

December 5, 2022

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Docket ID No. EPA-HQ-OA-2022-0859

RE: Comments on EPA’s Civil Rights Obligations in Designing and Implementing the Greenhouse Gas Reduction Fund

As members of the Title VI Alliance¹ - a coalition of attorneys, advocates, and community members seeking strengthened civil rights protections in federal environmental decision making - we appreciate the opportunity to provide comments on the design and implementation of the Greenhouse Gas Reduction Fund (GHGRF).

In particular, we write to provide comments on essential safeguards and principles EPA should consider to ensure that (1) funds spent and leveraged under the GHGRF directly benefit disadvantaged and low-income communities, and (2) recipients of GHGRF resources comply with their civil rights obligations under Title VI of the Civil Rights Act of 1964 (Title VI) and other laws.

Absent meaningful consultation and adequate civil rights safeguards, investments of this scale may not fully and fairly benefit People of Color, Indigenous Peoples and Tribal Nations, and low-income communities. These communities have for too long felt the adverse health and other effects of racial segregation and inadequate environmental protection.² Government-sanctioned discriminatory housing and land use practices have had devastating impacts on generations of residents, whose injuries include disproportionate levels of lead poisoning, asthma, diabetes, heart disease, respiratory illness, cancer, and now COVID-19.³ Severe and long-standing

¹ Organizational signatories include Taproot Earth, Earthjustice, Alternatives for Community and Environment, the UC Berkeley School of Public Health, National Housing Law Project, IDARE LLC, the Institute for Policy Integrity, BIG! Blacks in Green, Center for Environmental Health, and Concerned Citizens for Nuclear Safety. Individual signatories include Richard Grow (U.S. EPA, retired), Hannah Perls (Harvard Environmental & Energy Law Program), and Leslie Fields (Sierra Club). Please find a complete list of signatures at the end of this letter.

² See e.g. Dorceta E. Taylor, Toxic Exposure: Landmark Cases in the South and the Rise of Environmental Justice Activism, in TOXIC COMMUNITIES: ENVIRONMENTAL-RACISM, INDUSTRIAL POLLUTION, AND RESIDENTIAL MOBILITY 6 (New York University Press 2014) (highlighting major environmental racism cases in the South). See also Christopher W. Tessum, et al., PM2.5 polluters disproportionately and systemically affect people of color in the United States, *Sci. Advances*, vol. 27, no. 18 (Apr. 28, 2021).

³ See, e.g., Jyotsna S. Jagai et al., The Association Between Environmental Quality and Diabetes in the U.S., *Journal of Diabetes Investigation* (Oct. 2019) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7078099/>, Olga Khazan, A Frightening New Reason to Worry About Air Pollution, *The Atlantic* (July 5, 2018) <https://www.theatlantic.com/health/archive/2018/07/a-frightening-new-reason-to-worry-about-air-pollution/564428;>

deficiencies in federal external civil rights enforcement and oversight play a key role in enabling such environmental racism and injustice.⁴ The climate crisis has proven to be a threat multiplier for People of Color, Indigenous Peoples and Tribal Nations, and low-income communities even as these same communities receive disproportionately fewer resources to prepare for and recover from extreme weather and other climate-related disasters.

In our comments below, we identify several areas where EPA should ensure that civil rights obligations inform the allocation and implementation of the GHGRF, including the design of grant selection criteria, and mechanisms for ongoing monitoring and accountability. Zealous enforcement of Title VI and Executive Orders 12898, 13985, and 14008 in the expenditure of federal funds is necessary to correct the longstanding trend of concentrating industry and emitting facilities in EJ communities already disinvested and overburdened by pollution, and now contending with increasing risks due to climate change. This includes compliance with the administration's Justice40 Initiative established under EO 14008, in which at least forty percent of the "benefits" under federal climate, energy, and environmental programs should be directed to "disadvantaged communities."

In addition to our responses below, we urge EPA to adopt the following principles for the design and implementation of both the \$7 billion for zero-emission distributed generation technologies to benefit disadvantaged and low-income communities, and the \$20 billion in financing and technical assistance to be allocated by nonprofit entities.

- **EPA should maximize benefits for low-income and disadvantaged communities across the entire \$27 billion portfolio.** Prioritizing direct investments in and benefits to low-income and disadvantaged communities and households is the best way to accomplish multiple goals of the GHGRF, including facilitating additionality, creating new markets for clean energy technologies, and ensuring compliance with the administration's Justice40 Initiative.
- **EPA should clarify that GHGRF resources must directly benefit disadvantaged communities.** Examples of such direct benefits include investments in energy efficiency, resilience, or electrification in affordable housing, small businesses, nonprofits, community facilities, and small educational and religious institutions that address existing inequities and contribute to measurable improvements to social determinants of

Anthony Nardone et al., Associations between historical residential redlining and current age-adjusted rates of emergency department visits due to asthma across eight cities in California: an ecological study, *Lancet Planet Health* (Jan. 4, 2020); New Research Links Air Pollution to Higher Coronavirus Death Rates, *N.Y. Times* (Apr. 7, 2020) <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>; Claudia Persico & Kathryn Johnson, The effects of increased pollution on COVID-19 cases and deaths, *J. Env'tl. Econ. Mgmt.* (Feb. 2021), <https://www.sciencedirect.com/science/article/pii/S0095069621000140>.

