

**INITIAL DETERMINATION**

Miami Workers Center  
(Charging Party) }  
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 }  
 v. }  
 }  
 Florida Department of Economic Opportunity, }  
 Division of Workforce Services, }  
 Office of Unemployment Compensation }  
 (Respondent) }  
 \_\_\_\_\_ }

CRC Complaint No. 12-FL-048

**I. AUTHORITY**

The U.S. Department of Labor’s (the Department’s or DOL’s) Civil Rights Center (CRC) has completed its investigation of the complaint of discrimination filed on or about November 21, 2011, by the Miami Workers Center (MWC), the Charging Party (CP),<sup>1</sup> against the Respondent, the Office of Unemployment Compensation (OUC)<sup>2</sup> operated by the Division of Workforce Services (DWS) of the Florida Department of Economic Opportunity (DEO). This complaint was investigated pursuant to CRC’s authority under four statutes and their implementing regulations:

- Section 188 of the Workforce Investment Act of 1998 (WIA), as amended, 29 U.S.C. 2938 (WIA Section 188), and its implementing regulations at 29 CFR part 37.<sup>3</sup>
- Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.* (Title VI), and DOL’s regulations implementing that title, at 29 CFR part 31.<sup>4</sup>
- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), and DOL’s regulations implementing that section, at 29 CFR part 32.<sup>5</sup>

<sup>1</sup> The CP is represented by Florida Legal Services, Inc.

<sup>2</sup> During the 2012 legislative session, a bill passed by the Florida legislature changed the name of this office to the Office of Reemployment Assistance, and replaced all references to “unemployment compensation” in the Florida system with references to “reemployment assistance.” For consistency and clarity, this Initial Determination will use either the terms “unemployment compensation” and “UC,” or, when referring to DOL policies and documents, the terms “unemployment insurance” and “UI.”

<sup>3</sup> In pertinent part, WIA Section 188 prohibits discrimination on various bases, including national origin and disability, in programs and activities operated by recipients of WIA Title I financial assistance or by One-Stop partners.

<sup>4</sup> Title VI prohibits discrimination on various bases, including national origin, in programs and activities operated by recipients of Federal financial assistance.

<sup>5</sup> In pertinent part, Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance.

- Title II of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. 12132 *et seq.* (ADA Title II).<sup>6</sup> The regulations implementing ADA Title II are published at 28 CFR part 35; 28 CFR 35.190(b)(7) makes DOL responsible for enforcing that Title with regard to components of State and local governments that operate “programs, services, and regulatory activities relating to labor and the work force.”

## II. JURISDICTION

The CP alleges that the Respondent’s unlawful conduct began between July 1 and August 1, 2011, and is ongoing. The complaint was therefore filed timely.

During the period from July 1, 2011, through the present, under Florida’s unemployment compensation (UC) laws, the Respondent has paid UC benefits to unemployed workers who satisfy specified criteria. Pursuant to WIA Section 121(b)(1)(B)(xii) (29 U.S.C. 2841(b)(1)(B)(xii)), the Respondent has been a required partner in the nation’s American Job Center<sup>7</sup> service delivery system, and has been required to make its services available through that system. Therefore, during the period at issue, the Respondent has satisfied the definition of “recipient” set forth in the WIA nondiscrimination regulations at 29 CFR 37.4, and has been subject to the requirements of those regulations pursuant to 29 CFR 37.2(a)(1) and (2).

Additionally, during the period from July 1, 2011, through the present, the Respondent’s UC program has been a recipient of financial assistance from DOL.<sup>8</sup> Therefore, during the period at issue, the Respondent has been subject to Title VI, Section 504, and DOL’s regulations implementing those statutory provisions.

Furthermore, during the period at issue, the Respondent has been a State agency that operated “programs, services, and regulatory activities relating to labor and the work force.” It therefore has been subject to ADA Title II as enforced by DOL during that period. *See* 28 CFR 35.190(b)(7).

## III. ALLEGATIONS

The CP alleges that effective sometime between July 1 and August 1, 2011, the Respondent began requiring that all claimants for UC benefits (1) file claims online and (2) complete an online skills assessment as part of the claims-filing process. The CP further alleges that for various reasons, the new claims-filing process as implemented by the Respondent discriminates against persons who are limited English proficient (LEP) or have disabilities, and “constructively denies” such persons “of access to services and benefits.”

<sup>6</sup> ADA Title II prohibits discrimination on the basis of disability by public entities, including State governments.

<sup>7</sup> These Centers were formerly known as One-Stop Career Centers or One-Stop Centers. *See* DOL Employment and Training Administration (ETA), Training and Employment Guidance Letter (TEGL) No. 36-11 (June 14, 2012). This Initial Determination will use the term “American Job Center,” except in direct quotations.

<sup>8</sup> *See, e.g.*, Federal Award Identifier UI210931155A12, Unemployment Insurance Formula Grant, Funding Amount \$37,658,443, Starting Date 10-01-2010, Ending Date 12-31-2013.

## IV. METHODOLOGY

CRC conducted an onsite investigation during the week of February 27 through March 2, 2012. CRC also reviewed materials submitted before and after the onsite by the Complainant and the Respondent, and conducted its own online research. CRC concludes that the information in the file is sufficient to support this Initial Determination.

## V. FINDINGS OF FACT

### A. BACKGROUND

1. *Overview.* The State of Florida operates its UC system to provide “temporary wage replacement benefits to qualified individuals who are out of work through no fault of their own.”<sup>9</sup> Eligibility for the program is governed by State law, consistent with Federal law. To receive UC benefits, a claimant must meet certain monetary and non-monetary eligibility requirements.<sup>10</sup> The Respondent issues determinations and redeterminations on individual claimants’ satisfaction of these eligibility requirements.<sup>11</sup> A party who believes a determination is inaccurate may request reconsideration within 20 days from the mailing date of the determination; the Respondent will review the information on which the request is based and issue a redetermination.<sup>12</sup> Additional appeals are available, as discussed *infra* in this Initial Determination.

2. *Previous filing methods.* Before July 2011, the Respondent accepted initial claims for UC benefits in three ways: by postal mail, by telephone, and by Internet.<sup>13</sup> A February 2009 study commissioned by DEO’s predecessor agency, the Agency for Workforce Innovation (AWI),<sup>14</sup> determined that 55 percent of claims were filed via the Internet,<sup>15</sup> while 40 percent

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<sup>9</sup> Florida DEO website, “Unemployment Compensation Benefits Center: File a Claim,” English version (“‘File a Claim,’ English”), available at <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/file-a-claim> (most recently visited November 27, 2012).

<sup>10</sup> Florida Senate Bill Analysis and Fiscal Impact Statement Prepared By Professional Staff of Judiciary Committee, CS/SB 728, Unemployment Compensation, March 8, 2011 (“Senate Judiciary Committee Bill Analysis”), Section II, “Present Situation,” at 4, “State Unemployment Compensation Benefits.” Note: this analysis was of the companion bill; the version that was actually passed was House Bill 7005.

<sup>11</sup> *Id.*, “Determinations and Redeterminations.”

<sup>12</sup> *See id.*

<sup>13</sup> State of Florida, Agency for Workforce Innovation, Unemployment Compensation Services, Schedule IV-B Feasibility Study, “Unemployment Compensation Modernization,” 2/3/2009 (“Feasibility Study”) (available at [http://floridajobs.org/unemployment/UC\\_ModernizationProject/documents/OtherDeliverables/20090121%20-%20AWI%20-%20Schedule%20IVB%20Feasibility%20Study%20for%20the%20Unemployment%20Compensation%20System%20v2\\_2d.pdf](http://floridajobs.org/unemployment/UC_ModernizationProject/documents/OtherDeliverables/20090121%20-%20AWI%20-%20Schedule%20IVB%20Feasibility%20Study%20for%20the%20Unemployment%20Compensation%20System%20v2_2d.pdf)) (most recently visited November 27, 2012), at 26, Chart, “Unemployment Compensation Services.”

<sup>14</sup> *See id.*, cover page. In this Initial Determination, we have replaced references to “the agency” or “AWI” with references to DEO, where appropriate.

<sup>15</sup> *Id.* at 180.

were filed via the Interactive Voice Response (IVR) telephone system.<sup>16</sup> AWI appears to have accepted this study as authoritative: notably, the study served as the basis for the Invitation To Negotiate AWI issued in May 2010, seeking a contractor to modernize its computerized UC claims processing system.<sup>17</sup> For purposes of this Initial Determination, therefore, we accept the statistics cited in the study as both accurate and applicable to the time period when Florida was planning the changes to its claims filing system that are at issue in this case.

3. Modernization project. The above-cited UC modernization project is known as “Project Connect.”<sup>18</sup> According to the State’s website, the project is “intended to improve the claims, benefits, and appeals processes and strengthen the relationship with Workforce Services for quicker reemployment.”<sup>19</sup> The project scope covers all UC functions: initial claims and continued claims, wage determination, adjudication, appeals, benefit payment control and program integrity.<sup>20</sup> The original budget for the modernization project was \$63,409,980.<sup>21</sup>

The original implementation date for the modernized system, known as the Connect system, was December 2012.<sup>22</sup> However, the Project Status Report presented at the May 9, 2012, meeting of the Project Executive Steering Committee indicated that because of technical problems, the implementation date had been pushed back to September 2013.<sup>23</sup> The report further indicated that “DEO and Deloitte are in discussions to address the risks and financial impact of that delay.”<sup>24</sup> As of the report date, the updated project budget was \$57,804,974.<sup>25</sup>

4. LEP Plan and languages spoken in Florida. During the course of our investigation, DEO submitted to CRC a draft Limited English Proficiency Plan, subtitled “Plan to Assure Meaningful Access to Services for Persons with Limited English Proficiency,” dated December 2011. Subsection IV(1) of this plan indicates that according to the U.S. Census Bureau’s 2006-2008 American Community Survey, the top two languages spoken at home in Florida, following English, are Spanish (spoken by approximately 18.8% of the State population) and “French

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<sup>16</sup> *Id.* at 181. No information was provided regarding the remaining five percent of claims. Although the study cites neither a source nor a time period for the statistics it does provide, the study served as the basis for the Invitation To Negotiate on which the award for the modernization project was based.

<sup>17</sup> See AWI “Invitation To Negotiate Solicitation Acknowledgement Form,” May 14, 2010, AWI Solicitation No.: 10-ITN-001-SS (“ITN”) (available at [http://www.floridajobs.org/unemployment/ITN/Solicitation/ITN%20and%20supporting%20documents/UCCBIS\\_10ITN001SS\\_ITN\\_20100514.pdf](http://www.floridajobs.org/unemployment/ITN/Solicitation/ITN%20and%20supporting%20documents/UCCBIS_10ITN001SS_ITN_20100514.pdf)) (most recently visited November 27, 2012), at 5, 7.

<sup>18</sup> Description of “Project Connect,” available at <http://www.floridajobs.org/office-directory/division-of-workforce-services/about-workforce-services/project-connect> (most recently visited June 12, 2012).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> “UC C&B IS Project Executive Steering Committee Member Update,” March 9, 2011, available at [http://floridajobs.org/unemployment/UC\\_ModernizationProject/documents/StatusReports/20110309%20UC%20ESC%20Project%20Status%20Report.pdf](http://floridajobs.org/unemployment/UC_ModernizationProject/documents/StatusReports/20110309%20UC%20ESC%20Project%20Status%20Report.pdf) (most recently visited November 27, 2012), at 8, 17, 18.

<sup>22</sup> Description of “Project Connect” (see fn. 18 *supra*).

<sup>23</sup> See

[http://sitefinity.floridajobs.org/unemployment/uc\\_modernizationproject/documents/statusreports/20120509%20UC%20ESC%20Project%20Status%20Report.pdf](http://sitefinity.floridajobs.org/unemployment/uc_modernizationproject/documents/statusreports/20120509%20UC%20ESC%20Project%20Status%20Report.pdf) (most recently visited November 27, 2012), at 7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 13.

Creole” (spoken by approximately 1.7% of the State population).<sup>26</sup> DEO has identified these two languages as those used by “a significant number or proportion” of the population it serves. CRC has reviewed the cited American Community Survey, and has verified that the information provided by the State is an accurate representation of the contents of the Survey, and that the Survey does not identify any other languages that are used by a significant number or proportion of the State population.

5. Telephone hotline.

a. According to UC program personnel interviewed by CRC,<sup>27</sup> the State operates three call centers, located in Tallahassee, Orlando, and Fort Lauderdale, to answer calls about UC claims. English-, Spanish-, and Creole-speaking customer service representatives (CSRs) are employed at all three locations.<sup>28</sup> The call center hold queues can handle up to 300 callers waiting in queue; when this capacity is reached, callers will experience hang-ups.<sup>29</sup>

At various points during CRC’s investigation, individuals who phoned the call center reported experiencing such hang-ups. For example, according to an August 21, 2012, news story in the *Miami Herald/Times*, a “reporter tried several times over the course of a week to reach the state’s customer service department for jobless claims. Several times an automated message said, ‘We are currently experiencing high call volumes. An agent is not available at this time,’ and then the line went dead.” On one occasion, according to the news report, the recorded voice said: “There are currently 399 calls in front of you.”<sup>30</sup>

Similarly, during late November/early December 2012, an attorney representing a UC claimant phoned the main call center number, 1-800-204-2418, on several occasions, and experienced the automatic disconnection “due to the high volume of calls.”<sup>31</sup> On December 5, 2012, this attorney phoned the call center four times. The first three times were again automatic disconnects due to high volume of calls.<sup>32</sup>

i. According to DEO, it offers an automated call-back option to callers: “Instead of waiting on hold for extended periods, you are now able to provide your phone number, hang up and a representative will call you back in the order that your call was

<sup>26</sup> The LEP Plan and the American Community Survey use the term “French Creole”; however, the UC website refers to the language as “Haitian Creole,” and the complaint refers to “Haitian claimants whose native language is Creole.” We will therefore use the terms “Haitian Creole” and “Creole” in this Initial Determination.

<sup>27</sup> CRC conducted a group interview on February 29, 2012, of the following UC Program personnel: Bob Corder, manager, North Florida claims & adjudication hub; Nicole Brindisi, UC program supervisor; and Essie Phillips, employment security representative 1, who is a telephone claimstaker. All statements in this Initial Determination that are attributed to “DEO staff,” “DEO personnel,” or “UC program personnel” are from this interview or from responses to follow-up questions asked the following day.

<sup>28</sup> February 29, 2012, interview.

<sup>29</sup> *Id.*

<sup>30</sup> See “Getting an unemployment check in Florida is frustrating ordeal for many,” *available at* <http://www.miamiherald.com/2012/08/21/2962090/getting-an-unemployment-check.html> (most recently visited November 27, 2012).

<sup>31</sup> See e-mail from Attorney  
2012 (“ E-Mail”).

n to CRC Senior Policy Advisor Denise Sudell, dated December 7,

<sup>32</sup> *Id.*

received.”<sup>33</sup> However, in at least one instance during the period at issue, a claimant who telephoned the call center and selected the call-back option never received a return call.<sup>34</sup>

b. During the period of CRC’s investigation, the main call center number referred to above was posted on the Unemployment Compensation Benefits Center website and identified as the “Unemployment Compensation Benefits Hotline.”<sup>35</sup> This number handled calls from callers speaking English, Spanish, or Creole. However, when callers were on hold on this line, all outgoing recorded messages were in English.<sup>36</sup>

c. A second number, 1-800-681-8102, was dedicated to “other” calls – those from individuals speaking other languages, callers experiencing technical difficulties, individuals with disabilities, and so forth. During the period of CRC’s investigation, DEO contracted with Certified Languages International (CLI) to provide telephone interpreting services in languages other than English. The CLI website asserted that the company offers interpreters who are “fluent in over 175 languages.”<sup>37</sup> A hard copy of a CLI flyer supplied to CRC by DEO during the onsite investigation lists “Languages We Speak” from Acholi to Zuni. UC program staff also supplied CRC with a hard-copy page of “Contractor Deliverables,” and asserted that the document sets forth the terms of DEO’s contract with CLI.<sup>38</sup> The contractual terms that are relevant to this Initial Determination will be discussed *infra* in Section V(C), “Telephone Services.”

d. According to UC program personnel,<sup>39</sup> DEO procedure during the period of CRC’s investigation was that when Hotline CSRs on the 681-8102 number received a call in a language other than English, they determined what language the caller was speaking by asking, in English, what language the caller was speaking. “They [the LEP callers] can understand some English, if you’re speaking slowly. . . . They understand [the word] ‘language’ and will say what it is.”<sup>40</sup> The CSRs would put the caller on hold, call CLI and provide account information. A CLI interpreter who spoke the appropriate language would then join the call.

During the February 29, 2012, group interview, claimstaker Phillips stated that LEP callers might also “have somebody with them, a child or someone else,” to interpret the call.<sup>41</sup> Program supervisor Brindisi immediately stated that this practice was contrary to DEO policy. However, as described *infra* in section V(B)(2)(c)(ii)(A), CRC’s observations during the onsite investigation support Phillips’s statement. Furthermore, evidence supplied by Complainant’s

<sup>33</sup> “Contact the Office of Unemployment Compensation,” <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/contact-the-office-of-reemployment-assistance> (most recently visited November 30, 2012).

<sup>34</sup> See Affidavit of \_\_\_\_\_, dated March 5, 2012 (“\_\_\_\_\_ Affidavit”), paragraph 7.

<sup>35</sup> See, e.g., <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/file-a-claim> (most recently visited November 27, 2012).

<sup>36</sup> Follow-up interview with UC program personnel, conducted March 1, 2012.

<sup>37</sup> <http://www.certifiedlanguages.com/> (most recently visited November 28, 2012).

<sup>38</sup> This page (hereinafter “CLI Contractor Deliverables”) appears to be part of a larger document: it is numbered page 20. A note at the bottom of the page indicates: “Version date: 06/28/06 (Vendor).”

<sup>39</sup> See fn. 27 *supra*.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

attorneys indicate that at least one caller to the Hotline was told to call back when she had someone available to assist her who spoke English or Spanish.<sup>42</sup> We therefore find that in some cases, the Respondent relied upon LEP callers to provide their own interpreters.

## B. CHANGES IN UC CLAIMS FILING PROCESS AND REQUIREMENTS

During the 2011 legislative session, the Florida legislature passed a bill, CS/CS/HB 7005, amending the Florida Statutes to make a number of significant changes to the State UC system. The changes that are relevant to this case are discussed below.

1. *Requirement of on-line filing.* CS/CS/HB 7005 amended the relevant statutory section to provide, in pertinent part, that “[i]nitial and continued claims for [UC] benefits must be made by approved electronic means”<sup>43</sup> – in other words, via the Internet.

a. *Justification.* The Senate Judiciary Committee Bill Analysis notes, “By requiring claimants to file UC claims by the Internet, the initial skills review<sup>44</sup> could be incorporated into the benefit application process. This would allow claimants to participate in the initial skills review at the time they file for benefits and engage in reemployment services.”<sup>45</sup>

According to Tom Clendenning, Director of DEO’s Division of Workforce Services (DWS) and chair of DEO’s Unemployment Compensation Modernization Project, the State conducted no studies or surveys of the capacity of Florida claimants to file on line, or of whether the burden of the Internet-only requirement would fall more heavily on particular demographic groups.<sup>46</sup> Rather, he told CRC, the staff of his office visited a number of American Job Centers to assess their ability to handle an increased number of people coming in to use Center computers.

b. *Implementation.* Although at the time CS/CS/HB 7005 was passed, the modernized Connect UC system was not scheduled to be implemented until December 2012, the statutory requirement that all UC claimants file their claims electronically became effective on August 1, 2011. The Florida system for filing claims online was known during the period of CRC’s investigation as FLUID.<sup>47</sup> It contained separate sections for filing initial and continuing claims.<sup>48</sup> The DEO website also contained multiple other pages related to filing UC claims, as described below.

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<sup>42</sup> See discussion *infra* in Section V(C)(2)(b)(ii).

<sup>43</sup> Florida Statutes (F.S.) 443.151(2)(a). All references to the Florida Statutes in this Initial Determination are to the 2011 Statutes unless noted otherwise.

