Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual

Policy Number: 5-14-00

Originating Office: Commerce Regulatory Compliance

Subject: Discrimination Prohibited Based on National Origin, Including Limited English Proficiency (LEP)

Issued: 08-02-2017

Revised: 07-19-2017

Programs: Programs and activities that are part of the one-stop delivery system and that are operated by one-stop partners listed in section 121(b) of the Workforce Innovation and Opportunity Act (WIOA).

Purpose: To transmit state policy and guidance from the U.S. Department of Labor (USDOL) Civil Rights Center with respect to the responsibilities of entities that receive federal financial assistance related to serving persons having Limited English Proficiency (LEP), pursuant to the requirements of Title VI of the Civil Rights Act of 1964 and Section 188 of the Workforce Innovation and Opportunity Act (WIOA) 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; WIOA Equal Opportunity and Non-Discrimination Regulations at 29 CFR Part 38.9; USDOL Non-discrimination in Federally Assisted Programs regulations at 29 CFR Part 31; 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: USDOL regulations at 29 CFR part 31 require all recipients of federal financial assistance from USDOL to provide meaningful access to limited English proficient (LEP) persons. 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 workforce system partners should develop procedures to assure compliance with this policy as required by applicable laws and federal funding agreements entered into under Titles 1-4 of WIOA.

Contact: Questions should be directed to WIOA EO Officer John M. Ybarra, Commerce Regulatory Compliance, (785) 296-5092; TDD: 1-800-766-3777, 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.

Discrimination Prohibited Based On National Origin, Including Limited English Proficiency (LEP)

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Discrimination Prohibited Based On National Origin, Including Limited English Proficiency (LEP)

Discrimination Prohibited

WIOA Section 188 non-discrimination regulations at 29 CFR Part 38.9(a) state: In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin, including limited English proficiency (LEP). An individual must not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any WIOA Title I-financially assisted program or activity based on national origin. National origin discrimination includes treating individual beneficiaries, participants, or applicants for any aid, benefit, service, or training under any WIOA Title I-financially assisted program or activity adversely because they (or their families or ancestors) are from a particular country or part of the world, because of ethnicity or accent (including physical, linguistic, and cultural characteristics closely associated with a national origin group), or because the recipient perceives the individual to be of a certain national origin, even if they are not.

Policy Applicability and Coverage

The prohibition against National Origin discrimination applies to any recipient, as defined in 29 CFR Part 38.4; to programs and activities that are part of the one-stop delivery system and that are operated by one-stop partners listed in section 121(b) of WIOA, to the extent that the programs and activities are being conducted as part of the one-stop delivery system; as required by applicable laws and federal funding agreements entered into under Titles 1-4 of WIOA; and as provided in 29 CFR Part 38.18, to the employment practices of a recipient and/or one-stop partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as part of the WIOA Title I or the one-stop delivery system. Some recipients operate in localities in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency (LEP).

The term "recipient" means any entity to which financial assistance under Title I of WIOA is extended, directly from USDOL or through the Governor or another recipient (including any successor, assignee, or transferee, of a recipient). Entities connected to the workforce development system may be recipients for purposes of Section 188 and these procedures even if they do not receive assistance in the form of money. For example, recipients subject to these procedures include entities with agreements, arrangements, contracts, sub-contracts, or other instruments for the provision of assistance or benefits under WIOA Title I. For the purpose of this policy, one-stop partners, as defined in section 121(b) of WIOA are treated as "recipients," and are subject to these non-discrimination and equal opportunity requirements.

"Recipient" includes but is not limited to: State-level agencies that administer, or are financed in whole or in part, with WIOA Title I funds; State Workforce Agencies; State unemployment compensation agencies; State and Local Workforce Development Boards; Local Workforce Development Area (LWDA) grant recipients; One-Stop Operators; service providers including eligible training providers (ETP); On-the-Job Training (OJT) employers; Job Corps contractors and center operators; outreach and admissions agencies, placement agencies and other National Program recipients including: Migrant and Seasonal Farmworkers Programs, Native American Programs, National Dislocated Worker Grant Programs, and Youthbuild programs. The United State Department of Labor Civil Rights Center (CRC) notes however, that whether an entity is an additional one-stop partner subject to Section 188 is based on whether that entity has signed a Memorandum of Understanding as an

additional partner per the requirements of Section 121 of WIOA and not merely whether that entity is working with or contributing something to a WIOA Title I program.

Definition of Limited English Proficiency (LEP) (29 CFR Part 38.4)

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or LEP, and entitled to language assistance with respect to a particular type of service, benefit, or encounter. LEP individuals may be competent in English for certain types of communication (e.g. speaking or understanding), but still be LEP for other purposes (e.g. reading or writing).

