State Responsibilities for Ensuring Access to Unemployment Insurance Benefits

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Presented by: Office of Unemployment Insurance, Employment and Training Administration and Civil Rights Center

U.S. Department of Labor
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Here’s what you can expect to get out of this webinar!

1. Legal requirements states must comply with to ensure that individuals, including those in protected classes, receive sufficient access to UI program services.

2. Diverse methods of providing UI program access.
1. Getting Our Heads Around the Issue of Access

2. Federal Requirements - Accessibility
   - Non-discrimination Provisions
   - UI Methods of Administration

3. Access Challenges

4. Methods of Ensuring Access

5. Resources, Partners, Technical Assistance

6. Questions?
What Does “Access” Mean?

- Communications that are easy to understand by all claimants
- Processes that are also easy to understand and to navigate by all claimants
- Providing alternative methods of communications or processes to those with barriers
- Under WIOA, providing “assistance” with claims filing in one-stop centers (see UIPL No. 20-15)
What Communications and Processes Must Be Accessible?

- Websites for communications
- On-line tools for filing claims and carrying out other required activities
- Forms/Questionnaires/Correspondence
- Benefit Rights Information (however provided)
- Appeal rights and appeal processes
- Instructions and information pertinent to filing and maintaining eligibility
- Staff verbal communications
- Not exhaustive list
Section 188

• Section 188 of WIA/WIOA prohibits discrimination on the basis of race, color, religion, sex, national origin, age or disability (as well as political affiliation or belief) by recipients of WIA/WIOA Title I financial assistance or by one-stop partners.

• Section 121 of WIA/WIOA defines state UI agencies as required one-stop partners, so state UI programs are subject to the nondiscrimination requirements of Section 188 of WIA/WIOA.

• The implementing regulations are 29 CFR Part 37 (WIA) and 29 CFR Part 38 (WIOA).
Nondiscrimination Requirements

What does discrimination look like?

- **Forms of Discrimination include:**
  - *disparate treatment* (intentionally treating members of protected groups differently based on their protected status) and
  - *disparate impact* (using policies or practices that are neutral on their face, but have a disproportionate impact on members of some protected groups).
Example of disparate impact:

- If a state went to an online only system for UI claims, and after a year it was found that such a system had a negative impact on one protected group compared to others, it would be discriminatory.
Nondiscrimination Requirements

- In addition to the obligation not to discriminate, the regulations include specific requirements for individuals with disabilities and for individuals with limited English Proficiency (LEP).
Legal Requirements: Individuals with Disabilities

• Section 188 of WIA and section 188 of WIOA prohibit discrimination based on disability in programs operated, and activities provided by, recipients of WIA and WIOA Title I financial assistance, or by one-stop partners.

• WIA/WIOA nondiscrimination regulations prohibit these covered entities (either directly or through contractual, licensing, or other arrangements) from using standards, procedures, criteria or administrative methods that have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.
• The regulations require, for example, 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 modification would fundamentally alter the nature of the service, program, or activity.
The WIA/WIOA 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 with disabilities are as effective as communications with others.
Legal Requirements: Other Laws for Individuals with Disabilities

- 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.

- And, Title II of the Americans with Disabilities Act 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.
Technology and online applications can expand access for people with disabilities, 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.
Technology: Individuals with Disabilities

- 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 communications options) that render the services, etc. as effective as those offered to others.
Legal Requirements: Individuals with Limited English Proficiency

• 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.

• Section 188 of WIA and section 188 of WIOA contain a similar provision.

• Executive Order 13166 also requires improved access to services for persons with limited English proficiency.
Obligation to provide LEP Services

• For language(s) 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.

• For less widely used languages, the recipient “should make reasonable efforts to meet the particularized language needs” of such persons.
Legal Requirements: Individuals with Limited English Proficiency

- 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 WIA/WIOA regulations, especially if such information and systems are not effectively translated into appropriate languages.
Legal Requirements: Individuals with Limited English Proficiency

- State UI agencies that develop web-based systems should carefully design them to ensure that information about services and benefits provided 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.
Use of machine translation (such as Google translate) are not recommended. Agencies have the obligation to ensure accuracy of all translations.
Legal Requirements: Older Individuals

• The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance. Section 188 of WIA/WIOA also prohibits discrimination on the basis of age in programs operated by, and activities provided by, recipients of WIA/WIOA Title I financial assistance or by one-stop partners.

• A large 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 website or file for benefits through an online system.
Legal Requirements: Older Individuals

- 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.
Section 303(a)(1) of the SSA

- States must have methods of administration reasonably calculated to ensure full payment of benefits “when due.”
Meaningful Access

- All individuals must have the opportunity to know about and undertake appropriate action(s) to apply for UI without undue burdens or barriers.

