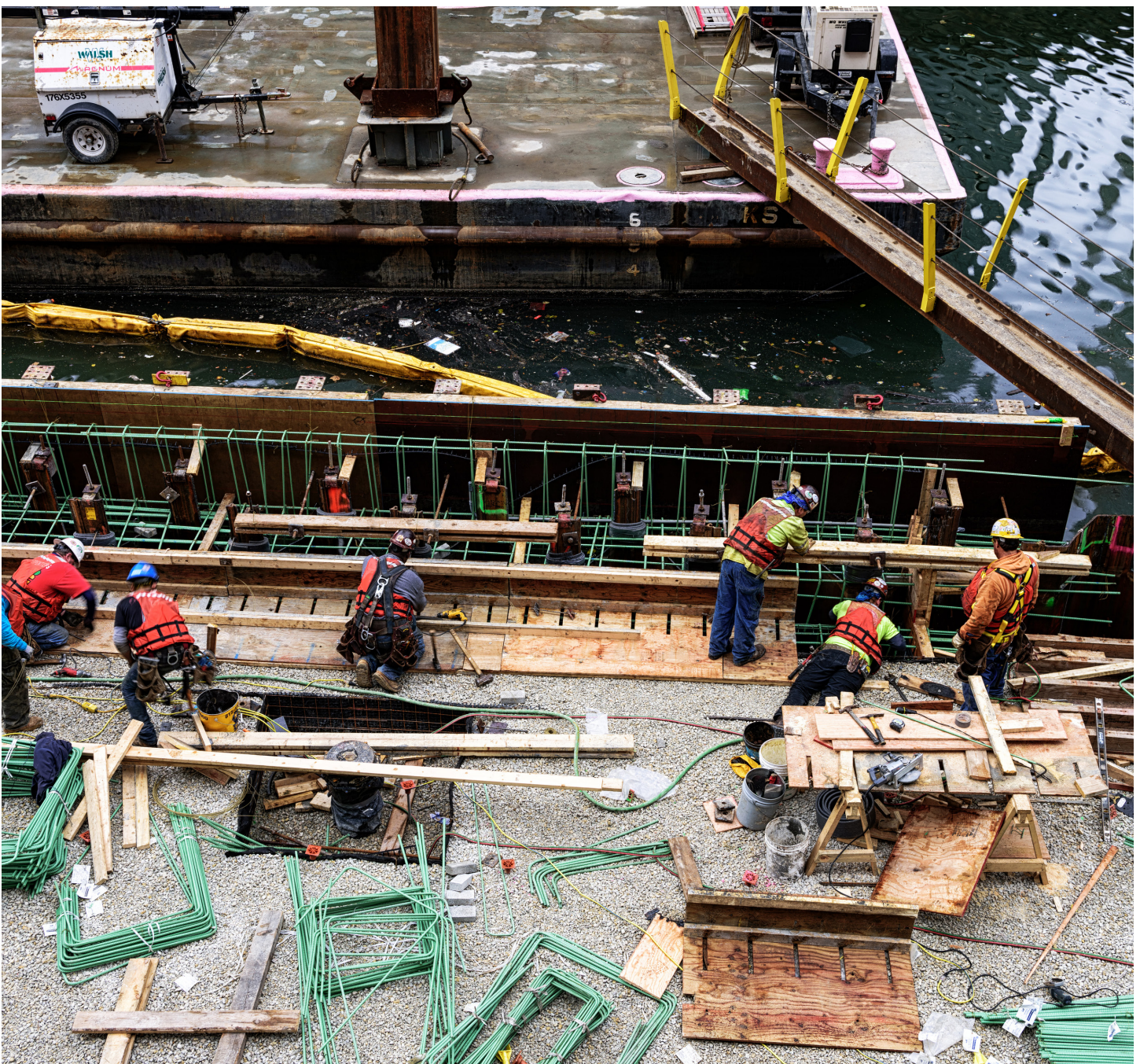


Justice40 Implementation Guide for State and Local Governments

PolicyLink



Introduction and Executive Summary

This guide aims to help state and local-level administrators optimize federal investments to benefit underserved communities in alignment with the Justice40 Initiative. President Biden established the Justice40 Initiative through [*Executive Order 14008: Tackling the Climate Crisis at Home and Abroad*](#), which aims to ensure that at least 40 percent of overall benefits of certain federal investments flow to disadvantaged communities.¹ Covered federal investments include: “clean energy and energy efficiency; clean transit; affordable and sustainable housing; training and workforce development; the remediation and reduction of legacy pollution; and the development of critical clean water infrastructure.”² In addition, the U.S. Office of Management and Budget later added coverage of climate change investments in its implementation guidance.³

Federal departments and agencies have begun implementing Justice40 by issuing guidance, directives, and screening tools. Although federal materials primarily focus on implementation of Justice40 at the federal level, state and local government entities can look to leverage federal guidance for ideas on how to implement Justice40 at the state and local level as well.

