons of their right to free language assistance services and invite them to identify themselves as persons needing such services.
4. Using competent persons to translate application forms, instructions and other written material into appropriate languages other than English.
5. Interpreting documents orally for persons who speak languages that are not regularly encountered.
6. Providing uniform procedures for timely and effective telephone communication between staff and LEP persons. This must include instructions for English-speaking employees to obtain assistance from interpreters or bilingual staff when receiving calls from or initiating calls to LEP persons.

Oral Language Interpretation

In designing an effective language assistance program, a service provider should develop procedures for obtaining and providing trained and competent interpreters and other interpretation services, in a timely manner, by taking some or all of the following steps:

1. Hiring bilingual staff who are trained and competent in the skill of interpreting;
2. Contracting with an interpreter service for qualified interpreters;
3. Arranging for the services of volunteers who are qualified interpreters; and
4. Arranging, or contracting with, telephone language interpreter services.

The following provides guidance to service providers in determining which language assistance options will be of sufficient quantity and quality to meet the needs of LEP persons.

Hiring Bilingual Staff

Paid staff interpreters are especially appropriate where there is a frequent or regular need for interpreting services. Hiring bilingual staff, or utilizing current staff, for applicant and client contact facilitates participation by LEP persons. The ability of staff to communicate directly with LEP persons, without the assistance of third-party interpretation and translation, maximizes agency resources and permits LEP persons to more fully engage in programs and services. However, where there are a variety of languages commonly spoken in a provider's service area, this option may not meet the needs of all LEP persons. When this option is not practical, the

provider must provide additional and timely language assistance. The qualifications of both current and future bilingual staff must be reviewed to ensure that they are proficient in English and in the second language. Bilingual staff should receive orientation and training on the skills and ethics of interpretation and should have a fundamental knowledge in both languages of any specialized terms or concepts. Staff interpreters must be readily available.

Contracting with Interpreter Service

The use of contracted interpreters may be an option for service providers that have infrequent needs for interpreting services, have less common languages spoken in their service areas, or need to supplement their in-house capabilities on an as-needed basis. When contracted interpreters are used, appropriate training must be provided. Training should include orientation and training on the skills and ethics of interpretation and fundamental knowledge in both languages of any specialized terms or concepts. Contract interpreters must be readily available.

Arranging for Services of Volunteers

The use of community volunteers may be a cost-effective method for providing interpreter services. However, experience has shown that to effectively use community volunteers for interpreting services, service providers must ensure that formal arrangements are made so that community organizations are not subjected to ad hoc requests for assistance. Service providers must ensure that volunteers are qualified to interpret and understand their obligation to maintain client confidentiality. When community volunteers are used, appropriate training must be provided. Training should include orientation and training on the skills and ethics of interpretation and fundamental knowledge in both languages of any specialized terms or concepts. Additional language assistance must be provided where competent volunteers are not readily available during all hours of service.

Interpreter Services by Telephone

Interpreter services by telephone may be a useful option as a supplemental system, or may be useful when a service provider encounters a language that it cannot otherwise accommodate. A telephone interpreter service often offers assistance in many different languages and usually can provide the service in quick response to a request. However, providers should be aware that such services might not always have readily available interpreters who are familiar with the terminology of the particular program or activity. This method may also be inadequate when documents need to be reviewed. It is important that a provider not offer this as the only language assistance, except when other language assistance options are unavailable.

Written Material Translation

Vital Documents

It is particularly important to ensure that vital documents are translated into each regularly encountered language spoken by groups eligible to be served or likely to be directly or significantly affected by the provider's program or activity (see *Basic Requirements* section of this policy). Translation of vital documents must occur on a timely basis so as not to delay the LEP person's participation in, or receipt of benefits. When vital documents, or portions of vital documents, must be translated to assist persons in language groups

significantly represented in the local area, this must occur on a timely basis so as not to delay communication with LEP persons. These documents include, but are not limited to, the following:

1. Applications;
2. Consent forms;
3. Information on the right to file complaints of discrimination;
4. Letters containing information regarding participation in a program or activity;
5. Notices advising LEP persons of the availability of free language assistance;
6. Notices pertaining to the reduction, denial or termination of services or benefits and of the right to appeal such actions;
7. Notices that require a response from beneficiaries; and
8. Other outreach materials.

Babel Notices

If a vital document cannot be translated immediately, the document or notice should contain a Babel Notice. A Babel Notice is a tagline which communicates to the customer/claimant how they can contact the American Job Center staff in order to receive assistance. The Babel Notice should be provided in a variety of languages other than English to ensure customers/claimants will understand their right to receive services in the language they speak.

Web sites

The requirements outlined in this policy also apply to materials posted on Web sites. The placement of materials on a Web site does not change the provider's original determination regarding the number or proportion of LEP persons that comprise the intended audience for that document. This applies to each individual document presented on a Web site. Generally, entire Web sites need not be translated. Only vital documents or vital information requires translation. If the English version of a particular document or piece of information can be found on the Web site, then the provider must also post that document or piece of information in appropriate languages other than English. If documents are translated on a Web site, the Home Page should direct browsers to such information.

Safe Harbor Provision

The *safe harbor provision* applies to the translation of written documents only. This does not change the requirement to provide LEP persons with meaningful access through competent oral interpreters. A service provider will be found to be in compliance with the Title VI Civil Rights Act and WIOA Section 188 obligation to provide written materials in languages other than English generally based on the following:

1. The service provider offers translated written materials for each language spoken in the local area that constitutes ten percent (or 3,000 whichever is less) of the population of persons eligible to be served or likely to be directly or significantly affected by the provider's program or activity (see *Basic Requirements* section of this policy).
2. The service provider ensures that, at a minimum, vital documents are translated into appropriate languages other than English when the LEP language groups constitute five percent (or 1,000 whichever

is less) of the population of persons eligible to be served or likely to be directly or significantly affected by the provider's program or activity. Translation of non-vital documents can be provided orally.

