

Congress of the United States

Washington, DC 20515

April 30, 2024

The Honorable Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20506

Mina Hsiang
Administrator
United States Digital Service
742 Jackson Place, NW
Washington, DC 20501

Dear Chair Mallory, Director Young, and Administrator Hsiang:

The Council on Environmental Quality (CEQ), the Office of Management and Budget (OMB), and the US Digital Service (USDS) have a unique opportunity to facilitate the advancement of environmental justice (EJ) across the Biden-Harris administration. In June 2023, the Administration launched Phase One of its EJ Scorecard, through which federal agencies must track their actions in pursuit of environmental justice. Now, as CEQ, OMB, and USDS refine the EJ Scorecard, we urge CEQ and OMB to strengthen this tool through improved data collection and analysis, increased public transparency, more effective coordination between relevant federal offices and agencies, and greater focus on specific populations that federal investments have historically neglected. Once the Scorecard is truly comprehensive, it will serve as a powerful tool for measuring our progress in addressing pervasive environmental injustices and delivering tangible environmental, social, and economic benefits to communities with EJ concerns.

Immediately upon taking office, President Biden took action on environmental justice. In January 2021, he issued Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, which requires federal agencies to center environmental justice in decision-making, and directs OMB, CEQ, and USDS to develop an EJ Scorecard to track those agency actions in pursuit of environmental justice.¹ In April 2023, the President issued Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, which requires agencies to submit EJ Strategic Plans and progress reports (known as "EJ Assessments") and mandates that CEQ report on these plans through the EJ Scorecard.² The EJ Scorecard is a critical first step in ensuring that federal agencies implement the Administration's EJ goals (including Justice40) and are accountable for detailing their progress toward rectifying current and historic environmental injustice.

¹ Executive Order 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021), <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

² Executive Order 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023), <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>.

In our January 26, 2023 letter to CEQ, we highlighted the need for accessibility and transparency in the EJ Scorecard. We maintain that the Scorecard should be available in multiple languages and be accessible beyond the “digital divide” by providing access to hard-copy versions of it through partnerships with public libraries, community centers, and non-profit organizations. CEQ should promote principles of transparency through community and stakeholder engagement in the EJ scoring process. We commend CEQ for publicly issuing a Request for Information (RFI) to inform both the development of the initial EJ Scorecard and its second phase.³ In future public engagement processes, CEQ should also include regional in-person, virtual, and hybrid feedback opportunities that anticipate and account for participant disabilities, transportation challenges, and language barriers.⁴

We commend CEQ for its October 2023 release of the agency guidance document, *Strategic Planning to Advance Environmental Justice*. It is our hope that agency adoption of additional guidance recommended in this letter, coupled with the consideration of feedback collected in CEQ’s RFI, will inform a more comprehensive and effective EJ Scorecard tool. We urge CEQ, OMB, and USDS to take the following actions to ensure effective implementation of phase two of the EJ Scorecard:

- **Better understand agency performance on racial equity by reporting on racial demographics of communities with federal EJ investments:** Decades of redlining, gerrymandering, and industrial zoning in redlined areas have placed immense financial and health burdens on communities of color, particularly Black communities, due to chronic underinvestment and disproportionate exposure to toxic waste and industrial pollutants. By understanding racial demographics in areas where federal investments are awarded, we can better discern how equity concerns are or are not being addressed. Communities of color, and in particular Black communities, bear a disproportionate pollution burden, irrespective of income.⁵ The use of relevant factors, including racial demographic data in the Scorecard to disaggregate data, will facilitate our understanding of the impact of federal investments on historically redlined communities that continue to be overburdened and chronically underinvested in. For future iterations of the EJ Scorecard, we urge CEQ and OMB to require agencies to provide racial demographic data on the communities in which federal investments are made.
- **Integrate and implement recommendations made by the White House Environmental Justice Advisory Council (WHEJAC):**

³ Biden-Harris Administration Launches Public Process to Inform Development of Environmental Justice Scorecard, First-ever Tool to Assess Government-Wide Progress on Environmental Justice, White House Council on Environmental Quality (Aug. 3, 2022), <https://www.whitehouse.gov/ceq/news-updates/2022/08/03/biden-harris-administration-launches-public-process-to-inform-development-of-environmental-justice-scorecard-first-ever-tool-to-assess-government-wide-progress-on-environmental-justice>; Environmental Justice Scorecard, 88 Fed. Reg. 80697 (Nov. 20, 2023), <https://www.federalregister.gov/documents/2023/11/20/2023-25508/environmental-justice-scorecard>.

