

OPERATIONALIZING LANGUAGE ACCESS RIGHTS
FOR LIMITED ENGLISH PROFICIENT TAXPAYERS

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ABSTRACT

Taxpayers with limited English proficiency (LEP) face inherent barriers to exercising important rights under the tax laws. This Essay, prepared for the Temple Law Review’s Symposium, Taxpayer Rights in the United States: All the Angles, explains the legal obligations that the Internal Revenue Service (IRS) has for making the tax system accessible to LEP taxpayers. While the IRS has developed comprehensive written policies for language access, it still faces challenges in operationalizing these rights for LEP taxpayers.

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INTRODUCTION

In the United States, there are 25.1 million individuals who are limited English proficient (LEP).¹ For LEP taxpayers, the inability to fully communicate in English is a barrier to understanding and exercising important rights, such as being tax compliant and addressing tax controversies.² The issue of providing language access to LEP taxpayers is thus of paramount importance if the Internal Revenue Service (IRS) seeks to operationalize rights for all taxpayers.

In this Essay, I consider how the IRS has managed to develop a comprehensive language access system while facing challenges in

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1. Jie Zong & Jeanne Batalova, *The Limited English Proficient Population in the United States*, MIGRATION POL’Y INST. (July 8, 2015), <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states> [http://perma.cc/L9S7-LCSP]. The U.S. Census Bureau defines an LEP person as someone who speaks English less than “very well.” *Id.*

2. See *infra* Section III.

operationalizing those rights for LEP taxpayers. In particular, the IRS has done a great deal to ensure language access rights through its written policies and guidance. Such policies and guidance address the key categories for having a well-functioning language access framework, including (1) a clearly stated commitment to the legal obligation of language access, (2) protocols and procedures for providing translation and interpretation, and (3) mechanisms for evaluating and holding IRS operations and IRS-funded community programs accountable.

When examining policies on the books, however, a consistent open question is the extent to which such policies have translated into real rights on the ground.³ There are multiple instances, for example, when LEP taxpayers fail to get appropriate notices so they are unable to exercise their due process rights.⁴ The IRS appears not to have a system for tracking who is an LEP taxpayer.⁵ Yet the IRS is particularly well positioned to address the issue of language access for LEP taxpayers given its mission to “[p]rovide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.”⁶ A continuing challenge for the IRS, therefore, is to use its strong written language access framework to ensure that LEP taxpayers are actually able to take advantage of such rights in their everyday interactions with the IRS.

This Essay proceeds in three sections. First, it discusses the overall legal framework for language access obligations. Second, it examines how the IRS has created written policies and guidance in order to comply with these obligations. Finally, it offers examples of how the IRS faces challenges in its practical implementation of language access rights, which result in the creation of barriers for LEP taxpayers to understanding and exercising their rights.

3. See Jon B. Gould & Scott Barclay, *Mind the Gap: The Place of Gap Studies in Sociolegal Scholarship*, 8 ANN. REV. L. & SOC. SCI. 323, 324 (2012) (reviewing the long history of “gap studies” that compare law’s operation to its aspirations). Other federal entities, too, have failed to address issues confronting LEP individuals. See, e.g., Laura K. Abel, *Language Access in the Federal Courts*, 61 DRAKE L. REV. 593, 598 (2013) (arguing that the federal courts are failing to meet language access obligations); Katherine L. Beck, *Interpreting Injustice: The Department of Homeland Security’s Failure To Comply with Federal Language Access Requirements in Immigration Detention*, 20 HARV. LATINX L. REV. 15, 21 (2017) (detailing the failure of the Department of Homeland Security to comply with federal language access law in immigration detention facilities); Rebecca Smith et al., *Low Pay, High Risk: State Models for Advancing Immigrant Workers’ Rights*, 28 N.Y.U. REV. L. & SOC. CHANGE 597, 614 (2004) (stating that the Department of Labor’s language access guidance falls short of the federal requirements for written LEP language access plans).

4. See *infra* notes 129–39 and accompanying text.

5. See *infra* notes 134–39 and accompanying text.

6. *The Agency, Its Mission and Statutory Authority*, IRS, <http://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority> [<http://perma.cc/S4B9-L2VV>] (last updated Mar. 28, 2019).

I. LANGUAGE ACCESS OBLIGATIONS

As a matter of federal law, the IRS must address the issue of language access for LEP taxpayers.⁷ Language access is not just about rendering culturally competent services but is also fundamentally a civil rights issue.⁸ The legal obligation to provide language access stems from our landmark Civil Rights Act of 1964.⁹ Title VI of the Act states: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹⁰ In 1974, the Supreme Court in *Lau v. Nichols*¹¹ interpreted national-origin discrimination under Title VI to include the differential treatment of a person based on their inability to speak, read, write, or understand English.¹² The Court found that the failure of a school district to supplement English instruction for LEP students violated Title VI.¹³ Since *Lau*, advocates have continued to highlight the ways in which limited English proficiency has impacted access to public education.¹⁴ Further, they have extended such advocacy to virtually all programs run by public entities, ranging from the state courts to agencies that administer federal public benefits.¹⁵

The executive branch has largely been responsible for the evolution of language access rights. Since the enactment of Title VI, federal agencies have played an important role in delineating legal obligations by issuing regulations, guidance, and memorandums. In 1965, President Lyndon Johnson issued an executive order tasking the Attorney General to assist federal agencies with the

7. States and localities have also enacted language access laws. *See, e.g.*, OAKLAND, CAL., MUNICIPAL CODE § 2.30.020 (2018), http://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT2ADPE_CH2.30EQACSE_2.30.020DE [<http://perma.cc/72TE-NLTF>]; S.B. 987, 2001-02 Reg. Sess. (Cal. 2002); S. 265, 2002 Leg., 416th Sess. (Md. 2002); John F. Street, Mayor of the City of Philadelphia, Executive Order No. 4-01 (Sept. 29, 2001), <http://www.phila.gov/ExecutiveOrders/Executive%20Orders/4-01.pdf> [<http://perma.cc/5Y3P-9Z8C>].

8. Layla P. Suleiman, *Beyond Cultural Competence: Language Access and Latino Civil Rights*, 82 CHILD WELFARE 185, 189 (2003).

9. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

10. 42 U.S.C. § 2000d (2018).

11. 414 U.S. 563 (1974).

12. *See Lau*, 414 U.S. at 568–69; *see also* Yniguez v. Arizonans for Official English, 69 F.3d 920, 947 (9th Cir. 1995) (stating that “language is a close and meaningful proxy for national origin”), *vacated on other grounds sub nom.* Arizonans for Official English v. Arizona, 520 U.S. 43 (1997).

13. *Lau*, 414 U.S. at 568–69.

14. *See, e.g.*, Ariz. Dep’t of Educ. (AZ), U.S. Dep’t of Educ., No. 08-06-4006 (resolved Aug. 31, 2012), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/08064006-b.pdf> [<http://perma.cc/555K-QL5V>]; Cleveland Metro. Sch. Dist. (OH), U.S. Dep’t of Educ., No. 15-08-1276 (resolved Sept. 15, 2011), <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/15081276-b.pdf> [<http://perma.cc/28WC-C5KS>].

