

# DIRECTIVE

## WORKFORCE INVESTMENT ACT

Number: WIAD04-20

Date: May 12, 2005

69:162:jw:9097

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: LIMITED ENGLISH PROFICIENCY

### EXECUTIVE SUMMARY:

#### Purpose:

The purpose of this directive is to transmit revised federal policy guidance regarding the prohibition against national origin discrimination as it affects persons with Limited English Proficiency (LEP).

#### Scope:

The guidance in this directive applies to all Local Workforce Investment Areas (LWIA) and other Workforce Investment Act (WIA) Title I grant recipients.

#### Effective Date:

This directive is effective on the date of issuance.

### REFERENCES:

- Section 188 of the WIA of 1998
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000)
- Federal Register, Volume 68, Number 103, 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; Notice (May 29, 2003)
- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8
- Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 26-02, Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (May 29, 2003)
- WIA Directive WIAD01-21, Subject: Nondiscrimination and Equal Opportunity Procedure (June 25, 2002)

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## **STATE-IMPOSED REQUIREMENTS:**

This directive contains no State-imposed requirements.

## **FILING INSTRUCTIONS:**

This directive supersedes WIA Directive WIAD01-8, dated October 2, 2001, and finalizes Draft Directive WIADD-93, issued for comment on March 29, 2005. Retain this directive until further notice.

## **BACKGROUND:**

The Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. Section 188 of the WIA contains the nondiscrimination and equal opportunity provisions. These provisions prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, or participation in WIA Title I-financially assisted programs and activities, including participation by citizens and noncitizens eligible to participate in Title I programs. The WIA Directive [WIAD01-21](#) provides federal and State requirements regarding nondiscrimination and equal opportunity procedures.

As required by Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency," issued by the President on August 11, 2000, the DOL Civil Rights Center (CRC) published policy guidance in the Federal Register (January 17, 2001) regarding the prohibition against national origin discrimination as it affects persons with limited English proficiency. The policy guidance was issued pursuant to the requirements of Title VI of the Civil Rights Act and Section 188 of WIA.

Based on the public comments received in response to the January 17, 2001, guidance and further instructions from the Department of Justice, the DOL published revised policy guidance in the Federal Register on May 29, 2003.

## **POLICY AND PROCEDURES:**

The CRC revised policy guidance in the [Federal Register](#) on May 29, 2003. The revised guidance does not create new obligations or requirements but rather clarifies standards consistent with case law and well-established legal principles developed under Title VI. The purpose of this guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons. The policy guidance reiterates DOL's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons receive, free of charge, the language assistance necessary to afford them access to the programs, services, and information those recipients provide.

## **Determine the Extent of Your Obligation to Provide LEP Services**

Recipients and federal agencies are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. The DOL's revised LEP guidance includes an individualized assessment that balances four-factors that should be applied when assessing language needs and deciding reasonable steps. The objective of the four-factor analysis is to suggest a reasonable balance that ensures meaningful access by LEP customers to critical services while not imposing undue burdens. The four-factor analysis includes:

1. The number or proportion of LEP persons served or encountered in the eligible services population;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service provided by the recipient; and
4. The resources available to the recipient and costs.

## **Select Language Assistance Services**

Recipients have two primary ways to provide language services: Oral interpretation either in person or via a telephone interpretation service and written translation. The correct mix of language assistance services should be based on what is both necessary and reasonable in light of the four-factor analysis.

When oral interpretation is needed and is reasonable, recipients should consider the following options: ensuring the competence of the interpreters, hiring bilingual staff, hiring staff interpreters, contracting for interpreters, using telephone interpreters lines, using community volunteers or using family members or friends.

When using written translation services, the recipient should make a determination regarding the kinds of documents to be translated, the language subject to interpretation, and the expertise of the translator(s).

The [Dymally-Alatorre Bilingual Services Act \(DABSA\)](#) requires that, when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and must translate documents explaining available services into their clients' languages. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide. It is suggested that LWIAs review the DABSA in conjunction with the CRC guidance in reviewing and revising their policies and procedures regarding services to LEP individuals.

## **Develop an Effective Plan on Language Assistance for LEP Persons**

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan. Although having a written plan is not a requirement, the State highly recommends the development of a written plan. One-Stop Career Centers should address the following five elements when developing their own LEP service plan:

1. Identification of LEP individuals who need language assistance
2. Use of language assistance measures
3. Staff training
4. Information dissemination to LEP persons
5. Monitoring and oversight, including updating the LEP plan

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process. Detailed explanations of the above five elements, as well as the four-factor analysis, are provided in the Federal Register. Please refer to the Federal Register for a complete understanding of the CRC's guidance.

The Federal Interagency Working Group on LEP Web site, [www.lep.gov](http://www.lep.gov), provides tools and resources to assist One-Stop Career Centers when developing and assessing a plan for LEP services.

### **ACTION:**

Bring this directive to the attention of appropriate staff at the LWIA, the One-Stop Career Centers, and WIA Title I-funded subrecipients.

### **INQUIRIES:**

If you have any questions, please contact your [Regional Advisor](#) at (916) 653-6347.

/S/ BOB HERMSMEIER  
Chief  
Workforce Investment Division