<sup>44</sup> See discussion in section V(B)(2) *infra*.

<sup>45</sup> Senate Judiciary Committee Bill Analysis (see fn. 10), Section III, “Effect of Proposed Changes,” at 17, “State Unemployment Compensation Benefit Eligibility, Qualifying Criteria: Initial Skills Review.”

<sup>46</sup> Interview with CRC, conducted February 29, 2012. All statements in this Initial Determination that are attributed to Clendenning are from this interview.

<sup>47</sup> See <https://www2.myflorida.com/fluid/> (most recently visited November 27, 2012); [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-\(work-search-claim-weeks-and-more\)](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-(work-search-claim-weeks-and-more)) (most recently visited December 11, 2012), “Go Manage Your Benefits in FLUID.”

<sup>48</sup> <https://www2.myflorida.com/fluid/> and <https://www2.myflorida.com/flccid/> (both pages most recently visited December 13, 2012).

i. Description of website. From the DEO home page, <http://www.floridajobs.org/>, clicking on the link “File an Unemployment Compensation Claim” during the relevant period led to a page headed “File a Claim.”<sup>49</sup> The English version of this page listed the requirements for qualifying for benefits, and contained links to multiple other pages with information about UC-related topics.<sup>50</sup>

The link in the largest type in the main text of the “File a Claim” page was headed “Claims Process.” Clicking this link led to a page headed “Steps to File an Unemployment Compensation Claim.”<sup>51</sup> The four steps listed included “1. File Online”; “2. Receive Confirmation”; “3. Complete Initial Skills Review”; and “4. Claim Your Weeks and Submit Your Work Search Information Online.”<sup>52</sup> The page provided detailed information about each of these steps, including links to tutorials. The page also included a list of “Helpful Tips,” with links to further information.

Both “File a Claim” and “Steps to File an Unemployment Compensation Claim” pages contained links to the entry page of the part of the FLUID system for filing initial claims.<sup>53</sup> On the English version of the “File a Claim” page, the link was contained in a prominently-placed green button. The contents of the “File a Claim” and “Steps to File an Unemployment Compensation Claim” pages will be discussed in further detail *infra*.

The “File a Claim” page (as well as other UC-related pages on the DEO website) also contained a series of links on the left side of the page. These links included a link entitled “Manage Your Benefits (Work Search, Claim Weeks and More.)”<sup>54</sup> On the English version of the page, the link led to a page by the same name.<sup>55</sup> The latter page lists the tasks related to continuing claims and work search certifications that could be accomplished through the FLUID system, including submitting work search contacts; establishing or canceling payment by Florida Visa® debit card; establishing, changing, or canceling direct deposit information; creating or changing a PIN; getting claim and payment information; claiming weeks; changing address and/or phone number; and printing tax forms.<sup>56</sup> It also contained a link, labeled “Go Manage Your Benefits in FLUID,” to the entry page for the part of the FLUID system for filing continuing claims and certifying satisfaction of work search requirements.<sup>57</sup>

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<sup>49</sup> <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim> (most recently visited December 12, 2012).

<sup>50</sup> *Id.*

<sup>51</sup> <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/claims-process> (most recently visited December 12, 2012).

<sup>52</sup> *Id.* The same page is the source for the remaining sentences in this paragraph.

<sup>53</sup> See pages cited in fns. 49 and 51, linking to <https://www2.myflorida.com/fluid/> (most recently visited December 13, 2012).

<sup>54</sup> See, e.g., <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim>; <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/claims-process> (both pages most recently visited December 12, 2012).

<sup>55</sup> See [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-\(work-search-claim-weeks-and-more\)](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-(work-search-claim-weeks-and-more)) (most recently visited December 12, 2012).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*, linking to “Welcome to the Florida Unemployment Compensation Weekly Claim Certification and Work Search Verification,” <https://www2.myflorida.com/flccid/> (most recently visited December 13, 2012).



On the Spanish and Haitian Creole versions of the UC-related pages on the DEO site, the links that paralleled the “Manage Your Benefits” link did not lead to a “Manage Your Benefits” page; rather, they led directly to the entry page for filing continuing claims and work search certifications.<sup>58</sup> However, in both languages, that entry page apparently provided the same information described above about the tasks that could be accomplished through the FLUID system.<sup>59</sup>

ii. Initial claims. During the period of CRC’s investigation, the FLUID system was available 24 hours a day, 7 days a week, for filing initial claims.<sup>60</sup> The entry page of the initial-claims system contained brief information in English, Spanish, and Haitian Creole about how long it should take to file a claim using the system, how soon a claim application must be completed once it was begun, and how the benefits date was determined.<sup>61</sup> However, neither this information, nor the filing system itself, was made available in Haitian Creole until either January 31 or March 28, 2012.<sup>62</sup>

From approximately August 12, 2011, onward,<sup>63</sup> the page has also contained a “Babel notice,” in 14 languages (including Spanish and Haitian Creole) in addition to English, telling claimants that if they do not read or understand English, they may call a specific phone number (either 204-2418 or 681-8102, depending on the language) “for free translation assistance regarding [their] Unemployment Compensation claim[s].”<sup>64</sup> See discussion in Section V(B)(1)(c), “Exceptions,” *infra* for further information about the Babel notice.

As of early March 2012, the page also listed the 681-8102 number as a contact number for claimants who “[h]ave a physical or visual impairment which makes [them] unable to use a

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<sup>58</sup> See, e.g., “Proceso de Reclamación” (Spanish), [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-\(spanish\)/presente-un-reclamación/proceso-de-reclamación](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-(spanish)/presente-un-reclamación/proceso-de-reclamación), link on right side of page labeled “Administre sus beneficios”; “Pwosesis Demann yo” (Creole), [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-revanbochaj-\(haitian-creole\)/fe-yon-demann/pwosesis-demann-yo](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-revanbochaj-(haitian-creole)/fe-yon-demann/pwosesis-demann-yo), link on right side of page labeled “Kontwole Avantaj Ou yo” (both pages most recently visited December 13, 2012).

<sup>59</sup> Compare English page “Manage Your Benefits (Work Search, Claim Weeks and More),” [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-\(work-search-claim-weeks-and-more\)](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-(work-search-claim-weeks-and-more)), with “Bienvenido al Reempleo de Florida Semanalmente Certificación de Reclamo and Verificación de Búsqueda de Trabajo,” [https://www2.myflorida.com/flccid/Default\\_Sp.asp](https://www2.myflorida.com/flccid/Default_Sp.asp), and “Sètifikasyon Reklamasyon pou Benefis/ Soumèt Rechèch Travay,” [https://www2.myflorida.com/flccid/Default\\_Cr.asp](https://www2.myflorida.com/flccid/Default_Cr.asp) (all pages most recently visited December 13, 2012).

<sup>60</sup> See DEO website, “Frequently Asked Questions,” topic “Filing A Claim,” response to question “I am having trouble filing my initial claim. What do I do?”, available at <http://www.floridajobs.org/frequently-asked-questions-directory/frequently-asked-questions/category/200e7f10-8a0e-4409-a9ff-84d011a3fae6/x> (most recently visited November 27, 2012).

<sup>61</sup> See <https://www2.myflorida.com/fluid/> (most recently visited December 20, 2012).

<sup>62</sup> The Respondent provided inconsistent information regarding the date on which the FLUID system went live in Creole. Compare E-mail from Florida Equal Opportunity (EO) Officer James Landsberg to CRC Senior Policy Advisor Sudell, dated June 6, 2012 (“Landsberg E-Mail 1”) with E-mail from Florida Unemployment Compensation Operations Manager Audra Wiggins to Sudell, dated November 19, 2012 (“Wiggins E-Mail 1”) and Responses to “Follow-Up Questions for DEO” (“Responses to Follow-Up Questions”), attachment to e-mail from Wiggins to Sudell, dated November 30, 2012 (“Wiggins E-Mail 2”), response 1(b).

<sup>63</sup> See Responses to Follow-Up Questions, response 4(a).

<sup>64</sup> See fn. 61 *supra*.

computer.”<sup>65</sup> According to DEO personnel, the agency had no TTY or other assistive technology through which persons with disabilities that prevent them from using voice telephones may contact the Hotline. Rather, such persons were required to use a third-party relay service, such as the national 711 service.<sup>66</sup> Clendenning acknowledged to CRC that DEO took no steps to make the on-line filing process accessible for customers with disabilities. “When it came time to implement the law, we used the administrative rule process, we provided a functional waiver [for persons with disabilities].” See discussion in Section V(B)(1)(c), “Exceptions,” *infra*.

iii. Continuing claims and work search verification. Florida requires UC claimants, after they file their initial claims, to contact at least five potential employers, or meet with a representative at a local American Job Center for reemployment services, for each week they are out of work.<sup>67</sup> They must also certify every two weeks that they have complied with these requirements.<sup>68</sup> As with initial claims, the certification process must be accomplished online unless the claimant falls into one of the exceptions provided by administrative rule. See discussion *infra* in Section V(B)(1)(c), “Exceptions.”

During the period of CRC’s investigation, as noted above, a separate part of the FLUID system was set aside for filing “Weekly Claim Certification and Work Search Verification.”<sup>69</sup> The DEO website indicated that for these purposes, “[t]he FLUID system is available Monday through Saturday from 6:30 a.m. to 8:00 p.m. and Sunday from 6:30 a.m. to 6:00 p.m., Eastern Time.”<sup>70</sup> The site further noted, however, that “[t]he system may not be available Monday through Friday from 1 p.m. to 2:30 p.m. Eastern Time due to processing weeks for payment.”<sup>71</sup>

c. *Exceptions.* Although the statutory language makes no provision for exceptions to the electronic-filing requirement, the implementing regulatory language in the Florida Administrative Code (FAC) permits paper filing of initial UC claims “[w]hen a declared disaster or emergency makes internet filing impractical, or when the claimant needs special assistance or accommodation.”<sup>72</sup> The language governing filing of continued claims is similar.<sup>73</sup>

The rules state that for filing purposes, “a claimant needs special assistance or accommodation when she or he: 1. Is legally prohibited from using a computer; 2. Has a physical or visual impairment which makes her or him unable to use a computer; or 3. Is unable to read or write effectively in a language in which the Internet application is available.”<sup>74</sup> Claimants meeting the

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<sup>65</sup> *Id.*

<sup>66</sup> Interviews with Clendenning and UC program personnel.

<sup>67</sup> See <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/claims-process> (most recently visited December 11, 2012), “Steps to File a Reemployment Assistance Claim,” Step 4, “Claim Your Weeks and Submit Your Work Search Information Online.”

<sup>68</sup> *Id.*

<sup>69</sup> <https://www2.myflorida.com/flccid/> (most recently visited December 11, 2012).

<sup>70</sup> “Manage Your Benefits (Work Search, Claim Weeks and More),” [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-\(work-search-claim-weeks-and-more\)](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-(work-search-claim-weeks-and-more)) (most recently visited December 10, 2012).

<sup>71</sup> *Id.*

<sup>72</sup> FAC 73B-11.013(1)(b), effective date 11/27/2011.

<sup>73</sup> See 73B-11.015(1)(b), effective date 11/27/2011.

<sup>74</sup> FAC 73B-11.013(1)(c). The rule governing continued/follow-up claims refers to the same definition. See 73B-11.015(1)(b).

above criteria are permitted by the rules to file paper applications by mail, fax, or in-person delivery.<sup>75</sup>

Despite the findings of the February 2009 Feasibility Study that 40 percent of all claimants in Florida used the telephone to submit their claims, the rules make no provision for filing by telephone.<sup>76</sup> Nonetheless, DEO personnel informed CRC that in practice, Hotline CSRs would file initial and continuing claims in the electronic system on behalf of claimants who fell into the above-listed categories.<sup>77</sup> These claims, manually entered by a DEO UC program claimstaker, were designated as “agency-assisted” claims.<sup>78</sup>

Despite the existence of these regulatory and *de facto* exceptions to the Internet-filing requirement, the “File a Claim” page on the DEO website Unemployment Compensation Benefits Center as of the time of CRC’s investigation provided no information about alternate filing methods.<sup>79</sup> Instead, the page stated merely, “All unemployment compensation claims must be filed online.” It advised individuals who did not have Internet access that “public computers are available at your local One-Stop Career Center as well as local public libraries, community centers and colleges and universities (if you are a student).” The Spanish<sup>80</sup> and Haitian Creole<sup>81</sup> versions of the page contained similar statements.

Nor did a number of other UC-related pages on DEO’s website provide information about alternative filing methods. Neither the “Claims Process: Steps to File a Reemployment Assistance Claim” page (in either the English, Spanish, or Creole versions)<sup>82</sup> nor the “Manage Your Benefits (Work Search, Claim Weeks and More)” page<sup>83</sup> mention the options of telephone or paper filing. The tutorials on the “Claims Process” page in all three languages lead claimants through the process of online filing of initial and continuing claims, without referring to other filing methods.<sup>84</sup>

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<sup>75</sup> FAC 73B-11.013(1)(d); 73B-11.015(1)(b).

<sup>76</sup> *See id.*

<sup>77</sup> *See* fn. 27 *supra*.

<sup>78</sup> *Id.*

<sup>79</sup> <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/file-a-claim>, under heading “Claims Process” (most recently visited November 28, 2012).

<sup>80</sup> *See* [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-\(spanish\)/presente-un-reclamaci%c3%b3n](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-(spanish)/presente-un-reclamaci%c3%b3n) (Spanish, under heading “Proceso de reclamación”) (most recently visited November 28, 2012).

<sup>81</sup> *See* [http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/sant-avantaj-konpansasyon-pou-chomaj-\(haitian-creole\)/fè-yon-demann](http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/sant-avantaj-konpansasyon-pou-chomaj-(haitian-creole)/fè-yon-demann) (Haitian Creole, under heading “Pwosis Demann yo”) (most recently visited November 28, 2012).

<sup>82</sup> *See* <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/claims-process>; “Proceso de Reclamación” (Spanish), [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-\(spanish\)/presente-un-reclamaci%c3%b3n](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-(spanish)/presente-un-reclamaci%c3%b3n); “Pwosis Demann yo” (Creole), [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-reyanbochaj-\(haitian-creole\)/fè-yon-demann/pwosis-demann-yo](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-reyanbochaj-(haitian-creole)/fè-yon-demann/pwosis-demann-yo) (all pages most recently visited December 13, 2012).

<sup>83</sup> [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-\(work-search-claim-weeks-and-more\)](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/manage-your-benefits-(work-search-claim-weeks-and-more)) (most recently visited December 13, 2012).

<sup>84</sup> The tutorial on filing initial claims appeared in English only.

[http://www.floridajobs.org/Unemployment/tutorials/Filing%20Initial%20Claim%20\(IC\).pdf](http://www.floridajobs.org/Unemployment/tutorials/Filing%20Initial%20Claim%20(IC).pdf) (most recently visited (footnote cont’d on following page)

Asked how it informs claimants of the existence of exceptions to the Internet-only rule, the Respondent referred CRC<sup>85</sup> to language on the entry page for filing initial claims in FLUID.<sup>86</sup> The cited language stated, in pertinent part:

If you are unable to file over the internet for any reason, you may call the phone number below [the 681-8102 number] for assistance. If you need to use a public computer to file your unemployment claim, you may want to try a public library or college/university (if you are a student).

This language appeared on the page in English, Spanish, and Creole. It did not appear in any other languages.<sup>87</sup>

The Babel notice on the page, which appeared in 12 languages in addition to English, Spanish, and Creole, did not include the above text regarding claimants who were unable to file over the Internet.<sup>88</sup> Rather, the notice stated merely:

This document contains important information, dates, or eligibility status regarding your Reemployment Assistance claim. It is important for you to understand this document. If you do not read or understand English, call 1-800-204-2418 for free translation assistance regarding your Reemployment Assistance claim.<sup>89</sup>

According to the Respondent, this notice was added on or about August 12, 2011.<sup>90</sup>

On or about March 6, 2012, DEO added the following text to the page:

You must file your claim online, unless you:

1. Are legally prohibited from using a computer;
2. Have a physical or visual impairment which makes you unable to use a computer; or
3. Are unable to read or write effectively in English, Spanish, or Creole.

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(footnote cont'd from preceding page)

December 13, 2012). The tutorial on filing continuing claims appeared in English ([http://www.floridajobs.org/Unemployment/tutorials/Filing%20Initial%20Claim%20\(IC\).pdf](http://www.floridajobs.org/Unemployment/tutorials/Filing%20Initial%20Claim%20(IC).pdf)), Spanish ([http://www.floridajobs.org/Unemployment/tutorials/DEO%20Work%20Search%20\(S\).pdf](http://www.floridajobs.org/Unemployment/tutorials/DEO%20Work%20Search%20(S).pdf)), and Creole ([http://www.floridajobs.org/Unemployment/tutorials/Worksearch\(C\).pdf](http://www.floridajobs.org/Unemployment/tutorials/Worksearch(C).pdf)) (all links most recently visited December 13, 2012).

<sup>85</sup> Landsberg E-Mail 1.

<sup>86</sup> <https://www2.myflorida.com/fluid/> (most recently visited December 21, 2012).

<sup>87</sup> *See id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Responses to Follow-Up Questions, response 4(a).

However, during the period of CRC's investigation, the only languages in which the above text appeared were English, Spanish, and Creole.<sup>91</sup> The Babel notice did not inform claimants that they were not required to file their claims on line if they were unable to read or write effectively in any of the latter three languages.

The same Babel notice quoted above appeared on all three versions (English, Spanish, and Creole) of the entry page for filing continuing claims and certifying satisfaction of work search requirements.<sup>92</sup> It was added to the page on August 24, 2011.<sup>93</sup> Again, the notice did not mention the exception for claimants who were unable to read or write effectively in English, Spanish, or Creole. Furthermore, none of the versions of the entry page for filing continuing claims contained the text quoted above, regarding the exceptions to the requirement for online filing, that appears on the entry page for filing initial claims.<sup>94</sup> Asked why, the Respondent asserted that call center staff would provide that information verbally to claimants when they filed their initial claims by telephone.<sup>95</sup>

The Respondent further asserted that claimants who were unable to use the Internet could obtain information on how to apply for benefits, including information about the exceptions, from "any of the Department's call centers, or . . . One-Stop Career Centers."<sup>96</sup> However, despite a specific request that it provide documentation of how it disseminates information about the exceptions, the Respondent provided no such documentation.<sup>97</sup> More significantly, as discussed below, evidence provided to CRC by attorneys for the Complainant is contrary to the above assertions. That evidence indicates that accurate information about the exceptions to the online filing requirement has not been consistently provided, either by customer service representatives on the UC Hotline or by American Job Center staff.

i. American Job Centers. Attorneys for the Complainant provided declarations from two claimants who were born deaf, communicate most effectively in American Sign Language (ASL), and do not understand complex written English.<sup>98</sup> Both claimants attempted to

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<sup>91</sup> See *id.*

<sup>92</sup> See <https://www2.myflorida.com/flccid/Default.asp> (English); [https://www2.myflorida.com/flccid/Default\\_Sp.asp](https://www2.myflorida.com/flccid/Default_Sp.asp) (Spanish); and [https://www2.myflorida.com/flccid/Default\\_Cr.asp](https://www2.myflorida.com/flccid/Default_Cr.asp) (Creole) (all most recently visited December 10, 2012).

<sup>93</sup> "Responses to Follow-up Questions," response 6.

<sup>94</sup> *Id.*

<sup>95</sup> Telephone call between Florida UC Operations Manager Wiggins and CRC Senior Policy Advisor Sudell, December 14, 2012.

<sup>96</sup> Landsberg E-Mail 1.

