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How equity isn't built into the infrastructure bill—and ways to fix it

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By all measures, the \$1.2 trillion Infrastructure Investment and Jobs Act (IIJA) signed into law last month is a massive, once-in-a-generation outlay. But as history shows, the consequences of such massive federal outlays have been the inequitable distribution of benefits by race as well as the burdens of their resulting projects. Interstate highway construction in the early 1960s, for example, cleaved through predominately Black neighborhoods in Houston, New Orleans, and Nashville, Tenn.

Today, policymakers are acknowledging that racial inequities were built into our public infrastructure, with talk about “reconnecting communities” divided by highways, upgrading harmful and antiquated water and energy services for homes in underserved places, and providing new critical infrastructure systems for all communities' access. Some federal programs are already integrating equity, such as the Flood Mitigation Assistance program's vulnerability scores. And on his first day in office, President Joe Biden signed an executive order on racial equity and underserved communities, followed by the “Justice40” executive order, which seeks to deliver 40% of overall benefits from relevant investments to disadvantaged communities.

Ultimately, however, these are administrative rules, not law. So, the question remains: Unlike the massive federal expenditures of the past, does the new infrastructure law cement racial equity into our built environment?

Unfortunately, the IIJA does not radically move the equity conversation down the road. On the whole, it funds business as usual, with continued funding for traditional infrastructure (like highways) that have caused problems before and no explicit references to Justice40.

In this piece, we'll examine seven ways in which equity is not prioritized in the IIJA, and how these potholes could be avoided as program rules and project selections roll out over the next five years.

The importance of ‘naming names’ when it comes to targeted investment

The IIJA primarily adds funds to existing federal programs, most of which rely on past requirements such as environmental reviews and perfunctory community input when it comes to equitable investment in historically disinvested places. In a few cases, the IIJA sets aside specific funding streams for geographic jurisdictions that directly invest in marginalized communities—specifically, tribal lands. New investments are also going to specific places (such as rural communities) that indirectly support certain racial groups simply because of local demographic patterns. And a few place-based funds in the IIJA indirectly address equity; for example, increasing the Superfund and Brownfields remediation programs invariably help those sites' neighbors, who are typically low-income households or households of color.

Finally, other programs' funds that are distributed to states already consider disadvantage at the household level, such as the existing home weatherization assistance program and the broadband connectivity assistance. The IIJA's new “digital equity” funds don't name racial equity as a goal, but require states to assess broadband gaps that likely reflect race-based disparities. While these set-asides are helpful, they obviously don't cover *all* communities in need and don't address the health, financial, and social burdens that the toxic sites and concentrated disinvestments originally caused.

In the past, the federal government has named names when it comes to disinvested communities, directly providing investment incentives in specific places as recently as the Opportunity Zone program. Naming the people and places in need is a first step in stopping further harms and repairing past ones.

The lack of such targeted and transparent earmarks is the most fundamental oversight in the IIJA. Consequently, committed state governments must now look for every opportunity to identify disinvested communities relevant to each provision's

implementation, starting with programs that are directly controlled by the federal government, such as the Army Corps of Engineers.

States aren't obligated to use formula funds in disinvested communities

The majority of IIJA funds go to current and new funds that are provided to states through established criteria or formulas. There are about \$3 in formula grants to every \$1 in discretionary and competitive grants. Ninety percent of the highway fund—the biggest single pot in the IIJA—is given out in formula grants. The formula for the clean water and drinking water revolving funds that received a \$23 billion infusion is based on periodic water quality assessment, and the new \$15 billion for lead service pipe replacements is similarly apportioned.

States such as California and New York have created definitions for “environmental justice communities” to identify specific geographies (or at least formulas and criteria for geographies) to move pots of their own state monies directly. Yet, even there, there is no clear commitment to funnel IIJA resources as well. There are few or only minimal statutory requirements for prioritizing or considering equity in the projects states select for their apportionment. For example, the new lead service pipe funds specify only that priority be given to assisting disadvantaged communities that are defined by affordability criteria that each state gets to establish itself. Other newly apportioned grants, such as those for broadband infrastructure and electric vehicle charging networks, have similarly ambiguous targets for prioritizing investments and equitably allocating them to communities in need.

Without the sticks of rigorous and explicit statutory requirements on how states can use the funds, states may not even consider equity when selecting their projects—as what happened recently with large block grants in the American Rescue Plan. Consequently, federal agencies will need to monitor states' project selection and encourage them to prioritize equity-promoting projects and processes.

Competitive grants must be refined with extensive equity requirements

Competitive grants have always proven more flexible for project ideas that respond to specific needs, such as focusing on historically disinvested communities. A handful of the IIJA's new competitive grant programs are designed with equity in mind; the Reconnecting Communities program, for example, is designed to rectify past harms from highway construction. Programs for "healthy streets," EV charging grants, and passenger rail corridors note the importance of prioritizing low-income communities. For new funding streams, the program rules are already evolving.

