



June 28, 2017

TO: United States Department of Labor  
Director, Civil Rights Center  
200 Constitution Ave., N.W., Room N4123  
Washington, D.C. 20210  
Attention: Office of External Enforcement

FROM: Gracianne Noel by her legal representative Veronika Kot, Esq., RI Legal Services and  
Jennifer Doucleff, Esq., RIACLU Cooperating Attorney

RE: Civil Rights Complaint (Discrimination based on national origin, inadequate and unequal access to unemployment insurance benefits due to limited English, in violation of requirements of federal law, including Title VI of the Civil Rights Act of 1964, 42 USC2000d [Title VI]; your Department's regulations implementing that law, 29 CFR 31; your Department's "Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" 68 FR 32290 (May 29, 2003) [DOL Guidance]; Workforce Investment Act, 29 U.S.C. 2938 (Aug. 7, 1998); Appeal from Final Action of Rhode Island Department of Labor and Training (May 30, 2017).

### **Background**

This present case demonstrates that the Rhode Island Department of Labor and Training [RIDLT] is not providing LEP individuals with meaningful access to its critical unemployment insurance [UI] services and is in breach of its duties pursuant to Title VI. This violation is exceptionally flagrant given that RIDLT has previously been on notice that it was not meeting with its Title VI obligations with regard to its provision of UI services, which resulted in the September 24, 2013, Conciliation Agreement reached between DOL and RIDLT. Exhibit A. This agreement specifically required RIDLT to create and implement a LEP plan to "ensure that DLT takes reasonable steps to provide services or information in a language other than English so that eligible individuals can be effectively informed about, or able to participate in, the unemployment insurance program." Exhibit A, Conciliation Agreement Part II, 1.

### *The Original Complaint*

Ms. Gracianne Noel filed a complaint with RIDLT on March 2, 2017 (Exhibit B), seeking remedies that would address and prevent the repetition of the language access problems that deprived her of unemployment compensation benefits.

All the facts alleged in that complaint are incorporated herein, as are the requested remedies. Exhibit B.

In summary, Ms. Noel's complaint pertains to RIDLT's Unemployment Insurance TeleServe Automated Payment System [TeleServe] system, as well as its notices.

The TeleServe system requires applicants/ recipients of unemployment benefits to call in weekly to report job search and earnings as a condition of receipt of benefits. The system is available only in English, Spanish and Portuguese (and even the latter two language options are provided only after a very lengthy message in English.) Speakers of languages other than English, Spanish or Portuguese are still required to use the system as a condition of benefit receipt, and are not provided an alternative. Ms. Noel was forced to rely on the assistance of a friend to navigate the TeleServe system. When her friend was not available she could not comply with the weekly TeleServe obligation and was denied benefit eligibility for that period. *See* Exhibit B.

Ms. Noel also complained of RIDLT notices, which continue to require applicants and recipients to provide their own interpreters. Notices are provided only in English, with some information provided in Spanish. Babel notices are sometimes included and sometimes omitted. Ms. Noel does not recall any Babel notices provided with notices she has received.

### *RIDLT's Final Action*

On May 30, 2017, RIDLT issued its Notice of Final Action [Final Action]. Exhibit C. Upon request by Counsel for Ms. Noel, RIDLT provided the Standardized Work Instruction Sheet that is mentioned in the Final Action. Exhibit D.

While the Background and Findings of Fact in the Final Action are essentially correct, Ms. Noel believes that the remedies and conclusions in the Final Action fail to adequately address her complaint and are insufficient to guarantee to her, and to similarly situated individuals, the reasonable and meaningful access to benefits to which they are entitled by law.

Essentially the Final Action determines that:

- RIDLT is not responsible for not knowing that Ms. Noel needed language assistance.
- Ms. Noel and other non-English speakers can be expected to navigate an English-only telephone message by being coached to press random numbers, and that this constitutes meaningful language access.
- That training staff on the above procedures and documenting them in a Standardized Work Instruction Sheet is adequate to ensuring meaningful language access to Ms. Noel and similarly situated persons.

- The existence of Babel notices (Exhibit E) on a separate sheet that is sometimes inserted with notices and sometimes not and that directs callers to a number where no meaningful assistance is provided constitutes meaningful language access to Ms. Noel and similarly situated persons.
- RIDLT notices continue to include language instructing recipients to find an interpreter and the Final Action does not address this.

### *Inadequacy of the Final Action*

While Ms. Noel, with the help of RILS counsel, and by pursuing hearings on the matters, was ultimately able to overcome the particular disqualifications that resulted from her lack of meaningful language access, she continues to be vulnerable to ongoing and repeated incidents of the same, as do other similarly situated individuals. Indeed, Ms. Noel must continue to navigate a TeleServe system which she does not understand and for which she needs assistance the Department does not provide. She continues to receive notices which fail to provide her any real language access.

Moreover, the ad hoc language access plan RIDLT lays out in the Final Notice appears to have been patched together only now, in response to Ms. Noel's formal complaint. According to RIDLT's own account of events, the introduction of the Standardized Work Instruction Sheet and related managerial and staff trainings took place following receipt of Ms. Noel's claim.<sup>1</sup> RIDLT Notice of Final Action, Finding of Fact 12. Apart from the coaching that a RIDLT staff member allegedly provided to Ms. Noel, it is not apparent that the availability of this system has been publicized within the greater LEP population served by RIDLT. Yet, even if other similarly situated LEP individuals were made aware of this newly established procedure, the process is so convoluted that it would still do little to afford meaningful access to LEP persons.

### **DOL Standards**

DOL regulations require all recipients of DOL financial assistance<sup>2</sup> to provide LEP persons with meaningful access to their programs and activities in accordance with Title VI, 29 CFR 31. RIDLT must therefore "communicate effectively with persons who are LEP to ensure that they have meaningful access to the workforce investment system, including, for example, understanding how to apply for ... UI benefits." 68 FR 32302.

The DOL Guidance directs RIDLT to apply a four-factor analysis "to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps should be taken to ensure meaningful access for LEP persons." 68 FR 32294. This analysis guides RIDLT in implementing a "mix" of LEP services based on what is reasonable and necessary. 68 FR 32295. In carrying out the assessment, RIDLT must bear in mind that "the obligation to provide language services increases where the importance of the activity is greater."

<sup>1</sup> According to the Final Action, it was only after Ms. Noel filed her claim on March 2, 2017, that "[o]n or about March 17, 2017, unemployment administrators met with all division managers and presented a Standardized Work Instruction Sheet with step by step instructions on the process that should take place in order to properly handle calls from limited English proficient claimants." RIDLT Notice of Final Action, Finding of Fact 12. These procedures were then introduced to RIDLT staff via email on or about March 17, 2017, and presented in separate team meetings on or about March 22, 2017.

<sup>2</sup> RIDLT's TeleServe program is covered by Title VI because it is funded wholly or in part by DOL.

68 FR 32302. DOL unmistakably deems the provision of unemployment insurance as an important service, specifying that “[u]nder this framework, critical areas for language assistance would include applications for UI...benefits and adjudications of issues regarding benefits.” 68 FR 32302.

RIDLT has patently disregarded its legal obligations under Title VI, and is in breach of its 2013 Conciliation Agreement. Nearly four years after it entered the Conciliation Agreement, and three and a half years after drafting an LEP plan, RIDLT still fails to provide LEP persons with meaningful access to the vital UI program. However, as this case makes clear, RIDLT has only now, in response to the formal complaint of Ms. Noel, put in place its rudimentary and ineffectual plan to offer language services for TeleServe callers. The absence of a plan for such a crucial service calls into question RIDLT’s compliance with Title VI with regard to any of its less vital activities.

Moreover, the current proposal for language access services with regard to unemployment insurance is inadequate and of questionable quality. RIDLT does not offer LEP callers a straightforward telephone voice mail menu that could easily direct their calls to the appropriate language service. Instead, RIDLT expects Ms. Noel and other similarly situated LEP callers to contact the general TeleServe number and then blindly follow a seven-step labyrinth of prompts in English in order to finally reach a language line. However, before ultimately accessing an interpreter on the language line, the caller must first communicate his or her need for assistance to an RIDLT staff person who may prove unable to understand the caller and his or her request for assistance. In addition, the inconsistent and disorganized manner in which RIDLT provides Babel notices, frustrates the ability of Ms. Noel and other similarly situated LEP individuals to meaningfully access vital documents associated with their UI benefits.

#### **I. RIDLT Is Not Implementing the Four-Factor Analysis Outlined in the DOL Guidance**

The DOL Guidance sets out a four-factor analysis to assist agencies such as RIDLT in determining whether they have taken reasonable steps to provide meaningful access to their programs and activities. The four factors to be balanced are: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or recipient; (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 program to people’s lives; and (4) the resources available to the agency and costs. 68 FR 32293-94.

RIDLT’s Final Notice in this matter illustrates that the agency cannot be strenuously assessing whether it has taken adequate steps to provide meaningful access the needs of its LEP population. Contrary to the proactive approach advocated by the DOL Guidance and the Conciliation Agreement, RIDLT does not appear to have a procedure in place to reliably assess the language access needs of the LEP population it serves. RIDLT does not systematically elicit information from TeleServe callers in order to ascertain whether or not an individual requires language access services. Tellingly, the recently implemented Standardized Work Instruction Sheet does not provision a system so that staff may record the particular language service needs

of its callers, but instead only instructs staff to record instances of a caller declining access to language services.

RIDLT's failure to accurately assess its LEP client population is not surprising given that RIDLT plainly misunderstands its obligation under Title VI and the Conciliation Agreement "to identify LEP contact situations" and ensure that language access services are promoted and made known within the relevant LEP populations. Conciliation Agreement Part II, 1; 68 FR 32299. RIDLT appears to place the onus for reporting language access needs on the individual LEP claimants, maintaining in the Final Action that the "Department cannot be expected to offer language access services to claimants when it is not aware of their language access needs." RIDLT Notice of Final Action, Conclusion.

In any case, RIDLT states outright that because Haitian Creole is not spoken by a significant proportion of the population using unemployment benefits, it "does not have language access services in this language readily available" and "is not required to have language access services readily in this language." RIDLT Notice of Final Action, Conclusion. However, RIDLT does not offer any data in support of its claim about the size of this LEP population and, based on the system put in place under its Standardized Work Instruction Sheet, does not appear to be collecting, nor to even have the capacity to accurately collect, such data.

