



January 19, 2024

**To:** Council on Environmental Quality

**Subject:** Request for Information: Phase One of the Environmental Justice Scorecard  
(Agency/Docket Number: CEQ-2023-0005)

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)<sup>1</sup> respectfully submits this comment letter in response to the Request for Information (RFI) by the Council on Environmental Quality (CEQ) on Phase One of the Environmental Justice Scorecard (the Scorecard).<sup>2</sup> Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

CEQ seeks feedback from environmental justice communities and stakeholders on potential improvements to Phase One of the Scorecard. In these comments, Policy Integrity recommends improvements that will increase transparency and “ensure that environmental and economic justice are key considerations in how [agencies] govern,” as required by Executive Order 14,008 *Tackling the Climate Crisis at Home and Abroad* (E.O. 14,008).<sup>3</sup>

Policy Integrity recommends the following improvements to the Scorecard:

- CEQ should disclose the process through which it solicits information to develop the Scorecard.
  - This disclosure should include the set of questions that CEQ asked agencies to provide information on. CEQ should also note when an agency did not respond or provide adequate information.
- The Scorecard should include a new metric that assesses whether agencies articulate how their work affects environmental justice communities on their websites.
- The Scorecard should provide a more comprehensive and consistent review of agencies’ environmental justice initiatives by targeted adjustments to its current metrics.

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<sup>1</sup> This document does not purport to represent the views, if any, of New York University School of Law.

<sup>2</sup> See Request for Information: Environmental Justice Scorecard Phase One Feedback; 88 FR 80697 (Nov. 20, 2023).

<sup>3</sup> Exec. Order No. 14,008, 86 Fed. Reg. 7619, 7629 (February 1, 2021).

- The Scorecard should show all reporting categories for each agency, even when those metrics are not applicable to an agency’s work or an agency did not report any information.
- The Scorecard should note why information on certain reporting categories are omitted for individual agencies, where applicable.
- The Scorecard should include a new metric that covers agency actions on environmental justice and the results of those actions.
- The Scorecard should show an agency’s progress across fiscal years to determine relative success over time.

## **I. Background**

In E.O. 14,008, President Biden mandated that the White House Environmental Justice Interagency Council (IAC) create a Scorecard to hold agencies accountable to their environmental justice commitments.<sup>4</sup> Specifically, E.O. 14,008 directs the IAC, chaired by CEQ, to develop “a strategy to address current and historic environmental injustice,” set “clear performance metrics to ensure accountability,” and to publish an “annual public performance scorecard on its implementation.”<sup>5</sup>

In August 2022, CEQ published a Request for Information (RFI), which solicited public feedback on what should be included in Phase One of the Scorecard.<sup>6</sup> CEQ released Phase One of the Scorecard in April 2023.<sup>7</sup> CEQ states that Phase One “presents a baseline assessment of actions taken by Federal agencies in 2021 and 2022 to help achieve the Biden-Harris Administration’s environmental justice goals.”<sup>8</sup> In November 2023, CEQ published another RFI soliciting feedback from environmental justice communities and stakeholders on Phase One of the Scorecard. In the current RFI, CEQ specifically seeks feedback from environmental justice communities and stakeholders on potential qualitative and quantitative metrics for future versions of the Scorecard, as well as ways to improve how the Scorecard is organized.<sup>9</sup>

We commend CEQ for taking first steps to incorporate metrics that measure essential agency practices for advancing environmental justice, including the adoption of agency-wide environmental justice strategic plans, community outreach and engagement events, and the appointment of staff dedicated to environmental justice work.

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<sup>4</sup> *Id.* at 7630.

<sup>5</sup> *Id.* at 7630.

<sup>6</sup> See Request for Information: Environmental Justice Scorecard Feedback; 87 Fed. Reg. 47,397 (Aug. 3, 2022).

<sup>7</sup> See Request for Information: Environmental Justice Scorecard Phase One Feedback; 88 Fed. Reg. 80,697, 80,698 (Nov. 20, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 80,699.

The current Scorecard, however, has unfulfilled potential to improve transparency and accountability so federal agencies can deliver on their commitments to make environmental justice a central part of their missions, programs, policies, and activities. To ensure that the Scorecard improves transparency and accountability, the Scorecard should incorporate the following recommendations.

