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Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964

The United States Departments of Justice (DOJ), Homeland Security (DHS), Housing and Urban Development (HUD), Health and Human Services (HHS), and Transportation (DOT) are issuing this guidance to assist recipients of federal financial assistance engaged in emergency management (e.g., state and local emergency management agencies, law enforcement, healthcare service providers, housing and transit authorities) to ensure that individuals and communities affected by disasters¹ do not face unlawful discrimination on the basis of race, color, or national origin (including limited English proficiency) in violation of Title VI of the Civil Rights Act of 1964 (Title VI).²

In the aftermath of Hurricanes Katrina and Rita, we have learned many critical lessons about how recipients of federal financial assistance engaged in emergency management activities can more effectively ensure that all members of the community receive services, regardless of race, color, or national origin. Pursuant to Presidential Policy Directive 8, the Federal government issued the National Response Framework and the National Disaster Recovery Framework, guides on national response to all types of disasters and emergencies and effective recovery support to disaster-impacted areas.³ The Recovery Framework notes that “care must be taken to assure that actions, both intentional and unintentional, do not exclude groups of people based on race, color, national origin (including limited English proficiency), religion, sex or disability.”⁴ Both Frameworks highlight the importance of complying with the

¹ For the purposes of this guidance, “disaster” or “emergency” includes any natural catastrophe (including hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought) or, regardless of cause, any fire, flood, explosion, act of terrorism or other human-engineered action, or public health or biological crisis, which in the determination of the President, a federal agency, or State or local government constitutes an emergency. It also includes any such event that is determined by leadership in the recipient entity to cause or be likely to cause damage of sufficient severity and magnitude to warrant preventative, response, mitigation, or recovery measures outside the recipient’s normal course of business. This guidance is not limited to presidentially declared disasters or emergencies.

² 42 U.S.C. § 2000d.

³ *National Response Framework*, FEMA (2d ed., May 2013), available at http://www.fema.gov/media-library-data/20130726-1914-25045-1246/final_national_response_framework_20130501.pdf; *National Disaster Recovery Framework*, (FEMA Sept. 2011) available at http://www.fema.gov/media-library-data/20130726-1820-25045-5325/508_ndrf.pdf; *Presidential Policy Directive 8*, available at <https://www.dhs.gov/presidential-policy-directive-8-national-preparedness>; *National Preparedness Goal*, available at <https://www.fema.gov/national-preparedness-goal>.

⁴ *National Disaster Recovery Framework*, 9 (FEMA Sept. 2011), available at http://www.fema.gov/media-library-data/20130726-1820-25045-5325/508_ndrf.pdf.

nondiscrimination requirements of civil rights statutes, addressing the needs of the whole community, and ensuring equal opportunity to access recovery efforts.

This guidance provides an overview of the application of Title VI in emergency and disaster management, and examples of promising practices to ensure nondiscrimination on the basis of race, color, and national origin. Additionally, we have attached to this guidance some useful resources, which may assist recipients of federal financial assistance to understand their broader civil rights obligations: (i) *Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response, and Recovery*, which ensures that limited English proficient (LEP) communities have meaningful access to emergency-related services; and (ii) a *Checklist for Recipients of Federal Financial Assistance*, which facilitates the integration of the whole community into emergency-related activities.⁵ The non-exhaustive list of promising practices discussed in this guidance focuses on planning ahead. However, as is commonly known in emergency and disaster management, sound planning and preparation lessens the need for *ad hoc* response to exigent circumstances. In some cases it can make all the difference in preserving the lives of first-responders and the people who need their help. These promising practices are one of many options recipients can implement to comply with the nondiscrimination requirement of Title VI and Title VI regulations.

Recipients of federal financial assistance that provide information or services in connection with disasters must also comply with all other federal anti-discrimination provisions, including prohibitions against discrimination and specific affirmative obligations for all federally assisted activities based on disability, sex, religion, age, economic status, or familial status.⁶

Title VI of the Civil Rights Act of 1964

Title VI and its implementing regulations obligate recipients of federal financial assistance to ensure nondiscrimination in federally-assisted emergency preparedness, response, mitigation, and recovery programs and activities. All recipients must comply with Title VI, as well as other antidiscrimination laws, at all times including during emergencies. Title VI provides that “[n]o 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.”⁷ Title VI’s implementing regulations explain that recipients of federal financial assistance:

⁵ Civil rights requirements and effective practices related to individuals with disabilities in emergency management can be found in chapter 7 of the *ADA Best Practices Tool Kit for State and Local Governments* at <http://www.ada.gov/pcatoolkit/chap7emergencymgmt.htm>.

⁶ Other statutes prohibiting discrimination include, but are not limited to, the Robert T. Stafford Disaster and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5121 et seq. (2013) (as amended by the Post-Katrina Emergency Management and Reform Act of 2006); the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et. seq.; the Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq.; HUD’s Final Rule on Affirmatively Furthering Fair Housing, 24 C.F.R. Parts 5, 91, 92, *et al.*, and the Age Discrimination Act, 42 U.S.C. 6101 et seq.

⁷ 42 U.S.C. § 2000d.

