

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

November 03, 2022

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

RE: Comments on Environmental Justice Scorecard Request for Information  
CEQ-2022-0004

Dear Chair Mallory,

I appreciate the opportunity to comment on the Environmental Justice (EJ) Scorecard. In Executive Order 14008 on *Tackling the Climate Crisis at Home and Abroad*, President Biden mandated the development of performance measures for an annual Environmental Justice Scorecard.<sup>1</sup> The Biden administration should be commended for working to develop a new tool that aims to provide “a robust and comprehensive assessment of the Federal Government’s efforts to secure environmental justice for all.”<sup>2</sup> Below please find comments in response to the Council on Environmental Quality’s request for feedback on the proposed vision, framework, and engagement plan for the EJ Scorecard, though it remains essential that the administration center affected EJ community voices and comment as it works to develop and update the EJ Scorecard.

### **Vision**

As stated in the Council on Environmental Quality’s request for information, the vision of the EJ Scorecard is “a robust and comprehensive assessment of the Federal Government’s efforts to address current and historic environmental injustice, including the Justice40 Initiative.” A robust, comprehensive, and transparent assessment is critical so that the public and affected communities can better assess performance by federal agencies to address environmental injustices, including the disproportionately high pollution burden borne by communities of color and low-income communities across our country. Additionally, there is a clear rationale for the administration’s plan to measure progress made by federal agencies on EJ since 2021 in the first version of the EJ Scorecard. Still, while federal agencies may make crucially important progress in addressing environmental injustice compared to a 2021 baseline, the ultimate goal and focus for future iterations of the EJ Scorecard should be to assess progress made toward ensuring that

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<sup>1</sup> *Tackling the Climate Crisis at Home and Abroad*, 86 Fed. Reg., 7619 (Feb. 1, 2021) (online at [www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/](http://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/)).

<sup>2</sup> *Request for Information: Environmental Justice Scorecard Feedback* (Oct. 4, 2022) (online at <https://www.regulations.gov/document/CEQ-2022-0004-0001>).

environmental justice communities secure the same degree of protection from environmental and health hazards as other communities, as well as equitable treatment and access to federal resources to support healthy environments for communities to live, learn, work and recreate.

## **Framework**

In the proposed framework for the EJ Scorecard, federal government activities will be organized into three reporting categories: (1) reducing burdens and harms in communities; (2) delivering benefits to communities; and (3) centering justice in federal agency decision making. Below please find feedback on each reporting category.

### *Reducing Burdens and Harms in Communities*

In this reporting category, it is essential to include markers of progress that measure and respond to widely stated EJ community priorities and needs. Examples include priorities relating to implementation of the National Environmental Policy Act (NEPA), such as more accessible public input processes by federal agencies and robust consideration and disclosure of adverse cumulative impacts during the NEPA process. The need for robust consideration and disclosure of cumulative impacts is especially important when federal agencies are considering actions that may further overburden communities that are already overburdened by the cumulative effects of numerous pollution sources and environmental hazards.

It is also important to include markers of progress relating to compliance with our nation's civil rights laws and regulations. This includes regulations promulgated under Title VI of the Civil Rights Act of 1964 (Title VI), which requires all federal agencies to ensure that federally funded programs, activities, and recipients of federal funding do not discriminate on the basis of race, color, or national origin. Discriminatory actions can include siting and permitting decisions by federal funding recipients that disproportionately burden particular communities with higher pollution levels and environmental health burdens.

Currently, many federal agencies lack oversight systems to properly track compliance with civil rights laws by federal funding recipients.<sup>3</sup> In response, the Biden administration has initiated some important efforts to improve federal grant administration and civil rights law enforcement, including efforts focused on more equitable siting and environmental permitting decisions by funding recipients. These efforts should be prioritized and ultimately integrated, measured, and tracked in the Environmental Justice Scorecard to the greatest extent possible. To help ensure that federal funds are not used to fund discriminatory programs and activities prohibited under our civil rights laws, federal agencies can also measure and track the degree to which agencies carry out the following actions:

- Provide clear and accessible guidance to federal funding recipients and impacted communities on civil rights law requirements.
- Provide civil rights guidance that goes beyond procedural checklists to include mechanisms for determining substantive Title VI violations, including for pollution-related permits.

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<sup>3</sup> See, for example, U.S. Environmental Protection Agency, Office of the Inspector General: Improved EPA Oversight of Funding Recipients' Title VI Programs Could Prevent Discrimination (Sept. 28, 2020) (20-E-0333).

- Provide accessible civil rights compliance training and technical assistance for federal grant recipients.
- Use clear and transparent mechanisms for civil rights compliance reviews that include opportunities for public input and transparency regarding selection and evaluation criteria.
- Leverage discretionary federal funding to affirmatively promote equity and correct for past discrimination.
- Use enforcement mechanisms provided under Title VI, including withholding or rescinding federal funding as a result of Title VI violations.
- Maintain a civil rights threshold list—like the Department of Housing and Urban Development’s Civil Rights Threshold List—to determine federal funding eligibility based on whether applicants are currently the subject of a federal agency finding of a civil rights violation or Department of Justice civil rights lawsuit.
- Publish all public-facing information about Title VI administrative complaints that would otherwise be available under the Freedom of Information Act via a searchable and accessible public database that includes complaints (redacted as needed), correspondence, findings, closure letters, resolutions agreements, and the amount of time federal agencies take to respond to and investigate Title VI administrative complaints.

### *Delivering Benefits to Communities*

For this reporting category, please see the enclosed letter previously sent by several Members of Congress with extensive comments and feedback specific to the delivery of benefits and implementation of the Justice40 Initiative.

### *Centering Justice in Decision Making*

Metrics to consider for this reporting category can include the number of jobs created in environmental justice communities (using unemployment and underemployment data), the percentage of federal agency employees from minority communities, the amount of advance notice afforded to communities before an agency opens a public comment period, the length of the public comment period, and the amount of accessible technical assistance provided to community-based environmental justice organizations.

### **Engagement**

According to the Council on Environmental Quality, the draft framework for the Environmental Justice Scorecard has been informed by community groups, federal agencies, and industry. It is imperative that affected EJ community voices guide the continued development of the Environmental Justice Scorecard. Using an inclusive, transparent, community-led, and community-driven process—like the one employed to draft the Environmental Justice for All Act—can help ensure that environmental justice communities throughout the country are responsibly engaged.

## Conclusion

Once again, thank you for your consideration of these comments. I look forward to continued engagement and the work ahead to address environmental injustices across our country.

Sincerely,

A handwritten signature in blue ink that reads "Raúl M. Grijalva". The signature is written in a cursive style with a blue color.

Raúl M. Grijalva  
Chair  
Committee on Natural Resources