Despite RIDLT's insistence that it need not be prepared to "readily" offer language services to Ms. Noel, even roughly applying the four-factor analysis to the facts of this case indicates that RIDLT should have had a robust language access plan in place for Ms. Noel and other similarly situated LEP individuals.

*(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population*

The first factor informing the language services provided by a recipient is "the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population." 68 FR 32294. The DOL Guidance directs that "[r]ecipients should first examine their prior experience with LEP encounters and determine the breadth and scope of the language services that were needed." 68 FR 32294. Further, "[i]n conducting this analysis, it is important to include language minority populations that are eligible for programs or activities but may have been underserved because of existing language barriers." 68 FR 32294. Other data to be consulted in order to refine the evaluation include census data for the area served, data from school systems and community organizations, and data from state and local governments. 68 FR 32294.

RIDLT has said that Haitian Creole is not a commonly spoken language among persons seeking UI benefits. However, RIDLT has proffered no evidence documenting how it reached this conclusion. The circumstances of Ms. Noel's case, in which RIDLT admitted that it did not solicit information about Ms. Noel's LEP status, and was thus unaware of her language access needs, verify that the agency does not properly assess the LEP population it serves. Indeed, as stated above, RIDLT does not believe that it is under an obligation to actively seek out such information.

Nevertheless, even a cursory review of census data confirm that a substantial number of LEP persons speaking Haitian Creole<sup>3</sup> fall within RIDLT's eligible service population. According to this data, Haitian Creole speakers represent the fourth largest LEP population in Rhode Island, following Spanish, Portuguese and Chinese speakers.<sup>4 5</sup>

*(2) The Frequency with which LEP Individuals Come in Contact with the Program*

Recipients of DOL funding are instructed to “assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual.” 68 FR 32294. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. 68 FR 32294. Furthermore, “[i]f a LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent.” 68 FR 32294.

Again, the DOL Guidance makes clear the responsibility rests with the recipients to inform LEP persons of the available services, stating that “[i]n applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups and therefore also increase the demand for language assistance from these LEP populations.” 68 FR 32294-95.

As previously noted, and as the facts of this case prove, RIDLT does not appear to be tracking the frequency with which Haitian Creole, or any LEP, speakers seek to access UI benefits. RIDLT does not proactively ascertain the language needs of those seeking UI benefits, but considers it to be the duty of LEP individuals to notify the agency of his or her language access needs. At the same time, at least with regard to UI benefits, RIDLT does not effectively publicize the availability of the limited services it alleges to offer. Without a system to accurately assess the population of LEP individuals that attempt (or would attempt if the information were publicized) to seek out language services, RIDLT cannot possibly know the frequency with which Haitian Creole – or any other language – speaking LEP individuals attempt to participate in the UI program. Yet, considering the census data discussed in the

---

<sup>3</sup> Although the census data refers to French Creole, the data does not distinguish among the different versions of French Creole. However, given that the first-generation Haitian population in Rhode Island far exceeds that of other countries in which a French Creole variant is spoken, it can be assumed that most, if not all, of the French Creole speakers in Rhode Island are Haitian Creole speakers. *See generally*, U.S. Census Bureau, Place of Birth for the Foreign-Born Population in the United States, American Community Survey 5-year Estimates, 2015.

<sup>4</sup> The Haitian Creole LEP population numbers 2,400 people, while the Spanish LEP is approximately 50,000, the Portuguese LEP population about 13,000 and the Chinese LEP population is approximately 3,300. *See* US Census Bureau Data, Table 40, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013, available at <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>.

<sup>5</sup> Curiously, while RIDLT insists that the small size of the Haitian Creole LEP population relieves it from any duty to provide language access services to this group, it nevertheless appears to have staff interpreters who speak both Cambodian and Hmong (see Standardized Work Instruction Sheet), which represent significantly smaller LEP populations. (Haitian Creole LEP population numbers approximately 2,400 people, while the Cambodian LEP population is 2,100 and the Hmong LEP population is 300. *See* US Census Bureau Data, Table 40, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013, available at <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>).

section above, RIDLT cannot assume that Ms. Noel is the only Haitian Creole LEP speaker among the UI service population.

Moreover, the particular type of interaction at issue in this case – the required reporting to TeleServe – is frequent, occurring on a weekly basis. As transpired with Ms. Noel, UI benefit seekers must regularly and accurately convey particular information or they will lose access to a vital benefit.

*(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program*

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. 68 FR 32295. A heightened obligation to provide language services applies in the instances where denial or delay of access to services or information would lead to serious implications for an LEP individual. 68 FR 32295. The DOL Guidance specifically discusses the critical nature of the UI program as it “offers the first line of defense against the ripple effects of unemployment”; not only does it ensure that a “significant proportion of the necessities of life, most notably food, shelter and clothing, can be met on a week-to-week basis while the claimant searches for work,” it also “provide[s] temporary wage replacement that helps claimants to maintain their purchasing power and stabilize the economy.” 68 FR 32303.

Furthermore, within this vital program, the DOL Guidance highlights that decisions by a federal, state, or local entity to make an activity compulsory, such as job training and/or job search certification in the UI program, can also serve as strong evidence of the program’s value. 68 FR 32295. Indeed, the DOL Guidance underscores the importance of making language access services available because “the requirements for filing a claim for Unemployment Insurance must be effectively communicated.” 68 FR 32295.

DOL Guidance leaves no doubt that LEP individuals must be provided with the support they need in order to access the vitally important UI program. Language services are particularly crucial in the situations at issue in this case, namely the required weekly reporting via TeleServe and the notifications regarding the disqualification of benefits.

*(4) The Resources Available to the Recipient and Costs*

The level of resources available and the costs associated with language services may have an impact on the nature of steps a recipient will take in providing language services. 68 FR 32295.

RIDLT has not asserted that it does not have sufficient funding to make the necessary language access services available. Moreover, much of the relief sought by this claim would not result in a major cost escalation. Many of the proposed remedies require RIDLT only to improve or expand upon the system already in place – for example, by establishing the solicitation and recording of information regarding language needs; by making the availability of services known at the initial point of contact; and by printing Babel notices on the back of documents rather than as individual pieces of paper.

## II. RIDLT Does Not Provide LEP Individuals with Meaningful Access to its Services

RIDLT falls short of its Title VI duties to offer language services commensurate with the needs of its LEP population and the critical nature of its unemployment program. As described below, the oral interpretation and translation services actually offered by RIDLT are inadequate and of questionable quality. The failure to provide competent language services is particularly egregious given the potentially serious ramifications for LEP individuals who depend on UI benefits to secure basic necessities of life as they seek employment.

### (1) *Oral Language Services*

Enhanced interpretation services, such as hiring staff interpreters, would be a reasonable and necessary means for ensuring accurate and meaningful communication with LEP persons where RIDLT has frequent contact with a particular LEP group, or when critical services are being provided to a high volume of LEP individuals. 68 FR 32294, 32296. On the other hand, when contact with a particular LEP population is infrequent or unpredictable, or when the programs and activities are less critical, contract interpreters and commercially-available telephonic interpretation services may suffice. *See* 68 FR 32296-97.

Nonetheless, RIDLT should not plan to rely on a LEP person's family members, friends, or other informal interpreters to provide language assistance services to important programs and activities. 68 FR 32297. Yet, "where LEP persons so desire, they should be permitted to use, at their own expense, interpreters of their own choosing (whether a professional interpreter, family member, friend, or other informal interpreter) in place of or as a supplement to the free language services expressly offered by the recipient." 68 FR 32297. Regardless of the type of language services implemented, however, quality and accuracy of those services are critical so to avoid serious consequences to both LEP persons and RIDLT. 68 FR 32299.

Further, as pointed out by the DOL Guidelines, where "language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services." 68 FR 32300. Such notice is particularly required with regard to situations in which high volumes of LEP persons seek access to income security programs. 68 FR 32300. One example of such notice is by use of a telephone voice mail menu offered in the most common languages encountered to provide information about available language assistance services and how to access them. 68 FR 32300.

As discussed in the section above, there is a considerable likelihood that Haitian Creole speaking LEP persons represent a significant part of the eligible UI population. Given that the receipt of this vital benefit is conditioned upon weekly reporting into the TeleServe system, this would constitute a group frequently attempting to contact RIDLT. Although RIDLT does not systematically record the language needs of its eligible service population, it could be assumed that other, similarly situated LEP groups exist among RIDLT's potential client pool, as well. In addition to Spanish and Portuguese speaking groups, the most recent census figures indicate that other large LEP populations seeking UI benefits in Rhode Island could include Chinese, Mon-



Khmer/Cambodian, Italian, French or Laotian speakers, for example. *See* US Census Bureau Data, Table 40, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013, *available at* <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>. Based on the Standardized Work Instruction Sheet, it would appear that RIDLT employs Spanish, Portuguese, Cambodian and Hmong interpreters. However, following a careful assessment of the LEP population through the lens of the four-factor framework, RIDLT might determine that staff interpreters capable of speaking additional languages would be necessary.

Even if a thorough four-factor analysis suggested that commercially available, telephonic interpretation services would suffice to provide Ms. Noel and other similarly situated LEP persons with meaningful access to UI benefits, RIDLT would nonetheless still need to overhaul the current, ad hoc and ineffectual provision of language services at once. As previously discussed, the language services purportedly available are not immediately apparent to LEP callers into the TeleServe system.

Instead, as of March 17, 2017, when the Standardized Work Instruction Sheet was implemented, RIDLT staff has been instructed to direct LEP callers to call the general TeleServe phone number ((401)243-9100) and then pursue a maze of seven unclear steps so that they might access a language line.<sup>6</sup> One of the ultimate steps in this process requires the caller to communicate their needs to a call center staff member who may not be capable of assisting individuals with less frequently encountered languages. Indeed, as encountered by undersigned counsel as recently as June 9, 2017, even carefully following these instructions does not result in a meaningful access to services. In counsel's experience, after a lengthy process she was connected to a deeply frustrated RIDLT employee who kept saying "I don't understand what you are saying" and was completely unable to offer language assistance.

In the face of an unnecessarily complicated process, it is not surprising that Ms. Noel does not understand how to avail herself of the allegedly available services and has continued to rely on a third party to communicate the weekly required information. While RIDLT claims it has reached out directly to Ms. Noel to impart guidelines for following the process for accessing language services, Ms. Noel does not comprehend the instructions and is not sure she was even coached in doing so. It is not clear what RIDLT would expect from a claimant that had not received any sort of notice as to how this phone system worked. A caller without a very clear roadmap as to how to navigate the system would be lost entirely.

