



Report to the Ranking Member,  
Committee on Oversight and  
Accountability, House of  
Representatives

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April 2024

# JUSTICE40

## Additional Efforts Needed to Improve Tribal Applicants' Access to Federal Programs under Environmental Justice Initiative

# GAO Highlights

Highlights of [GAO-24-106511](#), a report to the Ranking Member, Committee on Oversight and Accountability, House of Representatives

## Why GAO Did This Study

Underserved communities—including federally recognized Tribes and other historically marginalized people—experience a disproportionate share of adverse socioeconomic and environmental conditions, according to GAO’s prior work. Executive Order 14008 established the Justice40 Initiative with the goal of delivering to disadvantaged communities 40 percent of the overall benefits of certain federal investments. In determining Justice40 benefits, guidance directed agencies to consult with Tribes and other stakeholders to ensure meaningful involvement.

GAO was asked to review agencies’ implementation of the Justice40 Initiative with respect to tribal applicants. This report reviews the actions selected agencies took to (1) adjust programs to direct funding to tribal recipients, and (2) consult with Tribes and conduct outreach to Indigenous communities regarding the initiative. GAO examined laws, executive orders, presidential memoranda, guidance, and policies; and interviewed officials from three selected agencies, leadership from six Tribes, and representatives from seven tribal organizations. GAO selected a mix of agencies and programs based on tribal participation, funding mechanisms, and types of programs.

## What GAO Recommends

GAO is making a total of nine recommendations, including that EPA, FEMA, and USDA should document and address legislative and regulatory barriers, and conduct consultation and outreach about Justice40. The three agencies agreed with the recommendations.

View [GAO-24-106511](#). For more information, contact Anna Maria Ortiz at (202) 512-3841 or [OrtizA@gao.gov](mailto:OrtizA@gao.gov).

April 2024

# JUSTICE40

## Additional Efforts Needed to Improve Tribal Applicants’ Access to Federal Programs under Environmental Justice Initiative

### What GAO Found

The Justice40 Initiative is the administration’s goal for 40 percent of the overall benefits of certain federal investments to flow to disadvantaged communities. GAO reviewed six Justice40 programs in three selected agencies—the Environmental Protection Agency (EPA), Federal Emergency Management Agency (FEMA), and U.S. Department of Agriculture (USDA). GAO found that each agency adjusted program mechanisms to increase access to funding for underserved communities, including Tribes and eligible Indigenous communities (tribal applicants), in response to the Justice40 Initiative as well as other agency initiatives.

However, certain program characteristics create barriers to tribal applicants’ ability to access selected covered Justice40 programs, including cost shares, administrative burdens, and certain statutory and regulatory requirements. For example, EPA has a mechanism to reduce administrative burdens for recipients by combining funds from multiple grants into a single budget. Agency officials told GAO that grants funded by the Infrastructure Investment and Jobs Act and Inflation Reduction Act are not eligible for this mechanism. Agencies have taken actions to identify statutory and regulatory barriers to access for tribal recipients. Additional actions to document and discuss these barriers with affected stakeholders to determine any additional statutory and regulatory changes needed could help tribal applicants more readily access covered programs, consistent with the Justice40 goal and executive orders.

### Examples of Historic Barriers to Tribes’ Access to Federal Programs

Program characteristics				
<b>Certain eligibility requirements</b> Requirements based on land ownership or organization type.	<b>Competition for program access</b> Competition with state, local, and other tribal governments.	<b>Administrative burdens</b> Lengthy applications and large volumes of programs.	<b>Cost-share requirements</b> Requirements that recipients provide funding up front.	<b>Statutory and regulatory barriers</b> Program limitations codified in law or regulation.

Source: Analysis of past GAO reports; and GAO (icons). | GAO-24-106511

Selected agencies consulted with Tribes on new programs, funding opportunities, and related topics, such as equity assessments. However, the extent to which these efforts informed agency implementation of Justice40 is unclear because the agencies generally did not make related consultation results publicly available. Consistent with executive orders and presidential memoranda, considering publicly sharing high-level consultation summaries could help ensure Tribes have access to information about prior tribal input on federal programs. In turn, this information could inform Tribes’ future input on Justice40 and reduce their administrative burdens. Additionally, GAO’s review of the selected agencies’ online consultation tracking systems and interviews with agency officials found that the agencies did not consult with Tribes specifically about the Justice40 Initiative. Interim implementation guidance directs agencies to consult with stakeholders, including Tribes, when determining Justice40 covered program benefits. Agencies have additional opportunities to consult with Tribes and conduct outreach on Justice40 implementation to ensure meaningful input.

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## Abbreviations

BRIC	Building Resilient Infrastructure and Communities
CEQ	Council on Environmental Quality
DWIG-TSA	Drinking Water Infrastructure Grants - Tribal Set-Aside
DWSRF	Drinking Water State Revolving Fund
EO	executive order
EOP	Executive Office of the President
EPA	Environmental Protection Agency
EQIP	Environmental Quality Incentives Program
FEMA	Federal Emergency Management Agency
FPIC	free, prior, and informed consent
IIJA	Infrastructure Investment and Jobs Act
OMB	Office of Management and Budget
REAP	Rural Energy for America Program
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
USDA	U.S. Department of Agriculture

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April 10, 2024

Honorable Jamie Raskin  
Ranking Member  
Committee on Oversight and Accountability  
House of Representatives

Dear Mr. Raskin:

Underserved communities—including federally recognized Tribes and other historically marginalized people—experience a disproportionate share of adverse socioeconomic and environmental conditions, such as poverty and pollution.<sup>1</sup> In 2021, Executive Order (EO) 14008, *Tackling the Climate Crisis at Home and Abroad*, established a goal that 40 percent of the overall benefits of certain federal investments flow to disadvantaged communities.<sup>2</sup> The executive order and subsequent implementing guidance identified seven areas of investment, including clean energy and energy efficiency, the development of critical clean water infrastructure, and the remediation and reduction of long-standing pollution (see fig. 1).<sup>3</sup> The executive order refers to federal efforts to achieve this goal as the Justice40 Initiative.

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<sup>1</sup>GAO, *Environmental Justice: Federal Efforts Need Better Planning, Coordination, and Methods to Assess Progress*, [GAO-19-543](#) (Washington, D.C.: Sept. 16, 2019); and *Justice40: Use of Leading Practices Would Strengthen Efforts to Guide Environmental Justice Initiative*, [GAO-24-105869](#) (Washington, D.C.: Jan. 29, 2024).

<sup>2</sup>Exec. Order No. 14,008, § 223, 86 Fed. Reg. 7619, 7631 (Feb. 1, 2021). Implementation guidance for federal agencies notes that all federally recognized tribal entities are considered disadvantaged communities for the purposes of the Justice40 Initiative. We use the term “disadvantaged communities” to refer to specific language in the executive order or related agency guidance and documents because those documents use that term. However, in general instances not referring to specific provisions of or obligations under those documents, we will refer to these communities as “underserved” in this report.

<sup>3</sup>Specifically, EO 14008 listed six areas of investment to be addressed by the Justice40 Initiative: clean energy and energy efficiency; clean transit; affordable and sustainable housing; training and workforce development; the remediation and reduction of legacy pollution; and the development of critical clean water infrastructure. Interim implementation guidance for EO 14008 added climate change as a seventh investment area. Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28 (Washington, D.C.: July 20, 2021).

**Figure 1: Seven Areas of Investment Covered by the Justice40 Initiative**



Sources: Exec. Order No. 14008, § 223, 86 Fed. Reg. 7619, 7631 (Feb. 1, 2021); M-21-28, *Interim Implementation Guidance for the Justice40 Initiative*; and GAO (icons). | GAO-24-106511

According to the White House website, to meet the goal of the Justice40 Initiative, the administration has identified hundreds of federal programs covered by the initiative across the government to help ensure that disadvantaged communities receive the benefits of new and existing federal investments.<sup>4</sup> The Infrastructure Investment and Jobs Act (IIJA) and the Inflation Reduction Act included billions of dollars in funding to programs covered under the Justice40 Initiative for which Tribes and, in some cases, Indigenous communities are eligible.<sup>5</sup> According to the White House website, this investment aims to address decades of underinvestment in disadvantaged communities and bring critical resources to communities overburdened by legacy pollution and environmental hazards.

Three offices within the Executive Office of the President (EOP) lead the Justice40 Initiative. They are the Council on Environmental Quality (CEQ), the Office of Management and Budget (OMB), and the White House Office of Domestic Climate Policy.<sup>6</sup> EO 14008 directs the EOP to take action to support the implementation of the Justice40 Initiative and the environmental justice policy set forth by the executive order, including the development of guidance and tools to implement the initiative.

<sup>4</sup>White House, *Justice40: A Whole of Government Initiative*, accessed December 22, 2023, <https://www.whitehouse.gov/environmentaljustice/justice40/>.

<sup>5</sup>Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818 (2022); Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021).

<sup>6</sup>In this report, we use the term EOP to refer collectively to CEQ, OMB, and the White House Office of Domestic Climate Policy. EO 14008 refers to the National Climate Advisor, which leads the White House Office of Domestic Climate Policy as the third entity with responsibilities under the Justice40 Initiative. For the purposes of this report, we refer to the White House Office of Domestic Climate Policy, rather than the National Climate Advisor. Because other EOP offices, such as the National Security Advisor and Office of Science and Technology Policy, do not have a leadership role in the Justice40 Initiative delineated under EO 14008, we did not include them in the scope of our report or our use of the term EOP.

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Moreover, EO 13175 directs federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.<sup>7</sup> Further, the non-binding United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) includes provisions addressing consultation and free, prior, and informed consent (FPIC) of Indigenous communities in certain contexts.<sup>8</sup>

You asked us to describe agencies' efforts to implement the Justice40 Initiative with respect to Tribes and eligible Indigenous communities (tribal applicants or tribal recipients).<sup>9</sup> You also asked us to describe agencies' efforts to consult with Tribes and Indigenous communities about the Justice40 Initiative and reflect the practice of FPIC. Additionally, the IRA included an appropriation for GAO to support oversight of the use of funds appropriated under the IRA and whether certain impacts of such funds are equitable.<sup>10</sup> This report examines the actions selected agencies have taken to implement Justice40 within selected programs to (1) adjust programs to direct funding to tribal recipients and the mechanisms used

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<sup>7</sup>Exec. Order No. 13,175, *Consultation and Coordination with Indian Tribal Governments*, § 5(a), 65 Fed. Reg. 67,249, 67,250 (Nov. 9, 2000). Further, a 2009 Presidential Memorandum required each agency to prepare and periodically update a detailed plan of action to implement the policies and directives of EO 13175. 74 Fed. Reg. 57,881 (Nov. 5, 2009). This policy was reaffirmed in a 2021 Presidential Memorandum. 86 Fed. Reg. 7491 (Jan. 29, 2021). The EO's scope is limited to federally recognized Tribes and does not include other Tribes and Indigenous communities.

<sup>8</sup>G.A. Res. 295, U.N. GAOR, 61st Sess., U.N. Doc. A/Res/61/295 (2007). The United States initially voted against UNDRIP in 2007 but subsequently endorsed the declaration in 2010. In its 2010 statement endorsing UNDRIP, the White House noted that the United States supports UNDRIP, which—while not legally binding or a statement of international law—has both moral and political force. The statement further provided that UNDRIP expresses aspirations that the United States seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies. Further, the statement noted that the United States recognizes the significance of UNDRIP's provisions on FPIC. The United States understands those provisions to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken, according to the statement.

<sup>9</sup>For the purposes of this report, the term "tribal applicant" refers to federally recognized Tribes, Indigenous communities, Alaska Native Corporations, and consortia that are eligible to participate in federal programs as recipients or subrecipients. The term "tribal recipient" refers to tribal applicants that received funding or otherwise participate in federal programs—either as recipients or subrecipients.

<sup>10</sup>Pub. L. No. 117-169, § 70004, 136 Stat. 2087 (2022). Specifically, the IRA provided an appropriation to GAO to support the oversight of (1) the distribution and use of funds appropriated under the act, and (2) whether the economic, social, and environmental impacts of such funds are equitable.

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to do so;<sup>11</sup> and (2) consult with Tribes and conduct outreach to Indigenous communities<sup>12</sup> regarding the Justice40 Initiative.

To answer these objectives, we identified the nine agencies responsible for implementing the 21 pilot programs listed in the Justice40 interim implementation guidance. We focused on these agencies and programs because EOP directed them to take specific actions to implement Justice40 as part of the pilot. Additionally, the White House publishes and periodically updates a list of programs covered by the Justice40 Initiative, which includes hundreds of programs across the federal government. We applied program selection criteria, which included pilot and non-pilot programs, different types of funding mechanisms, and a range of tribal participation levels, among other criteria,<sup>13</sup> to select two programs each from the following three federal agencies and programs:

- Environmental Protection Agency (EPA)—the Drinking Water State Revolving Fund (DWSRF) and the Brownfields State and Tribal Response Program Grants;
- Federal Emergency Management Agency (FEMA), within the Department of Homeland Security—the Building Resilient Infrastructure Communities (BRIC) and the Flood Mitigation Assistance Program; and
- U.S. Department of Agriculture (USDA)—Natural Resources Conservation Service’s Environmental Quality Incentives Program

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<sup>11</sup>For the purposes of this report, federal funding mechanisms can include grants, contract funds, loans, and loan guarantees. Tribes and tribal organizations may receive funding directly or through other entities, such as states.

