

**DRAFT DIRECTIVE
COVER PAGE**

LIMITED ENGLISH PROFICIENCY

GENERAL INSTRUCTIONS

The attached directive is being issued in draft to give the Workforce Development Community the opportunity to review and comment prior to final issuance.

Submit any comments by email no later than Thursday, February 23, 2018.

All comments received within the comment period will be considered before issuing the final directive. Commenters will not be responded to individually. Rather, a summary of comments will be released with the final directive.

Comments received after the specified due date will not be considered.

Email: PGPullen@tularewib.org
Include "Draft Directive Comment" in the email subject line.

Mail: Workforce Investment Board of Tulare
County Attn: Patricia G. Pullen
309 W. Main St., Ste. 120
Visalia, CA 93291

If you have any questions, contact Patricia Pullen at 559-713-5200

WORKFORCE INVESTMENT BOARD OF TULARE COUNTY WORKFORCE INNOVATION AND OPPORTUNITY ACT TITLE I	DATE: January 24, 2018
	SUBJECT: LIMITED ENGLISH PROFICIENCY

WIB DIRECTIVE

TUL 18-01

TO: **WIB and WIB Subrecipients**

SUBJECT: **LIMITED ENGLISH PROFICIENCY**

PURPOSE

This policy provides guidance and establishes the procedures regarding the prohibition against national origin discrimination as it affects persons with Limited English Proficiency (LEP).

SCOPE

This policy applies to all subrecipients (i.e. WIB) or contractors funded or authorized by *Workforce Innovation and Opportunity Act (WIOA) Title I.*

EFFECTIVE DATE

This directive is effective on the date of issuance.

REFERENCES

- WSD17-03 Limited English Proficiency (August 11, 2017)
- WIOA (Public Law 113-128) Section 188
- Title 29 *Code of Federal Regulations* (CFR) Part 31 and 38-38.9
- Department of Labor (DOL) Training and Employment Notice (TEN) 28-16, Subject: *Best Practices, Partnership Models, and Resources Available for Serving English Language Learners, Immigrants, Refugees, and New Americans* (January 9, 2017)
- Department of Labor (DOL) Training and Employment Notice (TEN) 28-16, Change 1, Subject: *Best Practices, Partnership Models, and Resources Available for Serving English Language Learners, Immigrants, Refugees, and New Americans* (January 13, 2017)
- WIB Directive 17-05, Nondiscrimination & Equal Opportunity Procedures (November 8, 2017)

FILING INSTRUCTIONS

This policy supersedes TCWIB Directive 05-2, LIMITED ENGLISH PROFICIENCY WIA Title 1-B-LEP dated August 1, 2005. Retain this directive until further notice.

STATE-IMPOSED REQUIREMENTS

This policy contains no state-imposed requirements

WIB-IMPOSED REQUIREMENTS

This policy contains some WIB-imposed requirements in bold.

BACKGROUND

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA and 29 CFR Part 38 prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity.

POLICY AND PROCEDURES

National origin discrimination now includes LEP under 29 CFR Section 38.9 and specifically states that 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 LEP. Additionally, 29 CFR Section 38.41 added “LEP and preferred language” to the list of categories of information that each recipient must record about each applicant, registrant, eligible applicant/registant, participant, and terminee.

Definitions

For the purposes of this Directive, the following definitions apply:

Babel Notice – a short notice included in a document or electronic medium (e.g. web site, “app,” email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages (29 CFR Section 38.4[i]).

Employment-related training – training that allows or enables an individual to obtain skills, abilities and/or knowledge that are designed to lead to employment (29 CFR Section 38.4[t]).

LEP individual – an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. An LEP individual 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) (29 CFR Section 38.4[hh]).

LEP Plan – A written language access plan which assists in ensuring that LEP individuals have meaningful access to WIOA Title I-financially assisted programs and activities (29 CFR Section 38.9 Appendix).

Meaningful Access – Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English proficient individuals.

Primary language – An individual's primary language is the language in which an individual most effectively communicates, as identified by the individual.

