

# EO Letter



## 2024 Equal Opportunity (EO) Letter

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**ID/NO:** EO Letter 01-2024

**TO:** Local Workforce Development Board Executive Directors  
Workforce Development Directors  
Integrated Service Area Managers  
Office of General Counsel  
Unemployment Insurance Directors  
Appellate Services Division Directors

**FROM:** Jon Pokorney, Director of Equal Opportunity Compliance Department

**DATE:** April 2, 2024

**SUBJECT:** Language Access Requirements

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**This letter rescinds/replaces EO Letter 03-01**

### PURPOSE

To provide updated guidance on the language access requirements for recipients under [Workforce Innovation and Opportunity Act \(WIOA\) § 188](#) and [29 CFR Part 38](#). Language access barriers can result in the exclusion of those with limited English proficiency (LEP) and can be a form of national origin discrimination. Additionally, these barriers can negatively impact performance by causing denial of benefits and services, delay in service delivery, ineffective service, increased costs and inefficiencies, and inferior services.

Boards, their service providers, and TWC divisions should use the information included in this letter to inform their service-delivery strategies to ensure compliance with language access requirements for all WIOA one-stop partner programs.

### INFORMATION

WIOA § 188 prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I-financially assisted program or activity. [29 CFR § 38.9\(a\)](#) clarifies that national origin discrimination includes discriminating based on limited English proficiency (LEP). The full text of 29 CFR §39.9(a) states:

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin,

including limited English proficiency. An individual must not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any WIOA Title I-financially assisted program or activity based on national origin. National origin discrimination includes treating individual beneficiaries, participants, or applicants for any aid, benefit, service, or training under any WIOA Title I-financially assisted program or activity adversely because they (or their families or ancestors) are from a particular country or part of the world, because of ethnicity or accent (including physical, linguistic, and cultural characteristics closely associated with a national origin group), or because the recipient perceives the individual to be of a certain national origin, even if they are not.

[29 CFR §§ 38.9\(b\) – 38.9\(i\)](#) sets forth recipient's obligations for providing language access to LEP individuals. These requirements apply to all recipients or those treated as recipients, which includes WIOA Title-I programs and activities, Local Workforce Development Boards, the state Vocational Rehabilitation (VR) program, and the state unemployment compensation program. Providing alternative language assistance can facilitate effective communication with and equal access to LEP individuals.

[Title VI of the Civil Rights Act of 1964](#) also prohibits national origin discrimination under any program or activity receiving Federal financial assistance. The Department of Labor (DOL) rules implementing Title VI are found in [29 CFR Part 31](#). However, as stated in [29 CFR § 38.3\(a\)](#), a recipient's compliance with 29 CFR Part 38 will satisfy any obligation to comply with 29 CFR Part 31. Therefore, recipients should not have a separate obligation to comply with language access requirements under 29 CFR Part 31, if they are complying with 29 CFR Part 38.

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## Data Collection

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[29 CFR § 38.41\(b\)\(2\)](#) requires recipients to record the limited English proficiency and preferred language of each applicant, registrant, participant, and terminatee (as defined in 29 CFR § [38.4\(c\)](#), [\(aaa\)](#), [\(oo\)](#), and [\(nnn\)](#)). Under 29 [CFR § 38.4\(oo\)](#), participant "means an individual who has been determined to be eligible to participate in, and who is receiving any aid, benefit, service, or training under, a program or activity financially assisted in whole or in part under Title I of WIOA. Participant includes, but is not limited to, individuals receiving any service(s) under State Employment Service programs, and claimants receiving any service(s) or benefits under State Unemployment Insurance programs." The collection of LEP status and preferred language can be helpful in developing or updating a language access plan and can assist in statistical or other quantifiable analysis of participants that may reveal barriers to access or potential discrimination. For additional information, see [WD Letter 16-19](#), Collection of Limited English Proficiency Status and Preferred Language Data.

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## Meaningful Access

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[29 CFR § 38.9\(b\)](#) requires recipients to "take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity." Reasonable steps generally may include, but are not limited to, an assessment of an LEP individual to determine language assistance needs; providing oral interpretation or written translation of both hard copy and electronic materials, in the appropriate non-English languages, to LEP individuals; and outreach to LEP communities to improve service delivery in needed languages.

