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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 2-16

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: PORTIA WU /s/
Assistant Secretary
Employment and Training Administration

NAOMI BARRY-PEREZ /s/
Director
Civil Rights Center

SUBJECT: State Responsibilities for Ensuring Access to Unemployment Insurance Benefits

1. **Purpose.** To help states comply with statutory and regulatory obligations to ensure access to the Unemployment Insurance (UI) program and its benefits, services, and information.

2. **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 Investment Act of 1998 (WIA), as amended, 29 U.S.C. § 2938¹;
- Section 188 of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3248;

¹ The Workforce Innovation and Opportunity Act (WIOA) supersedes Titles I and II of the Workforce Investment Act of 1998 and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973. Most provisions of WIOA took effect on July 1, 2015 and will fully take effect on July 1, 2016. Section 188 of WIOA took effect on July 1, 2015. WIA funds received and obligated by the States before July 1, 2015 are subject to the requirements of WIA. WIA funds that the States received before July 1, 2015, but which were unobligated as of July 1, 2015, are subject to WIOA's requirements.

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- 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, 36, 37, and 38²;
- 28 CFR Part 35;
- Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency* (August 11, 2000);
- Unemployment Insurance Program Letter (UIPL) No. 30-11, *State Responsibilities Regarding Limited English Proficient Individuals*;
- Training and Employment Guidance Letter (TEGL) No. 26-02, *Publication of Revised Guidance Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons*; and
- Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 FR 32290, 32295 (May 29, 2003).

3. **Background.** Nationally, the UI program has evolved from in-person and by-mail claims-filing systems to primarily telephone and web-based claims-filing systems. At the inception of the program (in the mid-1930s), the processes for claims-filing generally consisted of an individual filing an application for UI in person. UI claimants also initially filed their weekly continued claim certifications mostly in person. In the early 1980s, states began providing the option for claimants to file continued claims by mail. With budget challenges and reduced staff in the 1990s, many state UI agencies began implementing voice-activated systems to allow claimants to access information about the program and apply for benefits by telephone. In the late 1990s, state UI agencies also began implementing telephone-based initial and continued claims-taking systems. Many states began serving limited English proficient (LEP) callers by, for example, outsourcing language line services that were integrated into the telephone claims-taking process.

More recently, state UI agencies have developed websites where information about the UI program is available, including webpages where individuals may file an initial claim and submit continued claim certifications. Some states have moved to or are considering exclusively web-based claims-taking and processing systems with very limited exceptions. Technology has enabled states to provide almost round-the-clock UI program information

² On July 23, 2015, the Civil Rights Center of the Department of Labor promulgated nondiscrimination and equal opportunity regulations to implement section 188 of WIOA. The final rule created a new part in the CFR, 29 CFR Part 38, which mirrors the regulations implementing Section 188 of WIA. (29 CFR part 37) 29 CFR Part 38 adopted the language of 29 CFR Part 37 verbatim, with technical revisions to conform to WIOA. Specifically, the Department has: Replaced references to the “Workforce Investment Act of 1998” or “WIA” with “Workforce Innovation and Opportunity Act” or “WIOA” to reflect the proper statutory authority; and updated section numbers in the text of the regulation to reflect its new location. 80 Fed.Reg. 43,872 (July 23, 2015). Consistent with Footnote 1, WIA funds obligated before July 1, 2015 are subject to the requirements of 29 CFR part 37, and funds which were unobligated as of July 1, 2015 are subject to 29 CFR Part 38.

and claim filing resources on their websites, which has also helped to reduce administrative costs and paperwork.

While web-based claims filing systems offer many individuals the convenience of filing UI claims remotely at almost any time, ineffectually designed or implemented websites can create barriers that prevent or limit access for some individuals in violation of applicable Federal equal opportunity or nondiscrimination laws. Information and claims-filing systems that have the effect of limiting access for individuals with disabilities, LEP, older or members of other protected groups may violate Federal nondiscrimination laws. They may also violate UI law. UI benefits are by law an individual entitlement and states have an obligation to make sure that eligible individuals can access them. In addition, as described in more detail below, states participating in the federal-state unemployment compensation program must, as a condition of the federal UI administrative grant, have “methods of administration” that are “reasonably calculated” to ensure full payment of unemployment benefits “when due” in order to receive a UI administrative grant. Those methods of administration must provide that eligible individuals can effectively access the programs benefits and services.

