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MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

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SUBJECT: Interim Implementation Guidance for the Justice40 Initiative

President Biden is committed to securing environmental justice and spurring economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care. In [Executive Order 14008](#),<sup>1</sup> the President directed the Director of the Office of Management and Budget (OMB), the Chair of the Council on Environmental Quality (CEQ), and the National Climate Advisor, in consultation with the White House Environmental Justice Advisory Council (WHEJAC), to jointly publish guidance on how certain Federal investments might be made toward a goal that 40 percent of the overall benefits of such investments flow to disadvantaged communities – the Justice40 Initiative. The Justice40 Initiative is a critical part of the Administration’s whole-of-government approach to advancing environmental justice.

The following Interim Implementation Guidance for the Justice40 Initiative (“guidance” or “interim guidance”) provides the initial recommendations pursuant to section 223 of Executive Order 14008,<sup>2</sup> and supports the Administration’s comprehensive approach to advancing equity for all in line with Executive Order 13985.<sup>3</sup> The Executive branch should implement this guidance in accordance with existing authorities in order achieve the 40-percent goal.

**Summary of Interim Implementation Guidance for the Justice40 Initiative**

This interim guidance includes a set of actions required of agencies that manage covered Justice40 programs. These actions include identifying the benefits of covered programs, determining how covered programs distribute benefits, and calculating and reporting on reaching the 40-percent goal of the Justice40 Initiative. This interim guidance provides implementation direction to an initial set of covered programs under the Justice40 Initiative. Additional guidance is forthcoming. The interim guidance applies to all entities with covered programs, including those agencies with potential covered programs listed in Appendix B.

<sup>1</sup> *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg., 7619 (Feb. 1, 2021).

<sup>2</sup> *Supra* note 1, at 7632.

<sup>3</sup> *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 Fed. Reg., 7009 (Jan. 25, 2021).

## Interim Agency Justice40 Implementation

- I. Interim Definition of Disadvantaged Communities
- II. Covered Programs
- III. Examples of Benefits of Covered Programs
- IV. Calculating Benefits
- V. Reporting
- VI. Pilot to Maximize Benefits to Disadvantaged Communities

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### I. Interim Definition of Disadvantaged Communities

Further guidance to agencies on how to define disadvantaged communities for the purposes of the Justice40 Initiative<sup>4</sup> will be released later this year, concurrent with the establishment of a geospatial Climate and Economic Justice Screening Tool being developed by CEQ, in partnership with the United States Digital Service (USDS). This new tool will include interactive maps with indicators to assist agencies in defining and identifying disadvantaged communities.

Until such time when further guidance is provided, agencies should consider using, as appropriate, the following indicators of disadvantaged communities to implement the goals of the Justice40 Initiative utilizing existing data sources and indices that are currently used by programs serving low income, vulnerable, and underserved communities:

- **Community** – Agencies should define community as “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.”<sup>5</sup>
- **Disadvantaged** – Agencies should consider appropriate data, indices, and screening tools to determine whether a specific community is disadvantaged based on a combination of variables that may include, but are not limited to, the following:
  - Low income, high and/or persistent poverty
  - High unemployment and underemployment
  - Racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities
  - Linguistic isolation
  - High housing cost burden and substandard housing

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<sup>4</sup> Executive Order 14008 uses the phrase “disadvantaged communities,” and this term has been used in existing Federal and state programs to prioritize funding for environmental justice. Some community members and advocates prefer alternative terminology, and specifically the use of “overburdened and underserved communities.” Until subsequent guidance can address the question of the most appropriate terminology, this memorandum relies on the language used in Executive Order 14008.

<sup>5</sup> CEQ, *Environmental Justice: Guidance under the National Environmental Policy Act* (Dec. 10, 1997), available at <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>.

- Distressed neighborhoods
- High transportation cost burden and/or low transportation access
- Disproportionate environmental stressor burden and high cumulative impacts
- Limited water and sanitation access and affordability
- Disproportionate impacts from climate change
- High energy cost burden and low energy access
- Jobs lost through the energy transition
- Access to healthcare

In determining which variables to consider, agencies should consider the statutory authority for covered programs. In addition to the above definition of disadvantaged communities, geographic areas within Tribal jurisdictions should be included.

## II. Covered Programs

Agencies should work with OMB, as outlined in section IV, to review and determine whether Federal programs fall within the scope of the Justice40 Initiative. Agencies should contact their OMB Resource Management Office or email [EJ@omb.eop.gov](mailto:EJ@omb.eop.gov) to consult on the determination of covered programs.