<sup>12</sup>For the purposes of this report, Tribes include federally recognized Tribes, and Indigenous communities include state-recognized Tribes that are not also federally recognized, Tribes that are neither federally nor state-recognized, and colonias with large Indigenous populations. A colonia is an unincorporated settlement located along the U.S. border with Mexico, is typically developed on plots of land sold by private developers, and typically lacks access to basic utilities such as electricity, running water, drainage, sewage infrastructure, and paved roads. HUD, PD&R Edge: An Online Magazine, *Southwest Border Colonias: Housing and Sustainable Development in the 21st Century: A Regional Conference of the United Nations Habitat III Effort*, accessed January 2, 2024, <https://www.huduser.gov/portal/pdredge/pdr-edge-trending-072516.html>.

<sup>13</sup>Levels of tribal participation were determined based on the analysis of publicly available funding data (USAspending.gov) for the selected agencies’ programs. Other criteria included program funding sources, program eligibility, tribal set-aside, and cost-share requirements.

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(EQIP) and Rural Development's Rural Energy for America Program (REAP).

Additionally, we selected a nongeneralizable sample of 22 Tribes and Indigenous communities that were either eligible for or recipients of funding from the selected Justice40 programs in our review, aiming for variety in population size and geographic location. Of the 22 selected Tribes and Indigenous communities, we met with and interviewed representatives from six of them.<sup>14</sup>

We also selected a nongeneralizable sample of 12 tribal organizations that provided technical or advisory support to Tribes. We selected these organizations based on their focus on agricultural, environmental, and emergency management issues relevant to the programs in our review, their work in the same geographic locations as the Tribes and agency regions we selected, and whether they have a large representative membership that reflects multiple perspectives. Of the selected tribal organizations, we met with representatives from seven of them.

To learn about their experiences with Justice40 programs and agency efforts across both objectives in our review, we interviewed

- agency officials and staff, including officials from state-level offices,
- leadership and program officials of selected Tribes and Indigenous communities, and
- representatives from tribal organizations.

The views of the agency officials, Tribes, and tribal organizations we interviewed are illustrative and not generalizable to all federal agencies' efforts to implement Justice40 covered programs and all tribal applicants' experiences when accessing these programs.

To describe the actions agencies have taken to adjust programs to direct funding to tribal recipients, we reviewed Justice40 implementation guidance issued by EOP. We also reviewed and analyzed agency documents and available agency data on awards made to tribal recipients. We assessed the reliability of these data by reviewing agency internal controls and comparing central office totals to disaggregate amounts from the regional offices for the same programs. We found these data to be reliable for meeting the report's objective. We compared agency actions against the Justice40 interim implementation guidance

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<sup>14</sup>As part of our outreach efforts, we offered the option of in-person or virtual interviews.

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and the January 2023 addendum to the interim guidance on using the Climate and Economic Justice Screening Tool.<sup>15</sup>

To describe the actions selected agencies have taken to consult with federally recognized Tribes and conduct outreach to Indigenous communities about Justice40 and related issues, we reviewed executive orders and memoranda related to tribal consultation. We reviewed selected agencies' policies and procedures for soliciting and incorporating input from Tribes and Indigenous communities.<sup>16</sup> When available, we reviewed agency stakeholder engagement plans developed in response to EOP's Justice40 interim implementation guidance. We also compared selected agencies' consultation and outreach practices to identify any similarities with internationally recognized practices that include UNDRIP provisions on FPIC of Indigenous peoples.<sup>17</sup>

We conducted this performance audit from January 2023 to April 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

### Federal Government's Trust Responsibility

The United States has a government-to-government relationship with federally recognized Tribes, and through treaties, statutes, and historical relations, the United States has undertaken a unique trust responsibility to

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<sup>15</sup>Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28; and *Addendum to the Interim Implementation Guidance for the Justice40 Initiative, M-21-28, on using the Climate and Economic Justice Screening Tool (CEJST)*, M-23-09 (Washington, D.C.: Jan. 27, 2023). The addendum provides supplemental guidance to federal agencies on using the Screening Tool, which includes interactive maps with indicators to assist agencies in defining and identifying geographically defined disadvantaged communities, including for covered programs under the Justice40 Initiative.

<sup>16</sup>The federal government does not have a government-to-government relationship with Indigenous communities that are not federally recognized Tribes. Therefore, some agencies may not have formal processes to solicit and incorporate these communities' input.

<sup>17</sup>As noted in the 2010 White House statement of support for UNDRIP, UNDRIP has both moral and political force but is not legally binding or a statement of current international law.

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protect and support Tribes and their citizens.<sup>18</sup> In a 2018 assessment of whether the federal government was meeting its responsibilities to Tribes, the U.S. Commission on Civil Rights found that Native Americans continue to rank near the bottom of all Americans in terms of health, education, and employment.<sup>19</sup> In its assessment, the Commission attributed this disparity in part to historical discriminatory policies of the federal government toward Tribes, insufficient resources, and inefficiencies in federal programs that serve Tribes. For example, the Commission found that federal funding for certain programs and services for Tribes and their citizens continued to be disproportionately lower than federal funding for similar programs and services to non-Native populations.

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## Program Barriers Affecting Tribal and Underserved Communities

In our previous work, we have consistently found that certain program characteristics can create barriers to tribal participation in federal programs (see fig. 2). For example, in several of our prior reports, we found that program characteristics, such as cost-share requirements, lengthy applications, unclear or outdated guidance, eligibility restrictions, and limited interagency coordination could create barriers to tribal access.<sup>20</sup> In some cases, these program characteristics, such as cost-share requirements, can be important tools from a program perspective. However, the federal government has recognized that there are opportunities for waiving statutory or regulatory requirements for Tribes.<sup>21</sup> We have previously reported on the following examples of barriers:

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<sup>18</sup>See 25 U.S.C. § 5601(3).

<sup>19</sup>U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (Washington, D.C.: Dec. 2018).

<sup>20</sup>GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, [GAO-20-625](#) (Washington, D.C.: June 25, 2020); *EPA Grants to Tribes: Additional Actions Needed to Effectively Address Tribal Environmental Concerns*, [GAO-21-150](#) (Washington, D.C.: Oct. 20, 2020); *Alaska Native Issues: Federal Agencies Could Enhance Support for Native Village Efforts to Address Environmental Threats*, [GAO-22-104241](#) (Washington, D.C.: May 18, 2022); and *Tribal Economic Development: Action Is Needed to Better Understand the Extent of Federal Support*, [GAO-22-105215](#) (Washington D.C.: Aug. 30, 2022).

<sup>21</sup>For example, EO 13175 addresses waivers of certain requirements—specifically, statutory or regulatory requirements that are discretionary and subject to waiver by the agency. EO 13175 directs federal agencies, to the extent practicable and permitted by law, to consider any application by an Indian Tribe for a waiver of such requirements in connection with any program administered by the agency, with a general view toward increasing opportunities for utilizing flexible policy approaches at the tribal level—in cases in which the proposed waiver is consistent with the applicable federal policy objectives and is otherwise appropriate.

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- **Certain eligibility requirements.** Eligibility requirements related to income sources can limit tribal access because federal programs may not account for revenue from gaming—an important source of employment and income for many Tribes.<sup>22</sup>
  - **Competition for program access.** Competitive grant programs can include significant administrative requirements that can be difficult to meet, especially for smaller tribal recipients with limited administrative capacity.<sup>23</sup>
  - **Administrative burdens.** Managing varying reporting requirements and deadlines for multiple programs across several agencies can strain the administrative capacity of tribal recipients.<sup>24</sup>
  - **Cost-share requirements.** Cost-share requirements can be a significant obstacle for smaller tribal recipients applying for assistance for construction projects because they generally do not have the revenue streams necessary to provide substantial matching funds.<sup>25</sup>
  - **Statutory and regulatory barriers.** Certain program characteristics created by statutes or regulations can limit tribal access, such as statutory definitions related to tribal applicants.<sup>26</sup>
  - **Tribal capacity.** Limited resources—including staff and internet connectivity—can cause challenges that hinder tribal recipients’ access to federal funding.<sup>27</sup>
  - **Agency capacity.** Limited agency staff capacity can create administrative challenges meeting customer service needs—including providing technical assistance to help tribal recipients access programs.<sup>28</sup>

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<sup>22</sup>See [GAO-20-625](#). Federal programs may exclude gaming proceeds as income sources as part of their eligibility criteria.

<sup>23</sup>See [GAO-22-104241](#).

<sup>24</sup>GAO, *COVID-19 Relief Funds: Lessons Learned Could Improve Future Distribution of Federal Emergency Relief to Tribal Recipients*, [GAO-23-105473](#) (Washington, D.C.: Dec. 15, 2022).

<sup>25</sup>See [GAO-22-104241](#).

<sup>26</sup>See GAO, *COVID-19: Lessons Learned from Interior and Treasury’s Administration of CARES Act Funds Could Improve Federal Emergency Relief to Tribes*, [GAO-22-104349](#) (Washington, D.C.: Oct. 29, 2021); and [GAO-22-104241](#).

<sup>27</sup>See [GAO-21-150](#) and [GAO-23-105473](#).

<sup>28</sup>See [GAO-22-104349](#).

**Figure 2: Examples of Historic Barriers to Tribal Participation in Federal Programs**

Program characteristics					Other barriers	
Certain eligibility requirements	Competition for program access	Administrative burdens	Cost-share requirements	Statutory and regulatory barriers	Tribal capacity	Agency capacity
Requirements based on land ownership or organization type.	Competition with state and local governments, and other Tribes.	Lengthy applications, reporting burdens, and unclear guidance.	Requirements that recipients provide funding for a portion of the project cost.	Program limitations codified in law or regulation.	Lack of staff and connectivity.	Staffing shortages, limited experience with Tribes, and limited interagency coordination.
						

Source: Analysis of past GAO reports; and GAO (icons). | GAO-24-106511

The administration has also directed federal agencies to examine—and work to address—aspects of programs, policies, practices, and processes that may pose barriers to underserved communities’ ability to access federal programs. Specifically, the January 2021 EO 13985, *Advancing Racial Equity Through Support for Underserved Communities through the Federal Government*, directed agencies to identify and address potential barriers to access to benefits and services in federal government programs faced by underserved communities and individuals, including Indigenous and Native American persons.<sup>29</sup> The selected agencies have taken steps to fulfill the requirements set by the executive order by developing equity actions plans, holding consultations to identify barriers, and updating agency guidance to address the identified barriers.

Further, in December 2023, EO 14112 stated that federal programs that provide funding and support to Tribes are too often administered in ways that leave Tribal Nations unduly burdened and frustrated with bureaucratic processes.<sup>30</sup> Additionally, the executive order stated that the federal funding Tribal Nations rely on comes from myriad sources across the federal government, often with varying and complex application and reporting processes. The executive order further provided that some Tribal Nations do not have the capacity and resources they need to

<sup>29</sup>86 Fed. Reg. 7009 (Jan. 25, 2021).

<sup>30</sup>Exec. Order No. 14,112, Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination, 88 Fed. Reg. 86,021 (Dec. 6, 2023). The executive order provides that all actions under it are to be implemented consistent with applicable law.

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access federal funds—and even for those that do, having to repeatedly navigate federal processes often unnecessarily drains tribal resources. The executive order also noted the need to identify any statutory and regulatory changes that are necessary or may be helpful to ensure that federal funding and support programs effectively address the needs of Tribal Nations, and recommend legislative changes, where appropriate. The executive order called for agencies to take several actions to increase the accessibility, equity, flexibility, and utility of federal funding and support programs for Tribal Nations.

For example, the executive order directs agencies to design application and reporting criteria and processes in ways that reduce administrative burdens. It also directs agencies to provide ongoing outreach and technical assistance to Tribal Nations throughout the application and implementation process while continually improving agencies' understanding of Tribal Nations' unique needs through tribal consultation and meaningful partnerships. Further, the executive order directs agencies to proactively and systematically identify and address, where possible, any additional undue burdens not discussed in the order that Tribal Nations face in accessing or effectively using federal funding and support programs for Tribal Nations and their root causes, including those causes that are regulatory, technological, or process based.<sup>31</sup>

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## Executive Order 14008

EO 14008 directs EOP to take certain actions to support implementation of the Justice40 Initiative and the environmental justice policy set forth by the executive order more generally, including by developing guidance and tools to implement the initiative. For example, EO 14008 directs CEQ to create a Climate and Economic Justice Screening Tool and annually publish interactive maps highlighting disadvantaged communities. EO 14008 also directs EOP, in consultation with the White House Environmental Justice Advisory Council,<sup>32</sup> to publish recommendations on how certain federal investments might be made toward the Justice40

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<sup>31</sup>Under the executive order, federal funding and support programs for Tribal Nations include funding, programs, technical assistance, loans, grants, or other financial support or direct services that the federal government provides to Tribal Nations or Indians because of their status as Indians. The executive order further notes that the term also includes actions or programs that do not exclusively serve Tribes, but for which Tribal Nations are eligible along with non-tribal entities. It does not include programs for which both Indians and non-Indians are eligible.