...[m]ay not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.⁸

Title VI's plain text and agency regulations clarify that discrimination based on race, color, or national origin (including limited English proficiency) is prohibited. Recipients of federal financial assistance are also prohibited from implementing facially-neutral policies and practices that have a disproportionate impact on protected groups. Additionally, Title VI requires recipients to ensure that LEP persons have meaningful access to programs or activities, benefits, services, and vital information. To avoid violations of federal law, recipients must ensure that their actions do not exclude individuals because of their race, color, or national origin, including limited English proficiency.

The prohibition against discrimination on the basis of race, color, and national origin can never be waived. Recipients of federal financial assistance engaged in emergency management activities, as well as recipients that provide emergency-related services, such as health providers⁹ and law enforcement agencies, must comply with Title VI at all times. In fact, complying with these requirements becomes even more important during emergencies and disasters in order to ensure that no one is unjustly denied the services and support they need during times of crisis, when their physical safety or well-being are often at greatest risk, and when many of the resources they might otherwise have drawn upon for support may not be available. Proper planning to comply with Title VI requirements avoids complications imposed by the exigencies of emergencies and disasters.

Need for this Guidance

On August 29, 2005, Hurricane Katrina made landfall in Louisiana, ravaging its coastal communities, as well as Mississippi, Alabama, and much of the Southeastern United States. Only a few weeks later, Hurricane Rita hit the Texas shoreline before striking many of the same communities still grappling with the damage left in Katrina's wake. Combined, these storms left over 1,800 people dead. Thousands more lost their homes and the communities they had developed over generations. While emergencies and disasters affect all people, the ability of

⁸ *Nondiscrimination in Federally Assisted Programs – Implementation of Title VI of the Civil Rights Act of 1964* (DOJ), 28 C.F.R. § 42.104(b). See also *Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964*, 45 C.F.R. § 80.3; *Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Civil Rights Act of 1964*, 49 C.F.R. § 21.5; *Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of Homeland Security*, 6 C.F.R. § 21.5; *Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development – Effectuation of Title VI of the Civil Rights Act of 1964*, 24 C.F.R. § 1.4.

⁹ See Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 (2010), which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities; U.S. Department of Health and Human Services, *Nondiscrimination in Health Programs and Activities*, 81 Fed. Reg. 31376 (May 18, 2016), 45 C.F.R. Part 92 (to be codified at 45 C.F.R. Part 92).

communities of color to access critical recovery programs, activities, and services often has been hampered.¹⁰

For example, in the days after Hurricane Katrina made landfall, numerous media reports showed images of African Americans stranded on roofs in New Orleans. These images exposed significant inequalities in access to emergency response and recovery efforts. More than one-third of New Orleans's African American population did not own cars and over 15% of the city's residents relied on public transportation.¹¹ Yet, those planning for Katrina appeared to assume most people could rely on personal vehicles to evacuate and failed to consider the transportation needs of all segments of the population. Identifying the needs of the transit-dependent community and then addressing those needs in emergency planning can reduce or eliminate racial and ethnic, as well as economic, disparities in emergency response and recovery activities.

Nondiscriminatory access to housing and shelters in the aftermath of Katrina also posed a major challenge for diverse racial and ethnic communities. Many seeking temporary housing immediately encountered discriminatory rental advertisements that explicitly refused to rent to African Americans.¹² For example, an advertisement on a website designed to reach Katrina evacuees read: "Provider will provide room and board for \$400 but prefers two white females." Evidence collected by fair housing testers found that in 66% of all tests, White persons were favored over African American persons seeking housing using contacts available to Katrina evacuees.¹³ A federal court found evidence of intentional discrimination in actions by St. Bernard Parish, which neighbors New Orleans, when the parish sought to restrict rental housing opportunities, including actions to halt the development of rental housing and enacting a permit requirement for single-family rentals that exempted renters who were "related by blood" to the homeowners. Additionally, the parish changed zoning rules to reduce the availability of rental housing, which was widely perceived in the parish as being planned to house African Americans in the aftermath of Hurricane Katrina. Because of these actions, the parish faced a HUD-initiated investigation, a DOJ lawsuit, and several private lawsuits alleging violations of the Fair

¹⁰ See, e.g., Arloc Sherman and Isaac Shapiro, *Essential Facts about the Victims of Hurricane Katrina*, Center on Budget and Policy Priorities (2005), <http://www.cbpp.org/9-19-05pov.htm>; Lung Vu, et al., *Evacuation and Return of Vietnamese New Orleanians Affected by Hurricane Katrina*, *Organ Environ.* 1, 22(4): 422-436 (December 2009), U.S. National Institutes of Health on <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2943234>. (articles referencing Census data on impact of Hurricane Katrina on minority, low-income, and LEP populations).

¹¹ The data on zero-vehicle households are derived from the "vehicles available" question on the 2000 Census long form. See also U.S. Gov't Accountability Off., GAO-07-44, *Transportation Disadvantaged Populations: Actions Needed to Clarify Responsibilities and Increase Preparedness for Evacuations* (2006).