⁴ *Community Engagement Brief: Ensuring environmental justice communities participate in decision-making on the Justice40 Initiative and beyond*, We Act (Sept. 23, 2022), <https://www.weact.org/wp-content/uploads/2022/10/Community-Engagement-Brief-092322-FINAL.pdf>.

⁵ C.W. Tessum et al., *PM2.5 pollutants disproportionately and systemically affect people of color in the United States*, *Science Advances* (Apr. 8, 2021), <https://www.science.org/doi/10.1126/sciadv.abf4491>.

The White House Environmental Justice Advisory Council (WHEJAC) was established under Executive Order 14008 with the responsibility to provide recommendations to both CEQ and White House Environmental Justice Interagency Council on federal efforts to address current and historic environmental injustice. In March 2022, WHEJAC issued a report providing input and guidance on the development of the first iteration of the EJ Scorecard.⁶ However, only a few priorities and suggestions raised in the report were integrated into the original Scorecard tool. The recommendations not incorporated that should be in subsequent versions include:

- Tracking where and how federal money is spent.
- Monitoring community-level impacts of federal spending, that is, tracking federal investments and evaluating their EJ-related impacts on disadvantaged communities (for example, health, food security, housing access, and water quality).
- Grading federal agencies on access to, distribution of, and benefits afforded by federal spending according to geographic and racial demographic indicators.

We urge CEQ to promptly acknowledge, meaningfully consider, and formally respond to all future recommendations issued by WHEJAC with detailed explanations. The expertise and knowledge of the WHEJAC membership is an invaluable resource on which the Administration should rely and leverage in pursuit of its EJ goals.

- **Develop more comprehensive agency EJ performance metrics:**

The first iteration of the EJ Scorecard offered limited information on covered projects and programs that federal agencies have deployed in pursuit of their EJ Strategic Plans and the Justice40 initiative. In further development of the EJ Scorecard, we urge CEQ, USDS, and OMB to 1) identify barriers to agencies reporting disaggregated data, and 2) provide detailed information on how agencies are monitoring and assessing the success of actions taken to deliver benefits to disadvantaged communities. Further, CEQ should require agencies to improve their reporting on the implementation and distribution of funding under their EJ Strategic Plans and Justice40 covered programs by disclosing:

- CEQ's evaluation of an agency's submitted EJ Strategic Plan and subsequent EJ Assessments. This should also include links to relevant documents, a summary of agency priorities within the EJ Strategic Plan, and an audit trail outlining compliance with CEQ deadlines for the release of the agency's EJ Strategic Plan.
- The amount of funding for projects in disadvantaged communities, disaggregated by community, as geographically defined in the Climate and Economic Justice Screening Tool. Further, to the extent possible, agencies should also provide information on the levels of funding that have been awarded to communities that qualify as disadvantaged through a broad set of variables—for example, by levels of income, unemployment, racial segregation, incarceration, pollution burden, and other best available factors for defining disadvantaged communities—or by the

⁶ Phase One Scorecard Recommendations Report, White House Environmental Justice Advisory Council (Mar. 8, 2022), <https://www.epa.gov/system/files/documents/2022-04/whejac-phase-one-scorecard-recommendations-report.pdf>.

variables defined by the OMB's Interim Implementation Guidance for the Justice40 Initiative.⁷

- The number of projects and the percent and total amount of agency funds awarded to projects that pursue partnerships with Minority Serving Institutions or community based organizations fighting environmental racism (and/or the related health burdens disproportionately impacting communities of color) as determined by Environmental Protection Agency's EJ Thriving Communities Grantmakers.
- The number of 1) outreach and capacity building materials produced and made available, 2) dedicated staff, and 3) applications received annually, disaggregated by covered program.
- Whether an agency requires the submission of a community benefits plan, health impact assessments plan, and/or representative community engagement plan as part of an application for Justice40-covered program funding, and any additional details on these requirements.