<sup>97</sup> *Id.*

<sup>98</sup> Declaration of \_\_\_\_\_, dated 2/24/12 ("\_\_\_\_\_ Declaration"), paragraphs 2, 4, and 5; declaration of \_\_\_\_\_ ("\_\_\_\_\_ Declaration"), dated February 28, 2012, paragraphs 2-4. See also U.S. Department of Justice (DOJ) Regulations Implementing Title II of the Americans with Disabilities Act (ADA), "Title II Regulations: 2010 Guidance and Section-by-Section Analysis," "Appendix A to Part 35—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services," available at [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm) (most recently visited November 28, 2012), discussion of Section 35.104, "Definitions," definition of "Auxiliary Aids and Services" ("For persons whose primary language is American Sign Language (ASL) . . . using written English in exchange of notes often is ineffective because ASL syntax and vocabulary is dissimilar from English").

file for UC benefits after August 1, 2011, by going to Work Source Career Centers and asking for help to file their claims.<sup>99</sup>

According to the declaration of the first deaf claimant, he was told by Center staff that he “needed to answer some questions on the computer.”<sup>100</sup> Because he was unable to understand the English questions, a Center employee tried to help him fill out the on-line application, but he was never provided with, or offered, a qualified ASL interpreter.<sup>101</sup> As a result, incorrect information was included in his claim.<sup>102</sup>

Furthermore, when this same claimant later returned to the Center to provide information about his work search for his continuing claim, he once again had difficulty using the on-line claims system.<sup>103</sup> Again, a Center employee tried to assist him, but he neither received nor was offered an ASL interpreter.<sup>104</sup> Nor was he informed about the options of paper or telephone-assisted filing.<sup>105</sup> This claimant eventually received only one benefits check.<sup>106</sup>

According to the declaration of the second deaf claimant, when he went to an American Job Center for help filing his claim,

The representative didn’t understand what I was saying. I told them they were required to provide an interpreter; I showed them a card that stated so. They made excuses and said they were too busy and I would have to wait. They then kept me waiting for about two-three hours. I needed to get home and couldn’t wait any longer, so I left.<sup>107</sup>

Neither of the deaf claimants was informed about the exceptions to the requirement of on-line claims filing.

ii. UC Hotline. Complainant’s attorneys provided logs of calls made by English- and foreign-language-speaking testers to the UC Hotline to determine how long callers were required to wait and what information was being provided. The testers were given the following instructions:

If and when a live person answers, speak only in your foreign language. Do not speak English. Conduct yourself only in your foreign language. In your foreign language say: “I need to ask a

<sup>99</sup> Declaration, paragraph 7; Declaration, paragraphs 5, 14.

<sup>100</sup> Declaration, paragraph 8. The Center in question was identified as the Work Source Career Center at 525 State Road 16, Suite 109, Saint Augustine, FL 32084.

<sup>101</sup> *Id.*, paragraphs 10-11.

<sup>102</sup> *Id.*, paragraph 11.

<sup>103</sup> *Id.*, paragraph 15.

<sup>104</sup> *Id.*, paragraph 16.

<sup>105</sup> *Id.*, *passim*.

<sup>106</sup> *Id.* paragraph 17.

<sup>107</sup> Declaration, paragraph 14. The Center in question was identified as the Southside Jacksonville WorkSource Career Services Center, 6800 Southpoint Parkway, Suite 950, Jacksonville, FL.

question about the program.” If they ask, do not tell them the name of the language you are speaking. Just keep repeating the same sentence in your language: “I need to ask a question about the program.”

If a person is put on the line with you who speaks your foreign language, tell that phone attendant; “I am calling for a friend who does not have access to a computer, who speaks only (your foreign language), and who does not read English. How should he apply for Unemployment Compensation?”

If the phone attendant says “your friend can call back and apply over the phone in his native language and the agency will help your friend over the phone,” ask “How should my friend claim weeks and report his work search online? And what about the skills assessment?”<sup>108</sup>

The logs of the calls placed by the testers indicate that the Respondent’s CSRs did not consistently inform callers of the existence of the exceptions to the Internet-only filing requirement.

For example, in five different phone calls, a Polish-language tester was given differing information about how a friend who does not read or speak English should file a claim.<sup>109</sup> In one call, the tester was told at first that the friend must call the Hotline to connect with a Polish interpreter who will help him apply on line.<sup>110</sup> When the tester challenged that assertion, the CSR then stated that under the circumstances, the friend would be permitted to file a claim by phone.<sup>111</sup> In three other calls in which she was able to reach a Polish-speaking CSR, the tester was told that the friend must apply on line; that he should come to an American Job Center for assistance; and that the Center would call a language line to provide Polish interpretation.<sup>112</sup> In only one call was the tester informed in the first instance that because of special circumstances, her friend would be permitted to file a claim over the phone.<sup>113</sup>

Similarly, an English-speaking tester made multiple calls to the Hotline to ask how a friend who was unable to read or write English should apply for benefits. In two different phone calls, the tester was told that she (the tester) should accompany her friend to a computer in a public location, such as an American Job Center or a library, and help her friend file a claim on line.<sup>114</sup> In a third call, the tester was told that her friend could go to an American Job Center for assistance, then the call was dropped.<sup>115</sup> This tester was never informed of the exception to the

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<sup>108</sup> E-mail from Florida Legal Services attorney Valory Greenfield to CRC Senior Policy Advisor Sudell, dated June 8, 2012 (“Greenfield E-Mail 1”).

<sup>109</sup> Polish-language call log, calls placed 2/10/12, 2/16/12, 2/23/12, 2/27/12, and 2/29/12.

<sup>110</sup> *Id.*, call placed 2/27/12.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*, calls placed 2/10/12, 2/16/12, and 2/29/12.

<sup>113</sup> *Id.*, call placed 2/23/12.

<sup>114</sup> English-language call log, calls placed 3/16/12 and 3/19/12.

<sup>115</sup> *Id.*, call placed 3/20/12.

on-line filing requirement for persons who are unable to read or write effectively in English, Spanish, or Creole.<sup>116</sup>

A Creole-language tester was told in one call that a neighbor who did not know how to read and write would be able to receive assistance with the application process over the phone.<sup>117</sup> In three subsequent calls, however, the same tester was told that as of August 2011, all applications are completed online and not over the phone, and that the tester's friend who could not read or write would need to go to an American Job Center for assistance.<sup>118</sup>

2. "Initial Skills Review." At the same time as the amendments discussed above, the Florida legislature amended the relevant statutory sections to require UC claimants to participate in a process called an Initial Skills Review (ISR),<sup>119</sup> and to define the latter term, in pertinent part, as "an online education or training program, such as that established under [the Florida Ready to Work Certification Program], that is approved by [DEO] and designed to measure an individual's mastery of workplace skills."<sup>120</sup>

a. *Florida Ready to Work Certification Program.* The statutory section establishing the cited program specifies that the program is "created . . . to enhance the workplace skills of Floridians to better prepare them for successful employment in specific occupations."<sup>121</sup> The statute declares, in pertinent part, that the program

shall be composed of:

(a) A comprehensive identification of workplace skills for each occupation identified for inclusion in the program by [DEO] and the Department of Education.

(b) A preinstructional assessment that delineates an individual's mastery level on the specific workplace skills identified for that occupation.

(c) A targeted instructional program limited to those identified workplace skills in which the individual is not proficient as measured by the preinstructional assessment. Instruction must utilize a web-based program and be customized to meet identified specific needs of local employers.

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<sup>116</sup> Note: this tester was able to speak with a CSR in only three of the eleven calls she attempted. See discussion in Section V(C) *infra*.

<sup>117</sup> Creole-language log, call placed 2/29/12.

<sup>118</sup> *Id.*, calls placed 3/27/12, 3/7/12, and 3/26/12.

<sup>119</sup> F.S. 443.091(1)(c). "Initial Skills Review" is the term used in the statute. Other State documents use such terms as "initial skills assessment" or "initial skills test." In this Initial Determination, CRC will use the statutory term, unless quoting directly.

<sup>120</sup> F.S. 443.036(26), citing s. 1004.99. The latter section has been redesignated as Title XXXI, s. 445.06.

<sup>121</sup> F.S. 445.06(1).



(d) A Florida Ready to Work Credential and portfolio awarded to individuals upon successful completion of the instruction. Each portfolio must delineate the skills demonstrated by the individual as evidence of the individual's preparation for employment.<sup>122</sup>

The three subjects that must be included in the assessment, according to the statute, are Reading for Information, Applied Mathematics, and Locating Information.<sup>123</sup> The Bill Analysis and Fiscal Impact Statement prepared by the professional staff of the Florida Senate's Budget Committee ("Senate Budget Committee Bill Analysis") states that these are "general skills necessary for 90 percent of all jobs."<sup>124</sup> However, no source for the latter assertion is provided.

b. *Implementation of "Initial Skills Review" in UC claims filing process.*

i. Development of Initial Skills Review. Clendenning told CRC during the onsite investigation that the Florida Ready to Work Certification Program, including the assessment portion, was developed by Worldwide Interactive Network, Inc. (WIN), a private entity.<sup>125</sup> According to Clendenning, WIN developed the Initial Skills Review for the UC claims filing process by modifying a preexisting product, under a contract with Florida's Department of Education that was transferred to DEO.<sup>126</sup> As a result, DEO was not charged for the development or deployment of the ISR for the initial year.<sup>127</sup>

ii. Form and content of Initial Skills Review. By the conclusion of CRC's investigation, the ISR was available in English, Spanish, and Haitian Creole. According to the Respondent, the English and Spanish versions went live on July 29, 2011. However, the Creole version was not implemented until March 28, 2012.<sup>128</sup> To run the ISR, a claimant was required to use the software program Adobe Flash Player.<sup>129</sup>

As reviewed by CRC, the ISR contained questions in the three subjects required by the statute: Reading for Information, Applied Mathematics, and Locating Information.<sup>130</sup> Each question appeared on a different screen. On at least some of the screens, the claimant was required to actively click "Next" or "Continue" to move to the next screen.

<sup>122</sup> F.S. 445.06(3)(a) through (d).

<sup>123</sup> F.S. 445.06(4).

<sup>124</sup> Senate Budget Committee Bill Analysis of CS/SB 728, Unemployment Compensation, April 20, 2011, Section III, "Effect of Proposed Changes," at 16, "State Unemployment Compensation Benefit Eligibility: Qualifying Criteria: Initial Skills Review, Section 3."

<sup>125</sup> CRC interview with Tom Clendenning, February 29, 2012 ("Clendenning interview"); *see also* Bloomberg Businessweek Company Overview of Worldwide Interactive Network Inc., available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=21944082> (most recently visited November 28, 2012).

<sup>126</sup> Clendenning interview.

<sup>127</sup> *Id.*

<sup>128</sup> Wiggins E-Mail 1; Responses to Follow-Up Questions, response 6.

<sup>129</sup> Undated, hard-copy "Call Center Guide" for Florida UC call center staff, providing answers to frequently asked questions, provided to CRC by Respondent during onsite investigation during the week of February 27 through March 2, 2012 ("Call Center Guide").

<sup>130</sup> CRC review of English-language ISR, conducted February 13, 2012. All factual statements that are cited in this paragraph and the following three paragraphs regarding the ISR are based on this review.

For each subject, the ISR contained fifteen questions at increasing levels of difficulty, beginning with Level 3. The screen introducing each subject told claimants that they were permitted to use "other reference information." The introductory screen further stated, in pertinent part: "Take your time and make every effort to answer as many questions correctly as you can. There is no 'pass' or 'fail.' Just do your best."

Each level in each subject contained five questions. A claimant was required to correctly answer four of the five questions at each level in order to progress to the next level. If a claimant answered two questions at a particular level of a subject incorrectly, a message appeared informing the claimant that s/he has "completed" that subject.

If the claimant completed all three subjects, s/he received the following message:

Thank you! You have satisfied the requirement to complete the Initial Skills Review. You have the option to use the FREE Initial Skills Training to further build your skills while looking for work. To get started, just click the button below and choose any of the three skills from the menu. You may work in the courseware as long as you want and return and use it again in the future.

The message also informed the claimant of the highest level of questions (3, 4, or 5) that s/he has completed.

c. Consequences for claimants. The relevant statutory language states that

The failure of the individual [UC claimant] to comply with th[e] requirement [to complete the Initial Skills Review] will result in the individual being determined ineligible for benefits for the week in which the noncompliance occurred and for any subsequent week of unemployment until the requirement is satisfied. However, this requirement does not apply if the individual is able to affirmatively attest to being unable to complete such review due to illiteracy or a language impediment.<sup>131</sup>

i. Exemptions. Division 73B of the Florida Administrative Code contains rules related to DEO's Division of Workforce Services, including rules related to unemployment compensation.<sup>132</sup> At the time of the investigation, CRC was unable to identify any rules in this division that implemented or otherwise specifically addressed either the ISR requirement or the exemptions thereto. However, UC program personnel interviewed by CRC indicated that in practice, the "affirmative[] attest[ation]" required by the statute in order for a claimant to receive an exemption was accomplished verbally, by phone.<sup>133</sup> These personnel stated that a claimant need only call the UC Benefits Hotline and tell a telephone attendant that s/he is entitled to an

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<sup>131</sup> F.S. 443.091(c)(2).

<sup>132</sup> See <https://www.flrules.org/gateway/organization.asp?divid=1065> (most recently visited November 28, 2012).

<sup>133</sup> See fn. 27 *supra*.

exemption. The State would “take them at their word”: solely on the basis of a claimant’s statement, a supervisor would issue an exemption to the ISR requirement.

These statements are consistent with several documents provided to CRC by DEO. These include a document in the Respondent’s UC Claims manual that states, in pertinent part:

The UC Call Center staff will provide customer service support for the Initial Skills Review including all inquiries concerning . . . exemptions . . . . Following supervisor review, any suspected systematic, global technical issues impacting multiple users (ie: [*sic*] internal server error) may be referred to the AWI Help Desk . . . . *All other issues should be resolved at the UC Call Center level.*<sup>134</sup>

Additionally, during the onsite investigation, DEO provided CRC with a copy of a form that it asserted was used by UC staff to document requests for exemptions.<sup>135</sup> The form asks the claimant’s primary language, and provides the options English, Spanish, Creole, and Other (with a space for identification of the “Other” language). The form further permits the UC staffer to indicate whether the claimant has been determined Exempt or Not Exempt, and provides four possible reasons for exemption: “Language Barrier,” “Illiteracy,” “Physical Limitation,” and “Short Term Compensation (STC).”<sup>136</sup>

However, the policy articulated in these statements and memorialized in these documents is not reflected in the Call Center Guide purportedly used by CSRs staffing the UC Hotline to answer callers’ questions.<sup>137</sup> The Guide’s recommended response to the question “If I cannot file my claim electronically because I am disabled, visually impaired or have a language impediment, will I still have to complete the Initial Skills review [*sic*]?” was “If you are unable to complete the Initial Skill [*sic*] Review, you will be contacted by the agency and a determination will be made.”<sup>138</sup>

Furthermore, asked how it informs claimants of the existence of the exemptions from the ISR requirement, the Respondent referred CRC to the language discussed above that was added on March 6, 2012, to the entry FLUID page for filing initial claims, and that informs claimants that “you must file your claim on line, unless you” fall into one of the three listed exceptions.<sup>139</sup> When CRC pointed out that the ISR exemption is different from the exception to the on-line filing requirement, DEO responded:

<sup>134</sup> “Florida Initial Skills Review – Customer Technical Q&A, UPDATED: July 28, 2011,” included in UC Claims Manual as revised 1/12 (emphasis added).

<sup>135</sup> Form UCB-206ISA, provided by DEO to CRC during the on-site investigation. Although the form was provided in English, Spanish, and Creole versions, only the Spanish version contained a publication date; that date was October 2011. All further citations in this paragraph are to this form.

<sup>136</sup> We note that this list includes two categories of exemptions not specifically articulated in the statutory language. The “Physical Limitation” category is relevant to the issues addressed in this Initial Determination. See discussion *infra* in section VI(B)(2).

<sup>137</sup> See fn. 129 *supra*.

<sup>138</sup> Call Center Guide at 3.

<sup>139</sup> Landsberg E-Mail 1.

- The only claimants who are required to complete the ISR are those who are required to file by internet.

- Claimants being assisted via telephone and who are exempt from internet filing are never presented with the ISR.<sup>140</sup>

The Respondent's position fails to consider that claimants with disabilities or limited English proficiency may attempt to file their claims on line with the help of a friend or family member who is unaware of the existence of the exemption. In at least one decision supplied to CRC by attorneys for the Complainant, DEO rejected an appeal from a claimant with visual impairments who filed a claim on line with his daughter's help, but did not complete the ISR until more than three weeks after the initial claim.<sup>141</sup> The decision states that "[a]lthough the claimant's testimony reflects he does not see very well, the record reflects the claimant was informed of the reporting requirements."<sup>142</sup> In this instance, the claimant apparently was unaware of his right to an exemption from the ISR, and failed to raise the issue on appeal. He was therefore denied benefits to which he was apparently entitled.

The Respondent also indicated that information about the exemptions is available through the American Job Centers and "call centers" (referring to the UC Hotline).<sup>143</sup> However, despite a specific request that it provide documentation demonstrating how it disseminates the information, the Respondent provided no such documentation.<sup>144</sup>

Moreover, the same declarations and logs that were provided to CRC by attorneys for the Complainant and referred to in the above discussion of the on-line filing requirement, as well as additional declarations and logs discussed below, indicate that accurate information about the ISR requirement and the exemptions has not been consistently provided, either by CSRs staffing the UC Hotline or by American Job Center staff. In the absence of any indication to the contrary, we find the latter evidence to be credible.

(A) UC Hotline. According to a Russian-language tester's log, she was told by a CSR that a Russian-speaking claimant who understands no English needs to call the UC hotline and ask for a Russian interpreter for assistance in taking the ISR.<sup>145</sup> Similarly, a Polish-language tester was told that a friend who speaks no English and has no computer should go to an American Job Center to apply for UC benefits, and that he would be able to do the skills assessment in the center with the help of a Polish interpreter on the phone.<sup>146</sup> During only one of

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<sup>140</sup> E-mail from EO Officer Landsberg to Senior Policy Advisor Sudell, dated June 7, 2012 ("Landsberg E-Mail 2").

<sup>141</sup> See DEO UC Appeals, Redacted Decision of Appeals Referee, Local Office No. 3671-1.

<sup>142</sup> *Id.* at 2.

<sup>143</sup> Landsberg E-Mails 1 and 2.

<sup>144</sup> *Id.*

<sup>145</sup> See Russian-language call log, at 2-3, call date 3/1/12.

<sup>146</sup> Polish-language call log, at 10-11, call date 2/29/12.

the test calls was a tester told that a claimant who was unable to read or write would be exempt from the ISR.<sup>147</sup>

(B) American Job Centers. One of the deaf claimants whose declaration was addressed above in the discussion of the requirement to file on-line was informed by Center staff during a December 2011 visit that he “had to take a test to get [his] unemployment checks.”<sup>148</sup> His declaration states, “I did not know why I had to take this test, or what the test was for, and no interpreter was provided to explain the test to me.”<sup>149</sup>

Another claimant who was proficient in Spanish, but whose English proficiency was limited, went to an American Job Center for assistance filing her claim.<sup>150</sup> There, despite her limited English, she was assisted by an English-speaking Center employee who did not speak Spanish.<sup>151</sup> The employee did not advise the claimant that she could file a claim in Spanish; instead, the employee assisted the claimant with filing an online claim in English.<sup>152</sup> According to the claimant, she filed the English claim because “there seemed to be no One-Stop staff member who could translate into Spanish for me; I felt I had no choice.”<sup>153</sup>

The Center employee failed to explain the ISR requirement to this claimant, and the claimant did not complete the ISR. As a result, she received a Notice of Determination denying her claim.<sup>154</sup> Only when the claimant called the DEO call center to obtain an explanation of the notice did she learn of the ISR requirement.<sup>155</sup>

ii. Failure to complete.

(A) Initial request for additional information.

If a claimant fails to either complete the ISR or ask for an exemption, DEO will first either contact the claimant by telephone or send him/her a copy of DEO Form UCB-121, the “Claimant Call In Card.” This card notifies the claimant that “IN ORDER TO DETERMINE YOUR

<sup>147</sup> Creole-language call log, at 1, call date 2/29/12.

<sup>148</sup> Declaration, paragraphs 15, 18.

<sup>149</sup> *Id.*, paragraph 18.