Some federal departments have also released guidance to state and local funding recipients on how they should implement Justice40 with federal dollars—examples are referenced throughout this guide. For instance, the U.S. Department of Energy released robust guidance to funding recipients on how to identify benefits, measure and track those benefits, implement Justice40 with both formula funding and competitive funding, and conduct stakeholder engagement. Although some federal departments have not published this type of guidance, they have hosted public webinars and meetings in which they describe their expectations of funding applicants. For example, they list the types of benefits to identify, and provide initial direction on how to measure distribution of benefits over time. In addition, several federal program applications require or encourage applicants to describe their commitments to meeting Justice40 goals, such as through Justice40 plans or community benefits plans.

State and local agencies may also consider implementation examples from their peers. Some states have taken administrative action to strengthen their Justice40 implementation, while others have taken legislative action. Examples of administrative action include executive orders and climate plans committing to meet the 40 percent goal of Justice40, making investment decisions that primarily benefit disadvantaged communities, and recruiting community representatives to help with distribution of benefits and community engagement.

Within the context of those examples, this document provides step-by-step guidance to state and local agencies on Justice40 implementation, as follows:

Step 1 Identify J40 Covered Programs

For any given infrastructure project, state and local agencies often apply for funding from various federal programs, many of which are Justice40-covered programs. After a state or local agency has determined whether its federal funding sources are covered by Justice40, it should begin implementation through the next steps outlined below.

Step 2 Centering Project Benefits in Disadvantaged Communities (DAC)

Justice40 requires benefits to flow to disadvantaged communities. As such, state and local agencies must identify those communities in and around the project area. The Climate and Economic Justice Screening Tool is the primary tool for identifying disadvantaged communities, although some federal agencies have developed additional tools more specific to their focus areas.

Step 3 Identify and Consider Community Benefits and Burdens

Justice40 recognizes that many projects result in both burdens and benefits to disadvantaged communities. Some federal agencies require their state and local funding recipients to identify both in order to determine whether the burdens will outweigh the potential benefits. This step also provides an important opportunity to assess the racial equity impacts of the project. In particular, state and local agencies should assess whether the benefits or burdens may cause any disparate impacts based on race.

Step 4 Develop a Community Benefits Plan

Next, state and local agencies should make a plan on how to ensure that the identified benefits flow to disadvantaged communities. One way is to adopt a formal community benefits plan to engage with community-based organizations in frontline communities. Working with other state and local agencies could be helpful in identifying these groups. A community benefits plan should include various mechanisms through which to deliver the project's benefits to disadvantaged communities (such as new policies or binding agreements) as well as monitoring and enforcement mechanisms. These are the concrete components of a community benefits plan that impacted communities can use to hold the state or local agency accountable to its commitments.

The next section describes each step in more detail with relevant examples.

Four Steps to Implementation

Step 1 Identify J40 Covered Programs

The first step toward implementing Justice40 through a state or local project is to determine whether it will need funding from Justice40-covered federal funding programs. Justice40 covers seven investment areas: clean energy and energy efficiency; clean transit; affordable and sustainable housing; training and workforce development; the remediation and reduction of legacy pollution; the development of critical clean water infrastructure; and the mitigation of climate change. The White House has published a list of specific federal funding programs covered by Justice40 and has been expanding it over time.⁴

Most Justice40-covered programs are competitive discretionary grants. However, Justice40 covers a handful of nondiscretionary (formula-funded) programs as well. Below are examples of nondiscretionary programs by agency, provided in the Covered Programs List, (published in November 2023, and referenced at endnote 4):

- Department of Transportation (“DOT”)
 - National Electric Vehicle Formula Grants
 - Buses and Bus Facilities Program Formula
 - Carbon Reduction Program
 - Congestion Mitigation and Air Quality Improvement Program
- Environmental Protection Agency (“EPA”)
 - Clean Water State Revolving Fund
 - Drinking Water State Revolving Fund
 - Solid Waste Infrastructure for Recycling Grants
 - Brownfields Projects Program
- Department of Energy (“DOE”)
 - Energy Efficiency and Conservation Block Grant Program (EECBG)
 - State Energy Program
 - Weatherization Assistance Program

Even if Justice40 does not apply to a particular federal funding stream for the project, the state or local recipient must expend those funds in a manner that meets other antidiscrimination requirements, including Title VI of the Civil Rights Act, Executive Order 11246, and the duty to avoid passive participation in discriminatory behavior under the Equal Protection Clause of the U.S. Constitution. This guide can help recipients robustly implement these requirements because they often overlap with Justice40 requirements.

