MADERA COUNTY WORKFORCE Development Board

LIMITED ENGLISH PROFICIENCY

EDD Revision Date: 10/2/01; 3/29/05; 5/12/05; 8/11/17
WDB Review Date: 3/22/07; 12/17/15; 12/15/16; 11/9/17

EXECUTIVE SUMMARY:

Purpose:

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

Scope:

The guidance in this policy applies to the Madera County Local Workforce Development Area (LWDA) and all other Workforce Innovation and Opportunity Act (WIOA) Title I grant recipients or subrecipients.

Effective Date:

This policy is effective on the date of issuance of Employment Development Department Directive WSD17-03, issued on August 11, 2017.

REFERENCES:

- WIOA(Public Law 113-125) Section 188
- Title 29 Code of Federal Regulations (CFR) Part 38
- 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)*

STATE-IMPOSED REQUIREMENTS:

This policy contains no State-imposed requirements.

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/registrant, participant, and terminee.

Definitions

For the purposes of this policy, 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 individuals 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. A 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 38.9 Appendix).

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 individuals. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior as compare to programs or activities provided to English proficient individuals.

Primary Language – An individuals' 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 a LEP individuals 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 services 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 will ensure that every program delivery method, whether it be in person, electronic, or by phone, conveys in the appropriate language how a 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, Local Area staff will be 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 will ensure that above all, these services are free of charge and provided in a timely manner. A 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 will not require a LEP individual to provide their own interpreter. Furthermore, the Local Area will not rely on a 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 a 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 a 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 may still provide their own, independent interpreter, even if a 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, the Local Area will 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, the Local Area will 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, the Local Area will 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.

The Local Area 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 38.9[g])

Finally, to the extent otherwise required by 29 CFR Part 38, once made aware of the non-English preferred language of a LEP beneficiary, participant, or application for aid, benefit, service, or training, all vital information must be conveyed in the individuals preferred 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 Local Areas develop a written LEP Plan. Local Areas that develop, implement, and periodically revise a 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 a 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 in the Local Area.

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

- The process the Local Area 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 the 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 materials, contracts, electronic and information technologies, applications, or adaptions).
- 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).
- Allocations 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, refer to Department of Labor Training and Employment Notice TEN 28-16.

ACTION:

This policy will be disseminated in the Local Workforce Development Area to the One-Stop Career Centers, satellite locations, and WIOA Title I-funded subrecipients.

INQUIRIES:

If you have any questions, please contact the Executive Director or the local Equal Opportunity Officer at (559) 662-4500.