¹² See generally U.S. Dep't of Housing and Urban Development, Written Statement by Kim Kendrick, Ass't Sec. of Fair Housing and Equal Opportunity before the US House of Representatives Committee on Financial Services Subcommittee on Housing and Community Opportunity (Feb. 28, 2006) available at <http://archives.hud.gov/testimony/2006/test022806.cfm> (last visited Feb. 17, 2016).

¹³ Testimony, Shanna L. Smith, President and CEO, National Fair Housing Alliance, Before the House Financial Services Committee Subcommittee on Housing and Community Opportunity, February 28, 2006, <http://financialservices.house.gov/media/pdf/022806ss.pdf>. (last visited Feb. 17, 2016).

Housing Act and it ultimately paid more than \$5 million in damages and attorneys' fees to settle the cases.¹⁴

These types of problems were not limited to Hurricane Katrina: subsequent disasters in other parts of the country have revealed additional examples of how communities of color and other populations have been denied vital services and programs in disaster recovery efforts. When wildfires ravaged Southern California in 2007, there were widespread reports of discrimination against Latinos during emergency response and recovery efforts. At sheltering sites, public employees reportedly required Latino evacuees to produce proof of identity and residence before allowing them access to the shelters.¹⁵ Additionally, although the area affected by the California wildfires included a large LEP population, reports indicated that vital information regarding evacuation was disseminated only in English, was not distributed at all in areas populated by migrant farmworkers, and interpreters were generally unavailable.¹⁶ As a result, not only were these individuals denied critical information needed to safely respond to the emergency, but first responders also faced heightened risks because they were required to provide assistance to those who could have evacuated on their own had they been informed.

In 2014, HUD received a complaint and ultimately reached an agreement with the State of New Jersey after an investigation of the Hurricane Sandy recovery efforts concluded that African Americans and Latinos were disproportionately denied recovery and rebuilding assistance and that insufficient outreach efforts to minority, low-income, and LEP communities were a factor in the low application rates for assistance from these groups. The settlement provided for \$240 million in direct housing assistance to low-income households, reevaluation of all denied applications, reopening programs for homeowners and renters who suffered losses due to the storm, adoption of a comprehensive language access plan, and enhanced outreach to the LEP population in multiple HUD-funded recovery-related programs.¹⁷

¹⁴ Press Release, *Department of Justice, St. Bernard Parish, Louisiana Agrees to \$2.5 Million Settlement to Resolve Housing Discrimination Lawsuits*, (May 10, 2013), at <http://www.justice.gov/opa/pr/st-bernard-parish-louisiana-agrees-25-million-settlement-resolve-housing-discrimination>. HUD paid over \$62 million to provide additional compensation to low income homeowners in Louisiana after Katrina after a lawsuit challenged the formulas for compensation approved by HUD as disproportionately disadvantaging African American homeowners. *See, e.g.*, http://www.nola.com/crime/index.ssf/2014/12/in_post-katrina_housing_discri.html and <http://www.gnofairhousing.org/2013/05/10/fair-housing-center-announces-900000-settlement-agreement-with-st-bernard-parish-pleased-with-settlement-between-united-states-and-parish/>

¹⁵ *See, e.g.*, Richard Marosi and Ari B. Bloomekatz, *Evacuations Raise Deportation Fears*, LATimes.com (Oct. 28, 2007), at <http://www.latimes.com/local/la-me-border28oct28-story.html> (last visited Feb. 17, 2016) (The article recounts claims that some shelter volunteers subjected immigrants to racial profiling and abuse, questioning their legal status. Additionally, the article cites claims that the city did not go to migrant camps to tell people to evacuate.).

¹⁶ *See City of San Diego, After Action Report, October 2007 Wildfires City of San Diego Response*, 31, (2007) available at http://www.sandiego.gov/fire/pdf/witch_aar.pdf (last visited Feb. 17, 2016) (“During this incident there was a chronic lack of translators, which hindered the ability to evacuate and/or provide other emergency services.”). *See generally* Marosi, *supra* fn 6.

¹⁷ *See Voluntary Compliance Agreement and Conciliation Agreement*, Title VI Case No. 02-13-0048-6 (May 30, 2014) available at <http://portal.hud.gov/hudportal/documents/huddoc?id=NewJerseyAgreementsigned.pdf> (last visited Feb. 17, 2016).

Recipients of federal financial assistance can play a pivotal role in making sure that these inequities do not reoccur in future emergencies and disasters. Many state or local government agencies and law enforcement agencies are on the front lines of responding to emergencies and coordinating preparedness and recovery efforts. In addition, non-governmental recipients often are integrally involved in emergency management. Many of the services they provide – including emergency housing and shelter, access to transportation, food banks, child care services, and public health programs, as well as long term housing and support – are not only essential during emergency situations, but also in the preparedness, response, mitigation, and recovery stages.

Promising Practices for Ensuring Title VI Compliance During Emergency and Disaster Management

Every emergency or disaster situation will be different and will pose its own set of unique challenges. However, there are a series of common steps recipients can adopt now, in advance of a disaster or emergency. These practices will not only advance compliance with Title VI and other federal civil rights obligations, but they also can serve as useful tools for ensuring that all communities receive the services they are entitled to during emergency and disaster preparedness, response, mitigation, and recovery.

