

**COMMENTS OF THE ATTORNEYS GENERAL OF MASSACHUSETTS,  
COLORADO, MARYLAND, MINNESOTA, NEW YORK, OREGON, WISCONSIN,  
AND THE DISTRICT OF COLUMBIA**

April 10, 2023

**Via Electronic Submission**

**Re: *Request for Information seeking input on the United States Environmental Protection Agency's Environmental and Climate Justice Block Grant Program (Docket ID No. EPA-HQ-OEJECR-2023-0023)***

The Attorneys General of Massachusetts, Colorado, Maryland, Minnesota, New York, Oregon, Wisconsin, and the District of Columbia, submit these written comments in response to the U.S. Environmental Protection Agency's (EPA) February 2023 Request for Information (RFI) seeking input on its Environmental and Climate Justice (ECJ) Block Grant Program funded by the Inflation Reduction Act (IRA) (Docket ID No. EPA-HQ-OEJECR-2023-0023). We collectively support the continued efforts of EPA's Office of Environmental Justice and External Civil Rights (OEJECR) to solicit input from various stakeholders and to promote equity in this very important work.

We appreciate the opportunity to provide input on this funding initiative to ensure underserved communities enjoy the benefits of the IRA, while not bearing the disproportionate burdens of its investments. We also commend EPA for extending its initial comment period to allow stakeholders additional time to develop and submit meaningful comments to aid in achieving the goals of its RFI.

All of our comments are intended to help strengthen not only EPA's ECJ program to promote equitable principles in tangible and measurable ways, but also all of EPA's grant programs and attempts to aid disadvantaged communities through future funding initiatives. To ensure accountability and transparency and to demonstrate appreciation for stakeholder feedback that will be critical to the success of this historic funding, we strongly recommend that EPA develop and publish a full list of recommendations and comments received, along with detailed information about which recommendations will and will not be incorporated into the final ECJ Program. Although states are not directly eligible as funding recipients, community-based non-profit organizations, local government agencies, institutions of higher education, and Tribes will be applicants for this ECJ funding opportunity and will be implementing projects across our respective States aimed at equitably reducing climate pollution and implementing clean energy projects. Implementation of this ECJ program can significantly impact the ability of stakeholders within our states to receive funding, the amount of funding they receive, and their ability to implement projects that align with our states' broader climate and energy and environmental justice goals.

We offer the following comments to guide implementation of the ECJ program on its multiple aspects, including but not limited to, Program Design, Types of Projects to Fund, Reducing Application Barriers, Reporting and Oversight, and Technical Assistance. As requested, our comments are identified by and align with the topic and question number in the RFI. We also appreciate EPA’s invitation “to address additional areas of interest...related to the ECJ Program.”<sup>1</sup> These comments are found in the general comments section.

## **ECJ PROGRAM DESIGN**

### **Question 1: What should EPA consider in the design of the ECJ Program?**

Comment 1: EPA should provide a clear definition of the term “disadvantaged community” for purposes of this funding initiative.

In EPA’s effort to support Executive Order 14008’s directive on “how certain Federal investments might be made toward a goal that 40 percent of the overall benefits flow to disadvantaged communities”<sup>2</sup>, it is imperative that EPA clearly define the standards for qualifying as a disadvantaged community as it has done in other contexts.

For example, the White House Council on Environmental Quality’s (CEQ) Climate and Economic Justice Screening Tool Frequently Asked Questions points to Executive Order 14008 as defining “disadvantaged communities” as “those that are marginalized, underserved, and overburdened by pollution.”<sup>3</sup> Similarly, Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities”, provides a clear and detailed definition of the term “underserved communities”.<sup>4</sup> The term “underserved communities” specifically “refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of ‘equity.’”<sup>5</sup> In turn, Executive Order 13985’s definition of “equity” refers to “the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to underserved communities... such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.”<sup>6</sup> While EPA’s RFI notes that “Underserved Communities may also

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<sup>1</sup> EPA-HQ-OEJECR-2023-0023-0002, EPA Request for Information on the Environmental and Climate Justice Block Grant Program, p1 (Feb. 9, 2023), <https://www.regulations.gov/document/EPA-HQ-OEJECR-2023-0023-0002>.