15. *See, e.g.*, LAURA ABEL, BRENNAN CTR. FOR JUST., LANGUAGE ACCESS IN THE STATE COURTS 1 (2009), <http://www.brennancenter.org/publication/language-access-state-courts> [<http://perma.cc/Q8WP-EFN4>]; Jana J. Edmondson & Lisa J. Krisher, *Seen but Often Unheard: Limited-English-Proficiency Advocacy in Georgia*, 46 CLEARINGHOUSE REV. 343, 346–49 (2012).

coordination of Title VI enforcement activities.¹⁶ In 1974, President Richard Nixon signed an executive order designed “to clarify and broaden the role of the Attorney General with respect to title VI enforcement.”¹⁷ Pursuant to this order, the Department of Justice (DOJ) promulgated regulations in 1976 that detailed language access obligations.¹⁸ The regulations stated that federal agencies and federally assisted programs needed to provide information in “languages other than English.”¹⁹ In 1980, President Jimmy Carter issued an executive order that further broadened DOJ’s role by including more explicit oversight and enforcement authority for Title VI.²⁰

Twenty years later, President Bill Clinton took perhaps the most significant step in pursuing language access when he signed Executive Order 13,166. This order largely created the federal framework in place today regarding language access obligations. It required federal agencies to “prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons.”²¹ It also required each agency providing federal funding to “draft title VI guidance specifically tailored to its recipients.”²² On the same day that President Clinton signed the executive order, DOJ issued general guidance to “Executive Agency Civil Rights Officers” outlining general principles for developing such guidance documents.²³

In 2002, DOJ issued more detailed guidance for recipients of federal funding.²⁴ It did so in part to clarify its regulations in the wake of the Supreme Court’s decision in *Alexander v. Sandoval*²⁵ and because of substantial public comment in response to the DOJ’s notice for rulemaking.²⁶ This guidance specifies that recipients of federal financial assistance must determine the extent

16. Exec. Order No. 11,247, 30 Fed. Reg. 12,327 (Sept. 24, 1965). Prior to this executive order, the coordination responsibility was assigned to the President’s Council on Equal Opportunity. Exec. Order No. 11,197, 29 Fed. Reg. 1721 (Feb. 5, 1965).

17. Exec. Order No. 11,764, 39 Fed. Reg. 2575 (Jan. 21, 1974).

18. 28 C.F.R. §§ 42.410–42.415 (2018). DOJ made minor amendments to these regulations in 1980. U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., TITLE VI LEGAL MANUAL § III, at 2 n.2 (2001), <http://www.justice.gov/crt/case-document/file/934826/download> [<http://perma.cc/27AG-58RX>].

19. 28 C.F.R. § 42.405(d)(2).

20. Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 2, 1980).

21. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

22. *Id.*

23. Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency; Policy Guidance, 65 Fed. Reg. 50,123 (Aug. 16, 2000).

24. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455–72 (June 18, 2002) [hereinafter 2002 DOJ Guidance].

25. 532 U.S. 275 (2001).

26. 2002 DOJ Guidance, *supra* note 24, at 41,458–59. *Alexander v. Sandoval*, which held that there was no private right of action for a disparate impact claim under the Title VI regulations, did not limit the authority of DOJ to promulgate regulations enforcing Title VI. *Id.* at 41,458 n.3.

of their obligation to provide language access through a four-factor analysis. This analysis requires recipients to consider the

1. number or proportion of LEP persons in the eligible service population,
2. frequency with which LEP persons come into contact with the program,
3. importance of the service provided by the program, and
4. resources available to the recipient.²⁷

The four-factor analysis intends to balance providing meaningful access to federally funded services with the financial and other burdens of providing such services on small businesses or local governments.²⁸ The 2002 guidance suggests that recipients develop a written plan on language assistance for LEP persons (LEP plan) upon determining that an obligation exist.²⁹ The purpose of the LEP plan is to detail the elements for an effective plan for language assistance for the relevant LEP population(s) being served.³⁰

The 2002 DOJ guidance also explicitly defines what DOJ meant by language access: providing oral and written language services.³¹ Oral language services, otherwise known as interpretation, involve the hiring of bilingual staff or staff interpreters, or contracting with live or telephone interpreters.³² Written language services, otherwise known as translation, involve translating “vital written materials.”³³ Whether a document is considered “vital” depends on “the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.”³⁴

After Executive Order 13,166 and the 2002 DOJ guidance, other federal agencies began to develop and issue their own guidance on language access for their federal funding recipients.³⁵ They also created LEP plans, detailing how they would address language access issues within their own agencies.³⁶

In 2010, under the Obama administration, Attorney General Eric Holder issued a memo requiring that each “component” of the DOJ create and implement a language access plan.³⁷ The impetus for the memo, issued a decade

27. *Id.* at 41,459–61.

28. *Id.* at 41,459.

29. *Id.* at 41,464.

30. *Id.*

31. *Id.* at 41,461–63.

32. *Id.* at 41,461–62.

33. *Id.* at 41,463.

34. *Id.*

35. *Federal Agency LEP Guidance for Recipients*, LEP.GOV, http://www.lep.gov/guidance/guidance_index.html [<http://perma.cc/7YNX-M7Q5>] (last visited May 30, 2019).

36. *Federal Agency LEP Plans*, LEP.GOV, http://www.lep.gov/guidance/fed_plan_index.html [<http://perma.cc/YED5-USVJ>] (last visited May 30, 2019).

37. Memorandum from Eric Holder, U.S. Att’y Gen., to Heads of Components of Dep’t of Justice (June 28, 2010), http://www.lep.gov/13166/language_access_memo.pdf [<http://perma.cc/5AEM-DJDG>].

after Executive Order 13,166, was an acknowledgement that the DOJ still had much work to do “to transform policy into practice.”³⁸ In 2011, Attorney General Holder issued an additional memo to all the heads of federal agencies, their general counsel, and civil rights heads.³⁹ A recognition of the inconsistent compliance with language access obligations across federal agencies spurred this memo.⁴⁰ It specifically required that agencies take the following action:

1. “Establish a Language Access Working Group”
2. “Evaluate and/or update [their] current response[s] to LEP needs”
3. “Establish a schedule to periodically evaluate . . . LEP services and LEP policies”
4. “Ensure that agency staff can competently identify LEP contact situations”
5. “Notify the public . . . of [their] LEP policies, plans, and procedures”
6. Consider the relevancy of non-English language proficiency in hiring criteria.
7. “[C]ollaborate with other agencies to share resources” for written translations.
8. “[D]raft recipient guidance” (“[f]or agencies providing federal financial assistance”).⁴¹

Further, the memo tasked DOJ’s Civil Rights Division to undertake periodic monitoring of these action items.⁴²

Given the growing LEP population in the United States, there is a continued need for federal agencies and federally funded entities to address the issue of language access. From 1990 to 2013, for example, the LEP population increased by eighty percent, largely through increases in the immigrant LEP population.⁴³ Under the Obama administration, the DOJ’s Civil Rights Division actively enforced Title VI, resulting in a large number of compliance plans with federally funded entities.⁴⁴ In contrast, it appears that the Trump administration is not looking to aggressively enforce Title VI obligations relating to language access in the same manner.⁴⁵

38. *Id.* at 1.

39. Memorandum from Eric Holder, U.S. Att’y Gen., to Heads of Fed. Agencies, Gen. Counsel, and Civil Rights Heads (Feb. 17, 2011), http://www.lep.gov/13166/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf [<http://perma.cc/VWK2-9AEY>].

40. *Id.*

41. *Id.* at 2.

42. *Id.* at 3.

43. Zong & Batalova, *supra* note 1.

44. Tere Ramos, *When Access to Language Means Access to Justice: How To Advocate Effectively on Behalf of Limited-English-Proficient Persons*, CLEARINGHOUSE COMMUNITY, June 2018, at 1, 5.

45. *DOJ Agreements and Resolutions*, U.S. DEPT OF JUSTICE, <http://www.justice.gov/crt/doj-agreements-and-resolutions> [<http://perma.cc/2RD9-E3X9>] (last updated July 5, 2018) (listing the resolutions under the different presidential administrations); *see also* Laura Meckler & Devlin Barrett, *Trump Administration Considers Rollback of Anti-Discrimination Rules*, WASH. POST (Jan. 3, 2019),

II. LANGUAGE ACCESS FOR TAXPAYERS

The IRS has done extensive work to create written policies and guidance both for IRS operations and IRS-funded community programs. When considering how to address language access rights, there are three key considerations: First, there must be a clearly stated commitment to the obligation of language access itself. Second, there must be a protocol or process for implementing language access rights, whether through the use of live interpreters, translated documents, or both. The protocol or process is essential to ensuring language access is an integrated and routine part of agency practice rather than left to ad hoc and inconsistent decisions by agency staff. Third, there must be some way to evaluate need while monitoring and enforcing compliance with language access obligations. The successful use of evaluation, monitoring, and enforcement ultimately depends on whether the agency uses such feedback to improve its protocol and process.

