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MEMORANDUM FOR DIANA COSME-AVERY
EQUAL EMPLOYMENT SPECIALIST
EXTERNAL CIVIL RIGHTS UNIT

FROM: Neil B. Worden
Chief, Claims, Labor and Personnel Law

SUBJECT: **Application of Executive Order 13166 to Requirement for Translated Documents From Applicant for Individual Taxpayer Identification Number**

This responds to your question regarding the applicability of Executive Order 13166 to the Internal Revenue Service requirement that persons applying for an Individual Taxpayer Identification Number (ITIN) may be required to provide a certified English translation of foreign language documents. The Service currently requires a person applying for an ITIN to complete IRS Form W-7, "Application for IRS Individual Taxpayer Identification Number," which must be submitted with specific documentation substantiating the applicant's foreign/alien status and their true identity. The instructions accompanying Form W-7 state that the applicant may be required to provide a certified translation of foreign language documents. You stated that an IRS taskforce working on ITIN procedures questioned your office regarding whether this requirement is in noncompliance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." Accordingly, you requested our opinion on whether it is noncompliant with Executive Order 13166 for the Service to require applicants for an ITIN to provide a certified translation of foreign language documents submitted with their Form W-7 to verify their foreign/alien status and identity. You also questioned whether the Executive Order would require the Service to provide translation services for all foreign language documents submitted with the Form W-7.

Conclusion

In our opinion, by applying the four-factor analysis, the requirement to provide a certified translation does not violate Executive Order 13166 since any language barrier to accessing the ITIN program by LEP persons is primarily in understanding the ITIN application process and ITIN requirements, rather than in securing a certified translation. The requirement for a certified translation is a component of the broader requirements regarding acceptable documentation of the applicant's identity and foreign/alien status. In our opinion, the Executive Order does not require the Service to translate all foreign language documents submitted by applicants, nor does it preclude

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the Service from requiring applicants to provide a certified translation of their own foreign language documents.

The ITIN Program

According to IRS Publication 1915, "Understanding Your IRS Individual Taxpayer Identification Number," rev. 11/2002, the ITIN is a tax processing number that became available on July 1, 1996, for certain nonresident and resident aliens, their spouses and dependents, who are not eligible to obtain a social security number. The ITIN is a 9-digit number beginning with the number "9" and formatted like a social security number.

The ITIN is issued by the IRS to be used only for federal income tax purposes. Issuance of an ITIN by the IRS does not entitle the recipient to social security benefits, create an inference regarding the individual's immigration status, nor give the individual the right to work in the U.S. If an individual must file a federal tax return or is listed on the return as a spouse or a dependent, and the individual does not have, and cannot obtain, a valid SSN, the person must apply for an ITIN. When completing the tax return, the individual is instructed to enter their ITIN in the space for the SSN. If a return requesting a refund is filed without a SSN or an ITIN for the primary filer and spouse, any refund will be delayed until an ITIN is obtained. If a SSN or ITIN is missing for a dependent, the exemption will be denied and any refund will be reduced accordingly.

To obtain an ITIN, the requester must complete IRS Form W-7, "Application for IRS Individual Taxpayer Identification Number." Form W-7 requires specific documentation substantiating the foreign/alien status and true identity of each applicant. The instructions for the W-7 provide that the applicant must provide original documents or copies of documents that are certified by the issuing agency or official custodian of the original record or notarized by a U.S. notary public legally authorized within his/her local jurisdiction to certify that the document is a true copy of the original. Additionally, the applicant may be required to provide a certified translation of foreign language documents.

