



May 25, 2022

VIA ELECTRONIC SUBMISSION

Brenda Mallory, Chair
Council On Environmental Quality
730 Jackson PI NW
Washington, D.C. 20503

Re: Comments on CEQ’s Beta Version of Its Climate and Economic Justice Screening Tool (CEQ Docket CEQ-2022-0002).

Dear Chair Mallory:

On February 23, 2022, the Council on Environmental Quality (CEQ) issued a request for information (RFI) to solicit feedback on the beta version of its Climate and Economic Justice Screening Tool (CEJS Tool).¹ This letter constitutes the Office of Advocacy’s (Advocacy) public comments in response to the RFI. Advocacy encourages the CEQ to expand its listed indicators used to determine whether a community is “disadvantaged” to ensure that disadvantaged communities located within small governmental jurisdictions are properly captured by the CEJS Tool. In addition, Advocacy encourages CEQ to directly engage with small governmental jurisdictions and their residents to learn how they may face inequities and be disadvantaged.

The Office of Advocacy

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities, including small governmental jurisdictions, in front of Congress, the White House, and federal agencies. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

Background of the Justice40 Initiative

The Justice40 Initiative was created through Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (E.O. 14008).² Per E.O. 14008, CEQ was directed to work with the White House Office of Management and Budget (OMB) and the National Climate Advisor to publish recommendations on how “40 percent of the overall benefits” from certain Federal investments

¹ 87 Fed. Reg. 10176 (Feb. 23, 2022).

² 86 Fed. Reg. 7619 (Feb. 1, 2021)

to bolster clean energy and economic mobility would flow to “disadvantaged communities.”³ On July 20, 2021, CEQ, OMB, and the National Climate Advisor distributed Interim Implementation Guidance for the Justice40 Initiative (Guidance) to the heads of every federal department and agency.⁴

The Guidance recommends agencies use certain indicators to identify a “disadvantaged community” under the Justice40 Initiative. These indicators for “disadvantaged” include the following:

1. Low income, high and/or persistent poverty,
2. high unemployment and underemployment,
3. racial and ethnic residential segregation,
4. linguistic isolation,
5. high housing cost burden and substandard housing,
6. distressed neighborhoods,
7. high transportation cost burden and/or low transportation access,
8. disproportionate environmental stressor burden and high cumulative impacts,
9. limited water and sanitation access and affordability,
10. disproportionate impacts from climate change,
11. high energy cost burden and low energy access,
12. jobs lost through the energy transition, and
13. access to healthcare.⁵

Communities that qualify as “disadvantaged” based upon one or more of these indicators are more likely to be the beneficiary of certain Federal investments aimed at bolstering clean energy and economic mobility. As a result, CEQ should take care to properly identify all communities that are “disadvantaged”—many of which are encapsulated or governed by small governmental jurisdictions—to direct these Federal investments to benefit all disadvantaged communities.

The Climate and Economic Justice Screening Tool

On February 23, 2022, the CEQ made available the beta version of the CEJS Tool for consideration by the public.⁶ The CEJS Tool attempts to identify all “disadvantaged communities” under the Justice40 Initiative⁷ and uses certain publicly available data sets to make such determinations.⁸ Under the CEJS Tool, a community will be deemed “disadvantaged” “if

³ Id.

⁴ Interim Implementation Guidance for the Justice40 Initiative, White House Office of Management and Budget, available at <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf> (last accessed April 18, 2022).

⁵ See id.

⁶ 87 Fed. Reg. 10176 (Feb. 23, 2022).

⁷ See Climate and Economic Justice Screening Tool Beta, Council on Environmental Quality, available at <https://screeningtool.geoplatform.gov/en/about#3/33.47/-97.5> (last accessed April 18, 2022).

⁸ See Id.

the census tract is above the threshold for one or more environmental or climate indicators” and “above the threshold for the socioeconomic indicators.”⁹

Advocacy’s Recommendations

Advocacy encourages CEQ to ensure no important indicators to determine which communities are “disadvantaged” under the Justice40 Initiative have been overlooked. The failure to consider all appropriate indicators to make this determination will lead to some disadvantaged communities being unintentionally excluded from the benefits of and achieving the goals of the Justice40 Initiative. Many such communities that could qualify as disadvantaged include those governed by small governmental jurisdictions.¹⁰

A. Advocacy recommends that data sets used by the CEJS Tool be directly linked and that the use of the data be more robustly explained

