08/12/2022 - Environmental Justice - Federal Policy Analysis

Breaking Down the Environmental Justice Provisions in the 2022 Inflation Reduction Act

by Hannah Perls

For a comprehensive overview of the IRA's EJ provisions and key criteria, see our table here (http://eelp.law.harvard.edu/wp-content/uploads/EELP-IRA-EJ-Provisions-Table.pdf). See EELP's analysis of how the IRA will impact future climate regulation here (https://eelp.law.harvard.edu/2022/08/ira-implications-for-climate-ej-priorities/).

The Inflation Reduction Act's (IRA) environmental justice (EJ) provisions represent the first time the Biden administration's EJ agenda has been expressly included in a statute. However, the IRA leaves it to federal agencies to define key terms, processes, and criteria, which will determine how these benefits reach intended communities.

The IRA will direct billions of dollars to communities based on various EJ-related criteria, including income, energy burden, and demographics. Experts at the Just Solutions Collective estimate that the IRA includes $40 billion in direct benefits (https://assets-global.website-files.com/5fd7d64c5a8c62dc083d7a25/63232854dd4d104128f01b8c_JSC%20-%20Analysis%20of%20the%20Inflation%20Reduction%20Act%20-r3.pdf) for communities with EJ concerns, as compared to $29 billion the Biden administration allocated under the Justice40 Initiative as of May 23, 2022 (https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-biden-harris-administration-holds-justice40-week-of-action-to-highlight-historic-investments-in-overburdened-and-underserved-communities/). While the IRA's requirements apply to states and other funding recipients, federal agencies have discretion to define key language, processes, and requirements for grants that must be implemented within a short timeframe.

Several coalitions and organizations have argued that the Act's EJ benefits are outweighed by other provisions under the IRA, especially provisions that may drive investment in coal, oil and gas, nuclear, hydrogen, and biofuels that disproportionately impact frontline communities.[1] Other organizations have expressed cautious support for the IRA, but call for more aggressive executive action to offset the impacts of further investments in fossil-based fuels and technologies, including changes to the federal permitting process, improved language access and engagement policies, and the passage of H.R. 2021, the Environmental Justice For All Act (https://www.congress.gov/bill/117th-congress/house-bill/2021). [2]

In this blog, I focus on key considerations for agencies as they work to implement the IRA's EJ provisions. Many of these provisions explicitly target "disadvantaged communities", mirroring language from the administration's Justice40 Initiative, which requires federal agencies to direct 40 percent of federal "benefits" from various climate-related programs to "disadvantaged communities". Biden established the Justice40 Initiative and other EJ goals via executive order (https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/). This means federal agencies have had to rely on their existing authorities to implement the Initiative, while states and other non-federal entities are not required to comply. Now, however, several of the IRA's EJ programs require states and local governments implementing those programs to prioritize "disadvantaged" and other communities with EJ concerns. There are few legal levers advocates can pull to hold states and local governments accountable. However, the law shifts the burden onto funding recipients to justify spending that conflicts with these provisions.

Agency Considerations for Implementing the IRA's EJ Provisions

As discussed in our blog on the IRA's broader climate impacts (https://eelp.law.harvard.edu/2022/08/ira-implications-for-climate-ej-priorities/), the IRA provides some guidance on how EJ funds should be spent, but federal agencies and states have a significant role in deciding how these programs are designed, implemented, and monitored. There are several factors that will determine how benefits reach communities with EJ concerns, including:

- **How beneficiaries are identified and defined** (e.g., "disadvantaged communities")
- **Who is eligible to apply** (e.g., state and local governments versus community-based nonprofit organizations)
- **If applicants must pay before accessing benefits** (e.g., tax credits or post-purchase rebate programs) or pay a portion of a project's total costs
- **If grants are distributed using competitive processes**, and who defines the criteria for selecting successful applicants

These unanswered questions give federal agencies significant discretion in deciding how to implement the IRA's EJ-related programs. The IRA does not define "disadvantaged" or "overburdened" communities. Agencies will likely develop definitions based on spatial mapping tools, similar to the Council on Environmental Quality's (CEQ) Climate & Economic Justice Screening Tool (CJEST) (https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5), developed to identify "disadvantaged" communities under the Justice40 Initiative.[3] To implement the IRA, agencies could rely on the CJEST's definition of "disadvantaged" or establish their own definitions to include criteria specific to their mission or grant program. For example, while the CJEST is in beta, the Department of Energy (DOE) developed its own definition of "disadvantaged communities" (https://energyjustice.egs.anl.gov/) based on cumulative burdens[4] associated with various indices, including households' energy burden (i.e., the proportion of a household's income that is spent on energy costs), dependence on fossil fuels, and internet access.