Acknowledging the changes in methods of communication and operation of the UI program in today’s service environment, this guidance is a broad reminder of the requirements for states to provide UI program access to all individuals who file for benefits and related services as required by state law.

4. **Applicable Statutes, Regulations and Guidance.** There are two sources of Federal authority that provide guidance for the operation of the UI system: Federal statutes, regulations, and guidance that address UI program requirements and those that address the state UI agencies’ obligation to prohibit discrimination and ensure equal opportunity in the operation of their programs.

A. UI Program Requirements. Under Section 303(a)(1) of the SSA, a state’s laws must provide for “methods of administration” that are “reasonably calculated” to ensure full payment of unemployment benefits “when due” in order to receive a UI administrative grant. “When due” is the basis for Federal requirements concerning timeliness of benefit payments and eligibility determinations. The requirement is broad and includes ensuring that individuals have sufficient access to the program so that eligibility can be determined, and benefit payments can be made promptly. Therefore, state UI agencies must ensure that use of new technologies and systems for administering UI programs and providing services do not create barriers (e.g., procedural, technological, or informational) that may prevent individuals from accessing UI benefits, such as by denying them a reasonable opportunity to establish their eligibility. The U.S. Department of Labor (Department) has determined that “access” for purposes of conforming to Section 303(a)(1) of the SSA means individuals’ ability to complete, submit, and obtain information about their initial and continued claims, appeals, reemployment services, and any other information, program functions, or services available for all claimants. To meet the requirement that unemployment benefits be paid “when due,” all individuals must have the opportunity to be informed of and take appropriate action(s) to apply for

UI, maintain their entitlement to UI, and access services without undue burdens or barriers.

Furthermore, while states have broad authority to use a variety of methods to communicate with claimants and employers, states must provide individuals with a written determination and an opportunity to appeal when benefits are denied. In the Standard for Claim Determination, the Department interprets the Federal UI requirements for providing claimants notice. Section 6013.C.1.c. of the Standard for Claim Determination (see Employment Security Manual, Part V; Section 6010-6015) provides that the state agency must give each claimant a written notice of any determination that adversely affects his or her rights to benefits. Section 6013.C.2 provides that this written notice of determination(s) to claimants must furnish “sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.” The information that must be provided to the claimant in the notice of determination includes an explanation of the disqualification or ineligibility, the source of information about the reason for disqualification, and a statement of appeal rights. Thus, while states may offer claimants a variety of methods to receive information, the content of a written determination, whether it is a letter mailed to the claimant or provided in an electronic medium, must comply with the requirements in the Standard for Claim Determination specified above.

B. Nondiscrimination Requirements. The nondiscrimination laws that apply to state UI agencies prohibit discrimination based on both disparate treatment – intentionally treating members of protected groups differently based on their protected status – and disparate impact – the use of policies or practices that are neutral on their face, but have a disproportionate impact on members of some protected groups.³ In addition, as detailed below, regulations implementing these laws prohibit states from establishing policies or procedures that, while not directly barring access to benefits or services for individuals who have disabilities and/or are LEP, indirectly prevent or limit access. The use of a website and web-based technology as the sole or primary way for individuals to obtain information about UI benefits or to file UI claims may have the effect of denying or limiting access to members of protected groups in violation of Federal nondiscrimination law, as described below. The legal standards governing the required level of accessibility under nondiscrimination laws vary according to the particular protected group. Therefore, the specific access requirements are provided below in the section focused on each of those groups.

³ If a policy appears to result in a disproportionate impact on a protected class, the policy or practice could be considered discriminatory, depending on whether the grant recipient can articulate a “substantial legitimate justification” for the challenged practice. To prove a “substantial legitimate justification,” the recipient must show that the challenged policy was “necessary to meeting a goal that was legitimate, important, and integral to the [recipient’s] institutional mission.” *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1413 (11th Cir. 1993). If the recipient can make such a showing, the next question would be whether there are any effective alternative practices that would result in less disproportionality or whether the justification proffered by the recipient is actually a pretext for discrimination. See Department of Justice Title VI legal manual at <http://www.justice.gov/crt/title-vi-legal-manual>.