⁴ See, e.g., Marianne Engelman-Lado, No More Excuses: Building A New Vision of Civil Rights Enforcement in the Context of Environmental Justice, 22.4 *Univ. of Pennsylvania J. of L. and Soc. Change* 281, 290–93 (2019) (documenting EPA's failure to adequately enforce Title VI of the Civil Rights Act).

health in disadvantaged communities. Achieving general reductions in greenhouse gas emissions, absent demonstrations of direct benefits to disadvantaged communities, is an unacceptable use of the GHGRF.⁵

- **EPA should clarify that GHGRF funds can be used for retrofits and other investments necessary to make properties eligible for clean energy and other improvements, including zero-emission technologies.** Many projects with the potential to deliver significant benefits to disadvantaged communities require upfront investments that aren't covered by other federal clean energy funding. For example, aging infrastructure in communities with a history of disinvestment often require significant remediation or upgrades prior to installing zero-emission technology, weatherizing the property, or other climate-friendly projects. Individual properties, including homes and rental properties, may likewise need significant remediation or upgrades before GHG reduction strategies can be deployed. EPA should therefore clarify that GHGRF grants can be used to invest in necessary infrastructure or home upgrades and remediation to facilitate future clean energy project financing in communities that the private market does not currently serve.
- **EPA must pair financing with technical assistance and grants to ensure disadvantaged communities are able to access clean energy solutions.** In order to ensure GHGRF benefits reach disadvantaged communities, EPA must invest in the capacity of community-based organizations and local residents to leverage and implement clean energy financing. This gap in resources exists in both public infrastructure, such as transit, and at the household level, where homeowners require resources to come into compliance with relevant codes before accessing energy efficiency resources.

We also urge EPA to adopt specific principles with regards to the \$20 billion in financing and technical assistance available under Sections 134(a)(2) and (3). The IRA's legislative history clearly demonstrates that the \$7 billion available under Section 134(a)(1) to facilitate the adoption of zero-emission technologies is distinct in form and nature from the rest of the GHGRF, and should preference distributed generation and closely-related technologies directly benefiting residents of disadvantaged and low-income communities.⁶ We therefore offer the following principles as separate recommendations with regards to the other \$20 billion in financing under Sections 134(a)(2) and (3):

⁵ See, e.g., Juan Declet-Baretto & Andrew A. Rosenberg, *Environmental justice and power plant emissions in the Regional Greenhouse Gas Initiative states*, PLoS ONE 17(7): eo271026 (July 20, 2022), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0271026> (finding that power sector carbon mitigation policies focusing on aggregate emissions reductions have largely benefitted non-environmental justice communities and have not redressed the fundamental problem of disparities in pollutant burdens between EJ and non-EJ communities).

⁶ For more, see comments from the Coalition for Community Solar Access (CCSA).

- When evaluating a proposed project’s benefits under Sections 134(a)(2) and (3), **entities should consider reductions in GHGs, criteria pollutants, and hazardous air pollutants (HAPs)**. Under Section 134(c)(3), a “qualified project” is one that “reduces or avoids greenhouse gas emissions and *other forms of air pollution*.” EPA’s RFI therefore unnecessarily restricts the scope of the GHGRF to GHGs and criteria pollutants, excluding potential benefits from reductions in HAPs, such as mercury and other air toxics, which are suspected to cause serious health problems including immunological, neurological, reproductive, and respiratory harm.
- Whenever possible, **EPA should consider how proposed projects will reduce upstream emissions of GHGs and other pollutants**. Many clean energy sources rely on upstream processes that disproportionately impact disadvantaged and low-income communities, including nuclear energy and natural gas-reliant technologies. By accounting for upstream emissions, EPA can ensure that selected projects do not result in net disproportionate burdens or impacts to the very communities the GHGRF is designed to benefit most.
- When selecting ‘eligible recipients’, EPA should prioritize **multiple entities with strong relationships and an established track record of accountability to disadvantaged and low-income communities**. The GHGRF represents an unprecedented opportunity to reverse the legacy of disinvestment in disadvantaged and low-income communities and facilitate a just transition to an inclusive and regenerative economy that relies on justly sourced renewable energy. This requires partnership with local community based-organizations and community members to identify existing needs and actionable solutions to meet those needs. To deliver on that promise, EPA must select recipients with a proven track record of engaging with, investing in, and being accountable to target communities. Now is not the time to rely on intermediary entities without knowledge of on-the-ground conditions, much less gamble on untested institutions.

We thank EPA for their consideration of our comments. If we can be of further assistance, please contact Sofia Owen at sofia@ace-ej.org.

Section 1: Low-Income and Disadvantaged Communities

1. *What should EPA consider when defining “low income” and “disadvantaged” communities for purposes of this program? What elements from existing definitions, criteria, screening tools, etc., - in federal programs or otherwise - should EPA consider when prioritizing low-income and disadvantaged communities for greenhouse gas and other air pollution reducing projects?*

EPA should **use the White House Council on Environmental Quality’s (CEQ) Climate & Economic Justice Screening Tool (CEJST) Version 1.0** as a first step to define disadvantaged communities for purposes of allocating funds designated to benefit those communities under the IRA, and disbursing funds under both the IIJA and IRA consistent with the Justice40 Initiative. Agencies should supplement the CEJST with other spatial mapping tools that integrate key EJ indicators, including cumulative pollution and health burdens and other social vulnerability indicators, such as the Agency for Toxic Substances and Disease Registry’s Environmental Justice Index.⁷ EPA should include consideration of race and ethnicity as a non-exclusive criterion, similar to how many states define "disadvantaged" or analogous terms for purposes of allocating state resources (e.g., New York State’s criteria for identification of disadvantaged communities under the Climate Leadership and Community Protection Act).⁸ Finally, **EPA should consider establishing a process for communities to petition to be identified as disadvantaged** for purposes of grant allocation. This process is essential to the extent that mapping tools rely on incomplete, outdated, or coarse datasets, or exclude key characteristics such as race or ethnicity.

