



EXPLAINER

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President Biden's Justice 40 Interim Guidance

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On July 20, 2021, the Biden Administration issued interim guidance for implementing the [Justice40 Initiative](#), which has the goal of delivering forty percent of the overall benefits of relevant environmental justice investments to disadvantaged communities. As a part of the Justice40 Initiative, the Administration will also commence with the development of the Climate and Environmental Justice Screening Tool, in order to “identify disadvantaged communities, support the Justice40 Initiative, and inform equitable decision making across the federal government.”

This explainer lays out what the Justice40 Initiative entails, what actions the Biden Administration has taken so far to implement it, and next steps on environmental justice issues.

What is Justice 40?

Justice40 is based on a Joe Biden [campaign proposal](#) to target 40 percent of relevant clean energy investments in disadvantaged communities. This proposal is based on a [New York State law](#), and the [executive order](#) lays out the following examples of kinds of investments that are covered:

- clean energy and energy efficiency deployment;
- clean transit;
- affordable and sustainable housing;
- training and workforce development;
- remediation and reduction of legacy pollution;
- and the development of critical clean water infrastructure

The proposal further stated that the Climate and Economic Justice Screening Tool would be used to identify which disadvantaged communities are threatened by, “the cumulative impacts of the multiple stresses of climate change, economic and racial inequality, and multi-source environmental pollution.”

As a part of implementing the Executive Order, the Biden Administration brought together a number of outside voices as part of the [White House Environmental Justice Advisory Council](#). In May, the Council submitted a number of [recommendations](#) regarding energy efficiency, sustainable and affordable housing, training and workforce development, and pollution reduction.

This is because the order specifically directs that within 120 days, the Chair of the Council on Environmental Quality (CEQ), the Director of the Office of Management and Budget (OMB), and the National Climate Advisor, in consultation with the Advisory Council, jointly publish recommendations on how certain Federal

investments might be made toward a goal that 40 percent of the overall benefits flow to disadvantaged communities. As a part of developing these recommendations, they are also instructed to consult with the affected disadvantaged communities.

Additionally, within 60 days of the recommendations being issued, agency heads are required to identify applicable program investment funds based on the recommendations and consider interim investment guidance. And finally, by February 2022, the Director of the OMB, in coordination with the Chair of the CEQ, the Administrator of the United States Digital Service, and other relevant agency heads, are required to publish on a public website an annual Environmental Justice Scorecard detailing agency environmental justice performance measures.

The goal of the Justice40 Initiative is to, “to secure environmental justice and spur 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.”

The Justice 40 Interim Guidance

In July, the Biden Administration released [interim guidance](#) regarding how federal agencies should go about ensuring that forty percent of all energy and environmental spending go to disadvantaged communities. The guidance includes specific actions that agencies are required to take for covered Justice40 programs.

Twenty one federal programs have been named as pilot programs for Justice40 implementation.¹ These pilot programs are meant to provide a blueprint to other agencies to inform implementation of the Justice40 Initiative and were selected following extensive consultation with environmental justice stakeholders. The guidance also directs all relevant Federal agencies to identify the benefits of programs beyond this pilot program, propose methods to calculate and report on reaching the 40-percent goal, and develop plans to engage with communities.

Additional guidance will also be issued later this year on defining disadvantaged communities in conjunction with the release of the geospatial Climate and Economic Justice Screening Tool. Until that time, for the purposes of the executive

¹ The pilot programs are 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 Advanced 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, and USDA Rural Energy for America Program.

order, the interim guidance defines a 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.”² And it lays out the following factors for consideration in determining whether a community is disadvantaged:

- 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
- 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

Covered programs³ are those that make a covered investment⁴ under one of seven areas:

1. Climate change
2. Clean energy and energy efficiency
3. Clean transportation

² This however does not codify Free, Prior, and Informed Consent (FPIC) for Tribal Nations and communities. This is a crucial step to correcting the generations of harm inflicted upon Indigenous Peoples by the federal government. By narrowly defining these communities as only those “geographic areas within Tribal jurisdictions,” the guidance excludes many federally recognized Tribes, and non-recognized Indigenous peoples broadly.

³ OMB has begun compiling a list of potential “covered programs” at <https://go.max.gov/justice40>. Agencies with Potential Covered Programs include: 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, and National Science Foundation.

⁴ Covered investments are federal investments in the following categories: i. Federal financial assistance as defined at 2 CFR 200.7 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); 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.

4. Affordable and sustainable housing
5. 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)
6. Remediation and reduction of legacy pollution
7. Critical clean water and waste infrastructure

Agencies are further directed to establish a methodology to calculate the benefits that flow from each covered program and what percentage of those benefits are going to disadvantaged communities. As a part of this calculation, agencies are instructed to consult with stakeholders, including state, local, and Tribal governments, as well as Native communities.

Conclusion and Next Steps

Going forward, finalizing a definition of disadvantaged communities will continue to be an ongoing discussion. The development of the Environmental Justice Scorecard and the Climate and Economic Justice Screening Tool will also be critical to the development of Justice40 and provide another opportunity for interested stakeholders and communities to provide feedback on implementation. Environmental justice advocates have urged the Biden Administration to look at similar tools developed by California and Washington as good starting points. The administration could additionally further implement the recommendations from the White House Environmental Justice Advisory Council.

Finally, in addition to executive action, the administration has also [stated](#) that they will continue these efforts with bipartisan infrastructure agreement. The Build Back Better package will also be another opportunity to push for legislative action to further these efforts.