Step 2 Centering Project Benefits in Disadvantaged Communities (DAC)

Justice40 requires at least 40 percent of the benefits of covered investments to flow to “disadvantaged communities.” The U.S. Office of Management and Budget (“OMB”) describes the definition of “disadvantaged communities” in its Interim Implementation Guidance as follows:

- 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.”
- 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
 - 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 health care.⁵

OMB’s guidance also notes that “geographic areas within Tribal jurisdictions should be included” in the definition of disadvantaged communities.⁶

The Council on Environmental Quality (“CEQ”) developed the Climate and Economic Justice Screen Tool (“CEJST”)⁷ as the primary screening tool to assist agencies with identifying disadvantaged communities. CEJST is an interactive mapping tool that provides data indicators related to climate change, environment, health, and economic opportunity. CEQ issued formal guidance regarding CEJST in the “Addendum to the

Interim Implementation Guidance for the Justice40 Initiative.”⁸ This guidance requires federal departments and agencies to “use their best efforts” to transition to CEJST as soon as possible and to use it for any new Justice40-covered programs as of October 2023.

However, “in certain special circumstances,” a federal agency may use additional tools “where there is a justifiable need to consider other communities as disadvantaged within the meaning of the original Justice40 Interim Guidance definition of disadvantaged communities.” In that circumstance, the agency should inform the CEQ at least 30 days before it starts considering those other disadvantaged communities. Federal agencies may also use other definitions of disadvantaged communities if the program at issue is subject to a different statutory definition of target beneficiaries. CEQ’s guidance also notes that some states have their own definitions that they may continue to use as long as the federal funding agency ensures that those definitions conform with the Justice40 Interim Guidance.⁹

To assist with the transition to using CEJST, CEQ also published instructions.¹⁰ These instructions explain that CEJST only applies to the identification of geographically defined disadvantaged communities and not to geographically dispersed communities like migrant workers. As such, federal agencies may use other tools and means to identify any geographically dispersed disadvantaged communities. CEQ’s instructions also explain that CEJST’s datasets show how various burdens (i.e., climate change, energy, health, housing, legacy pollution, transportation, and workforce development) affect census tracts. A community is disadvantaged if it is in a census tract that “meet[s] the thresholds for at least one of the tool’s categories of burden, or if [it is] on lands within the boundaries of Federally Recognized Tribes.”¹¹

To use CEJST, government agencies should start with the tool’s entire list of disadvantaged communities, *not* looking at just a single burden or category of burden.¹² Then they may prioritize disadvantaged communities based on the extent of potential burdens on a community relevant to the project using their own data and metrics, as permitted by law. To this point, agencies should be aware that the definition of “disadvantaged” is not always transferable between CEJST and other agency-developed tools such as those developed by DOT, DOE, and EPA. Rather, those tools can be used as supplements to help prioritize communities to which the project should direct benefits.

Step 3 Identify and Consider Community Benefits and Burdens

The Interim Guidance directs federal departments and agencies to calculate the degree to which benefits from covered programs will be delivered to disadvantaged communities.

Identification of Benefits and Burdens

State and local agencies should calculate the degree to which their proposed projects will deliver benefits and burdens to disadvantaged communities.¹³ The Interim Guidance defines benefits as “direct and indirect investments (and program outcomes) that positively impact disadvantaged communities.”¹⁴ These benefits should prioritize disadvantaged communities’ economic and community development needs and interests. For instance, when a project will create jobs, benefits can include workforce development, targeted hiring requirements, and equitable procurement. When a project will develop land, benefits can include access to open space or improvements to community facilities. Some federal funding program applications list explicit benefits that state and local recipients must meet, while others do not.

Justice40 recognizes that many projects result in both burdens and benefits to disadvantaged communities. As some federal agencies require, state and local funding recipients should identify both in order to determine whether the burdens will outweigh the potential benefits.¹⁵ In addition, state and local agencies should assess the impacts of existing projects and past choices that have hindered disadvantaged communities’ access to opportunities.

State and local agencies should identify these benefits and burdens through meaningful consultation with community stakeholders, as well as other state, local, and tribal governments when determining what constitutes a benefit. Step 4 of this guide provides specific recommendations on community engagement.

Measurement of Benefits and Burdens

State and local agencies must also determine how to categorize, prioritize, and measure benefits and burdens. Some federal funding programs provide a methodology for calculating benefits and community consultation, but even if a program does not come with a methodology, state and local administrators should create their own methodology to calculate and track benefits.¹⁶

Assessment of Racial Equity Impacts

State and local agencies should also consider whether the project’s benefits and burdens will cause racial equity impacts and make decisions to avoid those adverse impacts, as required by their affirmative duty to avoid racial discrimination under the Equal Protection Clause of the U.S. Constitution.