EPA should **also clarify that GHGRF resources must *directly* benefit residents of disadvantaged and low-income communities**. Examples of such direct benefits include investments in energy efficiency, resilience, or electrification in affordable housing, small businesses, nonprofits, community facilities, and small educational and religious institutions that address existing inequities and contribute to measurable improvements to social determinants of health in disadvantaged communities. Examples of unacceptable indirect benefits include relying solely on census tracts to quantify qualifying benefits. This approach does not guarantee additionality as high-capacity institutions may reside within disadvantaged census tracts. Furthermore, projects geared toward aggregate reductions in GHG emissions are an unacceptable use of GHGRF resources. Absent demonstrations of direct benefits to disadvantaged communities, such projects do not fulfill either the spirit or letter of the text of the IRA or the Justice40 Initiative, and risk exacerbating existing disparities if not structured explicitly to mitigate the impacts of concentrated fossil fuel infrastructure in disadvantaged and low income communities.⁹

2. *What kinds of technical and/or financial assistance should the Greenhouse Gas Reduction Fund grants facilitate to ensure that low-income and disadvantaged communities can participate in and benefit from the program?*

⁷ *Environmental Justice Index*, Agency for Toxic Substances and Disease Registry (last updated Aug. 10, 2022), <https://atsdr.cdc.gov/placeandhealth/eji/index.html>.

⁸ *Disadvantaged Community Criteria*, New York State (last visited Dec. 2, 2022), <https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria>.

⁹ See Delect-Barreto J, Rosenberg AA (2022) Environmental justice and power plant emissions in the Regional Greenhouse Gas Initiative states. PLoS ONE 17(7): e0271026. <https://doi.org/10.1371/journal.pone.0271026>; Cushing, Lara et al., Carbon trading, co-pollutants, and environmental equity: Evidence from California’s cap-and-trade program (2011–2015), PLOS Medicine (2018), <https://doi.org/10.1371/journal.pmed.1002604>.

EPA should provide guidance directing eligible recipients of the \$20 billion in financing under Sections 134(a)(2) and (3) to prioritize financial assistance to the minority-owned businesses already engaged in facilitating transitions to clean energy sources in their own communities. Examples of such businesses include minority-owned wind and solar energy companies, companies developing environmentally-friendly product solutions in disadvantaged communities, and businesses developing project management solutions for issues that disproportionately impact disadvantaged communities, such as solid waste disposal. EPA should also prioritize technical assistance to workers in such businesses, paying special attention to the historic inequities in the development of construction workforces and steep challenges workers may face from historic disinvestments in infrastructure. Where possible, EPA should partner with the Minority Owned Business Development Agency, Historically Black Colleges and Universities, the Native American Business Development Institute, and other eligible institutions to ensure technical assistance opportunities are accessible to community members and minority owned businesses thrive through robust access to needed capital.

Section 2: Program Design

1. *What should EPA consider in the design of the program to ensure Greenhouse Gas Reduction Fund grants facilitate high private-sector leverage (i.e., each dollar of federal funding mobilizes additional private funding)?*

EPA should adopt clear guidance stating that **first and foremost, selected projects must demonstrate clear, specific benefits delivered directly to disadvantaged and low-income communities**. There is a risk that prioritizing “high private-sector leverage,” without contextualizing this priority within the broader equity-driven goals of the GHGRF, will result in selected projects that fail to provide additionality or community-level benefits. Furthermore, when assessing to what extent grants facilitate private-sector leverage, **EPA should give more weight to private-sector financing with the potential to drive new market creation and/or market transformation**, as opposed to financing that will deliver benefits primarily to existing markets. This includes prioritizing financing streams with the potential to ultimately invest or transfer wealth (as profits or surpluses) or assets to community member-owned entities. This could include prioritizing profit-sharing arrangements with partner community-based organizations.

2. *What should EPA consider in the design of the program to ensure Greenhouse Gas Reduction Fund grants facilitate additionality (i.e., federal funding invests in projects that would have otherwise lacked access to financing)?*

EPA can guarantee GHGRF grants facilitate additionality by **prioritizing direct benefits to disadvantaged and low-income communities and households across the entire \$27 billion fund**. Specifically, EPA should structure and award the \$11.97 billion under Section 134(a)(2) with a priority toward disadvantaged and low-income household access, as well as small businesses and institutions, including schools and religious organizations, that may be physically located outside of those communities but still serve them.

Consistent with this focus, investment criteria should **screen out projects that cannot convincingly demonstrate a need for GHGRF capital** to drive project benefits directly and overwhelmingly to low-income and disadvantaged communities. Projects that may fail this “but for” test could include mature technologies such as utility-scale renewables; market segments well-served by current financing such as transmission; and areas that are well funded via other federal provisions in IRA and IIJA. Many non-low-income focused entities – such as corporate, investment-grade rated institutions with no demonstrated mission focus, affluent customers, and commercial real estate developers – do not require public financing assistance to adopt GHG-reducing and decarbonization technologies. Instead, GHGRF investment criteria should screen for projects that reduce barriers to larger-scale implementation of GHG-reducing and decarbonization projects for historically disinvested communities at both community-wide and household levels.