The CEJS Tool currently identifies eight categories that could result in a community being designated as “disadvantaged.”¹¹ Each of the eight categories contains terms, such as “low income” or “linguistic isolation” or “diabetes,” which are indicators used to determine whether a community is “disadvantaged” under the Justice40 Initiative.¹² The CEJS Tool provides a short definition for each of these terms alongside a link to the data source used to determine if a community has satisfied that indicator’s threshold to qualify as “disadvantaged.”¹³ Each data source link directs the user to a general webpage of the organization that provided the applicable data, but it fails to direct the user to the actual data itself. The CEJS Tool attempts to compile all data sets used by providing a spreadsheet titled “data sources used in the CEJST.” However, this spreadsheet created by CEQ only provides the conclusions of whether communities meet certain indicator thresholds and only provides a quantitative number summarizing some of those indicators.¹⁴

Advocacy encourages CEQ to provide a link directly to the data being relied upon by the CEJS Tool to determine a community’s status as “disadvantaged” under the Justice40 Initiative. In addition, Advocacy encourages CEQ to provide a more robust explanation for each of the eight categories explaining its indicators, how the indicators were selected from the data set, a description of the original data, and the purpose for collecting the original data.

B. Advocacy recommends that the CEJS Tool explain why certain percentile thresholds were selected for indicators

⁹ See Climate and Economic Justice Screening Tool Beta, Methodology & Data, Council on Environmental Quality, available at <https://screeningtool.geoplatform.gov/en/methodology#3/42.09/-122.17> (last accessed April 18, 2022).

¹⁰ Advocacy is using the term “small governmental jurisdiction” as defined in 5. U.S.C. § 601(5) of the Regulatory Flexibility Act.

¹¹ See Climate and Economic Justice Screening Tool Beta, Methodology & Data, Council on Environmental Quality, available at <https://screeningtool.geoplatform.gov/en/methodology#3/42.09/-122.17> (last accessed April 18, 2022).

¹² See id.

¹³ See id.

¹⁴ See id.

Each of the eight categories used to determine whether a community is “disadvantaged” under the Justice40 Initiative requires a community to meet or exceed certain percentiles for various environmental/climate indicators as well as various socioeconomic indicators.¹⁵ For example, the first category designates a community as “disadvantaged” if it is “at or above the 90th percentile for expected agricultural loss rate OR expected building loss rate OR expected population loss rate, AND is above the 65th percentile for low income AND 80 % or more of adults 15 or older¹⁶ are not enrolled in higher education” (capitalization in original). The CEJS Tool does not explain why it has set any of the specific percentile benchmarks for the various indicators for any of the eight categories.

It is important for small entities to understand why a community that, for example, is at the 90th percentile for expected agricultural loss could be considered “disadvantaged” while a community that is at only the 89th percentile for each of agricultural loss, building loss, and population loss is not. Advocacy encourages CEQ to explain why it chose specific percentile thresholds for the various indicators and how CEQ has ensured that disadvantaged communities on the threshold of qualifying as “disadvantaged” under the Justice40 Initiative are not inadvertently excluded.

C. Advocacy recommends communities that host higher education institutions not be subject automatically to the 80 percent higher education enrollment indicator threshold.

For each of the eight categories, a community must have “80 % or more of adults 15 or older not enrolled in higher education” to be designated as “disadvantaged.”¹⁷ Thus, a community that has catastrophic agricultural loss, catastrophic building loss, catastrophic population loss, high energy burden, and significant air pollution would still not be designated as “disadvantaged” if that same community had more than 20 percent of adults 15 or older enrolled in higher education. Based upon this indicator threshold, most communities that host any higher education institution would automatically not qualify as “disadvantaged.” Many communities, including many small governmental jurisdictions, host higher education.

Advocacy recommends revising or clarifying this indicator to ensure that communities that host higher education institutions within their boundaries or the related census tracts are not inappropriately excluded from the “disadvantaged” designation only because of the existence of the higher education institution that naturally populates the community with many adults enrolled at the institution. The median distance college students go away to college is 94 miles¹⁸, while the average distance of a full-time community college student who commutes by automobile is 10.2 miles.¹⁹ Because census tracts used by the CEJS Tool vary greatly in size

¹⁵ See id.

¹⁶ CEQ’s CEJS Tool designates those 15 years or older as adults.

¹⁷ See id.

¹⁸ Student Choice of College: How Far Do Students Go for an Education? Mattern, Krista et. al., Journal of College Admissions, V.203 p.18-29 (2009), available at <https://eric.ed.gov/?id=EJ838811> (last accessed May 25, 2022).