The following guidance about legal obligations regarding specific activities engaged in by state UI agencies for program operations is provided to enhance compliance with Federal UI and nondiscrimination laws. States must ensure that information about each component of the program, as well as the processes used to administer the program, are accessible to individuals regardless of their disability, LEP, age, race, or membership in other protected groups. For purposes of nondiscrimination law, “access” has the same meaning in nondiscrimination requirements as in UI program requirements, stated above.

States may offer individuals the option of receiving the information, services, etc., discussed in this guidance via electronic methods, but may not require that individuals communicate only through electronic means. Such policies unduly restrict program access, as not all individuals have the ability or capacity to communicate electronically. Additionally, any electronic communications containing personally-identifiable information may not be sent via email unless that email is encrypted or access is otherwise limited to the individual whose claim is the subject of the communication to ensure confidentiality of the data in accordance with 20 CFR part 603. States must also assess whether encryption hinders the ability of individuals to obtain communications as discussed below, and provide assistance and/or guidance to overcome any barriers it presents to effective communications with UI applicants or claimants.

5. Access for Individuals with Disabilities.

A. Legal Requirements. States must ensure equal access for people with disabilities by making reasonable accommodations and modifications, and ensuring effective communications. Section 188 of WIA and section 188 of WIOA prohibit discrimination based on disability (among other bases) in programs operated, and activities provided, by recipients of WIA and WIOA Title I financial assistance, or by “one-stop” partners.⁴ 29 CFR 37.2(a)(2) or 29 CFR 38.2(a)(2), as applicable. Section 121(b)(1)(B)(xii) of WIA and section 121(b)(1)(B)(xi) of WIOA define state UI programs as required one-stop partners. WIA and WIOA nondiscrimination regulations provide, in pertinent part, that covered entities “must not, directly or through contractual, licensing, or other arrangements, use *standards, procedures, criteria or administrative methods . . . [t]hat have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.*” 29 CFR 37.7(e)(1) or 29 CFR 38.7(e)(1), as applicable.

The regulations promulgated pursuant to WIA as amended, 29 CFR 37.8, and WIOA, 29 CFR 38.8, require that a state UI agency make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. The regulations also require state UI programs and other covered entities to “take appropriate steps to ensure that communication with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals

⁴ Under WIOA, this citation is Section 121(b)(1)(B)(xi).

with disabilities are as effective as communications with others.” 29 CFR 37.9 or 29 CFR 38.9, as applicable.

In addition, Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against individuals with disabilities in any program or activity receiving Federal financial assistance, which includes state UI programs. 29 U.S.C. § 794. Finally, Title II of the Americans with Disabilities Act of 1990, as amended, prohibits public entities from discriminating against qualified individuals with disabilities or from excluding such individuals from participating in or denying benefits of their services, programs or activities. 42 U.S.C. § 12132.

Technology and online applications in particular can expand access for people with disabilities if used correctly, but can also restrict access for individuals who do not have access to the technology, do not have the capacity to use the technology, or if the technology does not fully utilize accessibility options. Therefore, state UI agencies that develop web-based systems must carefully design them to ensure that information about services and benefits presented in those systems, and the claims-filing processes implemented through those systems, are as accessible to people with disabilities as other individuals. If these systems are not accessible, states must provide reasonable accommodations and modifications including communication options that render the services, etc., as effective as those offered to others.

B. Methods of Providing Access. When designing, building, and implementing new websites, webpages, graphic user interfaces, phone systems, etc., to carry out state UI program functions and to deliver services, state UI agencies must ensure accessibility and provide accessible notice and information about alternative means of receiving services for individuals who need them. Appendix A of this guidance provides a list of resources states may use during development and maintenance of web-based processing or service delivery systems to help maximize accessibility for people with disabilities in compliance with regulations promulgated pursuant to WIA, as amended, and WIOA, Section 504 of the Rehabilitation Act, and other nondiscrimination laws. For persons unable to access or use a web-based system, the state must offer an alternative option for accessing information and benefits, such as by telephone and/or in person, in a manner that ensures equal access. Further, states must broadly and conspicuously disseminate information about alternative access options in ways that ensure that individuals who may need to use such options are aware of the options. To ensure access for individuals with disabilities, state UI agencies should, for example:

- Make websites “Section 508 compliant.” While Section 508 of the Rehabilitation Act applies only to Federal agencies, the standards provided for Section 508 compliance set the bar broadly for ensuring that websites are accessible to individuals with disabilities. To be “Section 508 compliant” means that the development, procurement, maintenance, and use of electronic and information technology provide individuals with disabilities access that is comparable to access available to others.