6. *What, if any, common federal grant program design features should EPA consider or avoid in order to maximize the ability of eligible recipients and/or indirect recipients to leverage and recycle Greenhouse Gas Reduction Fund grants?*

EPA should **integrate best practices identified by the Office of Management and Budget** in its July 2021 Study to Identify Methods to Assess Equity¹⁰ to make federal funding opportunities as accessible as possible. This includes minimizing unnecessary administrative burdens whenever possible, and co-designing programs and services with the very communities those programs are intended to benefit. EPA should also ensure that all relevant grant program design and application materials are provided consistent with the agency’s Language Access Plan.¹¹

8. *What should EPA consider when developing program guidance and policies, such as the appropriate collection of data, to ensure that greenhouse gas and air pollution reduction projects funded by grantees and subrecipients comply with the requirements of Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance?*

¹⁰ *Study to Identify Methods to Assess Equity: Report to the President*, Office of Management and Budget (July 2021), https://www.whitehouse.gov/wp-content/uploads/2021/08/OMB-Report-on-E013985-Implementation_508-Compliant-Secure-v1.1.pdf.

¹¹ *Assisting People with Limited English Proficiency*, EPA (last updated Oct. 24, 2022), <https://www.epa.gov/external-civil-rights/assisting-people-limited-english-proficiency>.

The Biden administration has dedicated significant funding, personnel, and policy resources to strengthening enforcement of Title VI among federal funding recipients. EPA in particular has made strides in expanding the agency’s capacity and dedication to enforcing Title VI, most notably with the recent establishment of the Office of Environmental Justice and External Civil Rights (OEJEER). However, the GHGRF will likely bring many new funding recipients under the purview of Title VI, including but not limited to nonprofit entities receiving funds as part of the \$20 billion allocated under Sections 134(a)(2) and (3). We provide these recommendations to ensure these recipients are cognizant of and prepared to comply with EPA’s regulations implementing Title VI.

In considering these recommendations, we encourage EPA to **strike an appropriate balance to ensure that requirements do not prevent smaller and community-based entities and disadvantaged and low income communities from accessing GHGRF resources**, while providing the information needed to ensure that disadvantaged and low income communities directly benefit from and are not disproportionately burdened by large-scale projects.

First, EPA should clarify both for its own staff and eligible state, municipal, and Tribal grantees under Section 134(a)(1) that **receipt of federal financial assistance triggers the application of Title VI to the entire department or agency, and not just the program within that agency for which funding was sought.**¹² Similarly, for private and public institutions serving a public purpose, such as nonprofit grantees under Sections 134(a)(2) and (3), the “program or activity” covered by Title VI “encompasses the entire institution and not just the part of the institution that receives federal financial assistance.”¹³ EPA should also clarify that an entire state government may be liable for Title VI violations if it is found to be “partially responsible” for the discriminatory conduct, is contractually obligated to comply with Title VI, or otherwise has a “responsibility to monitor subrecipients.”¹⁴

Second, **data collection and use requirements must be designed to facilitate recipients’ demonstration that their programs do not result in discriminatory effects.** EPA has committed to “clarifying that recipients must not only collect and maintain data about the communities they serve but must also analyze it and use it in their decision-making process *to promote equity and ensure program decisions, including permitting decisions, are consistent with civil rights laws.*”¹⁵ To limit the burden that data collection and use requirements might impose on smaller grant recipients and ensure that data collection reflects on-the-ground

¹² <https://www.justice.gov/crt/fcs/T6manual>, at sec. V(E).

¹³ 42 U.S.C. § 2000d-4a.

¹⁴ <https://www.justice.gov/crt/fcs/T6manual>, at sec. V(E)(2).

¹⁵ Environmental Protection Agency, OGC Revised Responses to OIG Recommendations, 7 (September 13, 2021), https://www.epa.gov/system/files/documents/2021-10/_epaog_20-e-0333_agency_response2.pdf. (emphasis added).

conditions, EPA should incorporate community science and qualitative data, including community narratives, as part of its prioritization and selection process. These data should be given equal consideration compared to statistical and quantitative data collection and use.

Third, EPA should provide **guidance that goes beyond procedural checklists and data collection requirements to include mechanisms for determining and preventing substantive Title VI violations**. That guidance should include clear and transparent mechanisms for civil rights compliance reviews that include opportunities for public input and transparency regarding selection and evaluation criteria.

Fourth, given that funds under the GHGRF must be disbursed relatively quickly, EPA should explore **mechanisms for issuing funds in conditional disbursements over an extended period of time** such that the grantee is only able to receive additional rounds of funding if they demonstrate compliance with Title VI. In the absence of such measures, disbursing all funds within a short amount of time severely limits grantees' accountability to those impacted by the program, and removes the threat of EPA pausing or rescinding federal funding if it finds that the grantee did in fact violate Title VI.

Fifth, EPA must be prepared to expediently investigate and resolve Title VI complaints regarding discrimination by recipients of this unprecedented disbursement of funds. EPA must further provide **clear guidance to ensure consistency in the inclusion of complainants in the investigation and resolutions of complaints**. Not only will this lead to effective resolution of those complaints, but also make the complaint administration process more transparent to members of the public and other complainants.

Sixth, EPA should **clarify the consequences for violations of Title VI, including the authority of agencies to withdraw or defer funding**. This would urge federal funding recipients to be proactive and consistent in demonstrating compliance with Title VI requirements, while informing potential complainants of the types of recourse available when filing complaints.