A report by the Government Accountability Office (GAO) about the IRS in 2010, for example, found that the IRS had successfully developed an LEP plan compared to its counterparts in federal government.⁴⁶ In particular, it found that the IRS LEP plan had the elements required to be effective whereas the Federal Emergency Management Agency and the Small Business Administration did not.⁴⁷

A. IRS Operations

The IRS's LEP plan applies to its own "employees who serve taxpayers lacking full command of the English language because it is not their primary language."⁴⁸ It resides in the *Internal Revenue Manual* (IRM) and was most recently updated on October 19, 2018.⁴⁹ The origins of this plan come from the IRS's Multilingual Initiative, implemented in 2000.⁵⁰ Further, when the IRS's parent agency, the Department of the Treasury (DOT), created its own LEP plan, it delegated the responsibility of developing an LEP plan to each individual

http://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874f1ac36_story.html [<http://perma.cc/MFH3-3ZBC>] (noting that the Trump administration's DOJ appears to be interested in diluting Title VI regulations).

46. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-91, LANGUAGE ACCESS: SELECTED AGENCIES CAN IMPROVE SERVICES TO LIMITED ENGLISH PROFICIENT PERSONS 11 (2010), <http://www.gao.gov/assets/310/303599.pdf> [<http://perma.cc/JPD6-FL2V>].

47. *Id.* at 11–12 (noting also an IRS multilingual policy from 1999).

48. IRM 22.31.1.1 (Oct. 19, 2018).

49. IRM 22.31.1 (Oct. 19, 2018).

50. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 46, at 11.

bureau.⁵¹ The DOT's rationale was that each individual bureau had a "unique mission[]" and . . . different levels of contact with the public."⁵²

The IRS has developed an LEP plan that addresses the three key considerations for its own internal operations. First, the IRS's LEP plan has a clearly stated commitment to language access that is fundamentally tied to its mission of serving taxpayers. As part of its role in collecting over three trillion dollars of tax annually, the IRS needs to assist hundreds of millions of taxpayers each year.⁵³ Through Policy Statement 22-3, issued on May 1, 2001, the IRS reaffirms that

[t]he IRS commits to provide top quality service to each taxpayer, including those who lack a full command of the English language. The needs of these taxpayers will be included in the agency strategic and tactical plans consistent with available resources. Our workforce will have the essential tools necessary to interact appropriately with our diverse taxpayer base.⁵⁴

While the IRS acknowledges that the source of such obligations derives from Title VI, it also ties its obligation to the Taxpayer Bill of Rights (TBOR). The IRS states that through its LEP plan, it "ensures that LEP taxpayers' rights as outlined in the Taxpayer Bill of Rights are protected."⁵⁵ At several different points within its LEP plan, the IRS links language access services to the exercise of taxpayer rights under the TBOR.⁵⁶

Second, the IRS LEP plan has a set protocol and procedure for providing language services. As a whole, an agency needs to detail how it will actually provide such services, which can be both time consuming and costly.⁵⁷ When developing a protocol or procedure for language access, some key issues include (1) the affirmative steps an agency must take to comply with language access, (2) the kind of interpretation and translation services the agency will provide, and (3) the standards by which the agency decides to deliver such services to LEP individuals. In its LEP plan, the IRS delineates the affirmative steps it takes to provide oral interpretation and written translation for frequently encountered

51. U.S. DEP'T OF THE TREASURY, IMPROVING ACCESS TO TREASURY'S SERVICES BY PERSONS WITH LIMITED ENGLISH PROFICIENCY 4 (2000), <http://www.treasury.gov/about/organizational-structure/offices/Mgt/Archive/Updated%20Treasury%20LAP%202015%20compliant.pdf> [<http://perma.cc/952S-CUQ5>].

52. *Id.*

53. Joshua D. Blank & Leigh Osofsky, *Simplexity: Plain Language and the Tax Law*, 66 EMORY L.J. 189, 196 (2017).

54. IRM 22.31.1.1.2 (Oct. 19, 2018).

55. IRM 22.31.1.1.1 (Oct. 19, 2018) (citation omitted).

56. See, e.g., IRM 22.31.1.4 (Oct. 19, 2018); IRM 22.31.1.5.2.1 (Oct. 19, 2018); IRM 22.31.1.6 (Oct. 19, 2018).

57. See, e.g., 2002 DOJ Guidance, *supra* note 24, at 41,456-57 (noting that cost is still a legitimate consideration in identifying the reasonableness of particular language access measures); Letter from Thomas Perez, Assistant Att'y Gen., U.S. Dep't of Justice, Civil Rights Div., to Chief Justice/State Court Admin. 4 (Aug. 16, 2010), http://www.lep.gov/final_courts_ltr_081610.pdf [<http://perma.cc/WBE9-UKVA>] (acknowledging that it takes time to create a competent language access system in the state court systems).

LEP language groups.⁵⁸ The IRS has solely designated Spanish as a frequently encountered language,⁵⁹ although undoubtedly there are other frequently encountered languages in certain regions of the United States.⁶⁰ The IRM purports to address other non-English languages by providing oral interpretation where there are high concentrations of LEP individuals or the translation of “vital” documents if they are considered “mission critical.”⁶¹

For oral interpretation, the IRS has a contract with an over-the-phone interpreter (OPI) service that provides access to interpreters who speak more than three hundred fifty languages.⁶² It is available twenty-four hours per day, seven days a week.⁶³ The IRS has also created a feedback form where IRS staff can provide feedback about OPI.⁶⁴

For written translation, there is even more extensive guidance in the IRM. The IRM prioritizes the translation of “vital” documents.⁶⁵ Given the sheer number of IRS forms, schedules, and worksheets, translating these documents is no small endeavor. The IRS has over six hundred tax forms and schedules and over one hundred fifty worksheets.⁶⁶ Documents that are “vital” either contain “critical information for accessing tax services, rights, and/or benefits” or contain information that the LEP taxpayer has “no ‘alternate means’ for obtaining” and the document is required by law.⁶⁷ The IRS provides some examples of “vital” documents, such as tax forms for filing returns, outreach and education material for accessing benefits and services, and case-related audit documents.⁶⁸ Non-vital documents are translated on a case-by-case basis, but it is unclear how frequently this type of translation occurs.⁶⁹

The IRM then outlines a Standard Translation Process (STP), which involves the set of steps, criteria, and decisions for determining whether the document will be translated.⁷⁰ To be a candidate for translation, the document must be “important” to LEP taxpayers.⁷¹ The IRS defines “important” documents as those that help LEP taxpayers (1) understand and fulfill their tax

58. IRM 22.31.1.4.1 (Oct. 19, 2018).

59. *Id.*

60. U.S. DEP’T OF HOMELAND SEC., LANGUAGE ACCESS PLAN 7–8 (2011) http://www.lep.gov/guidance/040312_crcl-dhs-language_access-plan.pdf [<http://perma.cc/MQ39-UPLQ>] (noting another nine frequently encountered languages apart from Spanish).

61. IRM 22.31.1.4.1 (Oct. 19, 2018).

62. IRM 22.31.1.6 (Oct. 19, 2018).

63. *Id.*

64. *Id.*

65. IRM 22.31.1.5 (Oct. 19, 2018).

66. Kathleen DeLaney Thomas, *User-Friendly Taxpaying*, 92 IND. L.J. 1509, 1527 (2017). As of 2008, the IRS had identified ninety-seven vital documents and translated eighty-nine into Spanish. U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 46, at 21.

