



For economic and racial justice

67 E. Madison St., Suite 2000, Chicago, IL 60603
312.263.3830 | povertylaw.org

July 6, 2021

VIA <http://www.regulations.gov>

Shalanda Young
Acting Director
The Office of Management and Budget
725 17th St., NW
Washington, DC 20503

Re: ***Response to OMB Request for Information, Docket No. OMB-2021-005 Methods and Leading Practices for Advancing Equity and Support for Underserved Communities through Government***

Dear Acting Director Young:

Thank you for the opportunity to inform the Office of Management and Budget (OMB) about the federal government’s approach to advancing equity and support for underserved communities. The following information are submitted on behalf of the Shriver Center on Poverty Law (“Shriver Center”). The Shriver Center is a law and policy advocacy organization that provides national leadership in advancing laws and policies that secure economic and racial justice to improve the lives and opportunities of people living in poverty. As part of this work, the Shriver Center leads the Legal Impact Network (LIN), a multi-state collaborative of advocates from across the country working with communities to end poverty and achieve racial justice at the federal, state, and local levels. The following LIN member organizations have signed onto this response:

- Advocates for Basic Legal Equality, Inc. (Ohio)
- Colorado Center on Law and Policy
- Connecticut Legal Services
- Florida Legal Services, Inc.
- Greater Hartford Legal Aid (Connecticut)
- Hawaii Appleseed Center for Law and Economic Justice
- Kentucky Equal Justice Center
- Massachusetts Law Reform Institute
- Mississippi Center for Justice
- Nebraska Appleseed Center for Law in the Public Interest
- Public Justice Center (Maryland)
- South Carolina Appleseed
- Tennessee Justice Center
- Vermont Legal Aid

Roadmap

This response will address the following: Area 1, Equity Assessment and Strategies; Area 2, Barriers and Burden Reduction; and, briefly, Area 3, Procurement and Contracting, and Area 5, Stakeholder and Community Engagement. Regarding ***equity assessments and strategies***, the response notes:

- Federal agencies have varying levels of thoroughness when conducting internal racial and ethnic equity assessments, with USDA’s Civil Rights Impact Analysis serving as a better assessment

model, but all agencies ultimately lacking in accountability and transparency.

- The federal government may look to how localities such as New Orleans and Philadelphia have undergone Assessments of Fair Housing (AFHs) as part of their duty to affirmatively further fair housing (AFFH) for potential lessons.
- The federal government may also look to states such as Illinois and Maine, which have undertaken equity assessments in determining affordable healthcare policy and in furthering equitable legislation, respectively.

Regarding *reducing barriers and burdens*, Shriver’s response argues:

- Federal agencies should implement equitable methods in data collection and interagency data sharing to bridge current gaps in equitable access to public benefits and protect privacy for vulnerable populations.
- The federal government must ensure adequate funding of equity assessments in the first place, and use equitable methods in budgeting, as shown by Seattle’s Racial Equity Toolkit.
- The federal government’s emphasis on “program integrity” perpetuates racist myths about individuals on welfare and contradicts its mission of program uptake, as high uptake rates are a better measure of programmatic success and low uptake rates showcase program inefficiency.
- Barriers and burdens to public benefits often fall heaviest on communities of color, from a lack of rural broadband access to remote identity proofing (RIDP) requirements to a lack of language access across programs. Some of these barriers have significant effects on immigrant and undocumented communities, who already face residual chilling effects of participation via the Trump Administration’s 2019 public charge rule.
- Overall, the federal government has many tools to implement policies and procedures for advancing racial equity, but must be intentional about the process.

Area 1: Equity Assessment & Strategies

A. Federal Agencies

OMB should first look to the federal agencies for existing tools to conduct equity assessments. Some federal agencies currently have a process for conducting a civil rights analysis of agency practices and policies, which could form the basis for conducting a more expansive equity assessment as well as provide a model for other agencies.

1. USDA’s Civil Rights Impact Analysis Policy

The U.S. Department of Agriculture (USDA) is an example of a federal agency with a blueprint for a systematic analysis of the civil rights implications of its policies and practices, though it is not clear how well USDA follows through on this analysis. Although a civil rights analysis is not the same as an equity assessment, it contains elements that could form the basis of an equity assessment so that federal agencies do not have to start from zero.

USDA’s Civil Rights Impact Analysis (CRIA) policy and procedures are governed by USDA [Departmental Regulation 4300-004](#).¹ The majority of USDA actions require staff to prepare a CRIA. For significant agency actions, USDA’s Office of the Assistant Secretary for Civil Rights (OASCR) is responsible for reviewing the CRIA and making a determination regarding its sufficiency.² Significant agency actions include regulatory actions and notices to be published in the Federal Register as well as departmental regulations, manuals, and notices that require

¹ [Civil Rights Impact Analysis, DR 4300-004](#), USDA (Oct. 17, 2016).

² *Id.* at 6.

Departmental approval.³ In addition, the Assistant Secretary may require submission of the CRIA for any other policy, program, action, or activity, or the implementation of which may have potentially adverse civil rights impacts.⁴ Generally, OASCR may take one of three actions: (i) approve the proposed action as is, (ii) approve the proposed action on the condition that USDA takes certain actions, or (iii) reject the action.⁵

For all other agency actions, USDA staff must prepare a CRIA but are not required to submit it to OASCR for review.⁶

Section 9 of DR 4300-004 lays out the required elements of a CRIA in detail.⁷ For significant rules, non-significant rules, notices, and departmental regulations, the CRIA consists of the following parts: background, analysis, mitigation, and outreach strategy.⁸ The *analysis* section has thirteen detailed directives for staff in analyzing these regulatory actions, which includes identifying whether the policy contains any requirements related to eligibility, benefits and/or services whose purpose or effect is to disadvantage any protected classes.⁹

Once this analysis is completed, agency staff must develop and implement a *mitigation strategy* to eliminate or alleviate any identified adverse impacts.¹⁰ Agency staff must also develop and implement an *outreach strategy* to ensure members of protected groups receive timely notification of program changes and outline methods to be used in this communication.¹¹ For both mitigation and outreach strategies, DR 4300-004 provides examples and lays out elements that the strategies should include.¹²

As described in DR 4300-004, the USDA's CRIA process includes many of the elements that could form the basis of a federal agency's equity assessment of its policies and practices. However, it is not clear whether USDA fully implements DR 4300-004. There is little opportunity for the public to view and assess completed CRIAs and the Department's implementation of their recommendations. USDA does not clearly or widely publish the completed analyses, and viewing those that are published requires a specific search for the exact report a person is looking for. Furthermore, OASCR may offer recommendations for mitigating strategies, but it has no independent authority to halt or alter a proposed rule.¹³

Nor does the inclusion of mitigating strategies within the CRIA itself mean that the Department will adopt those strategies as part of its final rule. In fact, Lawyers' Committee for Civil Rights Under Law and National Women's Law Center recently filed an amicus brief in a suit

³ *Id.* at 6–7.

⁴ *Id.* at 7.

⁵ *Id.* at 8.

⁶ Such actions include: (1) new and revised agency-specific instructions, procedures, manuals, and other guidance published in agency directives systems; (2) advisory boards and committees that are established at the discretion of the agency and are not mandated by statute, rule, or USDA regulation; (3) budget proposals; (4) grants and contracts; (5) organizational changes not requiring Departmental notification as prescribed in DR 1010-001; and (6) national, regional, and local special projects affecting program beneficiaries. *Id.* at 7.

⁷ *Civil Rights Impact Analysis*, *supra* note 1.

⁸ *Id.*

⁹ *Id.* at 11–12.

¹⁰ *Id.* at 16–17.

¹¹ *Id.* at 17–18.

¹² *Id.* at 16–18.

¹³ [Review of the Office of the Assistant Secretary for Civil Rights: Hr 'g Before the Subcomm. on Nutrition, Oversight, and Dep't Operations of the H. Comm. On Agric.](#), 116th Cong. 31 (2019).

against the USDA noting this fact.¹⁴ In early 2020, the USDA enacted a final rule that would have tightened work requirements for SNAP benefits for able-bodied adults without dependents.¹⁵ The amicus brief noted that the CRIA failed to consider the significant reliance interests of African American and Hispanic recipients and expert submissions containing extensive data detailing the harm to communities of color, in violation of the DR’s requirements.¹⁶ The Department also ignored every one of the CRIA’s remedial recommendations and mitigation strategies, enacting the Final Rule as is.¹⁷ Consequently, analysis without the requirement that identified mitigation strategies be adopted or OASCR’s authority to mandate their implementation is ineffective.