<sup>32</sup>The White House Environmental Justice Advisory Council, established within EPA pursuant to EO 14008, comprises non-federal stakeholders and officials such as representatives of community-based organizations, scholars, and state officials.

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Initiative's goal that 40 percent of the overall benefits flow to disadvantaged communities.<sup>33</sup>

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**Justice40 Interim  
Implementation Guidance**

In July 2021, EOP issued interim implementation guidance for the Justice40 Initiative that, according to the guidance, provided the initial recommendations pursuant to EO 14008 and supported the comprehensive approach to advancing equity for all in line with EO 13985.<sup>34</sup> Among other things, the interim guidance noted that the definition of disadvantaged communities is to include geographic areas

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<sup>33</sup>EO 14008 states that the recommendations are to reflect existing authorities agencies may possess for achieving the 40-percent goal, as well as recommendations on any legislation needed to achieve the 40-percent goal. Exec. Order No. 14,008, § 223(a), 86 Fed. Reg. 7619, 7632 (Feb. 1, 2021).

<sup>34</sup>Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28.

### Justice40 Initiative Terminology

**Benefits:** Include direct and indirect investments (and program outcomes) that positively impact disadvantaged communities. Examples of these benefits include reduction of greenhouse gas emissions and local air pollutants; access to clean, high-frequency transportation; and replacement of lead service lines.

**Covered investments:** A federal investment in one or more of the following categories: federal financial assistance as defined by federal regulation at 2 C.F.R. pt. 200, including federal grants as well as other types of financial assistance; direct payments or benefits to individuals; federal procurement benefits; programmatic federal staffing costs; and additional federal investments under covered programs as determined by the Office of Management and Budget.

**Covered program:** A federal government program that makes covered investment benefits in one or more of seven areas identified in EO 14008 and by the interim implementation guidance for the Justice40 Initiative.

**Community:** Agencies are to define “community” as “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.”



Source: Exec. Order No. 14,008, § 223, 86 Fed. Reg. 7619, 7631 (Feb. 1, 2021); Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, Interim Implementation Guidance for the Justice40 Initiative, M-21-28 (Washington, D.C.: July 20, 2021); GAO (photo). | GAO-24-106511

within tribal jurisdictions.<sup>35</sup> The interim guidance included a set of actions required of the agencies that manage Justice40 covered programs and identified 21 pilot programs to undertake an initial implementation of the initiative.<sup>36</sup>

The interim guidance directed agencies to consider certain guidelines, to the extent consistent with statutory and constitutional requirements, for modifying pilot programs. The interim guidance further noted that to the extent modifications are restricted by statute or regulation, agencies should describe what, if any, legislative changes would be required to advance the goals of the Justice40 Initiative with respect to the pilot program. Moreover, agencies were directed to establish a methodology for calculating the benefits that flow from each covered program and accrue in disadvantaged communities from each covered program. According to the interim guidance, benefits include direct and indirect investments, as well as program outcomes, that positively impact disadvantaged communities. The interim guidance also instructed agencies to develop and submit to OMB an implementation plan and a stakeholder engagement plan for all Justice40 pilot programs. According to the interim guidance, the plans for pilot programs were to include the following:

- **Stakeholder engagement plan.** A timeline for engaging relevant stakeholders, including grantees and recipients, and a list of key issues relating to implementation of the initiative with respect to the covered program for stakeholder input. According to the guidance, the plans should account for other stakeholder engagement efforts, including, but not limited to, public involvement activities conducted pursuant to the

<sup>35</sup>In the addendum to the interim guidance, EOP further specified that regardless of whether a federally recognized Tribe has land, all federally recognized tribal entities are considered disadvantaged communities for the purposes of the Justice40 Initiative. Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Addendum to the Interim Implementation Guidance*.

<sup>36</sup>In addition to identifying programs subject to the pilot, the July 2021 guidance included an interim definition of disadvantaged communities, guidelines for agencies on identifying programs covered by the initiative as well as their benefits, and direction for agencies to report certain information to OMB.

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National Environmental Policy Act and nation-to-nation consultations with Tribes.<sup>37</sup>

- **Justice40 implementation plan.** A description of (a) the agency’s plan to maximize benefits of the covered program in disadvantaged communities; (b) any significant barriers or constraints to maximizing benefits to disadvantaged communities; (c) opportunities or resource needs that may address the identified barriers or constraints; and (d) timelines for achieving the milestones identified in the agency’s plan.

When determining the benefits of a covered program, the interim guidance provided that agencies should “consult with stakeholders, including state, local, and tribal governments, as well as Native communities, to ensure public participation and that community stakeholders are meaningfully involved in what constitutes the ‘benefits’ of a program.”<sup>38</sup>

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## Federal Consultation Guidance

EO 13175, *Consultation and Coordination With Indian Tribal Governments*, calls for agencies to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.<sup>39</sup> Additionally, in 2022, the President issued a memorandum to establish uniform minimum standards to be implemented across all agencies regarding how tribal consultations are to be conducted.<sup>40</sup> The memorandum was designed to, among other things, improve and streamline the consultation process for both Tribes and federal participants. The memorandum was also designed to ensure more consistency in how agencies initiate, provide notice for, conduct, record, and report on tribal consultations. Additionally,

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<sup>37</sup>Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28.

<sup>38</sup>Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28. Consultation under the interim guidance is called for with a variety of stakeholders, including tribal governments, Native communities, and others, while formal government-to-government consultation discussed elsewhere in this report is specifically between the federal government and federally recognized Tribes. As noted previously, the federal government does not have a government-to-government relationship with Indigenous communities that are not federally recognized Tribes.

<sup>39</sup>65 Fed. Reg. 67,249, 67,250 (Nov. 9, 2000). As noted previously, the scope of EO 13175 is limited to federally recognized Tribes.

<sup>40</sup>Uniform Standards for Tribal Consultation, 87 Fed. Reg. 74,479 (Dec. 5, 2022).

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each selected agency has department-wide consultation policies and procedures, and in EPA's case, many regions have developed region-specific guidance.

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### United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

In 2007, the United Nations General Assembly, by a majority of states, adopted UNDRIP, internationally recognized practices, which include consultation in several articles.<sup>41</sup> In particular, the non-binding resolution calls for governments to “consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent” before adopting and implementing legislative or administrative measures that may affect them or approving any project affecting their lands, territories, or other resources. In endorsing the declaration in 2010, the White House issued a statement of support, stating that it understood the declaration’s provisions on “free, prior and informed consent” to call for a process of meaningful consultation with tribal leaders, but not necessarily the agreement of those leaders, before the actions addressed in those consultations are taken. The statement said the United States intended to continue to consult and cooperate in good faith with federally recognized Tribes in accordance with federal law and executive directives. The statement also said the United States would continue to implement the many laws that require the agreement of federally recognized Tribes and Indigenous groups before certain actions can be taken.

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### Selected Agencies’ Administration of Programs Serving Tribes and Other Eligible Recipients

We previously reported that federal agencies administer a wide range of programs and services for Tribes and other eligible recipients, including Indigenous communities.<sup>42</sup> Federal programs—including Justice40 covered programs—may be administered in different ways. For example, agencies may deliver services directly to Tribes and other eligible recipients or may award grants or loans to provide services. The type of grants awarded include discretionary and pass-through grants. Discretionary grants are awarded competitively or noncompetitively to eligible applicants, whereas pass-through grants are grants awarded to a recipient, such as a state. The grant recipient then makes an award to a subgrantee, such as a Tribe or nonprofit organization. Table 1 lists the

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<sup>41</sup>G.A. Res. 295, U.N. GAOR, 61st Sess., U.N. Doc. A/Res/61/295 (2007). In 2007, the United States voted against this resolution on the day of its adoption but subsequently endorsed the declaration in 2010.

<sup>42</sup>GAO, *Tribal Funding: Actions Needed to Improve Information on Federal Funds That Benefit Native Americans*, [GAO-22-104602](#) (Washington, D.C.: May 19, 2022); and *Indian Issues: Federal Funding for Non-Federally Recognized Tribes*, [GAO-12-348](#) (Washington, D.C.: Apr. 12, 2012).

three selected agencies and two covered Justice40 programs within each agency included in our review.

**Table 1: Selected Justice40 Covered Programs**

Agency	Program	Program description	Recipients	Funding mechanism	Program type <sup>a</sup>
Environmental Protection Agency (EPA)	Drinking Water State Revolving Fund (DWSRF) Infrastructure Capitalization Grants and Drinking Water Infrastructure Grants - Tribal Set-Aside (DWIG-TSA) program	<p>Provides a low-cost, long-term source of drinking water infrastructure financing and awards capitalization grants to states and Puerto Rico to capitalize their DWSRFs and direct grants to other U.S. territories and possessions.</p> <p>DWIG-TSA program: the Safe Drinking Water Act authorizes EPA to set aside a certain percentage of EPA's appropriation for the DWSRF program to provide grants for drinking water infrastructure that serve tribal populations.<sup>b</sup></p>	<p>States and U.S. territories and possessions</p> <p>Tribal set-aside: federally recognized Tribes</p>	<p>Non-competitive grants, formula grants, and interagency agreements<sup>c</sup></p>	Pilot
	Brownfields State and Tribal Response Program	<p>Provides assistance to grant recipients for various activities related to their response programs, including to develop their own cleanup standards, conduct planning and community involvement related to brownfield sites, and provide subgrants to carry out cleanup activities at brownfield sites within their jurisdiction.</p>	<p>States, U.S. territories and possessions, Tribes, and Intertribal Consortia</p>	<p>Non-competitive grants and formula grants (cooperative agreements)</p>	Non-pilot <sup>d</sup>

Federal Emergency Management Agency (within the Department of Homeland Security)	Building Resilient Infrastructure and Communities program	Provides grants for pre-disaster mitigation activities including mitigation projects, capability and capacity building, and management costs to eligible recipients in states that have received a major disaster declaration in the last 7 years.	States, U.S. territories and possessions, and Tribes	Competitive grants	Pilot
	Flood Mitigation Assistance Program	Provides competitive grants for projects and planning to reduce the risk of flood damage to structures insured under the National Flood Insurance Program.	States, local governments, U.S. territories, Tribes, tribal organizations, homeowners, property owners, individuals, and families	Competitive grants with sub-awards	Pilot
U.S. Department of Agriculture	Natural Resources Conservation Service's Environmental Quality Incentives Program	Offers technical and financial assistance for working lands, including field crops, specialty crops, organic, confined livestock and grazing, and non-industrial private forest land to promote agricultural production, forest management, and environmental quality.	Agricultural producers, individuals, families, and Tribes	Competitive grants, contracts, and direct payments	Non-pilot
	Rural Development's Rural Energy for America Program	Provides guaranteed loan financing and grant funding for renewable energy systems or to make energy efficiency improvements. Agricultural producers may also apply for new energy efficient equipment and new system loans for agricultural production and processing.	Agricultural producers, rural small businesses, tribal agricultural producers, and tribal small businesses	Loans and grants	Pilot

Source: GAO analysis of federal agency program information and funding data. | GAO-24-106511

<sup>a</sup>The Justice40 interim implementation guidance identified 21 pilot programs to undertake an initial implementation of the Justice40 Initiative. In addition to the 21 pilot programs, hundreds of other federal programs, which we refer to as non-pilot programs, are covered programs under the Justice40 Initiative.

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<sup>b</sup>The Safe Drinking Water Act, as amended, allows EPA to use up to 1.5 percent of the annual Drinking Water State Revolving Fund appropriation for the tribal set-aside. See 42 U.S.C. § 300j-12(i). According to EPA, since fiscal year 2010, the agency has been authorized through its annual appropriation to use up to 2 percent for the set-aside, and since fiscal year 2016, up to 2 percent of appropriated funds or \$20 million, whichever is greater. According to EPA, it expects this language to continue to carry forward in future years.

<sup>c</sup>According to EPA officials, DWIG-TSA program funds have frequently been administered via interagency agreements with the Indian Health Service.

<sup>d</sup>According to EPA, the competitive grants part of the Brownfields program was part of the Justice40 pilot program, but the Brownfields State and Tribal Response Program was not a part of the pilot.

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## Selected Agencies Took Various Actions to Increase Access, but Program Characteristics May Hinder Tribes' Ability to Access Programs

Each selected agency took various actions to direct funding to underserved communities, including tribal recipients. However, tribal applicants continue to encounter barriers regarding certain program characteristics that may hinder access to federal funding for underserved communities.