<sup>150</sup> See Declaration of \_\_\_\_\_, dated November 28, 2012 (“\_\_\_\_\_ Declaration”), paragraphs 1 and 5; Exhibit D thereto, State of Florida Reemployment Assistance Appeals Commission (RAAC) Order No. \_\_\_\_\_ dated November 5, 2012 (“RAAC Order”), at 2.

<sup>151</sup> \_\_\_\_\_ Declaration, paragraphs 5 and 6; RAAC Order at 2.

<sup>152</sup> \_\_\_\_\_ Declaration, paragraphs 6, 7, and 9; RAAC Order at 2.

<sup>153</sup> \_\_\_\_\_ Declaration, paragraph 9.

<sup>154</sup> Exhibit B to \_\_\_\_\_ Declaration, DEO Reemployment Assistance Program Claims and Benefits, ID# \_\_\_\_\_, Claim Filed Effective 07/01/12, Claim Office No. 3627, Issue Code \_\_\_\_\_, Date Mailed 07/23/12, “Notice of Determination.”

<sup>155</sup> At that point, \_\_\_\_\_ did complete the ISR. \_\_\_\_\_ Declaration, paragraph 16. She appealed the forfeiture of her initial weeks of benefits, and received an adverse decision at the initial level.

\_\_\_\_\_ Declaration, paragraph 20; Exhibit C thereto, DEO Reemployment Assistance Appeals, Docket No. \_\_\_\_\_

\_\_\_\_\_ “Decision of Appeals Referee,” at 2. With the assistance of an attorney, she appealed to the Reemployment Assistance Appeals Commission, which reversed the initial decision four months after the claimant initially filed for benefits. \_\_\_\_\_ Declaration, paragraph 22; RAAC Order at 3. Nonetheless, more than three weeks after the RAAC order, \_\_\_\_\_ was still attempting to obtain her missing initial benefits of \$648.00.

\_\_\_\_\_ Declaration, paragraph 23.

ELIGIBILITY TO RECEIVE, OR CONTINUE RECEIVING UNEMPLOYMENT COMPENSATION BENEFITS, ADDITIONAL INFORMATION IS NEEDED,” and requests that the claimant call the telephone number provided.<sup>156</sup>

The boilerplate language of the October 2011 version of the form states: “ADDITIONAL INFORMATION IS NEEDED CONCERNING:”<sup>157</sup> This language is followed by a space for insertion of the necessary information, and by a highlighted warning stating, “IMPORTANT: IF THE REQUESTED INFORMATION IS NOT RECEIVED WITHIN 05 DAYS OF THE MAILING DATE OF THIS NOTICE, A DETERMINATION WILL BE MADE WITH THE AVAILABLE INFORMATION. THIS MAY RESULT IN A DELAY OR DENIAL OF BENEFITS.”<sup>158</sup>

As of October 2011, this form was apparently available only in English. A statement in Spanish appears at the bottom of the October 2011 version of the form, telling claimants that if they do not speak or understand English, they should find someone to translate the form for them.<sup>159</sup> Moreover, the form warns that the telephone discussion will be conducted in English, and if the claimant does not speak or understand it, s/he should ask someone for help with “translation.”<sup>160</sup>

As of April 2012, Form UCB-121 was replaced by Form UCB-121M, which is available in English, Spanish, and Haitian Creole.<sup>161</sup> However, both the English<sup>162</sup> and Spanish<sup>163</sup> versions of the revised form continue to contain the Spanish-language statements regarding finding someone to “translate” both the form and the telephone conversation. The Creole version of the revised form contains a similar statement in Creole.<sup>164</sup>

The Respondent provided a statement asserting that when mailed, the “Call In Card” is accompanied by the “Babel list,” informing claimants that if they need assistance in languages other than English, they can call the 681-8102 number.<sup>165</sup> However, as discussed above, the language on the “Call In Card” itself informs claimants that they must find their own interpreters; therefore, the information provided to claimants regarding the availability of interpreter services is contradictory at best.

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<sup>156</sup> DEO Form UCB-121 (Rev 10/2011).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> See “Unemployment Compensation Forms Directory,” available at <http://www.floridajobs.org/office-directory/division-of-workforce-services/unemployment-programs/unemployment-compensation-forms-directory> (most recently visited November 27, 2012).

<sup>162</sup> <http://www.floridajobs.org/Unemployment/download/RA%20Forms/Adjudication/UCB121M.pdf> (most recently visited November 27, 2012).

<sup>163</sup> [http://www.floridajobs.org/Unemployment/download/RA%20Forms/Adjudication/UCB121M\(S\).pdf](http://www.floridajobs.org/Unemployment/download/RA%20Forms/Adjudication/UCB121M(S).pdf) (most recently visited November 27, 2012).

<sup>164</sup> See [http://www.floridajobs.org/Unemployment/download/RA%20Forms/Adjudication/UCB121M\(C\).pdf](http://www.floridajobs.org/Unemployment/download/RA%20Forms/Adjudication/UCB121M(C).pdf) (most recently visited November 27, 2012).

<sup>165</sup> See “Notes on CRC Complaint,” document prepared by Assistant General Counsel John Perry, dated 2/16/12, revised 2/29/12.

Furthermore, CRC's observations during the onsite investigation indicate that the Respondent did indeed place at least some responsibility for obtaining interpretation of UC-related telephone discussions on claimants themselves. With DEO's permission, a CRC investigator listened in on a portion of a random call to the UC Hotline. During that call, an English-speaking CSR spoke with a claimant who apparently spoke no English. The CSR told the claimant, in English, that he had been disqualified for benefits because he had failed to return a call to the agency, and asked the claimant's permission to speak with someone else on his behalf. The claimant passed the phone to a female who spoke in halting English, and who did not appear to understand everything the CSR was saying. During the portion of the conversation heard by the CRC investigator, the CSR repeated a phrase several times in English.

This evidence is consistent with statements by UC program personnel indicating that DEO's LEP-related policies and practices are based on the assumption that LEP persons "can understand some English if you're speaking slowly."<sup>166</sup>

(B) *Notice of determination.*

If the claimant continues to fail to either complete the ISR or request an exemption, s/he will receive a Notice of Determination<sup>167</sup> informing him/her that s/he has been determined ineligible for benefits. A sample Notice provided by attorneys for the Complainant, mailed to claimant Celeste Huff,<sup>168</sup> states in Section I, "THE CLAIMANT FAILED TO COMPLETE THE INITIAL SKILLS REVIEW AS REQUIRED BY LAW. THIS INELIGIBILITY WILL REMAIN IN EFFECT UNTIL THE INITIAL SKILLS REVIEW HAS BEEN COMPLETED."<sup>169</sup> Section II, Determination, states, "In accordance with Section 443, Florida Statutes: Benefits are not payable because: THE REPORTING REQUIREMENTS WERE NOT MET. THE LAW REQUIRES INELIGIBILITY FROM 11/27/11. ANY BENEFITS RECEIVED FOR WHICH YOU WERE NOT ENTITLED ARE OVERPAYMENTS AND SUBJECT TO RECOVERY."<sup>170</sup>

The form contains boilerplate explanations in English, Spanish, and Creole of claimants' appeal rights. However, representatives of the Respondent acknowledged to CRC during the on-site investigation that individualized information about a particular claimant's situation was provided in English only, on both the Notice of Determination and Form UCB-121.

Furthermore, the English version of the explanation of appeal rights, which appears on the first page of the Notice of Determination, states that the "determination will be final unless an appeal

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<sup>166</sup> See discussion *supra* in Section V(A)(5)(d).

<sup>167</sup> As of July 2010, this form was designated AWI Form UCB-45. However, as of September of that same year, the latter designation was apparently applied to another form. See <http://www.floridajobs.org/Unemployment/download/RA%20Forms/Adjudication/UCB200.pdf> (most recently visited November 27, 2012), at 2.

<sup>168</sup> See Composite Exhibit attached to Declaration of (Composite Exhibit"), DEO UC Program Claims and Benefits, Claim Filed Effective 11/27/11, Claim Office No. 3676, Issue Code Date Mailed 12/20/11.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

is filed within 20 calendar days after the mailing date *shown above*.<sup>171</sup> However, the Spanish and Creole versions of the explanation appear on the second page of the Notice. No date appears on the second page.<sup>172</sup> Moreover, the text "DATE MAILED" is not translated into either Creole or Spanish.<sup>173</sup> As a result, at least one Spanish-speaking claimant failed to understand the deadline for filing an appeal of an adverse determination on her claim, and filed her appeal untimely.<sup>174</sup>

d. Use of results.

i. *Situation through June 30, 2012.* The relevant statutory language effective from August 1, 2011, through June 30, 2012, states that

The administrator or operator of the initial skills review shall notify [DEO] when the individual [claiming UC benefits] completes the initial skills review and report the results of the review to the regional workforce board or the one-stop career center as directed by the workforce board. The workforce board shall use the initial skills review to develop a plan for referring individuals to training and employment opportunities.<sup>175</sup>

According to Clendenning, the quoted statutory language regarding "a plan for referring individuals . . ." did not mean that a reemployment plan was required to be developed for each UC claimant. Rather, it meant that each regional workforce board (RWB) was required to develop an overall plan for using the results of the ISR. As a result, according to Clendenning, whether and how the results are used to assist individual claimants varied from region to region.

CRC's review of the websites of each of Florida's 24 RWBs verified that regional plans for the use of ISR results were inconsistent. By September 30, 2011, each RWB was required to modify and update its local Workforce Services Plan.<sup>176</sup> Section V.G.1.g. of the updated plan was to contain a "[d]escription of] how the RWB will use the scores obtained from the initial skills review to provide employment and training services to unemployment compensation claimants."<sup>177</sup>

For those RWBs that posted their plan modifications online,<sup>178</sup> the relevant descriptions ranged widely. The plans of some RWBs appeared to indicate that those regions would take an active

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<sup>171</sup> *Id.* (emphasis added).

<sup>172</sup> *Id.* at 2.

<sup>173</sup> *Id.* at 1.

<sup>174</sup> See Letter from Attorney \_\_\_\_\_ Counsel for Claimant \_\_\_\_\_ to DEO Executive Director Hunting F. Deutsch, dated November 5, 2012.

<sup>175</sup> F.S. 443.091(c)(2).

<sup>176</sup> See "Regional Workforce Board Plan Modification Instructions," available at [http://www.floridajobs.org/PDG/Memos/2011-2012 Workforce Services Local Plan Instructions 7-15-11.pdf](http://www.floridajobs.org/PDG/Memos/2011-2012%20Workforce%20Services%20Local%20Plan%20Instructions%207-15-11.pdf) (most recently visited November 27, 2012), at 3.

<sup>177</sup> See *id.* at 14.

<sup>178</sup> CRC was unable to locate plan modifications on the websites of eleven of Florida's 24 RWBs. In addition, the proposed plan modification for Region 15, the Tampa Bay WorkForce Alliance, contained no response to the question regarding use of Initial Skills Review results. See (footnote cont'd on following page)



role in reviewing the ISR results and using them to help UC claimants improve their job prospects. For example, the plan for Region 5 (the Big Bend Jobs and Education Council, Inc., d/b/a “WORKFORCE *plus*”) stated, in pertinent part, that “[a] query will be used to extract a list of Initial Skills Review scores for claimants in the region. Customers that do not attain a three or better on the skills review will be engaged for remediation in order to increase their potential to find employment. . . . [C]laimants who score greater than a three in all categories of the Initial Skills Review are only required to complete either five job searches per week or receive a service from WORKFORCE *plus* staff.”<sup>179</sup>

On the other hand, at least three of the RWBs that included information about use of ISR results in their local Workforce Services Plans indicated that the results would only be used to assist claimants if requested or initiated by the claimants themselves, or if a particular claimant was already seeking jobseeker services from the workforce development system. For example, the relevant response in the plan for Region 1, Workforce Escarosa, Inc., stated, “Based on staffing resources, RWB1 will incorporate an initial interview assessment, which may include discussion of the ‘initial skills assessment’, [sic] to those claimants involved in the U.C. Priority Re-Employment Program and those claimants who express interest in / participate in re-employment services where an initial assessment may be warranted. The tool will be used to assess need for training.”<sup>180</sup>

Similarly, the relevant response in the plan for Region 11 stated, “Any Claimant *coming to a One-Stop Employment Center for work search assistance* who scores four or higher [on the ISR] will be referred to the appropriate reemployment workshops, assessments, career counseling, Labor Market Information or other prescriptive service to help them become job ready. If the Claimant scores three or less, he/she will be provided information on remedial reemployment assistance.”<sup>181</sup>

And the relevant response from Region 2 stated, in pertinent part, that the scores “will be reviewed with the . . . Claimants as needed and requested by the Claimants.”<sup>182</sup> The response went on to note that “[t]he One-Stop Orientations” have been updated to include information

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(footnote cont’d from preceding page)

<http://workforcetampa.com/files/public/TBWA%20Two%20Year%20Plan%20Modification%20-%20For%20Public%20Comments.pdf> (most recently visited November 27, 2012).

<sup>179</sup> Big Bend Jobs & Education Council, Inc. d/b/a WORKFORCE *plus* – Region 5, Workforce Services Plan 2011-2012, available at [http://www.wfplus.org/documents/2011-2012\\_Workforce\\_Services\\_Local\\_Plan\\_Rev\\_-\\_132012.pdf](http://www.wfplus.org/documents/2011-2012_Workforce_Services_Local_Plan_Rev_-_132012.pdf) (most recently visited November 27, 2012), at 17.

<sup>180</sup> Region 1 Workforce Services Plan 2011-2013, available at <http://www.workforceescarosa.com/PDF%20Files/Administrative%20Documents/2011-2013%20Workforce%20Services%20Plan/Workforce%20Services%20Plan%20FY%202011-2013.pdf> (most recently visited November 27, 2012), at 31.

<sup>181</sup> Workforce Development Board of Flagler and Volusia Counties, Inc., d.b.a. Center for Business Excellence, Workforce Services Plan, available at [http://www.centerforbusinessexcellence.net/Reports/files/Region\\_11\\_Workforce\\_Services\\_Plan\\_Draft.pdf](http://www.centerforbusinessexcellence.net/Reports/files/Region_11_Workforce_Services_Plan_Draft.pdf) (most recently visited November 27, 2012), at 36 (emphasis added).

<sup>182</sup> Workforce Development Board of Okaloosa and Walton Counties d/b/a Jobs*Plus* Workforce Services Plan 2011-12, available at <http://www.jobsplusonestop.com/news/attach/2011-12%20Local%20Plan%2009.01.11.pdf> (most recently visited May 29, 2012), at 51.

about the new UC filing requirements and the ISR process, indicating that this information would be provided to claimants who actually came to an American Job Center.<sup>183</sup>

ii. *Statutory amendments.* In March 2012, the Florida legislature passed, and the Governor signed, CS/HB 7027.<sup>184</sup> In pertinent part, this bill amended the relevant statutory language to require DEO to “prescribe a numeric score on the initial skills review that demonstrates a minimal proficiency in workforce skills.”<sup>185</sup> The revision also provides that:

3. Any individual that falls below the minimal proficiency score prescribed by the department in subparagraph 2. on the initial skills review shall be offered training opportunities and encouraged to participate in such training at no cost to the individual in order to improve his or her workforce skills to the minimal proficiency level.

4. The department shall coordinate with Workforce Florida, Inc.,<sup>186</sup> the workforce boards, and the one-stop career centers to identify, develop, and utilize best practices for improving the skills of individuals who choose to participate in training opportunities and who have a minimal proficiency score below the score prescribed in subparagraph 2.

5. The department, in coordination with Workforce Florida, Inc., the workforce boards, and the one-stop career centers, shall evaluate the use, effectiveness, and costs associated with the training prescribed in subparagraph 3. and report its findings and recommendations for training and the use of best practices to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013.

The changes required by the amendments to the statutory language went into effect on July 1, 2012. According to DEO, it has determined that the minimal proficiency score for the ISR is 3. “Individuals scoring below three on any sections of the ISR are encouraged to take advantage of free online training to enhance work ready skills and become more marketable in a competitive economy.”<sup>187</sup>

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<sup>183</sup> See *id.*

<sup>184</sup> See “CS/HB 7027: Unemployment Compensation, Bill History,” at <http://www.flsenate.gov/Session/Bill/2012/7027> (most recently visited November 27, 2012).

<sup>185</sup> See Chapter 2012-30, Committee Substitute for House Bill No. 7027, available at [http://laws.firules.org/files/Ch\\_2012-030.pdf](http://laws.firules.org/files/Ch_2012-030.pdf) (most recently visited November 27, 2012), revision of F.S. 443.091(1)(c)(2).

<sup>186</sup> Workforce Florida, Inc., is the State’s workforce board. See “About Workforce Florida” at <http://www.workforceflorida.com/AboutUs/AboutUs.php> (most recently visited November 27, 2012).

<sup>187</sup> Responses to Follow-Up Questions, response 11.

### 3. Appeals/Requests for Reconsideration

Under Florida law, appeals from UC determinations are regarded as separate and distinct from requests for reconsideration.

#### a. *Reconsiderations.*

The 2011 Florida Statutes provided that DEO may reconsider a determination if it finds an error, or if new evidence or information pertinent to the determination is discovered after a prior determination or redetermination. A redetermination could not be made more than 1 year after the last day of the benefit year, except in cases of false or fraudulent representation; in such cases, the redetermination may be made within 2 years after the false or fraudulent representation.<sup>188</sup> Parties seeking reconsideration were instructed to file via postal mail.<sup>189</sup> This instruction appeared on both the Creole and Spanish versions, as well as the English version, of the initial page of the Internet Appeals Program.<sup>190</sup>

#### b. *Appeals.*

Pursuant to Florida law, during the relevant period, the claimant or any other party entitled to notice of a UC determination had the right to appeal an adverse determination to an appeals referee within 20 days.<sup>191</sup> The appeals-filing process could be conducted via Internet.<sup>192</sup> Filing via fax or postal mail was also permitted, using either a letter or DEO's Notice of Appeal form,<sup>193</sup> although the agency encouraged filing by Internet.<sup>194</sup> Unlike the initial page of FLUID, the relevant pages of the Respondent's Internet Appeals Program contained no Babel Notice informing persons who are literate in languages other than English, Spanish, or Creole about where or how to obtain assistance in filing an appeal or a request for reconsideration.<sup>195</sup>

<sup>188</sup> F.S. 443.151(3)(e)(1), available at [http://archive.flsenate.gov/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0400-0499/0443/Sections/0443.151.html](http://archive.flsenate.gov/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0443/Sections/0443.151.html) (most recently visited November 27, 2012).

<sup>189</sup> See "The Internet Appeals Program," [https://iap.floridajobs.org/IAP\\_INTER/process.asp](https://iap.floridajobs.org/IAP_INTER/process.asp) (most recently visited November 27, 2012), second page (reached by clicking on "Continue" button at bottom of first page), "What's This?"

<sup>190</sup> *Id.*, second page in each language. To locate, click on relevant language button at top of English-language page. For Spanish, click on "Continuar" button at bottom of first Spanish page; see section headed "¿Qué es esto?" on right side of second page. For Creole, click on "Kontinye" button at bottom of first Creole page; see section headed "Kisa sa a ye?" on right side of second page.

<sup>191</sup> F.S. 443.151(4)(b)(1). See fn. 188 *supra* for URL.

<sup>192</sup> See "File an Appeal," <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/file-an-appeal>; "The Internet Appeals Program," [https://iap.floridajobs.org/IAP\\_INTER/process.asp](https://iap.floridajobs.org/IAP_INTER/process.asp) (both most recently visited November 27, 2012).

<sup>193</sup> Form DEO-A100, available at <http://www.floridajobs.org/office-directory/division-of-workforce-services/unemployment-programs/unemployment-compensation-forms-directory> (most recently visited November 27, 2012) (click "Appeals" tab).

<sup>194</sup> See Frequently Asked Questions (FAQs), <http://www.floridajobs.org/frequently-asked-questions-directory/frequently-asked-questions/category/d4b2bda5-1899-48e0-ad0e-1a00e073a97a/x>, "How do I appeal an unemployment compensation determination?" (most recently visited November 27, 2012).