A. Reaffirm Commitment to Nondiscrimination Protections

Leadership and commitment to nondiscrimination matter. Recipients who communicate this commitment internally in their departments, agencies, and organizations, as well as externally through training, policies, and outreach, will set the stage for improved Title VI compliance and more effective delivery of services. Robust information-sharing with affected or potentially affected communities is a practical way to reaffirm recipients' commitment to Title VI protections. It is also essential to advance effective emergency preparedness, response, mitigation, and recovery efforts. Information-sharing activities also present an important opportunity for recipients to explicitly inform beneficiaries of their nondiscrimination rights. Title VI regulations require that recipients provide participants and beneficiaries with information on nondiscrimination protections assured to them under the law.¹⁸

To that end, recipients should post a statement of nondiscrimination in all of their public facilities, on their public websites, and on notices distributed to the public during disasters and emergencies. Recipients should also identify a point of contact for the public to submit complaints of discrimination.¹⁹ For example, the Federal Transit Administration has directed its recipients to draft “a Title VI notice to the public that indicates the recipient complies with Title VI, and informs members of the public of the protections against discrimination afforded to them by Title VI.”²⁰ These notices, posted at transit centers, subway stations, bus shelters, and inside

¹⁸ See, e.g., 28 C.F.R. § 42.106(d); *Coordination of Enforcement of Non-Discrimination in Federally Assisted Programs*, 28 C.F.R. § 42.405(c)-(d).

¹⁹ 28 C.F.R. § 42.405(c)-(d).

²⁰ Circular, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*, FTA C 4702.1B (2012), available at http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf (last visited Feb. 17, 2016).

buses, provide vital information to the public of their rights under Title VI and of the recipient's commitment to nondiscrimination on the basis of race, color, and national origin.

Promising Practices

- Recipients of federal financial assistance should ensure that information they post or provide about housing, health services, or other emergency-related services is disseminated and accessible to diverse racial, ethnic, and limited English proficient populations.
 - Recipients should also ensure that services or resources are not offered on a discriminatory basis, e.g., that advertisements do not exclude people based on their race, color, or national origin.
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B. Engage with and Include Diverse Racial, Ethnic, and Limited English Proficient Populations

Direct engagement with diverse racial, ethnic, and LEP populations or through community and faith-based organizations, civil legal aid, and ethnic media outlets is a critical step in ensuring that recipients of federal financial assistance comply with Title VI nondiscrimination requirements, as well as that of other civil rights laws. Recipients should not wait until there is an emergency or disaster to engage with diverse racial, ethnic, and LEP populations or to seek their participation to help inform emergency management.²¹ Consistent and robust outreach can assist recipients' efforts to include the whole community in emergency planning well before a catastrophic event, as well as during the response, mitigation, and recovery stages.²² It can also raise awareness of available emergency or disaster assistance and any related eligibility standards.

There is no one-size-fits-all approach to effective outreach. Consulting with targeted communities can help to determine how best to tailor outreach to build mutual trust and forge effective partnerships. Meetings, forums, town halls, webinars, teleconferences, and other public events should be accessible to all affected community members, including those who are LEP and those who rely on public transportation.²³ Regular engagement can build trust between government entities and the communities they serve.

Recipients should consider choosing outreach locations where community events are regularly held, such as schools, libraries, community centers, community health centers, and places of worship. Recipients should also consider working with legal aid and community-based organizations, both to disseminate information to affected communities and to solicit information about the needs and difficulties experienced by diverse racial, ethnic and LEP populations. Even

²¹ See, e.g., 28 C.F.R. 42.406 (a)-(c); 42 U.S.C. 5196f(a).

²² Direct engagement with diverse racial, ethnic, and LEP populations is necessary during the recovery stage to ensure that recovery programs (for example, the planning, siting, and construction of temporary housing and affordable housing) are developed in a manner that takes into account the needs of all members of the community, regardless of race, color or national origin, and do not result in the creation or perpetuation of racial or ethnic disparities.

²³ See e.g., 28 C.F.R. § 42.104; 42 U.S.C. 5196f.

prior to a disaster, recipients should be able to identify when, where, and how they will learn relevant information from LEP communities.²⁴

Legal aid and community services organizations often provide assistance to communities before, during, and after an emergency or disaster. Most legal and community services organizations operate on the local level, and often focus on underserved communities. As a result, these organizations are often well-positioned as trusted intermediaries who can engage with diverse racial, ethnic, and LEP populations to identify their needs and to assist them in accessing emergency and recovery services and benefits. The federally funded Legal Services Corporation (LSC), along with several partners, developed www.DisasterLegalAid.org to serve as a centralized national resource for legal aid, pro bono and criminal defender attorneys across the country on legal issues related to all types of disasters, to recruit and help mobilize pro bono attorneys in the aftermath of disasters, and to provide accurate and timely information on legal issues related to disasters to the low and moderate income public.²⁵ DOJ's Office for Access to Justice can also be a valuable resource to assist recipients seeking to forge relationships with legal aid organizations.²⁶