Under [29 CFR § 38.9\(b\)\(2\)](#), meaningful access for training programs may include, but is not limited to, providing (i) written materials in appropriate non-English languages by written translation or by oral interpretation or summarization; and (ii) oral training content in appropriate non-English languages through in-person interpretation or telephone interpretation.

Prior guidance from the Department of Justice (DOJ) and the Department of Labor, provided a four-factor analysis to determine compliance with meaningful access requirements under Title VI. However, in responses to comments on the 29 CFR Part 38 final rules ([81 FR 87130](#)), DOL indicated they chose not to include the four-factor analysis in rule, but instead provided a list of factors DOL would use to determine compliance with 29 CFR § 38.9(b). "[F]actors that CRC may consider in determining compliance regarding the appropriate level of LEP services include, but are not limited to:

- The nature and importance of the program, activity, or service provided by the recipient, including the nature and importance of the particular communication at issue (this factor is to be given primary weight);
- The length, complexity, and context of the communication;
- The number or proportion of LEP persons served or encountered in the eligible service population;
- The frequency with which LEP individuals come in contact with the program;
- The prevalence of the language in which the individual communicates among those eligible to be served or likely to be encountered by the program or activity;
- The frequency with which a recipient encounters the language in which the individual communicates;
- Whether a recipient has explored the individual's preference, if any, for a type of language assistance service, as not all types of language assistance services may work as well as others in providing an individual meaningful access to the recipient's program or activity;
- The cost of language assistance services and whether a recipient has availed itself of cost-saving opportunities;
- All resources available to the recipient, including its capacity to leverage resources within and without its organizational structure, or to use its negotiating power to lower the costs at which language assistance services could be obtained; and
- Whether the recipient has taken the voluntary measure of developing a language access plan."

An LEP individual's ability to learn about a program or service should not be solely limited to one form of communication. [29 CFR § 38.9\(c\)](#) states that, a "recipient should ensure that every program delivery avenue (e.g., electronic, in person, telephonic) conveys in the appropriate languages how an individual may effectively learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides. As a recipient develops new methods for delivery of information or assistance, it is required to take reasonable steps to ensure that LEP individuals remain able to learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides." Additionally, [29 CFR § 38.34](#) requires recipients to provide the initial and continuing EO notice in appropriate languages to ensure meaningful access to LEP individuals.

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## **Vital Information**

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There are additional language access requirements for vital information. [29 CFR § 38.4\(tt\)](#) defines vital information as "information, whether written, oral or electronic, that is necessary for an individual to understand how to obtain any aid, benefit, service, and/or training; necessary for an individual to obtain any aid, benefit, service, and/or training; or required by law. Examples of documents containing vital information include, but are not limited to applications, consent and complaint forms; notices of rights and responsibilities; notices advising LEP individuals of their rights under this part, including the availability of free language assistance; rulebooks; written tests that do not assess English language competency, but rather assess competency for a particular license, job, or skill for which English proficiency is not required; and letters or notices that require a response from the beneficiary or applicant, participant, or employee."

With regard to vital information, [29 CFR § 38.9\(g\)](#) sets the following requirements:

(1) For languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site. Written training materials offered or used within employment-related training programs as defined under [§ 38.4\(t\)](#) are excluded from these translation requirements. However, recipients must take reasonable steps to ensure meaningful access as stated in [§ 38.9\(b\)](#).

(2) For languages not spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must take reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service, or training that the recipient provides. Vital information may be conveyed orally if not translated.

When addressing similar language access obligations under Title VI, the Department of Justice issued [Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient](#)

Persons ([67 FR 41455](#)) in 2002 that included a safe harbor provision that applied to written translations of vital documents.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written translation obligations:

- (a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- (b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

However, in similarly titled guidance issued in 2003, the Department of Labor's Civil Rights Center (DOL-CRC) declined to include a similar safe harbor provision and instead focused on factors that were specific to the recipient and program or activity ([Policy Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons \(68 FR 32290\)](#)).