Reasonable Steps to Ensure Meaningful Access to LEP Persons (29 CFR Part 38.9)

Recipients must take reasonable steps to ensure meaningful access to each LEP individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity. To ensure meaningful access for LEP persons recipients should conduct an individualized assessment that balances the following four factors:

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.

Recipients must provide written training materials in appropriate non-English languages by written translation or by oral interpretation or summarization; and oral training content in appropriate non-English languages through in-person interpretation or telephone interpretation.

A recipient should monitor and ensure that every program delivery avenue (*e.g.,* electronic, in person, telephonic) conveys in the appropriate languages how an individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides. As a recipient develops new methods for delivery of information or assistance, it is required to take reasonable steps to ensure that LEP individuals remain able to learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides.

Any language assistance services, whether oral interpretation or written translation, must be accurate, provided in a timely manner and free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training at issue.

A recipient must provide adequate outreach and notice to LEP individuals of the existence of interpretation and translation services and that these language assistance services are available free of charge. A recipient shall not require an LEP individual to provide their own interpreter.

A recipient shall not rely on an LEP individual's minor child or adult family or friend(s) to interpret or facilitate communication, except: an LEP individual's minor child or adult family or friend(s) may interpret or facilitate

communication in emergency situations while awaiting a qualified interpreter; or the accompanying adult (but not minor child) may interpret or facilitate communication when the information conveyed is of minimal importance to the services to be provided or when the LEP individual specifically requests that the accompanying adult provide language assistance, the accompanying adult agrees to provide assistance, and reliance on that adult for such assistance is appropriate under the circumstances. When the recipient permits the accompanying adult to provide such assistance, it must make and retain a record of the LEP individual's decision to use their own interpreter.

Where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, or where the competency of the interpreter requested by the LEP individual is not established, a recipient may decide to provide its own, independent interpreter, even if an LEP individual wants to use their own interpreter as well.

With Regard to Vital Information:

For languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site. Written training materials offered or used within employment-related training programs as defined under 29 CFR part 38.4(t) are excluded from these translation requirements. However, recipients must take reasonable steps to ensure meaningful access as stated in 29 CFR Part 38.9(b).

For languages not spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service, or training that the recipient provides. Vital information may be conveyed orally if not translated.

Recipients must include a "Babel notice," indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on Web sites. To the extent otherwise required by this part, once a recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant, or applicant for aid, benefit, service, or training, the recipient must convey vital information in that language.

Written Language Access Plan (29 CFR Part 38.9)

Recipients should develop a written language access plan to ensure that LEP individuals have meaningful access. Recipients that develop, implement, and periodically revise a written language assistance plan are more likely to fulfill their obligation of taking reasonable steps to ensure access to programs and activities by LEP individuals. The guidelines set forth below provide a clear framework for developing a written plan that will ensure meaningful access to LEP individuals. Developing and implementing a written plan has many benefits, including providing the recipient with a roadmap for establishing and documenting compliance with nondiscrimination obligations and ensuring that LEP beneficiaries receive the necessary assistance to participate in the recipient's programs and activities.

The elements of a successful LEP plan are not fixed. Written LEP plans must be tailored to the recipient's specific programs and activities. And, over time, plans will need to be revised to reflect new recommendations

and government guidance; changes in the recipient's operations, as well as the recipient's experiences and lessons learned; changing demographics; and stakeholder and beneficiary feedback. Nonetheless, a recipient that develops an LEP plan incorporating the elements identified below will benefit greatly in accomplishing its mission and providing an equal opportunity for LEP individuals to participate in its programs and activities. A written LEP plan should identify and describe:

1. The process the recipient will use to determine the language needs of individuals who may or may seek to participate in the recipient's program and activities (self- or needs-assessment).
2. The results of the assessment, *e.g.*, identifying the LEP populations to be served by the recipient.
3. Timelines for implementing the written LEP plan.
4. All language services to be provided to LEP individuals.
5. The manner in which LEP individuals will be advised of available services.
6. Steps individuals should take to request language assistance.
7. The manner in which staff will provide language assistance services.
8. What steps must be taken to implement the LEP plan, *e.g.*, creating or modifying policy documents, employee manuals, employee training material, posters, Web sites, outreach material, contracts, and electronic and information technologies, applications, or adaptations.
9. The manner in which staff will be trained to ensure that: staff know about LEP policies and procedures; and staff having contact with the public are trained to work effectively with in-person and telephone interpreters.
10. Steps the recipient will take to ensure quality control, including monitoring implementation, establishing a complaint process, timely addressing complaints, and obtaining feedback from stakeholders and employees.
11. The manner in which the recipient will document the provision of language assistance services.
12. The schedule for revising the LEP plan.
13. The individual(s) assigned to oversee implementation of the plan (*e.g.*, LEP Coordinator or Program Manager.)
14. Allocation of resources to implement the plan.