Promising Practices

- Disseminate information to the public in a manner that accounts for the various ways different community members access information. This may include dissemination through local newspapers serving diverse communities; social media; websites; ethnic radio and other media outlets; foreign-language media outlets; and community centers.
- Reach out to local community centers; employers and their unions; and community, civil rights, and legal aid organizations to share information about emergency planning meetings and for advice on engaging diverse racial, ethnic, and LEP communities.
- Accommodate nontraditional work schedules and transportation needs by holding meetings at various times and at locations that are accessible by public transit.
- If LEP populations are among those affected, provide translated materials about emergency services, housing, health care, and transportation in appropriate languages through hotlines, other telephone and internet information services, and interpreters at public meetings and forums.
- Maintain relationships with community centers and community, civil rights, and legal aid organizations for long-term outreach efforts.
- Post information about restoration programs, planned actions, and public hearings or meetings, as well as damage studies, data collection efforts and findings, on public websites and make it accessible to diverse populations in various venues, including local ethnic markets and businesses. Make this information available in a manner that provides

²⁴ See, e.g., 28 C.F.R. §42.406.

²⁵ This site is a collaborative effort of Lone Star Legal Aid, the American Bar Association, the Legal Services Corporation, the National Legal Aid and Defender Association, the Texas Legal Services Center and Pro Bono Net.

²⁶ <http://www.justice.gov/atj>.

the public with reasonable and timely notice, as well as a meaningful opportunity to provide comments when appropriate.

- For an example of how to incorporate community consultation into the emergency management process, recipients may consider the Department of Housing and Urban Development, Second Allocation, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy, 78 F.R. 69104 (Nov. 18, 2013) available at <https://www.gpo.gov/fdsys/pkg/FR-2013-11-18/pdf/2013-27506.pdf>.
- Host annual preparedness meetings, such as town hall meetings, to facilitate regular community engagement.

C. Provide Meaningful Access to LEP Individuals

Title VI and agency implementing regulations require recipients to take reasonable steps to ensure meaningful access to the information and services they provide to LEP persons.²⁷ Recipients should make language services available in all their public-facing programs or activities. Language services may include in-person interpretation, telephonic interpretation, translation services, monolingual communication in the LEP person's language, and sight-translation.²⁸ Including input from and addressing the needs of LEP populations in evacuation and disaster preparedness plans that are made widely available helps ensure that communities have access to them when needed.

Recipients should assess the language needs of the service community and develop a language access plan, which is a management tool that provides an administrative blueprint for bringing the agency into compliance with language access requirements. Such plans outline the recipient's policies and standards for delivering services to LEP individuals and describe how the agency will implement those policies and standards, including explaining how the agency will increase its capacity to address the language service and resource needs identified in the self-assessment. Recipients should periodically review their plans to evaluate whether changes need to be made, including addressing changing demographics of their service populations. Recipients are encouraged to refer to the Language Access Assessment and Planning Tool, issued by the Civil Rights Division's Federal Coordination and Compliance Section, which

²⁷ *Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency*; Policy Guidance, 65 F.R. 50,123, 50,124 (Aug. 16, 2000). Federal agencies have issued guidance as an analytic framework to determine how best to comply with statutory and regulatory obligations by federal financial assistance recipients on providing meaningful access to LEP populations. *See, e.g.*, Department of Justice, 67 F.R. 41,455 (June 18, 2002); Department of Health and Human Services, 68 F.R. 47,311 (Aug. 8, 2003); Department of Transportation, 70 F.R. 74,087 (Dec. 14, 2005); Department of Housing and Urban Development, 72 F.R. 2,732 (Jan. 22, 2007); Department of Homeland Security, 76 F.R. 21,755 (April 18, 2011).

²⁸ For more information about different language access services and promising practices for the selection, retention, and use of different language services, please visit www.lep.gov.

provides guidance on how recipients should assess their own programs and activities, and formulate a language access plan.²⁹

Emergency or disaster-related documents issued by recipients, including those made available on websites, are most effective when written in plain and simple English that can be translated into languages spoken by LEP individuals in the areas the recipient serves. Recipients will also find it helpful to consider the literacy levels of the populations they intend to reach and consider other communication formats such as oral and universal design graphics.

Federal agencies have similar obligations to take reasonable steps to ensure that their federally conducted programs and activities are accessible to LEP individuals under Executive Order 13166.³⁰ In implementing the Executive Order, DHS has issued a policy on the provision of meaningful access to LEP persons in its federally conducted activities and routinely carries out activities to provide meaningful access to LEP persons. For example, the Federal Emergency Management Agency (FEMA) provides documents such as public service announcements, media advisories, flyers, guides, and letters related to disaster assistance in non-English languages and deploys Disaster Survivor Assistance Teams that are prepared to engage directly with the LEP populations in an impacted area, including registering eligible LEP persons for FEMA disaster assistance.³¹ In response to the BP Oil Spill, DHS worked with the Deepwater Integrated Services Team to ensure that language assistance services, including translation of critical forms and notices, were provided to linguistic minorities impacted by the spill and arranged for the posting of trained and experienced Limited English Proficiency Coordinators in the affected areas. Through these efforts, DHS ensured that critical materials were available to LEP individuals in Cambodian (Khmer), Creole, French, Haitian Creole, Lao, Spanish, Thai, and Vietnamese. These materials allowed residents affected by the disaster to access much needed resources to which they were entitled. Recipients can look to the efforts of federal agencies for examples of how to provide language access and resources.