Additionally, in responses to comments on the interpretation of a "significant number or portion of the population" in the final rules for 29 CFR Part 38 ([81 FR 87130](#)), DOL-CRC stated that "CRC believes that providing a specific, inflexible standard to trigger translation obligations may make compliance difficult for a small recipient or be wholly inapplicable to another." "CRC will consider all relevant factors (on a case-by-case basis) when evaluating whether a recipient has provided meaningful access for LEP individuals generally, and when evaluating whether the recipient has translated vital information into appropriate languages more specifically. Primary weight will be given to the nature and importance of the program or activity, but other factors may also be relevant in a particular case, including, . . . the LEP population in the service area, the frequency of different types of language contacts, the resources available, and costs." "Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance." **As such, while the Department of Justice safe harbor provisions might be helpful in some situations, recipients cannot rely on the DOJ safe harbor provisions for Title VI to meet compliance requirements under 29 CFR 38.9(g)(1), which require recipients to provide written translations of vital documents in languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered.**

[29 CFR § 38.9\(g\)\(3\)](#) requires recipients to include a "Babel notice," indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on Web sites. [29 CFR § 38.4\(i\)](#) defines a Babel notice means a short notice included in a document or electronic

medium (e.g., Web site, “app,” email) in multiple languages informing the reader that the communication contains vital information and explaining how to access language services to have the contents of the communication provided in other languages. See [WD Letter 02-19](#), Babel Notices, for additional guidance to Local Workforce Development Boards on Babel notice requirements.

Under [29 CFR § 38.9\(h\)](#), "to the extent otherwise required by this part, once a recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant, or applicant for aid, benefit, service, or training, the recipient must convey vital information in that language." Therefore, once a recipient learns of an individual's preferred language, if required to provide written translation of a vital information document under 29 CFR 38.9(g)(1), a recipient must continue to provide vital information documents to the individual in their preferred language. Additionally, [29 CFR § 38.36\(c\)](#) requires a written or electronic copy of the EO notice to be provided to participants in appropriate languages other than English as required in 29 CFR § 38.9.

See [TEGL 21-22](#), Increasing Equitable Access and Employment Outcomes for All Jobseekers in WIOA and Dislocated Worker Programs, for additional WIOA specific guidance on language access. [UIPL 02-16, Change 1](#), addresses language access in the UI program and states "vital information in the UI context include applications for benefits, notices of rights and responsibilities, and communications requiring a response from the beneficiary or applicant. This information must be translated into languages spoken by a significant number or portion of a state's population. The state must also take reasonable steps to meet the particularized language needs of LEP individuals who speak other languages."

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## **Language Access Services & Translations**

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[29 CFR § 38.9\(d\)](#) requires that language assistance services, whether oral interpretation or written translation, must be accurate, provided in a timely manner, and free of charge. To be timely, language access services must be provided at a place and time that ensures equal access and avoids delay or denial of any aid, benefit, service, or training. Additionally, under [29 CFR § 38.9\(e\)](#), adequate notice must be provided to LEP individuals of the existence of interpretation and translation services and that these services are available free of charge.

Recipients should be aware that the use of machine translation, while cost effective, can result in inaccurate translations. The LEP Committee of the Federal Title VI Interagency Working Group provided the following guidance in 2021:

If the entity utilizes machine translation software, the entity should have a human translator proofread all content containing vital information before posting it to ensure the accuracy of the translated information. Website content that is translated and checked by qualified human translators is more likely to be accurate and locatable by LEP users. Use of disclaimers regarding the accuracy

of machine translations does not relieve the recipient of its responsibility to provide translated information that is accurate, reliable, and culturally appropriate.

Similarly, the Department of Justice Civil Rights Division has stated "we do not recommend the use of error-prone machine translation resources, such as Google Translate, unless the translated content is also reviewed for errors and corrected before it is posted for the public." The Department of Justice Civil Rights Division also highlighted a concern about the difficulties LEP individuals can face navigating an English language website before being able to access translated vital information, "[if an entity takes] reasonable steps to accurately translate vital information, it is counterproductive to then require an LEP individual to navigate through multiple English webpages, or incorrectly translated webpages, to access the translated content." Regarding unemployment compensation benefits, UIPL 02-16 states, " Use of free, web-based translation services (also known as machine translation software) is not sufficient to ensure that the translation is appropriate and conveys the same meaning as the English version."