- Provide alternative methods of gaining equal access to information in places other than the website for individuals with disabilities who may not be able to access web-based information, and provide accessible notice and information about the availability of such alternative methods. Telephone, mail, or in-person options may be viable alternatives for individuals with disabilities for whom access to computer- or web-based technology is either unavailable or inadequate. Methods to communicate the availability of alternative access must be such that the individual with a barrier to accessing the program can easily learn how to gain access. It is not sufficient to have a phone number that individuals may call. The state agency must advertise the number widely and in multiple formats and state staff and staff in One-Stop Centers must be thoroughly trained in how to effectively connect individuals to that telephone line and any other alternative access options. Some persons with a disability may need in person options to obtain services and information. Consider providing increased in-person assistance in rural or digitally-isolated areas.
- Furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities equal access to UI services and benefits:
 - When a state UI agency has a telephone-based system, it must use telecommunication devices for individuals with hearing impairments that provide equally effective communications systems such as telephone relay services; and
 - A notice must be posted on inaccessible websites and must be provided on any telephone-based services that indicates how an individual with a disability can access services.
- UI agency staff must be trained (including ongoing periodic training) to identify barriers and assist persons with disabilities. Staff must also be trained to connect those individuals to alternative access points pursuant to the state’s standard operating procedures.

6. Access for Individuals with Limited English Proficiency.

A. Legal Requirements. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin, under any program or activity receiving Federal financial assistance. 42 U.S.C. §2000d. Section 188 of WIA and section 188 of WIOA contain a similar prohibition. Relevant case law has interpreted “national origin” to include ensuring that individuals with LEP have meaningful access to programs and activities.⁵ The regulations giving effect to this Title provide in part that recipients, such as state UI agencies, “may not ... utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of race, color or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national

⁵ See *Pabon v. Levine*, 70 F.R.D 674, 677 (S.D.N.Y. 1976) citing *Lau v. Nichols*, 414 U.S. 563, (denied summary judgment for defendants in case alleging that State officials failed to provide unemployment insurance information in Spanish, in violation of Title VI).

origin.” 29 CFR 31.3(b)(2). Under Title VI, oral interpretation or in-language services “should be provided at the time and place that avoids the effective denial or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person.” 68 Fed. Reg. 32296.

The WIA and WIOA nondiscrimination regulations place different levels of obligation on covered recipients, including state UI agencies, with respect to services and information in languages other than English. With respect to persons who communicate in the language (or languages) used by a “significant number or proportion” of the population served, the recipient must take reasonable steps to provide services and information in appropriate languages.” With respect to LEP individuals who communicate in less-widely-used languages, the recipient “should make reasonable efforts to meet the particularized language needs” of such persons. 29 CFR 37.35(a)(2) and (b) or 29 CFR 38.35(a)(2) and (b), as applicable.

State UI agencies engage in two main ways of providing language services: oral interpretation, either in person⁶ or via telephone interpretation service, and written translation, on a website or in hard copy. State UI agencies should provide adequate notice to LEP individuals of the existence of interpretation and translation services and that they are available free of charge.

Although technology-based service delivery models may make access for some LEP individuals easier, web-based UI information and claims-filing systems may have the effect of limiting access for LEP individuals in violation of Title VI and regulations promulgated by WIA, as amended, and WIOA especially if such information and systems are not effectively translated into appropriate language(s). Therefore, state UI agencies that develop web-based systems should carefully design them to ensure that information about services and benefits presented in those systems, and the claims-filing processes implemented through those systems, contain meaningful translations of vital information into appropriate languages and are otherwise accessible to LEP individuals.

B. Methods of Providing Access. For languages spoken by a significant number or proportion of the eligible service population, individuals should be able to learn about, apply for, and maintain eligibility in the relevant language(s) for every program delivery avenue (i.e., online, in person, and/or phone). The state agency should also ensure it has reasonable methods in place for identifying and reaching other LEP individuals who speak a language that is not spoken by a significant number or proportion of the eligible service population. As state UI agencies move to almost exclusively website-driven services, there is an increased likelihood that LEP individuals will face barriers to accessing information and claims-related access in violation of Title VI and regulations promulgated by WIA, as amended, and WIOA, and as described above. Appendix B

⁶ State UI agencies may employ bilingual staff who speak directly in-language to LEP individuals, “When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options . . . Recipients can, for example, fill public contact positions . . . or UI claims examiners, with staff who are bilingual and competent to communicate directly with LEP persons in the appropriate language.” 68 Fed. Reg. 32296.

contains resources for states and state UI agencies to use in developing an LEP policy and procedures to ensure meaningful access to programs for LEP individuals.