2. Contrast with Department of Homeland Security & HUD

Despite these concerns regarding the effectiveness of USDA’s CRIA policy, its detailed process stands in contrast to other agencies’ meager impact assessment policies. Take the Department of Homeland Security, for example. DHS has Civil Rights and Civil Liberties Impact Assessments¹⁸ mandated by DHS’ enabling statute, which explains that one of DHS’ missions is to “ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland.”¹⁹ However, the only way to discern when DHS is statutorily required to complete an assessment is to look to the authorizing acts themselves, and even then, there is no clear direction for how it must be completed.

Similarly, the Fair Housing Act requires HUD to administer its housing and urban development programs in a manner that affirmatively furthers the purpose of the Act²⁰, commonly known as the requirement to “affirmatively further fair housing” (AFFH).²¹ This statutory mandate requires HUD not only to refrain from discrimination but to take action to undo historic patterns of segregation and other types of discrimination.²² However, it is unclear whether HUD conducts any analysis of its own policies and regulations in this regard. The agency itself stated that it carries out the mandate primarily by extending the obligation to recipients of federal funding.²³

Neither HUD nor DHS has a clearly outlined policy for when impact analysis is required and what considerations must be included in that analysis, making it difficult for internal staff and external stakeholders to hold these agencies accountable in terms of civil rights.²⁴ As agencies consider implementing similar assessment policies in the future, they should create not only a specific and thorough process, as USDA has done, but also ongoing opportunities for stakeholders

¹⁴ [Brief of Lawyers’ Comm. for Civil Rights Under Law and National Women’s Law Center as Amici Curiae Supporting Plaintiffs](#), Dist. of Columbia, et al. v. USDA, et al., 2020 WL 9596420 (D.C. Cir. 2020) (No. 20-5136).

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 5–9.

¹⁷ *Id.* at 14–15.

¹⁸ *Civil Rights and Civil Liberties Results and Reports*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/reports-office-civil-rights-and-civil-liberties> (last visited June 29, 2021).

¹⁹ 6 U.S.C. § 111(b)(1).

²⁰ 42 U.S.C. § 3608(d) (2016).

²¹ *Affirmatively Furthering Fair Housing (AFFH)*, U.S. DEP’T OF HOUS. AND URBAN DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/affh (last visited June 29, 2021).

²² Memorandum on Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies, Daily Comp. Pres. Docs., 2021 DCPD No. 00090 (Jan. 26, 2021).

²³ Restoring Affirmatively Furthering Fair Housing Definitions and Certifications, 86 Fed. Reg. 30779 (proposed June 10, 2021) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, 903).

²⁴ However, unlike USDA, DHS does publish and make clearly available each of its completed assessments on its website. *Civil Rights & Civil Liberties Completed Impact Assessments and Related Documents*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/publication/civil-rights-civil-liberties-completed-impact-assessments-and-related-documents> (last visited June 29, 2021).

and impacted communities to examine the resulting analysis and its impact on the proposed agency actions in question.

B. State and Local Examples

The Request for Information asked for lessons learned from jurisdictions at the state and local level that have implemented equity assessment tools to inform their policymaking, budgetary, or regulatory processes. The following section provides local examples of jurisdictions undergoing the AFFH process as well as examples of state-level equity assessments from Illinois and Maine.

1. Local Assessments of Fair Housing: New Orleans & Philadelphia

The duty to affirmatively further fair housing applies to HUD grantees. In 2015, HUD published its AFFH regulation, and in the first round, twenty-two jurisdictions were required to complete an Assessment of Fair Housing (AFH). These local assessments provide potentially useful case studies in how to assess policies and programs with a broader equity goal of integration and fair housing, versus the narrower goal of refraining from discrimination.

Part of the first round, **New Orleans** was the first city in the nation to release a legally required AFH report.²⁵ The Housing Authority of New Orleans (HANO) worked in conjunction with over 100 stakeholders and seven community organizations as part of the community engagement portion of the assessment.²⁶ Many of the meetings were accessible to the public, including to individuals with limited English proficiency, people with disabilities, and people who lived in racially/ethnically concentrated areas (R/eCAPs), as required by HUD. In order to reach people with limited English proficiency (LEP), HANO partnered with the Louisiana Fair Housing Action Center to perform outreach in Spanish, Arabic, and Urdu with translated flyers and television and radio appearances. The public meetings provided valuable commentary from New Orleans residents which were then scribed and summarized by topic area along with summaries of comments that were not accepted with reasons why not.²⁷

As part of the AFH, HANO utilized HUD's AFFH Data & Mapping Tool which provided dissimilarity index data for the City of New Orleans and demonstrated residential segregation among racial/ethnic groups.²⁸ Using HUD-provided tools and a previous community-based report by HousingNola,²⁹ New Orleans was able to conduct a clear-eyed assessment of racial segregation in the city, and specific identification of segregated or R/eCAP and integrated areas. This assessment also includes the impact of gentrification of R/eCAPs by the influx of new disproportionately white, wealthier residents into these areas as well as confirmation of racial disparities in access to transportation, though HUD data suggested otherwise.³⁰

The New Orleans assessment has since been lauded by housing advocates due to its timely and comprehensive analysis, though it may be difficult to replicate in larger, more populous cities. The collaboration between city officials and housing advocacy organizations also proved fruitful in this process, both with analyzing data and accruing community involvement, and should be replicated in other cities as far as possible.

²⁵ [From the Field: New Orleans Submits First Assessment of Fair Housing in the Nation](#), NATIONAL LOW INCOME HOUSING COALITION (Oct. 31, 2016).

²⁶ CITY OF NEW ORLEANS, OFFICE OF CMTY. DEV. [2016 ASSESSMENT OF FAIR HOUSING](#) (2016).

²⁷ *Id.* at 10.

²⁸ *Id.* at 26.

²⁹ HOUSINGNOLA, [10 YEAR STRATEGY AND IMPLEMENTATION PLAN FOR A MORE EQUITABLE NEW ORLEANS](#) (2015).

³⁰ CITY OF NEW ORLEANS, *supra* note 26, at 54.

Philadelphia is another city that has been successful in utilizing HUD’s AFFH tools. The city’s Division of Housing and Community Development (DHCD), in collaboration with the Philadelphia Housing Authority (PHA), released their legally required AFH in 2016.³¹ The community engagement process received 5,000 online and paper survey responses in English and Spanish, with approximately 700 responses from R/eCAP residents, and conducted community focus groups geared towards Spanish-speaking people and people with disabilities. DHCD contacted forty-five organizations to promote, distribute, and collect surveys and contacted fifteen community organizations to recruit focus group participants. Public comments were also scribed and summarized, including the specific community goals of the AFH process.

Additionally, DHDC and PHA identified various R/eCAPs and used the data to compare R/eCAP and non-R/eCAP households within a variety of demographics, i.e., families with children, elderly households, and disabled households. Philadelphia also analyzed job proximity and single female-led households with children using the R/eCAP lens.

2. State Assessment in Healthcare Policy: Illinois

In July 2020, Governor J.B. Pritzker signed Illinois Public Act 101-0649, which instructed an Interagency Working Group comprising of the Department of Healthcare and Family Services (HFS) and the Department of Insurance (DOI) to explore various healthcare policy options and their impacts on eligibility, affordability, and coverage for poorly insured and uninsured Illinoisans.³² The legislation mandated the examination of uninsured rates for low-income and middle-income Illinoisans with the inclusion of data by geography, race, and ethnicity in an effort to prioritize health equity, reduce uninsurance, and increase affordability.³³ The study defined health equity as when “everyone has the opportunity to attain optimal health regardless of race, ethnicity, gender, income level, or other social factors that create barriers to health.”³⁴ Upon completion, the State of Illinois released a “Feasibility Report for Coverage Affordability Initiatives in Illinois” in 2021.

