

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 30-11

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: State Responsibilities Regarding Limited English Proficient (LEP) Individuals

1. Purpose. To remind states of their obligations to provide meaningful access to the Unemployment Insurance (UI) program for individuals with limited English proficiency and to provide guidance to states about reasonable steps that should be taken to help ensure individuals understand their rights and responsibilities related to UI.

2. References. Title VI of the Civil Rights Act of 1964 (42 USC 2000(d)-2000(d)(1)); Section 188 of the Workforce Investment Act of 1998; President Executive Order 13166; Training and Employment Guidance Letters (TEGL) 26-02 and 13-05; and Federal Register, Vol. 68, No. 103, pp. 32290-32305.

3. Background. Section 601 of Title VI of the Civil Rights Act of 1964, provides that no person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Section 602 authorizes and directs federal agencies that extend federal financial assistance to any program or activity “to effectuate the provisions of [section 601] by issuing rules, regulations, or orders of general applicability” (42 U.S.C. 2000d-1).

On May 29, 2003, the U.S. Department of Labor (Department) issued TEGL No. 26-02, Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons, to clarify the Department’s requirements, which are consistent with case law and well-established legal principles developed under Title VI of the Civil Rights Act. The policy guidance also reiterated the Department’s longstanding position, that in order to avoid discrimination against LEP individuals on the grounds of national origin, agencies must take reasonable steps to ensure that such individuals receive, free of charge, the language assistance necessary to afford them meaningful access to programs, services, and information.

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The Department's guidance on LEP information can be found on its Web site at: http://www.doleta.gov/reports/dpld_lep.cfm. The Federal Interagency information on LEP can be found at: <http://www.lep.gov>, and, in addition, the Department's Civil Rights Center (CRC) has developed training and compliance assistance tools which can be found at: <http://www.dol.gov/oasam/programs/crc/external-compliance-assistance.htm>. All staff who works with UI claimants should be aware of these obligations and guidelines.

4. UI Program Access. Individuals have a right to file for UI benefits when they become unemployed. States determine whether individuals are eligible for benefits based on several eligibility requirements. It is important that states have accurate and timely information and that all individuals who file for benefits understand their rights and responsibilities. States are responsible to formulate policies and practices to effectively communicate with individuals, including LEP individuals.

States are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP individuals. In developing policies and procedures for serving LEP individuals, agencies need to address the following four factors: (1) The number or proportion of LEP individuals estimated to be served or likely to be encountered by the program; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the service provided by the program to individuals' lives; and (4) the resources available. It is suggested that the four factors be applied to determine language needs and for decisions regarding reasonable steps states should take to ensure meaningful access for LEP individuals.

This four-factor analysis provides guidance to the states on the mix of LEP services required. In general, states have two primary ways to provide language services: oral interpretation (in person or via telephone) and written translation. Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP individuals, to access through commercially-available telephonic interpretation services. Written translation can range from use of a tag line (also called a Babel notice) for important messages or short descriptions of a document to translation of an entire document.

When interpretation services are needed and the cost is reasonable as determined by the state, such service should be provided in a timely manner to avoid the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP individual. At a minimum, Title VI guidance requires that for LEP individuals, interpreters should be provided in legal proceedings at the government's expense. UI appeals hearing officers, in particular, often work with interpreters.

After applying the four-factor analysis, states may determine that an effective LEP plan for their individual UI program includes the translation of vital written materials into a specific language(s) other than English for a frequently-encountered LEP group(s) eligible to be served and/or likely to be affected by the UI program.

Whether or not a UI document (or the information it solicits) is "vital" depends upon the importance of the determination or decision, the information, the encounter, or the service involved, as well as the consequence(s) to the LEP individual if the information in question is not provided accurately or in a timely manner. Where appropriate, states are encouraged to

create plans for consistently determining, over time and across their various UI activities, what documents are “vital” to ensuring meaningful access to the LEP population(s) served. Vital written materials could include, for example: applications or intake forms, information and/or advisement forms that potentially have important consequences, written notices of eligibility criteria, appeal or other rights, determination and decision notices, and notices advising individuals of free language and translation assistance.

Once states have decided what language services will be made available in the state, it should develop an outreach plan to ensure that LEP individuals have the opportunity to know that such services are available free of charge.

States are asked to revisit their current LEP services. All areas impacting individuals should be reviewed. For example, states’ “good cause” provisions for late continued claim filing or other such provisions should be reviewed to ensure individuals who otherwise display due diligence in complying with the state requirements are not denied procedural due process because of their limited English proficiency. Other examples include reviewing terms that are used in the program such as “voluntarily quit” or “misconduct.” The state should ensure clarity of instructions regarding applications for services, required reporting to the agency, job search requirements, appeal rights and responsibilities, equity and good conscience criteria involving non-fraud UI overpayments, critical deadlines, etc.

Finally, states should ensure that interpreters are knowledgeable of technical UI-related terminology. Training and informational materials related to UI terms that are used in claims taking, fact finding and appeals proceedings should be part of the process for using any interpreting services.

The Department strongly recommends that states include a tag line (Babel notice) such as the sample notice below in important documents such as “call-in” notices, determination notices, appeals hearing notices, and appeal decisions. Suggested language to include with such notices is provided below:

Sample Tag Line/Babel Notice

IMPORTANT! *This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.*

DEADLINE FOR APPEAL: *If you disagree with this determination or decision, you must file an appeal before the deadline noted in this document.*

IMMEDIATELY: *If needed, call xxx-xxx-xxx for assistance in the translation and understanding of the information in the document(s) you have received.*

This sample language has been translated into 10 common languages spoken nationally. These are: Spanish, Chinese, French, German, Tagalog, Italian, Vietnamese, Korean, Polish, and Russian. The Department will make these translations available to the states via the Regional Offices under separate cover.

The Department is available to provide technical assistance, including training, to states to assist them in complying with Title VI and Section 188. States can contact the Department's CRC (<http://www.dol.gov/oasam/programs/crc/index.htm>) by calling (202) 693-6500 or by e-mailing CivilRightsCenter@dol.gov. The Department of Justice has also published a Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs (http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf) that states can incorporate in their LEP programs. States can also obtain information about best practices, successful strategies used by other federal fund recipients, and to identify sources of federal reimbursement for translation services from the "Revised HHS LEP Guidance" issued on February 1, 2002. Additional technical assistance can be obtained from the HHS Office of Civil Rights Web site at <http://www.hhs.gov/ocr>.

A live webinar featuring two states' UI services for LEP individuals was held on July 13, 2011, and the webinar was recorded for future access. States are encouraged to access this recording on the Workforce 3 One Web site at www.workforce3one.org.

5. Action Requested. State Administrators are requested to distribute this advisory to appropriate staff who work with UI claimants.

6. Inquiries. Direct questions to the appropriate Regional Office.