

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE May 11, 2020

**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 02-16
 CHANGE 1**

TO: STATE WORKFORCE AGENCIES
 STATE AND LOCAL EQUAL OPPORTUNITY OFFICERS
 STATE WORKFORCE ADMINISTRATORS
 STATE WORKFORCE LIAISONS
 STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
 STATE LABOR COMMISSIONERS
 EMPLOYMENT AND TRAINING ADMINISTRATION REGIONAL
 ADMINISTRATORS

FROM: JOHN PALLASCH /s/
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 Employment and Training Administration

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SUBJECT: State Responsibilities for Ensuring Access to Unemployment Insurance Benefits, Services, and Information

1. **Purpose.** To provide guidance to states to ensure that they comply with their statutory and regulatory obligations to provide access to Unemployment Insurance (UI) benefits, services, and information, as outlined in Unemployment Insurance Program Letter (UIPL) No. 02-16.
2. **Action Requested.** The Department of Labor (Department) requests that State Workforce Administrators:
 - a. Disseminate this guidance and its attachments to appropriate agency staff, including state-level Equal Opportunity (EO) officers and appropriate UI agency staff.
 - b. Ensure that current web-based online, telephone-based, and other UI services meet the requirements of UIPL No. 02-16 and the additional legal requirements described in this advisory.
 - c. Ensure that state-level and UI agency EO officers participate in the development of information technology systems and the evaluation of current systems, to promote integration of access requirements in those systems.

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3. Summary and Background.

- a. Summary. This advisory highlights certain state responsibilities for access to UI benefits and services that became effective after publication of UIPL No. 02-16 on October 1, 2015.
- b. Background. Since the issuance of UIPL No. 02-16, the Department finalized regulations governing states' responsibilities for implementing the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA) at 29 C.F.R. Part 38. The regulations reflect developments in equal opportunity and nondiscrimination jurisprudence in the 21st century, as well as the use of computer and internet-based systems to provide aid, benefits, services, and training through WIOA Title I activities. These regulations apply to state UI programs and systems.¹

4. State Responsibilities.

a. Access for Individuals with Disabilities.

States must ensure equal access for individuals with disabilities by making reasonable accommodations and modifications and providing equally effective communications. The most recent regulations (29 C.F.R. Part 38) include specific requirements related to the use of electronic and information technologies,² including the requirements that such technologies “[i]ncorporate accessibility features for individuals with disabilities; [a]re consistent with modern accessibility standards...; and [p]rovide individuals with disabilities access to, and use of, information resources, programs, and activities that are fully accessible, or ensure that the opportunities and benefits provided by the electronic and information technologies are provided to individuals with disabilities in an equally effective and equally integrated manner.” 29 C.F.R. § 38.15(a)(5). The regulations include similar specific requirements related to communication by telephone.

States must give individuals with disabilities access to web-based services and information that is comparable to the access available to others. They must also offer an alternative option for accessing benefits, services, and information, and should advertise the alternative option widely and in multiple formats. States may wish to provide video remote interpreting services for individuals who communicate via sign language. These services must meet specific legal and technical requirements,³ and should be widely advertised widely.

States' telephone-based systems must use telecommunications devices or systems such as text telephones (TTYs) or telephone relay services to provide equally effective communications for individuals with hearing or speech impediments. When the agency uses an automated-attendant system (*e.g.*, voicemail and messaging) or an interactive voice response system, such systems must provide effective, real-time communication

¹ Section 188 of WIOA prohibits discrimination based on disability and national origin (among other bases) in programs operated, and activities provided by WIOA Title I financial assistance, or by “one-stop” partners. Section 121(b)(1)(B)(xi) of WIOA defines state UI programs as required one-stop partners.

² Also known as information and communication technology (ICT).

³ See 29 CFR § 38.15(a).

with individuals using auxiliary aids and services, including TTYs and all forms of Federal Communications Commission approved telecommunications relay systems.

States' websites and telephone-based services should include information about how an individual with a disability who has difficulty using the site or service can get assistance to access the site or service. Web-based claims filing systems must also provide information about how individuals with disabilities can file a complaint about delayed or denied service resulting from inaccessibility or failure to provide equally effective communication.

b. Access for Individuals with Limited English Proficiency.

The regulations, at 29 C.F.R. § 38.9, explicitly require states to “take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity.” 29 C.F.R. § 38.9(b). Examples of reasonable steps cited in the regulations include assessing an LEP individual to determine language assistance needs; providing oral interpretation or written translation of both hard copy and electronic materials in the appropriate language; and conducting outreach to LEP communities to improve service delivery in needed languages.