A. **Covered Program.** A “covered program” is a Federal Government program that makes covered investment benefits in one or more of the following seven areas:

- i. Climate change
- ii. Clean energy and energy efficiency
- iii. Clean transportation
- iv. Affordable and sustainable housing
- v. Training and workforce development (related to climate, natural disasters, environment, clean energy, clean transportation, housing, water and wastewater infrastructure, and legacy pollution reduction, including in energy communities<sup>6</sup>)
- vi. Remediation and reduction of legacy pollution
- vii. Critical clean water and waste infrastructure

B. **Covered Investments.** A “covered investment” is a Federal investment in one or more of the following categories:

- i. Federal financial assistance as defined at 2 CFR 200,<sup>7</sup> including both Federal grants as well as other types of financial assistance (including loans, credit, guarantees, or direct spending/benefits);
- ii. Direct payments or benefits to individuals;
- iii. Federal procurement benefits (acquisition of goods and services for the Federal government’s own use);

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<sup>6</sup> Energy communities, as discussed in Executive Order 14008, include coal, oil, and gas and power plant communities.

<sup>7</sup> 2 CFR 200 Subpart A §200.1 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) defines Federal financial assistance.

- iv. Programmatic Federal staffing costs (e.g. federal pay for staff that provide technical assistance); and
- v. Additional federal investments under covered programs as determined by OMB.

When appropriate and within existing statutory authorities, eligible investments of covered programs include: FY 2021 enacted appropriations, supplemental appropriations, prior year carryover from unobligated balances, and (when they become available) future fiscal year appropriations.

### III. Examples of Benefits of Covered Programs

Benefits include direct and indirect investments (and program outcomes) that positively impact disadvantaged communities.

Table 1 provides a summary of additional examples of benefits of covered investments identified by the WHEJAC and the White House Environmental Justice Interagency Council (IAC) to be considered by agencies when determining the benefits of covered program.

<b>Category</b>	<b>Example Benefits When Applied for (or within) Disadvantaged Communities</b>
Climate Change	<ul style="list-style-type: none"> <li>• Reduction of greenhouse gas (GHG) emissions and local air pollutants<sup>8</sup></li> <li>• Creation of community resilience plans that specifically include addressing needs of disadvantaged communities</li> <li>• Increased technical assistance and community engagement of disadvantaged communities</li> <li>• Increased flood mitigation Benefits               <ul style="list-style-type: none"> <li>• Hectares of floodplain restored</li> <li>• Hectares of wetlands restored</li> <li>• Green stormwater infrastructure</li> <li>• Urban flood risk mapping addressing the distribution of socially vulnerable communities and risks</li> </ul> </li> </ul>

<sup>8</sup> For example, program expenditures to reduce air pollution generated by one state or locality that benefit “down wind” disadvantaged communities or in, such as, installing a control device on an incinerator that reduces exposure to harmful pollutants in a disadvantaged community in a neighboring state.

	<ul style="list-style-type: none"> <li>• Increased urban heat island effect mitigation benefits <ul style="list-style-type: none"> <li>• Increased acres of greenspace restored</li> <li>• Increased tree and vegetation cover and sustainable shade coverage</li> </ul> </li> <li>• Increased access to and advancement of public health warnings (weather and preparedness messages) translated into multiple languages</li> </ul>
Clean Energy and Energy Efficiency	<ul style="list-style-type: none"> <li>• Increased energy efficiency programs and resources</li> <li>• Deployment of clean energy, including renewable community energy projects</li> <li>• Establishment of community microgrids</li> <li>• Reduction of energy burden (e.g. the share of household income spent on home energy costs)</li> </ul>
Clean Transportation	<ul style="list-style-type: none"> <li>• Improvement in public transportation accessibility, reliability, and options</li> <li>• Reduction of exposure to harmful transportation-related emissions</li> <li>• Access to clean, high-frequency transportation</li> <li>• Access to affordable electric vehicles, charging stations, and purchase programs</li> <li>• Increased bicycle and walking paths</li> </ul>
Affordable and Sustainable Housing	<ul style="list-style-type: none"> <li>• Availability and access to affordable green housing</li> <li>• Reduction in displacement</li> <li>• Improved indoor air quality</li> <li>• Improved housing quality and safety and enhanced public health</li> <li>• Reduction in abandoned or vacant homes</li> <li>• Reduced housing cost burden</li> </ul>