²⁹ Department of Justice, Civil Rights Division, Federal Coordination and Compliance Section, *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs*, (May 2011), available at http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf.

³⁰ Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," requires federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency, and develop and implement a system to provide those services so LEP persons can have meaningful access to them.

³¹ Department of Homeland Security, *Language Access Plan* (Feb. 28, 2012), available at <http://www.dhs.gov/sites/default/files/publications/crcl-dhs-language-access-plan.pdf> (last visited Feb. 17, 2016).

Promising Practices

- Visit www.lep.gov for resources helpful in developing a language access plan. Additionally, use *Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response, and Recovery* to ensure LEP communities have meaningful access to emergency-related services.
 - To determine what languages are spoken by LEP individuals in their service areas, recipients are encouraged to refer to the Department of Justice, Civil Rights Division's Language Map App, available at www.lep.gov/maps/.
 - Update existing Language Access Plans to ensure that the affected communities received adequate information about all stages of emergency management, including planning, response, recovery and mitigation activities.
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D. Include Immigrant Communities in Preparedness, Response, Mitigation, and Recovery Efforts

A person's immigration status generally does not prevent access to critical emergency-related information and resources. It is especially commonplace during a disaster or emergency for all families – regardless of their immigration status – to lose or leave behind important documents such as identification and social security cards, passports, birth certificates, and immigration documents. Title VI compels recipients to provide services to eligible beneficiaries regardless of their national origin. Requiring additional verification or documentation from individuals based on their appearance, name, accent, limited English proficiency, or suspected immigration status may violate Title VI and other civil rights laws. Thus, first responders or emergency services providers should not ask only persons of certain national origins for documents proving lawful immigration status or report or threaten to report them to Immigration and Customs Enforcement based on their skin color, accent, or limited English proficiency.

Most public services for protection of life and safety provided by recipients of federal financial assistance do not have immigration status restrictions.³² For example, public health assistance for immunizations and for testing and treatment of symptoms of communicable diseases can be provided without regard to an individual's immigration status.³³ Short-term, non-cash, in-kind emergency disaster relief, such as Disaster Legal Services and Crisis Counseling, is also available regardless of an individual's immigration status.³⁴ Additional programs are available to non-citizens with certain qualified immigration statuses, including monetary disaster assistance, and cash assistance for housing-related needs through FEMA's

³² Attorney General Order No. 2353-2001, 66 Fed. Reg. 3613 (Jan. 16, 2001). *See also* Questions and Answers for Undocumented Immigrants Regarding FEMA Assistance (June 17, 2004), <http://www.fema.gov/news-release/2004/06/17/questions-and-answers-undocumented-immigrants-regarding-fema-assistance>.

³³ 8 U.S.C. § 1611(b)(1)(C).

³⁴ 8 U.S.C. § 1611(b)(1)(B); *Crisis Counseling Assistance and Training Program*, FEMA.gov, <http://www.fema.gov/recovery-directorate/crisis-counseling-assistance-training-program> (last visited, Feb. 16, 2016); *Disaster Legal Services Program*, Americanbar.org, http://www.americanbar.org/groups/young_lawyers/disaster_legal_services.html (last visited, Feb. 16, 2016).

Individuals and Households Program.³⁵ Furthermore, many families include individuals with different immigration statuses, including U.S.-born American citizen children. Parents and guardians may generally apply for benefits on their children's behalf even if they themselves are not eligible.³⁶

Failing to plan for and serve immigrant communities in emergencies can undermine response efforts and increase safety risks for both local communities and first responders. For example, individuals in fear of immigration enforcement operations may not evacuate in a timely manner or seek humanitarian relief. In emergencies involving a disease outbreak, a fear to come forward for prevention information and screening, medical assistance, or vaccination may prolong an epidemic, endangering and compromising the health of others in the community. Immigrant families may also not realize that they are eligible to receive certain government benefits and services. Therefore, it is imperative to include immigrant communities in outreach and engagement efforts to clarify whether eligibility for services or benefits is restricted based on immigration status.

In the last several years, DHS has acted to address concerns that immigrant populations could be discouraged from safely evacuating and/or seeking assistance immediately preceding and during disasters, or could be marginalized in response to health pandemics. In response to Hurricane Isaac, DHS issued a statement in multiple languages to the public stating that “there will be no immigration enforcement initiatives associated with evacuations and sheltering, ... including the use of checkpoints for immigration enforcement purposes” in order to promote life-saving and life-sustaining activities.³⁷ DHS issued similar statements before Hurricane Sandy made landfall in the United States in 2012.³⁸ Similarly, HUD has published questions and

³⁵ 8 U.S.C. §§ 1611(a), 1641. *See generally* 42 U.S.C. § 5174; 44 C.F.R. § 206.113. *See also* Federal Emergency Management Agency, Applicant's Guide to the Individuals & Households Program 4 (July 2008), available at https://www.fema.gov/pdf/assistance/process/help_after_disaster_english.pdf (last visited Feb. 17, 2016).