<sup>2</sup> See Exec. Order 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021) (Tackling the Climate Crisis at Home and Abroad).

<sup>3</sup> *Climate and Economic Justice Screening Tool: Frequently Asked Questions*, The White House, (Feb. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/02/CEQ-CEJST-QandA.pdf>.

<sup>4</sup> See Exec. Order 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021) (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government).

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

include...disadvantaged communities,” it does not detail what “disadvantaged communities” will include.<sup>7</sup>

Recognizing that all communities have some disadvantages, EPA should provide a similarly detailed definition in the RFI to capture the parameters of disadvantaged communities intended to receive EPA’s ECJ funding and should be more prescriptive than a reference to “as defined by the Administrator of EPA”.<sup>8</sup>

Comment 2: EPA should utilize quantitative factors by which communities can be measured to identify and support the most disadvantaged communities.

EPA should acknowledge that all disadvantaged and underrepresented communities do not endure and have not historically endured the same burdens. To that end, EPA should incorporate procedures to recognize and support the most disadvantaged communities by using measurable factors and new or existing mapping tools. Some potentially helpful existing federal mapping tools include, but are not limited to, CEQ’s Climate & Economic Justice Screening Tool,<sup>9</sup> the Agency for Toxic Substances and Disease Registry’s (ATSDR) Environmental Justice Index Mapping Tool,<sup>10</sup> and EPA’s own Environmental Justice Screening and Mapping Tool (EJScreen)<sup>11</sup>. State environmental justice screening and mapping tools, state laws, and state definitions can also be utilized such as New York’s Disadvantaged Communities (DAC) Screening Tool, California’s 2021 Environmental Screening Tool (CalEnviroScreen 4.0), New Jersey’s Environmental Justice Law (N.J. Stat. § 13:1D-158), and Massachusetts’ Environmental Justice Population Definition.

For example, New York’s DAC Tool uses 45 criteria to identify disadvantaged communities, which includes communities within census block groups that meet the HUD 50% Area Medium Income (AMI) threshold and are also in their Department of Environmental Conservation’s potential EJ areas or communities that are located within NY State Opportunity Zones.<sup>12</sup> In 2022, CalEPA designated four categories of geographic areas as disadvantaged, which are: (1) census tracts receiving the highest 25 percent of overall scores in CalEnviroScreen 4.0; (2) census tracts lacking overall scores in CalEnviroScreen 4.0 due to data gaps, but receiving the highest 5 percent of CalEnviroScreen 4.0 cumulative pollution burden scores; (3) census tracts designation as disadvantaged in 2017; and (4) lands under the control of federally recognized Tribes.<sup>13</sup>

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<sup>7</sup> EPA-HQ-OEJECR-2023-0023-0002, p2.

<sup>8</sup> EPA-HQ-OEJECR-2023-0023-0002, p3.

<sup>9</sup> *Climate and Economic Justice Screening Tool*, The White House Council on Envntl. Quality, <https://toolkit.climate.gov/tool/climate-and-economic-justice-screening-tool#:~:text=The%20Climate%20and%20Economic%20Justice,the%20nation%20facing%20significant%20burdens>, (last visited Apr. 10, 2023).

<sup>10</sup> *Environmental Justice Index*, Agency for Toxic Substances and Disease Registry, <https://www.atsdr.cdc.gov/placeandhealth/eji/index.html>, (last visited Apr. 10, 2023).

<sup>11</sup> *EJ Screen: Environmental Justice Screening and Mapping Tool*, U.S. Envntl. Prot. Agency, <https://www.epa.gov/ejscreen>, (last visited Apr. 10, 2023).

<sup>12</sup> *Disadvantaged Communities*, New York State, <https://www.nyserda.ny.gov/ny/Disadvantaged-Communities>, (last visited Apr. 10, 2023).

<sup>13</sup> SB 535 Disadvantaged Communities Map, Cal. Envntl. Prot. Agency, <https://oehha.ca.gov/calenviroscreen/sb535>, (last visited Apr. 10, 2023).