Finally, EPA's selection criteria should **require direct recipients of GHGRF resources to demonstrate best practices necessary to achieve compliance with Title VI** in order to ensure that IRA and IIJA-funded projects do not result in discriminatory effects. That criteria may include requiring applicants to report a detailed spending plan to the awarding agency, including an analysis of the plan's impact on EJ communities; consider alternatives to reduce or eliminate potential discriminatory impacts; collect and report additional data to the awarding agency to demonstrate compliance; meaningfully consult with disadvantaged communities; and submit a timeline for providing compliance data to the awarding agency.

- For example, the Department of Housing and Urban Development (HUD) issued a Consolidated Notice on Feb. 1, 2022 requiring grantees under the Community

Development Block Grant for Disaster Recovery (CDBG-DR) program to “assess whether the planned use of CDBG-DR funds will have an unjustified discriminatory effect on OR failure to benefit racial and ethnic minorities in proportion to their communities’ needs, particularly in concentrated areas of poverty. Grantees must also assess how they will address the recovery needs of impacted individuals with disabilities. Grantees must consider the impact of their planned use of CDBG-DR funds on all protected class groups under fair housing and civil rights laws; vulnerable populations; and other historically underserved communities.”¹⁶

10. *What federal, state and/or local programs, including other programs included in the Inflation Reduction Act and the Infrastructure Investment and Jobs Act or “Bipartisan Infrastructure Law,” could EPA consider when designing the Greenhouse Gas Reduction Fund? How could such programs complement the funding available through the Greenhouse Gas Reduction Fund?*

EPA should **ensure that the recently established Environmental Finance Centers (EFCs) are equipped to provide GHGRF-specific technical assistance** to their target communities.¹⁷ These Centers will receive up to \$150 million in grants over the next five years under the Bipartisan Infrastructure Law and other funding sources to “provide states, Tribes, and local governments or water systems with technical assistance services to advance equitable health and environmental protections”, including supporting greenhouse gas reduction projects in overburdened and underserved communities. The EFCs can therefore provide essential capacity to help communities access GHGRF resources.

Section 3: Eligible Projects

It is essential that EPA **prioritize GHGRF projects that address legacy issues of disinvestment and disproportionate environmental burdens, and avoid projects that will not have discriminatory effects on communities of color and low-income communities.**

As the Biden administration has noted, “... policies to tackle climate change also must clean up the legacy pollution that low-income communities and communities of color have suffered with for far too long.”¹⁸ Consistent with this policy goal, experts with the Indigenous Environmental

¹⁶ *Advancing Equity in Disaster Recovery*, Dep’t of Housing & Urban Dev’t (Feb. 1, 2022), https://www.hud.gov/sites/dfiles/CPD/documents/Advancing_Equity_in_CDBG-DR.pdf.

¹⁷ *Biden-Harris Administration Announces Selection of 29 EPA Environmental Finance Centers to Help Communities Access Funds for Infrastructure Projects*, EPA (Nov. 4, 2022), <https://www.epa.gov/newsreleases/biden-harris-administration-announces-selection-29-epa-environmental-finance-centers>.

¹⁸ Biden Administration FY 2022 US EPA Budget Justification, March, 2021, p1.

Network (IEN), among others, have advocated that “all efforts to reduce greenhouse gas emissions must be coupled with strategies to reduce toxic co-pollutants, waste and biodiversity destruction, as well as disproportionate pollution and poverty burdens borne by Black, Brown, Indigenous, migrant and poor communities around the world.”¹⁹

Any approach to GHG reductions must recognize that the most significant contributors to GHG emissions are also most often located in proximity to and impacting EJ populations. For example, in February of this year, a State of California evaluation of sources covered by the State’s cap and trade program found that “covered facilities are disproportionately located near disadvantaged communities, and that covered facilities near communities with high proportions of people of color tend to emit more air pollution.”²⁰

In this context, we provide the following responses.

1. *What types of projects should EPA prioritize under sections 134(a)(1)-(3), consistent with the statutory definition of “qualified projects” and “zero emissions technology” as well as the statute’s direct and indirect investment provisions? Please describe how prioritizing such projects would:*
 - a. *maximize greenhouse gas emission and air pollution reductions;*
 - b. *deliver benefits to low-income and disadvantaged communities;*
 - c. *enable investment in projects that would otherwise lack access to capital or financing;*
 - d. *recycle repayments and other revenue received from financial assistance provided using the grant funds to ensure continued operability; and*
 - e. *facilitate increased private sector investment.*

Section 134(a)(1) requires the \$7 billion in funding for State, municipalities, Tribal governments and “eligible” recipients to “enable low-income and disadvantaged communities to deploy or benefit from zero-emission technologies . . . and carry out other greenhouse gas reduction activities.” A plain reading of this section suggests that the *primary* purpose of such funds is to enable “low-income and disadvantaged” communities to *directly* benefit from or deploy such

<https://www.epa.gov/sites/production/files/2021-05/documents/fy-2022-congressional-justification-all-tabs.pdf>.

¹⁹ Indigenous Environmental Network, *Hoodwinked in the Hothouse* (2021) p. 21, <https://climatefalsesolutions.org/>. See also Cushing, Lara et al., Carbon trading, co-pollutants, and environmental equity: Evidence from California’s cap-and-trade program (2011–2015), PLOS Medicine (2018), <https://doi.org/10.1371/journal.pmed.1002604>.