3. Service providers with fewer than five percent (or 1,000 whichever is more) persons in a language group eligible to be served or likely to be directly or significantly affected by the provider's program or activity need not translate written materials. Written notice of the right to receive competent oral interpretation of written materials may be provided in the primary language of the eligible group.
4. The *safe harbor provision* is not intended to establish numerical thresholds for when a service provider must translate documents. Because the numbers and percentages included in these provisions are based on the balancing of a number of factors, the CRC will undertake additional determination of the numerical thresholds, which may be revised as a result. In such circumstances, the CRC will review the totality of circumstances to determine the precise nature of a provider's obligation to make available written materials in languages other than English. If written translation of a certain document or set of documents would be so financially burdensome as to defeat the legitimate objectives of programs or activities, and if there is an alternative means of ensuring that LEP persons have meaningful access to the information provided in the document (such as timely, effective oral interpretation of vital documents), the CRC will not find the translation of written materials necessary for compliance with Title VI Civil Rights Act and WIOA Section 188.

Issues Related to Interpreter Services

Use of Friends, Family, or Minor Children as Interpreters

A service provider may be exposed to liability under Title VI Civil Rights Act and WIOA Section 188 if it requires, suggests, or encourages a LEP person to use friends, family members, or minor children as interpreters because this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of the LEP person to reveal personal information critical to their situation. In addition, family and friends usually are not competent to act as interpreters, since they are often not proficient in both English and the other language, may be unskilled in interpretation, or are unfamiliar with specialized terminology.

If, after a service provider informs a LEP person of the right to free interpreter services, the person declines such services and requests a family member or friend, the provider may use the family member or friend, if using such a person does not compromise the effectiveness of services or violate the LEP person's confidentiality. The provider should document the offer and the declination in the LEP person's file. Even if a LEP person elects to use a family member or friend, the provider should suggest that a trained interpreter sit in to ensure accurate interpretation.

Level of Language Ability

As with English speakers, the ability of LEP persons to read and comprehend written materials in their native language will vary. If LEP persons are illiterate in their native language, oral interpretation of written materials will be necessary. As a general rule, interpreters should be aware of variances within a language (i.e. different words are used throughout the Spanish-speaking world to describe the same thing). Interpreters should be able to communicate with LEP persons utilizing the appropriate colloquial speech.

Qualified Interpreters

To provide effective services to LEP persons, a provider must ensure that persons who are qualified to provide interpreter services are used. Being qualified does not necessarily mean formal certification as an interpreter, although certification is helpful. On the other hand, being qualified requires more than self-identification as bilingual. A service provider must ensure that persons provided as interpreters are trained and qualified to act in this role. The requirement to be qualified includes:

1. Demonstrated ability to accurately convey information in both languages;
2. Demonstrated proficiency in both English and the other language;
3. Fundamental knowledge in both languages of any specialized terms or concepts particular to the provider's program or activity;
4. Orientation and training that includes the skills and ethics of interpreting (e.g., issues of confidentiality); and
5. Sensitivity to the LEP person's culture.

Determining Reasonable Efforts

The nature of the language assistance a service provider offers to ensure meaningful access will depend on a variety of factors. Factors in determining the reasonableness of effort include the number excluded, importance of program or activity, level of resources available, and frequency of contact.

Number Excluded

The number or proportion of people who will be excluded from the program or activity if efforts are not made to remove language barriers is included in determining the reasonableness of a provider's efforts. For example, programs and activities that serve a few or even one LEP person are still subject to the Title VI Civil Rights Act and WIOA Section 188 obligation to take reasonable steps to provide meaningful opportunities for access. However, reasonable steps for a provider who serves one LEP person a year will be different than those expected from a provider who serves several LEP persons each day.

Importance of Program or Activity

The importance of the provider's program or activity to participants or beneficiaries will affect the determination of what is reasonable. For example, more affirmative steps must be taken where the denial of access to programs and activities may have serious implications, such as the receipt of Unemployment Insurance benefits. In assessing the effect of denying access, providers must consider the immediate and long-term importance of the benefit to individuals.

Level of Resources Available

The level of resources available to a provider of federal financial assistance may have an impact on the nature of steps a provider must take. For example, a service provider with limited resources may not be able to take the same steps as a service provider with more resources to provide language assistance. Claims of limited resources, especially from larger entities, must be well substantiated. Programs and activities that have a

limited number of eligible LEP persons, where contact is infrequent, and/or where the program or activity is not crucial to an individual's day-to-day existence may not have to take the same steps as a larger service provider will to offer language assistance.

Frequency of Contacts

Frequency of contacts between the program or activity and LEP persons is another factor to be considered. For example, if LEP persons must access a program or activity on a daily basis (such as activities provided in a job training program) a service provider has a greater duty to provide language assistance than if program or activity contact is variable or infrequent. LEP persons must be able to access and participate in job training activities in a manner equally consistent and effective to that offered to non-LEP persons. There is no *one-size-fits-all* solution for Title VI Civil Rights Act and WIOA Section 188 compliance with respect to LEP persons. Service providers have considerable flexibility in determining precisely how to fulfill this obligation. The focus will be on the end result -- whether the provider has taken reasonable steps to ensure that LEP persons have meaningful access to programs and services.

Attachment: Civil Rights Center, Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.

<http://www.gpo.gov/fdsys/pkg/FR-2003-05-29/pdf/03-13125.pdf>