67. IRM 22.31.1.1.5.1 (Oct. 19, 2018); IRM 22.31.1.1.6.4 (Oct. 19, 2018).

68. IRM 22.31.1.1.5.1 (Oct. 19, 2018). It also states in a note: “All tax products originated by the [Tax Forms and Publication] Division are considered vital documents.” *Id.*

69. See IRM 22.31.1.4.1 (Oct. 19, 2018); IRM 22.31.1.5.1.1 (Oct. 19, 2018).

70. IRM 22.31.1.5 (Oct. 19, 2018).

71. See IRM 22.31.1.5.2 (Oct. 19, 2018).

responsibilities, (2) access federal benefits and services, (3) avoid fines and penalties, and (4) exercise their rights as outlined in the TBOR.⁷² There must also be no alternate means for understanding the document, such as through live interpretation.⁷³ An easier fix for translating an IRS notice, for example, may involve including a non-English language notice about calling for oral assistance (e.g., “*Para asistencia en español, favor de llamar al XXX-XXX-XXXX.*” (For assistance in Spanish please call XXX-XXX-XXXX.)).⁷⁴ Finally, the translation of the document must have an “acceptable level of downstream adverse impact” on the organization.⁷⁵ While the IRM does not define what would be an acceptable level of impact, it does identify issues, such as excessive costs, the adequacy of the number of bilingual staff to process the document, and the required changes to computer system, to be factored into the analysis.⁷⁶

Apart from the written translation of documents, the IRS has also committed to maintaining websites in five languages.⁷⁷ These languages are Spanish, Chinese, Korean, Vietnamese, and Russian.⁷⁸ The IRM further specifies requirements related to the content, posting, and maintenance of these websites.⁷⁹ The homepage of the Spanish language website, for example, is set up differently than the English language website in terms of the key topics.⁸⁰ Under certain topics, such as the Individual Taxpayer Identification Number (ITIN), the website in Spanish has a good amount of information as well as forms translated into Spanish.⁸¹ Under other topics, however, such as the “Free File” software or “ordering a tax return transcript,” after a brief explanation in Spanish, the links to further forms and information are in English.⁸²

Third, the IRS has identified mechanisms for evaluating, monitoring, and accounting for language access. Given the time-consuming and expensive nature

72. IRM 22.31.1.5.2.1 (Oct. 19, 2018).

73. See IRM 22.31.1.1.5.1 (Oct. 19, 2018).

74. IRM 22.31.1.5.2.3 (Oct. 19, 2018).

75. IRM 22.31.1.5.2 (Oct. 19, 2018).

76. IRM 22.31.1.5.3 (Oct. 19, 2018).

77. IRM 22.31.1.7 (Oct. 19, 2018).

78. *Id.*

79. *Id.*; see also IRS, PUB. 4744H, IRS MULTILINGUAL WEBSITES: FACT SHEET (2014), <http://www.irs.gov/pub/irs-pdf/p4744h.pdf> [<http://perma.cc/X56C-NZAP>].

80. Compare IRS, <http://www.irs.gov/> [<http://perma.cc/LX4S-RDSN>] (last visited May 30, 2019), with *Español*, IRS, <http://www.irs.gov/es/spanish> [<http://perma.cc/VBC2-GJP8>] (last updated Apr. 12, 2019).

81. *Número de Identificación del Contribuyente (ITIN)*, IRS, <http://www.irs.gov/es/individuals/individual-taxpayer-identification-number> [<http://perma.cc/M2RE-DPNN>] (last updated May 1, 2019).

82. *Free File: Presente Su Declaración Federal de Impuestos Gratuitamente*, IRS, <http://www.irs.gov/es/node/15857> [<http://perma.cc/4H7S-C367>] (last updated Nov. 21, 2018); *Ordenar Transcripción*, IRS <http://www.irs.gov/es/individuals/get-transcript> [<http://perma.cc/297L-UUL6>] (last updated May 1, 2019); see also 1 NAT’L TAXPAYER ADVOCATE, 2018 ANNUAL REPORT TO CONGRESS 74 (2018) [hereinafter 1 NAT’L TAXPAYER ADVOCATE, 2018 ANNUAL REPORT], http://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1.pdf [<http://perma.cc/FG5Y-MVNJ>]

(noting that for Free File even “if an ESL taxpayer can navigate through this screen, none of the return preparation software options available have a Spanish language option”).

of a language access program, evaluating and monitoring language access is significant to maximizing the program's benefits. In certain contexts, for example, it might be more cost effective or efficient to hire bilingual staff instead of relying on contract interpreters.⁸³ Language access systems also need to be responsive to changes in demographics. An IRS Tax Assistance Center (TAC) might need to modify its program because it is failing to adequately serve a newer group of LEP taxpayers now within its jurisdiction.⁸⁴ Accountability, too, is significant because it provides yet another feedback loop for the IRS to better understand how its LEP plan is faring while signaling to IRS employees and LEP taxpayers that it takes its obligation seriously.⁸⁵

One part of the IRS's evaluation and monitoring process is its Strategic Plan as outlined in the IRM. The Strategic Plan addresses "strategies, operating priorities, and improvement projects related to language services."⁸⁶ In particular, it is supposed to incorporate information from its IRS LEP Customer Base Report to obtain feedback from LEP taxpayers and internal and external stakeholders.⁸⁷ Such information includes (1) a demographic assessment; (2) an internal assessment of performance data, existing products and services, and employee tools and training; and (3) an external assessment of data from a market survey, focus groups, and Earned Income Tax Credit and low-income taxpayer clinics (LITC).⁸⁸ IRS officials then are supposed to use this LEP Customer Base Report to receive feedback that assists it in strategic decisionmaking regarding language access services provided by the agency.⁸⁹

Further, there are several entities within the IRS that are charged with holding it accountable to its LEP plan. It is unclear to what extent these entities are active in their oversight function. The Language Services Executive Advisory Council (LSEAC) ensures that issues related to LEP taxpayers are efficiently and timely addressed, but there is no public information about who sits on the council and how to contact them.⁹⁰ Further, the Multilingual Services Agency Branch, which is housed within the Wage and Investment Division, is tasked with working with LSEAC to provide oversight of language services and overseeing the non-English websites.⁹¹ The IRS's Office of Equity, Diversity and Inclusion, Civil Rights Division, enforces compliance with its language access

83. 2002 DOJ Guidance, *supra* note 24, at 41,461.

84. *Id.* at 41,465.

85. See, e.g., U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., LANGUAGE ACCESS IN STATE COURTS 12–13 (2016), <http://www.justice.gov/crt/file/892036/download> [<http://perma.cc/JKY5-UQFZ>] (discussing how the DOJ's investigation of complaints about state court language access systems have led to positive reforms).

86. IRM 22.31.1.2 (Oct. 19, 2018).

87. IRM 22.31.1.3 (Oct. 19, 2018).

88. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 46, at 14.

89. *Id.* at 15, 30.

90. IRM 22.31.1.1.3.1 (Oct. 19, 2018).

91. IRM 22.31.1.1.3.3 (Oct. 19, 2018).

obligations.⁹² It takes complaints from LEP taxpayers and provides for “on-site compliance reviews of Taxpayer Assistance Centers to assess availability of language access services.”⁹³

Over the years, the Taxpayer Advocate Service (TAS), as an independent organization within the IRS headed by the National Taxpayer Advocate (NTA), has informally provided oversight of LEP taxpayer issues. TAS identifies and provides administrative and legislative recommendations that will mitigate taxpayer problems.⁹⁴ For example, the NTA has previously “reported on systematic gaps in [the] IRS’s services for LEP populations and has recommended that [the] IRS provide publications in foreign languages other than Spanish, expand language access service during the audit process, and require that contracted debt collectors have plans for dealing with LEP taxpayers.”⁹⁵

B. IRS-Funded Community Programs

The IRS must also address language access obligations within its federally funded community programs, such as LITC, Volunteer Income Tax Assistance (VITA), and Tax Counseling for the Elderly (TCE).⁹⁶ The IRS has mostly addressed the key considerations for language access services in its written guidance for such community programs. In particular, the IRS addressed the first and third considerations by requiring that programs commit to complying with language access obligations as well as through the IRS’s statements that it will evaluate, monitor, and enforce such obligations.⁹⁷ As to the second consideration related to language access, the IRS has delegated the development of the protocol to the organizations running the community program.⁹⁸ Community programs are supposed to explain their protocols and processes for serving the needs of LEP taxpayers, and the IRS then ostensibly monitors whether language access services are, in fact, being provided.⁹⁹

There are several sources of guidance requiring IRS-funded community programs to comply with language access obligations. In 2005, DOT issued guidance for recipients of federal funding as required by Executive Order 13,166.¹⁰⁰ This guidance was largely identical to the guidance issued by DOJ for

92. *Protecting Taxpayer Civil Rights*, IRS, <http://www.irs.gov/about-irs/your-civil-rights-are-protected> [<http://perma.cc/CMQ8-8WK5>] (last updated Nov. 29, 2018).