In addition, New Jersey’s Environmental Justice Law, N.J. Stat. § 13:1D-158, uses quantitative factors to define “overburdened community” as “any census block group...in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency.”<sup>14</sup> Massachusetts uses one or more of the following criteria to define an environmental justice population: “(i) the annual median household income is not more than 65 per cent of the statewide annual median household income; (ii) minorities comprise 40 per cent or more of the population; (iii) 25 per cent or more of households lack English language proficiency; or (iv) minorities comprise 25 per cent or more of the population and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 per cent of the statewide annual median household income.”<sup>15</sup> EPA should employ a similar approach here, of using multiple environmental, climate and demographic indicators to identify and support the most disadvantaged and underrepresented communities.

Comment 3: EPA should take proactive steps to incorporate equity into its Requests for Proposals, Requests for Applications, and Notices of Funding Opportunities development and scoring procedures.

EPA’s strategy should incorporate equity in its funding mechanisms to incentivize participation and increase the success rate of funding organizations serving disadvantaged communities. Historically, most funding opportunities and solicitations have been implemented through competitive processes and structured applications such as Requests for Proposals (RFP), Requests for Applications (RFA), and Notices of Funding Opportunities (NOFO). We recommend that EPA employ measures that value historic community engagement and involvement for organizations that may not have been able to successfully compete in these processes, such as prioritizing an applicant’s connection to the community, and eliminating “neutral score” criteria. We further recommend that EPA rank applicants based on their total percentage of allowable points earned rather than their total points earned.

First, EPA should prioritize an applicant’s connection to the community and their history working with disadvantaged and underserved communities. EPA should recognize that, although organizational experience is important, even if an applicant does not have a past history of managing grants per se, it could still have the capacity to do so effectively. Working “in” a community experiencing environmental injustice (“EJ Community”) does not mean doing environmental justice work. Environmental Justice work requires the meaningful involvement of the people who live in that community who are most and disproportionately impacted by the harms being addressed. Working in an EJ Community without involving the people most impacted only creates and exacerbates environmental injustices because resources may not serve the community’s most pressing needs or preferred methods of implementation. EPA should ensure the total point distribution of funding mechanisms prioritizes community-based factors.

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<sup>14</sup> N.J.Stat. 13:1D-158

<sup>15</sup> Mass. Gen. Laws. ch. 30, § 62.

Second, EPA should eliminate any “neutral score” criteria. Instead, EPA should rank and award applicants based on their total percentage of allowable points earned rather than their total points earned. Newer applicants often have been historically overlooked. If newer applicants are not allowed to earn the maximum number of points by default, they are disadvantaged in the process by design. For example, in EPA’s 2022 Environmental Justice Small Grant (EJSG) Program<sup>16</sup> and 2023 Environmental Justice Collaborative Problem-Solving (EJCPS) Grant Program,<sup>17</sup> new applicants can only receive a total of 3 out of the 6 maximum points under the RFA’s Past Performance Criteria. The difference in receiving these three points, however, can be critical to receiving or not receiving a final award. For context, a perfect new applicant can only score 97 points compared to a perfect experienced applicant’s 100 points. Ranking applications based on total percentage points earned would result in the new applicant receiving 97 out of 97 points (100%) and the experienced applicant receiving 100 out of 100 points (100%), thus leveling the playing field for historically marginalized applicants.

**Question 3: Views on a 12-month rolling basis application period.**

Comment 1: All applicants should submit proposals and be scored at the same time.

All applicants should have the same scoring environment and opportunities. Rather than the two extremes of a 45-day submission period or a 12-month rolling basis, we recommend finding a reasonable middle ground, such as a 90-day submission period. Although there could be some benefit to having applicants submit and be ranked on a 12-month rolling basis, such as awarding funding to communities sooner than later, that approach may unintentionally allow for too much bias in the award process. Applicants with greater sophistication and professional grant writers may be more likely to submit quality applications first. This would have the unintentional effect of decreasing the funding pool for less experienced applicants who submit their applications toward the end of the 12-month period. A rolling submission period may also result in applicants being scored unevenly or under different circumstances.