Reasonable Steps to Ensure Meaningful Access for LEP Individuals

The local area is required to take reasonable steps to ensure that LEP individuals have meaningful access to their programs and activities. Reasonable steps may include, but are not limited to, the following:

- Conducting an assessment of an LEP individual to determine their language assistance needs.
- Providing oral interpretation or written translation of both hard-copy and electronic materials, in the appropriate non-English languages, to LEP individuals.
- Conducting outreach to LEP communities to improve service delivery in needed languages.

(29 CFR Section 38.9[b][1])

Reasonable steps for providing meaningful access to training programs may include, but are not limited to the following:

- Written training materials in appropriate non-English languages by written translation, or by oral interpretation, or summarization.
- Oral training content in appropriate non-English languages through in-person or telephone translation.

(29 CFR Section 38.9[b][2][i][ii])

Furthermore, the Local Area should ensure that that every program delivery method, whether it be in person, electronic, or by phone, conveys in the appropriate language how an LEP individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training available to them. It should also be noted that as new methods for the delivery of information or assistance are developed, the Local Area 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 available to them (29 CFR Section 38.9[c]).

Language Assistance Services

Language assistance generally comes in two forms: oral interpretation or written translation. The Local Area must ensure that above all, these services are free of charge and provided in a timely manner. An LEP individual must be given adequate notice about the existence of interpretation and translation services and that they are available 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 (29 CFR Section 38.9[d] and [e]).

Interpreter Services

The Local Area shall not require an LEP individual to provide their own interpreter. Furthermore, Local Areas shall not rely on an LEP individual's minor child or adult family or friend to interpret or facilitate communication, except for the following circumstances:

- In emergency situations while awaiting a qualified interpreter.
- When the information conveyed is of minimal importance to the services to be provided.
- When an LEP individual specifically requests that an accompanying adult provide language assistance and they agree to provide assistance to the individual. If a Local Area permits an accompanying adult to serve as an interpreter for an LEP individual, it must make and retain a record of the LEP individual's decision to use their own interpreter.

Finally, where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, the Local Area can still provide its own, independent interpreter, even if an LEP individual wants to use their own interpreter as well. This also applies in cases where the competency of the interpreter requested by the LEP individual is not established.

(29 CFR Section 38.9[f])

Concerning Vital Information

For languages spoken by a significant portion of the population eligible to be served or likely to be encountered, Local Areas must translate vital information in written materials into these languages. These translations must in turn be readily available upon request in hard copy or electronically. Written training materials offered or used within employment-related training programs (see definitions section) are excluded from these translation requirements. However, in all cases, Local Areas must take reasonable steps to ensure meaningful access for LEP individuals.

For languages not spoken by a significant portion of the population eligible to be served or likely to be encountered, Local Areas 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 is available to them. Vital information may be conveyed orally if not translated.

Local Areas must also be sure to include a Babel Notice, indicating that language assistance is available in all communications of vital information. This includes letters or decisions in hard-copy or electronic formats.

(29 CFR Section 38.9[g]).

Finally, to the extent otherwise required by 29 CFR Part 38, 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.

(29 CFR Section 38.9[h])

Developing a Written LEP Plan

In order to ensure that reasonable steps are taken to allow meaningful access for LEP individuals, the state highly recommends that the Local Area develop a written LEP plan. Local Areas that develop, implement, and periodically revise an LEP plan are more likely to fulfill their obligation of taking reasonable steps to ensure meaningful access to programs and activities by LEP individuals. Furthermore, developing and implementing an LEP plan has many benefits, including providing Local Area staff with a roadmap for establishing and documenting compliance with nondiscrimination obligations and ensuring that LEP individuals receive the necessary assistance to participate in the programs and activities of a Local Area.

When developing an LEP plan, Local Area staff should address the following elements as they provide a clear framework that will ensure meaningful access to LEP individuals:

- The process the Local Areas will use to determine the language needs of individuals who may or may seek to participate in programs and activities (self-assessment or needs -assessment) that receive financial assistance under WIOA Title I.
- The results of assessment (e.g., identifying the LEP populations to be served by the Local Area).
- Timelines for implementing the LEP plan.
- All language services to be provided to LEP individuals.
- The manner in which LEP individuals will be advised of available services.
- Steps LEP individuals should take to request language assistance.
- The manner in which Local Area staff will provide language assistance services.
- 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).
- The manner in which Local Area staff will be trained.
- Steps the Local Area will take to ensure quality control, including monitoring implementation, establishing a complaint process, timely addressing complaints, and obtaining feedback from stakeholders and employees.
- The manner in which the Local Area will document the provision of language services.
- The schedule for revising the LEP plan.
- The individual(s) assigned to oversee implementation of the LEP plan (e.g., LEP Coordinator or Program Manager).
- Allocation of resources to implement the LEP plan.