¹⁹ Commuting Costs for Community College Students, Hyde, William, Journal of Student Financial Aid, Vol. 10, No. 3 (1980), available at <https://files.eric.ed.gov/fulltext/EJ248850.pdf#:~:text=CPS%20data%20show%20that%20among%20community%2>

based upon population, it is likely that both commuting and residential college students attend college in census tracts different than where they are actually from.

Advocacy also encourages CEQ to focus on the existence of “education deserts” within the United States. These “education deserts” are “communities with the most constrained set of postsecondary options” and, like “food deserts”, “do not occur at random but are systematically drawn along lines of race and class where low-income neighborhoods and communities of color tend to have the poorest access . . .” As of 2016, there are 295 commuting zone “education deserts.”²⁰ It is well-accepted that there is a direct correlation between attending college and higher income earnings.²¹ Advocacy encourages CEQ to designate each of the 295 commuting zone “education deserts” that also satisfy one or more of the environmental or climate indicators within the United States as “disadvantaged.”

D. Advocacy recommends the CEJS Tool identify which communities are unable to regularly utilize traditional energy sources.

The second of the eight categories allows for a community to be designated as “disadvantaged” if it is “at or above the 90th percentile for energy burden OR PM2.5 in the air, AND is above the 65th percentile for low income AND 80 % or more of adults 15 or older are not enrolled in higher education.”²² The two climate and energy indicators are “energy burden” and “PM2.5 in the air.” “Energy burden” is defined as the “average annual energy cost per household (\$) divided by average household income.” The “energy burden” indicator attempts to determine which communities spend a larger amount of their household income on energy usage through traditional energy sources such as electricity or gas. However, the data set used to access “energy burden” fails to take into consideration physical and financial access to an energy source.

There are some residents in small governmental jurisdictions who may not have access to the infrastructure to connect to electrical and gas sources. There are also some residents in small governmental jurisdictions who use alternative energy sources such as wood stoves because they lack the financial resources to connect and pay for either electricity or gas. Advocacy recommends that CEQ identify which communities lack proximate access to these energy sources and which communities have a high usage rate of wood stoves and comparable heat sources due to financial limitations.

E. Advocacy recommends the CEJS Tool designate communities without public transportation systems as disadvantaged.

[Ocollege%20%20students%2C,college%20students%20reported%20by%20the%20College%20Scholarship%20Service.2](#) (last accessed May 25, 2022).

²⁰ See Education Deserts: The Continued Significance of “Place” in the Twenty-First Century, American Council on Education and Center for Policy Research and Strategy, available at <https://www.acenet.edu/Documents/Education-Deserts-The-Continued-Significance-of-Place-in-the-Twenty-First-Century.pdf> (last accessed May 13, 2022).

²¹ See Higher Education and the Opportunity Gap, The Brookings Institution, available at <https://www.brookings.edu/research/higher-education-and-the-opportunity-gap/> (last accessed May 13, 2022).

²² See Climate and Economic Justice Screening Tool Beta, Methodology & Data, Council on Environmental Quality, available at <https://screeningtool.geoplatform.gov/en/methodology#3/42.09/-122.17> (last accessed April 18, 2022).

The third of the eight categories allows a community to be designated as “disadvantaged” if it is “at or above the 90th percentile for diesel particulate matter exposure OR traffic proximity and volume, AND is above the 65th percentile for low income AND 80 % or more of adults 15 or older are not enrolled in higher education.”²³ This third category will likely capture communities with significant traffic volume and congestion as “disadvantaged.”

However, the Guidance specifically lists “high transportation cost burden and/or low transportation access” as the applicable indicator. The data set used to identify this indicator only looks to data that determines if the highway infrastructure is overburdened by its user population. The data set will not identify communities that have limited or no access to public transportation.

Many small governmental jurisdictions do not offer public transportation systems to their residents. Instead, they must rely on traditional car and truck transportation to be able to move within their communities. Lack of readily available and affordable public transit is a barrier for communities from accessing both resources and opportunities compared to communities that offer widely available and affordable public transportation systems. Communities that do not have access to public transportation have worse health outcomes because of inaccessibility to both food resources and healthy food²⁴ as well as health care.²⁵ Comparably, communities that do not have access to public transportation are more likely to have lower employment rates²⁶ and less economic mobility.²⁷ For these reasons, Advocacy encourages CEQ to designate communities as “disadvantaged” if they are not located in areas that offer affordable and accessible public transportation systems.

F. Advocacy recommends the CEJS Tool designate communities not in close proximity to either hospitals or maternity wards as disadvantaged.