<p>Training and Workforce Development</p>	<ul style="list-style-type: none"> <li>• Increased participation in clean energy good job training and subsequent good job placement/hiring, including providing the free and fair chance to join a union and collectively bargain.</li> <li>• Increased participation in good job training programs that target participation from disadvantaged communities, including formerly incarcerated individuals and youth transitioning out of foster care</li> <li>• Increased climate-smart training, including training to identify waste, efficiencies, and GHG inventories.</li> <li>• Increased percentage of good job training programs within energy communities, such as those that include paid employment and that measure and report participant outcomes.</li> </ul>
<p>Remediation and Reduction of Legacy Pollution</p>	<ul style="list-style-type: none"> <li>• Reduction of criteria air pollutant and toxic air pollutant exposure</li> <li>• Reduction in farmworker exposure to pesticides</li> <li>• Brownfield redevelopment</li> <li>• Remediation of Superfund sites</li> <li>• Community engagement training; capacity support for reduction strategies</li> <li>• Reclamation of abandoned mine lands and capping of orphan oil and gas wells</li> </ul>
<p>Development of Critical Clean Water Infrastructure</p>	<ul style="list-style-type: none"> <li>• Replacement of lead service lines</li> <li>• Increased access to safe drinking water and sanitary sewer services</li> <li>• Reduction in waterborne and respiratory illnesses</li> <li>• Reduction in the quantity of raw sewage discharged</li> <li>• Increase in the number of community water systems that meet applicable health-based standards</li> </ul>

Building on program metrics and engagement with state and community partners, the WHEJAC, and the IAC, and other groups including the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization, OMB will work with CEQ and USDS to develop and publish a common set of metrics to measure select benefits across agencies, e.g., improvements in air quality.

#### IV. Calculating Benefits

Executive Order 14008 states that “40 percent of the overall benefits” of federal investments from covered programs should flow to disadvantaged communities. To respond to that directive, each agency should establish a methodology for calculating the benefits that a) flow from each applicable covered program and b) accrue in disadvantaged communities from each covered program.

A. **Benefits Methodology.** The determination of what constitutes a “benefit” will vary by covered program. Accordingly, each agency is directed to:

- i. Within 60 days of the issuance of this guidance, to deliver to OMB:
  - a. An assessment of agency programs (referencing the list of programs in Appendix B) that are covered programs in accordance with section II.A and II.B of this guidance; and
  - b. A description of the types of benefits that result from the identified covered programs.
- ii. Within 150 days of the issuance of this guidance deliver to OMB a methodology for calculating the covered program benefits accruing to disadvantaged communities. This methodology should also include a description of the metrics that the agency is developing to measure covered program benefits.<sup>9</sup>

B. **Stakeholder Consultation.** When determining the benefits of a covered program, as specified in section IV(A), agencies should consult with stakeholders, including state, local, and Tribal governments, as well as Native communities, to ensure public participation and that community stakeholders are meaningfully involved in what constitutes the “benefits” of a program. In addition, if the calculation of a benefit to a disadvantaged community includes investments outside of that community, the disadvantaged community should be consulted. In engaging with stakeholders, agencies should consider their obligation under Title VI of the Civil Rights Act of 1964 to ensure meaningful access for individuals with limited English proficiency (LEP), as well as their

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<sup>9</sup> It may not be possible to accurately measure the allocation of covered program benefits based solely on the geography where the program expenditures occur. Accordingly, agencies should actively consider the purpose of the covered program when determining whether covered program benefits have accrued to disadvantaged communities. For example, an energy efficiency program that provides weatherization assistance to individual households may need to analyze the allocation of program benefits by tracking the characteristics of recipient households, rather than relying on geographic indicators. Programs that distribute grants to states and territories that then distribute funds to households may need to work with such states and territories to obtain additional information about the ultimate distribution of federal funding and benefits.

obligation pursuant to Section 504 of the Rehabilitation Act to take appropriate steps to ensure effective communication for individuals with disabilities. Where applicable, agencies should also comply with, the Paperwork Reduction Act, Federal Advisory Committee Act, or other relevant law, regulation, or guidance. Agencies should also review and incorporate, where appropriate, recommendations from the WHEJAC and the IAC when developing metrics. (Examples of Stakeholder Engagement Plans will be available to agencies on the MAX Justice40 page.)

## V. Reporting

Agency heads are responsible for calculating the accrual of covered program benefits to disadvantaged communities. Agencies should consult with OMB when determining whether their program is a covered program. Consistent with section IV, agencies shall report the following information to OMB for each covered program within 60 days and 150 days of the issuance of this guidance, as specified, and annually thereafter.

