



## Justice40 and the Federal Budget: Challenges of Scale and Implementation

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More than a quarter century ago, Executive Order 12898, issued by President Clinton, established environmental justice as a government-wide policy goal and required federal agencies to develop strategies for reducing environmental harms in communities of color—marking an important and long-needed development in federal policy.

Today, however, persistent [racial disparities](#) in pollution exposure and related health impacts remain the norm; even President Trump's EPA unequivocally confirmed this in a [2018 study](#) of particulate matter exposure, a potent source of respiratory harms. In 2020, a confluence of events—including George Floyd's murder and COVID-19 impacts in communities of color—elevated race like never before during a presidential campaign year. A striking political result of these events and realities was then-candidate Joe Biden's marked embrace of [race-forward climate policy](#), including what came to be known as the Justice40 initiative.

The Justice40 initiative is potentially a new and transformative way forward in governing for equity. It is the first policy of its kind since E.O. 12898 to invoke a systemic, "[all-of-government](#)" view of federal accountability for racial justice. However, an important difference is that Justice40 is primarily an investment policy, reflecting accelerating impacts of climate change and dramatic changes in policy understanding that have made it all but inconceivable to expect that we can address the climate crisis without new, very large-scale public investments in the near- and medium-term. Justice40 interprets these needs for public investment not only as a measure of the seriousness of the climate crisis but as an unmistakable opportunity for repairing historic harms of the fossil fuel economy and achieving resilience and equity for the most impacted communities.

Justice40 speaks to this opportunity by proposing a new, justice-centered paradigm for government investment in climate goods. Yet, Justice40 faces significant normative, policy, and administrative challenges that appear to be holding it back from fulfilling its promise, all of which need much more attention from advocates and policymakers to overcome.



## What is Justice40?

Justice40 is both a policy and a program. The policy is essentially an investment mandate directing substantial federal funding (whether new or expanded) to what are termed disadvantaged communities—broadly, communities harmed by racial and socioeconomic disparities and by disproportionate exposure to climate risks. The program focuses on implementation by agencies and is concerned with, among other things, how investments counted in Justice40 will be made available to disadvantaged communities given the myriad barriers they face in accessing government programs. The program has a strong emphasis on stakeholder engagement and technical support for community organizations.

Justice40's investment policy is formulated in President Biden's [Executive Order 14008](#) (January 27, 2021). E.O. 14008 requires that designated federal agencies invest in such a way that a minimum of 40 percent of all climate-related funding across seven major policy areas—including climate mitigation, clean energy and energy efficiency, transportation, and sustainable and affordable housing—is directed for the benefit of disadvantaged communities. As I interpret it, this is a mandate for sustained and systematic redirection of climate investments in support of the communities most harmed by the fossil fuel economy and most at risk in the face of climate change.

But the directives set out in E.O. 14008 are only the first step. The investments must still be allocated in the federal budget, which is difficult given that the type of highly intentional, place-based targeting Justice40 requires has rarely, if ever, happened before. Furthermore, how does one measure if (or how) an investment benefits a community during the budgeting process, especially when the programs in question have either not targeted disadvantaged communities before or do not include targeting in their legislative mandates? A key question, then, is what does Justice40's investment mandate mean as a budget concept, and in a budget analysis?

What it means, at least in principle, is that climate-related investments must be accountable not only to greenhouse gas reduction goals but also to a definition of "benefits" (and of justice) that is *measurable*—and measurable, specifically, *in proportion to the harm caused by environmental injustice and racism*. Why? Because we know the extent of the disparities in question, and we know what has happened to create these disparities. I further argue that the administration's 40 percent investment benchmark is both arbitrary and inadequate given the scale of harm; if we use that number, it should be interpreted as the starting point and not the goal—as a "floor" and not a "ceiling" for Justice40.

## What's in the Budget for Justice40?

I assess Justice40's budget footprint in light of new or expanded climate funding authorized through the Infrastructure Investment and Jobs Act (IIJA) and new or expanded funding proposed in the Build Back Better (BBB) legislation passed by the House of Representatives last fall. Two of the analyses raise significant policy questions.