Ms. Noel initially turned to the aid of an informal interpreter in order to access UI benefits because she was not aware that any language services existed. Yet the fact that Ms. Noel chose to rely on a third party to comply with the UI program reporting requirements does not discharge RIDLT from the obligation to identify Ms. Noel's language needs or from affording her

---

<sup>6</sup> An LEP person must call the general office number, which is regularly inaccessible given the high volume of calls. Once an LEP individual does reach a TeleServe staff person, the staff person has now been instructed to advise the caller that in order to reach language services with regard to future calls they must call the general number and then: "[l]isten to a woman's voice; [l]isten to a man's voice ; [p]ress 2 for 'Call Center' ; [p]ress 1 for 'English'; [p]ress 2 for '[a]ll other TS payment [i]ssues'; [y]our call will be routed to an agent in the CC." Standardized Work Instruction Sheet, at 7 and 8. Then, "[w]hen your call is answered, advise the agent that you need an interpreter by stating the words 'NO ENGLISH'; [t]he agent will then connect you with an interpreter." Standardized Work Instruction Sheet, at 8.

meaningful access to the program benefits by ensuring she is aware of the language services RIDLT offers. Indeed, RIDLT's duty extends to its broader, eligible LEP service population to publicize the existence of language services, how these services can be accessed and the fact that LEP individuals have a right to rely on these services free of charge or to choose to use the support of an informal interpreter.

## (2) *Translation Services*

RIDLT, having carried out the four-factor analysis, should decide to translate vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by its UI program. 68 FR 32297. Whether a document is "vital" may depend on the importance of the program, information or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. 68 FR 32298. DOL identifies vital written materials to include: "[a]pplications to participate in a recipient's program or activity or to receive recipient benefits or services"; "[l]etters containing important information regarding participation in a program or activity"; "[n]otices pertaining to the reduction, denial or termination of services or benefits and of the right to appeal such actions"; and "[n]otices that require a response from beneficiaries." 68 FR 32297-98.

Where it would be unreasonable to translate an entire document, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document. 68 FR 32298. The DOL Guidance suggests, for instance, that notice of available language services be translated in the most common languages and "tagged" onto the front of common outreach documents. 68 FR 32300.

As discussed previously, a thorough four-factor assessment would likely reveal that LEP Haitian Creole speakers make up a frequently-encountered LEP group. Moreover, given the value of the UI program, the forms and notices containing crucial UI benefit information – such as notifications related to denial of these benefits, including required conference calls or the right to appeal discontinuation of benefits – should be regarded as vital documents, or at least containing vital information. As such, RIDLT is obliged to translate into Haitian Creole the vital information contained in such documents, or the entire documents themselves, so that Ms. Noel might have meaningful access to the UI program. The importance of the UI program would suggest that such documents should be translated into other frequently occurring languages.

Yet, RIDLT does not provide translation assistance for languages other than Spanish or Portuguese so that LEP individuals can access the information required to file a UI claim online. See RIDLT website File A Claim, available at <http://www.dlt.ri.gov/ui/fileclaim2.htm>. To the extent *any* part of the unemployment benefits part of the website mentions such assistance, it directs LEP individuals to the general call center number where the messages are lengthy and complicated and only select language options are in fact available. Ultimately, even if a non-English speaker manages to get through to someone, this number does not necessarily connect to anyone capable of assisting individuals with less frequently encountered languages.

With respect to other notices at issue in the present case, the Final Action implies that because one of the lines on the purported Babel Notices is in Haitian Creole, this should resolve notice issues for Ms. Noel. However, as noted previously, the Babel Notices remain a separate piece of paper that is more often omitted than included with notices. Moreover, RIDLT has only just recognized that Ms. Noel required a Babel notice because of her formal complaint. It is not clear how it would become aware of the needs of other similarly situated LEP individuals.

Furthermore, RIDLT does not translate other vital information. For example, the general RIDLT website, <http://www.dlt.ri.gov/ui/>, is haphazardly translated into Spanish, with some Portuguese translation. However, there is no notice for how other LEP persons can access RIDLT services. The RIDLT Board of Review website, <http://www.dlt.ri.gov/bor/>, is only available in English.

In addition, as recently as April, 2017, UI beneficiaries have been receiving notices instructing them to obtain their own interpreters in direct violation of 29 C.F.R. § 38.9(f). *See e.g.* Exhibit F; *see also* exhibits attached to Ms. Noel's original complaint. Moreover, these notices continue to instruct beneficiaries to call a number where no real language assistance is available. The Notice of Final Action does not appear to address this issue.

### **Conclusion**

As is illustrated by the present case of Ms. Noel, RIDLT is not fulfilling its duties under Title VI to reduce language barriers for LEP individuals. Specifically, RIDLT fails to provide access for the Haitian Creole speaking LEP population, as well as other similarly situated LEP populations, to its critical UI program, which provides a significant proportion of the necessities of life to eligible unemployed workers. This case makes clear that not only does RIDLT fail to assess the needs of the LEP persons it serves, but the interpretation and translation services it offers do not sufficiently mitigate the risk that the RIDLT's eligible LEP population is effectively barred from accessing important benefits and services, and understanding and exercising important rights.

FOR ALL OF THESE REASONS, Ms. Noel asks for a full review of her complaint, both on her own behalf and on behalf of all similarly situated individuals, and seeks the remedies she originally sought through her complaint but has yet to receive, including:

- Alternative to TeleServe for languages not available on TeleServe;
- Improvements in TeleServe so that speakers of languages available on the system can choose that language option early on in the process;
- An application process that identifies language needs immediately at application;
- Babel notices that are an inseparable part of all notices (*e.g.* on the back so they cannot be omitted) and that connect to a real source of language assistance (*e.g.* directly to a language bank);
- Training for all staff (and continued training on a schedule), and a protocol consistent with above remedies to replace the current Standardized Work Instruction Sheet;
- A review and improvements to all points of access (phone, website, in-office , etc.) to ensure adequate and meaningful language access for all individuals with limited English including both frequently encountered and more rarely encountered languages;

- An urgent update to the Department's Language Plan, which does not appear to have been updated since 2014. Based on a quick perusal of the Department's website it appears that even the self-imposed actions and deadlines in that document (*e.g.* translation of vital documents) have not been met, a full three years later. *See* <http://www.dlt.ri.gov/pdf/LEPplan.pdf>
- Overview and revision of the Board of Review website which appears to be even less language friendly than RIDLT's website and which controls access to appeals information for RIDLT decisions. *See* <http://www.dlt.ri.gov/bor/>
- Review of the September 24, 2013 Conciliation Agreement in light of the concerns articulated within this appeal in order to determine whether the Department is in full compliance with the agreement.

Respectfully Submitted,  
Noel Graciane by and through her attorneys,



Veronika Kot, Esq.  
RI Legal Services  
56 Pine Street  
Providence, RI 02903  
(401) 274-2652 x 164  
Fax (401) 243-0310  
[vkot@rils.org](mailto:vkot@rils.org)

\_\_\_\_\_/s/\_\_\_\_\_  
Jennifer K. Doucleff  
ACLU Cooperating Attorney  
RIACLU  
128 Dorrance St., Suite 400  
Providence, RI 02903  
(401) 831-7171  
Fax (401) 831-7175  
[mllleduke@yahoo.com](mailto:mllleduke@yahoo.com)

cc  
Rhode Island Department of Labor and Training  
Angelyne E. Cooper  
Legal Counsel/EO Officer  
1511 Pontiac Avenue  
Cranston, RI 02920  
P: 401-462-8897  
F: 401-462-8884  
E: [angelyne.cooper@dlt.ri.gov](mailto:angelyne.cooper@dlt.ri.gov)

**EXHIBITS TO COMPLAINT OF GRACIANNE NOEL**

- A. Conciliation Agreement
- B. Original Complaint (filed with RI Department of Labor and Training)
- C. Notice of Final Action
- D. Standardized Work Instruction Sheet
- E. Babel Notice
- F. Notice

U.S. Department of Labor

Office of the Assistant Secretary  
for Administration and Management  
Washington, D.C. 20210



September 25, 2013

Charles J. Fogarty  
Director  
Rhode Island Department of Labor and Training  
1511 Pontiac Ave.  
Cranston, RI 02920

Re: Compliance Review

Dear Director Fogarty:

We have completed our review of the compliance of the Rhode Island Department of Labor and Training with its oversight responsibilities regarding the nondiscrimination and equal opportunity (EO) provisions of Workforce Investment Act.

Subject to the implementation of the commitments detailed in the Conciliation Agreement dated September 24, 2013, the violation shall be deemed resolved. This does not preclude a future determination of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

We sincerely appreciate the cooperation and courtesies extended by you and your staff during the conduct of the compliance review.

Sincerely,

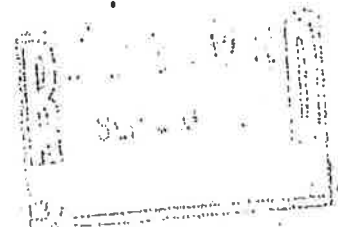
A handwritten signature in black ink, appearing to read "Roger Ocampo".

Roger Ocampo  
Chief  
Office of Compliance and Policy

Attachment

cc: Matthew Weldon, Equal Opportunity Officer, Rhode Island Department of Labor and Training  
1511 Pontiac Avenue, Cranston, RI 02920

Holly O'Brien, Regional Administrator, U.S. Department of Labor/ETA  
John F. Kennedy Federal Building, Room E-350, Boston, MA 02203



**CONCILIATION AGREEMENT  
BETWEEN THE U.S. DEPARTMENT OF LABOR  
AND  
THE STATE OF RHODE ISLAND  
DEPARTMENT OF LABOR AND TRAINING**

**PART I: General Provisions**

1. The parties to this Agreement are the United States Department of Labor (DOL or the Department) and the Rhode Island Department of Labor and Training (DLT).
2. The United States Department of Labor has jurisdiction of this matter under Section 188 of the Workforce Investment Act of 1998, as amended, 29 U.S.C. 2801 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq.; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681-1688; Title II of the Americans with Disabilities Act, as amended, 42 U.S.C. 12131 -12134; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101-6107; and regulations implementing these statutes.
3. The violations set forth in Part II of this Agreement were found by the United States Department of Labor's Civil Rights Center (CRC) during a compliance review of DLT initiated by CRC on November 3, 2011, and specified in a Letter of Findings issued on August 29, 2013. This Agreement is intended to resolve these violations.
4. DLT agrees that the remedial provisions of this Agreement will be incorporated into the Methods of Administration (MOA) for the State of Rhode Island as of the effective date of the Agreement. Subject to DLT's performance of all actions it commits to take in this Agreement and in the State's MOA, the violations listed in Section II of this Agreement will be deemed resolved. However, DLT is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
5. DLT agrees that CRC may review compliance with this Agreement. As part of such review, CRC may require written reports, and may inspect such premises, interview such witnesses, and examine and copy such documents, as may be relevant to the matter under investigation and pertinent to DLT's compliance. DLT shall permit access to its premises during normal business hours for these purposes. DLT shall maintain all records related to its compliance with this Agreement for a period of not less than three (3) years from the expiration date of the Agreement.
6. Nothing herein is intended to relieve DLT from the obligation to comply with the requirements of the statutes and regulations referenced in Paragraph 2 above or any other equal opportunity statute or executive order or its implementing regulations.