The report sought to analyze the needs of individuals whose access to care and healthcare outcomes are adversely affected by structural racism and discrimination, among other factors, as research has shown that social determinants of health (SDOH) may determine fifty percent of population health outcomes, contributing to racial inequalities in health.³⁵ For example, a comparison of uninsured rates in 2019 by race and ethnicity, demonstrated that Black and Hispanic or Latino Illinoisans are more likely to be uninsured than white Illinoisans, with 10.6 percent of uninsured Black residents and 16.3 uninsured Hispanic/Latino Illinoisans, in comparison to 8.7 white Illinoisans.³⁶ And while individuals in higher poverty areas are more likely to be uninsured, people of color are uninsured at a high rate regardless of geography.³⁷

Due to the historic and ongoing disparities in health care coverage among Black and Hispanic/ Latino populations and the disproportionate impact of COVID-19 on hospitalizations and deaths, HFS utilized a racial equity analysis created by the Government Alliance on Racial Equity (GARE)/Race Forward to assess racial impacts of healthcare proposals.³⁸ The tool was used to

³¹ CITY OF PHILADELPHIA & THE PHILADELPHIA HOUSING AUTH., [ASSESSMENT OF FAIR HOUSING](#) (2016).

³² IL DEP’T OF HEALTHCARE AND FAMILY SERV. & IL DEP’T OF INSURANCE, [FEASIBILITY REPORT FOR COVERAGE AFFORDABILITY INITIATIVES IN ILLINOIS](#) 2 (April 2021).

³³ *Id.* at 24.

³⁴ *Id.* at 39.

³⁵ *Id.* at 44.

³⁶ U.S. Census Bureau, American Community Survey, 2010-2019.

³⁷ FEASIBILITY REPORT, *supra* note 32, at 45.

³⁸ GOV. ALLIANCE ON RACE & EQUITY, [RACIAL EQUITY TOOLKIT: AN OPPORTUNITY TO OPERATIONALIZE EQUITY](#) (2016).

supplement stakeholder engagement and minimize potential adverse effects on communities of color. The Interagency Working Group conducted eight 90-minute interviews with an array of healthcare providers, insurers, and consumer advocacy groups over the span of ten days. In addition, advocates held two community listening sessions with fourteen individuals of varying insured, uninsured, and documented status, providing language and American Sign Language interpreters. In using the GARE/REIA assessment, the report evaluated the costs and benefits of each proposal through a racial equity lens, finding that the State of Illinois should focus its healthcare outreach and enrollment on marginalized communities to advance equity. In assessing policies through this lens, the report found, for example, that a Medicaid-Buy In program would significantly reduce uninsured rates for undocumented and Hispanic/Latino individuals and smaller declines in uninsured Black Illinoisans.³⁹

3. State Assessments in Legislation: Maine

Maine provides an example for how to methodically conduct equity assessments. In 2019, Maine established its Permanent Commission on the Status of Racial, Indigenous and Maine Tribal Populations.⁴⁰ The Commission's purpose is to promote, implement and coordinate programs that create and improve opportunities and eliminate disparities for historically disadvantaged racial, indigenous and tribal populations in Maine.⁴¹ The independent Commission is empowered to advise all three branches of the Maine government.⁴²

In 2020, the Commission established a process to collaborate with Maine legislators to review active legislation for its impact on racial disparities. As part of this process, 55 Main legislators joined the 15 Permanent Commission members to review the 454 bills remaining before the 129th Legislature. While the legislators served in an advisory capacity, the final recommendations were the decision of the Permanent Commission members, each of whom represents a key constituency.⁴³

Methodology: The full committee, including Commission members and legislators, was divided into seven subcommittees. The 454 bills were then divided at random among the subcommittees, and each subcommittee used a 10-question filtering tool to determine how much potential each bill had to combat racial inequities.⁴⁴ Members completed the filtering tool individually, then discussed bills to remove from consideration.⁴⁵ After narrowing the legislation, members were assigned specific bills to analyze using a more comprehensive assessment tool.⁴⁶ Next, each subcommittee presented its recommendations to the full committee. During this process, participants filled out a priority setting tool that estimated the ease of implementation and strength of potential impact for each bill.⁴⁷ Using the completed priority setting tools, the Permanent Commission members discussed the remaining legislation over a series of meetings and shared legislation with their constituencies for input.

September Report: The Commission's report, released in September 2020, contained two

³⁹ FEASIBILITY REPORT, *supra* note 32, at 106.

⁴⁰ ME. REV. STAT. ANN. tit. 5, § 25001 (2019), <http://www.mainelegislature.org/legis/statutes/5/title5sec25001.html>.

⁴¹ ME. REV. STAT. ANN. tit. 5, § 25001 (2019), <http://www.mainelegislature.org/legis/statutes/5/title5sec25001.html>.

⁴² PERMANENT COMM. ON THE STATUS OF RACIAL, INDIGENOUS AND MAINE TRIBAL POPULATIONS, RECOMMENDATIONS TO THE LEGISLATURE (2020), https://www.maine.gov/labor/pcrit/reports/2020_LegReport.pdf.

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 6.

⁴⁵ RECOMMENDATIONS TO THE LEGISLATURE, *supra* note 42, at 6.

⁴⁶ *Id.*

⁴⁷ *Id.*

sets of recommendations. The first was a list of 46 bills that would move Maine forward on issues of racial justice. Of these, 26 bills were ranked in Tier 1, which included legislation that was informed by existing data, explicitly targeted impacted communities, or had a clear ability to affect the necessary demographics. The remaining 20 bills received a Tier 2 ranking.⁴⁸

The second set of recommendations contained guiding principles for addressing structural racism through lawmaking in future sessions. The Commission noted that reversing the effects of racism, as well as adequately measuring and tracking disparities through data collection, requires significant financial and human resources. It also noted that awareness without action and policies that are race-neutral will only serve to maintain disparities. The Committee also presented a list of issues for the next legislature to address, including health disparities, criminal justice reform, the opioid crisis, and an institutional process to view legislation through a racial equity lens.⁴⁹

Subsequent Legislation: In response to the Commission’s final recommendation, the Maine Legislature passed LD 2, which was signed into law by the Governor on March 17, 2021.⁵⁰ LD 2 introduces Racial Impact Statements as a tool to address racial disparities through lawmaking. It sets up a process to study and pilot racial impact statements in 2022. Based on the outcome during the 2022 session, recommendations will be made on how they can be fully operationalized beginning in 2023.⁵¹ Maine has also dedicated some resources to this effort. On June 17, 2021, LD 1034 was enacted, which dedicates an additional \$500,000 to support the Commission’s work with full-time staffing and to cover administrative expenses.⁵² Prior to this bill, the Commission was funded by a one-time allocation of \$50,000.⁵³

C. General Principles

1. Data Collection and Data Sharing

The collection of data and the interagency sharing of that data must be central in advancing racial equity and expanding means-based programs to underserved communities. For example, data collection among state health agencies which only collects and classifies individuals by broad racial or ethnic categories and aggregates the totality of Asian and Pacific Islander (API) subgroups into one creates monolithic data points which perpetuate systemic injustices.⁵⁴ To combat this, California’s AB 1726 (2016) has required the State Department of Public Health to expand data collection on API subgroups to include, among others, Bangladeshi, Hmong, Indonesian, Malaysian, Pakistani, Sri Lankan, Taiwanese, Thai, Fijian, and Tongan Americans. Advocates have therefore asked the federal government to ensure that state agencies match data collection, analyses, and reporting standards set by OMB and to include OMB racial/ethnic categories as a baseline,

⁴⁸ *Id at 7.*

⁴⁹ RECOMMENDATIONS TO THE LEGISLATURE, *supra* note 42, at 14.

⁵⁰ 2021 ME. LEGIS. SERV. Ch. 21 (H.P. 5) (L.D. 2) (West), available at http://legislature.maine.gov/legis/bills/display_ps.asp?LD=2&snum=130.

⁵¹ [LD 2: An Act to Require the Inclusion of Racial Impact Statements in the Legislative Process](#), COALITION ON RACIAL EQUITY.

⁵² 2021 ME. LEGIS. SERV. Ch. __ (H.P. 768) (West), available at <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0768&item=1&snum=130>.

⁵³ Keith Bisson, [Testimony Submitted to the Joint Standing Committee on State and Local Government](#), COASTAL ENTERPRISES, INC. (Apr. 14, 2021).