<sup>195</sup> Compare <https://www2.myflorida.com/fluid/> (FLUID initial page) with [https://iap.floridajobs.org/IAP\\_INTER/process.asp](https://iap.floridajobs.org/IAP_INTER/process.asp) (first page of Internet Appeals Program) (both pages most recently visited November 27, 2012).

Moreover, as the Respondent acknowledges, the Internet Appeals Program was not made available in Creole until approximately December 5, 2011.<sup>196</sup>

Appeal hearings on most issues were conducted during the relevant period by referees from the Unemployment Compensation Office of Appeals.<sup>197</sup> These hearings were usually conducted by telephone, although in some instances they took place in person.<sup>198</sup>

Complainant's attorneys provided CRC with a sample Notice of Unemployment Compensation Telephone Hearing ("Notice of Hearing").<sup>199</sup> The text of the Notice of Hearing appears in English only, with the exception of language in Spanish and Creole that states: "CLAIMANTS: If you do not speak or understand English, notify the deputy clerk at the number below to request a free translator if one is needed for the hearing."<sup>200</sup>

The Notice of Hearing also states: "*IMPORTANT: Please read the enclosed Appeals Information Pamphlet. If not enclosed, notify the deputy clerk at the number below.*"<sup>201</sup> The cited pamphlet,<sup>202</sup> which contains detailed information about the appeals process, has been translated into Spanish<sup>203</sup> and Creole.<sup>204</sup> However, the English version states, in multiple other languages: "If you do not speak or read English well, have this important information translated immediately."<sup>205</sup>

Hearings on tax rate, reimbursement, and liability protests are conducted by Special Deputies.<sup>206</sup> According to a pamphlet published by the Respondent, "Parties to a special deputy appeal include the employing unit (Petitioner), the Department of Economic Opportunity (Respondent), represented by the Department of Revenue, and any claimant whose unemployment

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<sup>196</sup> See Responses to Follow-Up Questions, response 9.

<sup>197</sup> See FAQs (URL at fn. 194), "What will happen after I file an appeal?" (most recently visited June 19, 2012).

<sup>198</sup> See "Unemployment Compensation Appeals Information," DEO Form UCA Bulletin 6E (Rev. 9/11), available at <http://www.floridajobs.org/unemployment/download/uc/bulletin6-English.pdf> (most recently visited November 27, 2012), section 16. Neither the pamphlet nor the relevant FAQs explains the circumstances under which hearings take place in person.

<sup>199</sup> Composite Exhibit (see fn. 168 *supra*).

<sup>200</sup> *Id.*, "Notice of Unemployment Compensation Telephone Hearing," Claimant/Appellant identity and address and Docket Number redacted, SSN: XXX-XX-6725, Referee: Darcy Etienne, Date: January 25, 2012, Claims Cost Center: 3676-0, at 2.

<sup>201</sup> *Id.* at 1.

<sup>202</sup> See fn. 198 *supra*.

<sup>203</sup> "Compensación del Desempleo, Información Sobre Apelaciones," <http://www.floridajobs.org/unemployment/download/uc/Bulletin6-Spanish.pdf> (most recently visited November 27, 2012).

<sup>204</sup> "Tiliv Kontestasyon pou Konpansasyon pou Chomaj," <http://www.floridajobs.org/unemployment/download/uc/Bulletin6-Creole.pdf> (most recently visited November 27, 2012).

<sup>205</sup> See fn. 198 *supra*.

<sup>206</sup> "Special Deputy Appeals Hearing Information," <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/file-an-appeal/special-deputy-appeals-hearing-information>; see also <http://www.floridajobs.org/unemployment/pdf/specialdeputybulletin.pdf> (PDF version of pamphlet) (both most recently visited November 28, 2012).

compensation claim may be affected by the outcome of the appeal (Joined Party). Others may be joined as parties as the special deputy deems appropriate.”<sup>207</sup>

The pamphlet states:

The hearing will be conducted in English. When necessary, the Petitioner and Respondent must provide their own translators [*sic*]. Translators will be provided for claimants who are joined as parties and indicate a primary language other than English. If a translator is needed by a Joined Party and the Notice of Telephone Hearing does not advise that translation is arranged, have the special deputy clerk contacted at once to advise what language is needed so arrangements for translation can be made.<sup>208</sup>

The Respondent acknowledged that the Special Deputy Appeals Hearing Information page was not translated into any language other than English. According to the Respondent, “The Special Deputy Tax Information on the DEO website is provided in English for employers regarding the hearing process and the indexing of final orders. If the claimant is a joined party, he/she will receive information in the mail regarding the tax liability case once it is scheduled. We provide translated material for claimants if his/her language is a language other than English.”<sup>209</sup>

Complainant’s attorneys provided a sample Decision of Appeals Referee.<sup>210</sup> The Decision begins with text in English, Spanish, and Creole that states: “Important appeal rights are explained at the end of this decision.”<sup>211</sup> A three-paragraph explanation of appeal rights appears at the end of the document in each of the three languages.<sup>212</sup> However, the Issues Involved, Findings of Fact, Conclusions of Law, and Decision sections, and the explanation of repayment requirements, appear in English only.<sup>213</sup>

A party who disagrees with an appeals referee’s decision may file a written request, within 20 days of the date on which the decision was mailed, for review of the case by the Unemployment Appeals Commission (UAC).<sup>214</sup> The request may be filed via postal mail, fax, hand-delivery, delivery by courier service other than the United States Postal Service, or the Internet.<sup>215</sup> However, we were unable to locate the web pages providing information about the UAC in any

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<sup>207</sup> See *id.*

<sup>208</sup> *Id.*, section 13.

<sup>209</sup> E-mail from Florida UC Operations Manager Wiggins to CRC Senior Policy Advisor Sudell, dated December 6, 2012 (“Wiggins E-Mail 3”).

<sup>210</sup> Huff Composite Exhibit (*see* fn. 168 *supra*).

<sup>211</sup> *Id.*, “Decision of Appeals Referee,” SSN and Docket Number redacted, Local Office # 3676-0, at 1.

<sup>212</sup> *Id.* at 2-3.

<sup>213</sup> *Id.* at 1-2.

<sup>214</sup> *Id.* at 2; FAQs (*see* URL at fn. 194 *supra*), “What if I disagree with the decision?” (most recently visited November 26, 2012). The name of this body was changed to the Reemployment Assistance Appeals Commission by the Florida legislature during the 2012 legislative session, as discussed *supra* in fn. 2.

<sup>215</sup> See FAQ *id.*

languages other than English.<sup>216</sup> Nor does the process for filing an Internet request for UAC review appear to be available in any other languages.<sup>217</sup>

### C. TELEPHONE SERVICES

The logs and declarations provided by attorneys for Complainant and discussed above, as well as additional logs and declarations discussed below, contain evidence of further deficiencies in the telephone services provided by Respondent for persons with limited English proficiency.<sup>218</sup> This evidence is consistent with statements by UC program personnel discussed *supra* in Section V(A), the Background section.

1. *Unavailability of telephone services.* Although during the period of CRC's investigation, the service hours for the UC Hotline were supposedly 8 am to 5 pm Monday through Friday,<sup>219</sup> the logs and declarations contained evidence of numerous occasions when callers were unable to reach a live attendant during those hours.<sup>220</sup> The outgoing recorded messages heard by these callers were in English, despite the contractual term requiring CLI, in pertinent part, to "provide a 'pre-recorded message' in the client's native language when callers are placed on hold waiting to connect directly to an interpreter . . . ."<sup>221</sup>

#### a. Spanish-language tester.

i. On three occasions in March 2012 during business hours, this tester heard a recorded message in English, even after she pressed 2 for Spanish.<sup>222</sup> The recorded message said, "As of August 1, you have to apply online at [www.floridajobs.org](http://www.floridajobs.org). Information will not be available over the phone. Please go to [www.floridajobs.org](http://www.floridajobs.org) for more information."<sup>223</sup> On all three occasions, at the end of this message, the call was automatically disconnected.<sup>224</sup>

<sup>216</sup> See, e.g., <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/reemployment-assistance-appeals-commission><http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/file-an-appeal/unemployment-appeals-commission> (most recently visited November 26, 2012).

<sup>217</sup> See <https://raaciap.floridajobs.org/> (most recently visited November 26, 2012).

<sup>218</sup> According to Complainant's attorney, the Hindi/Punjabi, Portuguese, Polish, and Russian testers called the 681-8102 number; the Spanish and English calls were made to 204-2418; and the Creole calls were made to both numbers, with the log indicating which number was used for which call. See Greenfield E-Mail 1.

<sup>219</sup> See, e.g., "Contact the Office of Unemployment Compensation," "Call the Unemployment Compensation Hotline," <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/contact-the-office-of-unemployment-compensation> (most recently visited November 28, 2012).

<sup>220</sup> The main text addresses evidence provided by testers speaking languages other than English. However, an English-language tester also had similar experiences. Information about these experiences will be included in footnotes *infra*. See also discussion *supra* in Section V(A)(5)(a) of Background section in main text about experiences of a *Miami Herald/Times* reporter.

<sup>221</sup> CLI Contractor Deliverables, deliverable F (emphasis added). In the March 1, 2012, follow-up interview, UC program personnel acknowledged to CRC that outgoing recorded messages are in English.

<sup>222</sup> Spanish-language log, calls placed 3/7/12 at 1:19 pm, 3/16/12 at 11:55 am, and 3/23/12 at 11:55 am.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* The English-language tester had a similar experience on two occasions, although she pressed 1 for English. See English-language log, calls placed 3/13/12 and 3/21/12. See also the *Miami Herald-Times* story quoted in Section V(A)(5)(a) of main text *supra*.

ii. On a different occasion, after this tester dialed the number, she heard the message “Please hang up and dial again” in English.<sup>225</sup>

iii. On still another occasion, this tester obeyed a recording that told her to press 2 for Spanish, and was placed on hold. Although she waited for 20 minutes, a live attendant never answered, and eventually the call was automatically disconnected.<sup>226</sup>

b. *Creole-language tester.* This tester called the 204-2418 number during business hours and reached an English-language recording stating, in pertinent part, that there were 101 calls ahead of her and that the wait would be three minutes.<sup>227</sup> Although she waited for longer than three minutes, a live attendant never answered, and eventually the call was automatically disconnected.<sup>228</sup> Later the same day, also during business hours, she called the 681-8102 number, and reached another recording saying to please hold for assistance.<sup>229</sup> Although she waited for 10 minutes, a live attendant never answered, and eventually the call was automatically disconnected.<sup>230</sup>

c. *Creole-speaking paralegal.* A paralegal employed at Legal Services of Greater Miami, Inc., called the 681-8102 number, and reached a recording stating in English that the wait for an attendant would be five minutes.<sup>231</sup> While this paralegal was on hold, she heard recorded messages in English only. Although she waited for 15 minutes, a live attendant never answered, and eventually she hung up.<sup>232</sup>

d. *Complainant’s attorney.* Counsel for the CP called the 681-8102 number and waited on hold for 16.5 minutes. All of the recorded messages she heard during this time were in English only.<sup>233</sup>

2. *Inability to identify correct language.* The CLI Contractor Deliverables required the contractor to “[p]rovide immediate access, if AWI encounters a language which it cannot readily identify, to an employee trained to identify which language is needed and provide a qualified translator.”<sup>234</sup> Nonetheless, the tester logs document multiple occasions on which no one was able to identify the language spoken by testers. On at least two of these occasions, the tester was subjected to verbal abuse in English.

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<sup>225</sup> Spanish-language log, call placed 3/9/12 at 12:32 pm. The English-language tester had the same experience on three occasions. See English-language log, calls placed 3/7/12, 3/8/12, and 3/14/12.

<sup>226</sup> Spanish-language log, call placed 3/19/12 at 10:14 am. The English-language tester had a similar experience: after pressing 1 for English, she was placed on hold, and waited for 15 minutes, but never reached a live attendant, and eventually hung up. See English-language log, call placed 3/23/12.

<sup>227</sup> Creole-language log, call placed 3/7/12 at 3:45 pm.

<sup>228</sup> See *id.*

<sup>229</sup> *Id.*, call placed 3/7/12 at 4:35 pm. The log states that the tester did not note the language of the recording.

<sup>230</sup> See *id.*

<sup>231</sup> Declaration of Jacqueline-Michel Chow (“Chow Declaration”), dated February 24, 2012, paragraph 11.

<sup>232</sup> *Id.*, paragraphs 12-13.

<sup>233</sup> See Greenfield E-Mail 1.

<sup>234</sup> CLI Contractor Deliverables, deliverable C.

a. *Portuguese.* The Portuguese-language tester made six calls to Hotline numbers during business hours.<sup>235</sup> On half of those calls, the person(s) answering the call were unable to identify the tester's language as Portuguese, and eventually hung up.<sup>236</sup> According to the tester, "Seemed like they would get irritated if you didn't say anything other than the test prompts and they couldn't figure out how to help."<sup>237</sup>

b. *Hindi and Punjabi.* In nine calls to Hotline numbers during business hours, the Hindi/Punjabi tester never reached anyone who was able to identify the language(s) she was speaking.<sup>238</sup>

i. On two occasions, this tester spoke in Hindi to a live attendant and was put on hold for twenty minutes, but no Hindi speaker ever answered, and eventually she (the tester) hung up.<sup>239</sup>

ii. On one occasion when the tester spoke in Punjabi, a man asked her repeatedly in English whether she needed a Spanish interpreter. She responded in Punjabi, and was eventually placed on hold. After 10 minutes, a Spanish speaker came on the line, was unable to understand her, and told her in Spanish to call back when she had someone who spoke either English or Spanish to help her.<sup>240</sup>

iii. On one occasion, the person who answered the phone told the tester repeatedly in English, "I don't understand. You need to tell me what language you are speaking. I only speak English." After the tester repeated herself several times in Hindi, the staffer connected her with a recording instructing callers to press 1 for English, 2 for Spanish, and 3 for "French,"<sup>241</sup> in the respective languages. When the caller didn't press anything, the message repeated three times, and then the call automatically disconnected.<sup>242</sup>

iv. On three different occasions, when the person(s) who answered the tester's calls were unable to identify the language(s) in which the tester was speaking, they eventually hung up on her.<sup>243</sup>

v. Twice, this tester, speaking Punjabi, reached a Hotline CSR who told her such things as, "I only speak English. Speak English"; "Call back when you learn English"; and "I don't speak jibberish so call when you know English."<sup>244</sup> The log notes, "He was VERY Rude."<sup>245</sup>

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<sup>235</sup> Portuguese-language log, calls placed 2/15/12, 2/16/12, 2/21/12, 2/22/12, 2/23/12, 4/20/12.

<sup>236</sup> *Id.*, calls placed 2/16/12, 2/23/12, 4/20/12; E-mail from Complainant's Attorney Greenfield to CRC Senior Policy Advisor Sudell, dated June 11, 2012 ("Greenfield E-Mail 2").

<sup>237</sup> Greenfield E-Mail 2.

<sup>238</sup> "Hindi and/or Punjabi" log, *passim*.

<sup>239</sup> *Id.*, calls placed 2/13/12 at 12:32 pm and 4:30 pm.

<sup>240</sup> *Id.*, call placed 2/15/12.

<sup>241</sup> Given other information in the record, we find that this language was more likely Haitian Creole.

<sup>242</sup> *Id.*, call placed 3/1/12.

<sup>243</sup> *Id.*, calls placed 2/16/12, 3/5/12 at 10:25 am, and 3/5/12 at 2:30 pm.

<sup>244</sup> *Id.*, calls placed 3/2/12 at 1:15 pm and 1:18 pm.

<sup>245</sup> *Id.*, call placed 1:18 pm.



3. Undue delay waiting for interpreters. The contractual terms required CLI to “[e]nsure interpreters are available and prepared to respond to 90% of all calls received within 30 seconds and 100% of all calls received within 50 seconds.”<sup>246</sup> Nonetheless, the evidence provided by the Complainant’s attorneys indicated that foreign-language testers encountered hold times of 10 minutes or more waiting for an interpreter after speaking with a live agent.<sup>247</sup>

4. Other problems. The logs and other documentation provided by Complainant’s attorneys document problems of repeated dropped calls;<sup>248</sup> failure to return testers’ calls;<sup>249</sup> and after-hours messages in English only.<sup>250</sup>

## VI. ANALYSIS

Recipients subject to WIA Section 188, Title VI, Section 504, ADA Title II, and their implementing regulations have two similar types of general obligations toward both persons with disabilities and persons with limited English proficiency (LEP): steps that must be taken in advance, before a person with a disability or with LEP seeks services or information, and individualized steps that must be taken to address the specific needs of a particular person with LEP or a disability at the time when such a person seeks services or information.

### A. Meaningful Access for Persons with LEP

The regulations implementing WIA Section 188 impose on recipients specific obligations related to provision of services and information for persons with limited English proficiency (LEP).<sup>251</sup> These obligations have been imposed because, under longstanding Supreme Court precedent, a program receiving Federal financial assistance that denies LEP persons a “meaningful opportunity to participate” by failing to provide services and information in appropriate languages unlawfully discriminates against such persons on the basis of national origin.<sup>252</sup> See Lau v. Nichols, 414 U.S. 563, 568 (1973).

The LEP-related obligations imposed on recipients by the WIA nondiscrimination regulations are of two types: (a) obligations related to persons who communicate in the language (or languages) used by a “significant number or proportion” of the population the recipient serves, and (b) obligations related to “the particularized language needs” of LEP individuals who

<sup>246</sup> CLI Contractor Deliverables, deliverable G.

<sup>247</sup> See Portuguese-language log, call placed 2/15/12 (11 minutes, then tester hung up); Polish-language log, calls placed 2/10/12 (12 minutes) and 2/21/12 (21 minutes); Chow Declaration, paragraphs 8-10 (15 minutes, then paralegal hung up); Hindi/Punjabi log, calls placed 2/13/12 at 12:32 pm (20 minutes) and 4:30 pm (22 minutes).

<sup>248</sup> See Spanish-language log, calls placed 3/8/12, 3/12/12, 3/13/12, 3/19/12; Portuguese-language log, calls placed 2/21/12 and 2/22/12;

<sup>249</sup> See Russian-language log, call placed 2/29/12.

<sup>250</sup> See Polish-language log, call placed 2/11/12 at 5:59 pm.

<sup>251</sup> 29 CFR 37.35(a)(1) and (2).

<sup>252</sup> Preamble, “Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998,” 64 FR 61692 (November 12, 1999) (“Preamble to WIA Nondiscrimination Regulations”), at 61704, Section III, “Overview of the Rule,” Subpart B, “Recordkeeping and Other Affirmative Obligations of Recipients: Notice and Communications,” discussion of 29 CFR 37.35, citing Lau v. Nichols, 414 U.S. 563 (see main text).

communicate in less-widely-used languages.<sup>253</sup> Recipients have two main ways to provide language services: oral interpretation, either in person or via a telephone interpretation service (“interpretation”), and written translation (hereinafter “translation”).<sup>254</sup> Furthermore, recipients, including UI programs, are obligated not only to provide language services, but to give LEP persons adequate notice that those services are available free of charge.<sup>255</sup>

Although DOL’s Title VI regulations do not impose such explicit LEP-related obligations, they do prohibit not only intentional discrimination, but also conduct that has a discriminatory disparate impact on protected groups. The regulation at 29 CFR 31.3(b)(2) provides that a recipient “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 origin.” In the aforementioned *Lau* decision, the Supreme Court interpreted similar regulations, promulgated by the former Department of Health, Education, and Welfare, as requiring a San Francisco school district that had a significant number of non-English speaking students of Chinese origin to take reasonable steps to provide the LEP students with a meaningful opportunity to participate in federally funded educational programs.<sup>256</sup> The overall requirement imposed by Title VI, WIA Section 188, and their implementing regulations is that recipients take reasonable steps to ensure meaningful access by LEP persons.<sup>257</sup>

In the context of Unemployment Insurance (UI) programs, detailed guidance on how to provide such meaningful access is available in two documents issued by DOL. The first of these, entitled “Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (“DOL LEP Guidance”),<sup>258</sup> discusses the factors that each recipient should apply to the various types of contacts it has with the public, in order to assess language needs and determine what reasonable steps should be taken to ensure meaningful access.<sup>259</sup> The Guidance includes specific examples

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<sup>253</sup> 29 CFR 37.35(a), (b).