93. IRM 22.31.1.1.3.2 (Oct. 19, 2018).

94. Nina E. Olson, *Taxpayer Rights, Customer Service, and Compliance: A Three-Legged Stool*, 51 KAN. L. REV. 1239, 1240 (2003).

95. U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 46, at 30.

96. I.R.C. § 7526 (2018) (LITC); Revenue Act of 1978, Pub. L. No. 95-600, § 163, 92 Stat. 2763, 2810 (TCE); Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487 (VITA).

97. *See infra* notes 105–08, 117–21.

98. *See infra* notes 109–10.

99. *See infra* notes 109–10, 117–21.

100. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 70 Fed. Reg. 6067 (Feb. 4, 2005) [hereinafter 2005 DOT Guidance]. DOT’s initial guidance regarding Title VI was

federal funding recipients in 2002.¹⁰¹ While not requiring all federal funding recipients to develop an LEP plan, it urged that such written LEP plans have the advantage of documenting compliance, providing a framework for providing language access services, and helping with administration, planning, and budgeting.¹⁰² In this guidance, DOT also designated its Office of Equal Opportunity and Diversity as the division responsible for taking complaints about the failure of recipients to provide adequate language services.¹⁰³ The IRS materials tend not to rely on the DOT guidance so it is unclear the extent to which IRS-funded community programs are reading and following this specific set of guidelines.¹⁰⁴

Rather, the IRS uses its grant process to largely obligate community programs to address language access rights. Grant materials for LITC, VITA, and TCE, for example, reiterate the civil rights obligation for funding recipients to provide language access to LEP taxpayers.¹⁰⁵ Those participating in VITA and TCE must sign assurances that they are “tak[ing] reasonable steps to ensure that LEP persons have meaningful access to its programs in accordance with Department of Treasury implementing regulations and Department of Justice LEP Policy Guidance.”¹⁰⁶ TAS, which runs the LITC program, similarly requires that LITC applicants provide assurances of civil rights compliance.¹⁰⁷ The IRS’s Civil Rights Division Advisory No. 14-07 informs community programs that they are required to take reasonable steps to ensure LEP taxpayers have meaningful access to their programs and activities.¹⁰⁸

published on March 7, 2001, and republished for the purpose of obtaining additional public comment on March 7, 2002. *Id.*

101. Compare *id.*, with 2002 DOJ Guidance, *supra* note 24.

102. 2005 DOT Guidance, *supra* note 100, at 6074.

103. *Id.* at 6076. This office appears to have been renamed the Office of Civil Rights and Diversity. *About: Civil Rights and Diversity*, U.S. DEP’T OF THE TREASURY, <http://www.treasury.gov/about/organizational-structure/offices/pages/office-of-civil-rights-and-diversity.aspx> [<http://perma.cc/7RU3-RDSX>] (last updated Dec. 17, 2018, 4:30 PM).

104. A few IRS materials refer to the DOT guidance. See, e.g., IRS, PUB. 1101, APPLICATION PACKAGE AND GUIDELINES FOR MANAGING A TCE PROGRAM 10 (2018), <http://www.irs.gov/pub/irs-pdf/p1101.pdf> [<http://perma.cc/YGL9-TL7V>] [hereinafter IRS, TCE GRANT]; IRS, FORM 13325, STATEMENT OF ASSURANCE CONCERNING CIVIL RIGHTS COMPLIANCE FOR INTERNAL REVENUE SERVICE SPEC PARTNERSHIPS (2013), <http://www.irs.gov/pub/irs-pdf/f13325.pdf> [<http://perma.cc/6UA7-HZVP>] [hereinafter IRS, SPEC PARTNERSHIPS].

105. See, e.g., IRS, TCE GRANT, *supra* note 104, at 10; IRS, PUB. 4671, VITA GRANT PROGRAM OVERVIEW AND APPLICATION INSTRUCTIONS 27 (2018), <http://www.irs.gov/pub/irs-pdf/p4671.pdf> [<http://perma.cc/3XC6-VDHQ>] [hereinafter IRS, VITA GRANT]; TAXPAYER ADVOCATE SERV., LOW INCOME TAXPAYER CLINICS: 2019 GRANT APPLICATION PACKAGE AND GUIDELINES 62 (2018), <http://www.irs.gov/pub/irs-pdf/p3319.pdf> [<http://perma.cc/DRW2-D3WA>] [hereinafter TAS, LITC GRANT].

106. IRS, SPEC PARTNERSHIPS, *supra* note 104.

107. TAS, LITC GRANT, *supra* note 105, at 16–17, 59, 128.

108. IRS, CIVIL RIGHTS DIV. ADVISORY NO. 14-07, FS 1515: PROVIDING LANGUAGE ACCESS TO LIMITED ENGLISH PROFICIENT (LEP) TAXPAYERS (2014), [http://www.irs.gov/pub/irs-utl/Fact%20Sheet%20for%20FS%202015%20Providing%20Language%20Access%20to%20Limited%20English%20Proficient%20\(LEP\)%20Taxpayers.pdf](http://www.irs.gov/pub/irs-utl/Fact%20Sheet%20for%20FS%202015%20Providing%20Language%20Access%20to%20Limited%20English%20Proficient%20(LEP)%20Taxpayers.pdf) [<http://perma.cc/NDJ9-YGDV>] [hereinafter CIVIL RIGHTS DIV. ADVISORY 14-07].

As part of the grant application process, each organization is required to provide a “description of how [it] will address the needs of limited English proficient (LEP) individuals.”¹⁰⁹ Advisory No. 14-07 also includes instructions to community programs on how to (1) identify language access needs, (2) provide language assistance services, and (3) develop a language access plan.¹¹⁰ For VITA, the IRS actually encourages organizations to extend services to underserved populations, which include LEP taxpayers.¹¹¹ TAS, which provides oversight of the LITC program, funds organizations to represent low-income taxpayers.¹¹² In the current LITC program, one of the priority areas for clinics is to “[e]ducate low income and ESL taxpayers about their rights and responsibilities as U.S. taxpayers.”¹¹³ Further, the IRS offers both technical assistance for language access issues and encourages applicants to include “[r]easonable interpretation costs . . . in grant and award budget requests.”¹¹⁴ All programs are required to display a civil rights poster informing LEP taxpayers that they “may request language assistance to access services.”¹¹⁵ As part of its education and outreach, the LITC grant program more specifically emphasizes how participating organizations can provide notice to LEP taxpayers about their services.¹¹⁶

Finally, the IRS is supposed to monitor whether community programs comply with their language access obligations. As with the IRS’s TACs, its Civil Rights Division states that it also conducts reviews of IRS grant-funded programs, including on-site compliance reviews of grantees to assess the availability of language access services.¹¹⁷ Such compliance review may include looking into the kind of “[a]ccommodations for persons with limited English proficiency (e.g., bilingual volunteers, language interpreters, over-the-phone interpreters, community resources).”¹¹⁸ For LITC, all full grant applications are subject to review by the Civil Rights Division “for compliance with civil rights reporting requirements,” and an award of grant funding requires a determination

109. IRS, TCE GRANT, *supra* note 104, at 10; IRS, VITA GRANT, *supra* note 105, at 27; *see also* TAS, LITC GRANT, *supra* note 105, at 16–17, 128.