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## Selected Agencies Took Various Actions to Increase Access to Program Funding

### Alternative Funding Arrangements

According to the U.S. Department of Agriculture's *2023 Equity Action Update for the Natural Resources Conservation Service*, the agency published a policy on alternative funding arrangements. The policy is designed to provide Tribes and Alaska Native Corporations with additional flexibilities for funding, planning, and administration where existing processes created barriers to program participation, under the Environmental Quality Incentives Program and the Conservation Stewardship Program. These alternative funding arrangements provide flexible options for Tribes wishing to participate in these programs, with an emphasis on support for traditional tribal practices and Tribe-managed projects.

Source: USDA, *Natural Resources Conservation Service Equity Action Update*, (July 2023). | GAO-24-106511

Each selected agency adjusted some program mechanisms to increase access for underserved communities, including tribal applicants, to the Justice40 covered programs in our review. For example, selected agencies took actions, or plan to take actions, to do the following.

- **Non-federal cost share assistance and adjusting reimbursable contract requirements.** According to FEMA officials, Tribes can lower their non-federal cost share through donated or in-kind resources and FEMA works with tribal partners to help Tribes identify other sources of funding. For example, if a Tribe retains engineering staff that contribute labor to a funded project, their services can count toward the non-federal cost share. As another example, Natural Resources Conservation Service officials told us that increased reimbursement rates and advance payments are available to underserved producers, including Tribes, that otherwise may not be able to pay for up-front costs under the program.<sup>43</sup>
- **Modify eligibility requirements.** For USDA's REAP, Rural Development clarified the program's definition of small business to include certain tribal businesses and improve program access for tribal corporations. Similarly, EPA officials in one region stated that they are currently working with state officials to modify some state DWSRF eligibility requirements to increase access to the program for disadvantaged communities, including tribal applicants.
- **Increase tribal set-asides.** FEMA increased the BRIC tribal set-aside—a portion of the total amount available for the program allocated to Tribes—from \$20 million for fiscal year 2020 to \$25 million for fiscal year 2021, and then \$50 million for fiscal year 2022, to increase the amount of funds available to tribal applicants.<sup>44</sup>
- **Expand technical assistance.** EPA, FEMA, and USDA expanded technical assistance services to help underserved communities, including tribal recipients, to better access certain programs.<sup>45</sup> For

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<sup>43</sup>Reimbursable contracts are used by some programs, such as EQIP, which reimburse recipients after projects meet certain standards, rather than providing funding up front.

<sup>44</sup>As we reported in 2022, FEMA created a tribal set-aside for its competitive Pre-Disaster Mitigation grant program in 2014, which was superseded by the BRIC program in fiscal year 2020, which also has a tribal set-aside. See [GAO-22-104241](#).

<sup>45</sup>USDA's Rural Development is currently reviewing grantee applications for its newly established REAP Technical Assistance Grant program authorized by the Inflation Reduction Act. See Pub. L. No. 117-169, § 22002(b), 136 Stat. 1818, 2019 (2022). Once fully implemented, this program will award grants to eligible entities to provide services to assist potential REAP applicants in submitting complete applications, with a priority for applicants assisting distressed or disadvantaged communities.

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example, from IIJA funding for Brownfields grants, EPA allocated nearly \$57 million over 5 years for EPA Brownfields' Technical Assistance, Training and Research grants to improve program access and delivery to Tribes and other communities. Additionally, as part of the agency's broader environmental justice efforts, 16 EPA-funded Thriving Communities Technical Assistance Centers began opening in 2023 to assist communities with environmental justice concerns, in partnership with several tribal organizations.<sup>46</sup>

- **Supporting tribal capacity-building.** EPA plans to take actions through the DWSRF, among other programs, to strengthen tribal program capacity and to assist and train tribal water officials, according to the agency's Fiscal Year 2022–2026 Strategic Plan.<sup>47</sup>

While some of these actions were taken specifically in response to the Justice40 Initiative, others were not. For example, EPA's plans to strengthen program capacity are part of the agency's response to the Initiative and other efforts that predate the Justice40 Initiative, according to the agency's strategic plan and agency officials. In contrast, FEMA's increase to the BRIC tribal set-aside was part of an earlier effort by FEMA to direct funding to tribal recipients, according to agency officials. Broader actions such as these, taken to increase access to federal programs for underserved communities, may help agencies achieve the 40-percent goal of the Justice40 Initiative and improve access for Tribes and other Indigenous communities.

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### Several Program Characteristics May Hinder Tribal Applicants' Access to Some Selected Justice40 Programs

In our review of selected agencies' guidance and reports, and interviews with agency officials, Tribes, and tribal organizations, we found several program characteristics that may hinder agency efforts to increase tribal applicants' access to programs. Specifically, we found that barriers related to eligibility requirements, non-federal cost share requirements, competitive programs, administrative burdens, and statutes and regulations hinder tribal applicants' ability to access programs.

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<sup>46</sup>Technical assistance helps mitigate administrative burden to recipients by providing office hours, training, and other assistance to help recipients navigate the program, which can help mitigate tribal capacity concerns.

<sup>47</sup>EPA's February 2024 Equity Action Plan has a priority strategy that includes building the capacity of communities facing environmental justice concerns. Environmental Protection Agency, *Equity Action Plan: U.S. Environmental Protection Agency* (Washington, D.C: Feb. 14, 2024).

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## Eligibility Requirements

### Lease Term Requirements

Representatives from one tribal organization reported that the lease term requirement to participate in the U.S. Department of Agriculture's Natural Resources Conservation Service's Environmental Quality Incentives Program (EQIP) limits the participation of tribal producers. They stated that EQIP applicants must show control over the land in the proposed project area for 1 full year; however, 5 years is the typical maximum lease term. When Tribes apply for the funding, it can take between 2 and 3 years to get through the application process, which can leave just 1 year of the lease to get project funding through EQIP.

Source: Interviews with tribal leadership. | GAO-24-106511

Certain program eligibility requirements, such as requirements based on land ownership and income, can be a barrier to participation for tribal applicants. For example, to be eligible for USDA's REAP, tribal businesses and agricultural producers must provide collateral or other income streams to secure loans. According to agency officials we interviewed, this creates a barrier for tribal applicants because tribal trust land cannot be pledged as collateral, which may discourage capital investment.<sup>48</sup> In another example, FEMA's Flood Mitigation Assistance program has low tribal participation because applicants must participate in the National Flood Insurance Program.<sup>49</sup> In 2022, we reported that few Tribes participate in flood insurance because they may not have jurisdiction over all of the land within their reservation or Native village.<sup>50</sup>

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<sup>48</sup>Tribes, generally with the approval of the Secretary of the Interior, can lease trust land to other parties, who can then use their leasehold interest as collateral for a loan with the approval of the Secretary of the Interior. When a borrower uses a leasehold interest as collateral, upon default, the lender has the right to exercise control over the land for the remaining term of the lease. However, lenders may be less comfortable with this form of collateral, which may discourage investment on tribal trust lands. Unlike tribal trust lands, the use of individual Indian trust lands can be used as collateral for a loan with permission of the Secretary of the Interior. However, as we previously reported, many tracts of individual trust lands are allotments with ownership fractionated across multiple individuals. This can present a barrier to obtaining credit because it requires the consent of owners with a majority interest in the land for agricultural leases, leasehold mortgages, and mortgages. See [GAO-22-105215](#).

<sup>49</sup>FEMA's Flood Mitigation Assistance Program provides competitive grants for projects and planning to reduce risks of flood damage to structures insured under the National Flood Insurance Program. To participate in the National Flood Insurance Program, a community must adopt FEMA-approved floodplain management requirements for residents to be able to purchase federal flood insurance. We have previously reported on several barriers to tribal participation in the National Flood Insurance Program, including limited enforcement jurisdiction over floodplains due to prior federal policies that allotted tribal lands to individuals. See *GAO, Flood Insurance: Participation of Indian Tribes in Federal and Private Programs*, [GAO-13-226](#) (Washington, D.C.: Jan. 4, 2013).

<sup>50</sup>See [GAO-22-104241](#).

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## Cost-Share Requirements

### Matching Costs

Program officials from one Tribe reported that matching requirements are the first item they consider when deciding to apply for funding, because a multimillion-dollar grant with a high cost-share is nearly impossible for the Tribe to match. They stated that reducing or eliminating matching requirements for small and rural Tribes would make programs more accessible for tribal recipients.

Source: Interviews with tribal leadership. | GAO-24-106511

Programs that require recipients to provide significant amounts of funding up front, such as cost-share requirements and reimbursable contract requirements, can pose barriers to tribal applicants and put larger projects out of reach for smaller Tribes. For example, representatives from two tribal organizations and two Tribes told us the portion of non-federal cost-share that requires recipients to pay for some programs can deter them from applying for certain grants. USDA Rural Development officials also stated that matching funds are one of the biggest challenges to tribal recipients' ability to participate in agency programs, and the agency is working with philanthropic entities to help find matching funds for Tribes. Additionally, while REAP grants typically cannot exceed 25 percent of the project cost, REAP grant funding through the Inflation Reduction Act allows financing for up to 50 percent of the project cost.<sup>51</sup> In another example, EPA officials we interviewed stated that Tribes often do not seek funding from the state-administered portion of the DWSRF, because states may set up the programs as loans with partial loan repayment requirements rather than grants available through the tribal set-aside without repayment requirements.<sup>52</sup>

## Competitive Programs

### Funding Application Costs

Leaders from one Tribe we spoke with told us that funding application costs can create challenges for accessing program funding. For example, they stated that expenses for one recent grant application were \$13,000. According to tribal leaders, the Tribe loses that money if it does not receive funding from the application. According to agency officials, the expense of hiring a grant writer is a barrier for some communities.

Source: Interviews with agency officials and tribal leadership. | GAO-24-106511

Leadership and representatives from one Tribe and three tribal organizations we interviewed said that competition with states, local governments, and other Tribes for program funding deters them from pursuing certain programs. The costs of developing an application that could compete with higher-resourced applicants and prior low success rates in applying for programs discourage some Tribes from applying to certain programs, they said. For example, a representative from one tribal organization said that smaller tribal governments have fewer staff handling multiple responsibilities and may not have the technical

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<sup>51</sup>Pub. L. No. 117-169, § 22002(a), 136 Stat. 1818, 2019 (2022).

<sup>52</sup>Under the IIJA, 49 percent of funds provided through the DWSRF General Supplemental Funding and DWSRF Lead Service Line Replacement Funding must be provided as grants and forgivable loans to disadvantaged communities. Pub. L. No. 117-58, 135 Stat. 429, 1400 (2021). The IIJA also requires that not less than 25 percent of funds provided through the DWSRF Emerging Contaminants Funding be provided as grants and forgivable loans to disadvantaged communities or public water systems serving fewer than 25,000 people. 135 Stat. at 1402.

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expertise to develop certain data to submit with their application.<sup>53</sup> Of the programs we selected, BRIC, Flood Mitigation Assistance, EQIP, and REAP provide competitive loans or grant funding.

Tribal leadership and representatives from tribal organizations said intertribal competition, such as within a tribal set-aside, can also be a barrier to access for smaller Tribes and those with limited resources. One tribal organization representative we interviewed stated that Tribes with larger populations are more competitive for grants than smaller Tribes, because they typically have greater financial and staff resources available to apply for programs. Competitive grant programs can also include significant administrative requirements that can be difficult to meet, especially for tribal applicants with limited administrative capacity.<sup>54</sup> For example, one tribal organization representative we interviewed stated that the level of commitment needed for the grant writing process for competitive grants is much greater than non-competitive grants.

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<sup>53</sup>This representative also noted that the entities which could most benefit from grants—and greatly need the funding—are less likely to apply for grants, and if they do apply, generally have less robust applications.

<sup>54</sup>See [GAO-22-104241](#).

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## Administrative Burdens

### Agency Staffing Challenges

We have found that the demand on regional agency staff working on tribal issues can vary widely by region and state, due in part to the number of partnerships with Tribes in a region—ranging from six Tribes in the Environmental Protection Agency (EPA) and Federal Emergency Management Agency (FEMA) Region 4, to 271 Tribes in EPA and FEMA Region 10 (see fig. 5). For example, U.S. Department of Agriculture officials reported experiencing difficulty with staffing, particularly with hiring tribal liaisons in Alaska, which has a large number of tribal recipients. FEMA officials also stated the agency's lack of staff has limited outreach to Tribes. Officials from one region said that region has only two dedicated staff to work with more than 60 federally recognized Tribes, which has limited the region's ability to speak with Tribes one on one.

Source: GAO analysis of agency information and interviews. | GAO-24-106511

Agencies and tribal applicants also experience administrative burdens related to the increased number of funding opportunities, application processes, and program reporting requirements.<sup>55</sup> Officials we interviewed from two of the three selected agencies stated that the increase in program and technical assistance funding for covered programs from the IIJA and Inflation Reduction Act increased administrative demand. For example, USDA state officials reported pressure to spend IIJA funding quickly. However, they reported that this USDA state office is currently short on staff, and they have not been able to hire due to the length of the hiring process.