<sup>254</sup> “Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (“DOL LEP Guidance”), 68 FR 32290, 32295 (May 29, 2003), available at <http://www.dol.gov/oasam/regs/fedreg/notices/2003013125.htm>.

<sup>255</sup> DOL LEP Guidance, 68 FR at 32300; DOL ETA, UIPL No. 30-11, “State Responsibilities Regarding Limited English Proficient (LEP) Individuals” (September 16, 2011) (“LEP UIPL”), available at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3083](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3083), at 3.

<sup>256</sup> See 414 U.S. at 566-69.

<sup>257</sup> See, e.g., DOL LEP Guidance, 68 FR at 32291, fn. 2. The Guidance notes that “Although the regulatory language differs, the obligations of recipients to provide accessibility by LEP persons to DOL financially assisted programs and activities are the same under Title VI and Section 188.” *Id.* at 32292.

<sup>258</sup> Although the title of the LEP Guidance refers to Title VI, the text of the Guidance makes clear that it applies in the context of WIA Section 188, and articulates the requirements set forth in 29 CFR 37.35. See *id.* at 32292, Section II, “Legal Authority.” Additionally, the DOL LEP Guidance adheres to the Federal-wide compliance standards and framework for providing LEP persons with meaningful access. *Id.* at 32290, “Supplementary Information.”

<sup>259</sup> These four factors are: (1) The number or proportion of LEP persons served or encountered in the eligible service population; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature (footnote cont’d on following page)

of how the four relevant factors should be analyzed in the UI context.<sup>260</sup> DOL has also issued an Unemployment Insurance Program Letter (UIPL) outlining States' obligations to provide meaningful access to their UI programs for LEP persons.<sup>261</sup>

With specific regard to written translation in the UI context, both the DOL LEP Guidance and the UIPL provide that UI programs must translate "vital" written documents into the languages used by a significant number or proportion of the population the programs serve. The factors for determining whether materials are vital and should be translated are: (a) the importance of the determination or decision, information, encounter, or service involved, and (b) the consequence(s) to the LEP person if the information is not provided: (i) accurately, or (ii) in a timely manner.<sup>262</sup> Examples of vital UI documents listed in the UIPL include "applications or intake forms, information and/or advisement forms that potentially could have important consequences, written notices of eligibility criteria, appeal or other rights, determination and decision notices, and notices advising individuals of free language and translation assistance."<sup>263</sup>

We determine that, as described in detail below, the steps taken by Florida's UI program are insufficient to provide meaningful access to persons with limited English proficiency.

### 1. Overall analysis of the Florida claims filing process in light of the four factors

a. *The number or proportion of LEP persons served or encountered in the eligible service population.* As noted in the Findings of Fact, Florida has identified the two languages spoken by the largest LEP populations in the State as Spanish (18.8 percent) and Haitian Creole (1.7 percent).<sup>264</sup> CRC has verified that the information provided by the State is an accurate representation of the contents of the 2006-2008 American Community Survey, and that the Survey does not identify any other languages that are used by at least one percent of the State population. For purposes of this Initial Determination, therefore, we will consider Spanish and Haitian Creole to be the languages used by "a significant number or proportion" of the population served by Florida's UI program.

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(footnote cont'd from preceding page)

and importance of the program, activity, or service provided by the recipient; and (4) the resources available to the recipient and costs. DOL LEP Guidance, 68 FR at 32294.

<sup>260</sup> *Id.* at 32294-95, Section V, "How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?"; at 32295-99, Section VI, "Selecting Language Assistance Services"; and at 32301-04, "Appendix—Application of LEP Guidance for Specific Types of DOL Recipients."

<sup>261</sup> *See* fn. 255 *supra*.

<sup>262</sup> DOL LEP Guidance at 32298; LEP UIPL at 3.

<sup>263</sup> LEP UIPL at 3.

<sup>264</sup> The DOL LEP Guidance notes that where a recipient serves a large LEP population, "the appropriate service area is most likely determined by considering local service areas and not the entire population served by the recipient," and "suggests that states operating statewide programs, such as the Unemployment Insurance program . . . assess statewide language groups to identify potentially significant LEP populations, and ensure that local offices conduct similar surveys of their local service populations." DOL LEP Guidance at 32294. However, we determine that this suggestion is inapplicable to this case, for two reasons: one, because all services and information at issue in this case are provided by the State without regard to the geographic location of the claimants; and two, because the State provides telephonic translation services on an individualized basis for claimants from smaller LEP populations, as discussed *infra* in the main text.

b. *The frequency with which LEP individuals come in contact with the program.* The LEP Guidance explains that “[t]he more frequent the contact with a particular language group, the more likely that *enhanced* language services in that language are needed. The steps that are reasonable for a recipient that serves a[n] LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. . . . If a[n] 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.”<sup>265</sup> In Florida, claimants filing claims for continuing UC benefits must certify that they are looking for work; this certification must be provided, via the Internet, every other week. We determine that this level of contact is both frequent and predictable.

c. *The nature and importance of the program, activity, or service provided by the recipient.* As the DOL LEP Guidance states, “The more important the activity, information, service, or program, or the greater the possible consequences of the contact to LEP individuals, the more likely language services are needed.”<sup>266</sup> The discussion of UI services in the Appendix to the Guidance emphasizes the importance of the UI program: “Payments made directly to eligible, unemployed workers ensure that at least 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. UI benefits provide temporary wage replacement that helps claimants to maintain their purchasing power and stabilize the economy.”<sup>267</sup> These benefits are essential to unemployed Floridians who qualify for them, and therefore the State’s UI program must provide language services in order to ensure that persons who are LEP are “effectively informed about” and “able to participate in” the program.

d. *The resources available to the recipient and costs.* As of May 2011, the point at which CS/CS/HB 7005 was passed, the State had budgeted 63 million dollars to modernize its claims filing system. The WIA nondiscrimination regulations were promulgated in 1999, and DOL’s LEP Guidance was published in 2003. Florida therefore had enough notice to allocate sufficient resources to incorporate services and information for LEP persons into its budget and contractual requirements for its new electronic claims filing system. Moreover, DEO has not cited a lack of financial resources as a reason for the problems identified in CRC’s investigation.

## 2. *Specific aspects of UI program*

As set forth in the Appendix to the DOL LEP Guidance, the following aspects of a UI program should be analyzed in determining what language services such a program should provide.<sup>268</sup> We determine that with regard to each of these aspects, the steps taken by the Respondent during the period at issue have been insufficient to provide meaningful access to LEP persons.

<sup>265</sup> DOL LEP Guidance at 32294 (emphasis added).

<sup>266</sup> *Id.* at 32295.

<sup>267</sup> DOL LEP Guidance, 68 FR at 32303, “Appendix—Application of LEP Guidance for Specific Types of DOL Recipients,” Section 2, “Applying the Four-Factor Analysis to the Full Spectrum of Services,” subsection c, “Delivering Unemployment Insurance (UI) Services.”

<sup>268</sup> *Id.* at 32303-04, subsection c(2), “UI Benefits Rights Information (BRI).”

a. UI Benefits Rights Information (BRI)

The Appendix to the DOL LEP Guidance describes UI benefits rights information (BRI) as “necessary to ensure that claimants understand their rights and responsibilities under the state UI law.”<sup>269</sup> We determine that the steps taken by the Respondent during the period at issue were insufficient to fully satisfy its obligations to provide adequate BRI for LEP persons.

i. *Written translation: BRI provided on line.*

During the period at issue, the Florida DEO website contained an Unemployment Compensation Benefits Center that provided information on how to file claims, manage benefits, file for extended benefits, file appeals, report fraud or overpayments, repay overpayments, and obtain tax forms. Although as of CRC’s review, some of this information was provided in Spanish and Creole as well as English, vital materials were omitted from the translations. These omissions, taken together, constituted a failure to provide meaningful access to this vital information. We review some of the key webpages below.<sup>270</sup>

(A) “Steps to File an Unemployment Compensation Claim”

At the time of CRC’s investigation, the English version of this page<sup>271</sup> described the steps in the process of filing a claim: “File Online,” “Receive Confirmation,” “Complete Initial Skills Review,” and “Claim Your Weeks and Submit Your Work Search Information Online.” More significantly, the page contained links to narrated tutorial presentations for each of these steps.<sup>272</sup> Each tutorial stated that it was “created so that you may follow along while” taking the relevant step in the claims-filing process.<sup>273</sup> Three of the tutorial presentations were translated into Spanish and Creole; however, the overall presentation -- “Instructions for Filing a Claim and Registering for the Initial Skills Review” -- appeared in English only.<sup>274</sup>

<sup>269</sup> DOL LEP Guidance, 68 FR at 32303-04, “Appendix—Application of LEP Guidance for Specific Types of DOL Recipients,” Section 2, “Applying the Four-Factor Analysis to the Full Spectrum of Services,” subsection c, “Delivering Unemployment Insurance (UI) Services.”

<sup>270</sup> Please note: this review is not intended to represent a comprehensive list of all pages on the Respondent’s website that, in CRC’s view, contain or contained vital information.

<sup>271</sup> <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/claims-process> (most recently visited November 23, 2012).

<sup>272</sup> “Instructions for Filing a Claim and Registering for the Initial Skills Review,” [http://sitefinity.floridajobs.org/Unemployment/tutorials/Filing%20Initial%20Claim%20\(IC\).pdf](http://sitefinity.floridajobs.org/Unemployment/tutorials/Filing%20Initial%20Claim%20(IC).pdf); “Instructions for Finding Claim and Payment Information,” [http://sitefinity.floridajobs.org/Unemployment/tutorials/FindingClaim-PaymentInfo\(I\).pdf](http://sitefinity.floridajobs.org/Unemployment/tutorials/FindingClaim-PaymentInfo(I).pdf); “Instructions for Initial Skills Review Registration,” <http://sitefinity.floridajobs.org/Unemployment/tutorials/Initial%20Skills%20Review.pdf>; “Instructions for Claiming Weeks and Entering Your Work Search,”

[http://sitefinity.floridajobs.org/Unemployment/tutorials/WorkSearch\(I\).pdf](http://sitefinity.floridajobs.org/Unemployment/tutorials/WorkSearch(I).pdf) (all links most recently visited November 23, 2012).

<sup>273</sup> See slide following title slide in each tutorial cited in previous footnote.

<sup>274</sup> Compare “Steps to File an Unemployment Compensation Claim,” <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/file-a-claim/claims-process>, step 1, “File Online,” with “Etap pou Fè yon Demann Konpansasyon pou Chomaj,” [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-revanbochaj-\(haitian-creole\)/fè-yon-demann/pwosesis-demann-yo](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-revanbochaj-(haitian-creole)/fè-yon-demann/pwosesis-demann-yo), etap 1, “Aplike sou Entènèt,” and “Pasos para presentar una reclamación de (footnote cont’d on following page)

Similarly, the final “tip” in the list of “Helpful Tips” on the English version of the page, “Sign up for the Debit Card Program,” contained a link to “Debit Card Frequently Asked Questions.” Neither the Spanish nor the Creole version of the page contained such a link.<sup>275</sup> And the one-page “Work Search Instructions – Handout,” linked at Step 4 on the English version of the page, did not appear on the Creole version, although it did appear on the Spanish page.<sup>276</sup>

(B) “UC Hot Topics”

At the time of CRC’s investigation, the English version of the “Steps to File an Unemployment Compensation Claim” page contained a link labeled “View UC Hot Topics.” The linked page contained “Important Information” about such topics as eligibility for Emergency Unemployment Compensation (EUC) and the end of Florida’s Extended Benefit (EB) program.<sup>277</sup> Such information is specifically listed in the DOL LEP Guidance as falling within the category of “vital written materials.”<sup>278</sup>

The Spanish and Creole versions of the “Steps to File an Unemployment Compensation Claim” page contained links to equivalent pages; however, as of March 18, 2013, the Spanish page had been updated only once, and the Creole page twice, since July 1, 2011.<sup>279</sup> On the same date, by contrast, the English “Hot Topics” page listed twelve updates posted during 2012 and two posted during 2013.<sup>280</sup> Some of the information in those updates was provided elsewhere in Creole and Spanish, but other information was not.

For example, an undated item posted on the English page announced that effective Friday, February 15, 2013, all individuals filing reemployment assistance claims would be required to complete the full work registration requirement through the Employ Florida Marketplace (EFM) portal, located at [www.employflorida.com](http://www.employflorida.com), before claiming their first weeks of benefits. The parallel pages in Spanish and Creole contained no such announcement,<sup>281</sup> and we were unable to

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Compensación por Desempleo,” [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-\(spanish\)/presente-un-reclamación/proceso-de-reclamación](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-(spanish)/presente-un-reclamación/proceso-de-reclamación), paso 1, “Presentar por Internet” (all links most recently visited November 23, 2012).

<sup>275</sup> Compare pages cited in previous footnote.

<sup>276</sup> *Id.*

<sup>277</sup> <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/hot-topics> (most recently visited November 23, 2012).

<sup>278</sup> See DOL LEP Guidance at 68 FR 32298, Section VI, “Selecting Language Assistance Services,” Subsection B, “Written Language Services (Translation).”

<sup>279</sup> See “Sijè Enpòtan,” [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-reyanbochaj-\(haitian-creole\)/fè-yon-demann/sijè-enpòtan](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-reyanbochaj-(haitian-creole)/fè-yon-demann/sijè-enpòtan); “Temas Importantes,” [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-\(spanish\)/presente-un-reclamación/temas-importantes](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-(spanish)/presente-un-reclamación/temas-importantes) (both links most recently visited March 18, 2013).

<sup>280</sup> See <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/hot-topics> (accessed November 23, 2012).

<sup>281</sup> Compare <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/hot-topics> with “Sijè Enpòtan,” [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-reyanbochaj-\(haitian-creole\)/fè-yon-demann/sijè-enpòtan](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-reyanbochaj-(haitian-creole)/fè-yon-demann/sijè-enpòtan), and “Temas Importantes,” [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-\(spanish\)/presente-un-reclamación/temas-importantes](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-(spanish)/presente-un-reclamación/temas-importantes) (all (footnote cont’d on following page)

locate this information in either language anywhere on the DEO site. Moreover, as of March 18, 2013, the State had provided a Spanish version of the EFM portal, but no Creole version.<sup>282</sup>

Similarly, an item posted on the English version of the Hot Topics page on October 4, 2012, contained four paragraphs and eight bullet points describing the Treasury Offset Program (TOP), a program by which eligible unemployment compensation debts will be collected via offsets to a payee's Federal tax refund.<sup>283</sup> Although this English-language item included links to Spanish and Creole versions of FAQs about the TOP program, these links were buried in text in an obscure location on an all-English-language page, and were identified solely by the words "ESPAÑOL" and "KREYÒL." Neither the program title, nor any explanation of the program, nor even the title of either of the linked documents, was translated into either language. Therefore, even in the unlikely event that LEP persons would peruse English-language web pages in the off chance that such pages might contain information they could understand, such persons would have difficulty identifying the links or understanding that the linked pages might contain significant information. Moreover, no links to the Creole or Spanish FAQs about the TOP program were included on any of the Spanish or Creole pages we examined on the site.

(C) "Contact the Office of Unemployment Compensation"

During the period of CRC's investigation, the English version of this page<sup>284</sup> included a link to the Online Help Center, which apparently was provided in English only.<sup>285</sup> The default view of the Help Center page displays information about five "General or Non-Program-Related Topics": "General Information," "Civil Rights," "Ethics Complaint," "General Counsel," and "Public Records Request." Each of these topic areas has a link to a web page.<sup>286</sup> Each linked page appears in English only: although the top right section of each page displays links labeled "ESPAÑOL" and "KREYÒL," those links lead back to the UC "File a Claim" page in the respective languages.<sup>287</sup> We were unable to locate information about four of the five listed topics in Spanish or Creole anywhere on the DEO website. At the very least, information about how to file an ethics complaint should be considered vital information that must be provided in Creole and Spanish.

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links most recently visited March 18, 2013). The English version of the page states that the requirement applies "[u]nless you require special assistance," but does not explain what "special assistance" means.

<sup>282</sup> See <https://www.employflorida.com/vosnet/Default.aspx> (click "En español" link at top right side of page for Spanish version).

<sup>284</sup> <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/contact-the-office-of-reemployment-assistance> (most recently visited November 28, 2012).

<sup>285</sup> <http://www.floridajobs.org/help-center---contact-us> (most recently visited March 18, 2013).

<sup>286</sup> "General Information" links to <http://www.floridajobs.org/home>; "Civil Rights" links to <http://www.floridajobs.org/office-directory/office-for-civil-rights>; "Ethics Complaint" links to <http://www.floridajobs.org/office-directory/office-of-the-general-counsel/about-our-office/department-code-of-ethics>; "General Counsel" links to <http://www.floridajobs.org/office-directory/office-of-the-general-counsel>; and "Public Records Request" links to <http://www.floridajobs.org/office-directory/office-of-the-general-counsel/about-our-office/requests-for-public-records> (all links most recently visited March 18, 2013).

<sup>287</sup> See *id.*

With regard to the fifth topic, “Civil Rights,” the Benefits Rights Information booklet<sup>288</sup> contains the text of the WIA “Equal Opportunity is the Law” Notice set forth in 29 CFR 37.30, including contact information for both DEO’s Office for Civil Rights (OCR) and CRC. This booklet has been translated into Creole<sup>289</sup> and Spanish.<sup>290</sup> In addition, by using the search function, we were able to locate Spanish versions of a discrimination complaint form<sup>291</sup> and a document that appears to be an internal manual for processing discrimination complaints.<sup>292</sup> However, we were unable to locate either of the latter two documents on the site in Creole. The discrimination complaint form should be considered vital information that must be translated into Creole.

We were also unable to locate Spanish or Creole versions of other information that is provided in English on the OCR website, including such vital information as the procedure<sup>293</sup> and form<sup>294</sup> for submitting a request for reasonable accommodation for a person with a disability, and DEO’s policy on sexual harassment.<sup>295</sup>

Furthermore, both the Creole<sup>296</sup> and Spanish<sup>297</sup> versions of the “Contact the Office of Unemployment Compensation” page contained links to a form for contacting the UC office by e-mail; however, the contact form itself appeared in English only.<sup>298</sup> The ability to contact the UC office in writing in a language in which a claimant is able to effectively communicate is an essential aspect of meaningful access.

ii. *Oral interpretation: BRI provided by phone.*

As discussed in detail *supra* in the Findings of Fact, the evidence supplied by Complainant’s attorneys, as well as statements by UC program personnel and the observations of a CRC investigator, demonstrate that during the period of CRC’s investigation, DEO’s telephone system

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<sup>288</sup> “Florida’s Reemployment Assistance Program,” [http://www.floridajobs.org/Unemployment/bri/bri\\_english.pdf](http://www.floridajobs.org/Unemployment/bri/bri_english.pdf) (most recently visited March 22, 2013).

<sup>289</sup> “Pwogram Asistans Reyanchaj Florid,” [http://www.floridajobs.org/Unemployment/bri/BRI\\_Creole.pdf](http://www.floridajobs.org/Unemployment/bri/BRI_Creole.pdf) (most recently visited March 22, 2013).

<sup>290</sup> “El Programa reempleo de asistencia de la Florida,” [http://www.floridajobs.org/Unemployment/bri/BRI\\_Spanish.pdf](http://www.floridajobs.org/Unemployment/bri/BRI_Spanish.pdf) (most recently visited March 22, 2013).

<sup>291</sup> “Paquete De Formularios De Reclamo Por Discriminación,” [www.floridajobs.org/civilrights/docs/ComplaintForm\(S\).doc](http://www.floridajobs.org/civilrights/docs/ComplaintForm(S).doc) (most recently visited March 22, 2013).