Updating the Language Access Plan (USDOL LEP Guidance-Federal Register, Volume 68, No. 103).

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other factors require annual evaluation of LEP plans. Less frequent evaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community. In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered;
- Frequency of encounters with LEP language groups;
- Nature and importance of activities to LEP persons;
- Resource availability, including technological advances, additional resources, and costs imposed;
- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff knows and understands the LEP plan and how to implement it;
- Legislation or program requirements governing the recipient’s program or activity; and

- Whether identified sources for assistance are still available and viable.

In addition to these elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

Providing Notice

Recipients must provide adequate notice to LEP individuals of the existence of interpretation and translation services and that these language assistance services are available free of charge. Examples of notification that recipients should consider include:

- Posting signs in intake areas and initial points of contact explaining to LEP persons how to access free language services. The signs should be translated into the most common languages encountered.
- Stating in outreach documents, brochures, booklets, etc. that language services are available from the recipient. These statements should be translated into the most common languages and could be ‘‘tagged’’ onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients’ programs and activities, including the availability of language assistance services.
- Using a telephone voice mail menu with the most common languages encountered providing information about available language assistance services and how to access them.
- Including notices in local newspapers in languages other than English.
- Airing notices on non-English language radio and television stations about the availability of language assistance and how to access it.
- Making presentations and/or posting notices at schools, faith-based and other community organizations.

Oral Language Interpretation Guidance

When providing oral assistance, recipients should ensure competency of the language service providers, no matter which of the following strategies are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a language other than English when communicating information directly in that language, but may not be competent to interpret in and out of English. Likewise, they may not be able to do written translations. Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that interpreters:

- Demonstrate proficiency and ability to communicate information accurately in both English and in the other language and be able to identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient’s program or activity and of any particularized vocabulary and phraseology used by the LEP person;
- Understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires; and
- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Telephone Interpreter Lines

Telephone interpreter service lines offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also occur over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters are competent to interpret any technical or legal terms specific to a particular program that may be important to the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the documents prior to the discussion. Any other logistical problems should also be anticipated. CRC states in 29 CFR Part 38.9 that because low-cost commercial telephonic oral interpretation services, are widely available, recipients should, at a minimum provide telephonic interpretation services to ensure meaningful access.

Hiring Bilingual Staff

When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as One-Stop Career Center receptionists with staff who are bilingual and competent to communicate directly with LEP persons in the appropriate language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual hearings examiner would probably not be able to perform effectively the role of an administrative hearing interpreter and hearings examiner at the same time, even if the hearings examiner were a qualified interpreter).

Contracting for Interpreters

Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Community Volunteers

Community-based organizations may provide a cost-effective supplemental language assistance for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should

consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available on a regular basis.

Four Factors for Determining Reasonable Efforts (USDOL LEP Guidance)

1. **The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population**

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ``eligible to be served, or likely to be directly affected, by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a recipient serves a large LEP population, the appropriate service area is most likely determined by considering local service areas and not the entire population served by the recipient. This, for example, could occur in a local workforce development area (LWDA) that manages more than a single One-Stop Career Center. Instead of being guided by a population survey for the local area, each One-Stop Career Center may wish to assess its local service population.

2. The Nature and Importance of the Program, Activity, or Service Provided by the Recipient

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to LEP individuals, the more likely language services are needed. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for a LEP individual. However, recipients are providing a service to assist individuals in employment, and should consider that LEP individuals can be learning English and another skill at the same time. For example, a recipient may not need to make accessible certain health care practitioner courses to LEP persons if the ability to be fully proficient in English is a legitimate requirement of such training and the recipient has made a legitimate determination that a LEP person would not be eligible to work in the field in the local job market and at the level for which the training is targeted. However, in order for such determinations to be legitimate, recipients should conduct an objective analysis and not rely on stereotypes or anecdotal evidence regarding level of English proficiency required for such employment, and should consider the impact that participation in English-as-a-Second-Language courses may have on the ability of the LEP person to utilize the training.

3. The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take in providing language services. Smaller recipients with more limited budgets are not expected to provide the same level of language services as are larger recipients with larger budgets. In addition, ``reasonable steps'' may cease to be reasonable when the costs imposed substantially exceed the benefits. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful

to be able to articulate, through documentation or in some other reasonable manner, the process used for determining that language services would be limited based on resources or costs. Small recipients with limited resources may find that entering into a telephonic interpretation service contract will prove cost effective.

4. Frequency of Contacts

Recipients should assess the frequency with which they have or should have contact with LEP individuals from potential language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves a LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if a LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter 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