## **II. CEQ Should Disclose What Information It Solicits from Agencies So the Public Understands What Information is Missing.**

The Scorecard does not disclose the full scope of information that CEQ requested from agencies. Consequently, environmental justice stakeholders have no way to discern whether information was omitted for any reason or whether the reporting category is not relevant to an agency. To address this information gap, CEQ should disclose the questions and prompts CEQ sent to agencies and any other requests for information. The Scorecard should additionally note when an agency provided inadequate information or did not respond to a request for information.

Disclosing CEQ's set of questions and agencies' responses could incentivize agencies to disclose a fuller set of information or explain why information is omitted. It would improve accountability because environmental justice stakeholders would be aware of information gaps and could then request that agencies release any remaining critical information.

## **III. The Scorecard Should Include a New Metric that Assesses Whether Agencies Effectively Describe How Their Work Affects Environmental Justice Communities on Their Websites.**

Environmental justice stakeholders may already be familiar with some of the roles that certain agencies like the Environmental Protection Agency (EPA) and Department of Energy can play in addressing their concerns. But environmental justice stakeholders might not be familiar with how other agencies, like the Department of Defense or the U.S. Army Corps of Engineers, interact with environmental justice issues. In response to this information gap, the Scorecard should include a metric that gauges how informative each agency's website is regarding environmental justice issues.

An informative environmental justice page should describe how the agency's work affects environmental justice communities, provide examples of how its activities impact environmental justice, and explain/post the agency's strategic plan and metrics for achieving environmental justice, as required by Executive Orders 12,898 and 14,096.<sup>10</sup> Agencies' websites should also describe their responsibilities and authority to comply with federal laws, issue rules, design policy,

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<sup>10</sup> Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994) and Exec. Order No. 14,096, 88 Fed. Reg. 25,251, 25,256 (Apr. 21, 2023).

and enforce laws on environmental and civil rights protections. For example, the agencies' environmental justice page could discuss the types of agency projects, if any, that are subject to review under the National Environmental Policy Act (NEPA). The Scorecard could also note whether the agency typically receives Title VI complaints and describe the types of issues alleged in those complaints.

Without this information, environmental justice stakeholders may miss opportunities to engage with agencies on environmental justice issues. It may also be difficult for environmental justice stakeholders to assess whether an agency has authority to solve certain environmental justice issues if they do not know what the agency does and how its work affects environmental justice communities. If agencies' websites provide sufficient context for how each agency's work has the potential to solve or exacerbate environmental injustices, environmental justice communities will be better positioned to hold agencies accountable to advancing environmental justice in their work.

#### **IV. The Scorecard Should Provide a More Comprehensive and Consistent Review of Agencies' Environmental Justice Initiatives by Targeted Adjustments to its Current Metrics.**

The Scorecard offers fundamental metrics for assessing an agency's environmental justice efforts, but the metrics and how they are presented generally do not provide the full picture of each agency's work to advance environmental justice. To provide a more comprehensive view, CEQ could significantly improve how it presents metrics in three ways.

First, the Scorecard should display all metrics, even when those metrics are not applicable to an agency's work, or an agency did not report any information. Some agencies, including the Department of Defense and Department of Justice, do not list any metrics for Justice40. Instead of omitting the reporting category, all metrics should be visible to viewers.

Second, the Scorecard should note why information on certain metrics is omitted from a reporting category for individual agencies. For example, if an agency's Scorecard fully excludes or provides incomplete responses to metrics on Justice40 or environmental or civil rights protections, the Scorecard should explain the omission (i.e. the agency does not have Justice40 covered programs, there are no civil rights investigations, or the agency is not engaged in activities subject to NEPA).

Finally, the Scorecard should provide a more comprehensive view of agencies' environmental justice initiatives and provide consistent reporting for (1) achieving the Justice40 initiative; (2) ensuring environmental and civil rights protections; (3) centering environmental justice in decisionmaking; and (4) institutionalizing environmental justice. To this end, this section recommends ways to increase the transparency of information that agencies report and provide a better understanding of what agencies have accomplished.

### *A. Justice40 Initiative*

According to E.O. 14,008, the Scorecard should be a tool to ensure that federal agencies are achieving Justice40's goal that 40 percent of the overall benefits of certain federal investments flow to "disadvantaged communities that are marginalized, underserved, and overburdened by pollution."<sup>11</sup> To demonstrate that agencies are meeting this goal, the Scorecard should provide more information on each agency's Justice40-covered programs, the funding those programs receive, and the benefits environmental justice communities receive from those programs.