For a comprehensive overview of the IRA's EJ provisions and these criteria, see our table here (http://eelp.law.harvard.edu/wp-content/uploads/EELP-IRA-EJ-Provisions-Table.pdf). This table summarizes who can apply for those these benefits, if and how key EJ terms are defined under the IRA, and other important criteria.

Agencies also have significant discretion in designing the application process, which will shape who applies for and receives federal funding. In order for communities to access federal benefits, they must have the administrative capacity to compile, submit, and administer grant applications. The more complex and onerous the application criteria, the more difficult it becomes for communities and local or state governments with limited staffing, resources, and expertise to apply.[5] The IRA includes significant funding for technical assistance and implementation of these grant programs, which, if leveraged quickly and effectively to target low-capacity regions, could help address this gap. Also, the vast majority of the IRA's EJ provisions do not require applicants to pay a portion of the proposed project's costs (i.e., a non-federal cost share). This enables communities with less access to financing to apply for infrastructure and energy projects that might otherwise be inaccessible if the program included a cost share requirement.[6]

Federal agencies will also have to grapple with the IRA's short timeframes. For example, the IRA includes $2.8 billion in environmental and climate justice block grants for community-based nonprofits and other eligible partners. However, EPA must spend that money before September 30, 2026, and the awarded grants can only last up to three years. Establishing and disbursing grant programs of this size requires significant administrative support and resources, particularly where the intended beneficiaries may not have capacity to receive and immediately implement multi-million-dollar projects. To meet this challenge, agencies will likely rely on tools the Biden administration has already developed to implement its EJ agenda, including agencies' equity plans (https://www.whitehouse.gov/equity/#equity-plan-snapshots), new staff positions, agency offices created to address EJ-related issues, and public feedback on how agencies can reduce the administrative burdens of applying for and implementing federal grants.

After President Biden signs the IRA, agencies will begin the critical process of designing processes and criteria to implement the law's EJ programs. Early, frequent, and meaningful stakeholder engagement will be essential to designing processes that enable the IRA's significant benefits to reach communities with EJ concerns.

We will continue to monitor agencies' implementation of the IRA and the Biden administration's EJ agenda, and highlight opportunities for stakeholder engagement.

For more on EJ across the federal government and at specific agencies, visit EELP's Federal EJ Tracker (http://eelp.law.harvard.edu/ejtracker).

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[1] For examples, see statements and analyses from the Climate Justice Alliance (CJA) (https://climatejusticealliance.org/the-inflation-reduction-act-is-not-a-climate-justice-bill/), the Indigenous Environmental Network (https://www.ienearth.org/the-inflation-reduction-act-of-2022-is-not-a-climate-bill/), and The Black Hive – The Movement for Black Lives (M4BL) (https://m4bl.org/statements/the-black-hive-the-movement-for-black-lives-statement-on-the-inflation-reduction-act-ira/?utm_medium=social&utm_source=linktree&utm_campaign=the%20black%20hive%20at%20m4bl%E2%80%99s%20stateme

[2] For example, see statements from WE ACT for Environmental Justice (https://www.weact.org/2022/07/we-act-for-environmental-justice-responds-to-inflation-reduction-act-of-2022/), the Deep South Center for Environmental Justice (https://www.dscej.org/the-latest/dscej-shines-light-on-both-the-promises-and-threats-in-the-inflation-reduction-act-for-ej-communities-calls-for-bold-action), and GreenLatinos (https://www.greenlatinos.org/news/the-climate-and-energy-provisions-in-the-inflation-reduction-act-of-2022-bring-promise-and-concern-to-latino%2Fa%2Fx-communities).

[3] For more on Justice40 and the CJEST, visit our Federal EJ Tracker (http://eelp.law.harvard.edu/eelp).

[4] The current versions of CEQ's CJEST and EPA's EJSCREEN (https://www.epa.gov/ejscreen) do not account for cumulative impacts.

[5] Headwaters Economics recently published a "rural capacity index" (https://headwaterseconomics.org/equity/rural-capacity-map/) rating counties and municipalities based on their ability to compete for federal funding.

[6] For example, under Section 60501 creating the Federal Highway Administration's (FHWA) new Neighborhood Access and Equity Grant Program, states, local governments and other applicants must pay at least 20% of the project's costs. However, for projects in "disadvantaged or underserved" communities (likely to be defined by the FHWA Administrator or Department of Transportation (DOT) Secretary), the IRA increases the federal cost share to up to 100%.

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