Further, according to agency officials, the large number of federal programs can prevent tribal applicants with limited capacity from seeking out additional assistance for which they might be eligible. USDA officials we spoke with stated that the large amount of recent funding opportunities can be overwhelming for small Tribes and can make it challenging for the Tribes to navigate funding opportunities that could otherwise help the Tribe address needs (see table 2). Additionally, EPA officials stated that tribal communities may lack staff with knowledge of the federal funding process or have limited capacity to hire knowledgeable staff for the time it takes—typically 4 to 7 years—to apply for and execute a project, particularly large infrastructure projects. Representatives from one tribal organization stated that the lack of institutional knowledge of navigating federal programs is amplified by staff turnover, especially for smaller Tribes.

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<sup>55</sup>Administrative burdens can be closely tied to long-standing issues with tribal and agency capacity, such as limited staff. For additional challenges related to tribal and agency capacity, see appendix I.

**Table 2: Funding Allocated to Tribal Recipients from Selected Justice40 Covered Programs, Fiscal Year (FY) 2019–2022**

Dollars in millions

Agency	Program	FY 2019	FY 2020	FY 2021	FY 2022
Environmental Protection Agency (EPA)	Brownfields State and Tribal Response Program Grants	\$13	\$13	\$12	\$30
Federal Emergency Management Agency (FEMA)	Building Resilient Infrastructure and Communities (BRIC) program	N/A	\$22	\$19	\$70
U.S. Department of Agriculture	Natural Resources Conservation Service's Environmental Quality Incentives Program	\$41	\$41	\$49	\$47
U.S. Department of Agriculture	Rural Development's Rural Energy for America Program	\$0.4	\$0.9	\$1	\$7

N/A = not applicable.

Source: GAO analysis of federal agency funding data. | GAO-24-106511

Note: FEMA's BRIC funding data for fiscal year 2019 is not available because the program was created in fiscal year 2020. Data for two other selected programs were not available. FEMA's Flood Mitigation Assistance Program funding data was not available because the program did not have tribal recipients. EPA's Drinking Water State Revolving Fund program funding data were not available due to technical issues.

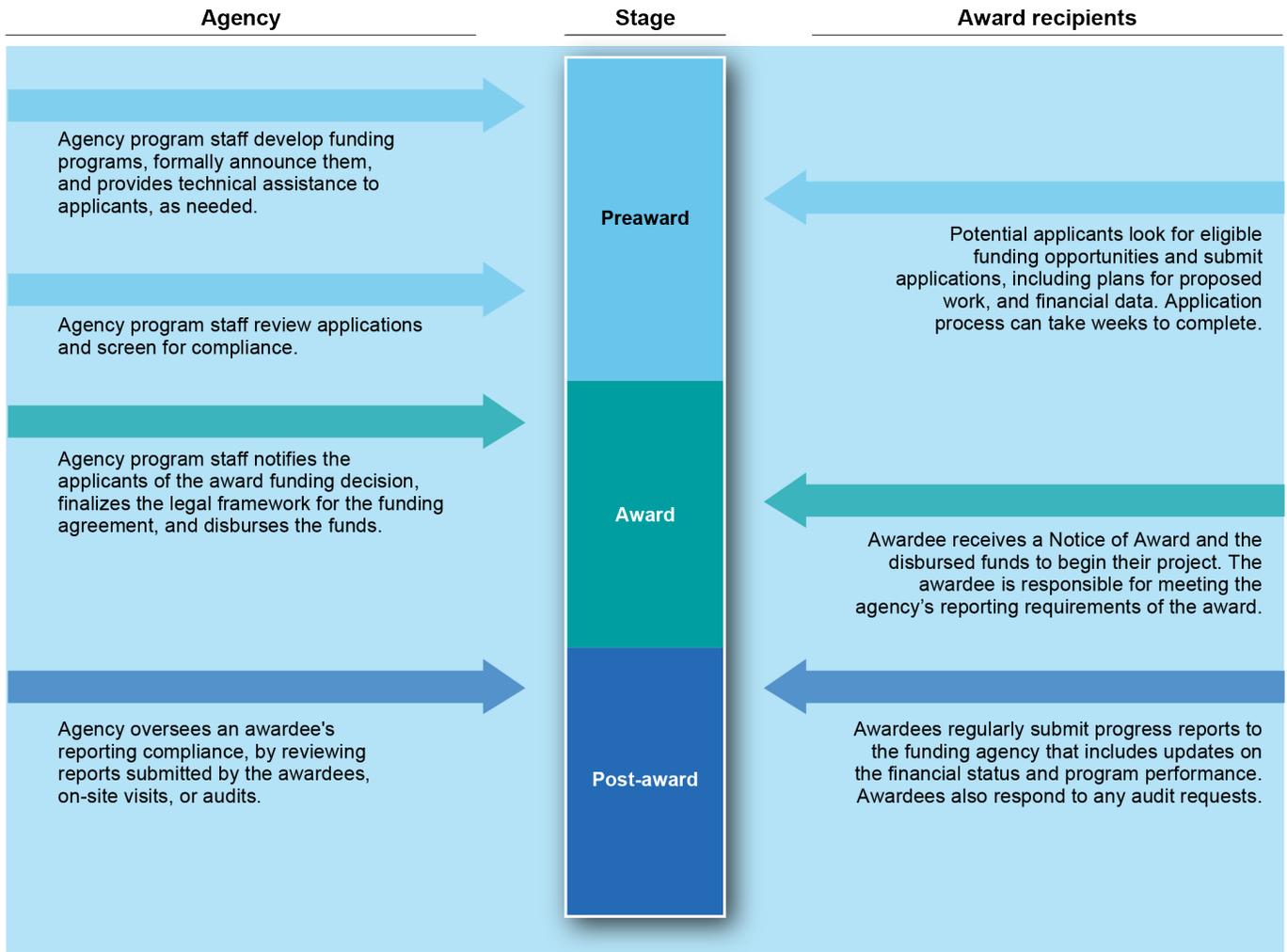
**Complex Program Applications**

Officials from one Tribe we interviewed said that applying for the Building Resilient Infrastructure and Communities program took a dedicated staff person 60 days to navigate the Federal Emergency Management Agency application system and required parallel applications because the system was designed for states.

Source: Interviews with tribal leadership. | GAO-24-106511

Application and program reporting requirements can also be difficult to meet for Tribes with limited capacity. For example, FEMA officials reported that meeting application qualification requirements can be difficult for Tribes applying for BRIC and the Flood Mitigation Assistance program, because of the complexity of the applications (see fig. 3). Representatives from one tribal organization stated that highly detailed and frequent reporting requirements deter tribal applicants from participating in some programs. For example, a representative from another tribal organization we interviewed stated that their Tribe has two staff in their Environmental Office working on up to seven grants that require quarterly reporting, which creates a substantial administrative burden.

**Figure 3: Steps in the Competitive Federal Funding Process**



Source: Analysis of information from Grants.gov and agency interviews. | GAO-24-106511

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## Statutory and Regulatory Barriers

### Program Funding Mechanisms and Deadlines

Program officials from one Tribe we interviewed stated that tight deadlines for program funding distribution encourages agencies to rely on existing funding mechanisms and makes it difficult for agencies to create flexibilities that would help Tribes access the programs.

Source: Interviews with tribal leadership. | GAO-24-106511

Officials we interviewed from selected agencies stated that they could not apply additional program flexibilities to some Justice40 covered programs in our review due to statutory language. For example, EPA has a flexible funding mechanism—Performance Partnership Grants—that allows recipients to reduce both their financial burden by reducing match requirements and administrative burden by combining funds from multiple grants into a single grant with a single budget. However, EPA officials told us that grants funded by the IIJA and Inflation Reduction Act are not eligible for this mechanism. As a result, Tribes must apply to all of the programs separately, according to those officials.

As noted previously, EO 13985 directed agencies to identify and address potential barriers to access to benefits and services in federal government programs faced by underserved communities and individuals, including Indigenous and Native American persons.<sup>56</sup> In addition, EO 14096 directed agencies to identify, analyze, and address historical inequities, systemic barriers, or actions related to any federal regulation, policy, or practice that impair the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment.<sup>57</sup> Further, EOP's interim implementation guidance for the Justice40 Initiative called for agencies, when developing a Justice40 implementation plan to maximize benefits, to consider certain guidelines for modifying pilot programs. For example, to the extent modifications are restricted by statute or regulation, agencies are to describe what, if any, legislative changes would be required to advance the goals of the Justice40 Initiative with respect to the covered pilot program.<sup>58</sup>

To date, some agencies have taken actions to identify statutory and regulatory barriers to access for tribal recipients, including the following:

- **USDA.** According to the 2023 USDA Rural Development Equity Action Plan, the agency conducts a twice-yearly review of its regulations to determine how changes to agency processes and

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<sup>56</sup>Exec. Order No. 13,985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government, 86 Fed. Reg. 7009 (Jan. 20, 2021).

<sup>57</sup>Under the executive order, agencies are to take such actions as appropriate and consistent with applicable law. The executive order notes that communities with environmental justice concerns exist in all areas of the country, including within the boundaries of Tribal Nations. Exec. Order No. 14,096, Revitalizing our Nation's Commitment to Environmental Justice for All, 88 Fed. Reg. 25,251 (Apr. 21, 2023).

<sup>58</sup>Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28.

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procedures can help advance equity—including for tribal applicants.<sup>59</sup> Additionally, USDA conducts annual consultations and listening sessions regarding equity and barriers to access in economic development programs, including regulatory or program requirements that pose barriers to Tribes. According to agency officials, USDA collected information on statutory and regulatory barriers raised by Tribes at these meetings and elevated that information to relevant program offices and legislative entities. USDA published a high-level summary of the results with completed and proposed agency actions to address the barriers.<sup>60</sup> However, based on our review of the documentation for these sessions, it is not clear which USDA Justice40 covered programs may have been addressed.

- **FEMA.** According to FEMA’s National Tribal Strategy, FEMA plans to conduct an internal review of programs and policies that may inhibit equitable Tribal Nation access to FEMA programs and resources and draft a report of recommended legislative, regulatory, and policy changes that will enhance tribal access.<sup>61</sup> In 2023, FEMA held consultations and listening sessions regarding tribal access to FEMA disaster assistance, which included seeking input on barriers created by statute or regulation that might be addressed on potential future agency actions.<sup>62</sup>
- **EPA.** According to agency officials, EPA is working with Tribes and EPA regional offices to identify and address potential barriers to tribal access to certain programs. Further, according to EPA officials, EPA conducted an analysis of legislative and regulatory barriers to access in 2022. While this analysis is not specific to Tribes, EPA used the results of prior consultations and reports from the National Environmental Justice Advisory Council to inform its analysis,

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<sup>59</sup>U.S. Department of Agriculture, *2023 USDA Rural Development Equity Action Plan* (Washington, D.C.: July 2023).

<sup>60</sup>U.S. Department of Agriculture, *USDA Tribal Consultation and Listening Session on Equity/Barriers April 2023 Framing Paper: Economic Development* (Washington, D.C.: April 2023).

<sup>61</sup>Federal Emergency Management Agency, *2022 – 2026 FEMA National Tribal Strategy* (Washington, D.C.: August 2022).

<sup>62</sup>Federal Emergency Management Agency, *Tribal Consultation on FEMA Disaster Declarations Guidance Framing Paper* (Washington, D.C.: April 2023). As part of the December 2023 White House Tribal Nations Summit, FEMA announced plans to update its policies to improve FEMA’s ability to assist Tribal Nations recovering from disasters and expand a culturally competent FEMA workforce by increasing tribal participation in shaping public assistance programs, hiring more staff from Indian Country, and developing FEMA staff trainings.

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according to EPA officials. Additionally, EPA acknowledged the presence of statutory, regulatory, and other barriers to access for communities facing environmental justice concerns and committed to addressing them as part of its February 2024 Equity Action Plan.<sup>63</sup>

Despite these actions, in reviewing the selected agencies' equity action plans,<sup>64</sup> we did not find evidence that the selected agencies have fully documented identified statutory and regulatory barriers to access for tribal recipients for Justice40 covered programs. Agency officials stated that such information has been identified but has not been made publicly available or shared with Tribes. GAO's *Standards for Internal Control in the Federal Government* states that management should communicate quality information externally through reporting lines so that external parties—such as the general public—can help the entity achieve its objectives and address related risks.<sup>65</sup>

We have previously reported that additional program flexibilities to reduce administrative burdens and other program barriers, including statutory and regulatory barriers, could help increase tribal recipients' access to federal programs.<sup>66</sup> Additional agency actions to document previously identified statutory and regulatory barriers, with input from Tribes, and, where the agency determines appropriate, to request further program flexibilities from Congress could improve tribal applicants' ability to access Justice40 covered programs. Increased tribal access to these programs could in turn help address long-standing disparities experienced by Tribes and Indigenous communities. Further, such actions could assist agencies in responding to the December 2023 EO 14112, which, as noted previously, calls for federal agencies to take various actions to increase the accessibility, equity, flexibility, and utility of federal funding and support programs for Tribal Nations.