- 7. DLT agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, filed a complaint or participated in any way in any proceeding in this matter.
- 8. If at any time in the future, CRC believes that DLT has violated any portion of this Agreement, the CRC Director will promptly issue a Notification of Breach of Conciliation Agreement, pursuant to 29 CFR 37.102 through 37.105. Such Notification will be sent to DLT, the Governor of Rhode Island, and appropriate grant making agencies, and will:
  - a. Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;
  - b. Identify the specific provisions of the Conciliation Agreement that have been violated;
  - c. Where appropriate, determine liability for the violation and the extent of the liability;
  - d. Indicate that failure of DLT to come into compliance within 10 days of the receipt of the Notification may result, after opportunity for a hearing, in the termination, denial, or discontinuation, as appropriate, of financial assistance provided by DOL, or in referral to the U.S. Department of Justice with a request to file suit against DLT;
  - e. Advise DLT of its right to request a hearing under the applicable procedures set forth in 29 CFR 37.111; and
  - f. Include a determination as to the Governor's liability, if any, in accordance with the provisions of 29 CFR 37.52.

The Notification of Breach of Conciliation Agreement is considered the Department's formal complaint. To request a hearing, DLT must file a written answer to the Notification within 30 days of receipt of the Notification, pursuant to the procedures set forth in 29 CFR 37.111(b).

Where CRC believes that DLT has violated this Conciliation Agreement, CRC may seek enforcement of the Agreement itself, and will not be required to provide proof of the underlying violations resolved by this Agreement.

Liability for violation of this Agreement may subject DLT to sanctions as set forth in 29 CFR 37.110(a).



A  
4

**PART II: Specific Provisions**

1. **Violation:** DLT did not provide services and information in appropriate languages other than English in order for individuals to be effectively informed about, or able to participate in, the unemployment insurance program as required by 29 CFR 37.35(a). Specifically, while some documents were available in Spanish and Portuguese/Portuguese Creole, other required forms, including the Claimant Decision/Right to Appeal, Notice of Referee Hearing, Decision of Referee Notice, and Decision of Board of Review forms, considered "vital" to unemployment benefits, were written in English only, even though a significant number or proportion of the population DLT serves needs services or information in languages other than English.

Additionally, DLT did not make reasonable efforts to meet the particularized language needs of limited English-speaking individuals who sought services or information as required by 29 CFR 37.35(b). Specifically, during the hearing process, individuals were either required to hire a professional interpreter to accompany them at the Board of Review or rely on a friend or relative to serve as a translator.

**Remedy:** DLT agrees to translate into Spanish and Portuguese/Portuguese Creole, the following vital forms: Claimant Decision/Right to Appeal, Notice of Referee Hearing, Decision of Referee Notice, and Decision of Board of Review. Additionally DLT must translate individualized information contained in Notices of Claimant Decision, Board of Review Decisions and Referee Hearings for individuals with known language needs.

DLT also agrees to cease requiring claimants to provide their own interpreters for any aspect of/contact with the UI program, including hearings and follow-up contacts, and provide meaningful access at no cost to LEP claimants in all UI proceedings and operations.

Within sixty days of the effective date of this agreement, DLT agrees to develop and submit to CRC for approval, Language Access Policy Directives that set forth standards, operating principles, and guidelines governing the delivery of language appropriate services. Policy directives require the DLT, including the Board of Review, and its staff to ensure meaningful access to persons with LEP. Such policy directives should be made publicly available.

DLT agrees to establish a LEP Working Group responsible for overseeing the development and implementation of DLT's LEP plan (discussed below). The composition of the group will reflect DLT's organizational structure, including the Board of Review and include advocates representing the interest of the language minority population(s) in Rhode Island, and other members of the community who have relevant experience in language access issues in obtaining services from DLT.

Additionally, DLT agrees that within ninety days of the effective date of this Agreement, DLT will develop and submit for CRC approval, a LEP plan. The plan will ensure that DLT takes reasonable steps to provide services or information in a language other than English so that eligible individuals can be effectively informed about, or able to

participate in, the unemployment insurance program. The plan will specify the management actions needed to implement the plan to ensure compliance with the WIA's and Title VI equal opportunity obligations, including the translation of vital documents into languages designated by highest need, and the tasks to be undertaken, assignment of responsibilities, deadlines, and process. DLT will take such actions as are necessary to implement the LEP plan.

Key components of a language access plan must include:

- Identification of persons charged with implementing the plan;
- Identification and assessment of LEP communities;
- A description of the timeframe, objectives and benchmarks for work to be undertaken;
- Identification of funding and procurement issues and the steps needed to address them;
- Notice of language assistance services;
- Training staff on policies and procedures;
- Ensuring quality and accurate translations and interpretations;
- Monitoring and updating the plan, policies and procedures; and
- Collaborating with LEP communities and other stakeholders.

The LEP plan must provide for the following:

- Evaluating current response to LEP needs by, among other things, conducting an inventory of languages most frequently encountered, identifying the primary channels of contact with LEP community members (whether telephonic, in person, correspondence, web-based, etc.), and reviewing agency programs and activities for language accessibility.
- Establishing a schedule to periodically evaluate and update agency LEP services and LEP policies, plans, and protocols, including time frames.
- Ensuring that agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access.
- Ensuring all interpreters/translators, including staff interpreters/translators, bilingual staff or contract interpreters/translators, have the necessary skills and specialized knowledge of the program to provide accurate and meaningful interpretations/translations.
- Notifying the public, through mechanisms that will reach the LEP communities you serve, of your LEP policies, plans, and procedures, and LEP access-related developments. Methods for publicizing language assistance include:
  - o Using a telephone voice mail menu to provide information about available language assistance services and how to get them;
  - o Posting signs in intake areas and other entry points;
  - o Stating in all written materials including hard-copy and electronic website materials that language assistance services are available from the agency; and

- o Working with community-based organizations and other stakeholders to inform LEP individuals of the agency's services, including the availability of language assistance services.
- When considering hiring criteria, assess the extent to which non-English language proficiency would be necessary for particular positions or to fulfill your agency's mission.
- For written translations, collaborate with other agencies and community organizations to share resources, improve efficiency, standardize terminology, and streamline processes for obtaining community feedback on the accuracy and quality of professional translations intended for mass distribution.

DLT will annually review the effectiveness of the LEP plan, and evaluate potential changes to improve this Plan and its policies and procedures. This assessment may be done by tracking the number of interpreters requested by language, assessing changes in the population of LEP persons, the frequency of encounters with LEP groups, and the availability of resources including technological advances and otherwise. The evaluation may include identification of areas of improvement and development of any corrective action including the number of persons requesting services, the assessment of both written and verbal language needs, the review of whether staff members adequately understand and implement LEP policies and procedures, and the collection of feedback from DLT customers, staff, and LEP communities and groups in the State of Rhode Island.

**PART III: Reporting**

DLT agrees to submit progress reports to CRC on the actions taken to comply with Section II of this Agreement every six months after the effective date of this agreement, and thirty days prior to its expiration. The detailed written reports will document the efforts made to comply with the language access requirements of Section 188 of the Workforce Investment Act and Title VI of the Civil Rights Act.

The reports shall include, but not be limited to, the following:

1. The actions DLT has taken or intends to take to comply with the agreement and execute the LEP plan, including:
  - a. Any further policies or procedures drafted or issued for these purposes; and
  - b. Any language related notices, forms, and signs drafted or issued;
2. Data on requests for language services, by DLT agency or office, location, language, and the form and mode of language assistance, and how those requests were handled pursuant to the LEP plan, including data that indicates:
  - a. Any delays resulting from unavailable language assistance;
  - b. Instances in which language assistance is not provided and the reasons therefor;
3. Data on the application of the LEP plan, including number of interpreters and bilingual staff used, broken down by:
  - a. Event, to include:
    - i. DLT agency or office, including location; and
    - ii. Type of event;
  - b. Interpreter, to include:

- i. Language;
  - ii. Qualification level, as professionally certified, professionally qualified, or registered;
  - iii. Employment status as bilingual staff, staff interpreter, or contractor; and
  - iv. State of residence;
4. Information regarding problems encountered in implementing the LEP Plan, including feedback gathered from the customers, staff, LEP advocacy group, and public; and
    - a. The process established to receive and respond to language access complaints;
    - b. The number, nature, and disposition of any language access complaints;
  5. The steps taken to notify the customers, customer representatives, community groups, and public of the policies or procedures to implement the LEP Plan, and any responses thereto;
  6. The trainings provided to managers, hearing officials, staff, and others regarding the LEP policies and any related language access matters; including the content of the trainings, training materials, dates held, trainers, and names and positions of attendees;
  7. Steps taken to recruit, train, set standards for, qualify, and certify interpreters, translators, and bilingual staff;
  8. Lists of authorized interpreters; translators, and bilingual staff specifying language, language proficiency test results, and type of authorization;
  9. Lists of documents, signage, forms, web content, and audio or video content that have been or will be translated, the languages completed or intended for each, and the means by which the items will be distributed internally and made available to customers/claimants;
  10. Additional steps taken to ensure quality communication when utilizing remote interpretation; and
  11. Once a year, the report shall include figures on spending for language services.