Examples of actions that state UI agencies should take to ensure access for LEP individuals include:

- When a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to participate effectively, vital documents and/or vital information must be translated. A document and/or information will be considered vital if it contains instructions or guidance that are critical for obtaining services and/or benefits, or is required by law. Vital documents and/or information must be available in both hard copy upon request and in electronic text on a website. For example, if a certain form is necessary in order to file a claim with an agency, that form would be vital. Other vital documents and/or information include: applications, consent and complaint forms; notices of rights and responsibilities; notices advising LEP persons of the availability of free language assistance; rulebooks; written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English proficiency is not required; and letters or notices that require a response from the beneficiary or client.

Non-vital information includes instructions and/or guidance that are not critical to access benefits and services. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety. It may sometimes be difficult to draw a distinction between vital and non-vital documents and/or information, particularly when considering outreach or other documents designed to raise awareness of rights or services.

Though meaningful access to a program requires an awareness of the program's existence, we recognize that it would be impossible, from a practical and cost-based perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients of Federal financial assistance, and Executive Order 13166 does not require it of Federal agencies. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important for agencies to regularly survey/assess the needs of eligible service populations in order to determine whether other materials should be translated into other languages.

Note: Use of free, web-based translation services (also known as machine translation software) is not sufficient to ensure that the translation is appropriate and conveys the same meaning as the English version. Information about effective translation resources may be found at: <http://www.digitalgov.gov/2012/10/01/automated-translation-good-solution-or-not/>

- Even where there is not a “significant” number or proportion of LEP persons, state UI agencies should inform program users and other members of the public about the LEP services offered orally and in writing. This includes incorporating a “Babel notice”⁷ into all vital communications, such as hard-copy letters or decisions or those communications posted on websites and via telephone-based technology, regarding eligibility requirements, benefits rights, intake procedures, claims processes, eligibility determinations and appeal rights in appropriate language(s).
- UI agency staff should be trained to identify language access barriers and provide affected claimants alternative access options (including ongoing periodic training to ensure that the state’s standard operating procedures are known and adhered to by staff).
- State UI agencies should ensure that individuals with known language needs are identified and that future vital program communications occur in the appropriate language for that individual (including claimant decisions/determinations, notices of right to appeal, and appeal decisions).
- State UI agencies should incorporate, into LEP plans, policies and procedures, methods for ensuring the quality of translations and interpretations. This may include, but is not limited to, using competent bilingual staff to ensure the accuracy of in-house or vendor-provided translations and interpretations.
- State UI agencies should notify the public, through methods that will reach LEP communities, of LEP policies and procedures, and LEP access-related developments. Methods for publicizing language assistance include:
 - Using a telephone voicemail menu to provide information about available language assistance services and how to access them;
 - Posting signs in intake areas in American Job Centers (formerly One-Stop Centers) and other entry points;
 - Stating in vital written program materials, including hard-copy and electronic general program website information, that language assistance services are available from the agency; and
 - Working with community-based organizations and other stakeholders to inform LEP individuals of language assistance services.
- State UI agencies should also ensure that web-based claims filing systems also maintain a system for receiving and addressing complaints from limited English proficient persons and persons with a disability. This includes, but is not limited to, providing in-language notice regarding how to file an online complaint about delayed or denied service resulting from language barriers.

⁷ A Babel notice is similar to a tag line that appears in multiple languages on vital documents or on web pages containing vital information available in English only that explains that the document or webpage contains important information, and how to access language services to have the contents of the document provided in other languages. Examples are contained in Unemployment Insurance Program Letter No. 30-11, *State Responsibilities Regarding Limited English Proficient Individuals*.