110. CIVIL RIGHTS DIV. ADVISORY 14-07, *supra* note 108.

111. IRS, VITA GRANT, *supra* note 105, at 24.

112. Keith Fogg, *Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics*, 67 TAX LAW. 3, 6–7 (2013).

113. TAS, LITC GRANT, *supra* note 105, at 1; U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 46, at 15; Nina E. Olson, *LITC Program Celebrates 20th Anniversary*, TAXPAYER ADVOCATE SERV.: NTA BLOG (Aug. 1, 2018), <http://taxpayeradvocate.irs.gov/news/nta-blog-low-income-taxpayer-clinic-program-celebrates-20th-anniversary> [<http://perma.cc/Z66M-XHUI>].

114. CIVIL RIGHTS DIV. ADVISORY 14-07, *supra* note 108; *see also* IRS, TCE GRANT, *supra* note 104, at 10–11; IRS, VITA GRANT, *supra* note 105, at 30.

115. IRS, TCE GRANT, *supra* note 104, at 11; IRS, VITA GRANT, *supra* note 105, at 30; *see also* TAS, LITC GRANT, *supra* note 105, at 17; *Protecting Taxpayer Civil Rights*, *supra* note 92.

116. TAS, LITC GRANT, *supra* note 105, at 37–38, 97–98.

117. IRM 22.31.1.1.3.2 (Oct. 19, 2018).

118. IRS, TCE GRANT, *supra* note 104, at 12; IRS, VITA GRANT, *supra* note 105, at 30; *see also* TAS, LITC GRANT, *supra* note 105, at 33.

of “probable or conditional compliance” by the Civil Rights Division.¹¹⁹ The required posting of the IRS’s civil rights poster also informs LEP taxpayers that they can file any complaints with the Civil Rights Division about the failure to receive adequate language access services at any LITC, VITA, or TCE site.¹²⁰ The IRS’s Civil Rights Division Advisory No. 14-02 instructs these programs on how to refer an LEP taxpayer to the Civil Rights Division to file a complaint.¹²¹

III. MAKING LANGUAGE ACCESS RIGHTS REAL

The challenge for the IRS is how its language access system operates on a practical, day-to-day level for LEP taxpayers. With over nine thousand employees who work in customer service, for example, it is unsurprising that there may be inconsistency in how language access services are handled.¹²² Further, the IRS has even less direct control over the language access services of the hundreds of IRS-funded community programs.¹²³ This Section briefly raises some examples of issues that LEP taxpayers may confront despite the IRS’s comprehensive written-language access framework. Given its agency mission, the IRS is well positioned to more proactively implement its language access obligations.

Advocates have flagged issues that LEP taxpayers confront that have not been addressed by the IRS’s language access system. Despite the IRS’s extensive guidance on prioritizing the translation of “vital” documents, many important forms are not translated. This lack of translation includes translation of documents into Spanish, although the IRS has designated Spanish as a top priority because it is a “frequently encountered language.”¹²⁴ One of the most well-known IRS forms, the U.S. Individual Income Tax Return (Form 1040), for example, is not translated into Spanish.¹²⁵ Another example includes the process for an Offer in Compromise (OIC), which is an agreement between the taxpayer and the IRS to settle a tax debt for less than the full amount owed, “provid[ing]

119. TAS, LITC GRANT, *supra* note 105, at 32.

120. *Protecting Taxpayer Civil Rights*, *supra* note 92.

121. IRS, CIVIL RIGHTS DIV. ADVISORY NO. 14-02, WHEN TO REFER A TAXPAYER TO THE CIVIL RIGHTS DIVISION (2014), <http://www.irs.gov/pub/irs-utl/Fact%20Sheet%20for%20FS%202015%20When%20to%20Refer%20a%20Taxpayer%20to%20the%20Civil%20Rights%20Division.pdf> [<http://perma.cc/YMP6-3KVZ>].

122. *IRS Budget & Workforce*, IRS, <http://www.irs.gov/statistics/irs-budget-and-workforce> [<http://perma.cc/8ZBD-Z4HQ>] (last updated Jan. 30, 2019) (noting that the IRS had 9,209 customer service representatives at the end of fiscal year 2017).

123. *See, e.g., Current VITA/TCE Awards List*, IRS, http://www.irs.gov/pub/irs-utl/current_vita_tce_award_list.pdf [<http://perma.cc/DA96-YHCN>] (last visited May 30, 2019) (listing the TCE grants awarded for the period of October 1, 2018, through September 30, 2019, and the VITA grants awarded for the period of August 1, 2018, through July 31, 2020).

124. IRM 22.31.1.4.1 (Oct. 19, 2018).

125. 1 NAT’L TAXPAYER ADVOCATE, 2018 ANNUAL REPORT, *supra* note 82, at 74. There is no official Form 1040 in Spanish except for a version for residents of Puerto Rico and one translated recently by TAS for educational purposes. *Cambios en la Reforma de Impuestos*, TAXPAYER ADVOCATE SERV., <http://taxchanges.us/es/forms/> [<http://perma.cc/3JXV-JUGS>] (last updated Dec. 13, 2018).

eligible taxpayers with a path toward paying off their tax debt and getting a fresh start.”¹²⁶ While the Spanish language website discusses the OIC process, Form 656 and accompanying instructions for how to make an OIC are not translated into Spanish.¹²⁷ These forms and instructions certainly fall within the IRS’s own definition of “vital” documents because they contain “critical information for accessing tax services, rights, and/or benefits.”¹²⁸ While the IRS does have hundreds of forms and worksheets, its language access system has seemingly failed to prioritize the translation of some of its most important documents for taxpayers.

Even more concerning are the written notices mailed directly to taxpayers that implicate their due process rights. Starting in 2016, for example, math error notices, which permit the IRS to summarily assess tax, interest, and penalties, were sent out in English to taxpayers based on deactivated ITINs.¹²⁹ Although many ITIN holders are Spanish-speaking immigrants who may be LEP, these notices were neither translated into Spanish nor included any language in Spanish about calling for oral assistance.¹³⁰ Statutory notices of deficiency (SNOD), or “90 day letters,” for example, are also provided in English to LEP taxpayers.¹³¹ The SNOD provides important information about taxpayer rights, which include a ninety-day time limit for filing an appeal with the Tax Court to dispute a claim.¹³² Apart from missing important deadlines, LEP taxpayers who do not understand various notices may be susceptible to signing forms that waive a taxpayer’s rights.¹³³

The IRS appears to not have a tracking system to flag within taxpayers’ accounts whether or not they are LEP.¹³⁴ State court systems, for example, track the language needs of a particular case within the case management system.¹³⁵

126. IRS, FORM 656 BOOKLET: OFFER IN COMPROMISE 1 (2018), <http://www.irs.gov/pub/irs-pdf/f656b.pdf> [<http://perma.cc/B2JZ-CFM2>].

127. *Ofrecimiento de Transacción*, IRS, <http://www.irs.gov/es/payments/offer-in-compromise> [<http://perma.cc/4PWA-M8BF>] (last updated Jan. 17, 2019) (summarizing the OIC process in Spanish and including a translated Form 433A but otherwise linking to the official instructions and forms in English).

128. IRM 22.31.1.1.5.1 (Oct. 19, 2018).

129. Email from Sarah Lora, Supervising Att’y, Dir. of Low Income Taxpayer Clinic at Legal Aid Servs. of Or., to author (Feb. 13, 2019) (on file with author).

130. *Id.*; *The Facts About the Individual Taxpayer Identification Number (ITIN)*, AM. IMMIGR. COUNCIL (Jan. 2, 2018), <http://www.americanimmigrationcouncil.org/research/facts-about-individual-tax-identification-number-itin> [<http://perma.cc/M4K8-JN2S>] (noting that many immigrants have ITINs).