⁵⁴ [Policy Recommendations: Healthy Equity Cannot be Achieved Without Complete and Transparent Data Collection and the Disaggregation of Data](#), ASIAN AND PACIFIC ISLANDER AMERICAN HEALTH FORUM (Feb. 2021).

while expanding reporting for more subgroups.⁵⁵

Data sharing among agencies may also be implemented to increase program up-take and integrity, and significantly reduce barriers and burdens on communities of color. However, advocates have expressed concern with the refusal of governmental agencies to identify program eligibility and expand access to individuals in means-based programs. For example, a combination of the government agency's failure to identify clients who would be eligible for utility shutoff protection and energy assistance and a failure by utility companies to advertise the program has resulted in a fraction of coverage for eligible participants.

Lack of data sharing among agencies, therefore, may be contributing to the low level of up-take and retention in programs such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). For example, 2018 data demonstrates that only 57 percent of eligible people participated in the program in an average month, while 98 percent of eligible infants received benefits.⁵⁶ Coverage rates are lowest for pregnant women and children older than 1-years-old, with coverage at 61 percent for 1-year-old participants versus 26 percent of 4-year-old participants. Notably, while Hispanic/Latinx people had slightly higher eligibility and coverage rates than other demographics, Latinx coverage declined in 2016-2018 due to a lack of participation, though eligibility had not changed, while white participation remained steady despite decrease in eligibility.⁵⁷

Non-Hispanic Black pregnant women account for the lowest program participation rate among shown demographics though Black women are more than twice as likely to experience stillbirth compared to Hispanic and white women, according to the CDC, and access to quality prenatal care can potentially reduce the risks.⁵⁸ An effort to share eligibility data or referrals between SNAP or TANF and WIC, for example, may greatly reduce these racial inequities.

In 2014, Connecticut Department of Public Health WIC Program implemented a "Head Start Better Together Collaboration" which aimed to formalize data sharing among agencies and improve health outcomes for participants, since half of Head Start families are enrolled in WIC even though all qualify.⁵⁹ However, it is unclear from the program's report whether this effort to streamline data sharing specifically reduced barriers to participants of color. Subsequent toolkits and strategies from other agencies, including USDA and HHS, similarly do not address specific efforts to reduce barriers for communities of color through information sharing.⁶⁰

Competitive integrated employment programs (CIE) may also benefit from interagency data sharing and collaboration for individuals with disabilities. According to Employment First, federal and state data on the compliance of AbilityOne should be shared with the program to better establish hiring thresholds and expand employment opportunities for people with significant

⁵⁵ *Id.* at 6.

⁵⁶ *WIC Eligibility and Coverage Rates-2018*, USDA FOOD AND NUTRITION SERVICE, <https://www.fns.usda.gov/wic/eligibility-and-coverage-rates-2018> (last visited June 30, 2021).

⁵⁷ *Id.*

⁵⁸ *Black Mothers Are More Likely to Experience Stillbirth Compared to Hispanic and White Mothers*, CDC, <https://www.cdc.gov/ncbddd/stillbirth/features/kf-black-mothers-stillbirth.html> (last reviewed Sept. 17, 2020).

⁵⁹ *Connecticut 2014 WIC Special Projects Grant Final Report*, WIC & HEAD START (March 17, 2017).

⁶⁰ *Enhancing Participant-Centered Services Between the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and Head Start Programs*, USDA & HHS ADMIN. FOR CHILDREN & FAMILIES (Oct. 2019).

disabilities.⁶¹ As a result, Employment First recommends easing internal data sharing limitations when necessary and when they comport with federal and state laws, but notes, “information sharing [with program participants] alone is insufficient in effectively helping address the legitimate and at times perceived fears and barriers experienced by individuals with significant disabilities.”⁶²

Likewise, mistrust of governmental agencies and an “overrepresentation” of BIPOC and in data systems (e.g., “disproportionate contact” in criminal justice or the “achievement gap” in education) can cause disparate impacts by reflecting racially biased data in the first place.⁶³ Data collection and integration, then, must be rooted in intentional methods to reduce inequities and not overburden communities of color or increase government mistrust while including previously ignored communities. These concerns may be addressed by involving impacted communities early and often. Efforts to implement interagency data sharing must also maintain privacy protections for communities of color, low-income individuals, and people with disabilities.⁶⁴ These communities are already most vulnerable to privacy disclosure and have historically experienced disproportionate levels of surveillance.⁶⁵

2. Funding

There are two general principles that federal agencies should follow regarding funding and equity assessments. First, given how resource-intensive data collection can be, it is critical that federal agencies receive or set aside enough funding to fully support their equity assessments. Without sufficient funding, their assessments will come up short.

Second, in addition to conducting equity assessments of their policies and programs, federal agencies should conduct equity assessments of their budgets, which reflects a federal agency’s priorities. The following are examples of local jurisdictions that have adopted equity assessments of their budgets and could provide useful models for federal agencies.

Seattle: In Seattle, city departments use the city’s Racial Equity Toolkit to assess policies, initiatives, programs, and budget issues.⁶⁶ Completion of the toolkit involves six steps: (1) setting outcomes; (2) involving stakeholders and analyzing data; (3) determining benefit and/or burden; (4) advancing opportunity or minimizing harm; (5) evaluating, raising racial awareness, and being accountable; and (6) reporting back.⁶⁷ While each department is required to use the toolkit to analyze a minimum of four projects each year, Seattle’s Budget Office also requires departments to use the toolkit to analyze every budget proposal.⁶⁸

Seattle’s 2018 budget illustrates the impact of the use of the Racial Equity Toolkit on the City’s budget.⁶⁹ The resulting changes included both increased funding for full-time employees in

⁶¹ [EF Presents 10 Critical Areas for Improving CIE-Based on the WIOA Advisory Committee Report](#), US DEP’T. OF LABOR EMPLOYMENT FIRST (Aug. 3, 2018).

⁶² *Id.* at 19.

⁶³ UNIVERSITY OF PENNSYLVANIA ACTIONABLE INTELLIGENCE FOR SOCIAL POLICY (AISP), [CENTERING DATA EQUITY THROUGHOUT DATA INTEGRATION TOOLKIT](#).

⁷³ Steven Brown, Graham McDonald, & Claire Bowen, [How the Federal Government Can Use Data to Make the Most of the Executive Order on Racial Equity](#), URBAN INSTITUTE (Jan. 29, 2021).

⁶⁵ [How Technology Experiences and Resources Vary by Socioeconomic Status, Race, and Ethnicity](#), DATA & SOCIETY, (Sept. 27, 2017).

⁶⁶ [SEATTLE RACE AND SOCIAL JUSTICE INITIATIVE, RACIAL EQUITY TOOLKIT](#).

⁶⁷ *Id.*

⁶⁸ Andrew Kleine & Mira Green, [Seattle is Helping Baltimore Consider Racial Equity in Budget Decisions](#), MEDIUM: RESULTS FOR AMERICA (Dec. 19, 2017).

⁶⁹ CITY OF SEATTLE, [2018 PROPOSED BUDGET: RACE AND SOCIAL JUSTICE INITIATIVES IN THE BUDGET](#) (2018).

equity-focused positions and funding for equity-focused programs, such as:

- Increased funding for the city’s Racial and Social Justice Initiative to increase two part-time employees to full-time;⁷⁰
- Increased funding for Seattle City Light, the City’s utility, to convert two part-time equity positions to full-time and to add two more equity-focused positions;⁷¹
- Added funding for the Seattle Fire Department to offer an EMT course and earn the required certification to help diverse candidates overcome SFD employment barriers;⁷²
- An additional \$200,000 for the creation of a Technical Assistance Center for Women and Minority-Owned Businesses to provide technical assistance and expertise, allowing these often small firms to compete more successfully for public projects.⁷³

These last two budget items especially exemplify the importance of examining barriers that exist for underserved communities and dedicating resources to breaking down those barriers.