A. Within 60 days of the issuance of this guidance agencies shall report:

- i. Agency
- ii. Program
- iii. Program ID (for financial assistance programs, this should be the assistance listing as defined in 2 C.F.R. § 200.203<sup>10</sup>)
- iv. Amount Appropriated
- v. Amount Obligated<sup>11</sup>
- vi. Developed Stakeholder Engagement Plan (y/n)

B. Within 150 days of the issuance of this guidance agencies shall report:

- vii. Benefit Methodology Submitted (y/n)
- viii. Benefit Methodology Submitted (date)
- ix. Target Benefits of Program (qualitative list of types of targeted benefits)
- x. Percent of Benefits Directed to Disadvantaged Communities (e.g., percent new waste water systems installed in disadvantaged communities of total waste systems installed)
- xi. Percent of Benefits Not Directed to Disadvantaged Communities (e.g., percent new waste water systems not installed in disadvantaged communities)
- xii. Percent of Benefits with Unknown Direction (e.g., a percentage of waste water systems with unknown installation location), including a brief explanation of why the percent of benefits to disadvantaged communities cannot be determined
- xiii. Line Item Data for the Geographic Distribution of Benefits and Program Funding (e.g., a table of data with rows for the census block groups served)

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<sup>10</sup> Assistance listings refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration. Assistance listings are detailed public descriptions of federal programs that provide grants, loans, scholarships, insurance, and other types of assistance awards.

<sup>11</sup> As obligation amounts change over time, agencies should update this reported amount semi-annually.

by each waste water system installation and the locations that received funding for that installation)<sup>12</sup>

- a. For programs that do not target benefits geographically, the data provided should reflect the common characteristics of communities receiving benefits at the narrowest level that does not raise privacy concerns
- xiv. Amount of Program Funding Received in Disadvantaged Communities (e.g. the dollars of funding received by a grant or loan recipient in a disadvantaged community)

Forthcoming guidance will provide additional information on the tool agencies should use to report the above information discussed in sections IV and V, and specific instructions for submitting the data into that tool.

The Administration's overall progress towards the Justice40 Initiative's goal will be tracked by the categories of covered project (climate change, clean energy and energy efficiency, clean transportation, affordable and sustainable housing, training and workforce development, the remediation and reduction of legacy pollution, and the development of critical clean water infrastructure).

## **VI. Pilot to Maximize Benefits to Disadvantaged Communities**

In addition to the previously mentioned covered programs, Appendix A lists 21 programs that will undertake an initial implementation of the Justice40 Interim Implementation Guidance to maximize the benefits that are directed to disadvantaged communities. These programs were selected by reviewing WHEJAC recommendations, consulting with the IAC, and reviewing agency responses to information requests about current federal investments in disadvantaged communities.

The agencies with covered programs listed in Appendix A should identify applicable program funding mechanisms, policies, and procedures based on this guidance and consider program-specific guidance that provides recommendations for maximizing the benefits of the program that accrue in disadvantaged communities, as appropriate and consistent with applicable law. Specifically, the agencies with covered programs listed in Appendix A are directed to:

- A. Develop a Stakeholder Engagement Plan.** Within 30 days of issuance of this guidance, develop a plan to engage stakeholders relevant to the covered agency program. Plans should include a timeline for engaging relevant stakeholders, to include grantees and recipients, and a list of key issues relating to implementation of the Justice40 Initiative with respect to the covered program for stakeholder input. Plans should account for other stakeholder engagement efforts, including, but not limited to public involvement activities conducted pursuant to the National Environmental Policy Act and nation-to-nation consultations with

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<sup>12</sup> Although this request includes the submission of detailed data, the calculation of several items listed already requires such data to exist, and this requirement asks the agency to also report the raw data used to make those calculations. Since disadvantaged communities in the CEJST will be defined at a very narrow geographic level, agencies need to prepare benefits and place of performance data at a narrow geographic level to perform these calculations. Agencies should report at the narrowest geographic unit possible.

Tribes. In addition, if the calculation of a benefit to a disadvantaged community includes investments outside of that community, the disadvantaged community should be consulted.