[29 CFR § 38.9\(f\)](#) addresses the use of family members or friends as interpreters.

- (1) A recipient shall not require an LEP individual to provide their own interpreter.
- (2) A recipient also shall not rely on an LEP individual's minor child or adult family or friend(s) to interpret or facilitate communication, except:
  - (i) An LEP individual's minor child or adult family or friend(s) may interpret or facilitate communication in emergency situations while awaiting a qualified interpreter; or
  - (ii) The accompanying adult (but not minor child) may interpret or facilitate communication when the information conveyed is of minimal importance to the services to be provided or when the LEP individual specifically requests that the accompanying adult provide language assistance, the accompanying adult agrees to provide assistance, and reliance on that adult for such assistance is appropriate under the circumstances. When the recipient permits the accompanying adult to provide such assistance, it must make and retain a record of the LEP individual's decision to use their own interpreter.
- (3) Where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, or where the competency of the interpreter requested by the LEP individual is not established, a recipient may decide to provide its own, independent interpreter, even if an LEP individual wants to use their own interpreter as well.

The Model Language Assistance Program section of this letter includes recommended practices related to language access services and translations.

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## Language Access Plan (LEP Plan)

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[29 CFR § 38.9\(i\)](#) states recipients are required to take reasonable steps to provide language assistance and should develop a written language access plan to ensure that LEP individuals have meaningful access. While language access plans are voluntary, having a documented plan is a favorable factor in DOL's determination of whether a recipient met meaningful language access requirements. The appendix to 29 CFR § 38.9, lays out the benefits of developing a language access plan, which include documenting compliance and ensuring access to LEP individuals. Language access plans are not fixed and must be tailored to the recipient and revised over time.

A written language access plan should identify and describe:

- 1) The process the recipient will use to determine the language needs of individuals who may or may seek to participate in the recipient's program and activities (self- or needs-assessment).
- 2) The results of the assessment, *e.g.*, identifying the LEP populations to be served by the recipient.
- 3) Timelines for implementing the written LEP plan.
- 4) All language services to be provided to LEP individuals.
- 5) The manner in which LEP individuals will be advised of available services.
- 6) Steps individuals should take to request language assistance.
- 7) The manner in which staff will provide language assistance services.
- 8) What steps must be taken to implement the LEP plan, *e.g.*, creating or modifying policy documents, employee manuals, employee training material, posters, Web sites, outreach material, contracts, and electronic and information technologies, applications, or adaptations.
- 9) The manner in which staff will be trained.
- 10) Steps the recipient will take to ensure quality control, including monitoring implementation, establishing a complaint process, timely addressing complaints, and obtaining feedback from stakeholders and employees.
- 11) The manner in which the recipient will document the provision of language assistance services.
- 12) The schedule for revising the LEP plan.
- 13) The individual(s) assigned to oversee implementation of the plan (*e.g.*, LEP Coordinator or Program Manager).
- 14) Allocation of resources to implement the plan.

Additional resources to aid in language access planning can be found at LEP.gov, including Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs:

[https://www.lep.gov/sites/lep/files/resources/2011\\_Language\\_Access\\_Assessment\\_and\\_Planning\\_Tool.pdf](https://www.lep.gov/sites/lep/files/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf)

It is recommended that recipients adopt and publish a written language assistance plan that is reviewed periodically. The plan should describe the recipients periodic process for



identifying and assessing languages that are likely to be encountered and estimating the number of LEP individuals that are eligible for services in its program or activity through a review of census data, LEP.gov data, client utilization data, information from community outreach (including customer surveys or other customer satisfaction information), and statistics from school systems, community agencies and organizations.