Portland: Portland requires all city bureaus to create a Racial Equity Plan. In addition, it requires use of the City’s Budget Equity Assessment Tool on all budget proposals and base budgets.⁷⁴ They must also tie those budget requests back to implementation of their Racial Equity Plans. The Budget Equity Tool, which the City has utilized for more than five years, contains two sections of questions that serve as a guide to the bureaus’ equity analysis.⁷⁵ The first set of questions ask bureaus to consider how well their budgets advance equity goals.⁷⁶ The second set relates to equitable engagement and access, whether community members have engaged with the budget and whether the budget allows for increased engagement with community members.⁷⁷ The information in the tool is then reviewed by the Office of Equity and Human Rights and the City Budget Office, both of which may offer thoughts, questions, and recommendations based on the completed tool.⁷⁸

San Antonio: San Antonio also has a budget equity tool which it requires all departments to complete as part of their budget proposal.⁷⁹ This tool asks departments to answer four questions, one relating to how the entire budget allocates funds to reduce and eliminate disparities, and three relating to whether and how program-specific budgets apply an equity lens or equity matrix.⁸⁰ The city highlighted some of the results of use of the budget equity tool in 2019. One example was the library’s identification of institutional racism when the assessment and collection of fines has a disproportionate impact on people of color and low-income populations. As a result, the library proposed eliminating overdue fines for all juvenile and young adult library materials.⁸¹

Area 2: Barrier & Burden Reduction

In addressing barrier and burden reduction, this section starts by discussing the need to readjust how the federal government emphasizes program integrity over program uptake. Then, this

⁷⁰ *Id.* at 35.

⁷¹ *Id.*

⁷² *Id.* at 38.

⁷³ *Id.* at 39.

⁷⁴ Portland, Me., ADM § 18.31 (2016).

⁷⁵ CITY OF PORTLAND, [BUDGET EQUITY ASSESSMENT TOOL](#).

⁷⁶ *Id.* at 2–3.

⁷⁷ *Id.* at 3.

⁷⁸ *Id.* at 5.

⁷⁹ CITY OF SAN ANTONIO, [FISCAL YEAR 2022 BUDGET EQUITY TOOL](#) (last visited June 29, 2021).

⁸⁰ CITY OF SAN ANTONIO, OFFICE OF EQUITY, [FISCAL YEAR 2022 BUDGET EQUITY INSTRUCTION MANUAL](#) (2021).

⁸¹ CITY OF SAN ANTONIO, OFFICE OF EQUITY, [FISCAL YEAR 2020 BUDGET EQUITY TOOL](#).

section proceeds to address specific barriers to accessing public benefits, such as language access for immigrant communities and broadband access for rural communities.

A. Program Integrity and Program Uptake

In the Request for Information, OMB posed the following question: “How might an agency assess or balance prioritization of potentially competing values associated with program administration, such as program uptake, program integrity, privacy protection, and resource constraints, in the context of addressing equity for underserved individuals and communities?”

As it relates to federal public benefits programs in particular, **program uptake** and **program integrity** often function as competing values, and the federal government has improperly balanced these two objectives. This imbalance has led to complicated, sometimes purposefully inaccessible bureaucracies constructed to determine who is “truly in need” and “deserving” of assistance in the eyes of the agencies charged with administering the programs, all of which functions to the detriment of communities of color. Two myths – often perpetuated by federal officials – have justified this poor calibration. First, that public benefits fraud occurs among participants to a degree that warrants investment and constant vigilance of program administrators, a myth that finds its modern roots in the racist welfare queen mythology that reached a crescendo in the 1980’s. Second, that low participation in public benefits programs indicates low need, and thus is a positive signal for the economic security and stability of low-income and working-class families. The federal government can promote race equity in its program administration by prioritizing program uptake over program integrity.

1. Benefits fraud is rare, and an emphasis on program integrity perpetuates racist myths.

Public benefits fraud is an extremely rare occurrence. Most of the small percentage of fraud that takes place in the SNAP program occurs on the retailer side, but still only amounts to a mere 1.5% of total SNAP benefits being trafficked.⁸² By contrast, evidence of fraud on the SNAP recipient side is infinitesimally small. According to the USDA’s most recent State Activity Report, for every 10,000 households participating in SNAP, about 14 contained a recipient who was investigated and determined to have committed fraud that resulted in an overpayment of benefits – only 0.14%.⁸³ To provide context, the IRS estimates that \$1 in every \$6 owed to the federal government is not paid⁸⁴, with the majority of tax evasion occurring at the higher income brackets.⁸⁵

Yet, talking points about the prevalence of fraud among low-income public benefits recipients are omnipresent in the national parlance, perpetuated by both political parties, and have led to dehumanizing measures to ensure program integrity such as fingerprinting⁸⁶, photos on SNAP EBT cards⁸⁷, and even drug testing⁸⁸. In one example, the state of Illinois cited fraud prevention in maintaining a system of color-coded coupons in Chicago. Under that system, WIC recipients in disproportionately Black and Latinx neighborhoods on the South and West side of the

⁸² RANDY ALISON AUSSENBERG, [CONGRESSIONAL RESEARCH SERVICE, ERRORS AND FRAUD IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM](#) (SNAP) 2 (2018).

⁸³ *Id.* at 17.

⁸⁴ William G. Gale & Aaron Krupkin, [How Big Is the Problem of Tax Evasion?](#), BROOKINGS (Apr. 9, 2019).

⁸⁵ Andrew Johns and Joel Slemrod, [The Distribution of Income Tax Noncompliance](#), 63 (3) NAT. TAX. J. 397 (2010).

⁸⁶ John Eligon, [Cuomo Pushing City to End Food Stamp Fingerprinting](#), N.Y. TIMES (May 17, 2012),.

⁸⁷ [Ohio Lawmakers Pass Bill to Require Photo ID on Food Stamp Cards](#), WFMJ (Nov. 2, 2017),.

⁸⁸ Continue to be proposed even though some courts have ruled suspicion-less drug tests to be unconstitutional. Victoria Palacio, [Drug Testing SNAP Applicants is Ineffective and Perpetuates Stereotypes](#), CLASP (July 2017).

city received coupons that could only be redeemed at WIC stores (where they were forced to sign-in and were monitored by security), while WIC recipients in the predominantly white North side of the city received coupons that could be redeemed at any retailer that accepted WIC.⁸⁹

Myths about fraud are targeted toward communities of color. This is the result of decades of messaging by detractors of the safety net built upon historical stereotypes about Black people – Black women in particular – dating back to slavery.⁹⁰ Ronald Reagan built upon historical stereotypes of Black people as “lazy” to begin the modern work for deeply engrained racialized skepticism of public benefits. While campaigning for governor of California in 1966, Reagan pledged to “send those welfare bums back to work.”⁹¹ Then, when he ran for president a decade later, he greatly embellished the story of Linda Taylor, a woman in Chicago who had defrauded the government of hundreds of thousands of dollars. Reagan frequently used her as evidence that people all over the country were “free-riding” off of federal programs and depicted her as a Cadillac-driving, fur-wearing, Black welfare mother – thus immortalizing her as the “welfare queen.”⁹² This imagery proved extremely potent. The research of political scientist Martin Gilens shows just how prolific these racist beliefs had become by the 1990s. Analyzing survey data, Gilens found that the majority of white Americans believed that Black people could be “just as well off as whites if they only tried harder.” Gilens concluded, “were it not for Whites’ negative views of Blacks’ commitment to the work ethic, support for the least-favored welfare programs might more closely resemble the nearly unanimous support that education, health care, and programs for the elderly currently enjoy.”⁹³ These attitudes were apparent when then presidential candidate Bill Clinton’s pledge to “end welfare as we know it”⁹⁴ was met with tremendous enthusiasm. Clinton kept his promise by passing the Personal Responsibility and Work Opportunity Reconciliation which eviscerated federal cash assistance by transforming it from an entitlement to a block grant and adding work requirements, time-limits, and other barriers. These changes ripped support away from many Black people who continue to be disproportionately low-income – not for reasons pronounced by racist myths - but because of a history of systematic oppression and discrimination. Concerns around program integrity capitalize on racist attitudes that see Black people as less deserving to justify cuts or additional barriers to assistance and continue to be used in more recent years by Speaker Paul Ryan⁹⁵ and President Trump.⁹⁶

2. Low uptake rates are a sign of structural failures, not low need.

When shrinking public benefits caseloads are celebrated, what is implied is that decreases in assistance caseloads are attributable to improving economic conditions for low-income people, and reduced need. While this can sometimes be the case, particularly with SNAP which is flexible and

⁸⁹ [Making WIC Work in Illinois](#), SHRIVER CENTER ON POVERTY LAW (Mar. 1, 2019). The current administration has since ended this system with the transition to eWIC using EBT cards.

⁹⁰ Ann Cammett, [Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law](#), 34 B.C.J.L. & SOC. JUST. 233 (2014).