²⁰ *Impacts of Greenhouse Gas Emission Limits Within Disadvantaged Communities: Progress Towards Reducing Inequities*, California Office of Environmental Health Hazard Assessment, (Feb. 2022) 16; <https://oehha.ca.gov/media/downloads/environmental-justice/impactsofghgpoliciesreport020322.pdf>. The report also found that “Black Californians in particular experience twice the PM2.5 exposure from facilities covered by the Cap-and-Trade Program than White Californians do. Furthermore, we found that Black Californians experience three times greater exposure from refinery emissions than all other stationary source sectors covered by the Cap-and-Trade Program combined.” *Id.* at 7.

projects. Consistent with that reading, EPA should **prioritize projects that deliver *direct* benefits to disadvantaged and low-income communities.**

With regards to guidance for selecting projects under Sections 134(a)(2) and (3), EPA should clarify that it will also consider reductions in non-criteria pollutants that have harmful public health effects, e.g., hazardous air pollutants (HAPs), when assessing projects. While benefit considerations for purposes of the \$7 billion zero-emission technologies program is restricted to GHGs, criteria pollutants and their precursors, the \$20 billion financing available under Sections 134(a)(2) and (3) is for projects that will “reduce[] or avoid[] greenhouse gas emissions and *other forms of air pollution.*” EPA’s RFI therefore unnecessarily restricts the scope of the \$20 billion in financing and technical assistance to GHGs and criteria pollutants, excluding potential benefits from reductions in HAPs, such as mercury and other air toxics, which are suspected to cause serious health problems including immunological, neurological, reproductive, and respiratory harm. **We therefore recommend EPA expand the scope of its interpretation of “other forms of air pollution” under Section 134(c)(3)(A) to include HAPs as well as criteria pollutants, therefore maximizing the “benefits” of selected projects under the GHGRF.**

Whenever possible, **EPA should consider how proposed projects will reduce *upstream emissions* of GHGs and other pollutants.** Many clean energy sources rely on upstream processes that disproportionately impact disadvantaged and low-income communities, including nuclear energy and natural gas-reliant technologies. By accounting for upstream emissions, EPA can ensure that selected projects do not result in net disproportionate burdens or impacts to the very communities the GHGRF is designed to benefit most. This is particularly true for purposes of the \$7 billion designated to facilitate adoption of zero-emission technologies, which should be utilized for community and rooftop solar and closely related technologies, consistent with Congress’s intent.²¹

For pollution-reduction projects financed via the \$20 billion allocated under Sections 134(a)(2) and (3), **EPA should prioritize projects that reduce harmful emissions** (i.e., both GHGs and other air pollutants) **at the source.** EPA should be extremely skeptical of projects that promise to “substitute” or “offset” emissions, as these programs fail to accomplish the primary purpose of GHGRF resources under Sections 134(a)(1) and (a)(3) to benefit “low-income and disadvantaged” communities. Projects promising to “indirectly” benefit these communities through general reductions in emissions or through offset projects will, at best, fail to comply with the statute. More likely, such projects will exacerbate disproportionate pollution burdens on these communities by allowing sources of harmful emissions to continue in operation.

²¹ For more, see comments submitted by the Coalition for Community Solar Access.

EPA has long recognized that market-based programs, offsets or other credit-based approaches may have disproportionate effects, and has previously issued guidance to protect against such effects. For example, in considering economic incentive programs (EIPs) intended to “trade” non-toxic pollutants such as volatile organic compounds (VOCs), EPA has stated:

“...[these] EIPs will inevitably involve HAPs. The public - including members of communities of concern - and EPA are concerned that EIPs could actually result in **increases in local HAP emissions or foregone reductions of HAP emissions** that could lead to localized increases in air toxics hazard - possibly in areas already subject to disproportionate impacts of air toxics hazards.”²² (emphasis added).

EPA goes on to say that such EIPs:

“should include safeguards to avoid localized impacts from air toxic emissions and any unacceptable health consequences for nearby areas, including low-income and minority communities . . . program design must consider options for **prevention and/or mitigation** of unacceptable impacts from potential or actual trades or other types of transactions involving HAPs.”²³

EPA’s guidance goes on to describe in detail the assessments and potential safeguards needed in order to avoid disproportionate effects of market-based programs.

In light of these concerns, **EPA should compare and prioritize proposed projects’ emission reductions by first considering direct reductions at source(s)** with the greatest impacts on communities’ health. EPA should give equal weight to reductions in greenhouse gas emissions and other harmful co-pollutants in order to select projects that maximize both climate and public health benefits to the surrounding communities. **Any alternatives to this direct reduction approach must provide equivalent benefits and protections**, consistent with with the Title VI principle requiring the consideration of “less discriminatory alternatives” when there is potential for discriminatory effects. Unless and until the GHGRF incorporates requirements for such assessments and safeguards, environmental justice and civil rights concerns should require an emphasis on direct reductions at the source of GHGs, while maximizing reductions of other harmful pollutants that may affect public health.

EPA should also consider that many projects with the potential to deliver significant benefits to disadvantaged communities are not shovel-ready and that a policy preference for shovel-ready projects will be an impediment to directing funds to benefit disadvantaged communities. Aging infrastructure in communities with a history of disinvestment often require significant

²² US EPA, “Improving Air Quality with Economic Incentive Programs”, Section 16.2, 2001, p183; <https://www.epa.gov/sites/default/files/2015-07/documents/eipfin.pdf>.