This affirmative duty applies with additional force of law in the context of federally funded projects because several federal laws reflect this longstanding principle, including Title VI of the Civil Rights Act of 1964, Executive Order 11246, and the National Environmental Policy Act (“NEPA”). As such, some federal agencies have operationalized racial equity assessments in their funding applications. For example, the Federal Aviation Administration (“FAA”) Title VI Pre-Award Assessment Checklist asks funding applicants to review the impacts of their projects on protected classes, including any disparities.¹⁷ Therefore, all state and local funding applicants should conduct a racial equity assessment as well.

We recommend state and local agencies use the Local and Regional Government Alliance on Race and Equity (“GARE”) Racial Equity Toolkit to help understand their proposed initiatives’ nuanced and qualitative impact on racial equity.¹⁸

Examples of Benefits from Federal Agencies

This section describes certain federal agencies' recommendations for identifying and measuring benefits and burdens for Justice40 implementation.

• DOT Justice40 Guidance

DOT defines Justice40 benefits and burdens across five categories that state and local funding recipients must consider: Safety, Jobs and Economic Competitiveness, Resilience, Access, and Emissions.¹⁹ DOT provides examples of benefits and burdens within those categories. For instance, under the "Access" category, DOT explains that a new public transportation system could benefit community members by increasing access to employment or it could burden them by dividing or disconnecting the community.²⁰ DOT also provides guidance on how to measure and weigh benefits and burdens in its "Benefit-Cost Analysis Guidance for Discretionary Grant Programs."²¹ For example, that guide shows how to calculate the benefits of emission reduction from public transportation projects.²² State and local agencies should consult that guide for more ideas.

• EPA Justice40 Guidance

EPA has also noted that it is identifying two to three "critical" benefits for each of its Justice40-covered programs.²³ Examples of those benefits include: pollution reduction, number of sites remediated, improvements in health outcomes, and local economic benefits.²⁴ In the context of EPA's Brownfields Program, it has listed the following examples of benefits as well: more site assessments, site cleanups, and number of students trained and placed for Brownfields' job-training grants.²⁵ State and local agencies should consider these examples as well.

• DOE Justice40 Guidance

DOE has set eight policy priorities for defining energy-related benefits that Justice40 programs could deliver to disadvantaged communities:

- Decrease energy burden
- Decrease environmental exposure and burdens
- Increase parity in clean energy technology access and adoption
- Increase access to low-cost capital
- Increase clean energy enterprise creation and contracting
- Increase clean energy jobs, job pipeline, and job training
- Increase energy resiliency
- Increase energy democracy²⁶

State and local agencies should aim to identify benefits that fall under these categories, though the applicability of these policy priorities will vary by DOE program.²⁷

Further, DOE has provided sample metrics to measure and report on the benefits (or burdens) their respective programs can provide. For example, agencies can measure decreases in energy burden through "[d]ollars saved [\$] in energy expenditures due to technology adoption" and "[e]nergy saved [MMBTU or MWh] or reduction in fuel [GGe]."²⁸ State and local agencies should consult DOE's guide for these clear and concrete sample metrics, and additional approaches.

• Other Examples of Community Benefits

This section describes additional examples of community benefits that state and local agency projects could provide with federal funds.²⁹ As described later in Step 4 of this guide, agencies can implement these benefits through various mechanisms such as formal policies, contract terms, community benefits agreements, community workforce agreements, and many other tools.

- Targeted Hiring Requirements: targeting hires based on geographic and economic factors for project construction can provide new job opportunities for disadvantaged communities.
- Job Quality Requirements: job quality requirements greatly enhance the economic and career benefits of employment opportunities, by improving wages and benefits, improving working conditions, integrating training opportunities in the employment setting, and building career pathways for disadvantaged workers.
- Affordable Housing: providing a specific number or percentage of affordable housing units in housing development projects, or requiring developers to contribute to a housing trust fund that can be used for affordable housing production and preservation, tenant protection services, or a community land trust, can help prevent displacement of disadvantaged communities.
- Community Benefits Fund: establishing a community benefits fund in which public and private entities (including developers) contribute funds can provide state and local agencies with more flexibility to support a variety of benefits for disadvantaged communities.

In sum, these examples show that there is a wide variety of benefits that could flow from federally funded projects. State and local agencies therefore must work closely with partners and disadvantaged communities to identify, prioritize, and measure the most impactful benefits for any given project.

Step 4 Develop a Community Benefits Plan

After identifying disadvantaged communities, benefits, and burdens, state and local agencies should create a community benefits plan to describe how they will ensure those benefits flow to disadvantaged communities. A community benefits plan is a formal, comprehensive, written plan for the delivery of specific, actionable, and measurable community benefits that have been identified by impacted community stakeholders. Agencies should begin community benefits planning early in the project development process.