An additional consideration is to have multiple quarterly submission periods where an equal amount of funding is allocated for each submission period. This may provide flexibility to applicants who are not ready to apply early without limiting their access to funding. In addition, it may support smaller organizations appreciation of multiple opportunities to apply, while also minimizing EPA’s administrative burden of processing and managing a significant amount of grants issued at the same time.

**Question 4: Replacing written portions of the application with an oral presentation.**

Comment 1: EPA should evaluate all applicants based on the same criteria and standards.

We appreciate EPA’s attempts to streamline the grant competition process and expedite the delivery of assistance for disadvantaged communities. However, EPA must ensure these

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<sup>16</sup> Catalog of Federal Domestic Assistance (CFDA) NO.: 66.604; EPA-OP-OEJ-22-01, [https://www.epa.gov/system/files/documents/2022-03/ejsg-tribal-arp-rfa\\_final\\_3.21.2022.pdf](https://www.epa.gov/system/files/documents/2022-03/ejsg-tribal-arp-rfa_final_3.21.2022.pdf).

<sup>17</sup> Catalog of Federal Domestic Assistance (CFDA) NO.: 66.306; EPA-R-OEJECR-OCS-23-01, <https://www.epa.gov/system/files/documents/2023-01/EJCPS%20Request%20for%20Applications%202023.pdf>.

efforts do not result in different standards or procedures for different applicants. Any deviation from a consistent standard for all applicants may result in discriminatory practices. Oral presentations may be helpful, particularly for entities without grant writing support and experience. If an oral presentation discussing predetermined questions is implemented, however, it should be required for all applicants, evaluated according to predetermined, consistent standards, and not tailored to any subset of applicants.

In addition, any oral presentations should have considerations and support for Limited English Proficient (LEP) applicants, as well as American Sign Language (ASL) support for presenters. Pre-recorded videos should also be allowed with considerations on how best to incorporate a questions and answer portion for adequate engagement.

## **ELIGIBLE PROJECTS**

### **Question 1: Which projects should EPA focus on and prioritize?**

Comment 1: EPA should prioritize projects that provide clear and specific details on how and when community engagement and public participation will occur.

Providing clear directives and minimum requirements related to community engagement and public participation is critical to ensuring equitable implementation. Some examples of important community engagement and public participation measures include, but are not limited to, a minimum number of required outreach events or community meetings; daytime and evening meeting availability; translation and interpretation services; in-person as well as remote options; remote access by phone (a computer and internet connection should not be required for remote participation or translation services); multiple ways to participate and provide input to agency decisions, including through written and oral comments; and multiple methods for public notification, beyond publication in newspapers and distribution via email (e.g., flyer distribution, social media posts, TV/radio ads, and educational sessions). EPA should require these measures be implemented by funding recipients to ensure meaningful community engagement and public participation consistently throughout the ECJ program implementation and prioritize those projects with the most robust community engagement strategies.

Comment 2: EPA should consider prioritizing projects that align with the communities' priorities and lead to better enforcement of environmental laws and regulations.

EPA should prioritize projects that are based off a community-led agenda. For example, one overarching issue is community led pollution monitoring. Empowering disadvantaged communities to identify and report local environmental hazards will promote public safety and measure the benefits of previous or concurrent pollution mitigation and remediation projects. The results of community-led monitoring may also inform environmental enforcement decisions, leading to enforceable orders to remediate and deter future violations. Providing resources to community-led organizations that are closer to day-to-day facility operations, can be extremely

effective in collecting critical data which can be used to support stronger environmental protection standards.

**Question 2(a): What are the most significant challenges and barriers to connecting residents to workforce opportunities?**

Comment 1: EPA should require contaminated site-related program funded grant recipients to allocate a percentage of their funds to supporting graduates of EPA workforce-development training grant program recipients.

Perhaps the most significant barrier to connecting residents of disadvantaged, underserved, and under-represented communities to workforce opportunities is the lack of a formal requirement connecting recipients of EPA grants for remediation to recipients of EPA grants for job training. This disconnect can be compounded by a disproportionate funding of projects in these disadvantaged communities as compared to funding and resources available to support the training needs of residents from those communities.