First, the Scorecard should include a link to each agency's Justice40 strategic plan required by the White House.<sup>12</sup> This strategic plan would provide environmental justice stakeholders with more information on what each agency's priorities are, how they determine which programs and investments are covered by Justice40, and how they calculate benefits.

Second, each agency's Scorecard should include a list of its Justice40-covered programs. This information could be a simple hyperlink to the agency's website. In addition, the Scorecard should indicate the following: (1) the amount of funding allocated to each program; (2) which programs offered funding that year; and (3) which communities received those funds and for what types of projects. Based on this information, the Scorecard should indicate what percent of funds from Justice40-covered programs are being allocated to disadvantaged communities; the amount of additional funding agencies need to provide to reach its 40 percent target; and whether these monetary investments translate into 40 percent of benefits (e.g., jobs, access to clean energy, improved water infrastructure) that flow to disadvantaged communities. Together, these improvements will help environmental justice stakeholders understand which communities may have inadequate funding and may merit additional resources or prioritization in the future.

### *B. Environmental and Civil Rights Protections*

Given the wide range of ways that agencies interact with environmental justice communities, each agency will have its own unique efforts to ensure environmental and civil rights protections. Specifically, an agency's role in advancing environmental justice will typically involve at least one of three main activities: promulgating rules, policymaking, or enforcement. EPA, for example, interacts with environmental justice communities by exercising all three of these activities. The U.S. Army Corps of Engineers, by contrast, primarily impacts environmental justice communities when handling siting and permitting matters.

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<sup>11</sup> Exec. Order No. 14,008, 86 Fed. Reg. at 7630-32.

<sup>12</sup> OMB, *Interim Implementation Guidance for the Justice40 Initiative* (July 20, 2021), available at <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

To better situate the Scorecard’s metrics on environmental and civil rights protections, each agency should explain how environmental and civil rights protections relate to its work. Currently, the Scorecard includes metrics for only two legal protections: National Environmental Policy Act (NEPA) and Title VI of the Civil Rights Act. These laws, however, might not be applicable to an agency’s work. Instead, an agency might be able to report on the enforcement of its own promulgated rules and policies. For example, in the highlights section of EPA’s Scorecard, EPA provided two examples of rulemakings EPA had finalized that year: a Hydrofluorocarbons phasedown under the American Innovation and Manufacturing Act and revisions to the Light Duty Vehicle Greenhouse Gas rule.<sup>13</sup> The highlights section, however, did not summarize how these rulemakings will affect environmental justice communities specifically. Instead of referencing only a few examples of rulemakings in the highlights sections, the Scorecard could have a metric dedicated to informing the public on all agency rulemakings related to environmental justice. To this end, the Scorecard should also add metrics that list: (1) the rules related to environmental justice that an agency promulgated; (2) the environmental justice policies that an agency designed; and (3) the number of enforcement actions for each rule and policy.

With regards to NEPA, the Scorecard should track additional metrics including: (1) the number of NEPA projects that were undertaken; (2) a list of these NEPA projects; (3) the number of NEPA projects that had a dedicated environmental justice analysis; (4) the number of NEPA projects that were modified due to environmental justice concerns; and (5) how the project modifications changed the outcome of the decision. In addition, CEQ should require agencies to share policies or guidelines regarding assessing and addressing environmental justice concerns during the NEPA process. The Department of Defense, for example, already referenced its policies and guidance to address environmental justice.<sup>14</sup> Agencies could similarly reference their relevant policies or hyperlink their agency’s guidance.

For the Scorecard’s metrics on Title VI of the Civil Rights Act of 1964 and Environmental Justice, the Scorecard should include: (1) the number of civil rights complaints received; (2) the total number of open and closed complaints; (3) the number of open investigations and when those complaints were submitted; and (4) the number of closed investigations, when those complaints were submitted, and reasons for closure. Investigations commonly remain open for several years, sometimes well over a decade.<sup>15</sup> With this information, environmental justice stakeholders would

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<sup>13</sup> See *Environmental Justice Scorecard: Environmental Protection Agency*, CEQ (last accessed Jan. 18, 2023), <https://ejscorecard.geoplatform.gov/scorecard/environmental-protection-agency/>.

<sup>14</sup> The Department of Defense’s (DOD) Scorecard states that “DOD and Military Departments provide policies and guidance to address environmental justice: the Army’s policy can be found at 32 CFR Part 651, the Navy’s policy can be found at 32 CFR part 775, and the Air Force’s policy can be found at 32 CFR Part 989.”