Some Justice40-covered programs *require* applicants to submit a community benefits plan and provide guidance on what they should include.³⁰ Even where community benefits plans are not required, agencies should develop them to ensure clarity and direction for community engagement and the delivery of community benefits.³¹ Many federal agencies such as DOE,³² EPA,³³ and DOT's Federal Highway Administration³⁴ have provided workshops, FAQ's, templates, and other resources for community benefits planning.³⁵ In particular, DOE has provided a robust community benefits plan template in the application form for its Battery Materials Procession and Battery Manufacturing grants, which all applicants must complete and submit.³⁶ Step 4, under Community Benefits Agreements below, provides additional detail on the community benefits requirements for this funding program.

State and local agencies should develop these plans through partnerships with other state and local agencies and through community engagement. Plans should include mechanisms on how the project will deliver benefits to disadvantaged communities (such as new policies or binding agreements) and monitoring and enforcement mechanisms to hold the agency accountable to its commitments. The appendix of this guide offers a community benefits plan template for state and local agencies.³⁷ The following sections provide details on how to develop this plan.

Interagency Partnerships

State and local agencies should begin their community benefits planning through interagency coordination. For example, agencies that provide for basic needs such as workforce development, housing, and child and family support can be instrumental in building connections with the residents of disadvantaged communities and identifying needed community benefits.

One state agency that has leveraged its interagency partners is the Hawai'i State Energy Office. As part of its Justice40 implementation, it partnered with the Hawai'i Climate Change Commission and other state agencies to increase its capacity to conduct community engagement.³⁸ These state agencies and offices worked together to form an AmeriCorps Vista program to hire full-time community outreach and engagement staff, and to establish a public-private sector collaborative called the Energy Equity Hui.³⁹

Community Engagement

One primary goal of Justice40 is to ensure that communities have meaningful participation in decision-making and opportunities to provide input on project decisions. When agencies meaningfully engage with disadvantaged communities, they can better design programs that equitably serve and engage those communities. Thus, it is critical to develop a collaborative stakeholder process to better understand the needs of the impacted community and determine what will work in practice versus in theory.

DOT has provided helpful guidance for meaningful community engagement.⁴⁰ DOT's community engagement guide recommends that agencies engage community stakeholders early in the process and to continue throughout the project's lifecycle.⁴¹ DOT defines "meaningful public involvement" as "a process that proactively seeks full representation from the community, considers public comments and feedback, and incorporates that feedback into a project, program, or plan when possible."⁴² DOT highlights key features of such involvement, including building durable relationships with diverse community members including outside of the project lifecycle, using engagement techniques responsive to the preferences and needs of these communities, documenting community impact, and noting the ways in which agencies are using community input.

Engagement strategies should also focus on transparency and removing barriers to participation. Barriers to participation may include the timing of meetings, language access, or other accessibility barriers. Please consult DOT's guide for additional details on robust community engagement efforts.

Mechanisms to Direct Community Benefits

Once an agency has identified the benefits that it will deliver to a community, it must determine mechanisms for delivering those benefits. This section provides examples of mechanisms for such delivery, including (1) new policies and legislation, (2) community benefits agreements, and (3) community workforce agreements.

Disclaimer: As with all approaches described in this guide, full legal review is required for compliance with state law and program-specific federal requirements. Even where a preferred approach is preempted or prohibited, there is almost always an alternative approach that is permissible. We have aimed to provide a flexible slate of options that can be tailored to particular local circumstances, including the legal landscape.

• New Policies and Legislation

State and local agencies may determine that new policies or legislation are needed to deliver certain benefits. For example, if a project's benefits include equitable contracting opportunities and new high-quality jobs for local residents, the agency may consider adopting a best value contracting policy or program to provide those benefits. Best value contracting allows public entities to consider factors beyond price when awarding contracts. Those factors can include number and quality of jobs for local residents, environmental sustainability, past performance, and geographic location preferences.

Miami-Dade County is establishing a best value contracting program by administrative order that will reward contract proposals for their plans to support environmental, labor, and economic sustainability.⁴³ The program aims to "[c]reate greater economic opportunities for residents and small businesses," "[m]aximize local and small business inclusion," "[s]afeguard the equitable and fair treatment of employees," and "[u]phold environmental and sustainability standards, legislation, and requirements" in county contracts and projects.⁴⁴

- **Community Benefits Agreements and Policies**

Another way to deliver benefits is through a community benefits agreement (“CBA”), which is a legally binding agreement between the developer of a proposed project, and organizations representing the community affected by the project. Under a typical CBA, the project developer commits to delivering specified community benefits if the project is approved and goes forward, and the community representatives in turn agree to support the project in the approvals process, and release any legal claims. Signatories to a CBA are generally community stakeholders or coalition groups, such as neighborhood associations, faith-based organizations, environmental groups, and labor unions. When it works well, a CBA can improve a project’s slate of public benefits, while enhancing community acceptance of and support for a project, through an inclusive and transparent process.