⁹¹ Elisa Minoff, [The Racist Roots of Work Requirements](#), CENTER FOR THE STUDY OF SOCIAL POLICY, 21 (2020).

⁹² *Id.* See also, Cammett, *supra* note 90.

⁹³ Gilens, Martin, *Racial Attitudes and Opposition to Welfare*, 57 J. OF POLITICS, no. 4 (1995); see also Gilens, Martin, *Why Americans Hate Welfare*, University of Chicago Press, 1999.

⁹⁴ See Kathryn J. Edin and H. Luke Shaefer, [20 Years Since Welfare ‘Reform’](#), THE ATLANTIC (Aug. 22, 2016).

⁹⁵ “We have a welfare system that’s trapping people in poverty and effectively paying people not to work.” Jeff Stein, [Paul Ryan Says Republicans to Target Welfare, Medicare, Medicaid, Spending in 2018](#), CHICAGO TRIBUNE (Dec. 6, 2017).

⁹⁶ Nicole Goodkind, [Trump Admin Says Millionaires Are Abusing Food Stamps. So 3.1 Million People Lose Benefits](#), NEWSWEEK (July 23, 2019).

well-suited to grow or contract consistent with larger economic trends⁹⁷, caseload figures in isolation don't tell the full story.

For example, after the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) colloquially known as “welfare reform”, AFDC - our country’s federal cash assistance program was transformed into the block-granted Temporary Assistance for Needy Families (TANF) program, and caseloads fell precipitously.⁹⁸ Celebrated as a success, this decline was in reality tied to additional barriers added as part of welfare reform, such as time limits and work requirements, rather than sustainably improving conditions. After 1996, fewer eligible families participated in the TANF program. The “take-up rate” gauges the number of families receiving TANF assistance relative to the number eligible for benefits. This rate has declined from a high of 86 percent in 1992 to 79 percent in 1996 to 36 percent in 2007.⁹⁹ By 2015, an estimated 26.3 percent of TANF eligible families received cash grants, with the number continuing to drop in 2016 to 24.9 percent.¹⁰⁰ These numbers tend to show that access to cash assistance has decreased, but “need” as defined by the program eligibility standards, has not meaningfully changed. While participation in cash assistance programs has sharply and consistently declined, the overall poverty rate has fluctuated between 11 and 15 since its initial rapid decline after 1964 with the launch of major War on Poverty programs.¹⁰¹ In fact, the deep poverty rate among children rose in the decade after “welfare reform”, from 3.1 percent in 1995 to 3.5 percent in 2005. This increase added 300,000 more children living in deep poverty and occurred among the children most affected by “welfare reform”: those in families led by single mothers.¹⁰²

3. The federal government should prioritize high uptake rates as a measure of programmatic success.

Understanding that an emphasis on program integrity has historically led to lower uptake rates, the federal government should prioritize high uptake rates and access to benefits as a measure of program success and deemphasize program integrity. A reduced emphasis on program integrity could mean less pressure on state administrators to keep error rates exceptionally low or to vigorously pursue benefits allocated in error. The spirit of public benefits programs should be to assist to people in need, so anything less than full participation is a moral and structural failure. By definition, less than 100% uptake means that some people are eligible for assistance even by problematic and narrow income eligibility standards¹⁰³ but are still not receiving assistance. The federal government should prioritize full participation among eligible individuals by investing in education and outreach, reducing federal barriers and encouraging state agencies to reduce barriers by providing resources that could increase language access or improve participant experience, being sensitive not to perpetuate negative cultural attitudes and stereotypes about public benefits programs

⁹⁷ Dottie Rosenbaum, *SNAP Is Effective and Efficient*, CENTER ON BUDGET & POLICY PRIORITIES (Mar. 11, 2013).

⁹⁸ Pamela J. Loprest, *How Has the TANF Caseload Changed Over Time?*, URBAN INSTITUTE (Mar. 2012).

⁹⁹ *Id.*

¹⁰⁰ Linda Giannarelli, *What Was the TANF Participation Rate in 2016?*, URBAN INSTITUTE (July 2019).

¹⁰¹ *What is the Current Poverty Rate in the United States?*, University of California, DAVIS CENTER FOR POVERTY & INEQUALITY RESEARCH, <https://poverty.ucdavis.edu/faq/what-current-poverty-rate-united-states> (last visited June 29, 2021).

¹⁰² Danilo Trisi & Matt Saenz, *Deep Poverty Among Children Rose in TANF's First Decade, Then Fell as Other Programs Strengthened* <https://www.cbpp.org/research/poverty-and-inequality/deep-poverty-among-children-rose-in-tanfs-first-decade-then-fell-as>, CENTER ON BUDGET AND POLICY PRIORITIES (Feb. 27, 2020).

¹⁰³ See Shriver comment on the inadequacy of the poverty measure.

and recipients, and combatting the “chilling effect”¹⁰⁴ for eligible non-citizens in the wake of the Trump administration’s public charge rule.

A federal emphasis on program integrity has also led to the celebration of states that aggressively pursue benefits recipients who may have been allocated benefits in error – with absolute disregard for the devastating implications these zealous collection tactics have on recipients. For example, in Illinois the state Department of Human Services maintains a strict policy of refusing to write-off or comprise any overpayment debt, even for miniscule or old overpayments. In 2018, the Department received a letter from USDA saying it “should be commended” for the “awesome work” being done by the state agency to refer overpayments to the Treasury Offset Program (TOP)¹⁰⁵, a federal program that involuntarily intercepts federal payments - such as federal tax returns or Social Security benefits - against outstanding debts owed to states in their administration of public benefits. The letter went on to say, “Illinois has consistently ranked in the highest quintile as well as placed in the top three overall for TOP collections when compared to the other 50 states . . . ‘Job well done’”¹⁰⁶ However, this cruel philosophy produces absurd results. In some cases elderly former SNAP recipients on a fixed income have their Social Security benefits intercepted against debts from decades prior that occurred through no fault of their own.¹⁰⁷ These tactics have put some former recipients in precarious economic circumstances, and it has been the experience of Shriver Center attorneys that some clients who have previously dealt with overpayments, despite still being eligible for benefits, will not participate in the programs for fear of incurring another overpayment and again being tenaciously pursued. At the very least, the federal government should stop encouraging states to utilize these brutal collection methods employed in the name of program integrity.

Even if the federal government allows states to be more flexible in their administration of federal programs to promote program uptake, some states who are more hostile toward their low-income residents, will not avail themselves of these options. There is no greater evidence of this tendency than the 12 states¹⁰⁸ that still refuse to adopt Medicaid expansion under the Affordable Care Act despite nearly the entire cost of expansion being paid for with federal money. Even states like Missouri, whose voters passed Medicaid expansion via ballot initiative in 2020, are refusing to appropriate the state funds necessary to implement expansion to the detriment of nearly 275,000 Missourians who would gain eligibility.¹⁰⁹ As such, the federal government and its agencies should explore the full extent of their power to mandate state activities that increase program uptake and make access to benefits easier for low-income residents of every state, not just states who see fit to ask federal permission. Such mandates would be especially important to low-income residents of states that lack state safety net programs and therefore rely entirely upon federal programs for support. An approach requiring states to affirmatively adopt federal options or opt-in, will only

¹⁰⁴ Hamutal Bernstein, Dulce Gonzalez, & Michael Karpman, *Adults in Low-Income Immigrant Families Were Deeply Affected by the COVID-19 Crisis yet Avoided Safety Net Programs in 2020*, URBAN INSTITUTE (May 2021).

¹⁰⁵ See *Treasury Offset Program*, BUREAU OF THE FISCAL SERVICE, <https://fiscal.treasury.gov/top/how-top-works.html> (last visited June 29, 2021).

¹⁰⁶ Letter with Shriver Center; available upon request.

¹⁰⁷ Virginia Eubanks, *Zombie Debts Are Hounding Struggling Americans. Will You be Next?*, THE GUARDIAN (Oct. 15, 2019); See also Doug Finke, *Thirty-Year-Old SNAP Overpayments Still Being Collected*, THE STATE JOURNAL-REGISTER (Aug. 28, 2016).

¹⁰⁸ *Status of State Medicaid Expansion Decisions: Interactive Map*, KAISER FAMILY FOUNDATION (June 29, 2021), <https://www.kff.org/medicaid/issue-brief/status-of-state-medicare-expansion-decisions-interactive-map/> (last visited June 29, 2021).