**PART IV: Termination Date**

Unless otherwise agreed in writing by the parties, the Agreement will terminate twenty-four (24) months after its effective date, provided that DLT:

- is in substantial compliance with the terms of this Agreement at that time;
- has been in substantial compliance continuously during the preceding year; and
- has submitted a final report that is accepted by CRC.

For the Department of Labor:

For the Department of Labor and Training:

  
 NAOMI BARRY-PEREZ  
 Director  
 Civil Rights Center

  
 CHARLES J. FOGARTY  
 Director

Dated: 9/24/13

Dated: 9/13/13

U.S. Department of Labor

Office of the Assistant Secretary  
for Administration and Management  
Washington, D.C. 20210



August 30, 2013

Charles J. Fogarty  
Director  
Rhode Island Department of Labor and Training  
1511 Pontiac Ave  
Cranston, RI 2920

RE: Compliance Review

Dear Director Fogarty:

On November 3, 2011, the U.S. Department of Labor's Civil Rights Center (CRC) initiated a focused review of the compliance of the Rhode Island Department of Labor and Training (DLT) with the nondiscrimination and equal opportunity provisions of the Workforce Investment Act (WIA) and 29 CFR Part 37. The review focused on whether the Rhode Island DLT's Unemployment Insurance Program was providing services and information in languages other than English, as required generally by WIA Section 188 and specifically by 29 CFR 37.35. The review was conducted pursuant to 29 CFR sections 37.60 and 37.63.

Based on the evidence gathered during our review, our preliminary findings indicate that DLT is not in compliance with the above-cited legal obligations. Our specific preliminary findings and proposed remedies are set forth below.

1. **Violation:** DLT did not provide services and information in appropriate languages other than English in order for individuals to be effectively informed about, or able to participate in, the unemployment insurance program as required by 29 CFR 37.35(a). Specifically, while some documents were available in Spanish and Portuguese/Portuguese Creole, other required forms, including the Claimant Decision/Right to Appeal, Notice of Referee Hearing, Decision of Referee Notice, and Decision of Board of Review forms, considered "vital" to unemployment benefits, were written in English only, even though a significant number or proportion of the population DLT serves needs services or information in languages other than English.

Additionally, DLT did not make reasonable efforts to meet the particularized language needs of limited English-speaking individuals who sought services or information as required by 29 CFR 37.35(b). Specifically, during the hearing process, individuals were either required to hire a professional interpreter to accompany them at the Board of Review or rely on a friend or relative to serve as a translator.

**Remedy:** DLT must agree to translate into Spanish and Portuguese/Portuguese Creole, the following vital forms: Claimant Decision/Right to Appeal, Notice of Referee Hearing, Decision of Referee Notice, and Decision of Board of Review. Additionally DLT must agree to translate individualized information contained in Notices of Claimant Decision,

Board of Review Decisions and Referee Hearings for individuals with known language needs.

DLT must also agree to cease requiring claimants to provide their own interpreters for any aspect of/contact with the UI program, including hearings and follow-up contacts, and provide meaningful access at no cost to LEP claimants in all UI proceedings and operations.

Within thirty days of the effective date of this agreement, DLT must agree to develop and submit to CRC for approval, Language Access Policy Directives that set forth standards, operating principles, and guidelines governing the delivery of language appropriate services. Policy directives require the DLT, including the Board of Review, and its staff to ensure meaningful access to persons with LEP. Such policy directives should be made publicly available.

DLT must agree to establish a LEP Working Group responsible for overseeing the development and implementation of DLT's LEP plan (discussed below). The composition of the group will reflect DLT's organizational structure, including the Board of Review and include advocates representing the interest of the language minority population(s) in Rhode Island, and other members of the community who have relevant experience in language access issues in obtaining services from DLT.

Additionally, DLT must agree that within sixty days of the effective date of this Agreement, DLT will develop and submit for CRC approval, a LEP plan. The plan will ensure that DLT takes reasonable steps to provide services or information in a language other than English so that eligible individuals can be effectively informed about, or able to participate in, the unemployment insurance program. The plan will specify the management actions needed to implement the plan to ensure compliance with the WIA's and Title VI equal opportunity obligations, including the translation of vital documents into languages designated by highest need, and the tasks to be undertaken, assignment of responsibilities, deadlines, and process. DLT will take such actions as are necessary to implement the LEP plan.

Key components of a language access plan must include:

- Identification of persons charged with implementing the plan;
- Identification and assessment of LEP communities;
- A description of the timeframe, objectives and benchmarks for work to be undertaken;
- Identification of funding and procurement issues and the steps needed to address them;
- Notice of language assistance services;
- Training staff on policies and procedures;
- Ensuring quality and accurate translations and interpretations;
- Monitoring and updating the plan, policies and procedures; and
- Collaborating with LEP communities and other stakeholders.

The LEP plan must provide for the following:

- Evaluating current response to LEP needs by, among other things, conducting an inventory of languages most frequently encountered, identifying the primary channels of contact with LEP community members (whether telephonic, in person, correspondence, web-based, etc.), and reviewing agency programs and activities for language accessibility.
- Establishing a schedule to periodically evaluate and update agency LEP services and LEP policies, plans, and protocols, including time frames.
- Ensuring that agency staff can competently identify LEP contact situations and take the necessary steps to provide meaningful access.
- Ensuring all interpreters/translators, including staff interpreters/translators, bilingual staff or contract interpreters/translators, have the necessary skills and specialized knowledge of the program to provide accurate and meaningful interpretations/translations.
- Notifying the public, through mechanisms that will reach the LEP communities you serve, of your LEP policies, plans, and procedures, and LEP access-related developments. Methods for publicizing language assistance include:
  - Using a telephone voice mail menu to provide information about available language assistance services and how to get them;
  - Posting signs in intake areas and other entry points;
  - Stating in all written materials including hard-copy and electronic website materials that language assistance services are available from the agency; and
  - Working with community-based organizations and other stakeholders to inform LEP individuals of the agency's services, including the availability of language assistance services.
- When considering hiring criteria, assess the extent to which non-English language proficiency would be necessary for particular positions or to fulfill your agency's mission.
- For written translations, collaborate with other agencies and community organizations to share resources, improve efficiency, standardize terminology, and streamline processes for obtaining community feedback on the accuracy and quality of professional translations intended for mass distribution.

DLT will annually review the effectiveness of the LEP plan, and evaluate potential changes to improve this Plan and its policies and procedures. This assessment may be done by tracking the number of interpreters requested by language, assessing changes in the population of LEP persons, the frequency of encounters with LEP groups, and the availability of resources including technological advances and otherwise. The evaluation may include identification of areas of improvement and development of any corrective action including the number of persons requesting services, the assessment of both written and verbal language needs, the review of whether staff members adequately understand and implement LEP policies and procedures, and the collection of feedback from DLT customers, staff, and LEP communities and groups in the State of Rhode Island.

Please be advised that our findings are based on the evidence currently available to us. We offer DLT the opportunity to submit evidence demonstrating that the findings are inaccurate. If DLT concurs with our findings or does not wish to submit such evidence, we invite you, or another appropriate official, to begin negotiations to bring DLT into voluntary compliance. Such compliance will require DLT to enter into a written agreement with CRC to comply with its obligations under 29 CFR 37.50 through 37.55. The agreement must:

- address the violation listed above, by providing that the violation will not recur and specifying the action(s) that will be taken within a specified time period to correct that violation; and
- provide for both periodic reporting on the status of the actions and enforcement for a breach of the agreement.

For your review and consideration, we have attached a written conciliation agreement that, if signed and implemented, will resolve the violation identified during the review. It is requested that you sign and return the entire enclosed proposed conciliation agreement to this office within five (5) working days of receipt.

Should you wish to submit evidence or discuss this agreement with me, please do so during the above period of time by contacting me at (202) 693-6562 (voice); Federal Relay Service TTY/TDD: (800) 877-8339; Video Relay: (877) 709-5797 or myfedvrs.tv; or by e-mail at [ocampo.roger@dol.gov](mailto:ocampo.roger@dol.gov). In the event you feel that a particular violation or remedy is not appropriate, please advise this office of the basis for the conclusion, the substitute action you propose, and the results that can be expected before you retype or make revisions to the agreement.

Subsequent to your signature on the agreement, a copy of the fully executed agreement will be forwarded to you.

Sincerely,



Roger Ocampo  
Chief  
Office of Compliance and Policy

Attachment

cc: Vincent Rossi, Equal Opportunity Office, Rhode Island Department of Labor and Training  
1511 Pontiac Avenue – Building 73, Cranston, RI 02920

Holly O'Brien, Regional Administrator, U.S. Department of Labor/ETA  
John F. Kennedy Federal Building, Room E-350, Boston, MA 02203





**RHODE ISLAND LEGAL SERVICES, INC.**

56 Pine Street, Suite 400 Providence, RI 02903  
(401) 274-2652  
(800)662-5034  
FAX (401) 453-0310

50 Washington Square Newport, RI 02840  
(401) 846-2264  
(800)637-4529  
FAX (401) 848-0383

BY EMAIL

March 2, 2017  
Angelyne Cooper, Legal Counsel  
RI Department of Labor and Training  
1511 Pontiac Avenue  
Cranston, RI 02920

RE: Discrimination Complaint, concerning – Gracianne Noel

Dear Ms. Cooper:

I am filing this complaint with you on behalf of Ms. Noel who believes she has experienced national origin discrimination (Title VI violation) in that she has not had adequate access to translation/interpreter services as related to 1) Tele Serve and 2) Notices.

As a result she was assessed a one week disqualification and overpayment.<sup>1</sup>

Ms. Noel speaks Haitian Creole.

**TELE SERVE**

Ms. Noel began receiving unemployment benefits in November 2016. She has had to rely on the assistance of a friend to contact Tele Serve weekly. Tele Serve is only available in English, Spanish and Portuguese (and even Spanish and Portuguese require the listener to wait through a very long message exclusively in English). There is no telephone option for other languages and Ms. Noel has not been apprised of any alternative form of claim filing. When her friend was not available to help her with the Tele Serve she was unable to use it. This resulted in disqualification for the week as well as being “dropped” from the system – which requires even more computer and telephone based work to “refile” or “reopen”. All of which requires the assistance of someone who speaks English. No such assistance has ever been provided by DLT or BOR in a way that Ms. Noel could understand and access.

