

**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

ATTORNEY GENERAL OPINION  by  TERRY GODDARD ATTORNEY GENERAL  April 6, 2007	No. I07-005 (R07-005)  Re: Implementation of Proposition 300 With Regard to Adult Education Services
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TO: The Honorable Tom Horne  
Superintendent of Public Instruction

**Questions Presented**

You have requested guidance on the following issues to assist the Department of Education in implementing Proposition 300:

1. What is Proposition 300's effective date and when are reports due to the Joint Legislative Budget Committee ("JLBC")?
2. How is legal residency determined under Proposition 300, and what types of procedures and documents are required by Proposition 300 to verify an applicant's residency status?
3. Does federal law invalidate or preempt Proposition 300?

**Summary Answer**

1. Proposition 300 became effective on December 7, 2006. The first report to the JLBC regarding implementation of the Proposition is due June 30, 2007.

2. Under the Proposition, only citizens, legal residents of the United States, and others lawfully present in this country are eligible to receive adult education services through the Department of Education (“Department”). Because the Proposition does not mandate a specific screening process to determine eligibility, the Department is responsible for establishing procedures to determine that people receiving adult education services are eligible to participate in those programs. This process may include, for example, self declarations subject to penalty of perjury or a review of appropriate documents. Any process must be implemented in a nondiscriminatory manner.

3. Federal law does not invalidate or preempt Proposition 300.

### **Background**

#### **A. Proposition 300.**

In the November 2006 general election, Arizona voters passed Proposition 300, which limits certain services and benefits, including adult education services, to citizens, legal residents, or persons otherwise lawfully present in the United States. *See* A.R.S. § 15-232 (as amended by Proposition 300). With regard to adult education services, Proposition 300 provides that

[t]he Department of Education shall provide classes under this section only to adults who are citizens or legal residents of the United States or are otherwise lawfully present in the United States. This subsection shall be enforced without regard to race, religion, gender, ethnicity or national origin.

A.R.S. § 15-232(B). In addition to limiting who is eligible for adult education services, Proposition 300 requires the Department to report to the JLBC the total number of adults who

were denied instruction under this section because they were not citizens, lawful residents, or otherwise lawfully present in the United States. *See* A.R.S. § 15-232(C). The report is due December 31 and June 30 of each year. *Id.*

**B. Adult Education Services**

Pursuant to A.R.S. § 15-232(A), the Department is responsible for overseeing adult education services for the State of Arizona. The Department’s duties include the following: (1) prescribing a course of study for adult education in school districts; (2) supervising the adult education programs that other state institutions and agencies provide; (3) adopting rules for the conduct of classes for immigrant and adult education—including teaching English to foreign-born residents; (4) “stimulating and correlating” the Americanization work of various agencies; and (5) prescribing a course of study to enable adults to pass a general equivalency diploma test.

*Id.* The Department distributes funds to “adult education providers,” which include school districts, community colleges, correctional facilities, community-based organizations, and other local organizations. *See* A.R.S. § 15-234.

The Department receives federal funding for adult education services through Title II of the Workforce Investment Act (“WIA”) of 1998. *See* 20 U.S.C. §§ 9201 to 9253. The WIA requires State matching funds. *See* 20 U.S.C. §§ 9211, 9222. The Department distributes both State and federal funds to the local programs that provide adult education services. *See* A.R.S. § 15-234; 20 U.S.C. § 9222.

## Analysis

### **A. Proposition 300's Effective Date and Reporting Requirements.**

The Arizona Constitution states that initiatives and referenda “shall become law when approved by a majority of the votes cast thereon and upon proclamation of the Governor.” Ariz. Const. art. 4, pt. 1, § 1(5). Proposition 300 became effective on December 7, 2006, when Governor Napolitano signed the Proclamation for it.