For example, the Department of Energy requires the submission of a Community Benefits Plan in all funding proposals under the Infrastructure Investment and Jobs Act (IIJA) and Inflation Reduction Act (IRA), and has incorporated this requirement as a major part of proposal review criteria.⁸

- The number of funded projects that include formal community benefits plans and/or agreements, disaggregated by covered program.

Agency definitions and performance metrics under the EJ Scorecard should be transparent. Specifically, performance metrics should disclose any foreseen public health and environmental burdens that may occur as a result of a federal agency action in a disadvantaged community. Further, agencies should clarify how they define benefits under Justice40 and the metrics used to calculate progress towards the goal of 40 percent of delivered benefits going to disadvantaged communities. Agency definitions of Justice40 benefits should not include new or expanded fossil fuel projects in disadvantaged communities, inasmuch as WHEJAC specified that these projects are non-beneficial.⁹ CEQ should also advise agencies that comprehensive assessments of public health and environmental project burdens should supplement, not supplant, community engagement and jobs creation assessments.

- **Direct agencies to address cumulative impacts on communities with EJ concerns:** CEQ's *Strategic Planning to Advance Environmental Justice* template gives only cursory acknowledgment to agency consideration of cumulative impacts. In order to align agency implementation of Justice40 programming with guidance and policies issued by the

⁷ Interim Implementation Guidance for the Justice40 Initiative, Office of Management and Budget (July 20, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

⁸ About Community Benefits Plans, Department of Energy, <https://www.energy.gov/infrastructure/about-community-benefits-plans>.

⁹ Interim Final Recommendations, White House Environmental Justice Advisory Council (May 13, 2021), https://www.epa.gov/sites/default/files/2021-05/documents/whejac_interim_final_recommendations_0.pdf.

White House¹⁰ and the Executive Office of the President,¹¹ CEQ must support agencies in integrating consideration of cumulative impacts into all federal actions impacting public health and the environment. This will enable agencies to conduct comprehensive assessments of community health and welfare, which will in turn foster a deeper understanding of how to deliver Justice40 benefits to communities with EJ concerns. CEQ should also support agencies in incorporating cumulative impact assessments into decision-making processes. In the development of EJ Strategic Plans, CEQ should further support agency efforts to include mitigation and reduction of cumulative environmental impacts as a covered Justice40 benefit. This will encourage funding recipients to address cumulative burden at the project level.

- **Develop guidance for federal agencies to use when assisting states or municipalities with best practices for Justice40 implementation:** State and local governments play a vital role in the equitable implementation of Justice40-covered programs and related benefits. The Administration should develop guidance for federal agencies to use when assisting state and local entities to ensure that benefits from Justice40 federal funding programs are equitably distributed, both through direct grants or federal grants that are allocated by state and local partners. This can be achieved through:
 - Technical assistance and capacity building for local entities and community organizations in applying for federal funding opportunities.
 - Coordination with state and local government and community representatives to identify Justice40-centered funding opportunities for communities with EJ concerns.
 - Strengthening federal funding programs to maximize potential benefits for EJ communities, including through community benefits plan requirements and community science surveys for health and environment.

CEQ should also foster agencies' development of plans for state and local outreach and assistance within EJ Strategic Plans and assess progress on these plans in EJ Assessments. Further iterations of the EJ Scorecard should report on agency action on outreach and assistance to states and municipalities.

- **Include reporting on interagency coordination and collaboration efforts:** CEQ's *Strategic Planning to Advance Environmental Justice* template recommends that agencies pursue interagency collaboration in cases of overlapping interest and develop interagency approaches to environmental justice. The template also recommends that agencies leverage respective areas of specialized knowledge in development of goals, priorities, and desired outcomes under EJ Strategic Plans. We echo these recommendations, and, in future iterations of the Scorecard, encourage CEQ and OMB to foster agency pursuit of and reporting on any interagency coordination and collaboration. For example, the

¹⁰ Executive Order 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023), <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>.