<sup>292</sup> “Agencia para la Innovación en la Fuerza de Trabajo Procedimientos para la Presentación de Quejas por Discriminación,” [www.floridajobs.org/civilrights/moa/tabs/8-a-2.pdf](http://www.floridajobs.org/civilrights/moa/tabs/8-a-2.pdf) (most recently visited March 22, 2013).

<sup>293</sup> <http://www.floridajobs.org/office-directory/office-for-civil-rights/about-our-services/resources-for-assisting-individuals-with-disabilities> (second paragraph, main text) (most recently visited March 21, 2013).

<sup>294</sup> <http://www.floridajobs.org/forms/legal/Accommodation%20Request%20Form.pdf> (most recently visited March 21, 2013).

<sup>295</sup> <http://www.floridajobs.org/policies/HRM/sexualharassmentpolicy2.04.pdf> (most recently visited March 21, 2013).

<sup>296</sup> [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-reyanbochaj-\(haitian-creole\)/kontakte-biwo-konpansasyon-pou-chomaj](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/sant-avantaj-konpansasyon-pou-reyanbochaj-(haitian-creole)/kontakte-biwo-konpansasyon-pou-chomaj) (most recently visited November 28, 2012).

<sup>297</sup> [http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/centro-de-beneficios-de-compensación-por-desempleo-\(spanish\)/contacto-con-la-oficina-de-compensación-por-desempleo](http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/centro-de-beneficios-de-compensación-por-desempleo-(spanish)/contacto-con-la-oficina-de-compensación-por-desempleo) (most recently visited November 28, 2012).

<sup>298</sup> See <http://www.floridajobs.org/applications/uccontactus/> (most recently visited November 28, 2012).



was insufficient to accurately provide LEP claimants the information “necessary to ensure that claimants understand their rights and responsibilities under the state UI law.”

(A) Spanish and Creole.

For these two languages – the two non-English languages spoken by “a significant number or proportion” of the population served by the program – the deficiencies include the provision of outgoing recorded messages in English only, even on the phone lines dedicated to the other two languages; callers’ inability to reach a live attendant after pressing a button for the appropriate language; undue delays waiting for interpreters; calls with Spanish CSRs that were dropped in mid-conversation; and, where conversations actually took place, the failure of Respondent’s CSRs to provide information about exceptions to the online-only filing requirement, or about exemptions from the ISR requirement.

(B) Other languages.

Statements by UC program personnel<sup>299</sup> demonstrate that the Respondent’s system for “meeting the particularized language needs” of LEP persons who speak languages other than Spanish or Creole, and who seek information from Respondent by phone, has been based on ill-advised and inaccurate assumptions. These include the assumptions that such persons “can understand some English, if you’re speaking slowly,” and that they will be able to recognize the English word “language” and identify the language in which they communicate.<sup>300</sup> In CRC’s view, the experiences of the Portuguese- and Hindi/Punjabi-speaking testers – and in particular, the abusive language to which the Hindi/Punjabi-speaking tester was subjected – exemplify why a system based upon these assumptions is, at best, inadequate. Additionally, testers speaking other languages encountered the same other problems as Creole- and Spanish-speaking testers.<sup>301</sup>

b. Initial and Continuing Claims and Follow-Up Notices

i. Claims-filing process

The Appendix to the DOL LEP Guidance states:

State agencies that serve LEP claimants should consider the inherent communication impediments to gathering information from LEP persons throughout the UI claims process. During the initial claim process, it is necessary to collect basic information, such as the LEP person’s name, address, employment information, and reason for separation from employment. It is also necessary to communicate with claimants throughout the life of their claims,

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<sup>299</sup> See Section V(A), “Background,” *supra* in main text.

<sup>300</sup> *Id.*

<sup>301</sup> We recognize that the conditions that plaintiffs’ attorneys placed upon the tester calls – particularly the condition that the testers not tell the Respondent’s CSRs the name of the language they were speaking – do not necessarily reflect the experience of all LEP persons who seek information or assistance from the Respondent by phone. However, in CRC’s view, they are undoubtedly reflective of the experience of some LEP persons.

and workforce agencies should evaluate their ability to provide appropriate services at all stages of the UI claim. . . . Depending on the size of the LEP population, it may be necessary to translate vital forms into other languages or to include a multilingual tagline on correspondence not appropriately translated to inform claimants that free language services are available.<sup>302</sup>

The Respondent has appropriately translated its claims filing systems -- the FLUID system for filing initial claims<sup>303</sup> and the system for filing weekly claims certifications and work search verifications<sup>304</sup> -- into Spanish and Haitian Creole, the two languages used by “a significant number or proportion” of the population it serves. However, the FLUID system was not made available in Creole until March 28, 2012.

Before (and after) that date, the Respondent provided a “Babel notice,” in Spanish, Creole, and a number of other languages, on the entry pages for filing both initial and continuing claims, informing claimants that the information on the page was important, and that if they did not “read or understand English,” they would be able to receive free translation assistance by calling a particular phone number. However, as discussed in detail *supra* in the Findings of Fact, that notice did not inform claimants who were proficient in Creole, but not in English or Spanish, that they were entitled to an exception to the online filing requirement. Therefore, from August 1, 2011, through March 28, 2012, the steps taken by the Respondent were insufficient to provide meaningful access to the claims-filing process for such persons.

#### *ii. Initial Skills Review*

Although the Respondent has translated the ISR into Spanish and Haitian Creole, it failed to appropriately notify claimants and members of the public that until the Creole version was posted in March 2012, Creole-literate claimants were exempt from the ISR requirement. It has also failed to provide LEP persons who are proficient in other languages with accurate and timely information about their rights and obligations related to the ISR.

As discussed *supra* in the Findings of Fact, the Respondent asserts, in essence, that the text on the “Welcome to the Florida Internet Claims Filing System!” page<sup>305</sup> that provided information about the three categories of exceptions to the online filing requirement constituted notice to claimants regarding the exemptions from the requirement to take the Initial Skills Review. We reject this assertion, particularly in light of ambiguous statements elsewhere on the Respondent’s website regarding the ISR. Example, from the English version of the “Steps to File an Unemployment Compensation Claim” page:

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<sup>302</sup> *Id.* at 32303, “Appendix – Application of LEP Guidance for Specific Types of DOL Recipients,” Section 2, “Applying the Four-Factor Analysis to the Full Spectrum of Services,” subsection c(1), “Delivering Unemployment Insurance (UI) Services: Initial Claims and Follow-Up Notices.”

<sup>303</sup> <https://www2.myflorida.com/fluid/> (most recently visited March 19, 2013).

<sup>304</sup> <https://www2.myflorida.com/fluid/Default.asp>

<sup>305</sup> <https://www2.myflorida.com/fluid/> (most recently visited March 19, 2013).

You **must** complete an initial online skills review in the following subjects: Applied Mathematics, Reading for Information and Locating Information. If you are unable to complete such a review due to illiteracy or because you speak a language other than English, Spanish, or Creole you will be referred to your local One-Stop Career Center for assistance. The results of the review will be used by your local One-Stop Career Center to assist in your job search efforts.<sup>306</sup>

The above text may reasonably be interpreted as signifying that claimants who are illiterate, or who speak languages other than English, Spanish, or Creole, must go to an American Job Center for assistance in completing the ISR, and that the results of the review will be used to assist these claimants as well as others. This interpretation is particularly reasonable in light of the evidence that Respondent's own Hotline CSRs have given callers that very information. We therefore determine that the steps taken by the Respondent have been insufficient to provide meaningful access to accurate information about the ISR for persons with limited English proficiency.

*iii. Follow-up notices and phone calls*

As discussed *supra* in the Findings of Fact, from at least October 2011 through April 2012, the "Claimant Call In Card" was apparently available in English only, with a boilerplate explanation, in Spanish, informing claimants that if they did not speak or understand English, they would need to find someone to translate the card for them. Moreover, the card asked claimants to call the Respondent within five days of the date on which "this notice" was mailed, and to be prepared to provide their own interpreter for the telephone conversation. Even after the card was revised in April 2012, the statement warning claimants that the telephone conversation will be conducted in English, and that they should be prepared to provide their own interpreter, remained on the card.

The Call In Card is clearly a vital document: it notifies the claimant that if s/he fails to provide further information, his or her benefits may be delayed or denied. By initially providing the card only in English, and by failing to translate into Spanish or Haitian Creole the individualized substantive information on the revised card regarding a particular person's claim and the reason(s) s/he is/was being asked to call, the Respondent failed to take reasonable steps to provide meaningful access to persons who communicate in those two languages. The sample Notice of Determination<sup>307</sup> provides examples of standardized English sentences, between six and 15 words long, that the Respondent already uses to notify individual claimants about determinations regarding their claims. It would scarcely burden the Respondent to obtain Spanish and Creole translations of similar brief, standardized statements notifying claimants of the specific information that they must provide in order to demonstrate their eligibility for unemployment benefits. The failure to do so constitutes a denial of meaningful access unless the

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<sup>306</sup> <http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim/claims-process> (most recently visited November 23, 2012), emphasis in original.

<sup>307</sup> See fn. 168 *supra*.

State can demonstrate that persons who are proficient in Spanish or Creole are given additional time to provide the information listed on the card.

With regard to the phone calls: The DOL LEP Guidance emphasizes that “recipients 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 . . . . [I]n exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most of these situations.”<sup>308</sup>

The UC program manager asserted that DEO policy is not to rely on language assistance by the family or friends of an LEP claimant. However, her assertion is contradicted by the testimony by a UC claimstaker, information provided by the Complainant’s attorneys, and the observations of a CRC investigator, as well as by the statements on the Call In Card itself. In relying on these informal interpreters for the follow-up phone calls, the Respondent has failed to take reasonable steps to provide meaningful access for LEP persons.

*c. UI Determinations/Adjudications/Appeals*

The Appendix to the DOL LEP Guidance explains: “All state laws contain provisions permitting claimants to appeal determinations within a specified period of time. Because of the importance of accurate and timely information from UI claimants for eligibility determinations, formulating a successful policy for effectively communicating with LEP individuals is necessary.”<sup>309</sup> As discussed below, the Respondent’s policy for communicating with LEP individuals regarding eligibility determinations, adjudications, and appeals fails to satisfy this standard, in violation of Title VI, WIA Section 188, and their implementing regulations.

*i. Determinations*

As discussed *supra* in the Findings of Fact, the Respondent acknowledged to CRC that while boilerplate explanations of claimants’ appeal rights appear on the UC Notice of Determination form in English, Spanish, and Creole, substantive information about a particular individual’s claim is provided in English only. Furthermore, the placement of the boilerplate explanations in Spanish and Creole on the second page of the Notice, combined with the failure to translate the text “DATE MAILED” into either of those languages, is likely to result in confusion regarding the deadline for filing appeals of adverse determinations, and in at least one case has in fact resulted in such confusion and in a consequent failure to file a timely appeal.

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<sup>308</sup> DOL LEP Guidance, at 32297, Section VI(A), “Selecting Language Assistance Services: Oral Language Services (Interpretation); Use of Family Members, Friends or Other Community Members as Interpreters.”

<sup>309</sup> DOL LEP Guidance, at 32303, “Appendix – Application of LEP Guidance for Specific Types of DOL Recipients,” Section 2, “Applying the Four-Factor Analysis to the Full Spectrum of Services,” subsection c(3), “Delivering Unemployment Insurance (UI) Services: UI Determinations/Adjudications/Appeals.”

## *ii. Adjudications/Appeals*

As discussed *supra* in the Findings of Fact, the Respondent has taken some appropriate steps to provide access for LEP persons to its appeals process. The most outstanding example is its provision of free interpreters for claimants in appeals hearings. However, the pamphlet describing hearings conducted by Special Deputies states that employer-petitioners must provide their own interpreters.<sup>310</sup> In addition, the text regarding “translators” on the Notice of Hearing that is used for hearings conducted by appeals referees is addressed specifically to claimants.<sup>311</sup> The law requires provision of meaningful access to the hearing process for LEP persons who are employers, as well as for those who are claimants.

With regard to written translations, the Respondent offers the Internet Appeals Program (IAP) in English, Spanish, and Haitian Creole. It also provides forms in the same three languages for filing via postal mail or fax. However, during the period of CRC’s investigation, the Respondent failed to:

- provide information about where to obtain free translation of the Appeals Information Pamphlet into languages other than English, Spanish, or Creole
- translate the individualized substantive information contained in Decisions of Appeals Referees into Creole and Spanish (and may have similarly failed to translate such individualized information contained in Decisions of Special Deputies)

Furthermore, neither the online method of appealing the decision of an appeals referee to the UAC, nor any other part of the UAC website, is provided in any language other than English. The failure to provide this vital information constitutes a violation of the Respondent’s obligation to provide meaningful access for LEP persons to the full appeals process.

## **B. Equal Opportunity for Persons with Disabilities**

DOL’s regulations implementing Section 504 and WIA Section 188 require recipients, and the ADA Title II regulations require public entities, to take specific actions in order to provide equal opportunity for persons with disabilities in their programs and activities. We determine that the 2011 changes made by Florida to the system for filing UC claims deprive persons with disabilities of equal opportunity, in violation of the applicable legal requirements.

29 CFR 37.7(e)(1) of the WIA nondiscrimination regulations provides, in pertinent part, that a recipient “must not, directly or through contractual or other arrangements, utilize *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 32.4(b)(4), in DOL’s regulations implementing Section 504, and 28 CFR 35.130(b)(3), in the U.S. Department of Justice (DOJ) regulations implementing ADA Title II, contain similar language.

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<sup>310</sup> See fn. 206 and accompanying text *supra*.

<sup>311</sup> See fn. 200 *supra*.

29 CFR 37.7(i), in the WIA nondiscrimination regulations, provides that a recipient “must not impose or apply *eligibility criteria that screen out or tend to screen out* an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be *shown to be necessary* for the provision of the aid, benefit, service, training, program, or activity being offered.” The regulations implementing ADA Title II contain similar language at 28 CFR 35.130(b)(8).

The above-quoted language prohibits overt denials of equal treatment of individuals with disabilities, or establishment of exclusive or segregative criteria that would bar individuals with disabilities from participation in aid, benefits, services, training, programs, or activities. It also prohibits the imposition of criteria that “tend to” screen out an individual with a disability. This concept makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate.<sup>312</sup>

Furthermore, 29 CFR 37.9(a), in the WIA nondiscrimination regulations, explicitly requires recipients to “ensure that communications with beneficiaries . . . who are individuals with disabilities[] are as effective as communications with others.” The regulations implementing ADA Title II contain similar language at 28 CFR 35.160(a)(1). Additionally, DOL’s regulations implementing Section 504 state, in pertinent part: “In providing services receiving Federal financial assistance . . . a recipient to which this subpart applies . . . shall ensure that no . . . participant [with a disability] is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity because of the absence of auxiliary aids for participants with impaired sensory, manual or speaking skills.” 29 CFR 32.4(b)(7)(i).

### ***1. On-line filing requirement.***

The Section-by-Section Analysis in Appendix A of DOJ’s amended ADA Title II regulations explains, in pertinent part, that financial assistance recipients and public entities “that choose to provide services through web-based applications . . . or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services or information, unless doing so would result in an undue financial and administrative burden or a fundamental alteration in the nature of the programs, services, or activities being offered.”<sup>313</sup>

The Analysis further states that “an agency with an inaccessible Web site may meet its legal obligations by providing an alternative accessible way for citizens to use the programs or

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<sup>312</sup> DOJ Title II Regulations, “Title II Regulations: 1991 Preamble and Section-by-Section Analysis,” available at [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm) (most recently visited November 28, 2012), discussion of 28 CFR 35.150.

<sup>313</sup> DOJ Title II Regulations, “Title II Regulations: 2010 Guidance and Section-by-Section Analysis,” “Appendix A to Part 35—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services,” available at [http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm) (most recently visited November 28, 2012), discussion of “Other Issues: Public Comments on Other NPRM Issues: Web site accessibility.” See also DOJ’s June 2003 publication *Accessibility of State and Local Government Web sites to People with Disabilities*, available at <http://www.ada.gov/websites2.htm> (most recently visited November 28, 2012).

services, such as a staffed telephone information line. However, such an alternative must provide *an equal degree of access* in terms of hours of operation and the range of options and programs available. For example, if job announcements and application forms are posted on an inaccessible Web site that is available 24 hours a day, seven days a week, to individuals without disabilities, then the alternative accessible method must also be available 24 hours a day, 7 days a week.”<sup>314</sup>

Division of Workforce Services Director Clendenning acknowledged to CRC that DEO took no steps to make the on-line filing system accessible for persons with disabilities. He indicated that the State used the administrative rule process to create an exception from the requirement for such persons. However, as noted *supra* in the Findings of Fact, during at least part of the period of CRC’s investigation the exception applied solely to persons with “physical or visual impairment[s] which make[ them] unable to use a computer.” Therefore, the requirement as implemented by the rule constitutes a “standard[], procedure[], criteri[on] or administrative method[]” that has the effect of discriminating against persons with other types of disabilities, such as the deaf claimants whose declarations were provided by Complainant’s attorneys.

Additionally, the FLUID claims-filing system is available to claimants without disabilities for filing initial claims 24 hours a day, seven days a week. The UC Hotline, by contrast, is nominally available only Monday through Friday from 8 am to 5 pm.<sup>315</sup> Furthermore, the DEO website acknowledges that “[t]he best time to reach a Unemployment Compensation agent is generally[] Wednesday-Friday, 8:00 a.m. to 10:30 a.m. or 4:00 p.m. to 5:00 p.m., Eastern Time”<sup>316</sup> – an even narrower timeframe. Because the Respondent’s telephone service does not provide an equal degree of access for persons with disabilities to its system for filing initial claims as is provided for persons without disabilities, the Respondent has violated 29 CFR 37.7(e)(1) and 28 CFR 35.130(b)(3).<sup>317</sup>

Moreover, the ADA Title II regulations explicitly “require[] a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by” ADA Title II and its implementing regulations.<sup>318</sup> The Respondent has failed to comply adequately with this requirement.

According to DEO itself, as discussed *supra* in section (B)(1)(c) of the Findings of Fact, one of the only ways in which the agency has disseminated information about the existence of the exceptions is by placing a written statement on the initial page of the FLUID Internet claims-

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<sup>314</sup> *Id.* (emphasis added).

<sup>315</sup> “Contact the Office of Unemployment Compensation,” “Call the Unemployment Compensation Hotline,” <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/contact-the-office-of-unemployment-compensation> (most recently visited November 28, 2012). A CRC investigator who called the 681-8102 number outside normal business hours heard a recording directing claimants to file their claims on the Internet at [www.FloridaJobs.org](http://www.FloridaJobs.org).

<sup>316</sup> *See id.*

<sup>317</sup> *See also* 29 CFR 37.9(a) (providing, in pertinent part, that covered recipients “must take appropriate steps to ensure that communications with . . . individuals with disabilities[] are as effective as communications with others”; 28 CFR 35.160(a)(1) (similar).

<sup>318</sup> DOJ Title II Regulations, “Title II Regulations: 1991 Preamble and Section-by-Section Analysis” (*see fn.* 314), discussion of 28 CFR 35.106.

filing system. However, the three listed categories of persons to whom the statement is directed are those who “1. Are legally prohibited from using a computer; 2. Have a physical or visual impairment which makes you unable to use a computer; or 3. Are unable to read or write effectively in English, Spanish, or Creole” – in other words, persons who, by definition, are unable to access and/or understand the statement.

The other methods by which the Respondent claims to disseminate this information are via the telephone system and the American Job Centers. However, as discussed in detail in the Findings of Fact, deaf claimants who went to American Job Centers for assistance were not informed about the exception. Furthermore, DEO failed to respond to a specific request to provide documentation of any methods, other than the notice on the initial page of the FLUID system, that it uses to disseminate information about the exception. Given these circumstances, we determine that the Respondent has violated 28 CFR 35.106.

## **2. Initial Skills Review.**

Depending upon how it is viewed, the ISR requirement, as implemented by the State of Florida, violates applicable Federal disability nondiscrimination law in one of two ways.