7. Access for Older Individuals.

A. Legal Requirements. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs and activities receiving Federal assistance. Section 188 of WIA and section 188 WIOA also prohibit discrimination on the basis of age, among other bases, in programs operated by, and activities provided by recipients of WIA and WIOA Title I financial assistance, or by one-stop partners. Research suggests that a larger percentage of older individuals may not possess sufficient knowledge and understanding of computers and web-based programs to be able to access information about the UI program via a website or file for benefits through an on-line system.⁸ As a result, if a state UI agency develops a web-based system as its sole or primary method for individuals to access information and services, including filing for benefits, it may deny older individuals equal access in violation of the Age Discrimination Act, WIA, and WIOA. It is critical to ensure that alternative methods for accessing each aspect of the program are available to older individuals and that notice about these alternatives is disseminated to this population.

B. Methods of Providing Access. As with persons with disabilities or those with LEP, states must offer an alternative option for accessing information and benefits, such as by telephone and/or in person, in a manner that ensures equal access for persons unable to access or use a web-based system in order to avoid disparate impact on other protected groups. Further, states must broadly and conspicuously disseminate information about alternative access options in ways that ensure that people who may need to use such options are aware of the options. Therefore, as previously mentioned, state UI agencies must ensure that use of new technologies and systems for administering UI programs and providing services do not create barriers (e.g., procedural, technological, or informational) that may prevent individuals from accessing UI benefits, such as by denying them a reasonable opportunity to establish their eligibility.

8. Access for Individuals who Experience Challenges with Technology.

A. Legal Requirements. As discussed in section 4 of this UIPL, under Section 303(a)(1) of the SSA, a state's laws must provide for "methods of administration" that are "reasonably calculated" to ensure full payment of unemployment benefits "when due" in order to receive a UI administrative grant. "When due" is the basis for Federal requirements concerning timeliness of benefit payments and eligibility determinations.

Also, as discussed in section 7 of this UIPL, national statistics suggest that high rates of older individuals and members of certain protected groups do not use the Internet. While state/local statistics may differ (and may change with time and developments in technology), web-based UI information and claims-filing systems may have the effect of

⁸ *Digital differences: While increased Internet adoption and the rise of mobile connectivity have reduced many gaps in technology access over the past decade, for some groups, digital disparities still remain*, Pew Internet & American Life Project, Pew Research Center (April 2013) available at http://pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf.

limiting access for certain individuals who are older or members of other protected groups in violation of the Age Discrimination Act, Title VI, WIA or WIOA, as applicable. While there is no specific legal protection for individuals who have little or no computer literacy or who may have no access to computers as a formally protected class, individuals who have these access barriers may be members of one or more protected classes. Failure to address these access issues by a state UI agency may result in illegal disparate impact discrimination against those individuals. The equal opportunity or nondiscrimination laws that apply to state UI agencies prohibit discrimination based on both disparate treatment and disparate impact. In a disparate impact case, the focus is on the consequences of the grant recipient's (in this case, the state UI agency) practices, rather than the grant recipient's intent.

B. Methods of Providing Access. States may promote on-line filing as a primary method of filing UI claims, but they may not have policies and operational practices that make on-line filing the exclusive method of filing and certifying UI claims. As with persons with disabilities or those with LEP, or older individuals, states must offer an alternative option for accessing information and benefits, such as by telephone and/or in person, in a manner that ensures equal access for persons unable to access or use a web-based system in order to avoid disparate impact on other protected groups. Further, states must broadly and conspicuously disseminate information about alternative access options in ways that ensure that people who may need to use such options are aware of the options. State UI agencies must ensure that use of new technologies and systems for administering UI programs and providing services do not create barriers (e.g., procedural, technological, or informational) that may prevent individuals from accessing UI benefits, such as by denying them a reasonable opportunity to establish their eligibility.

9. Access for Individuals who Experience Challenges with Literacy.

A. Legal Requirements. As noted above, Section 303(a)(1) of the SSA requires that states have “methods of administration” that are “reasonably calculated” to ensure full payment of benefits “when due.” States are required to provide appropriate assistance to individuals who have challenges accessing the UI program and its benefits, even if they are not necessarily in a protected class, including, for example, individuals with low literacy levels (specifically in reading comprehension).