<sup>15</sup> The Center for Public Integrity filed a Freedom of Information Act request for every Title VI complaint to EPA’s civil rights office. Although the Center for Public Integrity did not receive records for all complaints, it received records for 265 Title VI cases spanning from 1996 to mid-2013. From these cases, more than 90% of Title VI complaints were rejected or dismissed. And for the majority of rejected cases, the office did not investigate before rejecting claims. See Kristen Lombardi et al, *Environmental Racism Persists, and the EPA is One Reason Why*, CTR.

be able to see whether agencies are resolving older investigations at a reasonable pace. In turn, if the Scorecard reveals that agencies have a large backlog of civil rights investigations, environmental justice stakeholders could use this information to hold agencies accountable by encouraging them to commit more resources to investigating these matters.

### *C. Centering Environmental Justice in Decisionmaking*

Environmental justice stakeholders should be able to use the Scorecard to assess whether agencies conduct principled and accessible community engagement that provides real opportunity to influence decisions. To meet this goal, the Scorecard should make the following improvements to metrics on centering environmental justice in decisionmaking, which will assess whether agencies are making important strides to expand meaningful engagement of environmental justice communities and stakeholders.

First, for community input and engagement, the Scorecard should include metrics that gauge community participation in public processes and technical assistance outreach. Quantitative metrics could include: (1) the number of meetings held; (2) the number of comments collected; and (3) the number of comments reviewed and responded to. For qualitative metrics, agencies should discuss any challenges to engaging environmental justice communities in outreach events and what efforts the agency plans to take to increase community attendance.

Second, for consultation and partnership with tribal nations, the Scorecard should include a narrative on what the Tribal consultations pertained to. This information could aid environmental justice stakeholders with assessing whether an agency's consultations with tribal nations embodied true partnership and yielded positive outcomes.

### *D. Institutionalizing Environmental Justice*

The Scorecard should expand its metrics on institutionalizing environmental justice to highlight the environmental justice work agencies are focusing on. Agencies should briefly highlight the environmental justice issues their tools, resources, and internal staff trainings inform. For example, the Scorecard might note that an agency held a certain number of trainings on how staff should use certain screening tools and programs to tackle wastewater issues. In addition, agencies should provide a summary of how these institutional efforts influenced their decisionmaking and affected environmental justice communities. With this information, stakeholders might be able to identify the work the agency may be doing for various environmental justice issues and the work that still needs to be done.

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FOR PUB. INTEGRITY (Aug. 3, 2015), <https://publicintegrity.org/environment/pollution/environmental-justice-denied/environmental-racism-persists-and-the-epa-is-one-reason-why/>.

**V. The Scorecard Should Include a New Metric That Discusses Agency Actions that Implicate Environmental Justice and the Results of Those Actions.**

The Scorecard currently does not include a metric that specifically discusses environmental justice outcomes – positive and negative – that resulted from agency actions. The only metric that exists, although inconsistently, is a discussion of agency “highlights,” which is a brief selection of program activities that an agency chooses to showcase. The highlights section, however, includes only examples of an agency’s positive work and excludes agency actions that could be detrimental to environmental justice.

To hold agencies accountable, the Scorecard should have a new qualitative metric that describes agency actions that implicated environmental justice and how the action improved or exacerbated environmental conditions for disadvantaged communities. With this metric, environmental justice stakeholders can identify positive and negative agency actions and assess whether, in the face of other accomplishments, agencies are actually making progress towards environmental justice.

**VI. The Scorecard Should Show an Agency’s Progress Across Fiscal Years and Compare Progress Across Different Agencies to Determine Relative Success.**

To successfully assess each agency’s efforts to advance environmental justice, the Scorecard should include some functionality that compares an agency’s progress across fiscal years. This could be a feature on a separate section of the Scorecard site that allows users to see metrics in a chart, or alternatively a spreadsheet that users can download. Once environmental justice stakeholders can track an agency’s progress from year to year, they can assess the pace at which agencies are progressing and identify areas in need of increased attention.

**VII. Conclusion**

While no Scorecard will be a perfect evaluation of federal agencies’ actions on environmental justice issues, CEQ’s work is a good step towards creating transparency and accountability. We encourage CEQ to improve the Scorecard to ensure that federal agencies are fulfilling their commitments to advancing environmental justice. Our recommendations could bring the Scorecard one step closer to achieving this goal.

Respectfully,

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