For example, a pressing and historic problem in many disadvantaged communities is unemployment. EPA allocates hundreds of millions of dollars annually under its Brownfields program via its Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Grants, while only allocating a relatively small amount of funding to its Brownfields Job Training Program, just \$3 million in fiscal year 2022<sup>18</sup> and most recently \$12 million in fiscal year 2023.<sup>19</sup> Furthermore, and most importantly, there is no requirement or incentive for its Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Grant recipients to hire or work with graduates of EPA's Brownfields Job Training program. In fact, 0 out of 180 points in EPA's \$60 million FY2023 Brownfield Clean-up Grant RFA were allocated towards the hiring of graduates from EPA's Brownfields Job Training program or residents from the communities most impacted.<sup>20</sup> Although it is an extremely valuable program that brings huge benefits to disadvantaged communities, encourages the use of EPA's EJScreen Tool, and suggest communicating project progress to impacted residents, it lacks the direct connection to employing the residents from the communities who are most impacted. This same disconnect can be found in EPA's Superfund Program<sup>21</sup> with respect to its Superfund Job Training Initiative.<sup>22</sup>

Leveraging EPA's authority to support and connect graduates of its workforce development programs to the funding it awards under its clean-up grant programs would allow unemployed and underemployed residents to work on cleaning up contaminated properties, often in their own communities. This relationship would instill pride in local residents, as well as the community as a whole. Additionally, a more formal and consistent relationship between EPA

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<sup>18</sup> Catalog of Federal Domestic Assistance (CFDA) NO.: 66.815; EPA-OLEM-OBLR-21-03, <https://www.epa.gov/system/files/documents/2021-08/21-03.pdf>

<sup>19</sup> Catalog of Federal Domestic Assistance (CFDA) NO.: 66.815; EPA-I-OLEM-OBLR-22-02, <https://www.epa.gov/system/files/documents/2022-06/FY23%20BF%20JT%20RFA.pdf>

<sup>20</sup> Catalog of Federal Domestic Assistance (CFDA) NO.: 66.818; EPA-I-OLEM-OBLR-22-09, <https://www.epa.gov/system/files/documents/2022-10/22-09.pdf>.

<sup>21</sup> *Superfund*, U.S. Env'tl. Prot. Agency, <https://www.epa.gov/superfund>, (last visited Apr. 10, 2023).

<sup>22</sup> *Superfund Job Training Initiative*, U.S. Env'tl. Prot. Agency, <https://www.epa.gov/superfund/superfund-job-training-initiative>, (last visited Apr. 10, 2023).

funded grant programs would shift the current goals of helping graduates find job opportunities, which can often be temporary and inconsistent, to building relationships with employers which are more likely to develop into long-term and more stable career development opportunities. EPA should create, incentivize, and implement requirements to leverage and restructure existing grant programs to make them “work better for the communities that need this support the most”<sup>23</sup>.

### **ELIGIBLE RECIPIENTS**

#### **Question 3: Ensuring projects are community-driven and result in benefits flowing to the community.**

Comment 1: EPA should prioritize and allocate funding directly to community organizations themselves rather than their partner organizations.

To implement the true intent of the Biden-Harris Administration’s Justice40 Initiative and deliver 40% of the overall benefits of climate, clean energy, and other investments to disadvantaged communities,<sup>24</sup> we strongly recommend allocating funding directly to community organizations in and representative of disadvantaged communities themselves, rather than their partners. Input or decision-making from local, state, and or quasi-governmental entities, businesses, and large non-profit organizations that work in disadvantaged communities does not constitute or substitute for meaningful involvement of community-based organizations. Indeed, funding entities that partner with community-based organizations may unintentionally shift the power dynamic between the two. This disconnect was recently highlighted in a 2023 Yale study confirming that some entities “have given more money to individual green groups...than to every U.S. environmental justice group put together.”<sup>25</sup> “The analysis examined more than 30,000 environmental and public health grants from 2015 to 2017, finding that more than half of grant money went to organizations with revenues of at least \$20 million.”<sup>26</sup> While environmental justice groups and community organizations “with less than \$1 million in revenues received less than 4 percent.”<sup>27</sup> Additionally, “less than 10 percent of grant dollars went to organizations focused on people of color.”<sup>28</sup>