**NOTICES**

In addition, Ms. Noel was sent a notice scheduling her for a telephone conference. The notice is in English and Spanish. Ms. Noel does not remember receiving the notice, which is not

<sup>1</sup> As of the filing of this complaint Ms. Noel is awaiting a Referee’s Decision in this matter. However, the Referee has stated on the record that he will not be dealing with the civil rights/language issues in this matter.

B<sub>2</sub>

surprising as she can't decipher either language. Even if she had received it she would not be able to read or understand it. Apparently no Babel notice was attached.

When Ms. Noel missed her telephone conference she was sent a second notice telling her she was disqualified for failing to make herself available for the telephone call. That notice is also in English and Spanish. Ms. Noel does not remember receiving the notice, which is not surprising as she can't decipher either language. Even if she had received it she would not be able to read or understand it. Apparently no Babel notice was attached. Because Ms. Noel either did not receive or couldn't understand the notice she did not appeal it timely. She is being charged a disqualification/possibly overpayment for a week as a result. Her appeal is currently pending and both the disqualification and untimely appeal are at issue.<sup>2</sup>

Included with this complaint are:

- 1) Statement signed by Ms. Noel
- 2) The two notices mentioned above as well as the Hearing Notice resulting from late appeal
- 3) US DOL letter referencing assistance that needs to be provided to Limited English Speakers, particularly in the context of technology based claims/access and filing for unemployment benefits (such as Tele Serve or computer based applications).

## REMEDIES SOUGHT

- 1) Individual case: Lifting of any period of disqualification or overpayment resulting from inability to contact Tele Serve or from the notices attached. Waiver of any lateness with regard to appeal of these matters.
- 2) In addition Ms. Noel seeks the broader remedies indicated below to avoid a repetition of these problems for herself and other Claimants.

I. **Tele Serve:** Alternative claim filing for persons who do not speak English, Spanish or Portuguese. This could be: a mail in form; a fax-in form or a separate call center number that accesses a language bank. The option should not be more burdensome than Tele Serve (e.g. don't require in-person at the office, allow recipient to use Tele Serve when a relative can help and the alternative mail-in form when they can't) and it should be made available/identified at the time of application. All applicants should be asked about their language ability and need and directed to appropriate claim filing option(s) that don't require them to rely on outside sources unless they choose to do so. They should be notified of alternatives should their outside source of assistance be unavailable.

- In addition the Tele Serve message should be changed so that non-English speakers can choose their available language (Spanish, Portuguese) up front instead of waiting through the long English message. (It is so long that many first

---

<sup>2</sup> It isn't clear from the record whether the one week overpayment is due to the failure to call Tele Serve or the failure to be present for the telephone conference or both. In either case Ms. Noel had no help with language access sufficient to enable her to comply.

time callers are likely to hang up, not knowing there is an alternative language option.)

- The up-front Tele Serve option ideally would also include other frequent language options redirecting to other extensions.
- II. Notices should include Babel notices directing recipients to an actual number where they can get help. Careful thought should be given to how to provide such assistance to a telephone caller who is dealing with a notice they can't understand. (For example, the most frequent notices could be coded with a number so that an unemployment denial would = Form 2, a granting of benefits would = 3, etc.) Identification of the claimant's language at the time of application would also facilitate flagging of less frequently encountered languages (those not included in Babel notice) so that notice recipients can be provided specific information at the time of application regarding how and where to access language assistance anytime a notice is received.
- III. Training should be provided to all appropriate staff regarding the provision of language access assistance. Appeal timelines should be waived whenever lack of language access impedes ability to comply with program requirements, claim filing, etc. All staff should be trained to recognize such situations.
- IV. All technology (websites, phone systems, Tele Serve) related to claim filing, applications, program compliance should be reviewed for language accessibility.

Thank you for your assistance in resolving this matter. I look forward to a prompt response.

Very truly yours,



Veronika Kot  
Staff Attorney

Encl.

I, Gracianne Noel, would like to file this complaint:

I have very limited English. My language is Haitian Creole.

**Tele Serve**

I am not able to access Tele Serve without help because there is no option for Haitian Creole. Only English, Spanish and Portuguese are available.

To my knowledge there is no other option or way to continue to qualify for unemployment benefits – calling Tele Serve weekly is required.

My friend has been helping me call in to Tele Serve but when she is not available I can't get through the system. Then I get disqualified from benefits for that week. And then I'm supposed to refile my claim through the website which I also can't do because of language.

**Notices**

The Department of labor and training told me I missed a telephone conference and that I am disqualified from benefits for that week.

I don't remember getting the notice. But even if I got it I wouldn't be able to read it. I don't read English well enough to understand the notice they say they sent me. I don't read Spanish at all.

It does not seem fair that I should lose benefits because I can't use Tele Serve independently or because the notice is only in languages I don't understand.

This statement was translated by my friend Edith Laurent.

Gracianne Noel March 1, 2017

Gracianne Noel

DEPARTMENT OF LABOR AND TRAINING  
Central Adjudication Unit  
PO Box 20067 Cranston, RI 02920-0941

B5

GRACIANNE M NOEL  
11 1/2 CROSS ST  
CENTRAL FALLS RI 02863

Mail Date: 11/29/16  
Local Office: 02 CALL CENTER  
Employer: ADDITIONAL PERSONNEL

We have received information which if correct, could adversely affect your right to continue to receive Unemployment Compensation Benefits. The information we have received is as follows:

INFORMATION RECEIVED INDICATES YOU WERE DISCHARGED FROM YOUR JOB.

With regard to the above information, you are hereby advised that a telephone hearing has been scheduled:

Date: 12/05/16  
Time: 8:00 AM - 3:00 PM  
Tel. No.: (401)241-4735

You will be called at the number listed above on the day and time scheduled. If the number is incorrect, please call this office at (401)462-8300. IF YOU ARE UNABLE TO SPEAK OR UNDERSTAND ENGLISH, PLEASE HAVE AN INTERPRETER AVAILABLE TO TRANSLATE FOR YOU WHEN WE CALL.

If you do not have a telephone number where you can be contacted, you must call the Central Adjudication Unit on the day and time of your scheduled telephone appointment. You can contact the Central Adjudication Unit by calling, (401)462-8650 and choosing option 1 to speak with a representative. If you do not have access to a telephone, you can use one free of charge at your local networkRI career center during normal business hours.

You have a right to be heard at this informal hearing at which time you may present affidavits, evidence or witnesses on your behalf. You also have a right to be represented by counsel. If you fail to be available for this hearing, you may be redetermined to be ineligible and your benefits will stop. Postponement of this hearing will NOT be granted except for good cause. Request for postponement or, if you have any questions about this hearing, call the Central Adjudication Unit.

Aviso importante, Por favor escoge el uso de un intérprete para entender esta carta.

Telephone: (401)462-8300 Fax: (401)462-8318 TTY Via RI Relay 711

B

An Equal Opportunity Employer/Program. Auxiliary aids and services available upon request for individuals with disabilities.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF LABOR AND TRAINING

B6



TTY Via RI Relay 711

Central Adjudication Unit, PO Box 20067, Cranston, RI 02920-0941  
Tel: (401)462-8300 FAX: (401)462-8318 TTY via RI Relay: 711  
Internet address: www.dlt.ri.gov/ui

CLAIMANT'S DECISION

|                                    |  |  |  |
|------------------------------------|--|--|--|
| 3-1-17<br>DATE: 2-20-17            |  | BOARD OF REVIEW<br>Exhibit # 2                 |  |
| <input type="checkbox"/> OBJECTION |  |  |  |
| <input type="checkbox"/> BOARD     |  | <input type="checkbox"/> REFEREE               |  |
| <input type="checkbox"/> CLAIMANT  |  | <input type="checkbox"/> OTHER                 |  |
| <input type="checkbox"/> EMPLOYER  |  | <input checked="" type="checkbox"/> DEPARTMENT |  |

Mailing Date: 12/08/16  
Employer: NA  
SSN: 1595  
No: 1639931-00  
Reprinted: 01/13/17

GRACIANNE M NOEL  
11 1/2 CROSS ST  
CENTRAL FALLS RI 02863

You were scheduled for a telephone adjudication appointment on 120516. Efforts to contact you were unsuccessful.

Rule 17 (I) of the Rhode Island Department of Labor and Training Rules provides, in part, that any individual who fails to contact the department for their scheduled telephone interview, shall not be eligible to establish a credit for waiting period or receive benefits for the week(s) during which such failure occurs unless such failure is determined to have been with good cause.

It is determined your failure to report was without good cause as the Department has no information regarding your inability to respond or be available for the scheduled appointment. You are denied benefits as indicated below.

This disqualification covers the period indicated below according to Section Rule 17 I: You are denied benefits for the 1 week ending 121016 only. If you are unemployed after the expiration of your disqualification period, you may contact the Call Center for a determination of your rights to collect benefits at that time.

Authorized Representative of the Director

RIGHT TO APPEAL

If you disagree with this decision, you must file a written appeal within 15 calendar days, including weekends and holidays, of the mailing date indicated on this decision or IT WILL BECOME FINAL. You may file an appeal either by mail, fax or Internet to the address/fax number/website above. In your letter, please provide your name, social security number, address, case number you are appealing, and reason for appeal. Once your appeal is received, you will receive further instructions by mail. IMPORTANT: You must continue using Tele-Serve on a weekly basis while pending any appeal hearing or further court proceedings, if you are still totally or partially unemployed.

IMPORTANT: You may have this document interpreted at no cost to you by contacting the department at 401-243-9100 and selecting one of the following language options: Portuguese, Laotian, Cambodian, or Hmong. If you need assistance in a language that is not listed, please contact the Call Center at 401-243-9100.

DEPARTMENT OF LABOR AND TRAINING

TTY Via RI Relay 711

Central Adjudication Unit, PO Box 20067, Cranston, RI 02920-0941

Tel: (401)462-8300 FAX: (401)462-8318 TTY via RI Relay: 711

Internet address: www.dlt.ri.gov/ui



B7

CLAIMANT DECISION

Mailing Date: 12/08/16

Employer: NA

SSN: 1595

No: 1639931-00

Reprinted: 01/13/17

GRACIANNE M NOEL

Page: 2

Esto es un documento importante. Si usted no está de acuerdo con ésta decision, usted debe de apelar por correo, fax, o via la Internet dentro de los próximos 15 dias del calendario a la dirección/fax antedichos o ésta SERA LA DECISION FINAL. Si necesita más información, favor de referirse a su folleto de Derechos de Beneficios. IMPORTANTE: Usted tiene que continuar usando el Tele-Servicio semanalmente mientras esté pendiente su audiencia de apelación, si aún continúa total o parcialmente desempleado.