Governmental entities at all levels of government have adopted community benefits policies encouraging CBA negotiations. Such policies can require developers who are seeking to use the state or local agency’s funds or property to (1) attempt to negotiate CBAs with affected local stakeholders and community-based organizations, (2) publicly report the results of such negotiations (including the terms of any final negotiated CBAs), and (3) regardless of outcome of such negotiations, include community benefits commitments in project development. While these policies cannot force the outcome of negotiations between private developers and community organizations, these policies can leverage public funding and support to promote CBA negotiations.

The U.S. Department of Energy has taken the lead on requiring CBA negotiations. As mentioned previously, applicants for DOE’s Battery Manufacturing and Recycling grants must submit a community benefits plan, in which the applicant “is strongly encouraged” to detail how it will negotiate agreements with community stakeholders, such as through community benefits agreements (and collective bargaining agreements, project labor agreements, community workforce agreements, or good neighbor agreements).⁴⁵ While CBAs are not technically required, grant terms make clear that they are strongly encouraged—and that if applicants wish to proceed without a CBA, they will still have to commit to providing community benefits, and indicate that they made efforts to explore CBAs with local stakeholders.

CBAs can cover a variety of Justice40 benefits as tailored to meet the needs of the impacted community and as relevant to the federally funded project. Benefits that government agencies often provide through CBAs are targeted hiring preferences, job quality improvement, affordable housing, and funding for additional benefits (i.e., creation of a community benefits fund). However, state and local agencies should not feel limited by these categories.

In one example, a strong CBA was forged between Facebook (the company that is now a subsidiary of the technology conglomerate Meta) and a coalition of community groups in the cities of East Palo Alto and Menlo Park, California, with regards to Facebook’s proposal to expand its corporate headquarters in 2016.⁴⁶ Through this CBA, Facebook committed \$18.5 million for the development and preservation of affordable housing, additional funding for tenant assistance, and support for a pipeline job-training program to help increase employment opportunities at Facebook for local residents.⁴⁷ In exchange, the community coalition agreed to refrain from advocating against Facebook’s expansion and to make a public statement expressing successful collaboration with Facebook in reaching this CBA.⁴⁸ For additional examples of CBAs, please consult the CBA toolkit published by PowerSwitch Action, a nationwide advocacy organization.⁴⁹

- **Project Labor Agreements (a.k.a. Community Workforce Agreements)**

Project labor agreements (“PLAs”), if negotiated so as to deliver high-quality employment and training opportunities to local or disadvantaged workers or communities, can be another strong tool for delivering project benefits during the construction phase.⁵⁰ A Community Workforce Agreement, or “CWA,” is a PLA that includes strong equity measures, such as provisions that encourage the recruitment, hiring, and retention of diverse workers.⁵¹ PLAs are typically negotiated between a project owner (whether a private or public entity) and local construction trades unions.⁵² PLAs should be considered a community benefits or equity tool only if they are successfully negotiated with these goals in mind.

One recent example of a CWA is the Regional Workforce Equity Agreement (“RWEA”), an agreement between three local public entities and the trades unions in the Portland, Oregon, region.⁵³ Its overall goals are to create and sustain a more diverse construction workforce, provide quality employment and training opportunities, and increase access

for all types of contractors, while ensuring job quality and strong labor standards. Another recent example is the San Diego Association of Governments' CWA, which also aims to provide economic opportunities for historically underserved groups, including disadvantaged workers and business enterprises.⁵⁴ Both of these agreements contain standard PLA terms, as well as negotiated provisions that build in flexibility and require specified steps toward ensuring equity in workforce and contracting on a covered project. Each agreement will apply to billions of dollars of public construction.

- **Mechanisms to Monitor and Enforce Benefits**

Monitoring and enforcement mechanisms are necessary to ensure that state and local agencies are accountable for their community benefits commitments. The following are some examples of strong accountability mechanisms that can help ensure equitable implementation of Justice40.

Reporting Requirements

Most, if not all, federal funding programs require state and local recipients to report certain data and information to the federal funding agency. Some of those reporting requirements may already include metrics and data on the recipient's delivery of benefits. If a federal agency has not established a methodology for calculating benefits and tracking their flow to specific disadvantaged communities, state and local recipients should create their own methodology and publicly report that data on a regular basis. If state and local recipients are awarding contracts or funds to subrecipients, they should include the same reporting requirements in their contracts, subcontracts, and funding agreements.