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### **Model Language Assistance Program**

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Implementing some or all of the following practices can assist in meeting language access requirements:

- Adopting and publishing a written language assistance plan.
- Identification and biennial assessment of the languages that are likely to be encountered and estimating the number of LEP individuals that are eligible for services in a program or activity through review of available data sources.
- Outreach to LEP communities, advertising program eligibility and the availability of free language assistance.
- Posting of signs in lobbies and in other waiting areas, in regularly encountered languages, informing applicants and clients of their right to free interpreter services, and inviting them to identify themselves as persons needing language assistance.
- Use of “I speak cards” by intake workers and other customer contact personnel so that applicants and clients can identify their primary languages.
- Requiring intake workers to note the language of the LEP person in his/her record so that all subsequent interaction will be conducted in the appropriate language.
- Employment of a sufficient number of staff, bilingual in appropriate languages, in applicant and client contact positions. These persons must be qualified interpreters. To be considered a qualified interpreter, bilingual staff must demonstrate proficiency in English and the second language, training on the skills and ethics of interpretation (e.g., issues of confidentiality), fundamental knowledge in both languages of specialized terms or concepts, sensitivity to the LEP person’s culture, and a demonstrated ability to convey information in both languages accurately. There may be times when the role of the bilingual employee may conflict with the role of an interpreter (i.e., there is an issue or disagreement between the customer and staff).
- Contracts with interpreting services that can provide qualified interpreters in a wide variety of languages, in a timely manner. The use of contract interpreter services is appropriate when a recipient has infrequent needs for interpreting services, has a need for less common LEP languages, or needs to supplement its in-house capabilities on an as-needed basis.
- Formal arrangements with community groups for qualified and timely interpreter services by community volunteers/individuals who are qualified interpreters. Assurances should

be made that community groups and/or volunteers are not subjected to ad hoc requests and must ensure that it is understood that client confidentiality must be maintained. A copy of any formal arrangements with community agencies or list of volunteers should be made available to the Board EO Officer and appropriate center/site staff.

- An arrangement with a telephone language interpreter line that can provide timely access to qualified interpreters.
- Ensuring interpreting services are made available to LEP customers in a timely manner during normal hours of operation.
- Translation of websites, application forms, instructional, informational, and other key documents into appropriate languages other than English in compliance with meaningful access and vital document requirements under 29 CFR Part 38.
- Oral interpretation of documents for persons who speak languages not regularly encountered in compliance with meaningful access and vital document requirements under 29 § CFR Part 38.
- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons.
- Provide general staff with a listing of bilingual staff qualified to assist those in customer contact positions with facilitated participation by LEP persons.
- Notice to and training of all staff, particularly applicant and client contact staff, with respect to the recipient's Title VI and WIOA § 188 obligation to provide language assistance to LEP persons, and on the language assistance policies and procedures to be followed in securing such assistance in a timely manner.
- Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff.
- Notice to the public regarding the language assistance policies and procedures, plus notice to and consultation with community organizations that serve LEP persons regarding problems and solutions, including standards and procedures for using their members as volunteer interpreters.
- Appointment of a senior level employee to coordinate the language assistance program and ensure that there is regular monitoring of the program.
- Consideration of LEP needs when implementing new programs or activities, as well as when publishing new forms or notices, etc.
- Providing marketing and outreach materials that are accessible by LEP individuals.

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## **Additional Resources**

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Department of Labor LEP Toolkit: [LEP Toolkit | U.S. Department of Labor \(dol.gov\)](#)

[Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs | LEP](#)

[Illustrative Applications in Recipient Programs and Activities, Appendix to § 38.9 – Guidance to Recipients](#)

### **“I Speak” Language Identification Flashcard**

[29 CFR Part 38](#)

[TEGL 21-22](#), Increasing Equitable Service Access and Employment Outcomes for All Jobseekers in Workforce Innovation and Opportunity Act Adult and Dislocated Worker Programs

[UIPL 01-24](#), Equitable Access in the Unemployment Insurance (UI) Program

[UIPL 02-16, Change 1](#), State Responsibilities for Ensuring Access to Unemployment Insurance Benefits, Services, and Information

[UIPL 30-11](#), State Responsibilities Regarding Limited English Proficient (LEP) Individuals *[This UIPL is noted as active by DOL; however, it predates 29 CFR Part 38 and applies earlier standards.]*

### **INQUIRIES**

Any questions should be directed to the Equal Opportunity Compliance Department.

Rescissions: EO 03-01	Expiration: Until Rescinded
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