IMPORTANTE: Usted puede tener estos documentos traducidos o interpretados, sin costo alguno para usted, comunicándose con el Centro de Servicio de Seguro de Desempleo en el 401-243-9100 y seleccionando una de las siguientes opciones de idioma: Español, Portugués, Laos, Camboya o Hmong. Si necesita ayuda en un idioma que no está en la lista, por favor póngase en contacto 401-243-9100 y un representante le ayudará.

B8



Chris Fierro  
Chairman  
Nathaniel J. Rendine  
Edward A. Lombardo, Sr.

# Board of Review

For  
The Department of Labor and Training  
74 West Road, Hazard Bldg., 1<sup>st</sup> Floor  
Cranston, RI 02920  
Telephone: (401) 462-9400 Fax: (401) 462-9401  
website: <http://www.dlt.ri.gov/bor>  
Email: [dlt.borinfo@dlt.ri.gov](mailto:dlt.borinfo@dlt.ri.gov)

|                                    |   |
|------------------------------------|---|
| BOARD OF REVIEW                    |   |
| DATE: 3-1-17                       | Exhibit # 1                                 |
| <input type="checkbox"/> OBJECTION |   |
| <input type="checkbox"/> BOARD     | <input checked="" type="checkbox"/> REFEREE |
| <input type="checkbox"/> CLAIMANT  | <input type="checkbox"/> OTHER              |
| <input type="checkbox"/> EMPLOYER  | <input type="checkbox"/> DEPARTMENT         |

## NOTICE OF REFEREE HEARING

GRACIANNE M NOEL  
110 1/2 CROSS ST APT. 2  
CENTRAL FALLS, RI 02863-3001

MAILING DATE: February 17, 2017  
SSN: 1595  
APPEAL NUMBER: 20170247 UC  
DATE OF APPEAL: January 13, 2017

THIS IS NOTICE TO THE FOLLOWING:  
Director  
Claimant

### YOU ARE NOTIFIED TO APPEAR ON:

DAY: Wednesday                      DATE: March 1, 2017                      TIME: 10:45 AM

Board of Review, 74 West Road, Hazard Bldg., 1st Floor, Cranston, RI 02920

for hearing on the appeal from a Director's decision denying benefits under the following provision of the Rhode Island Employment Security Act:

28-44-12, RULE 17 I      AVAILABILITY-FAILURE TO USE TELE-SERVE  
28-44-39(b)                      LATE APPEAL FROM DIRECTOR'S DECISION

**IMPORTANT:** THIS MAY BE THE ONLY HEARING PROVIDED ON THIS MATTER. AN INTERESTED PARTY DOES HAVE THE RIGHT TO APPEAL FROM A DECISION OF A REFEREE AND REQUEST A REVIEW OF THAT DECISION BY THE BOARD OF REVIEW. FOR THE MOST PART, HOWEVER, BOARD OF REVIEW DECISIONS ARE MADE ON REVIEW ONLY, WITHOUT ANOTHER HEARING (REF RIGL 28-44-47). ALL PARTIES, THEREFORE, SHOULD APPEAR. DO NOT BE LATE. PLEASE REPORT AHEAD OF TIME TO REVIEW THE RECORD.

cc: DIRECTOR  
VERONIKA KOT, ESQ.

**\*\*\*PLEASE NOTE: ALL PERSONS APPEARING AT THE BOARD OF REVIEW MUST PRESENT A VALID PERSONAL IDENTIFICATION\*\*\***

**IMPORTANT: DO NOT USE GPS FOR THIS ADDRESS**

**\*\*Please follow included directions\*\***

IMPORTANT INSTRUCTIONS ON REVERSE SIDE



|  |   |
|--|---|
| <b>EMPLOYMENT AND TRAINING ADMINISTRATION<br/>         ADVISORY SYSTEM<br/>         U.S. DEPARTMENT OF LABOR<br/>         Washington, D.C. 20210</b> | <b>CLASSIFICATION</b><br>Unemployment Insurance |
|  | <b>CORRESPONDENCE SYMBOL</b><br>OUI             |
|  | <b>DATE</b><br>October 1, 2015                  |

**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. § 2938<sup>1</sup>;
  - Section 188 of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3248;

<sup>1</sup> 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.

|                            |                                      |
|----------------------------|--------------------------------------|
| <b>RESCISSIONS</b><br>None | <b>EXPIRATION DATE</b><br>Continuing |
|----------------------------|--------------------------------------|

- 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 38<sup>2</sup>;
  - 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

<sup>2</sup> 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.

B<sub>u</sub>

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.<sup>3</sup> 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.

<sup>3</sup> 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 (11<sup>th</sup> 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.<sup>4</sup> 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

<sup>4</sup> 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.<sup>5</sup> 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

<sup>5</sup> 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).

B<sub>16</sub>

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 person<sup>6</sup> 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

---

<sup>6</sup> 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.digital.gov.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”<sup>7</sup> 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.

---

<sup>7</sup> 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.<sup>8</sup> 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

---

<sup>8</sup> *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](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.<sup>9</sup>

<sup>9</sup> 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 8<sup>th</sup> 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](mailto: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](http://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





RHODE ISLAND AND PROVIDENCE PLANTATIONS

**Department of Labor and Training**

Center General Complex  
1511 Pontiac Avenue  
Cranston, RI 02920-4407

Telephone: (401) 462-8000  
TTY: Via RI Relay 711

Gina M. Raimondo  
Governor  
Scott R. Jensen  
Director

May 30, 2017

Veronika Kot  
Staff Attorney  
RI Legal Services  
56 Pine Street, Suite 400  
Providence, RI 02903

**RE: NOTICE OF FINAL ACTION – GRACIANNE NOEL**

Dear Attorney Kot:

This Notice of Final Action serves as the Department's determination to your client's complaint regarding the denial of language access services. Ms. Noel's complaint was received electronically on Thursday, March 2, 2017. The complaint alleged that Ms. Noel was denied language access services related to her unemployment benefits claim, specifically, in accessing the Department's automated telephone system, TeleServe, and with regard to notices sent by the Board of Review.

**Background**

Ms. Noel started receiving unemployment benefits in November of 2016. To comply with the requirement of weekly certification via the Department's TeleServe system, Ms. Noel required the assistance of a friend who was proficient in English. Ms. Noel is not proficient in English, Spanish, or Portuguese – the only languages TeleServe is available in. Ms. Noel is proficient in Haitian Creole.

There came a time when Ms. Noel's friend was unavailable and according to Ms. Noel, she was unable to access the TeleServe system and certify for her unemployment benefits. Consequently, she was disqualified for the week(s) she attempted to certify on her own, without the assistance of her English proficient friend. The disqualification required Ms. Noel to refile her claim, which she stated she tried to do through the website, but could not because only English and Spanish language options were available.

Ms. Noel also alleged issues with Department notices. According to Ms. Noel, she received a notice from the Department regarding the scheduling of a telephone conference<sup>1</sup>. The notice received was in English and Spanish, and did not include a Babel notice. Consequently, Ms. Noel failed to participate in the phone conference. Thereafter, she received a second notice, again in English and Spanish and without a Babel notice, disqualifying her from receiving benefits

---

<sup>1</sup> Ms. Noel additionally states that she doesn't remember receiving the notice, but even if she did, she would not have understood it given that it was only in English and Spanish, and without an accompanying Babel Notice.

Noel Notice of Final Action

because of her failure to be available for the phone conference. The second notice advised Ms. Noel of her appeal rights, but Ms. Noel did not understand the notice and therefore, failed to file an appeal.

With the assistance of counsel, Ms. Noel filed a late appeal to the Board of Review regarding both her disqualification and failure to file a timely appeal. On or about March 1, 2017, a Referee from the Board of Review allowed Ms. Noel's late appeal to proceed and further determined that there was no overpayment of benefits and that she was eligible to receive unemployment benefits.

**Findings of Fact**

- 1.) Ms. Noel is a limited English proficient individual. She is proficient in Haitian Creole.
- 2.) The Department receives federal funding for its unemployment benefits program and is subject to the provisions of Title VI.
- 3.) At all times relevant to this complaint, Ms. Noel was a qualified unemployment benefits claimant.
- 4.) Ms. Noel relied upon a third party who was proficient in English to file her claim and certify each week that she was still eligible for unemployment benefits through the Department's TeleServe system.
- 5.) When the third party was unavailable, Ms. Noel was unable to navigate her way through the required process to properly handle her claim due to language access issues.
- 6.) Because of the language barrier, Ms. Noel failed to take required action and was disqualified from receiving unemployment benefits.
- 7.) Because the third party who was proficient in English had been assisting Ms. Noel with her claim for a period of time, the Department was not aware that Ms. Noel was limited English proficient and required language access services.
- 8.) The Department did not become aware of Ms. Noel's language access services needs until her complaint was filed on March 2, 2017.
- 9.) Subsequent to the filing of Ms. Noel's complaint, she had a hearing at the Board of Review that resolved the issues on appeal in her favor.
- 10.) On or about March 15, 2017, I sent you a sample Babel notice in French Creole to show to Ms. Noel to see if she could understand it.
- 11.) On or about April 3, 2017, you notified me that she could understand the Babel notice.
- 12.) On or about March 17, 2017, unemployment insurance administrators met with all division managers and presented a Standardized Work Instruction Sheet with step by step instructions on the process that should take place in order to properly handle calls from limited English proficient claimants.
- 13.) On or about March 17, 2017, the Standardized Work Instruction Sheet was emailed to all division staff.

Noel Notice of Final Action

- 14.) On or about March 22, 2017, the procedures outlined in the Standardized Work Instruction Sheet were discussed with staff in separate team meetings.
- 15.) On or about March 17, 2017, a customer service representative from the Call Center was instructed to call Ms. Noel and inform her of the process she should use to call TeleServe each week.
- 16.) On or about March 17, 2017, the customer service representative called Ms. Noel using the Department's language line and advised Ms. Noel that all pending payments for her claim had been processed, that Ms. Noel should call the Call Center at 401-243-9100 each week to certify payment, press 2 for Call Center, Press 1 for English, Press 2 for all other TeleServe payment issues, and that selection would route Ms. Noel's call directly to a customer service representative who would connect to the language line.
- 17.) On or about March 17, 2017, remarks were updated on the claim in the computer system to advise all customer service representatives that Ms. Noel was a limited English proficient claimant, that Haitian Creole was the language needed, and to use the procedures outlined in the Standardized Work Instruction Sheet when processing her claim.
- 18.) As of May 13, 2017, Ms. Noel has been regularly contacting the TeleServe payment line to process her unemployment claim benefits, though not as instructed (the language line has not been used).