- Technology and information systems used to administer the program must not create barriers that may prevent individuals from filing for or receiving benefits when due.
UI Methods of Administration

- Individuals must have the opportunity to protect their benefit rights
- Standard for Claim Determination
  - Requires written notice of any determination that adversely affects an individual’s right to benefits.
  - Written determinations must furnish sufficient information to enable individuals to understand these determinations and their right to protest, request reconsideration, or appeal.
Access Challenges

- UI has evolved from primarily an in-person system to a remote access system.
- New technologies have created efficiencies and generally made the process more convenient for many UI claimants.
- Nevertheless, technology can create access issues for some claimants, which may effectively deny their ability to receive benefits to which they may be entitled.
Access Challenges

• Individuals who may face access barriers:
  – Individuals with disabilities
  – Individuals with limited English proficiency
  – Older Individuals
  – Individuals who may experience challenges with technology
  – Individuals who have challenges with literacy
Ensuring Access with Evolving Technology

Testing of New Technology/New Systems
- Reasonable steps must be taken to adequately test new technology.
- Testing should occur in central offices, call centers, American Job Centers and other appropriate locations.

Customer Support
- States must take steps to support customer use of technology driven processes
Methods of Ensuring Access

- Alternative access methods such as telephonic and in-person options must be in place.
- Alternative access methods must be communicated clearly and broadly.
- States should use a wide array of media to ensure effective communication to individuals with potential access barriers.
Methods of Ensuring Access

Meaningful Access Includes:

• Ensuring staff are aware of all available access points and training staff on how to support claimants using them

• Ensuring availability of trained staff in the one-stop centers (physically or virtually) to provide support
Ensuring Access: Individuals with Disabilities

• Ensuring Meaningful Access:
  – Make websites Section 508 compliant.
  – Provide alternative access methods other than the website
  – Furnish appropriate auxiliary aids or services
  – Ongoing and periodic training of agency staff
Ensuring Access: Individuals with Limited English Proficiency (LEP)

- Ensuring Meaningful Access:
  - Translation of vital information
    - Babel Notices in vital communications.
  - Informing the public about LEP services
  - Training staff to identify potential language barriers and provide alternative options.
  - Maintain a system to address complaints and make improvements
Ensuring Access: Older Individuals

• Ensuring Meaningful Access:
  – Recognizing special needs of some older workers such as unfamiliarity with new technology:
    • Use of alternative features such as assistive devices, access to information and benefits by telephone, fax and/or in person services; and
    • Develop webpages using simple, conspicuous straightforward features to easily obtain information.
Ensuring Access:
Individuals who Experience Challenges with Technology

Ensuring Meaningful Access:
• Developing effective alternative options to on-line filing and for accessing information.
• Disseminating, broadly and conspicuously, information about alternative access options.
Ensuring Meaningful Access:

- Communicating critical information in a clear, concise and organized manner

- Recognizing different literacy levels

http://www.plainlanguage.gov/index.cfmInclude
Partnering with Your States EEO Officer

- State Equal Opportunity (EO) Officers have an important role to play:
  - Coordinating with the agency staff to help ensure nondiscrimination and equal opportunity obligations are met.
  - Providing valuable input on new plans and efforts that change or modify UI systems, processes and procedures.
More Technical Assistance Coming Soon

- ETA and CRC will collaborate to plan for additional technical assistance to states.
- State input is requested (now, through the chat feature) or by email to the appropriate ETA Regional Office on the type(s) of technical assistance that would be most useful.
Resources

• Section 508 Standards
  – http://www.access-board.gov/
  – www.section508.gov

• Web Content Accessibility Guidelines
  – www.w3c.org/

• Web Accessibility Initiative
  – www.w3c.org/WAI

• Employment Related Services for Disabled Persons:
  – http://www.dol.gov/odep/topics/Accommodations.htm
  – http://askjan.org/topics/univdes.htm
Resources

• DOL Guidance for LEP Individuals
  – http://www.dol.gov/oasam/regs/fedreg/

• CRC’s Training and Compliance Tools

• CRC LEP Materials

• DOJ LEP Materials:
  – http://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/FAQ_About_LEP_Title_VI_and_Title_VIRegs.pdf
Please enter your questions in the Chat Room!
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Federal Requirements to Protect Individual Rights in the Unemployment Compensation Overpayment Prevention and Recovery Procedures (see Unemployment Insurance Program Letter No. 01-16).

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THANK YOU

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