### **a. ISR as an eligibility criterion.**

Although the Respondent does not characterize the ISR as an eligibility criterion, multiple factors indicate that, as implemented by the State of Florida, it indeed constitutes such a criterion. In the first place, the ISR requirement appears in the section of the Florida Statutes entitled “Benefit eligibility conditions.”<sup>319</sup> Second, the relevant statutory language states, in pertinent part, that “The failure of the individual [claimant] to comply with this requirement will result in the individual *being determined ineligible for benefits* for the week in which the noncompliance occurred and for any subsequent week of unemployment until the requirement is satisfied.”<sup>320</sup> Third, copies of Notices of Determination and of Redetermination supplied to CRC by Complainant’s attorneys use the term “ineligibility” to refer to the claimant’s failure to complete the ISR and consequent non-entitlement for benefits.<sup>321</sup> We therefore determine that the ISR constitutes an eligibility criterion for purposes of 29 CFR 37.7(i) and 28 CFR 35.130(b)(8).

As noted *supra* in the Findings of Fact, the program Adobe Flash Player is necessary in order to run the ISR. However, multiple strategies must be employed by web designers in order to make Flash content fully accessible for persons with disabilities.<sup>322</sup> DWS Director Clendenning acknowledged to CRC that the Respondent took no steps to make the Initial Skills Review

<sup>319</sup> F.S. 443.091.

<sup>320</sup> F.S. 443.091(1)(c)(2) (emphasis added).

<sup>321</sup> E.g., Composite Exhibit attached to Declaration of \_\_\_\_\_ § (see fn. 168).

<sup>322</sup> See, e.g., website Web AIM (Web Accessibility In Mind), “Creating Accessible Flash Content,” article updated January 2009, available at <http://webaim.org/techniques/flash/>; website Six Revisions: Useful Information for Web Developers and Designers, “Adobe Flash Accessibility: Best Practices for Design,” article dated August 27, 2009, available at <http://sixrevisions.com/usabilityaccessibility/adobe-flash-accessibility-best-practices-for-design/> (both most recently visited November 28, 2012).



technology accessible. Nor has DEO provided an alternative method of taking the ISR: it is available solely via computer.<sup>323</sup>

Although DEO has chosen<sup>324</sup> to exempt persons who have “Physical Limitation,” or who are “disabled” or “visually impaired,” from the ISR requirement,<sup>325</sup> the agency has failed, as discussed in detail in the Findings of Fact, to effectively communicate the existence of this exemption to persons who might benefit from the exemption. Evidence provided by Complainant’s attorneys indicates that as a result, at least one claimant with a visual impairment was denied benefits to which he was otherwise entitled, because he and the family member who helped him file his claim online were unaware of the existence of the exemption.<sup>326</sup> Other claimants with disabilities may have been similarly denied benefits, or may have been discouraged from applying for benefits, because of DEO’s failure to notify them of the existence of the exemption.<sup>327</sup> We therefore determine that the ISR requirement, as implemented by the Respondent, tends to screen out persons with disabilities from fully and equally enjoying the benefits of the Respondent’s UC program.

Under the above circumstances, the ISR is lawful only if it “can be shown to be necessary for the provision” of UC benefits. However, for the period between August 1, 2011, and June 30, 2012, the Florida legislature permitted regional workforce boards to decide not just how, but *whether*, to utilize the ISR results. This fact demonstrates that, at least for the above period, the ISR requirement was not necessary for the provision of UC benefits. As to that period, therefore, the requirement violates 29 CFR 37.7(e)(1) and 28 CFR 35.130(b)(8).

b. ISR as a benefit.

As of July 1, 2012, the Florida legislature has mandated that all claimants who fail to achieve a particular score on the ISR be offered, and encouraged to participate in, training opportunities at no cost to the individual claimant. We will therefore analyze the ISR as constituting a benefit for this period.

DOJ’s preamble to the 1991 ADA Title II regulations states, in pertinent part, that the regulatory requirements, including the general prohibitions of discrimination and the communications requirements of subpart E,<sup>328</sup> “apply to courses and examinations provided by public entities. For example, a public entity offering an examination must ensure that modifications of policies, practices, or procedures or the provision of auxiliary aids and services furnish the individual with

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<sup>323</sup> See Landsberg E-Mails 1 and 2.

<sup>324</sup> The statutory language contains exemptions to the ISR requirement for persons who are “unable to complete such review due to illiteracy or a language impediment,” but no exemption for persons with disabilities. See F.S. 443.091(1)(c)(2). The exemption was therefore not provided by the Florida legislature.

<sup>325</sup> See discussion *supra* in section V(B)(2)(c)(i).

<sup>326</sup> See DEO UC Appeals, Redacted Decision of Appeals Referee, Local Office No. 3671-1, at 2.

<sup>327</sup> See Declaration at paragraphs 13 and 14.

<sup>328</sup> Subpart E of the ADA Title II regulations imposes detailed requirements obliging covered entities to ensure that communications with persons who have disabilities are as effective as communications with others. See 28 CFR 35.160 through 35.164.

a disability an equal opportunity to demonstrate his or her knowledge or ability.”<sup>329</sup> Despite the Respondent’s insistence that the ISR is not a “test,” the evidence indicates that the ISR requirement has been imposed in order to assess the “knowledge or ability” of UC claimants; under the circumstances, therefore, the regulatory provisions that are relevant to examinations should apply to the ISR.

As discussed above, the Respondent has failed either to make the ISR fully accessible to people with various types of disabilities, or to provide an alternative, accessible method of taking the ISR. Rather, in policy at least, the Respondent has chosen to “exempt” persons who have “Physical Limitation,” or who are “disabled” or “visually impaired,” from the ISR requirement. Any benefits of “referr[al] to training and employment opportunities” are therefore unavailable to such persons, in violation of 28 CFR Section 35.130 and Subpart E, as well as 29 CFR 37.7(a) and 37.9(a) and (b).

## VII. MATTERS OF CONCERN

In addition to the violations described above, CRC has identified problems with the language assistance services DEO has provided that do not rise to the level of violations, but that warrant DEO’s attention. Those areas of concern are described below.

### A. Meaningful Access for Persons with LEP

1. UI Benefits Rights Information (BRI)
  - a. *Written translation: BRI provided on line.*
    - i. Introductory page: “File a Claim”

The English version of this page<sup>330</sup> provided an overview of the qualifications claimants must satisfy and the process for filing a claim, along with information about special UC programs, a warning that UC fraud is a felony, and other material. Although the site also included Haitian Creole<sup>331</sup> and Spanish<sup>332</sup> pages with the same heading and similar content, at the time of CRC’s investigation, the latter two pages lacked at least one key piece of information that appears on the English page: the notice that “Unemployment compensation claimants filing a new claim are required to complete the Initial Skills Review before receiving benefits and must prove that they are actively looking for work while receiving benefits.”<sup>333</sup> Although that information is available

<sup>329</sup> DOJ Title II Regulations, “Title II Regulations: 1991 Preamble and Section-by-Section Analysis” (*see fn.* 314), discussion of 28 CFR 35.130.

<sup>330</sup> <http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/file-a-claim> (“English ‘File a Claim’ page”) (most recently visited November 28, 2012).

<sup>331</sup> [http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/sant-avantaj-konpansasyon-pou-chomaj-\(haitian-creole\)/fe-yon-demann](http://www.floridajobs.org/job-seekers-community-services/unemployment-compensation-benefits-center/sant-avantaj-konpansasyon-pou-chomaj-(haitian-creole)/fe-yon-demann) (most recently visited November 28, 2012).

<sup>332</sup> [http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-\(spanish\)/presente-un-reclamaci%c3%b3n](http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/centro-de-beneficios-de-la-asistencia-de-reempleo-(spanish)/presente-un-reclamaci%c3%b3n) (most recently visited November 28, 2012).

<sup>333</sup> See English “File a Claim” page, under heading “Claims Process.”

elsewhere on the site in Spanish and Creole, a link directly to the FLUID system appears on both the Creole and Spanish versions of the “File a Claim” page. As a result, Spanish and Creole claimants could have begun the claims-filing process without being made aware of the ISR requirement.

All Florida UC claimants – including those who are literate in Spanish and Creole -- must complete the ISR in order to receive benefits. Furthermore, although State law permits exemptions to this requirement for persons with language barriers, in practice, the exemption does not operate automatically: such persons must call and request the exemption. Consequently, failure to provide information about the requirement, and the exemption process, accurately and in a timely manner in the two non-English languages spoken by “a significant number or proportion” of the population served by the program could have resulted in an LEP person’s being denied benefits for one or more weeks of unemployment.

Moreover, the State has justified the ISR as equivalent to a benefit for claimants, in that regional workforce boards were at first permitted, and are currently required, to use the results of the review to determine whether claimants need additional services in order to achieve reemployment. As a result, a failure to provide LEP claimants with information about the ISR would constitute a failure to notify such claimants about a benefit to which they may have been entitled. We recommend that the State ensure that LEP claimants are notified about the ISR requirement in the same locations, and to the same extent, as English-proficient claimants.

ii. “Welcome to the Florida Unemployment Compensation Weekly Claim Certification and Work Search Verification”

During the period of CRC’s investigation, on the English and Spanish versions of this page, a block of text in green type appeared directly below the headings at the top of the page, stating (in English), “For instructions to assist you with claiming weeks and entering your work search information, registering for the required Initial Skills Review or getting claim and payment information, click here.” This text did not appear on the Creole version of the page.<sup>334</sup>

Moreover, on the English version of the page, clicking on the word “here” in the text quoted above led to the “Claims Process: Steps to File a Reemployment Assistance Claim” page. On the Spanish version, however, the parallel link was broken: it led to a page containing a “Page Not Found” error message.<sup>335</sup>

In this case, the lack of a parallel link on the Creole page, and the broken link on the Spanish page, do not rise to the level of a violation, because the “Claims Process: Steps to File a Reemployment Assistance Claim” page can be reached in both Spanish and Creole via other means. However, we recommend that the State ensure that LEP claimants have access to assistance with the weekly claims certification and work search verification process in the same

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<sup>334</sup> Compare <https://www2.myflorida.com/flccid/Default.asp> (English) and [https://www2.myflorida.com/flccid/Default\\_Sp.asp](https://www2.myflorida.com/flccid/Default_Sp.asp) (Spanish) with [https://www2.myflorida.com/flccid/Default\\_Cr.asp](https://www2.myflorida.com/flccid/Default_Cr.asp) (Creole). These problems were present as of December 18, 2012, and had not yet been corrected as of March 19, 2013.

<sup>335</sup> Compare English and Spanish pages cited in preceding footnote.

locations, and to the same extent, as English-proficient claimants. Moreover, the State must ensure that it appropriately maintains its Spanish and Creole web pages and promptly fixes broken links: under other circumstances, a failure to do so could constitute a violation of the law.

## **2. Initial and Continuing Claims and Follow-Up Notices**

### ***a. Claims-filing process***

The Respondent provided a “Babel notice,” in Spanish, Creole, and a number of other languages, on the entry pages for filing both initial and continuing claims, informing claimants that the information on the page was important, and that if they did not “read or understand English,” they would be able to receive free translation assistance by calling a particular phone number. However, as discussed in detail *supra* in the Findings of Fact, that notice did not inform claimants who are unable to read or write effectively in English, Spanish, or Creole that they were entitled to an exception to the online filing requirement.

The Respondent asserts that such claimants were notified of the exception when they telephoned the call center for the “free translation assistance” offered by the notice. This position, however, fails to consider that (1) the Babel notice did not explicitly notify such claimants that calling the number would enable them to file their claims with telephone assistance, and therefore (2) at least some such claimants may well have attempted to file both their initial and continuing claims on line with the help of a friend, family member, or other person who was unaware of the existence of the exception. Furthermore, as discussed in detail in the Findings of Fact and Analysis sections above, the services and information the Respondent has provided by phone have been inaccurate and ineffective.

We strongly recommend that in addition to making necessary changes to improve its phone assistance, as discussed below in the Proposed Remedies section, the Respondent add a statement to the Babel notices on the entry pages for filing both initial and continuing claims, explicitly informing claimants that if they are unable to read or write effectively in English, Spanish, or Creole, they are entitled to an exception to the online filing requirement.

## ***3. UI Determinations/Adjudications/Appeals***

During the period of CRC’s investigation, the Respondent did not provide a Babel Notice on the Internet Appeals Program website. The significance of this omission is offset by the fact that when a determination is made on a UI claim, a “Babel list,” DEO Form UCTI, is included as an insert with the Notice of Determination that is mailed to the claimant.<sup>336</sup> As a result, actual claimants who are not proficient in English, Spanish, or Creole have the opportunity to obtain translation of the information on the Notice, including information about the process for appealing the determination. Nonetheless, to ensure that members of the public who are not

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<sup>336</sup> See E-mail from Florida UC Operations Manager Wiggins to CRC Senior Policy Advisor Sudell, dated March 21, 2013 (“Wiggins E-Mail 4”), and attachment thereto.

proficient in any of the State's three primary languages are able to be equally informed about the appeals process, we recommend that the Respondent provide a Babel Notice on the IAP website.

## **VIII. PROPOSED REMEDIES**

During the course of CRC's investigation, Respondent DEO has demonstrated a willingness to comply with its obligations under the applicable civil rights laws discussed above. As indicated in the "Findings of Fact" and "Analysis" sections above, a number of the deficiencies alleged in the Complainant's complaint and/or identified in CRC's investigation have already been remedied, and DEO continues to take steps to improve the access of LEP persons and persons with disabilities to the UC system. However, as of the date of this Initial Determination, other deficiencies described above have apparently not been corrected.

The Respondent must notify CRC, *within fourteen (14) days* of the date on which this Initial Determination is issued, whether it is willing to enter into negotiations to reach voluntary compliance. Voluntary compliance will include signing a Conciliation Agreement in which the Respondent will agree to take specific steps to remedy those remaining deficiencies, and to come into full compliance with its obligations under WIA Section 188, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the ADA, and their implementing regulations. As described in more detail below, these steps must include actions to end and/or redress the above-described deficiencies; make-whole relief for individual victims of discrimination; and other remedial or affirmative relief. Unless CRC extends the time period, the Conciliation Agreement must be signed *within sixty (60) days* of the issuance of this Initial Determination.

If DEO is not interested in voluntary compliance, or if CRC determines that efforts to achieve compliance by voluntary means are unsuccessful, DOL will take appropriate enforcement actions as authorized by the applicable laws and their implementing regulations. Such actions may include, but are not limited to, referral of the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; issuance of a Final Determination, which initiates administrative procedures to suspend, terminate, deny, or discontinue Federal financial assistance from DOL; or such other action as may be provided by law. However, given DEO's ongoing cooperation with our investigation, we anticipate being able to conclude this matter through successful negotiations.

### **A. Overall Remedies**

#### ***1. Meaningful access for persons with LEP***

To ensure meaningful access for LEP persons to its UC-related programs and activities, the Respondent must take appropriate steps to correct the above-described violations and address the above-described matters of concern. The steps should include, but need not be limited to, the following remedies and corrective actions:

a. Written translation

i. **Within thirty (30) days** of the date on which the Conciliation Agreement is signed, conduct a complete review of all written materials, including hard-copy materials and web sites, that the Respondent produces or distributes related to the UC program, and identify which materials are “vital,” pursuant to the standards set forth in DOL’s LEP Guidance.

ii. **Within thirty (30) days** of the date on which the above review is completed, translate all vital written materials into Spanish and Haitian Creole, including, but not limited to, the following documents:

(A) Web pages, and portions of web pages, identified in Section VI(A)(2) *supra*.

(B) All information on the Call-in Card.

(C) The individualized substantive information contained in Notices of Determination and Decisions of Appeals Referees and Special Deputies.

(D) The UAC website.

iii. **Within seven (7) days** of the date on which the Conciliation Agreement is signed, post notice of the ISR requirement in a prominent place on the first pages of the Spanish and Creole versions of the online systems for filing initial and continuing claims, and on other web pages.

b. Oral interpretation

i. **Immediately** cease the unlawful practice of requiring claimants, employers, or members of the public to provide their own interpreters for any aspect of/contact with the UC program, including (but not limited to) hearings and follow-up phone calls.

ii. **Within fourteen (14) days** of the date on which the Conciliation Agreement is signed, conduct a complete review of the UC system and identify all points at which any employees of Respondent may have oral interactions with claimants, employers, or members of the public. **Within forty-five (45) days** of the date on which the above review is completed, train all Respondent staff who may be involved in such interactions (including staff of American Job Centers) regarding:

(A) their obligations to provide interpreters for LEP persons, and

(B) methods of providing such interpreters.

iii. In particular, train Customer Service Representatives who answer calls on the UC Hotline to respond appropriately to calls from LEP persons, including those who speak no English at all.

c. *Overall access to the system*

i. *Within thirty (30) days* of the date on which the Conciliation Agreement is signed, widely publicize, to appropriate audiences via appropriate methods, the exceptions to the on-line filing requirement, and the exemptions to the ISR requirement, for persons who are not proficient in English, Creole, or Spanish. Examples of such methods include, but are not limited to, use of print, broadcast, and electronic media in languages other than the three primary languages; outreach to community groups that serve such populations; and adding text in each language in the Babel Notice on the Respondent's website, explicitly explaining the existence of the exception and informing claimants that they may file by telephone.

ii. On an ongoing basis, monitor the UC Hotline on a regularly scheduled basis for wait times and performance, and take appropriate steps, to be negotiated with CRC, to ensure that UC-related services and benefits for LEP persons are neither denied nor delayed because of problems with the Hotline.

2. *Equal Opportunity for Persons with Disabilities*

To ensure equal opportunity for persons with disabilities in its UC-related programs and activities, the Respondent must take appropriate steps to correct the above-described violations and address the above-described matters of concern. The steps should include, but need not be limited to, the following remedies and corrective actions:

a. *Within forty-five (45) days* of the date on which the Conciliation Agreement is signed, either make the on-line claims-filing system fully accessible for persons with varying types of disabilities, or provide an alternative method of filing claims that provides an equal degree of access as is provided for persons without disabilities.

b. *Within forty-five (45) days* of the date on which the Conciliation Agreement is signed, develop and implement detailed procedures for responding to requests for communication assistance from individuals with various types of disabilities at differing points of the UC process, including those seeking assistance with claims-filing at American Job Centers. The procedures must address and comply fully with the requirements of the revised Subpart E of the regulations implementing ADA Title II, published at 28 CFR §§ 35.160 through 35.164: The procedures must describe how Respondent will provide, at a minimum, the following communication services for persons with hearing impairments when requested:

i. Interpreting services in an appropriate language (*e.g.*, American Sign Language, Signed English, Spanish Sign Language) and/or communication method (*e.g.*, oral interpretation, tactile sign language, Print-on-Palm);

ii. Communications Access Real Time (CART) transcription.

c. Beginning *within seven (7) days* of the date on which the above procedures are implemented, and on an ongoing basis thereafter, publicize to individuals with disabilities, through various appropriate methods, the availability of the above-described communication assistance. Such methods include, but need not be limited to:

- i. A notice on appropriate pages of the Respondent's web site.
- ii. Notices posted at, and distributed in alternate formats to customers of, American Job Centers.
- iii. Notices provided to organizations throughout the State that serve and/or represent persons with disabilities.

**B. Individual Remedies**

1. If the CP and its attorneys have identified and are seeking relief for any individual claimants who were denied any UC benefits to which they would have been entitled but for the Respondent's unlawful actions described above, the attorneys must submit to CRC, *within sixty (60) days* of the date on which this Initial Determination is issued, documentation demonstrating the type and/or amount of make-whole relief to which each such individual claimant is entitled.

2. The Respondent must publicize the Conciliation Agreement to audiences that include such individual claimants, and invite such individual claimants to identify themselves and present documentation that is sufficient to demonstrate the type and/or amount of make-whole relief to which they are entitled. *Within fourteen (14) days* of the date on which the Conciliation Agreement is signed, the Respondent must develop and submit to CRC for approval a plan for such publicity. Specific means and time frames for implementation will be set forth in the Conciliation Agreement.



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**NAOMI BARRY-PEREZ**  
**Director**  
**Civil Rights Center**

APR -5 2013

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**Date**