B. Methods of Providing Access. When developing web-based UI claims systems and when developing any materials communicating critical information to applicants or claimants, states must ensure the materials are written in a clear, concise and organized manner. States may consider guidance provided by the Plain Writing Act of 2010 (Pub. L. 111-274). Such information, as well as guidance can be found at: <http://www.plainlanguage.gov/index.cfm>. In addition, states should ensure that all communications are written to accommodate different literacy levels. According to the Department of Education, the average American adult reads at the 7th to 8th grade level.⁹

⁹ Kirsch IS, Jungeblut A, Jenkins L, Kolstad A. Adult Literacy in America. National Center for Education Statistics, U. S. Department of Education, September, 1993, Washington, D.C. (<http://nces.ed.gov/pubs2001/2001534.pdf>)

States are strongly encouraged to ensure vital documents are written at the 8th grade reading level.

As with persons with disabilities or those with LEP, states must offer an alternative option for accessing information and benefits, such as by telephone and/or in person, in a manner that ensures equal access for persons unable to read/comprehend written information or use technology based systems in order to avoid disparate impact on other protected groups. Further, states must broadly and conspicuously disseminate information about alternative access options in ways that ensure that people who may need to use such options are aware of the options.

States should take reasonable steps to provide services to individuals who self-identify as not possessing basic literacy skills or who have been identified by the state as requiring assistance to understand information and instructions from the state UI agency. For example, states may use audio or video to provide information and instructions related to claims filing, certification, and claimant rights and responsibilities. These steps could encompass something as simple as training agency staff to be sensitive to literacy issues and providing reasonable and appropriate services to assist individuals in overcoming these barriers, as appropriate.

10. Technology Impacts on Accessibility. Reasonable steps to test new technology before deployment will help to ensure that all individuals have the opportunity to effectively access programs and services. Steps should include testing in UI central offices, call centers, American Job Centers and other appropriate remote locations.

State UI agencies must also take reasonable steps to ensure that, if technology or other issues discussed in this UIPL interfere with claimants' access, they have established alternative methods of access, such as telephonic and/or in-person options. The alternative access points must be communicated clearly in a manner that reaches the population that may need to use them. The processes the state UI agency uses to offer alternative methods of access must be documented in the agency's policy documents and operating procedures. In addition, a state must train UI and American Job Center staff on the alternative methods of access to ensure that claimants and others who experience challenges are properly directed to alternative access options so that they may be served in a timely manner. Excessive delays experienced by potential claimants as they are referred to alternative access methods can result in a denial of access to services, in conflict with Federal UI law and nondiscrimination law requirements.

11. Communications Regarding Access Alternatives. As previously stated, in addition to providing appropriate accessibility to UI benefits, the state must also ensure it informs claimants about available access alternatives, using methods that ensure the communication is most likely to be successful for the specific population.

For example, states should use a wide array of media to ensure effective communication to individuals with access barriers that may include recorded messages on call center phone lines, hard copy brochures, posters and mailers, and website messages that are strategically

placed. Tailored public service announcements can also be produced and disseminated in local broadcasting stations.

12. Role of State Equal Opportunity Officers. States and State agencies managing UI programs must designate an Equal Opportunity Officer (EO Officer). 29 CFR 37.23 or 29 CFR 38.23, as applicable. The EO Officer should be a senior-level employee in the agency that manages the UI program. The EO Officer is responsible for coordinating the UI program's nondiscrimination and equal opportunity obligations. 29 CFR 37.25 or 29 CFR 38.25, as applicable. The EO Officer should be included in pertinent discussions regarding plans to upgrade or modernize web-based or other systems to ensure compliance with Federal nondiscrimination and equal opportunity obligations. For example, the EO Officer should be a part of the group planning and testing the design and structure of a website through which potential applicants and beneficiaries will be expected to learn about how to apply for UI benefits to ensure accessibility and equal opportunity for everyone including individuals with disabilities, LEP individuals, older individuals, and members of other protected groups. The EO Officer should also work with state UI program staff to develop policies and procedures on how individuals with disabilities, LEP individuals, older individuals, and members of other protected groups can file discrimination complaints related to their inability to effectively apply for and receive benefits if eligible.

13. Technical Assistance. The Department's Employment and Training Administration (ETA) and Civil Rights Center (CRC) provide technical assistance to states regarding the issues addressed in this guidance and will continue to identify and disseminate best practices. The technical assistance is provided in multiple forms including webinars, information on tools and products that support accessibility and one-on-one technical assistance with states, as appropriate. Resources are available at: <http://www.dol.gov/oasam/programs/crc/external-compliance-assistance.htm>. In addition, program staff may contact the CRC (<http://www.dol.gov/oasam/programs/crc/index.htm>) by calling (202) 693-6500, by fax (202) 693-6505, by relay (800) 877-8339, or by e-mailing CivilRightsCenter@dol.gov.