State and local agencies should align this reporting with their existing reporting duties under Title VI, NEPA, Executive Order 11246, and targeted contracting program compliance reporting. For instance, DOT's Disadvantaged Business Enterprise program requires DOT fund recipients to report the actual awards they make to disadvantaged business enterprises through prime and subcontracts, by dollar amounts and number, as well as by ethnicity and gender.⁵⁵ Similarly, several federal agencies' Title VI regulations require state and local recipients to maintain racial and ethnic data of their program participants and/or beneficiaries.⁵⁶

Compliance Reviews, Investigations, and Complaints

State and local agencies should also undergo routine compliance reviews and investigations to ensure they and their contractors and subrecipients are delivering benefits as promised. Agencies should use data reported to federal funding agencies and the metrics they have identified for measuring progress on benefits delivery. They should also consider factors such as past discrimination, displacement, and existing environmental burdens in the project area as part of compliance reviews to avoid causing disparate impacts on disadvantaged communities.

Agencies should provide a complaint mechanism for the public to report any issues they see with the delivery of benefits or other disparate impacts on disadvantaged communities as well. The complaint mechanism should include clear timelines and processes for the agency's investigation and decision on such complaints.

Remedies for Noncompliance

State and local agencies should set forth remedies that the public can enforce if the agency fails to provide the planned benefits. Agencies should develop appropriate remedies with community input. Remedies can include penalty payments into a community benefits fund, liquidated damages for CBAs, PLAs, and other agreements, and private rights of action for impacted community members to bring a lawsuit.

Conclusion

This guide provides state and local agencies with strong examples for equitable implementation of Justice40. Where available, state and local agencies should consult federal and state guidance but not limit themselves to only their ideas.⁵⁷ State and local agencies should instead develop creative and bold implementation methods in partnership with their community stakeholders. Emerald Cities Collaborative and PolicyLink stand ready to assist state and local allies in robust implementation of Justice40.



Appendix:

Community Benefits Plan Template Attached

(Select the attachment icon on the right to download)

Acknowledgments

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We have created this guide to provide general information and direction regarding equitable implementation of Justice40. However, state and local agencies must do additional research regarding local or state-specific contexts to ensure compliance with state laws and regulations.