However, most of the bill's competitive grant programs have surprisingly lukewarm equity statutes, some of which are weaker than what federal agencies are currently proposing. In most cases, the act leaves it to the administering agencies' "consideration" to determine how much priority to give to equity-driven proposals.

Fortunately, there are many ways to leverage this type of grant to encourage competition in prioritizing disinvested communities. Available grant values or federal shares could increase for proposals with direct community benefits. Proposal review and scoring rubrics should be weighted to prioritize disinvested communities. Requiring authentic community engagement—and evidence of it—in proposal narratives and subsequent awards should be standard. Finally, grant administrators can simply ask proposals to make the case for how disinvested communities will benefit or be directly served.

Safeguards should also be placed against using disinvested communities to leverage other, less needy beneficiaries. The quality of the carrots matter as much as their size.

Build local capacity in disinvested places, including their public and private players

Since the IIJA gives proportionally fewer dollars to competitive grants than entitlements, there is less of an incentive for underperforming jurisdictions to try for competitive grants—especially with additional proposal requirements. In the past, states have passed on these opportunities often in disservice to their own communities.

Low-capacity communities have less wherewithal to develop and propose projects that could be considered for entitlement funding or developed into a proposal for competitive grants. Many county and city governments simply do not have the government administrators that can perform the necessary range of activities, from community engagement through project development and, later, to project administration and reporting. There is also likely to be a dearth of professional talent as many rush to high-capacity jurisdictions with cutting-edge projects. All these factors make it less likely for disinvested communities to be prioritized or for inequitable conditions to be innovatively addressed.

Using program management funds in both formula and competitive programs, federal agencies could provide extensive technical assistance programs targeted at low-capacity communities to help them advance community-driven, technically feasible projects and prepare competitive applications. Most agencies have either existing assistance and guidance staff or operational funds to work with communities on engagement strategies and programming, and can potentially bring in experienced peers from other jurisdictions to support public servants in disinvested communities.

Federal agencies should also get creative about addressing the local professional gaps in these places. Bringing in global experts to help disinvested places—similar to what the Department of Housing and Urban Development did in the Rebuild by Design competition for Hurricane Sandy-damaged communities—could harness expertise with civil sector resources. Finally, administrators could think about using discretionary funding streams to support new and retired engineers to serve as project leads and advocates for communities, ideally from similar backgrounds to those communities.

Economic development should be better integrated with equitable workforce opportunities

Businesses in disadvantaged communities are not neglected in the IIJA, which solidifies the Minority Business Development Agency and establishes several new business center programs, advisory councils, and grants to nonprofits that serve minority businesses.

Ensuring that these efforts translate to state and local bidding opportunities will be a critical task, and one that needs almost immediate action as IIJA bids roll out from states.

On the worker development side, however, the IIJA sows fewer seeds of equitable change, aside from commissioning a few studies and advisory boards for identifying ways to include underrepresented groups in transit, transportation, and energy workforces. Federal grantees can create local hiring preferences but are not required to go beyond current statutes and rules, and the tweaks and modest funds to worker training programs generally do not reference opportunities for underserved communities. Finally, most jobs the IIJA creates are subject to prevailing wage requirements and other labor organizing supports, though the relevant unions' relationships with communities of color have been mixed.

Despite the focus on jobs in the act's title, there is no guarantee of racial equity in the resulting jobs. Federal agencies should encourage local community benefits agreements for individual projects—particularly competitive grants—as well as showcase examples in which diverse worker programs and procurements combine to produce infrastructure that positively benefits disinvested communities. Existing worker training and apprenticeship funds should also better channel underrepresented people into the jobs that are opening soon.

Equity studies are needed, but we shouldn't wait to act

The IIJA commissions several studies on the disparate effects of past and newly funded infrastructure projects on neighborhoods of color and low-income communities. Some of these studies are absolutely needed to provide evidence for future policymaking, such as the analysis of small and disadvantaged communities' clean water.

In many cases, though, there are independent academic inquiries and existing federal data resources that have already given preliminary evidence of disparities. These could be harnessed immediately for action and grant monitoring. Further, federally funded research should also prioritize scholars at historically Black colleges and universities and other researchers of color.

The value of investments must meet the challenge

The biggest equity pothole by far is not within the IIJA itself. It is whether the amount of money meets the need, including the full social and economic costs of past disinvestment as much as the engineering capacity gaps of future infrastructure. Budgets for many of the equity programs in the IIJA were significantly downsized during negotiations.

Ultimately, \$1.2 trillion is nothing to sneeze at, and new public investment is welcome after years of disinvestment and neglect. But if we want to ensure prosperity for all in the future, the IIJA is only a down payment on the debt that is owed to communities who have been denied resources. Policymakers at all levels of government will need to work to ensure that equity is cemented into both the projects that are implemented and the process by which that implementation takes place. Equity requires constant building—in this case, literally.