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<sup>63</sup>Environmental Protection Agency, *Equity Action Plan: U.S. Environmental Protection Agency*.

<sup>64</sup>As noted previously, in January 2021, EO 13985 directed agencies to identify and address potential barriers to access to benefits and services in federal government programs faced by underserved communities and individuals, including Indigenous and Native American persons. The executive order also directed agencies to produce plans to address certain barriers. The selected agencies have taken steps in response to the executive order, including developing equity action plans.

<sup>65</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

<sup>66</sup>See [GAO-21-150](#) and [GAO-22-104241](#).

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## Selected Agencies Have Not Consulted with Tribes Specifically on Justice40 Implementation, and Additional Efforts Could Inform Agency Implementation

Selected agencies have not consulted with Tribes specifically about their implementation of the Justice40 Initiative despite interim guidance direction to consult with various stakeholders, including Tribes. Specifically, the interim guidance provides that agencies should “consult with stakeholders, including state, local, and tribal governments, as well as Native communities,” when determining the benefits of programs covered under the Justice40 Initiative.<sup>67</sup> Selected agencies did hold consultations with Tribes on related issues, although the consultations did not focus specifically on the Justice40 Initiative. For example, agency consultations included other efforts related to environmental justice and to determine equity barriers to programs and services that historically have prevented the participation of underserved communities, including Tribes and Indigenous communities. The extent to which these consultations informed agency implementation of Justice40 is unclear, because selected agencies generally have not made consultation records publicly available in a consistent manner. These agencies have additional opportunities to consult with Tribes, engage with Indigenous communities, and record and publicly share high-level results to help ensure Tribes can provide meaningful input on Justice40 implementation.

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## Selected Agencies Have Not Consulted with Tribes on Justice40, but Have Consulted with Tribes and Engaged with Indigenous Communities on Related Topics

Through our review of selected agencies’ online consultation tracking systems and interviews with agency officials, we found that selected agencies have not consulted with Tribes specifically about the implementation of the Justice40 Initiative but have consulted with Tribes and conducted outreach on related topics. Specifically, we found that agencies have not consulted with Tribes about the Justice40 Initiative and their development of methodologies to calculate the benefits of covered programs.

Justice40 interim implementation guidance directed agencies to develop and submit to OMB draft implementation plans for pilot programs and methodologies for calculating the covered program benefits accruing

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<sup>67</sup>Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28. Consultation under the interim guidance is called for with a variety of stakeholders, including tribal governments, Native communities, and others, while formal government-to-government consultation discussed elsewhere in this report is specifically between the federal government and federally recognized Tribes. As noted previously, the federal government does not have a government-to-government relationship with Indigenous communities that are not federally recognized Tribes.

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generally and to disadvantaged communities.<sup>68</sup> When determining the benefits of a covered program, the interim guidance provided that agencies should “consult with stakeholders, including state, local, and tribal governments, as well as Native communities, to ensure public participation and that community stakeholders are meaningfully involved in what constitutes the ‘benefits’ of a program.”<sup>69</sup> Additionally, the interim guidance directed agencies to develop, for pilot programs, a plan to engage stakeholders relevant to pilot programs.<sup>70</sup>

At the time of our review, one of the three selected agencies did not provide stakeholder engagement and Justice40 implementation plans for the selected covered programs:

- **EPA.** EPA headquarters officials said that they had submitted a draft stakeholder engagement plan and draft implementation plans for pilot programs to CEQ and OMB but have not published them. They said that the agency is in the process of conducting an analysis to help develop benefit methodologies to track and report program benefits going to underserved communities. EPA officials said that they plan to consult with Tribes regarding determination of the benefits of Justice40 covered programs and await additional guidance from OMB. The officials stated that EPA has found determining the benefits of the Justice40 Initiative and translating them to the communities to be the toughest part of the overall effort. At the time of our interview,

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<sup>68</sup>The interim guidance directed agencies with pilot programs to submit methodologies within 60 days of issuance of the guidance, or by September 2021, and other covered programs (i.e., those other than pilot programs) to submit methodologies within 150 days of issuance of the guidance, or by December 2021. All covered programs could begin planning and implementation concurrently. When developing implementation plans, the interim guidance stated that agencies with pilot programs should consider certain specified guidelines, to the extent consistent with statutory and constitutional requirements, for modifying programs to maximize benefits. Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28.

<sup>69</sup>Office of Management and Budget, Council on Environmental Quality, and White House Office of Domestic Climate Policy, *Interim Implementation Guidance for the Justice40 Initiative*, M-21-28. Consultation under the interim guidance is called for with a variety of stakeholders, including tribal governments, Native communities, and others, while formal government-to-government consultation discussed elsewhere in this report is specifically between the federal government and federally recognized Tribes. As noted previously, the federal government does not have a government-to-government relationship with Indigenous communities that are not federally recognized Tribes.

<sup>70</sup>The interim guidance directed agencies with pilot programs to submit a stakeholder engagement plan within 30 days of issuance of the guidance, or by August 2021.

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EPA officials told us CEQ and OMB were working to develop better ways to calculate, define, and articulate the benefits.

- **FEMA.** FEMA developed a stakeholder engagement plan and an implementation plan for the pilot programs in our review. In its stakeholder engagement plan for Hazard Mitigation Assistance grant programs—including BRIC and Flood Mitigation Assistance—FEMA summarizes its planned efforts to measure, track, and modify its pilot programs to better support disadvantaged communities in response to the Justice40 Initiative. The plan notes that in conjunction with the Justice40 Initiative and as part of the equity assessment requirements of EO 13985, FEMA explores ways to make the distribution of hazard mitigation assistance funds more equitable.<sup>71</sup> Additionally, the agency developed a draft implementation plan, *Justice40 Benefits Methodologies*, that provides background on the two pilot programs and describes the data currently available to meet the Initiative’s requirements, plans for future studies, and implementation efforts.<sup>72</sup> According to FEMA headquarters officials, the agency has not explicitly engaged with external stakeholders or consulted with Tribes to determine the benefits of Justice40 covered programs, because CEQ has not yet set a benefits measurement approach.
- **USDA.** Rural Development developed its stakeholder engagement plan and implementation plan for REAP. USDA headquarters officials told us that these plans were not required for non-pilot programs, such as the Natural Resources Conservation Service’s EQIP. Both agencies have taken steps to develop benefit methodologies, including tracking the amount of funding flowing to affected communities and other program-specific metrics using the Screening Tool’s mapping feature. Headquarters officials said that USDA did not consult with Tribes on its benefit methodologies for Justice40 covered programs, but the agency has incorporated information from other consultations into its deliberations.

Through our interviews with selected Tribes, Indigenous communities, and tribal organizations, we found that their awareness of the Justice40

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<sup>71</sup>In addition to BRIC and the Flood Mitigation Assistance program, the engagement stakeholder plan also includes the Pre-Disaster Mitigation program (replaced by the BRIC program in fiscal year 2020), Hazard Mitigation Grant Program, and Hazard Mitigation Grant Program-Post Fire. Federal Emergency Management Agency, Hazard Mitigation Assistance Division, *Stakeholder Engagement Plan* (Washington, D.C.: Aug. 19, 2021).

<sup>72</sup>Department of Homeland Security, Federal Emergency Management Agency, *Justice40 Benefit Methodologies: Building Resilient Infrastructure and Communities (BRIC) and Flood Mitigation Assistance (FMA) Grant Programs* (draft) (Washington, D.C.: Sept. 22, 2021).

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Initiative or agency outreach on the topic was mixed. Program officials from two Tribes we interviewed said that their Tribe heard about Justice40 from non-federal sources, such as a business interested in partnering with the Tribe and an academic.<sup>73</sup> Leadership from one Tribe said that they received notification about which programs were covered under Justice40 from EPA via the agency's website or listservs. Representatives from one tribal organization told us CEQ held presentations on Justice40 in 2022 that provided information and training on the Screening Tool, but they were unaware of any Justice40 consultations or listening sessions since then.<sup>74</sup> However, representatives from two tribal organizations and program officials from one Tribe said that they have noticed an uptick in consultations and outreach efforts from agencies, including FEMA and USDA, in recent years. They attributed this change to the appointment of new agency leadership and the current administration's renewed focus on tribal issues.

Although we found that EPA, FEMA, and USDA had not consulted with Tribes specifically about the agencies' implementation of the Justice40 Initiative for the selected programs, we did find that the agencies have consulted with Tribes and conducted outreach on related topics.<sup>75</sup> Separately, the agencies held national level consultations with Tribes and conducted outreach to Tribes, Indigenous communities, and the public on a variety of related topics. Topics included new funding opportunities under the IIJA, use of the Screening Tool, other efforts related to environmental justice, and equity assessments under EO 13985. Selected agencies offered national level consultations to Tribes and conducted outreach efforts to tribal citizens and the public to discuss national and agency specific opportunities. Examples of the agencies'

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<sup>73</sup>For example, program officials from one Tribe told us several energy companies offered to partner with the Tribe to gain access to the influx of infrastructure-related funding provided to the covered Justice40 programs.

<sup>74</sup>In spring 2022, CEQ held a series of training webinars and public listening sessions on the beta version of the Screening Tool. Representatives from one tribal organization said that their awareness of these sessions and the Justice40 initiative was more due to their proactive tracking of environmental policy developments rather than agency outreach. They also noted a clear distinction between national level consultations—which are generally more of a presentation with a question-and-answer period—versus government-to-government consultations with specific Tribes on a particular issue that necessitate an iterative and bilateral approach between the participating governments.

<sup>75</sup>In November 2021, EPA held an environmental justice webinar series for Tribes and Indigenous communities that included an informational presentation on the initiative, *Justice40 Initiative: A Whole-of-Government Approach to Advance Environmental Justice*. The webinar provided an overview of the initiative and related guidance, next steps for federal agencies, and identified EPA's six pilot programs.

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outreach efforts included listening sessions, webinar presentations, meetings with tribal leaders, and sharing best practices.

- **EPA’s Summer 2022 Feedback Sessions for IJA Solid Waste and Recycling Programs.** According to EPA’s website, from May through July 2022, the agency hosted national virtual conversations and feedback sessions with interested stakeholders to discuss new IJA funding for solid waste prevention, management, and recycling initiatives. EPA conducted feedback sessions for specific groups to learn about their unique concerns about EPA funding programs that were under development. According to EPA headquarters officials, Tribes discussed the various challenges they—and smaller Indigenous communities—face when accessing federal programs, their limited administrative capacity, and the difficulties they experience navigating the federal grant application process that can span multiple websites.
- **FEMA’s Summer 2022 Hazard Mitigation Webinar Series.** According to FEMA headquarters officials, during a 10-part webinar series, agency subject matter experts and partners shared technical information, best practices, tools and resources regarding BRIC and the Flood Mitigation Assistance program. According to FEMA’s website, the agency designed the webinars and office hours sessions for tribal, state, and local government leaders, as well as private sector entities, to learn more about the grant programs and strategies for applying.
- **USDA’s 2023 Equity and Barriers Consultations and Listening Sessions.** In April 2023, USDA held a series of national consultations for Tribes and listening sessions for tribal citizens on barriers to accessing USDA programs that addressed a number of topics that specifically affect Tribes and Indigenous communities, in response to the 2022 Presidential Memorandum on Uniform Standards for Tribal Consultation and EO 13985, according to the agency. USDA’s framing paper—an informational background document—for these consultations and listening sessions outlined topics from past consultations, high level summary of tribal feedback, examples of USDA’s progress to date, and the need for additional tribal input.<sup>76</sup>

Nevertheless, the extent to which the selected agencies’ related consultation and outreach efforts have informed agency implementation of Justice40 is unclear because the agencies generally have not posted

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<sup>76</sup>U.S. Department of Agriculture, *USDA Tribal Consultation and Listening Session*.

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the records of past consultations.<sup>77</sup> Specifically, none of the selected agencies' public-facing consultation websites consistently included records of past national consultations despite instructions to consider doing so in agency guidance and a 2022 Presidential Memorandum.<sup>78</sup> In particular, agencies were instructed to consider posting consultation records that summarize tribal input in a non-identifiable way, agencies' planned efforts to incorporate tribal input in agency decisions, or the outcomes of the consultation. Each of the agencies' websites included notices about planned and past national consultations, event details, and other information, such as factsheets and framing papers. However, we generally were unable to locate publicly available information or individual records of past national consultations, beyond informational framing papers that provide background for future consultations and listening sessions.<sup>79</sup> According to EPA's *Plan for Implementing the Policies and Directives of Executive Order 13175*, beginning in fiscal year 2020, EPA's American Indian Environmental Office required headquarters and regional offices to document consultation outcomes in the agencies' internal consultation website.<sup>80</sup>

Representatives from a tribal organization and program officials from a Tribe we interviewed said that a number of agencies are not posting information following national consultations that acknowledge or take into account the input agencies received from Tribes.<sup>81</sup> Further, they said

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<sup>77</sup>Representatives from one tribal organization said that—with few exceptions—federal agencies do not maintain robust and user-friendly clearinghouses with this type of information for national consultations.