The seventh of the eight categories allows for a community to be designated as “disadvantaged” if it is “at or above the 90th percentile for asthma OR diabetes OR heart disease OR low life expectancy, AND is above the 65th percentile for low income AND 80 percent or more of adults 15 or older are not enrolled in higher education.”²⁸ The Guidance states that “access to health care” should be an indicator. Despite this, the CEJS Tool does not attempt to provide any data that would indicate whether a community has access to health care. Many small governmental jurisdictions do not have either hospitals or maternity wards within their jurisdiction. Their residents must travel long distances to a hospital or some other medical facility that has a

²³ See *id.*

²⁴ See Healthy Places: Transportation and Food Access, Centers for Disease Control and Prevention, available at <https://www.cdc.gov/healthplaces/healthtopics/healthyfood/transportation.htm> (last accessed May 13, 2022).

²⁵ See Essential Hospitals and States: Confronting Transportation Barriers to Improve Health, America’s Essential Hospitals, available at <https://essentialhospitals.org/wp-content/uploads/2019/03/Confronting-Transportation-Barriers-1.pdf> (last accessed May 13, 2022).

²⁶ See Econometric Analysis of the Link Between Public Transit Accessibility and Employment, Johnson et. al, *Trans. Policy*, 60 (Nov. 2017).

²⁷ See Investigating the Relationship between Urban Form and Economic Mobility in Forsyth County, NC, Blizard et. al, *Journal of Planning Education and Research* (Jan. 2021).

²⁸ See Climate and Economic Justice Screening Tool Beta, Methodology & Data, Council on Environmental Quality, available at <https://screeningtool.geoplatform.gov/en/methodology#3/42.09/-122.17> (last accessed April 18, 2022).

maternity ward. Mortality rates are more likely to be higher for populations that must travel a greater distance to hospitals than for populations that have a closer proximity to a hospital²⁹. Populations that have less access to health care are more likely to be plagued with worse health outcomes because of longer wait times for EMS and physician shortages³⁰. Advocacy encourages CEQ to include data sets indicating access to health care, including physical proximity to hospitals as well as maternity wards.

G. Advocacy recommends CEQ designate communities either where significant portions of the community are or historically have been employed by nonrenewable energy industries or that lack broadband infrastructure as disadvantaged.

The last category allows for a community to be designated as “disadvantaged” if it is “at or above the 90th percentile for low median income as a percentage of area median income OR linguistic isolation OR unemployment OR percent individuals in households at or below 100 % federal poverty level, and 10 % or more of adults 25 or older have not attained a high school degree AND 80 % or more of adults 15 or older are not enrolled in higher education.”³¹ This category is meant to include disadvantaged populations that need assistance with “training and workforce development.”

Because of the Justice40 Initiative emphasis on climate and economic justice, including “jobs lost through the energy transition,” Advocacy encourages the CEQ to automatically include all communities where a significant portion of the community is or has historically been employed by nonrenewable energy industries such as coal mining, coking coal operations, iron ore mining operations, steel operations, and oil and gas operations as disadvantaged. In addition, CEQ should not consider the educational status of such communities, as many employed in these sectors have obtained high school and college degrees and certificates specific to the above-listed industries. Advocacy further encourages CEQ to identify communities that lack broadband infrastructure as disadvantaged as broadband infrastructure has become a necessary tool for individuals to enter and participate in the ever-changing and technology-focused workforce.

Conclusion

The Office of Advocacy encourages the CEQ to ensure that the beta version of the CEJS Tool takes into account additional indicators that identify the diverse types of disadvantaged communities. Specifically, Advocacy recommends CEQ include additional socioeconomic indicators in the CEJS Tool and that CEQ directly engage with small governmental jurisdictions and its residents to understand the diverse indicators that may make a community disadvantaged. My office would be happy to assist in any such outreach effort. Should you have any questions

²⁹ See The Relationship Between Distance to Hospitals and Patient Mortality in Emergencies: An Observational Study, Nicholl et. al., Emerg Med J. 2007 Sep.; 24(9): 665-668.

³⁰ See Health Disparities Affect Millions in Rural U.S. Communities, Association of American Medical Colleges, available at <https://www.aamc.org/news-insights/health-disparities-affect-millions-in-rural-us-communities> (last accessed May 13, 2022).

³¹ See Climate and Economic Justice Screening Tool Beta, Methodology & Data, Council on Environmental Quality, available at <https://screeningtool.geoplatform.gov/en/methodology#3/42.09/-122.17> (last accessed April 18, 2022).

or concerns, please let me or Assistant Chief Counsel Astrika Adams (Astrika.adams@sba.gov) know.

Sincerely,

/s/

Major L. Clark, III
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/s/

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