First, there is the problem of certain investments that are counterproductive to the goals of Justice40. As the White House Environmental Justice Advisory Council (WHEJAC) proposes in its [Final Recommendations](#) on implementation of Justice40, this policy is guidance not only for 40 percent of investments but for a goal of “100% justice.” That is, for Justice40 to be truly reparative, “100% of investments must do no harm,” which means that, in addition to investment, *divestment* from policies, programs, and actions potentially harmful to disadvantaged communities is integral to achieving the goals of Justice40.

In contrast, I find nearly \$160 billion in funding or tax subsidies authorized or proposed for solutions that are considered harmful by WHEJAC and many other advocates, including carbon capture technologies, hydrogen, bioenergy, and nuclear power. Some advocates feel strongly that Justice40 is deeply compromised by these investments, and tension has grown around this question as the larger BBB proposal has faltered. Further, neither IJA nor the BBB proposal repeals the vast existing haul of fossil fuel tax subsidies, estimated in 2019 to be worth approximately [\\$27 billion](#) over 9–10 years.

On a more positive note, I also analyze what I term the Justice40 “expansion pool,” which includes investments that are relevant for disadvantaged communities but are not yet codified to prioritize these communities or otherwise benefit them. The expansion pool encompasses several dozen programs from both IJA and the BBB proposal, including investments in grid resiliency, transportation, and state carbon reduction plans, among others. Some of these programs either largely or partly align with Justice40 by legislative directive, such as large investments in lead pipe removal or in electric vehicle infrastructure partly prioritized for underserved communities. Other funding streams, while not clearly directed to disadvantaged communities by statute, nevertheless *should be* targeted for disadvantaged communities as a matter of policy, assuming there is nothing in statute that precludes such a focus. Examples include substantial investments in coastal resiliency and grid resiliency.

The Justice40 expansion pool is nearly \$430 billion—about 13 percent of total spending in the two packages. To be clear, this is not a technical or legal classification, and it is possibly more or less selective than it could or should be. Nevertheless, however one breaks it down, there is clearly significant funding available or forthcoming that could benefit disadvantaged communities but has yet to be included or fully integrated in Justice40. The question, then, is how will Justice40 be applied to the many new streams of climate-related funding, and how will it measure up as a share of total climate-related funding? A notable undercurrent in this question is the role of formula programs implemented by states: The ratio of formula to competitive funding in the IJA expansion pool is approximately 5-to-1, which poses challenges for Justice40 insofar as state implementation plans cannot be scripted by federal agencies. This problem, among others, suggests that a clear and consistent set of administration policies seeking to solidify Justice 40 at the agency level—and, in some cases, through formula grant programs—is needed.

## Next Steps for the Administration

I also raise a number of critical questions about Justice40 and propose policy recommendations with a goal of expanding the footprint of Justice40 in federal climate spending and related areas of spending. A common theme in these recommendations is the need for more directive leadership and coordination by the Office of Management and Budget, including the following:

- Working with agencies to identify and formally designate a substantial number and variety of additional programs for inclusion in Justice40;
- Developing clear guidance for agencies on the use of equity mapping tools for ensuring that the most vulnerable communities are prioritized for investments, especially in competitive grant programs;
- Working with agencies to develop rules or guidance for states to ensure their compliance with Justice40 in the use of federal formula funding, where applicable; and
- Undertaking a credible budget audit to calculate Justice40 spending as a share of total climate-related spending.

Consideration should also be given to establishing an oversight program focused on the distributional and environmental justice impacts of the BBB clean energy tax program, if it becomes law. Working with congressional allies is also important, particularly to develop legislation that permanently codifies Justice40 and establishes consistent rules for agencies on critical aspects of investment and implementation, including equity mapping and stakeholder engagement.

If designed and implemented well, Justice40 has the potential to transform how the federal government can work to repair some of the worst harms of systemic racism. But that will take more than just investment; it requires changes to how we budget, how we target programs and funding, and even how we measure and define benefit—all aspects of policy and governance that have, more often than not, been used to oppress the communities Justice40 now seeks to serve. Such a transformation is not out of reach, but it will require a commitment to racial equity that fully equips Justice40 with the budgetary, policy, and administrative powers that are necessary to achieve its goals.

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