Proposition 300 requires that the Department submit a report to the JLBC semiannually on December 31 and June 30. *See* A.R.S. § 15-232(C). This report is to include “the total number of adults who applied for instruction and the total number of adults who were denied instruction under this section because the applicant was not a citizen or legal resident of the United States or was not otherwise lawfully present in the United States.” *Id.* Although the Proposition could be read to have required a report to the JLBC on December 31, 2006, the Department would not have had any of the information necessary for the December 31 report. Statutes cannot be construed to require futile acts. *See Pinal Vista Props., L.L.C. v. Turnbull*, 208 Ariz. 188, 193, ¶ 17, 91 P.3d 1031, 1036 (App. 2004). Therefore, the first report that the Department could reasonably submit to comply with the new law is due June 30, 2007.<sup>1</sup>

Proposition 300 does not identify the time period that each report must encompass. *See* A.R.S. § 15-232(C). Thus, it leaves the beginning and ending date for each reporting period to the Department's discretion. The two reports, however, should cover the entire calendar year.

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<sup>1</sup> This Office has previously noted that the effective date of a statute “is not necessarily identical to the date by which the *implementation* of its substantive provisions must be completed.” Ariz. Att’y Gen. Op. I01-003.

**B. Determining Whether People Are Citizens, Legal Residents, or Otherwise Lawfully Present in This Country.**

In construing a ballot initiative’s meaning, the objective is to give effect to the intent of those who framed its provisions and of the electorate that adopted it. *See State v. Givens*, 206 Ariz. 186, 188, ¶ 5, 76 P.3d 457, 459 (App. 2003). The best indication of a statute’s intent is its language. *Id.* Although Proposition 300 mandates eligibility requirements for adult education services, it does not establish specific procedures for the Department or local providers to follow to determine a person’s eligibility. *See* A.R.S. § 15-232. Therefore, the Department must develop nondiscriminatory procedures to screen applicants to ensure compliance with Proposition 300. Although the Proposition does not establish specific screening requirements, the United States Department of Justice (“DOJ”) has previously identified the following methods for determining an applicant’s immigration status as to federal public benefits:

- Accepting a written declaration under penalty of perjury whether an applicant is a United States citizen, a legal resident, or is otherwise lawfully present in the United States;
- Accepting a written declaration under penalty of perjury from one or more third parties indicating a reasonable basis for personal knowledge that an applicant is a United State citizen, a legal resident, or is otherwise lawfully present in the United States; or
- Requiring an applicant to provide documentary evidence that he or she is a citizen, a legal resident, or is otherwise lawfully present in the United States.

Interim Guidance on Verification of Citizenship: Qualified Alien Status and Eligibility Under Title IV of PRWORA, 62 Fed. Reg. 61344, 61348 (November 17, 1997). Federal law

establishes whether a person is a citizen, a legal resident, or is otherwise lawfully present in this country. *See DeCanas v. Bica*, 424 U.S. 351, 354 (1976) (noting that the power to regulate who enters the country is undeniably a federal power). The procedures necessary to implement Proposition 300 will merely verify the person’s status to determine whether the person is eligible for adult education programs.

Although there are various methods for verifying immigration status, the DOJ has advised that “[t]he appropriate method of verifying an applicant’s citizenship will depend upon the requirements and needs of the particular program, including, but not limited to, the nature of the benefits to be provided, the need for benefits to be provided on an expedited basis, the length of time during which benefits will be provided, the cost of providing the benefits, the length of time it will take to verify based on a particular method, and the cost of a particular method of verification.” Interim Guidance on Verification of Citizenship, 62 Fed. Reg. at 61347.<sup>2</sup>

### **C. The Federal Workforce Investment Act of 1998.**

You have also asked whether the WIA preempts the eligibility requirements for adult education services that Proposition 300 mandates.<sup>3</sup> Section 188 of the WIA prohibits states that receive federal funding from discriminating based on age, disability, race, color, or national origin in administering such programs. *See* 29 U.S.C. § 2938(a). The WIA does not address whether states receiving money under the WIA may limit adult education services to persons legally residing in the United States.

The power to regulate immigration is indisputably a federal power. *See DeCanas*, 424 U.S. at 354. However, not every state enactment that “in any way deals with aliens is a

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<sup>2</sup> Because different programs may necessitate different methods of determining eligibility, agencies should work closely with their assigned assistant attorneys general in order to fashion appropriate procedures.

regulation of immigration and thus *per se* preempted.” *Id.* at 355. The regulation of immigration is a “determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.” *Id.* Proposition 300 does not permit state or local employees to determine who should or should not be admitted to the country or who should remain here. The statute merely requires that the Department limit the provision of adult education services to citizens, legal residents, and others lawfully present in the United States. Thus, A.R.S. § 15-232 is not an invalid immigration regulation.