14. Action Required. State Administrators must:

1. Ensure that processes exist or are implemented to provide all claimants access to UI benefits as discussed in this UIPL;
2. Disseminate this guidance to appropriate state agency staff, including the state's EO Officer;
3. Ensure that state EO Officers are involved early in all appropriate information technology modernization and business process reengineering plans to promote the full integration of equal opportunity requirements into agency technology plans; and
4. Work with state EO Officers to evaluate the avenues available to the public to participate in the UI process to help ensure access to everyone including individuals with disabilities and LEP individuals.

15. Inquiries. Inquiries should be directed to the appropriate ETA Regional Office.

16. Attachments:

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

APPENDIX A

Resources Regarding Technology for Individuals with Disabilities

Section 508 of the Rehabilitation Act was enacted to eliminate barriers in information technology, open new opportunities for people with disabilities, 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, the resources developed to help Federal agencies give employees and members of the public with disabilities access to information are extensive, publicly available and potentially useful to state UI agencies seeking to provide comparable access.

Section 508 Standards address the full range of electronic and information technologies in the Federal sector, including those used for communication, duplication, computing, storage, presentation, control, transport, and production. Specifically, the information in the 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/>
- <http://www.section508.gov/>

For example, the General Services Administration (GSA) hosts an online course for web developers interested in accessible web design that can be found at www.section508.gov . This program was developed in conjunction with the Access Board, the Department of Justice (DOJ), and the Department of Education and provides an interactive demonstration of how to build accessible web pages.

DOJ also included information about accessible web page design in an April 2000 report to the President. This report is available and may be located at <http://www.justice.gov/crt/508/report/content.php> .

Another comprehensive resource 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- the same organization that standardizes the programming language followed by all web developers. Information for web developers, including the current version of the Web Content Accessibility Guidelines (and associated checklists), may be found at <http://www.w3.org/TR/2006/WD-WCAG20-20060427/appendix.html> , and information about the Web Accessibility Initiative can be found at <http://www.w3.org/WAI/> .

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 <http://www.dol.gov/odep/index.htm> . Moreover, general information on providing reasonable accommodations for people with disabilities may also be found at: <http://www.dol.gov/odep/topics/Accommodations.htm> . For

specific information, the Job Assistance Network, a service provided by ODEP that provides free, confidential technical assistance about job accommodations and the Americans with Disabilities Act may be accessed at: <http://askjan.org/topics/univdes/htm> .

Information on universal design and assistive technology models for individuals with disabilities may also be found on ODEP's website.

APPENDIX B

Resources to Improve Language Access

The Department of Labor guidance on ensuring meaningful access to UI programs by Limited English Proficient (LEP) individuals may be found on its website at:

http://www.dol.gov/oasam/regs/fedreglnotices/20030_13125.htm.

The following conveys the basic framework that that recipients are required to apply to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

1. The number or proportion of LEP persons served or encountered in the eligible service 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. After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages.

The Department's Civil Rights Center (CRC) has developed training and compliance assistance tools for WIA and WIOA-funded programs that may be found at:

<http://www.dol.gov/oasam/programs/crc/external-compliance-assistance.htm>.

Specifically, CRC offers presentation materials, titled *Language Access: Unemployment Insurance Programs and LEP Individuals*. This material can be accessed at:

http://www.dol.gov/oasam/programs/crc/0620_13_DOL_UI_Webinar.pdf.

In addition, CRC has an LEP toolkit, <http://www.dol.gov/oasam/programs/crc/lepcent.htm>.

The Department of Justice has developed www.LEP.gov to provide extensive resources to Federal government agencies and programs receiving Federal assistance, including state UI agencies, to ensure compliance with Title VI of the Civil Rights Act and Executive Order 13166. Resources on this website include videos and other materials designed to assist in development of LEP policies and plans such as, under the Frequently Asked Questions category:

- Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs, http://www.lep.gov/resources/081511_Language_Access_CAQ_TA_Guidance.pdf
- Frequently Asked Questions about the Protection of Limited English Proficient (LEP) Individuals under Title VI of the Civil Rights Act of 1964 and Title VI Regulations http://www.justice.gov/crt/about/cor/FAQ_About_LEP_Title_VI_and_Title_VI_Regs.pdf