131. Email from Sarah Lora, *supra* note 129.

132. 26 U.S.C. §§ 6212–6213 (2018).

133. See, e.g., *Understanding Your CP3219A Notice*, IRS, <http://www.irs.gov/individuals/understanding-your-cp3219a-notice> [<http://perma.cc/4E6A-7329>] (last updated Apr. 15, 2019) (noting that a taxpayer can sign a waiver form if they agree with the changes).

134. Email from Sarah Lora, *supra* note 129.

135. See, e.g., ABEL, *supra* note 15, at 32 (noting that the National Center for State Courts recommends that courts have a system for tracking language needs for cases); UNIFIED JUDICIAL SYS. OF PA., LANGUAGE ACCESS PLAN 31 (2017), <http://www.pacourts.us/assets/files/setting-5486/file-5972.pdf> [<http://perma.cc/FUH5-N8N4>].

One advocate recounted a story of a client who was LEP and was interviewed extensively by the IRS with a Mandarin interpreter.¹³⁶ After this interview, however, the LEP client subsequently received a SNOD in English.¹³⁷ Other IRS forms may be translated into Spanish, but because there is no tracking system, the English form gets mailed to taxpayers.¹³⁸ These notices, which implicate due process rights, meet the definition of a “vital” document under the IRM and DOJ guidance because of the “consequence to the LEP person if the information in question is not provided accurately or in a timely manner.”¹³⁹

Further, another challenging aspect of providing language access services is ensuring LEP individuals have been provided with notice that they have the right to such services. The main points of contact with the IRS are online, by telephone, through the mail, or in person. The IRM itself does not explicitly discuss how the IRS will inform LEP taxpayers of their language access rights.¹⁴⁰

The IRS website presumes that a taxpayer has ready access to the internet, which is not true for many low-income taxpayers.¹⁴¹ At the IRS website, LEP taxpayers can immediately convert to a website in their own language, if they speak one of the five languages for which the IRS maintains a website.¹⁴² Even within these translated websites, the links take the taxpayer to further information or IRS forms in English.¹⁴³ Outside of these five languages, it is unclear where a taxpayer will learn about the right to language access services. While there is a more detailed FAQ in English about language access rights at

136. Email from Lazlo Beh, Supervising Att’y of the Pa. Farmworker Project, Phila. Legal Assistance, to author (Feb. 13, 2019) (on file with author).

137. *Id.*

138. A taxpayer is entitled to a Collection Due Process (CDP) hearing before appeals if the IRS sends a notice concerning a proposed levy or tax lien. *Collection Due Process (CDP)*, IRS, <http://www.irs.gov/appeals/collection-due-process-cdp> [<http://perma.cc/7TVV-ANBR>] (last updated Apr. 9, 2019). While the form for requesting the hearing is in Spanish, *see* IRS, FORM 12153, SOLICITUD PARA UNA AUDIENCIA SOBRE EL DEBIDO PROCESO DE COBRO O AUDIENCIA EQUIVALENTE (2007), <http://www.irs.gov/pub/irs-pdf/f12153sp.pdf> [<http://perma.cc/RX75-5JLP>], the actual CDP notice is sent in English, Email from Sarah Lora, *supra* note 129.

139. *See* U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 46, at 9; Email from Sarah Lora, *supra* note 129.

140. *Cf.* 2002 DOJ Guidance, *supra* note 24, at 41,465 (“[I]t is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand.”).

141. 1 NAT’L TAXPAYER ADVOCATE, 2017 ANNUAL REPORT TO CONGRESS, at ix (2017) [hereinafter 1 NAT’L TAXPAYER ADVOCATE, 2017 ANNUAL REPORT], <http://taxpayeradvocate.irs.gov/reports/2017-annual-report-to-congress/full-report> [<http://perma.cc/N5QM-CN8L>] (NTA’s introductory remarks).

142. At the top of the homepage, there is a tab for “Language” where a taxpayer can scroll down to the five other languages. IRS, <http://www.irs.gov/> [<http://perma.cc/LX4S-RDSN>] (last visited May 30, 2019). At the bottom of the page there is a list of the five languages that also link a taxpayer to the website in that language. *Id.*

143. *See supra* note 82 and accompanying text.

the IRS, it is unclear how an LEP taxpayer can easily locate this item on the website.¹⁴⁴

Another point of contact with taxpayers is through the IRS's ubiquitous 1-800 number. In theory, the IRS's 1-800 live assistants can use OPI, which provides access to interpretation of 350 languages.¹⁴⁵ The 1-800 number, however, only provides an option to proceed either in Spanish or English. There is no third option for other languages or any way to get routed to a live individual to indicate your language preferences without going through fairly extensive menus in English or Spanish. This problem for LEP taxpayers is part and parcel of the larger problems the IRS has with its 1-800 number. During the 2018 filing tax season, for example, the IRS estimated that it would only answer about six out of ten calls from taxpayers seeking to speak to a live assistant.¹⁴⁶

As described above, the IRS has different types of notices that it mails out to taxpayers. When such notices are in English, they could, for example, easily include brief language in Spanish about calling for oral assistance.¹⁴⁷ State court systems, for example, have addressed this issue by including information about available language access services with their court notices.¹⁴⁸

For in-person contact, the IRS has a required poster for TACs and IRS-funded community programs, which informs individuals about their language access rights.¹⁴⁹ These posters, however, only inform LEP taxpayers of that right in English and Spanish.¹⁵⁰ Sites that serve LEP individuals who speak Chinese, Korean, Russian, or Vietnamese are supposed to obtain a translated poster from the IRS online.¹⁵¹ The question is how LEP taxpayers who speak any other language are notified that they have the right to language access services. The IRS has developed "I speak" flashcards with thirty-eight different

144. Office of Equity, Diversity & Inclusion, *Language Access for Taxpayers with Limited English Proficiency: Frequently Asked Questions*, IRS, <http://www.irs.gov/pub/irs-utl/language-access-taxpayers-limited-english-proficiency-faqs.pdf> [<http://perma.cc/VV9B-4ZXF>].

145. IRM 22.31.1.4.1 (Oct. 19, 2018).

146. 1 NAT'L TAXPAYER ADVOCATE, 2017 ANNUAL REPORT, *supra* note 141, at viii.

147. See *supra* note 74 and accompanying text.

148. See, e.g., HAW. STATE JUDICIARY, LANGUAGE ACCESS PLAN FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY 18 (2015), <http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Language%20Access/Resources%20for%20Program%20Managers/2016%20LASS%20Map%20Documents/Judiciary%20LAP%202015%202016%20submit%20to%20OLA.ashx> [<http://perma.cc/Y26G-9NVV>] (noting the development of notice language into frequently encountered non-English languages to attach to court documents); UNIFIED JUDICIAL SYS. OF PA., *supra* note 135, at 28 (requiring a notice of language rights in the top five languages in the judicial district to be sent with every notice of hearing or subpoena). Unemployment compensation systems have also varied in addressing notices for filing an appeal, sometimes authorizing the late filing of an appeal based on language access barriers. Mary K. Gillespie & Cynthia G. Schneider, *Are Non-English-Speaking Claimants Served by Unemployment Compensation Programs? The Need for Bilingual Services*, 29 U. MICH. J.L. REFORM 333, 346-49 (1995).

149. *Protecting Taxpayer Civil Rights*, *supra* note 92.

150. *Id.*

151. IRS, SPEC PARTNERSHIPS, *supra* note 104, at 60.

languages.¹⁵² Staff can hand such a card, which asks LEP individuals the following: “Mark this box if you read or speak [language].”¹⁵³ While the IRS has these flashcards, it requires their use neither in the IRM nor in the grant materials governing its community-funded programs.