Further, the regulations require that all language assistance services must be accurate, provided in a timely manner, and free of charge. Language assistance is considered timely when it is provided at a place and time that ensures equal access and avoids delay or denial of any aid, benefit, or service at issue. States must provide notice to LEP individuals that interpretation and translation services are available at no cost.

The updated regulations explicitly require states to translate written, oral, or electronic “vital information,” defined as information necessary for an individual to obtain any aid, benefit, or service, or to understand how to do so. 29 C.F.R. § 38.4(ttt). Examples of vital information in the UI context include applications for benefits, notices of rights and responsibilities, and communications requiring a response from the beneficiary or applicant. This information must be translated into languages spoken by a significant number or portion of a state’s population. The state must also take reasonable steps to meet the particularized language needs of LEP individuals who speak other languages. A website provided by the Department of Justice provides extensive resources to assist government agencies and programs receiving Federal assistance, including state UI programs, to address the needs of LEP individuals. This website includes a new interactive mapping tool that helps users find the languages spoken by LEP individuals, and the concentration of LEP individuals speaking those languages, at the state or county level. Information about the tool and related data is available at <https://www.lep.gov/faq/faqs-mapping-tools/commonly-asked-questions-regarding-limited-english-proficient-lep-data-and>

The current regulations also require states to include a “Babel notice” in all communications of vital information. 29 C.F.R §38.9(g)(3). A “Babel notice” is a short notice in multiple languages that informs the reader that the communication contains vital information and explains how to access the agency’s language services to have the

contents of the communication provided in other languages. *See* 29 C.F.R. § 38.4(i); UIPL No. 30-11. In addition, states must record the limited English proficiency and preferred language of each LEP claimant/beneficiary, and as soon as the agency is aware of the non-English preferred language, convey vital information in that language.

c. Technical Assistance.

The U.S. Department of Labor's Employment and Training Administration and Civil Rights Center are available to provide technical assistance to states regarding access to UI benefits and services. Resources are available at <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/external>, by voice phone at (202) 693-6500, by relay at (800) 877-8339, or by email at CivilRightsCenter@dol.gov.

5. Inquiries. Please direct inquiries to the appropriate ETA Regional Office.

6. References.

- Section 303(a) of the Social Security Act (SSA), 42 U.S.C. § 503(a);
- Section 3304(a)(4) of the Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3304;
- Section 188 of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3248;
- Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*;
- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794;
- Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*;
- Title II of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. § 12132 *et seq.*;
- 29 CFR Parts 31, 32, 35, and 38;
- 28 CFR Part 35;
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, issued August 11, 2000;
- Unemployment Insurance Program Letter (UIPL) No. 30-11, *State Responsibilities Regarding Limited English Proficient Individuals*, issued September 16, 2011, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3083; and
- UIPL No. 02-16, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits*, issued October 1, 2015, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4233.

7. Attachment(s).

- Attachment I - Appendix A: Resources Regarding Technology for Individuals with Disabilities.
- Attachment II - Appendix B: Resources to Improve Language Access.

APPENDIX A

Resources Regarding Access for Individuals with Disabilities

Information technology. Section 508 of the Rehabilitation Act was enacted to eliminate barriers in information technology for people with disabilities, open new opportunities for such people, and encourage development of technologies that will help achieve these goals. While the law applies only to Federal agencies when they develop, procure, maintain, or use electronic and information technology, or EIT (also known as information and communication technology, or ICT), the resources developed to help Federal agencies give employees and members of the public with disabilities access to such technology are extensive, publicly available, and potentially useful to state UI agencies seeking to provide comparable access.

The U.S. Access Board is responsible for developing EIT / ICT accessibility standards. In January 2017, the Access Board issued updated accessibility requirements for technology covered by Section 508. The new standards went into effect in January 2018.

The updated Section 508 Standards apply to EIT / ICT in the Federal sector, including such examples as websites, information kiosks and transaction machines, electronic documents, telecommunications equipment, and software. The information in the updated Section 508 standards about software applications and operating systems, web-based Intranet and Internet information and systems, telecommunication products, and video and multimedia products may be helpful to state UI agencies in assessing whether their technology is accessible for individuals with disabilities. These two websites contain a wealth of information regarding the Section 508 Standards:

- <http://www.access-board.gov/>
- www.section508.gov

For example, the www.section508.gov website, provided by the Federal General Services Administration, contains numerous training materials on implementation of the updated Section 508 standards for individuals with varying levels of knowledge and expertise regarding IT and accessibility.