<sup>78</sup>Officials from USDA and FEMA emphasized the importance of maintaining the confidentiality of tribal leaders' comments to foster an open discussion of concerns. Additionally, there may be some project-specific or other consultations between an agency and individual Tribes where sharing consultation results beyond the participating Tribes may not be appropriate.

<sup>79</sup>According to USDA headquarters officials, USDA carefully considers whether to post consultation results publicly and developed its framing papers as a way to summarize tribal input and planned agency actions in a manner that protects the confidentiality of tribal leaders' comments. FEMA has also used framing papers as a way to summarize input from prior consultations in advance of upcoming consultations.

<sup>80</sup>Environmental Protection Agency, *Plan for Implementing the Policies and Directives of Executive Order 13175: Consultation and Coordination with Indian Tribal Governments* (Washington, D.C.: Apr. 23, 2021).

<sup>81</sup>For example, representatives from one tribal organization said that many of these presentations are also unidirectional and, while they solicit input from the Tribal Nations that do participate, it is unclear the extent to which feedback is incorporated. In contrast, according to the representatives, during certain environmental reviews, the lead agency responds to issues identified in public comments in the final document.

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several hundred consultations are happening across the federal government each year, making it difficult for Tribes and other agencies to keep track, and increasing the administrative demands they create for Tribes. Tribal organization representatives said due to the high volume of consultations at any given time, there is no way for a Tribe to attend them all and provide meaningful input, which makes agencies' actions to share the results of prior consultations particularly useful to Tribes.<sup>82</sup>

Specifically, by publicly sharing the high-level results of consultations, agencies would improve Tribes' access to information about prior tribal input on federal programs.<sup>83</sup> In turn, this information could inform Tribes' decisions on which consultations to prioritize to provide additional input and may reduce their administrative burden.

We have previously reported on the need for agencies to communicate how tribal input from consultations was used in agency decisions.<sup>84</sup> EPA and DHS have updated their consultation guidance to reflect how they will document and share results with participating Tribes.<sup>85</sup> Additionally, the *2022 Presidential Memorandum Uniform Standards for Tribal Consultations* states that agencies should maintain a record of the consultation process, including a summary of tribal input received and a general explanation of how tribal input influenced or was incorporated into

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<sup>82</sup>USDA's Plan of Action 270 Day report called for the creation of a federal agency-wide calendar for all consultations and consistency in the format and expectations of consultation efforts. At the time of the report, the USDA Office of Tribal Relations had not developed a shared calendar but had made an effort to notify stakeholders of events held by other agencies and had also held events jointly in collaboration with different agencies, such as the Department of the Interior, according to the report. For example, in 2021, USDA and the Department of the Interior held a three-part series of listening sessions on tribal bison co-sponsored by the Intertribal Buffalo Council. U.S. Department of Agriculture, *USDA Plan of Action 270 Day Report: Tribal Consultation and Strengthening Nation-to-Nation Relationship* (Washington, D.C.: Jan. 14, 2022).

<sup>83</sup>Representatives from one tribal organization emphasized the importance of agencies posting results summarizing the consultation and agency response to reduce Tribes' administrative burden. They noted that posting recordings of national consultations puts the administrative burden on Tribes because they must invest substantial time in reviewing the content.

<sup>84</sup>GAO, *Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects*, [GAO-19-22](#) (Washington, D.C.: Mar. 20, 2019).

<sup>85</sup>USDA is currently revising its tribal consultation policy and procedures. In its draft updated policy, USDA directs all mission areas, agencies, and staff offices to (1) document the results of consultations by including a summary of tribal input and how USDA incorporated tribal input into its decisions, and (2) report out these results to tribal participants within 30 days of the consultation.

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agency actions.<sup>86</sup> The memorandum also provides that for national and regional consultations, or otherwise if appropriate, agencies should consider—with tribal input—publicly posting the consultation record to foster ease of reference and use by other agencies, employees, and processes, and to minimize burdens on Tribes to provide similar input in multiple consultations.<sup>87</sup> If agencies implementing Justice40 covered programs maintain records of related consultations and make those records publicly available, as appropriate, it could improve institutional knowledge within agencies and ease administrative and resource burdens on both the agencies and Tribes.

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### Agencies Have Additional Opportunities to Consult with Tribes and Engage with Indigenous Communities on Justice40 Implementation

Based on our interviews with selected Tribes, eligible Indigenous communities, tribal organizations, and our prior work, we found that additional tribal input could help inform agencies' continued Justice40 implementation for selected programs. Agency officials and guidance have discussed the importance of receiving tribal input from consultations and listening sessions.

We previously reported that tribal leaders see consultations as a way to provide input that could influence agency decision-making.<sup>88</sup> Tribes used consultations as opportunities to provide input on appropriately scoping geographic areas for projects, determining the long-term effects of projects on tribal resources, and ensuring considerations of environmental justice. In May 2022, we reported that consultations with federally recognized Tribes helped agencies identify barriers that Native villages faced when applying for competitive grant programs and develop recommendations for addressing those barriers.<sup>89</sup>

According to agency officials, Tribes, and tribal organizations, consultation continues to be a vital way for agencies to receive

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<sup>86</sup>87 Fed. Reg. 74,479, 74,481 (Dec. 5, 2022). According to the memorandum, the record of the consultation process is also to include, if relevant, the general reasoning for why tribal suggestions were not incorporated into the agency action or why consensus could not be attained.

<sup>87</sup>*Id.* The memorandum notes that decisions regarding whether to publicly post consultation records should be made with tribal input. Further, the memorandum says that to the extent permitted by applicable law, agencies shall seek to ensure that information designated as sensitive by a tribal government is not disclosed. The memorandum also provides that agencies should obtain advance informed consent from tribal communities for the use of sensitive information provided by the Tribe, and inform tribal representatives that certain federal laws, including the Freedom of Information Act, may require disclosure of such information.

<sup>88</sup>See [GAO-19-22](#).

<sup>89</sup>See [GAO-22-104241](#).

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meaningful input regarding federal actions and program implementation that may affect Tribes.<sup>90</sup> An EPA headquarters official said that working with tribal organizations does not replace the value of high-level national consultations, such as the summer 2022 feedback sessions for IJA solid waste and recycling programs that the agency held. Additionally, tribal leadership and tribal organization representatives we interviewed emphasized the need for agencies to use consultations as a way to solicit tribal input ahead of decision-making. In particular, representatives from one tribal organization emphasized that tribal input should be sought during the initial planning stages, not after an agency had internally committed to an action.

Tribal program officials and tribal organization representatives told us that in several instances, Tribes were informed during consultations of agency decisions after they had been made. We previously reported that Tribes felt as though the agency were checking a box and did not consider the Tribes' view on the matter.<sup>91</sup> According to EPA's *Plan for Implementing the Policies and Directives of Executive Order 13175*, the agency has received similar feedback in prior consultations. EPA's plan noted that consultations can often feel like a "check the box" exercise to Tribes, with decisions predetermined and comparing these sessions to an early comment period opportunity rather than a consultation opportunity.<sup>92</sup>

Some tribal leadership and tribal organization representatives we interviewed highlighted the value of the selected agencies' national-level consultations and outreach efforts on other topics. But they voiced concerns that Tribes may be hesitant to ask questions at large-scale consultations and outreach efforts and suggested that more be done at the local and regional levels.<sup>93</sup> Tribal organization representatives we interviewed suggested that local and regional level consultations and outreach efforts would better address the differences and geographically

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<sup>90</sup>Representatives from one tribal organization noted a clear distinction between national level consultations—which are generally more of a presentation with a question-and-answer period—versus government-to-government consultations with specific Tribes on a particular issue that necessitate an iterative and bilateral approach between the participating governments.

<sup>91</sup>See [GAO-19-22](#).

<sup>92</sup>Environmental Protection Agency, *Plan for Implementing the Policies and Directives*.

<sup>93</sup>Additionally, limiting questions and responses during a large-scale consultation restricts Tribes' ability to digest the information and frame its questions with precision, according to representatives from one tribal organization. They also noted that agency personnel may not have the necessary information or opportunity to develop thoughtful, nuanced, and comprehensive responses in this format.

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specific needs of Tribes.<sup>94</sup> Alaska Native villages, for example, face unique challenges, including lack of reservations in the state,<sup>95</sup> remoteness of land-locked villages, and limited access to broadband internet that differ from those experienced in the lower 48 states.

Through our review of agency documents, we have found selected agencies have taken note of the need for more regionally specific consultations and a more streamlined process to reduce the need for Tribes to provide similar input multiple times. For example, USDA's Plan of Action 270 Day report noted USDA's goal of creating regional, interagency, and issue-specific consultations and increasing its efforts at inter-federal agency collaboration and, for example, holding joint consultations on shared subject matters when appropriate. At the time of the report, USDA had taken part in joint consultation efforts and planned to continue doing so.<sup>96</sup> Additionally, DHS's 2021 *Action Plan for Tribal Consultation and Strengthening Nation-to-Nation Relationships* called for working with other federal agencies in consultation efforts during regional and national tribal events to save tribal resources.<sup>97</sup>

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<sup>94</sup>According to USDA headquarters officials, at least once a year the Natural Resources Conservation Service's three regional conservationists host or co-host an in-person meeting with their regions'—East, Central, and West—Regional Tribal Conservation Advisory Councils. Additionally, agency leadership and staff hold virtual meetings with council members throughout the year, as needed. Further, many states also host state-level Tribal Conservation Advisory Council meetings on a quarterly or biannual basis.

<sup>95</sup>Enacted in 1971, the Alaska Native Claims Settlement Act revoked all but one reservation, the Metlakatla Reservation, in the State of Alaska. Pub. L. No. 92-203, § 19, 85 Stat. 688 (codified as amended at 43 U.S.C. § 1618).

<sup>96</sup>U.S. Department of Agriculture, *USDA Plan of Action 270 Day Report*.

<sup>97</sup>Department of Homeland Security, *2021 Action Plan for Tribal Consultation and Strengthening Nation-to-Nation Relationships* (Washington, D.C.: June 28, 2021).

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### State-Recognized Tribes

The Bureau of Indian Affairs, within the Department of the Interior, maintains a list of federally recognized Tribes. Non-federally recognized Tribes fall into two categories: (1) state-recognized Tribes that are not also federally recognized, and (2) other groups that are neither federally nor state recognized.

We have previously reported that some state-recognized Tribes have received federal funding under federal programs specifically authorized to fund state-recognized Tribes, or because the Tribes were organized as non-profits and were eligible to receive federal funding from any program authorized to fund nonprofits.

Tribal leadership and program officials we interviewed from state-recognized Tribes stated that they face unique challenges in accessing federal funding—in particular, communication challenges.

Tribal leadership from one state-recognized Tribe told us that outreach from federal programs typically goes to federally recognized Tribes, who may then pass information about funding opportunities through tribal networks. While awarded small federal grants in the past, this Tribe has primarily relied on grants from conservation groups. Program officials from another state-recognized Tribe stated that the lack of communication of programs available to state-recognized Tribes means they often hear about funding opportunities as they are close to expiring or have already expired.

Source: GAO-12-348; and interviews with tribal program officials. | GAO-24-106511

Representatives from one tribal organization and leadership and program officials from two state-recognized Tribes we interviewed told us that state-recognized Tribes and Indigenous communities are not directly notified about outreach activities for federal programs, such as listening sessions. Some regional and state offices have been taking additional steps to conduct outreach to state-recognized Tribes and Indigenous communities. For instance, USDA's Alaska, North Carolina, and South Carolina state offices have taken actions to reach out and track the number of state-recognized Tribes and Indigenous communities within the state.

Additionally, tribal organization representatives and tribal leadership and program officials from both federally recognized and state-recognized Tribes said that some Tribes may not have the capacity or time to keep track of federal agencies' events and would appreciate notification via email or direct communication from a tribal liaison about federal funding opportunities and outreach efforts.