**Conclusion**

In Ms. Noel's case, because she had been using a third party who was proficient in English, the Department was not aware that Ms. Noel was limited English proficient and required language access services in Haitian Creole until there was a problem – the third party was not available and Ms. Noel could not certify for benefits on her own. The Department cannot be expected to offer language access services to claimants when it is not aware of their language access needs. See 29 CFR 38 (h) ("once a recipient becomes aware of the non-English preferred language of an LEP beneficiary . . . the recipient must convey vital information in that language.").

Haitian Creole is not a language used by a significant proportion of the population using the unemployment benefits program and so the Department does not have language access services in this language readily available. Moreover, because Haitian Creole is not a language used by a significant proportion of the population accessing unemployment benefits, the Department is not required to have language access services readily available in this language. Nonetheless, the Department does have an established process for providing language access services to individuals like Ms. Noel, whose preferred language is not one used by a significant proportion of the population accessing the unemployment benefits program.

Once the Department was made aware of Ms. Noel's need for language access services, it had an obligation to take reasonable steps in order to provide Ms. Noel meaningful access to the unemployment insurance program. The process and procedures identified in the Findings of Fact were reasonable, and if followed, would provide Ms. Noel meaningful access to the program. However, according to the Department's reports, Ms. Noel has not attempted to use the procedure that was created specifically to address her claims, but instead, has opted to continue to rely on a third party to file her claim. The Department cannot be held responsible for Ms. Noel's choice in this regard. It is unknown to the Department why Ms. Noel has not called in as instructed, but if

C4

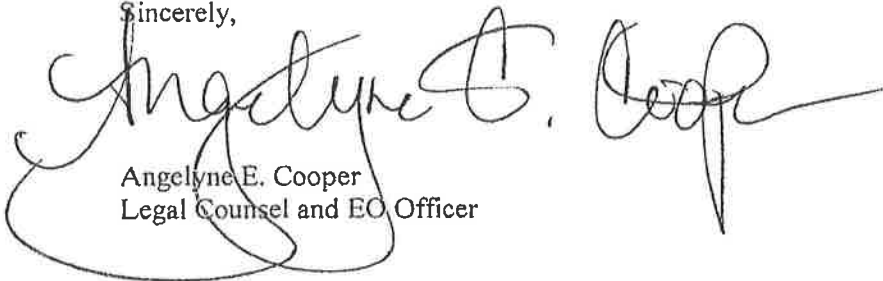
Noel Notice of Final Action

Ms. Noel feels unsure of the procedure that was provided to her, the Department will gladly review it again with her.

For all of the above stated reasons, I am closing this matter as resolved. If Ms. Noel is dissatisfied with the Department's determination regarding her complaint, she may file a complaint with the Civil Rights Center (CRC) within thirty (30) days of the date this correspondence was received.






If you have any questions or concerns, please feel free to contact me at 401-462-8897 or by email at [angelyne.cooper@dlr.ri.gov](mailto:angelyne.cooper@dlr.ri.gov).

Sincerely,

A handwritten signature in cursive script that reads "Angelyne E. Cooper". The signature is written in black ink and is positioned above the typed name and title.

Angelyne E. Cooper  
Legal Counsel and EO Officer



|  |  |  |
|--|--|--|
| <p>8</p> <p>When the claimant contacts the Call Center to certify for payment, you will need to access the language line, ask the certification questions by phone and process the payment, if eligible.</p> | <p></p>                   | <p>9</p> <p>3/17/17 CLMT CONTACTING FOR PAYMENT FOR W/E 3/11/17 - LEP CUSTOMER - SPEAKS FRENCH - ACCESSED LANGUAGE LINE -2A COMPLETED BY PHONE ADVISED TO CONTACT CC EACH WEEK FOR PAYMENT</p> |
| <p>LEGEND</p>  |  |  |
| <p> = STANDARD</p>  | <p> = SAFETY ITEMS</p>    | <p>Implementation Date: 3/17/2017</p>  |
| <p> = CONTROL ITEMS</p>   | <p> = VISUAL CHECKS</p> | <p>Author: Administrative Benefits</p>   |
| <p>Required Skills</p>   |  | <p>Interviewer &amp; Benefits Claim Specialist</p>   |

|               |         |          |         |          |          |             |
|---------------|---------|----------|---------|----------|----------|-------------|
| Customer Name | Service | Location | Product | Priority | Category | Case Number |
| 123456        | 123456  | 123456   | 123456  | 123456   | 123456   | 123456      |

9

REMARKS

3/17/17 CLMT CONTACTING FOR PAYMENT FOR W/E 3/11/17 - LEP CUSTOMER - SPEAKS FRENCH - ACCESSED LANGUAGE LINE -2A COMPLETED BY PHONE ADVISED TO CONTACT CC EACH WEEK FOR PAYMENT

Implementation Date:

3/17/2017

Author:

Administrative Benefits

SWIS Team Approval:

Required Skills

Interviewer & Benefits Claim Specialist

E,

THIS IS AN IMPORTANT NOTICE ABOUT YOUR APPEAL

If you do not understand this notice, please contact the Board of Review to speak with a Spanish interpreter. Spanish interpreters are available to assist you at your hearing. You cannot use your own interpreter. The Board of Review will provide an interpreter for you. It is important that you call the Board of Review at, 401-462-9400, at least seven (7) days prior to your hearing to request an interpreter.

The Board of Review is responsible to provide interpreter services at no cost to you. You are responsible for requesting these services in accordance with the procedure outlined in this notice.

SPANISH:

‘Este es un aviso importante para su apelación’.

Si usted no entiende esta notificación, por favor contacte al Board of Review para hablar con un intérprete en Español. Intérpretes en Español están disponibles para asistirle en su audiencia. Usted no puede usar su propio intérprete. El Board of Review le proveerá un intérprete para usted. Es importante que usted llame al Board of Review al 401-462-9400 por lo menos (7) días antes de su audiencia para pedir un intérprete.

El Board of Review es responsable de proveerle los servicios de intérprete no costo a usted. Usted es responsable de pedir estos servicios de acuerdo con estos procesos escrito en esta notificación.

PLEASE NOTE:

Interpreters in languages other than Spanish are also available to assist claimants at the hearing. Please contact the Board of Review at, 401-462-9400, at least seven (7) days prior to your hearing to request an interpreter for a language other than Spanish.

**KHMER**

"មានអ្នកបកប្រែភាសាខ្មែរ សម្រាប់សវនាការរបស់អ្នក។

សូមទាក់ទងគណៈកម្មការពិនិត្យឡើងវិញតាមលេខ 401-462-9400

ដែលមានរយៈពេលយ៉ាងតិចប្រាំពីរថ្ងៃ មុនកាលបរិច្ឆេទសវនាការរបស់អ្នក ដើម្បីរៀបរកអ្នកបកប្រែភាសា។

គ្មានការគិតថ្លៃ ឬការកំណត់តម្លៃអ្នកឡើយ សម្រាប់អ្នកបកប្រែភាសានេះ។"

**HMONG**

"Muaj cov neeg txhais lus hauv Hmoob rau qhov tshuaj xyuas koj rooj plaub. Tiv toj rau Pab Pawg Kuaj Xyuas Ntaub Ntawv ntawm 401-462-940 tsawg kawg xya hnuv ua ntej hnuv teem caij hais koj rooj plaub txhawm rau teem tus neeg txhais lus.

Tsis muaj qhov sau nqi lossis sau nyiaj ntawm koj rau qhov pab txhais lus no."

**PORTUGUESE**

"Estão disponíveis intérpretes de Português para a sua audiência. Contacte o Board of Review (Conselho de Avaliação) através do número de telefone 401-462-9400 pelo menos sete dias antes da data da sua audiência para agendar os serviços de um intérprete.

Este intérprete é-lhe atribuído de forma gratuita."

**FRENCH CREOLE**

"Gen entrèprèt ki disponib an kreyòl pou odyans ou an. Kontakte Komisyon Evalyasyon an (the Board of Review) nan 401-462-9400 pou piti sèt jou anvan odyans ou an pou ka pwograme yon randevou avèk yon entèprèt. Ou pa p peye anyen pou entèprèt sa a."

There are interpreters available for your hearing in languages other than listed above. These interpreters are available free of charge. Please contact the Board of Review at 401-462-9400 at least seven to ten days prior to your hearing for further information.





STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF LABOR AND TRAINING

TTY Via RI Relay 711

Unemployment Insurance Svc. Ctr., PO Box 20389, Cranston, RI 02920-0944  
Tel: (401)243-9100 FAX: (401)462-8318 TTY via RI Relay: 711

DLT454-C

Mailing Date: 04/25/17  
Employer: AIR SERV CORPORATION  
Claimant: [REDACTED]  
SSN: [REDACTED]  
Decision#: [REDACTED]

[REDACTED]  
127 CLARENCE STREET  
APT 2  
PROVIDENCE RI 02909-3505

This office has received your request for an appeal. This appeal has been sent to the Appeals Board of Review for processing and scheduling.

The Board of Review will send you a NOTICE OF HEARING with the following information:

- The date and time of your appeal hearing;
- The location of the hearing;
- The section of the law being appealed;
- Any other pertinent information and instructions related to the hearing.

It is important you make every attempt to appear for the hearing on time. If you cannot attend, or wish to withdraw or cancel the hearing, call (401) 462-9400.

You must continue to make yourself available for full time work, actively look for full time work, and keep a record of all job search activities. You may contact the NETWORKri office nearest you for free services offered by the state to aid you in your search for work. If you are allowed benefits as a result of this appeal, the Unemployment Insurance Center will send payment forms, or issue payments due, upon receipt of a decision from the Board of Review. Questions regarding this appeal should be directed to (401) 462-8300 PRIOR TO receiving your NOTICE OF HEARING form, and to (401) 462-9400 AFTER receipt of that notice.

IMPORTANT: You must continue using Tele-Serve on a weekly basis while pending any appeal hearing or further court proceedings, if you are still totally or partially unemployed.

!Esto es un documento importante! Téngalo por favor traducido.

↳ This is an important document. Please have it translated,