³⁶ *See, e.g.*, Department of Health and Human Services and Department of Agriculture, *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, and Food Stamp Benefits*, available at <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/origin/triagency.html>; *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 62 F.R. 61,345, 61,362 Attachment 3 (Nov. 17, 1997) (providing exemptions from status verification requirements for short-term, non-cash, in-kind emergency disaster relief, and emergency medical assistance under Title XIX of the Social Security Act not relating to organ transplant procedures). *See also National Disaster Recovery Framework 74*, Federal Emergency Management Agency (Sept. 2011).

³⁷ FEMA issued press releases stating that “ICE's top priorities in any emergency are life-saving and life-sustaining activities, preventing the loss of property to the extent possible, and assisting with a speedy recovery of the affected region[.]” *See ICE-CBP Joint Message Regarding Hurricane Isaac* (Aug. 27, 2012), available at <http://www.dhs.gov/publication/ice-cbp-joint-message-regarding-hurricane-isaac> (translated and available online in Spanish, Vietnamese, and Haitian Creole) (last visited Feb. 17, 2016).

³⁸ *ICE-CBP Joint Message Regarding Hurricane Sandy* (Oct. 26, 2012), available at <http://www.dhs.gov/ice-cbp-joint-message-regarding-hurricane-sandy> (translated and available online in Spanish, Simplified Chinese, Haitian Creole, Korean, and Vietnamese) (last visited Feb. 17, 2016); *see also* Press Release, *Storm Victims Urged To Come Forward For Emergency Aid Regardless Of Immigration Status*, available at <https://beta.fema.gov/news-release/2004/08/18/storm-victims-urged-come-forward-emergency-aid-regardless-immigration-status> (last visited Feb. 17, 2016).

answers about how the Fair Housing Act applies to persons based on their immigrant status.³⁹ HUD program offices, which administer disaster recovery funds, offer resources for immigrants, as well as information about how to file a fair housing complaint if illegal discrimination is suspected.⁴⁰

In 2009, DOJ's Acting Assistant Attorney General for Civil Rights issued a statement, *Addressing Civil Rights in Response to the H1N1 Influenza*, to remind responders of the importance of providing information in languages other than English and ensuring there is no harassment against immigrants or those of Mexican descent. In December 2014, DOJ's Civil Rights Division issued *Public Guidance on Protecting Civil Rights While Responding to the Ebola Virus* to address increased reports of racial and national origin discrimination against people from African countries or of African descent.

Promising Practices

- Share information about eligibility requirements translated into the most prevalent languages spoken in the affected areas, including to what extent, if any, immigration restrictions may affect eligibility of some family members.
- Provide training and publish and provide statements reminding recipients, including first responders and benefits providers, of the prohibition on discrimination and to not inquire about immigration status unless necessary for determining an individual's eligibility for a particular public benefit.
- Issue public statements that recipients will not engage in immigration-related enforcement activities in connection with their emergency and disaster efforts.
- Engage with the state immigration commissions, or other state equivalent, when developing emergency management plans to identify the needs of immigrant populations.

E. Collect and Analyze Data

Recipients' ongoing assessment of the needs of diverse racial, ethnic, and LEP populations that they encounter or serve is an indispensable tool for ensuring Title VI compliance and equitable preparation, response, mitigation, and recovery activities in emergencies and disasters. Collecting and analyzing information about the race, color, national origin, languages spoken by LEP populations, and other demographic information of communities served by a federally assisted program, activity, or service is vital to addressing potential barriers that may have an unlawful discriminatory impact in emergency preparedness, response, mitigation, and recovery. When disaster strikes, recipients should routinely consider all of the affected population and ensure effective, nondiscriminatory allocation of resources,

³⁹Immigration Status and Housing Discrimination Frequently Asked Questions, *available at* <http://www.equalhousing.org/wp-content/uploads/2014/09/2012-Immigration-Status-FAQ.pdf> (last visited Feb. 17, 2016).

⁴⁰HUD Disaster Resources, HUD.gov, <http://portal.hud.gov/hudportal/HUD?src=/info/disasterresources> (last visited Dec. 17, 2015).

services, and benefits. The federal government has made available a number of mapping tools and resources that may assist recipients in this effort.⁴¹

State and local entities may also work with FEMA and local partners – including nonprofits, advocate groups, legal services organizations, and community representatives – to identify, obtain, review, and share aggregate race, color, and national origin data concerning the extent and geographic distribution of damage caused by disasters and emergencies before formulating recovery and mitigation plans. An open exchange of aggregate data among recipients, FEMA, and the community in the data collection and analysis process enhances the accuracy of the information. In particular, it can help ensure that the data collected is shared and does not exclude important information about health impacts, and damage to housing, public transportation systems, infrastructure, as well as other effects of a disaster or emergency on diverse racial, ethnic, and LEP communities. Recipients that compare the geographic distribution of different populations across their jurisdiction with data about the extent of damage and any potential recovery and mitigation projects will be well-positioned to identify potential disparities in resource distribution. By identifying potential disparities based on race, color, and national origin before they occur and modifying plans accordingly, recipients may avoid Title VI violations. In addition, collecting and analyzing information about people who receive, or fail to access, a recipient’s services during or after an emergency, as well as about their experience with the programs, can highlight shortcomings in engagement, access, and services.