Instead, EPA should allocate resources to community-based organizations themselves, which are typically led by long-time residents, to provide resources directly to disadvantaged communities. This would also reward and recognize the advocacy work historically done by these organizational leaders without significant government resources. Such resource allocation

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<sup>23</sup> E-mail from EPA Environmental-Justice, [Environmental-Justice@epa.gov](mailto:Environmental-Justice@epa.gov), to EPA's Environmental Justice Listserv: EPA Seeks Input on Inflation Reduction Act Environmental and Climate Justice Program (Feb. 9, 2023, 12:03PM EST) (quoting Marianne Engelman-Lado, Acting Principal Deputy Assistant Administrator for the Office of Environmental Justice and External Civil Rights).

<sup>24</sup> See Exec. Order 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

<sup>25</sup> Taylor, Dorceta & Blondell, Molly. (2023). Examining Disparities in Environmental Grantmaking: Where the Money Goes. 10.13140/RG.2.2.10106.36801, <https://e360.yale.edu/digest/green-groups-environmental-justice-foundation-funding>

<sup>26</sup> Taylor, Dorceta & Blondell, Molly, *supra* note 3

<sup>27</sup> Taylor, Dorceta & Blondell, Molly, *supra* note 3

<sup>28</sup> Taylor, Dorceta & Blondell, Molly, *supra* note 5



also assists community-based organizations in building their internal capacity to continue to advocate and address environmental injustices in their communities. Dorceta Taylor, Professor of Environmental Justice at the Yale School of the Environment acknowledged “the communities that are most in need of funding are the ones getting the least funds to do environmental work.”<sup>29</sup>

Comment 2: EPA should implement and verify high standards of community involvement for applications in which a community-based organization is not the lead applicant.

Recognizing that not all community-based organizations will prefer to be the lead applicant, we recommend requiring that applicants who are not community-based organizations themselves provide at least 2-3 letters of support from community organizations historically rooted in the disadvantaged community. EPA should confirm community-based organization involvement and support by contacting the organizations directly and verifying their commitment to and role in the project. This practice is imperative to confirm notification and involvement of impacted community members and organizations who have historically carried the burden of disproportionate environmental and climate impacts. Additionally, we encourage EPA to not only to incentivize multiple partnerships, but also to value the strength and meaningfulness of those partnerships rather than the quantity.

## **REPORTING & OVERSIGHT**

**Question 1: What governance structures, reporting measures, and audit requirements should EPA consider?**

Comment 1: EPA should establish Regional Offices of Environmental Justice and Civil Rights tasked with supporting random auditing and oversight of grantees.

To ensure effective, efficient, and equitable implementation of ECJ funds, local and accessible authorities should conduct oversight of grantee operations and activities. Despite the best efforts and intentions of the centralized OEJECR in Washington, D.C., without the same structural presence in regional EPA offices throughout the country, local community-based organizations and tribes are often left without timely access to the specialized needs and expertise these offices provide. If and when these community-based organizations have the capacity and perseverance to succeed in elevating their issues to OEJECR, significant and often irreversible harm may have already occurred. “Many recipients do not have Title VI safeguards [which] creates a risk that EPA’s pre-award reviews are not successful in identifying...Title VI weaknesses”<sup>30</sup>. Indeed, “EPA’s Civil Rights Office has never denied funding or held up an award due to Title VI concerns.”<sup>31</sup>

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<sup>29</sup> Taylor, Dorceta & Blondell, Molly, *supra* note 2

<sup>30</sup> US EPA Office of Inspector General, Improved EPA Oversight of Funding Recipients' Title VI Programs Could Prevent Discrimination, Report No. 20-E-0333 (Sept. 2020) at 12.

<sup>31</sup> See *id.*

Regional Offices of Environmental Justice and Civil Rights can also provide grant recipient support in addition to auditing and oversight. These offices would have the capacity and unique expertise to help aid grantees in effectively implementing funds in a manner that aligns with Justice40 principles proactively and can identify Environmental Justice-related issues before they escalate and result in potential Title VI Civil Rights claims. This regional and national office alignment would be consistent with other regional and national EPA offices and divisions, such as Emergency Management, Enforcement and Compliance Assurance, Water, Mission Support, and Air and Radiation. We suggest that EPA establish these local offices of Environmental Justice and Civil Rights to have the structural support available to take a more proactive and preventative approach in ensuring responsible and efficient oversight of grantee operations and activities.