¹¹ Interim Implementation Guidance for the Justice40 Initiative, Memorandum for the Heads of Departments and Agencies, Office of Management and Budget (July 20, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

Department of Labor's (DOL) Good Jobs Initiative provides assistance to other agencies in integrating job quality incentives into grant-making, procurement, and other processes.¹² In 2022, DOL entered into a memorandum of understanding with the Departments of Energy (DOE) and Transportation (DOT) to integrate language on job quality, labor standards, and workforce development into their funding mechanisms.¹³ DOE and DOT should report these interagency efforts to CEQ and OMB so they may uplift and support the replication of these efforts across other agencies.

- **Convene the White House Environmental Justice Interagency Council to issue further guidance on agency implementation:** We recommend that CEQ convene the White House EJ Interagency Council and develop metrics to assess agency EJ Strategic Plans and progress toward implementation of guidance issued under Executive Order 14096. The Administration should also develop guidance for agencies to conduct comprehensive EJ Assessments to encourage strong reporting on progress made in pursuit of EJ Strategic Plans. CEQ should also develop metrics to review EJ Assessments and incorporate them in future iterations of the EJ Scorecard.
- **Enhance the accessibility of federal government EJ information, particularly resources on Justice40-covered programs:** The availability of the Administration's EJ materials—especially information on Justice40-covered programs—is inconsistent across federal agencies, and causes local and state governments, as well as community organizations, to miss vital opportunities to build resources and capacity for disadvantaged communities. We commend the Environmental Protection Agency on establishing EJ Clearinghouse. This central repository of resources is an important first step toward improving the accessibility of federal and non-federal resources for communities with EJ concerns. We encourage CEQ, OMB, and USDS to leverage the EJ Clearinghouse and the regularly updated White House guidebooks (both the IRA Guidebook and the IJA Guidebook and Implementation Map, each with their respective funding and implementation information) to keep the EJ Scorecard current as agencies continue to release funding and policies for Justice40-covered programs.¹⁴ Subsequent IRA and IJA guidebook and implementation map updates should also include a Justice40 section within the guidebooks and a Justice40 filter for implementation maps to maximize the accessibility of EJ funding information and ease of tracking EJ initiatives.

We commend the Administration's steady commitment to elevating principles of environmental justice in federal decision-making and CEQ, OMB, and USDS's launch of Phase One of the EJ Scorecard to assess agency actions in pursuit of Administration goals. We urge CEQ, in collaboration with other executive branch entities, to consider our recommendations in

¹² The Good Jobs Initiative, Department of Labor, <https://www.dol.gov/general/good-jobs>

¹³ Memorandum of Understanding between the United States Department of Energy and the United States Department of Labor (June 21, 2022), <https://www.energy.gov/sites/default/files/2023-02/DOL-DOE%20MOU%20signed.pdf>

¹⁴ Inflation Reduction Act Guidebook, The White House, <https://www.whitehouse.gov/cleanenergy/inflation-reduction-act-guidebook/>; Guidebook to the Bipartisan Infrastructure Law, The White House, <https://www.whitehouse.gov/build/guidebook/>; Maps of Progress, The White House, <https://www.whitehouse.gov/build/maps-of-progress/>

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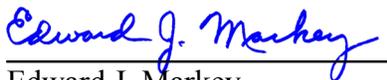
pursuit of a stronger, more effective EJ Scorecard that promotes agency transparency and accountability, and ensures that the Administration's Justice40 initiative truly delivers benefits to the nation's most marginalized communities.

We look forward to continuing to collaborate with the Administration to advance our collective environmental justice goals.

CC:

John Podesta, Senior Advisor to the President
Ali Zaidi, White House National Climate Advisor

Sincerely,



Edward J. Markey
United States Senator



Cori Bush
Member of Congress



Tammy Duckworth
United States Senator



Raúl M. Grijalva
Member of Congress
Ranking Member, Committee
on Natural Resources



Cory A. Booker
United States Senator



Jared Huffman
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Jennifer L. McClellan
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Alex Padilla
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