Recipients are also reminded that Title VI regulations authorize the routine collection of data and other information necessary to ensure nondiscrimination in federally-assisted programs and activities, and that they are required to provide data and other information that demonstrates their compliance.⁴² State and local government recipients should be particularly vigilant in collecting and analyzing data. Even if the recipient receives funds through a state administering agency, Title VI data collection requirements still apply. Recipients must ensure that sub-recipients receiving federal financial assistance collect data necessary to allow the recipient of federal funds to demonstrate compliance with Title VI.⁴³ Furthermore, some state and local recipients may be obligated to collect data by the funding agency. For example, the Department of Education requires every public school and school district in the country to respond to its civil rights data collection request.⁴⁴ Likewise, the Federal Transit Administration requires some of

⁴¹ DOJ has made available a mapping application and downloadable maps, available at www.lep.gov/maps, indicating number and percentage of LEP persons at the state, county, and judicial district level. Department of Agriculture’s Economic Research Service has created a mapping application which charts various demographic features at a county level, available at <http://www.ers.usda.gov/data-products/atlas-of-rural-and-small-town-america/go-to-the-atlas.aspx>. HUD’s Enterprise Geographic Information System team has issued an Affirmatively Furthering Fair Housing Tool to assist grantees ensure they meet their civil rights obligations. Information about the tool is available at <http://egis.hud.gov>.

⁴² *Coordination of Enforcement of Non-Discrimination in Federally Assisted Programs*, 28 C.F.R. § 42.406(b).

⁴³ *See, e.g.*, 28 C.F.R. § 42.106(b).

⁴⁴ *See Civil Rights Data Collection*, www.ed.gov, <http://www2.ed.gov/about/offices/list/ocr/data.html?src=rt> (last visited Feb. 17, 2016).

its recipients to collect race, color, and national origin data in conducting service equity analyses to ensure compliance with Title VI.⁴⁵

Promising Practices

- Use data when planning for emergency response, as well as for long term recovery and mitigation efforts. Census data or data collected by DHS, HUD, FEMA, school systems, community organizations, state and local government agencies, and third parties can be used to ensure evacuation and other emergency response programs are developed that best serve the communities in the service area. Use resources such as the Census Bureau and the Census Information Centers for training and technical assistance on effective demographic analysis for targeted outreach.
<https://www.census.gov/mso/www/training/index.html> and www.lep.gov.
- In the immediate and long-term aftermath of an emergency or disaster, actively engage in information collection and sharing with community organizations, nonprofits, advocacy groups, and local community leaders, to determine what populations were affected. Use data collected through these efforts, including anecdotal and qualitative data, to formulate recovery and mitigation plans, make changes to address gaps in services and barriers, and to ensure that plans do not disproportionately exclude or negatively affect populations in violation of Title VI.
- Data can include the geographic distribution of individuals by race, color, and national origin (including limited English proficiency); the reliance of particular communities on public transit; the proximity of different groups to emergency or disaster danger zones; and the geographic distribution of damage, taking into account varying degrees of severity.
- An evaluation process can help determine whether the programs and services are reaching and meeting the needs of diverse racial, ethnic, and LEP populations. Collect your own data to compare the service population to the populations actually using or participating in the program to determine whether the provision of services discriminates against certain populations and address any such gaps in services.

Civil Rights and Emergency Management Resources

To further promote these and other promising practices, federal agencies will post civil rights resources and information related to emergencies and disasters. We highlight some available resources here:

- DOJ has developed the *Tips & Tools for Reaching LEP Communities in Emergency and Disaster Preparedness, Response, and Recovery*. This document is directed to state and local decision-makers, planners, and language access coordinators responsible for emergency preparedness, response, and recovery. It provides

⁴⁵ See Department of Transportation, *Federal Transit Administration Circular 4702.1B* (October 1, 2012) available at http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf.

strategies for incorporating language access considerations into emergency and disaster management plans. It serves as a basic guideline for recipients to improve access for LEP communities and highlights innovative practices.

- HHS has created a *Checklist for Recipients of Federal Financial Assistance*, which provides steps that recipients can take to address the needs of the whole community, including those who are protected from discrimination under federal civil rights laws, including Title VI. It is a brief and effective reminder of the essential steps needed to integrate these populations into emergency and disaster management programs and activities.

Conclusion

Hurricane Katrina and subsequent emergencies and disasters highlight a recurring lesson: we need to take proactive measures to ensure that all members of our communities are appropriately incorporated into emergency management activities. We invite you to contact the civil rights office of your federal funding agency or DOJ's Federal Coordination and Compliance Section in the Civil Rights Division for additional technical assistance on compliance with Title VI and other federal civil rights laws.