The statute also passes the second *DeCanas* test, which analyzes whether Congress has fully occupied the field and intended “to oust State authority,” including state authority to promulgate laws that are harmonious with federal law. *DeCanas*, 424 U.S. at 357. Field preemption requires a demonstration that a “complete ouster of state power” was “the clear and manifest purpose of Congress.” *Id.* (quoting *Fla. Lime & Avocado Growers v. Paul*, 373 U.S. 132, 146 (1963)). A comprehensive federal law does not evidence congressional intent to preempt all state authority. *Id.*; see also *N.Y. Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 415 (1973) (noting that “a detailed statutory scheme [relating to requiring work for welfare] was both likely and appropriate, completely apart from any questions of pre-emptive intent”). The WIA’s scheme for providing funds to States for adult education services does not prohibit state legislation that is harmonious with and implements the WIA. There is no evidence that Congress intended to preclude harmonious state legislation when it enacted the WIA.

Even absent any evidence of congressional intent to “occupy the field,” the Supremacy Clause invalidates any state law that burdens or conflicts with federal laws or treaties. *DeCanas*,

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<sup>3</sup> Your opinion request indicates that the federal agency responsible for administering the WIA suggested that you seek guidance from this Office concerning whether federal law preempts Arizona’s new state law.

424 U.S. at 358. Preemption exists under this test when “compliance with both state and federal law is impossible, or when the state law ‘stands as an obstacle to the accomplishments and execution of the full purposes and objectives of Congress.’” *Mich. Canners & Freezers Ass’n v. Agric. Mktg. & Bargaining Bd.*, 467 U.S. 461, 469 (1984) (citations omitted). Accordingly, state laws that place burdens on the entrance or residence of aliens legally residing in the United States have been held invalid because they conflict with the constitutionally derived federal power to regulate immigration. *See DeCanas*, 424 U.S. at 358. Here, however, A.R.S. § 15-232(B) merely establishes eligibility requirements for the State’s adult education services. Moreover, as noted above, the WIA mandates only that states receiving funds under it are prohibited from discriminating based on age, gender, disability, race, color, or national origin; it does not address specific eligibility requirements. *See* 29 U.S.C. § 2938(a). Thus, A.R.S. § 15-232(B) does not conflict with the WIA.

Finally, the Proposition’s requirements apply equally to any expenditure of monies for programs under A.R.S. § 15-232, including both federal money received under the WIA and state matching funds. As noted above, the WIA does not prohibit states from implementing laws that restrict adult education services to persons legally residing in the United States. Under the WIA, the federal government awards grants to “eligible agencies,” 20 U.S.C. § 9211(b)(1), which in turn award grants or contracts to “eligible providers within the State,” 20 U.S.C. § 9241(a). The WIA defines an “eligible agency” as “the sole entity or agency in a State or an outlying area responsible for administering or supervising policy for adult education and literacy in the State or outlying area, respectively, *consistent with the law of the State or outlying area*, respectively.” 20 U.S.C. § 9202(4) (emphasis added). Thus, the federal law contemplates that the Department, an eligible agency, administers its adult education services, funded in part with



federal money, pursuant to State law. Therefore, the Department need not treat differently federal and state monies in the administration and supervision of adult education services.

Because the WIA does not invalidate or preempt A.R.S. § 15-232(B), the Department may lawfully implement the new statute in administering adult education services that are in part funded with money that the federal government provides pursuant to Title II of the Workforce Investment Act of 1998.

### **Conclusion**

Proposition 300 became effective on December 7, 2006, and the next report that it requires is due June 30, 2007. Federal law does not invalidate or preempt Proposition 300. To comply with Proposition 300, the Department must develop procedures so that only citizens, legal residents, and others lawfully present in the United States receive services. The process may include statements subject to penalty of perjury or documentary evidence.

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