Comment 2: EPA should implement Memoranda of Understanding (MOUs) to ensure effective and efficient implementation and oversight of operations and activities.

EPA should institute accountability measures for funded entities and organizations that do not meet their obligations and commitments or fail to perform as promised, particularly those entities that receive significant amounts of funding or fail to meet their obligations on a reoccurring basis. Specifically, EPA should adopt and implement explicit consequences for noncompliance to ensure the anticipated benefits of the project are achieved in the targeted community and to enforce the equitable implementation of environmental and climate justice principles in a meaningful way, particularly for disadvantaged communities who have civil rights concerns. A potential recipient's willingness to enter into a voluntary MOU could be integrated into the RFP point structure, which then could become enforceable upon award. These MOUs could incorporate language allowing for a temporary or permanent freeze on funding, a reallocation of funding, a temporary restriction on eligibility for future funding projects, or a permanent restriction for repeat violators. This strict, transparent, and proactive approach would aid in ensuring funding recipients meet the intent of the program, as well as deter them from repeating practices which have added to the historic injustices experienced by these disadvantaged communities.

Comment 3: EPA should promote equity in their oversight and auditing practices by implementing oversight based on the size and capacity of Community Based Organizations.

Smaller community-based organizations struggle to meet the reporting requirements to demonstrate administrative compliance with grant terms. Staff administrative capacity is often limited, and detailed training is often required on how to comply with federal grant regulations and reporting obligations. Additional barriers such as staff turnover result in training burdens and additional costs that reduce the time and resources these organizations can allocate to programmatic efforts. Furthermore, such organizations often face additional requirements implemented by their state and local governments increasing the complexity of the application, awarding, and reporting process. To address this concern EPA should consider providing a scaled approach to oversight of smaller organizations including streamlined ability to extend deadlines or waivers for certain aspects of the oversight process where EPA deems it appropriate.

#### **Question 4: Tracking program progress and outcomes.**

Comment 1: EPA should collect feedback directly from impacted community members to track and measure relevant program progress and outcomes to ensure project benefits reach those who need them the most.

EPA should collect and require applicants to submit detailed and specific data, prior to an award of funding, identifying the distinct disadvantaged populations intended to benefit from the proposed project. EPA’s External Civil Rights Compliance Office (ECRCO) “does not otherwise systematically collect data from EPA funding recipients . . . about the composition of the populations they serve.”<sup>32</sup> A 2012 Civil Rights Executive Committee report recommended requiring recipients to submit data on “affected persons and communities and on [limited-English proficiency] compliance” to support identifying and targeting “recipient programs that may be at risk for noncompliance or may be struggling with Title VI implementation.”<sup>33</sup> In addition to requiring the reporting of this information as part of the funding application, EPA should implement measures to collect feedback directly from these “affected persons” and community members throughout the course of project implementation or require funding recipients to implement these feedback collection strategies requiring the inclusion of the grants project officer or other agency representative. Some strategies to collect this feedback include, but are not limited to, electronic surveys, postcards mailings, and targeted community feedback listening sessions. Regardless of the collection strategy, hearing directly from affected persons and impacted stakeholders is critical to ensuring program goals and objectives are achieving their intended results.

### **TECHNICAL ASSISTANCE**

#### **Question 2: What organizations and institutions should provide technical assistance?**

Comment 1: Technical assistance should be provided by those organizations with a historical and close relationship to the impacted community.

Technical assistance often comes in the form of organizing, strategizing, identifying community priorities, and developing strategic plans to implement solutions targeted at addressing the community’s needs. Long-term community members and community-based organizations have already done similar work for years without compensation and have a deeper understanding than outside entities of the community’s needs as well as the obstacles to addressing them. Funding outside entities to come into communities to do this work can: prolong the implementation of solutions by taking additional time to gain feedback on the many complicated issues; create tension between local residents and the outside entity trying to provide support; and, most importantly, devalue the effort and uncompensated work that has been done by the community-based organizations and residents over the years. Technical assistance and resources should be viewed as the expertise needed to assist these disadvantaged communities’

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<sup>32</sup> See *id.* at 12

<sup>33</sup> See *id.* at 13.

most pressing needs rather than the expertise associated with professional work experience or educational degrees and accolades.