Analysis

Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 16, 2000), requires that each federal agency prepare a plan to improve access to its federally conducted programs and activities by eligible persons who are limited English proficient (LEP) so that LEP persons can have meaningful access to those programs and activities. This obligation is clarified in the Policy Guidance Document entitled "Enforcement of Title VI of the Civil Rights Act of 1964 -- National Origin Discrimination Against Persons with Limited English Proficiency (LEP Guidance)" published at 65 FR 50123 (August 16, 2000) (DOJ Policy Guidance) and is applied to Department of Justice recipients in the "Department of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National

Origin Discrimination Affecting Limited English Proficient Persons," published at 67 FR 41455 (June 18, 2002) (DOJ Recipient LEP Guidance.) The DOJ Policy Guidance, as well as the DOJ Recipient LEP Guidance, states that individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English are "LEP," and are entitled to language assistance with respect to a particular type of service, benefit, or encounter. The Guidance provides that the agency's obligation is to take "reasonable steps" to ensure "meaningful access" by LEP persons to the information and services the agency provides. What constitutes reasonable steps is determined on a case-by-case basis through a balancing of the following four factors:

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

In this case, the federal benefit or service involved is the issuance of an ITIN. Accordingly, the Executive Order requires the Service to take "reasonable steps" to ensure "meaningful access" to the ITIN program by LEP persons. What steps are reasonable is determined by applying the four-factor analysis.

The first factor is the number or proportion of LEP persons in the eligible service population. Since Executive Order 13166 covers only persons in the United States, the eligible population is persons who are in the United States but who are not eligible to obtain a social security number and who must apply for an ITIN. This factor looks to the number or proportion of LEP persons in this eligible population who will be excluded from the benefit absent efforts to remove the language barrier. It is reasonable to assume that the majority of LEP persons in this target audience may experience a language barrier in accessing the ITIN application process since they need to understand the application process and ITIN requirements in order to apply for an ITIN. However, once the application process and requirements are understood, language is no more a barrier to providing a certified translation of a foreign language document than to providing a certified or notarized copy of an original document. In our opinion, the obstacles to obtaining a certified translation are more likely to be financial or other obstacles than to be the LEP status of the applicant.

The second factor is the frequency with which LEP persons come into contact with the program. This factor seems aimed at the frequency with which LEP persons apply for an ITIN (i.e. attempt to file an application), rather than the less frequent occurrence of the Service requesting an LEP applicant to provide a certified translation. Addressing the language barrier in the application process would *improve access* by LEP persons to the ITIN program. The third factor is the importance of the service provided by the program. The service provided by the program is the provision of an ITIN for federal tax purposes, as described above. This service does not impact the life or safety of the LEP person. The DOJ LEP Guidance provides that more affirmative steps need to be

taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence. The fourth factor is the resources available. This factor considers the resources available to the agency for this program including the costs associated with oral and written language assistance services. Although we do not have cost or resource information, in our opinion, any resources available for improving LEP access to this program, seem best directed toward language assistance in understanding the application process and the ITIN requirements.

Based on the above four-factor analysis, accessing the ITIN program first requires understanding the application process and the requirements to obtain an ITIN. In our opinion, that is the relevant point at which the agency should make an assessment, through the four-factor analysis, of what steps are necessary and reasonable to ensure meaningful access to the program by LEP individuals. Once an LEP individual understands the application process and requirements, it is unlikely that LEP status will be a barrier to securing a certified translation.

In addition to language barriers, there may be financial, transportation or other barriers inherent in accessing federal programs and services. While Executive Order 13166 addresses the language barrier to accessing federal programs, it does not cover financial, transportation or other barriers. For example, Executive Order 13166 does not address or require the removal of fees or costs for certified or notarized copies of documents nor require the Government to absorb such costs. Moreover, the ability to pay such fees is not based on the LEP status of a person. In our opinion, the requirement for a certified translation of foreign language documents is part of the broader documentation requirements associated with verifying the applicant's identity and foreign/alien status for issuance of an ITIN. Although this requirement may pose a financial or logistical barrier for some LEP, as well as non-LEP applicants, it is unlikely to present a barrier to the ITIN program based on the applicant's LEP status. Consequently, in our opinion, (1) the Service is not required to translate foreign language documents submitted by applicants, and (2) the requirement for the applicant to provide a certified translation of foreign language documents is a program requirement that is not a violation of Executive Order 13166.

If you have any questions regarding this matter, please contact Phyllis M. Belzer at 202-283-7920.

cc: Harry Takai