Notes

- 1 [Executive Order 14008](#), President of the United States, Jan. 27, 2021; President Biden issued an additional executive order (*Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government*) on February 16, 2023, which requires federal departments and agencies to take additional steps toward ensuring equity in their funding activity. For instance, it requires federal departments to each establish an “Agency Equity Team” to coordinate implementation of the department’s equity initiatives and to submit an annual Equity Action Plan. Although it remains to be seen how these mandates will interact with Justice40, it is possible that these equity teams and plans will also support Justice40 implementation.
- 2 Executive Order 14008, *supra*, at § 223.
- 3 Interim Implementation Guidance for the Justice40 Initiative,” Executive Office of the President, Office of Management and Budget, July 20, 2021, at 3 <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.
- 4 “Justice40 Initiative Covered Programs List Version 2.0,” Nov. 2023, https://www.whitehouse.gov/wp-content/uploads/2023/11/Justice40-Initiative-Covered-Programs-List-v2.0_11.23_FINAL.pdf.
- 5 Interim Implementation Guidance, *supra* note 3.
- 6 *Id.*
- 7 “Council on Environmental Quality, Explore the Map - Climate and Economic Justice Screening Tool, Version 1.0,” Council on Environmental Quality, (updated Nov. 22, 2022), <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>.
- 8 “M-23-09 Addendum to the Interim Implementation Guidance for the Justice40 Initiative, M-21-28, on using the Climate and Economic Justice Screening Tool (CEJST),” Executive Office of the President, OMB, Jan. 27, 2023, https://www.whitehouse.gov/wp-content/uploads/2023/01/M-23-09_Signed_CEQ_CPO.pdf.
- 9 *Id.*
- 10 “Instructions to Federal Agencies on Using the Climate and Economic Justice Screening Tool,” CEQ, Jan. 2023, <https://static-data-screeningtool.geoplatform.gov/data-versions/1.0/data/score/downloadable/CEQ-CEJST-Instructions.pdf>.
- 11 *Id.* at 2.
- 12 *Id.* at 5 (“The CEJST definition of disadvantaged communities was not designed to produce separate lists for each category of burdens. Insufficient analysis has been conducted of using the methodology that way to ensure reliability when looking at just a single burden or category of burden. Rather, all agencies should use the entire list of disadvantaged communities identified by the CEJST as a starting point.”).
- 13 See Interim Implementation Guidance, *supra* note 3, at 4-7 (including examples of benefits).
- 14 *Id.* at 4.
- 15 *E.g.*, “Secretary Pete Buttigieg Remarks - Justice40 Webinar,” DOT, Nov. 2022, at 9, <https://www.transportation.gov/sites/dot.gov/files/2022-11/Justice4011141722.pdf>.
- 16 See Interim Implementation Guidance, *supra* note 3, at 7 (directing each federal agency to “deliver to OMB a methodology for calculating the covered program benefits accruing to disadvantaged communities...include[ing] a description of the metrics that the agency is developing to measure covered program benefits.”).
- 17 “Form 5100-145, FAA Title VI Pre-Grant Award Checklist,” FAA, Feb. 7, 2024, at 5, <https://www.faa.gov/forms/index.cfm/go/document.information/documentID/1041422>.
- 18 “Racial Equity Toolkit,” GARE, Dec. 2016, https://racialequityalliance.org/wp-content/uploads/2015/10/GARE-Racial_Equity_Toolkit.pdf.
- 19 “Three Major Components of DOT’s Justice40 Initiative,” DOT, Nov. 18, 2023, <https://www.transportation.gov/priorities/equity/justice40/three-major-components-dots-justice40-initiative>.
- 20 *Id.*
- 21 “Benefit-Cost Analysis Guidance for Discretionary Grant Programs,” DOT, Dec. 2023, <https://www.transportation.gov/sites/dot.gov/files/2023-12/Benefit%20Cost%20Analysis%20Guidance%202024%20Update.pdf>.
- 22 *Id.* at Appendix B.
- 23 “National Environment Justice Advisory Council, Virtual Public Meeting,” EPA, April 20-21, 2022, at 35, https://www.epa.gov/system/files/documents/2022-09/NEJAC%20Public%20Meeting%20Summary%20April%202022_0.pdf.
- 24 *Id.*
- 25 *Id.* at 114.
- 26 “General Guidance for Justice 40 Implementation,” DOE, July 25, 2022, at 10, <https://www.energy.gov/sites/default/files/2022-07/Final%20DOE%20Justice40%20General%20Guidance%20072522.pdf>.
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- 28 *Id.* at 11.
- 29 On September 21, 2023, OMB proposed changes to its Guidance for Grant and Agreements (OMB-2023-0017) that would explicitly permit state and local recipients to use federal funds to establish community benefits agreements, hiring requirements for underserved communities, community workforce agreements, and other measures to direct economic opportunities generated by federal spending to disadvantaged communities. Similarly, the proposed updates to the guidance would explicitly permit the use of socially and environmentally responsible bid preferences and rewards.
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- 40 “Promising Practices for Meaningful Public Involvement in Transportation Decision-Making,” DOT, Nov. 8, 2023, https://www.transportation.gov/sites/dot.gov/files/2023-11/Promising%20Practices%20for%20Meaningful%20Public%20Involvement_2023Update_FINAL.pdf.
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- 43 “News Release: Mayor Daniella Levine Cava announces Miami-Dade County is “Open for Business” with new contracting reforms,” Miami-Dade County, Apr. 11, 2022, <https://www.miamidade.gov/releases/2022-04-11-mayor-values-procurement.asp>; “Strategic Procurement Department Business Plan,” Miami-Dade County, July 19, 2023, at 6, <https://www.miamidade.gov/performance/library/business-plans/FY-2023-24-strategic-procurement.pdf>.
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- 51 *Id.* at 20.
- 52 *Id.* at 26.
- 53 “Regional Workforce Equity Agreement,” City of Portland, Multnomah County, and Metro (May 2022), <https://www.portland.gov/sites/default/files/council-documents/2022/rwea-february-7-2022-final-rev.pdf> (provisions include workforce diversity goals for women and people of color, apprenticeship utilization and retention goals, antiharassment protections and antidiscrimination requirements, a targeted contracting program, and a technical assistance fund).
- 54 “San Diego Association of Governments Community Benefits Agreement,” (May 19, 2022), <https://www.sandag.org/-/media/SANDAG/Documents/PDF/about/work-with-us/community-benefits-agreement/SANDAG-community-benefits-agreement-2022-01-19.pdf> (Note that despite the agreement’s title it is an example of a Community Workforce Agreement) (provisions include a workforce utilization and development program targeting disadvantaged workers, apprenticeship recruitment and training requirements, a targeted contracting program, and nondiscrimination policies).
- 55 49 C.F.R. § 26.11(a)-(d).
- 56 See e.g., 28 C.F.R. §§ 42.106(b), .406(a) (Department of Justice); 10 C.F.R. § 1040.102 (DOE); 40 C.F.R. § 7.85 (EPA).
- 57 State and local agencies must also do additional research regarding their state’s guidance, governor’s executive orders, and unique local contexts to ensure their programs are in compliance with state and local laws, regulations, and policies.



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