## **GENERAL COMMENTS**

### **Question 1: Any other comments on the ECJ program?**

Comment 1: EPA should implement creative solutions to support community organizations representing disadvantaged communities known to have suffered significant environmental injustices.

EPA should consider allocating discretionary funding, factoring additional points, and including special considerations for community-based organizations representing disadvantaged communities known to have suffered significant environmental harms due to environmental injustices and natural disasters. Finding creative solutions to support projects in these communities is imperative to addressing environmental and climate justice holistically and in its most equitable form. Impacts to these communities have existed for long periods of time, often without being fully resolved, causing displacement and disinvestment, as well as hampering these communities from competing meaningfully against other programs in national funding opportunities. Some communities that have suffered significant environmental injustices may include, but are not limited to, Flint, Michigan; New Orleans, Louisiana; Puerto Rico; and the Virgin Islands. Implementing creative solutions to support these communities shows a true understanding of environmental justice by aiding all disadvantaged communities and preventing future harms, but also by addressing and giving the much-needed attention to those communities who have suffered significant past environmental injustices.

### **Related Comments**

Comment 1: EPA should clearly define what constitutes a community “benefit”.

EPA should require projects receiving funding to yield tangible and measurable, rather than subjective and qualitative, benefits in communities where the projects will be implemented and require associated milestones with project benefits. EPA should also specify a geographic nexus to the community benefit as defined by a direct benefit “in” the disadvantaged community rather than an indirect benefit as a result of a project or work “near, adjacent to, or upstream” of the disadvantaged community.

Comment 2: EPA should allow community-based organizations to be eligible for all opportunities associated with funding announcements tailored toward bringing benefits to disadvantaged communities.

Although EPA’s recent announcement of \$16 million for Pollution Prevention in Environmental Justice Communities is intended to “advance environmental justice” by “adopt[ing] pollution prevention practices”, it is structured to support “technical assistance to businesses” and only encourages eligible entities to “consider partnering with . . . community

organizations”.<sup>34</sup> Furthermore, “community groups...are not directly eligible to apply,” but are encouraged to partner with those receiving the funding intended to benefit their communities. Of the approximately \$40.4 million dollars allocated over two years under EPA’s Pollution Prevention Grant Programs, only 2.8% or approximately \$1.1 million of the funding opportunities allow community organizations to apply.<sup>35</sup> To ensure resources actually reach disadvantaged communities, EPA should allow community-based organizations to apply for all funding opportunities intended to benefit their communities. This approach would shift decision-making to community organizations and leaders resulting in partner organizations prioritizing community input. We recommend allowing community organizations to contract or sub-grant with businesses or other entities to implement community benefits tailored to community-based priorities.

## CONCLUSION

We appreciate and thank EPA for the opportunity to provide these comments to ensure the implementation of the ECJ funding opportunity helps support disadvantaged communities to the fullest extent practicable. We recognize EPA’s attempts to incorporate similar equitable principles historically and we also are aware of implementation challenges due to potential limitations in EPA’s statutory authority. We hope our comments are helpful and support advancing the goals of the Biden-Harris Administration’s Justice40 Initiative by proposing solutions as well as identifying structural barriers in an attempt to create opportunities to remove them. We commend EPA for its efforts and look forward to supporting EPA and communities across the county to capitalize on this very important and historic opportunity.

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<sup>34</sup> Catalog of Federal Domestic Assistance (CFDA) NO.: 66.708; EPA-I-OCSP-OPPT-FY2023-002, <https://www.grants.gov/web/grants/search-grants.html?keywords=EPA-I-OCSP-OPPT-FY2023-002>.

<sup>35</sup> *Grant Programs for Pollution Prevention*, U.S. Env’tl. Prot. Agency, <https://www.epa.gov/p2/grant-programs-pollution-prevention>, (last visited Apr. 10, 2023).

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