²³ *Id.* at 183-84.

remediation or infrastructure upgrades prior to installing zero-emission technology or other climate-friendly upgrades. Individual properties themselves may likewise need significant remediation or upgrades before greenhouse gas reduction strategies can be deployed. EPA should therefore clarify that GHGRF grants can be used to overcome historic disinvestment and invest in necessary infrastructure upgrades and remediation/upgrades of homes, EPA can accelerate GHG-reducing investments in communities that the private market does not broadly serve. These investments include energy efficiency, weatherization, electrification, and resiliency investments in affordable housing, small businesses, nonprofits, community facilities, and educational and religious institutions. **EPA should therefore cover and prioritize projects that address deep energy retrofits in disadvantaged communities**, thus enabling communities to benefit from future GHG reduction activities.

Consistent with the language of the IRA, **EPA should give priority to projects that are deployed by disadvantaged and low-income communities**, i.e., projects that are community-owned or community-controlled. This criterion is consistent with the fundamental environmental justice principle of **self-determination**, and helps safeguard against capital extraction or tokenism, in which applicants partner with communities to secure GHGRF grants, with no guarantee that those resources will in fact reach the community after project implementation begins. By focusing on community ownership, EPA can help ensure that disadvantaged communities benefit both from *receiving* clean energy as well as *supplying* it.

Finally, **EPA should clarify that the definition of “zero-emission technology” does not include “net-zero” strategies**. Section 134(c)(4) states that “zero-emission technology” means a “technology that produces zero emissions” of criteria pollutants (or precursors to such pollutants) and GHGs. Projects claiming to be “net-zero” sacrifice real pollution reductions at the source for promised or unsound reductions elsewhere. Again, this definition is required by the plain language of the statute, and the provision’s legislative history.²⁴

2. *Please describe what forms of financial assistance (e.g. subgrants, loans, or other forms of financial assistance) are necessary to fill financing gaps, enable investment, and accelerate deployment of such projects.*

EPA should take an ecosystem development approach to GHGRF design and implementation. This includes recoverable and non-recoverable grants and flexible, low-cost impact investing structures that don't excessively rely on cash flow from low-income residents. Building community trust, project development, workforce development, small business support, and flexible early-stage financing represent just some of the challenges in finding “investable” projects in low-income and disadvantaged communities.

²⁴ For more, see comments submitted by the Coalition for Community Solar Access (CCSA).

3. *Beyond financial assistance for project financing what other supports – such as technical assistance -- are necessary to accelerate deployment of such projects?*

To maximize the benefit of GHGRF grants to disadvantaged communities, **EPA should clarify that the provision of “technical assistance” under Sections 134(a)(1), (a)(2), and (a)(3) includes workforce training and development** prioritizing disadvantaged and low-income community members. The provision of technical assistance, workforce development, community planning, and other activities essential to the expanded utilization of clean energy technologies in disadvantaged and low-income communities should also be considered “qualified projects” in their own right. This interpretation is consistent with Section 134(c), as such activities fulfill the goal of the GHGRF to “enable” such communities to “deploy or benefit from zero-emission technologies.” Furthermore, **EPA should prioritize these activities in the first round of funding to maximize their impact over the lifetime of the GHGRF.**

Section 4: Eligible Recipients

1. *Who could be eligible entities and/or indirect recipients under the Greenhouse Gas Reduction Fund consistent with statutory requirements specified in section 134 of the Clean Air Act? Please provide a description of these types of entities and references regarding the total capital deployed by such entities into greenhouse gas and air pollution reducing projects.*

For governmental entities applying under section 134(a), EPA **should explicitly consider applicants’ Title VI compliance history** as part of the application process. If candidates seeking federal funding (whether as a grantee or subgrantee) have been subject or are currently subject to a federal agency finding of a civil rights violation or Department of Justice civil rights lawsuit, the candidate should be required to speak to the status of that investigation or complaint, detail plans to remedy the circumstances that resulted in the discriminatory action or effect at issue, and specify measures taken to ensure such effects do not reoccur if the candidate is awarded additional federal funds.

- For example, the Department of Housing and Urban Development (HUD) maintains an internal Civil Rights Threshold List to evaluate a federal funding recipient’s eligibility to apply for HUD discretionary funding. EPA should create a similar list to be referenced as part of both the GHGRF grantee and subgrantee selection to the extent possible.
2. *What types of entities (as eligible recipients and/or indirect recipients) could enable Greenhouse Gas Reduction Fund grants to support investment and deployment of greenhouse gas and air pollution reducing projects in low-income and disadvantaged communities?*

To deploy capital quickly and equitably as part of the \$20 billion in financing, **EPA should prioritize existing, mission-driven institutions and platforms with proven grantmaking or financial relationships to Black, Brown, Indigenous, People of Color-led organizations, including a history of co-governance with these organizations.** These entities should have demonstrated track records of successfully deploying capital in low-income and disadvantaged communities either directly or through their networks. EPA should prioritize applicants that have: (1) clear client/borrower networks in low-income and disadvantaged communities; (2) an established lending and/or grantmaking infrastructure, including prudent lending/grantmaking standards and existing products that can be modified to include GHG reduction technologies; (3) a specific and credible commitment to modify existing products to drive GHG reductions; (4) existing reporting frameworks that can be used to track performance; and (5) demonstrated organizational accountability mechanisms to the communities they serve.