Yet as a federal agency, the IRS is particularly well suited to address language access rights. The IRS has an active interest in bringing LEP taxpayers into the fold as a voluntary compliance agency.¹⁵⁴ In part, the IRS’s interest in reaching all taxpayers derives from its service mission that focuses on helping the majority of taxpayers to comply with the tax laws.¹⁵⁵ In 1998, Congress enacted reforms to heighten the IRS’s emphasis on “customer service.”¹⁵⁶ As a result the agency shifted resources and personnel toward taxpayer service.¹⁵⁷ Several subsequent laws also “reinforce and expand the IRS’s duty to explain the tax law to taxpayers.”¹⁵⁸

Further, the IRS has adopted the TBOR, which the NTA believed “to be central to the promotion of voluntary compliance.”¹⁵⁹ Most significantly, it includes “the right to be informed.”¹⁶⁰ The current challenges that the IRS faces in operationalizing its language access system almost all relate to the failure to keep LEP taxpayers informed. The adoption of the TBOR by the IRS demonstrates a commitment by the IRS to recognize and respect the rights of all taxpayers by imposing “normative pressure on the IRS to act accordingly.”¹⁶¹

With this perspective of taxpayer service and rights, the IRS is well positioned to take on language access obligations. As part of this mission of serving taxpayers, the IRS has had to extensively consider how best to communicate with taxpayers to help them understand tax law.¹⁶² The IRS

152. IRS, PUB. 4269, LANGUAGE IDENTIFICATION FLASHCARD (2018) [hereinafter IRS, LANGUAGE IDENTIFICATION FLASHCARD], <http://www.irs.gov/pub/irs-pdf/p4269.pdf> [<http://perma.cc/D3YY-H9AY>].

153. *Id.*; see also 2005 DOT Guidance, *supra* note 100, at 6075 (suggesting that “I speak cards” should be used). A sample of these boxes from the flash card is reproduced below:



Mark this box if you read or speak English.



اگر فارسی می خوانید و یا صحبت می کنید این مربع را علامت بزنید.

IRS, LANGUAGE IDENTIFICATION FLASHCARD, *supra* note 152.

154. See generally Olson, *supra* note 94, at 1241–42. Some may argue that compliance with the tax laws is mandatory rather than voluntary. *The Agency, Its Mission and Statutory Authority*, *supra* note 6.

155. See *The Agency, Its Mission and Statutory Authority*, *supra* note 6.

156. Blank & Osofsky, *supra* note 53, at 197.

157. *Id.*

158. *Id.* at 198.

159. Alice G. Abreu & Richard Greenstein, *Embracing the TBOR*, 157 TAX NOTES 1281, 1282 (2017).

160. I.R.C. § 7803(a)(3)(A) (2018); see also IRS, PUB. 1, YOUR RIGHTS AS A TAXPAYER: THE TAXPAYER BILL OF RIGHTS (2017), <http://www.irs.gov/pub/irs-pdf/p1.pdf> [<http://perma.cc/2MDN-4ZM5>].

161. See Alice Abreu & Richard Greenstein, *The U.S. Taxpayer Bill of Rights: Window Dressing or Expression of Justice?*, 4 J. TAX ADMIN. 25, 28, 30, 39 (2018).

162. Blank & Osofsky, *supra* note 53, at 197.

conducts numerous studies to improve the quality of its services, which make it well positioned to incorporate issues of LEP taxpayers.¹⁶³ The recent report to Congress about taxpayer assistance outlined the various research efforts “allow[ing] the IRS to gather pertinent information on various segments of the taxpayer population and develop and test products and services, such as redesigned notices and forms, to improve the tax preparation process.”¹⁶⁴ While the IRS ostensibly does collect some data about its language access system, it is unclear how this information is then used to modify or improve its approach to LEP taxpayers.¹⁶⁵ In other words, the LEP taxpayer experience needs to be better incorporated into the IRS’s main strategic goal of using research to identify opportunities to improve taxpayer services, education, and outreach.¹⁶⁶

The IRS too should take advantage of its community partnerships to improve service and outreach to taxpayers aligned with the TBOR.¹⁶⁷ TAS has already recognized the importance of such relationships through its oversight of the LITC program. One of the stated priorities for LITC is to educate and inform LEP taxpayers about their rights.¹⁶⁸ The IRS also provides grants to community programs to operate VITA sites that can reach LEP taxpayers.¹⁶⁹ In other contexts, these partnerships with community organizations are the key to creating more effective government enforcement systems.¹⁷⁰ In particular, community organizations are in the best position to educate those who are hard to reach, including LEP individuals, about their rights.¹⁷¹ In turn, the IRS should be using these partnerships with community organizations to better understand from an on-the-ground perspective how its language access system is working for LEP taxpayers.¹⁷²

To some extent, it is only natural that the IRS will face some barriers in operationalizing language access rights given the inherent complexity in tax law

163. *Customer Satisfaction Surveys*, IRS, <http://www.irs.gov/privacy-disclosure/customer-satisfaction-surveys> [<http://perma.cc/5WTK-V86W>] (last updated Apr. 11, 2019).

164. IRS, ANNUAL REPORT TO CONGRESS, THE TAXPAYER ASSISTANCE BLUEPRINT: TAXPAYER SERVICE IMPROVEMENTS 35 (2017), <http://www.irs.gov/pub/irs-pdf/p4701.pdf> [<http://perma.cc/MB7W-EGD4>].

165. See IRM 22.31.1.3 (Oct. 19, 2018); *supra* notes 87–89 and accompanying text.

166. IRS, PUB. 3744, STRATEGIC PLAN: FY 2018–2022, at 7 (2018), <http://www.irs.gov/pub/irs-pdf/p3744.pdf> [<http://perma.cc/V5A9-4UHG>] (noting one of its six goals is to continue to use data to drive decisions and make the most effective use of its resources).

167. *Id.* (noting another of its six goals is to “[c]ollaborate with external partners proactively to improve tax administration”).

168. TAXPAYER ADVOCATE SERV., IRS, LOW INCOME TAXPAYER CLINIC PROGRAM REPORT 4 (2015), <http://www.americanbar.org/content/dam/aba/administrative/taxation/ProBono/2015%20LITC%20Program%20Report.pdf> [<http://perma.cc/UL7Q-AESQ>].

169. See IRS, VITA GRANT, *supra* note 105, at 24.

170. See, e.g., Jennifer J. Lee & Annie Smith, *Regulating Wage Theft*, 94 WASH. L. REV. (forthcoming 2019) (manuscript at 46–48), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3254539 [<http://perma.cc/6LS9-8KE5>] (identifying ways in which community partnerships assist agencies in reaching out to underserved populations).

171. *Id.* at 47.

172. But see U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 46, at 14 (noting the use of LITC data for evaluating the effectiveness of existing products and services).

compliance.¹⁷³ As an entity concerned with voluntary compliance, however, the IRS already has a structure in place to inform and assist taxpayers in understanding their rights. IRS Commissioner Charles P. Rettig most recently stated that the IRS needs to assist LEP taxpayers to “properly and easily comply with the tax code.”¹⁷⁴ The task ahead for the IRS, therefore, is to actively monitor the experiences of LEP taxpayers and ensure that its language access system is dynamically responding to address these challenges.

CONCLUSION

The IRS’s written policies and guidance provide fairly detailed information about how to comply with Title VI. At the end of the day, however, the written policies and guidance that create the IRS’s language access framework cannot be an end in and of itself. Advocates, communities, and LEP taxpayers must continue to hold the IRS accountable. In turn, the IRS, which is uniquely well positioned to address language access, needs to proactively implement language access to truly operationalize rights for LEP taxpayers.

173. Olson, *supra* note 94, at 1243.

174. Lydia O’Neal, *IRS Should Do More To Help English Learners, Rettig Says*, BLOOMBERG TAX (Feb. 21, 2019, 3:44 PM), <http://news.bloombergtax.com/daily-tax-report/irs-should-do-more-to-help-english-learners-rettig-says> [<http://perma.cc/2SLF-JNT>] (paraphrasing Commissioner Rettig).