¹⁰⁹ Tami Luhby, *Missouri Governor Nixes Voter-Approved Medicaid Expansion Plan*, CNN (May 13, 2021).

serve to increase inequity between states.

B. Specific Barriers & Burdens to Public Benefits

As part of their equity assessment, federal agencies should address the specific barriers and burdens to public benefits that fall most heavily on communities of color. Below are a few that have been relevant to the work of the organizations that have signed onto this response.

1. Broadband access in rural communities

The lack of broadband access poses a significant barrier for rural communities to access public benefits. More than 31 percent of American in rural communities do not have access to broadband internet at “minimally acceptable speeds.”¹¹⁰ Rural broadband deserts are present across the United States, particularly in rural communities with large Black populations¹¹¹.

The problems associated with the lack of broadband access became even more acute during the pandemic. Suddenly, applications moved online for everything such as unemployment insurance, emergency rental assistance, utility assistance. In addition, schools, courts, and even doctor’s visits required good internet access. In every one of these areas, a significant portion of the population was left behind or forced to engage in extraordinary measures like driving to a parking lot outside a coffee shop to sign on to their internet. In places like Vermont, the divide expanded. As demand for broadband increased exponentially, homes that could afford it and had access increased their service to high speed to accommodate kids attending school and parents working from home at the same time. According to 2019 stats, just 17.5 percent of Vermont’s population even had access to high-speed internet, and presumably, only a smaller percentage could afford it.

These burdens fall disproportionately on Black households. Across Black rural counties, approximately 46% of homes lack access to high-speed internet due to lack of connectivity and unaffordable prices.¹¹² In rural Marion County, SC the population is over 56 percent Black¹¹³, at least a quarter of the community lives below the poverty line, and it is estimated that over half of the population cannot access the internet¹¹⁴. Given these disparities, it is critical for the federal government to assess how limited broadband access impacts Black and rural communities and how to ensure equitable access to public benefits and other programs for these communities.

2. Remote identity proofing

The federal government should not require or encourage, and should actively discourage states from requiring remote identity proofing (“RIDP”) through consumer reporting services in order for beneficiaries or potential beneficiaries to access the online case management systems. The practice of administering RIDP through consumer reporting agencies unfairly discriminates against individuals who lack the information consumer reporting services draw upon—the unbanked, under-resourced, and those without access to vital records—and thus deprives vulnerable and potential beneficiaries from updating their benefit applications and managing their benefits cases. The COVID-19 Pandemic and corresponding surge of demand for public benefits has exacerbated

¹¹⁰ [FACTS SHEET: The American Jobs Plan](#), THE WHITE HOUSE (Mar. 31, 2021).

¹¹¹ Dean DeChiaro, [In Rural South Carolina, a Groundbreaking Broadband Project Takes Root](#), ROLL CALL (June 8, 2021).

¹¹² *Id.* at para. 7–8.

¹¹³ HARIN CONTRACTOR AND SPENCER OVERTON, THE JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES, [AN INTRODUCTION TO THE FUTURE OF WORK IN THE BLACK RURAL SOUTH](#) 388.

¹¹⁴ Nellie Payton, [Black and Rural Students Left Behind as U.S. Schools Go Online](#), THOMPSON REUTERS FOUNDATION (Aug. 26, 2020).

the harm of administering RIDP through consumer reporting services. See generally on harms of requiring RIDP to access online case management systems and recommendations for states.¹¹⁵

Consumer reporting agencies like Experian often use methods that exclude a number of potential applicants from securing RIDP, such as individuals without social security numbers, including many lawfully-documented immigrants who have authorization to access these public benefits systems.¹¹⁶ Indeed, an estimated 35 million to 54 million American adults have either no credit report or do not have sufficient information in their credit report to generate a workable credit score.¹¹⁷ This population includes disproportionate amounts of young adults, immigrants, people of color, and recently divorced or widowed individuals with limited credit histories. While identity-proofing through consumer reporting services appears to be a facially-neutral policy, its disproportionate impact on communities of color is one of many ways in which systemic racism manifests itself: through sterile, ostensibly-unbiased public policies that end up further disadvantaging communities of color.

The General Services Administration and the Internal Revenue Service have developed alternative methods for remote identity proofing for their Login.gov and Get Transcript services that do not rely on knowledge-based verification through consumer reporting agencies. Similarly, Massachusetts, Florida, Michigan, and Washington have all implemented alternative RIDP procedures. Further, the Center for Medicare and Medicaid Services has provided guidance that states may craft their own RIDP practices in conformity with security and privacy standards.¹¹⁸ It is also noteworthy that consumer reporting agencies have sometimes fallen short of these standards (i.e., 2017 Equifax data breach).¹¹⁹

3. Language Access Barriers to Public Benefits

Title VI of the Civil Rights Act of 1964 and President Clinton's EO 13166 require recipients of Federal financial assistance to take reasonable steps to make their programs, services, and activities accessible by eligible persons with limited English proficiency.¹²⁰ Recipients of federal funding must take "reasonable steps" to ensure that LEP individuals have "meaningful access" to their activities and programs and activities. An agency provides meaningful access to its programs when the language assistance provided is accurate, timely and effective and is at no cost to the LEP individual.¹²¹ However, there is little effort to enforce the requirements of Title VI. While DOJ has developed assessment and planning tools for agencies and suggests that they create language access plans, the creation of a language access plan is not required. In order to combat the limited

¹¹⁵ Jennifer Wagner & Genevieve Gaudet, [Removing Barriers to Access from Remote Identity Proofing](#), CENTER ON BUDGET AND POLICY PRIORITIES (Apr. 22, 2020),.

¹¹⁶ U.S. GOV'T ACCOUNTABILITY OFF., [REPORT TO CONGRESSIONAL REQUESTORS: FEDERAL AGENCIES NEED TO STRENGTHEN ONLINE IDENTITY VERIFICATION PROCESSES](#) 7 (May 2019), available at [hereinafter GAO Report].

¹¹⁷ Michael Turner, [The Credit Impacts on Low-Income Americans from Reporting Moderately Late Utility Payments](#), POLICY & ECONOMIC RESEARCH COUNCIL (PERC) (Aug. 2012).

¹¹⁸ CNTR. FOR MEDICARE & MEDICAID SERVS., [GUIDANCE REGARDING IDENTITY PROOFING FOR THE MARKETPLACE, MEDICAID, AND CHIP, AND THE DISCLOSURE OF CERTAIN DATA OBTAINED THROUGH THE DATA SERVICES HUB](#) (June 11, 2013).

¹¹⁹ GAO Report, *supra* note 116, at i.

¹²⁰ 42 U.S.C. § 2000d-1 (2009); *see also* Limited English Proficiency, HHS CIVIL RIGHTS, <https://www.hhs.gov/civil-rights-for-individuals/special-topics/limited-english-proficiency/index.html> (last visited June 30, 2021).

¹²¹ *See Frequently Asked Questions on Legal Requirements to Provide Language Access Services*, MIGRATION POLICY INST., <https://www.migrationpolicy.org/programs/language%20A0access-translation-and-interpretation-policies-and-practices/frequently-asked> (last visited June 30, 2021).

knowledge and enforcement of Title VI, many states have also passed language access laws.

a. Failure to Provide Meaningful Language Access

Despite federal and state requirements, states often lack sufficient translation services for limited English proficiency (LEP) persons. This limitation became clear during the COVID-19 pandemic, which created an unprecedented need for access to benefits that was exacerbated by lack of access to in-person assistance during the application process. For example, in Washington, D.C., with DHS service centers closed, the application for benefits moved entirely online, but the online application was offered only in English.¹²² Spanish- and Amharic-speaking applicants were able to print the paper application in their respective languages, but lack of access to printing services prevented many from doing so. In Connecticut, the Department of Labor was slow to produce Spanish language materials for a variety of programs during the first wave of the pandemic. Failure to translate the Temporary Rental Assistance Program materials resulted in the state returning \$10 million in rental assistance because eligible LEP persons could not access the program.