Another comprehensive resource for accessible technology is the Web Content Accessibility Guidelines developed by the Web Accessibility Initiative. These guidelines help designers make web pages as accessible as possible to the widest range of users, including users with disabilities. The Web Accessibility Initiative is a subgroup of the World Wide Web Consortium, which is the same organization that standardizes the programming languages followed by all web developers. Information for web developers, including the current version of the Web Content Accessibility Guidelines (and associated checklists), along with information about the Web Accessibility Initiative, may be found at <http://www.w3.org/>.

Equally effective communications. The Department of Justice has issued an explanation of communication requirements under the regulations implementing Title II of the Americans with Disabilities Act, which parallel the requirements of the WIOA nondiscrimination regulations. Among other topics, the document explains the performance standards that must be met if video

remote interpreting is used. The document may be found at <https://www.ada.gov/effective-comm.htm>.

Disability in general. The Department of Labor's Office of Disability Employment Policy (ODEP) has developed extensive resources to assist in ensuring meaningful access to employment and employment-related services for people with disabilities. Its website is <https://www.dol.gov/odep/>. Information on accessible technology is available on this site at <https://www.dol.gov/odep/topics/Technology.htm>. Additionally, general information on providing reasonable accommodations for people with disabilities may also be found on this site at <https://www.dol.gov/odep/topics/Accommodations.htm>. For specific information about accommodations, the Job Accommodation Network (JAN), a service provided by ODEP that provides free, confidential technical assistance about job accommodations and the Americans with Disabilities Act, may be accessed at <https://askjan.org/index.cfm>. Information on universal design and assistive technology models for individuals with disabilities may also be found on ODEP's website.

In 2019, ODEP, the Civil Rights Center (CRC), and the Employment and Training Administration (ETA) collaborated to issue an updated reference guide on promising practices for including individuals with disabilities in the nation's workforce system. The guide may be helpful for ensuring access to the UI system as well. It is available at <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-188-workforce-innovation-opportunity-act/guide>.

APPENDIX B

Resources to Improve Language Access

The provision of the Workforce Innovation and Opportunity Act (WIOA) nondiscrimination regulations that prohibits discrimination based on limited English proficiency (LEP) includes an appendix providing promising practices for ensuring meaningful access by LEP persons. *See* Appendix to 29 CFR § 38.9, available at https://www.ecfr.gov/cgi-bin/text-idx?SID=a92a40866c975b1d7f7538c9dc972924&mc=true&node=se29.1.38_19&rgn=div8. The appendix includes a specific example in the unemployment insurance context.

The U.S. Department of Labor's (Department's) Civil Rights Center (CRC) has developed training and compliance assistance tools for recipients of WIOA financial assistance, including tools related to serving LEP individuals. These tools may be found at <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/external/compliance-assistance>. Examples of LEP-related tools include Department guidance on ensuring meaningful access to Department-assisted programs, available at <https://www.dol.gov/agencies/oasam/regulatory/federal-register/2003013125>, and an LEP toolkit, available at <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/external/limited-english-proficient/toolkit>.

The Department of Justice has developed www.LEP.gov to provide extensive resources to government agencies and programs receiving Federal assistance, including state UI agencies, to help them address the needs of LEP individuals. Resources on this website include a new interactive mapping tool that helps users find the concentration of and languages spoken by LEP individuals at the state or county level. Information about the tool and related data is available at <https://www.lep.gov/faq/faqs-mapping-tools/commonly-asked-questions-regarding-limited-english-proficient-lep-data-and>. The website also includes videos and other materials designed to assist in development of LEP policies and plans. Examples:

- Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs, <https://www.lep.gov/faq/faqs-federally-conducted-and-assisted-programs/common-language-access-questions-technical>. Note: some of the material at this link is addressed to federal agencies, but the information is likely to be helpful to state UI agencies as well.
- Information on Language Access Planning, including program development; procurement of language services; and the Translation and Interpretation Procurement Series (TIPS), available at <https://www.lep.gov/language-access-planning>.

In addition, CRC offers individualized technical assistance related to LEP issues, as well as disability issues and other matters related to providing equal opportunity and access in the UI system. CRC may be contacted by voice phone at (202) 693-6500, by relay at (800) 877-8339, or by e-mailing CivilRightsCenter@dol.gov.