These institutions and platforms, such as Community Development Financial Institutions (CDFIs), established Green Banks, Housing Finance Agencies (HFAs), Public Housing Authorities (PHAs), as well as associations of community-based lenders like Credit Unions and Minority Depository Institutions (MDIs), can all deploy GHG-reducing capital quickly to projects in areas that have thus far been overlooked in our country's clean energy transition. With access to GHGRF capital and technical assistance, lenders can adjust and complement existing loan products – such as predevelopment, rehab, equipment, construction, and refinance loans – to finance GHG reducing technologies.

Consistent with these principles, **EPA should create a competitive, transparent process for selecting recipients of financing under Sections 134(a)(2) and (3)** to ensure a diverse set of entities are included in the pipeline to access the Fund.

3. *What types of entities (as eligible recipients and/or indirect recipients) could be created to enable Greenhouse Gas Reduction Fund grants to support investment in and deployment of greenhouse gas and air pollution reducing projects in communities where capacity to finance and deploy such projects does not currently exist?*

EPA could use a smaller tranche of the \$20 billion fund to invest in and spur new institutions and innovative approaches that address persistent gaps in the marketplace, **provided the majority of GHGRF resources are channeled through existing mission-driven institutions with established track records of serving disadvantaged and low-income communities.** These new institutions could be new local, state, or regional Green Banks, CDFIs, or nonprofit loan funds. In places where there are limited or insufficient intermediaries to adequately serve low-income and disadvantaged people and communities, EPA should look to invest in new entities that have a business model that explicitly seeks to complement (not compete with) existing

institutions, consistent with the GHGRF's additionality requirement. In addition to accountable and inclusive governance and performance standards, such entities should have a credible model to either (1) help bring together commercial, public, and mission-driven capital to drive GHG reduction in low-income and disadvantaged communities not currently met by existing institutions; (2) seek to fill funding gaps (e.g. pre-development, bridge loans, taking on specific risks that established lenders may avoid due to policy restrictions); and/or (3) address specific barriers in local, state, or regional markets inhibiting the existing deployment infrastructure.

4. *How could EPA ensure the responsible implementation of the Greenhouse Gas Reduction Fund grants by new entities without a track record?*

EPA should be extremely skeptical of entities seeking funding under Sections 134(a)(2) and (3) resources with no experience, connections or infrastructure in disadvantaged communities. The GHGRF represents an unprecedented investment in communities that have experienced rampant disinvestment, discrimination, or borne a disproportionate burden of environmental pollution. It also represents an opportunity for those seeking to leverage federal funding for personal or institutional gain. EPA must therefore apply strict criteria to ensure project applicants have the relevant capacities, mission, and expertise to fulfill the statutory purposes of the GHGRF.

Significant attention has been paid to the possibility of establishing a national non-profit green bank to implement some or all of the GHGRF. There is no national green bank that currently exists that could implement the program in its entirety. Establishing such an entity would require significant time, including engaging in significant stakeholder outreach and establishing that entity's credibility as a prerequisite to receiving GHGRF resources. **EPA should immediately clarify that it will award multiple smaller grants to subnational entities** consistent with the IRA's 180 day deadline, and invite public comment on considerations for the number and diversity of grants in subsequent rounds. EPA should also make clear that it will disqualify any applicant who discourages competing applicants or interferes with EPA's public request for information.

Section 5: Oversight and Reporting

1. *What types of governance structures, reporting requirements and audit requirements (consistent with applicable federal regulations) should EPA consider requiring of direct and indirect recipients of Greenhouse Gas Reduction Fund grants to ensure the responsible implementation and oversight of grantee/subrecipient operations and financial assistance activities?*

For the GHGRF to successfully meet Justice40 goals, impacts will need to be focused on people-centered benefits. EPA should require selected applicants to show clear, measurable equity-based outcomes in addition to pollution-related ones. Awardees should **prioritize meaningful improvements to the lived experience of marginalized and disadvantaged communities** through investments in GHG and other pollutant-reducing projects (e.g. percent reductions in energy burden and utility shut offs; percent reduction in exposure to criteria pollutants; employment outcomes; projects with clear ties to community ownership etc.). One potential resource for EPA to consult is the University of Michigan’s newly released Energy Equity Project report,²⁵ which provides a framework to measure and further energy equity outcomes.

- 2. Are there any compliance requirements in addition to those provided for in Federal statutes or regulations (e.g., requirements related to administering federal grant funds) that EPA should consider when designing the program?*

EPA should award applicants that can credibly demonstrate both (1) inclusive governance practices with responsiveness and accountability to low-income and disadvantaged communities and (2) best practices of nonprofit and financial governance. Other Federal programs, such as those run by US Department of Treasury’s CDFI Fund or the US Department of Health and Human Services Federally Qualified Health Centers, may serve as good examples for EPA to consider when deciding on GHGRF governance parameters. At minimum, consideration should be given to board and leadership representation, board charters, investment/credit policies, as well as organizational policies such as conflicts of interest standards, procurement policies, and document retention. In addition, applicants with a demonstrated track record of effectively stewarding federal and/or state funds through other programs (e.g., Paycheck Protection Program, CDFI Fund, utility ratepayer funds, etc.) should be scored highly. Similarly, indirect regulated recipients of funding, such as credit unions and minority depository institutions should fare well in scoring if they can demonstrate a record of best-in-class regulatory compliance.

Thank you for your time and consideration of these comments. We would be glad to discuss further and assist however possible as you move forward. For more information, please contact Sofia Owen at sofia@ace-ej.org, and any of the undersigned groups.

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²⁵ *Energy Equity Project Framework Report*, Energy Equity Project (2022), https://energyequityproject.com/wp-content/uploads/2022/08/220174_EEP_Report_8302022.pdf.

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