It should be noted that the elements of a successful LEP plan are not fixed and must be tailored to the Local Area's specific programs and activities. Over time, LEP plans will need to be revised to reflect the following:

- New recommendations and government guidance.
- Changes in the Local Area's operations as well as the experiences and lessons learned.

- Changing demographics.
- Stakeholder and beneficiary feedback.

(29 CFR Section 38.9 Appendix)

For additional information on best practices and resources for serving individuals with substantial cultural and language barriers to employment, Local Areas are encouraged to review DOL TEN 28-16.

LIMITED ENGLISH PROFICIENCY PLAN

Workforce Investment Board of Tulare County

PURPOSE

Establish a Limited English Proficiency Plan for the WIB Title 1-B WIOA programs operating in Tulare County.

POLICY

All WIB Subrecipients will be required to follow Policy in regards to a language assistance plan. It is the WIB policy to provide universal access to WIOA Title 1-B programs and services to all customers, including those customers who are Limited English Proficient (LEP). In order to ensure universal access is provided to all customers, WIB has incorporated elements from the Title 20 Code of Regulations (CFR) Part 38.

POLICY AND PROCEDURES

Utilizing LEP Guidance issued by the Department of Labor, the following procedures have been developed:

Identifying Individuals who need language assistance utilizing the four-factor analysis:

- a. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
- b. The frequency with which LEP individuals come in contact with the program;
- c. The nature and importance of the program, activity, or service provided by the program to people's lives; and
- d. The resources available to the WIB, and costs.

Within Tulare County, it has been determined that the two most predominant languages are English and Spanish. This information was found through researching US Census Bureau data on LEP in Tulare County.

In assisting LEP customers and to ensure universal access to WIOA Title 1-B programs and services, the following steps will be taken:

LEP Implementation Plan

Beginning July 1, 2018, all WIB subrecipients will be required to follow WIB Policy in regards to a language assistance plan. The WIB will require WIOA Title 1-B subrecipients to provide universal access to all customers, including those customers who are Limited English Proficient (LEP).

1) Language Assistance Measures

a. Signs

Post signs at all service delivering sites in the most predominant languages; English and Spanish.

b. Spoken Language List

Use of “Spoken Languages” list, which includes the names of the bilingual staff members and the languages they speak. This reference tool will help provide LEP customers with timely language assistance.

c. In Person

Information workshops that provide program and service overviews will be offered in Spanish for LEP customers. If a customer is unable to attend a workshop, an individual appointment with bilingual staff must be scheduled.

If a bilingual staff person is unavailable to schedule the appointment, the customer’s name and phone number will be requested in order to have the staff person call back within a reasonable amount of time. If the customer is in need of immediate assistance, calls will be made (to other centers to obtain the language assistance needed.)

d. Over the Phone

Calls received from LEP individuals are routed to bilingual staff.

e. Written Communication

Written communication is routed to bilingual staff.

2) Training Staff

Staff is trained annually on the LEP customer procedures.

3) Providing Notice of Available Services to LEP Individuals

All WIB subrecipients will provide notice in predominant languages informing individuals of the free language assistance available to all customers. Notices will be available through documents, calendars and

flyers and will be displayed at all America's Job Centers of California (AJCC) and service delivering sites.

4) Monitoring the Language Assistance Plan

The WIB will annually monitor subrecipients, as part of the regular monitoring schedule, for compliance with the Language Assistance Plan.

5) Schedule for Revising the Language Assistance Plan

The WIB will review and revise, if necessary, the Language Assistance Plan on an annual basis.

ACTION:

Please bring this directive to the attention of all WIB Subrecipients and WIB Staff.

INQUIRIES:

Please direct inquiries regarding this directive to the Workforce Investment Board of Tulare County at (559) 713-5200.

ADAM PECK
Executive Director

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