It is also important to consider specifically the significant lack of translation for languages other than Spanish. D.C.'s Department of Employment Services only makes its online application for standard unemployment benefits available in English and Spanish. Applicants who speak other languages must call the DOES hotline and often wait on hold for hours before an interpreter is available. Furthermore, agency websites translated into languages other than English or Spanish are less likely to have complete translations of all pages. A study conducted by the Web Integrity Project noted that many of the links on agencies' translated site simply lead back to the corresponding content written in English.¹²³ This lack of complete translations not only prevents LEP persons from accessing complete information, but it also leads to further confusion and frustration through the application process.

b. Reliance on Legal Aid and Community Organizations

When agencies fail to meet their language access obligations, the work of ensuring that LEP persons can access benefits falls on legal aid and community organizations. For example, during the pandemic, because the Connecticut Department of Labor was slow to produce Spanish language materials on the multiple pandemic unemployment programs, Greater Hartford Legal Aid translated the materials for the state. In D.C., the Legal Aid Society of the District of Columbia worked to bridge the gap by helping Spanish-speaking applicants complete online applications.¹²⁴ Similarly, in California, the Korean Community Center of the East Bay, a small community group with only two phone operators, provided thousands of Korean speakers with language assistance during the pandemic due to lack of translation of government-provided information.¹²⁵ These organizations are not unique in assuming what should be the federal government's role in providing language access.

In many cases, where organizations that serve immigrant or ethnically diverse populations are the only ones in their areas with the language capacity to provide this assistance, it displaces their capacity to provide other much-needed services. While collaboration between agencies and local organizations is an important strategy to ensure access to benefits for all those who are

¹²² Nicole Dooley & Blair Gilbert, [Language Access During COVID-19 at DOES and DHS](#), MAKING JUSTICE REAL (May 14, 2020).

¹²³ Jon Campbell & Sarah John, [Explained: The Federal Government's Responsibilities to Provide Online Content in Non-English Languages](#), SUNLIGHT FOUNDATION (Oct. 29, 2020).

¹²⁴ Dooley & Gilbert, *supra* note 122.

¹²⁵ Claudia Boyd-Barrett, [Community Groups Serve as Pandemic Information Lifeline to Non-English Speakers](#), CALIFORNIA HEALTH REPORT (Mar. 31, 2020).

eligible, the ultimate responsibility for providing language access falls on the agency. Even with the assistance provided by these organizations, it is unquestionable that many more LEP persons who are eligible for benefits are unable to access them.

4. Chilling effect of punitive measures

A significant barrier to public benefits is the punitive approach that governments take toward applicants and recipients. Consider the emphasis on **welfare fraud**. As noted earlier, evidence suggests that incidents of user fraud in government welfare programs are rare. When overpayment does occur, it is usually the result of a mistake by recipients, state workers, healthcare providers, or computer programmers navigating a complex regulatory system.¹²⁶

Yet, the federal government continues to assist and encourage states in their efforts to crack down on fraud. For example, FNS has provided assistance to states in adopting intrusive data analytic practices, including data matching and data mining, for SNAP fraud prevention and detection.¹²⁷ States are also using AI tools in unemployment insurance and Medicaid programs.¹²⁸ However, these programs, which rely on algorithms without human intervention, are often wrong because they use incomplete data and don't distinguish between fraud and innocent mistakes.¹²⁹ This often results in eligible recipients forced to make repayments of benefits they desperately need. In addition, the threat of being falsely accused of fraud has a chilling effect on participation in welfare programs.

The federal government has acknowledged in the past how attempts to detect welfare fraud can also deter eligible prospective applicants from participating. In 2014, USDA threatened to cut Maine's SNAP funding when it began printing photos on EBT cards to prevent fraud.¹³⁰ In a letter to Maine's Department of Health and Human Services, the USDA regional administrator said that the photo ID requirement on benefit cards could have a chilling effect on prospective applicants.

In a study on barriers to participation in the food stamp program among food pantry clients in Los Angeles, a finger imaging requirement was one of several significant barriers to participation in the program.¹³¹ In 2006, 5 of the 7 states that had fingerprinting requirements had food stamp participation rates lower than the national average, most significantly lower.¹³² One SNAP participant described the deterring effect of finger imaging like this: "It's basically like when you're going through central booking or something."¹³³

Another area where potentially punitive measures create a significant chilling effect in public benefits is around **public charge**. Both leading up to the August 2019 publication of the final public charge rule and post-publication of the rule, non-citizens of every immigration status experienced confusion and fear as to whether the rule applied to themselves or their family

¹²⁶ Michele Gilman, [Column: How Algorithms Intended to Root Out Welfare Fraud Often Punish the Poor](#), PBS: NEWS HOUR (Feb. 17, 2020).

¹²⁷ U.S. GOV'T ACCOUNTABILITY OFF., [SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: DISSEMINATING INFORMATION ON SUCCESSFUL USE OF DATA ANALYTICS COULD HELP STATES MANAGE FRAUD RISKS](#) (Oct. 2, 2018).

¹²⁸ Gilman, *supra* note 126.

¹²⁹ Gilman, *supra* note 126.

¹³⁰ Dave Sherwood, [U.S. Threatens to Cut Food Stamp Funding to Maine in Photo ID Row](#), REUTERS (Nov. 21, 2014).

¹³¹ Susan J. Algert et al., Barriers to Participation in the Food Stamp Program Among Food Pantry Clients in Los Angeles, 96 Am. J. Public Health 807 (2006); *see also* Kaaryn Gustafson, The Criminalization of Poverty, 99 J. CRIM. L. & CRIMINOLOGY 643, 676–678 (2008-2009).

¹³² Gustafson, *supra* note 131, at 678.

¹³³ Mark Robert Rank, et al., [Welfare Fraud is Actually Rare, No Matter What the Myths and Stereotypes Say](#), SALON (Apr. 4, 2021).

members, and as a result, disenrolled or chose to forgo public benefits for which they or their family members were eligible.¹³⁴ In 2019 and 2020, one in five adults in immigrant families with children reported avoided a public benefit or housing subsidy out of fear of risking green card status.¹³⁵

Immigrant-serving organizations report that non-citizens continue to be chilled by the 2019 public charge rule, despite its invalidation and overrule with the 1999 public charge guidance, effectuated on March 9, 2021.¹³⁶ Federal agencies have a critical role to play in issuing Frequently Asked questions (FAQ) documents and official guidance—especially aimed at state benefits agencies and health centers that receive federal funds—clearly communicating which benefits are included in the public charge rule and which commonly used benefits are excluded. State-specific guidance can be issued to specify the benefit program names particular to each state. Likewise, federal agencies can leverage existing channels of communication, such as the Healthcare.gov marketplace or navigator funding opportunities to disseminate accurate and clear messages that mitigate the chilling effect of the 2019 public charge rule.

Additional Areas

Area 3, Procurement and Contracting: The federal government must ensure that all entities with which it contracts or subcontracts reflect equitable goals in their own employment policies and practices. This includes, but is not limited to, providing workers (employees, contract workers, etc.) with living wages not less than \$15/hour, benefits including healthcare coverage and paid leave, and requiring that all entities establish their own equity policies and practices.

Area 5, Stakeholder & Community Engagement: Finally, this response briefly includes examples of stakeholder and community engagement. Such examples may be found in Area 1, specifically in local assessments of fair housing at (B)(1), Illinois’ assessment of healthcare policy at (B)(2), and data collection and data sharing at (C)(1).

Thank you for your consideration of the information in this response. For questions or comments, please contact us using the information below.

Sincerely,

/s/ Marie Claire Tran-Leung
Marie Claire Tran-Leung
Director, Legal Impact Network
Shriver Center on Poverty Law
marieclairetran@povertylaw.org

¹³⁴ [*New Data Reveal Stark Decreases in SNAP Participation Among U.S. Citizen Children Living With a Non-Citizen*](#), FOOD RESEARCH & ACTION CENTER (May 2021).

¹³⁵ Jennifer M. Haley, et al., [*Brief: One in Five Adults in Immigrant Families with Children Reported Chilling Effects on Public Benefit Receipt in 2019*](#), URBAN INSTITUTE (June 18, 2020).

¹³⁶ Randy Capps, Michael Fix, & Jeanne Batalova, [*Commentaries: Anticipated “Chilling Effects” of the Public-Charge Rule Are Real: Census Data Reflect Steep Decline in Benefits Use by Immigrant Families*](#), MIGRATION POLICY INSTITUTE (Dec. 2020).