- B. Justice40 Implementation Plan to Maximize Benefits.** Within 60 days of issuance of this guidance, develop a draft implementation plan describing a) the agency's plan to maximize benefits of the covered program in disadvantaged communities; b) any significant barriers or constraints to maximizing benefits to disadvantaged communities; c) opportunities and/or resource needs that may address the identified barriers or constraints; and, d) timelines for achieving the milestones identified in the agency's plan.
- C. Consider the Following Program Modifications to Maximize Benefits.** When developing a Justice40 implementation plan to maximize benefits, that agency should consider the following guidelines, to the **extent consistent with statutory and constitutional requirements**, for modifying programs:
- i. Foster well-paying job creation and job training, including a free and fair chance to join a union and collectively bargain.
  - ii. Coordinate investments and leverage funds where possible to provide multiple benefits and to maximize benefits.
  - iii. Avoid potential burdens to disadvantaged communities.
  - iv. Ensure transparency and accountability through full compliance with OMB requirements at 2 C.F.R. part 200 for financial assistance programs and provide public access to program information including through high quality data in compliance with Federal Funding Accountability and Transparency Act reporting (2 C.F.R. § 200.212).
  - v. Conduct outreach, and support technical assistance and capacity building to help potential applicants' access, manage, and report on results of funding.
  - vi. Hold competitive solicitations that prioritize or award extra points to projects that meet the criteria for benefiting disadvantaged communities and includes community engagement, planning, and feedback.
  - vii. When developing eligibility requirements in program guidelines and solicitation materials, establish targets or minimum thresholds for a specific benefit. For example, an agency could identify a certain percentage of total jobs for a project to be held by residents of a disadvantaged community in order to receive a higher priority for funding.
  - viii. Require applicants to apply cost savings from project implementation to benefit disadvantaged communities (e.g., energy cost savings reinvested in the local community to promote workforce development and community health).
  - ix. To the extent modifications are restricted by statute or regulation, describe what, if any, legislative changes would be required to advance the goals of Justice40 Initiative with respect to such covered program.
- D. Calculating Benefits and Reporting.** Within 60 days of issuance of this guidance, in line with section IV. A and V (but on the timeline specified in section VI.), provide a methodology for calculating, the covered program benefits

accruing generally and to disadvantaged communities. This methodology should also include a description of any additional metrics that the agency is developing to measure covered program benefits.

**E. Other Reporting.** The pilot programs listed in Appendix A should also plan to report the information outlined in section V.

Pilot programs should submit the requested information to [EJ@omb.eop.gov](mailto:EJ@omb.eop.gov) by the stated deadlines. Agencies may also use [EJ@omb.eop.gov](mailto:EJ@omb.eop.gov) to pose any questions regarding this guidance.

**Appendix A. Justice40 Covered Program Pilot to Maximize Benefits to Disadvantaged Communities**

<b>Agency</b>	<b>Program</b>
ARC	Partnerships for Opportunity and Workforce and Economic Revitalization (POWER)
DHS	Flood Mitigation Assistance Program
DHS	Building Resilient Infrastructure and Communities Program (BRIC)
DOE	Weatherization Assistance Program
DOE	Solar Energy Technologies Office (National Community Solar Partnership)
DOE	Vehicles Technologies Office (Clean Cities)
DOE	Environmental Management, Los Alamos
DOE	Advance Manufacturing Office (Industrial Assessment Centers)
DOI	Abandoned Mine Land Economic Revitalization (AMLER) Program
DOT	Bus and Bus Facilities Infrastructure Investment Program
DOT	Low or No Emissions Vehicle Program
EPA	Drinking Water State Revolving Fund
EPA	Clean Water State Revolving Fund
EPA	Brownfields Program
EPA	Superfund Remedial Program
EPA	Diesel Emissions Reductions Act Program (DERA)
EPA	Reducing Lead in Drinking Water
HHS	National Institute of Environmental Health Science (NIEHS) Environmental Career Worker Training Program
HHS	Low Income Home Energy Assistance Program (LIHEAP)
HUD	Lead Hazard Reduction and Healthy Homes Grants
USDA	Rural Energy for America Program

## **Appendix B. Internal Guidance for Agencies**

### **A. Covered Program List**

OMB has begun compiling a list of potential “covered programs” at <https://go.max.gov/justice40>. The programs listed have potential existing authorities that could be used to benefit disadvantaged communities. Agencies with covered programs are directed to begin examining (and consider modifications to) policies, practices, and procedures to implement the Administration’s Justice40 goals. If an agency would like to request to add or remove a program from this list, please contact [EJ@omb.eop.gov](mailto:EJ@omb.eop.gov).

### **B. Agencies with Potential Covered Programs**

Appalachian Regional Commission  
Corporation for National and Community Service  
Corps of Engineers--Civil Works  
Delta Regional Authority  
Denali Commission  
Department of Agriculture  
Department of Commerce  
Department of Energy  
Department of Health and Human Services  
Department of Homeland Security  
Department of Housing and Urban Development  
Department of Justice  
Department of Labor  
Department of State  
Department of the Interior  
Department of Transportation  
Department of Veterans Affairs  
Environmental Protection Agency  
National Aeronautics and Space Administration  
National Science Foundation