Finally, the internationally recognized United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) calls for governments to consult and cooperate in good faith with the Indigenous peoples concerned to obtain their free, prior, and informed consent (FPIC) before taking certain actions that may affect them or their lands, territories, or other resources.<sup>98</sup> The Food and Agriculture Organization of the United Nations' technical guide *Respecting Free, Prior and Informed Consent* provides practices for implementing FPIC for governments, companies, nongovernmental organizations, Indigenous peoples, and local communities in relation to land acquisition.<sup>99</sup> The technical guide provides ways to translate the FPIC principles into practical steps and examples of good practices that are part of an iterative and ongoing process in which particular actions may need to be repeated, prolonged,

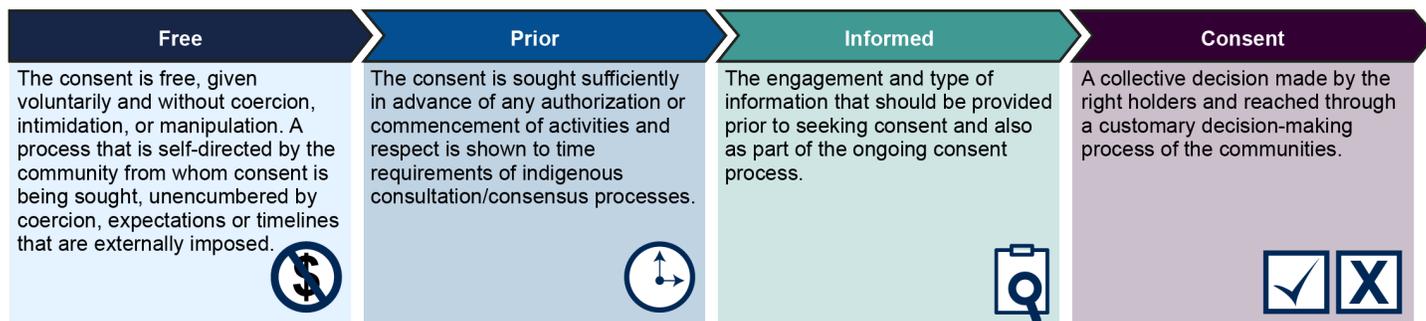
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<sup>98</sup>G.A. Res. 295, U.N. GAOR, 61st Sess., U.N. Doc. A/Res/61/295 (2007). Specifically, UNDRIP article 19 calls for governments to consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions to obtain their FPIC before adopting and implementing legislative or administrative measures that may affect them. Additionally, UNDRIP article 32 calls for governments to consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources—particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources.

<sup>99</sup>Food and Agriculture Organization of the United Nations, *Respecting Free, Prior and Informed Consent: Practical Guidance for Governments, Companies, NGOs, Indigenous Peoples and Local Communities in Relation to Land Acquisition*, Governance of Tenure technical guide no. 3 (Rome, Italy: 2014).

or repositioned within the broader process. Further, the Food and Agriculture Organization of the United Nations website provides information about the right to FPIC and how project practitioners can implement it on an iterative basis for a broad range of projects (see fig. 4).

**Figure 4: Food and Agriculture Organization of the United Nations' Definitions of Free, Prior, and Informed Consent**



Source: GAO analysis of Food and Agriculture Organization of the United Nations; and GAO (icons). | GAO-24-106511

Although federal agencies are not required to follow such practices, we found that some of the selected federal agencies' procedures and efforts are consistent with United Nations practices for respecting Tribes' FPIC. Through our review of agency guidance, documents, and websites, and interviews with agency officials, we found that agencies have taken or planned to take some steps related to respecting Tribes' FPIC or are planning to do so. Specifically, selected agencies have taken some steps to implement aspects of these practices by including references to these concepts in agency guidance, conducting increased outreach efforts, offering educational resources, and providing increased availability of agency staff to build relationships (see app. II).

For example, in the DHS Tribal Consultation Directive, updated in December 2022, DHS commits to regular and meaningful consultation with Tribal Nations and Alaska Native Corporations. Specifically, in the directive, DHS commits to such consultations regarding its policies, programs, and services that directly or indirectly impact Tribal Nations in an effort to work toward FPIC on matters that may have tribal implications.<sup>100</sup> Additionally, USDA's draft revised consultation policy includes consent-related language, providing that USDA agencies and offices will explore using consensual mechanisms for developing regulations. Consensual mechanisms include negotiated rulemaking on issues relating to tribal self-governance, tribal self-determination, tribal

<sup>100</sup>Department of Homeland Security, *DHS Directive System Directive Number: 071-04, Consultation and Coordination with Tribal Nations* (Washington, D.C.: Dec. 15, 2022).

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trust resources, or tribal treaty and other rights, according to USDA's draft revised consultation policy.<sup>101</sup> During our interviews, EPA, FEMA and USDA officials from three regional and state offices, respectively, stated that they have helped improve Tribes' access to agency officials by hiring dedicated tribal liaisons to be points of contact, building relationships with tribal partners, and coordinating agency responses to Tribes' questions. Additionally, officials told us the liaisons meet regularly with the Tribes on an individual basis to discuss Tribes' priorities, current concerns, and identify potential programs that could meet Tribes' needs. For example, FEMA Region 6 officials stated they have improved their communication with the 68 Tribes in the region by hiring two dedicated staff to conduct quarterly site visits to Tribes and hold weekly coordination calls following the publication of new funding opportunities.

Justice40 interim implementation guidance directs agencies to consult with stakeholders, including tribal governments and Native communities, when determining benefits of Justice40 covered programs to ensure public participation and that community stakeholders are meaningfully involved.<sup>102</sup> Applying the above successful practices to future Justice40 consultations and outreach efforts could help ensure opportunities for meaningful input and build trust, according to agency officials, tribal leadership, and tribal organization representatives we interviewed. Agency consultation with Tribes and increased outreach to Indigenous communities could help EPA, FEMA, and USDA determine the benefits of covered programs under Justice40 and provide meaningful input about regional needs unique to Tribes. In turn, this information could help inform future agency actions to improve access to federal programs for tribal recipients consistent with the goals of the Justice40 Initiative.

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<sup>101</sup>Specifically, the draft policy notes that agencies and offices will explore, where appropriate and in consultation with the Office of General Counsel, using consensual mechanisms in such contexts. As noted previously, USDA is currently revising its tribal consultation policy and procedures. According to USDA's draft departmental manual on tribal consultation, negotiated rulemaking is a technique used to bring interested parties into the rule-drafting process at an early stage. Rules are developed by reaching consensus among committee members representing affected interests, according to the manual, and if consensus is achieved, the agency publishes the draft rule based on that consensus in a notice of proposed rulemaking.

<sup>102</sup>Consultation under the interim guidance is called for with a variety of stakeholders, including tribal governments, Native communities, and others, while formal government-to-government consultation discussed elsewhere in this report is specifically between the federal government and federally recognized Tribes. As noted previously, the federal government does not have a government-to-government relationship with Indigenous communities that are not federally recognized Tribes.

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## Conclusions

Recent executive orders have directed federal agencies to reduce barriers to federal programs and established the goal that 40 percent of the overall benefits of certain federal investments flow to disadvantaged communities—including Tribes and eligible Indigenous communities. In response, EPA, FEMA, and USDA have consulted with Tribes on related topics, such as removing barriers to federal programs. However, some long-standing statutory and regulatory barriers remain, and agencies have not publicly shared results of actions taken to identify barriers.

Additionally, agencies generally do not make high-level summaries of relevant national consultation results publicly available online. Therefore, Tribes, eligible Indigenous communities, and agency officials may not be aware of how input from related agency efforts and program consultations have informed or could inform agencies' ongoing implementation of the Justice40 Initiative.

Further, agencies developed stakeholder engagement plans to ensure public participation and that community stakeholders are meaningfully involved as agencies determine benefits of selected Justice40 covered programs. However, some of the Tribes and tribal organizations we met with were not aware of the Justice40 Initiative or did not learn about it from the agencies. Increasing agency outreach—including consultations with federally recognized Tribes and engagement with eligible Indigenous communities—could help EPA, FEMA, and USDA collect meaningful tribal input and incorporate it into future implementation efforts.

Lastly, such actions for Justice40 covered programs also could help agencies begin to respond to the December 2023 executive order, EO 14112, which directs federal agencies to take actions to increase the accessibility, equity, flexibility, and utility of federal funding and support programs for Tribal Nations. In turn, increased tribal access to these programs could help address longstanding disparities and support Tribal Nations' efforts to provide their citizens with vital services.

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## Recommendations For Executive Action

We are making a total of nine recommendations, including three to EPA, three to FEMA, and three to USDA. Specifically:

The Administrator of EPA should ensure that the program offices of EPA Justice40 covered programs document previously identified statutory and regulatory barriers to access for tribal applicants informing their implementation of the Justice40 Initiative. As a part of this process, the agency should—with input from Tribes—identify any additional changes necessary to address remaining statutory and regulatory barriers, recommending legislative changes where the agency determines

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appropriate. The agency should make a summary of the results of this process publicly available. (Recommendation 1)

The Administrator of FEMA should ensure that program offices of FEMA Justice40 covered programs document previously identified statutory and regulatory barriers to access for tribal applicants informing their implementation of the Justice40 Initiative. As a part of this process, the agency should—with input from Tribes—identify any additional changes necessary to address remaining statutory and regulatory barriers, recommending legislative changes where the agency determines appropriate. The agency should make a summary of the results of this process publicly available. (Recommendation 2)

The Secretary of Agriculture should ensure that program offices of USDA Justice40 covered programs document previously identified statutory and regulatory barriers to access for tribal applicants informing their implementation of the Justice40 Initiative. As a part of this process, the agency should—with input from Tribes—identify any additional changes necessary to address remaining statutory and regulatory barriers, recommending legislative changes where the agency determines appropriate. The agency should make a summary of the results of this process publicly available. (Recommendation 3)

The Administrator of EPA should ensure that program offices implementing Justice40 covered programs maintain records of related consultations with Tribes and consider—with tribal input—publicly sharing a high-level summary of consultation results, as appropriate, to improve tribal applicants' access to information about tribal input on federal programs and decrease the burden on Tribes and eligible Indigenous communities. (Recommendation 4)

The Administrator of FEMA should ensure that program offices implementing Justice40 covered programs maintain records of related consultations with Tribes and consider—with tribal input—publicly sharing a high-level summary of consultation results, as appropriate, to improve tribal applicants' access to information about tribal input on federal programs and decrease the burden on Tribes and eligible Indigenous communities. (Recommendation 5)

The Secretary of the USDA should ensure that program offices implementing Justice40 covered programs maintain records of related consultations with Tribes and consider—with tribal input—publicly sharing a high-level summary of consultation results, as appropriate, to improve tribal applicants' access to information about tribal input on federal

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programs and decrease the burden on Tribes and eligible Indigenous communities. (Recommendation 6)

The Administrator of EPA should ensure that program offices consult with federally recognized Tribes and conduct outreach to eligible Indigenous communities to ensure meaningful involvement when determining benefits for Justice40 covered programs in accordance with EOP guidance and determine how to incorporate the input into future Justice40 implementation efforts. (Recommendation 7)

The Administrator of FEMA should ensure that program offices consult with federally recognized Tribes and conduct outreach to eligible Indigenous communities to ensure meaningful involvement when determining benefits for Justice40 covered programs in accordance with EOP guidance and determine how to incorporate the input into future Justice40 implementation efforts. (Recommendation 8)

The Secretary of the USDA should ensure that program offices consult with federally recognized Tribes and conduct outreach to eligible Indigenous communities to ensure meaningful involvement when determining benefits for Justice40 covered programs in accordance with EOP guidance and determine how to incorporate the input into future Justice40 implementation efforts. (Recommendation 9)

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## Agency Comments and Our Evaluation

We provided a draft of this report to EPA, FEMA, and the USDA for review and comment. EPA, FEMA, and USDA provided written comments that are reprinted in appendixes III, IV, and V, respectively, and summarized below. EPA, FEMA, and USDA also provided technical comments, which we incorporated, as appropriate.

EPA and FEMA agreed with our findings and recommendations and identified planned actions to address the recommendations. USDA generally agreed with our findings and recommendations as they pertain to REAP and EQIP. However, the agency noted that leadership of the initiative sits with CEQ within EOP, and that the calculation and tracking of benefits is therefore contingent on EOP guidance. Specifically, regarding our recommendation that program offices consult with Tribes and conduct outreach to eligible Indigenous communities to ensure meaningful involvement when determining program benefits under Justice40, USDA stated that USDA and other executive branch agencies have limited authority in administering Justice40. USDA expressed caution about being held to a standard of developing Justice40-specific benefits calculations or implementation processes, should the administration of the initiative shift in the future. We revised this

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recommendation for all three agencies to clarify that agency actions should be in accordance with EOP guidance.

Additionally, USDA commented that the draft report inaccurately described the status of REAP's stakeholder engagement plan and implementation plan. We had previously been unable to confirm REAP's completion of the plans despite having requested supporting documents from USDA at multiple junctures during our review. Nevertheless, we appreciate USDA ultimately providing the documents and have modified the report to reflect the plans' completion.

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We are sending copies of this report to the appropriate congressional committees, the Administrator of EPA, the Secretary of Homeland Security, the Secretary of the USDA, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or [OrtizA@gao.gov](mailto:OrtizA@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Ortiz', written in a cursive style.

Anna Maria Ortiz  
Director, Natural Resources and Environment

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# Appendix I: Capacity Challenges to Accessing Justice40 Programs for Tribal Recipients

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In addition to the program characteristics discussed in this report, we also found that long-standing capacity challenges experienced by tribal recipients and agencies can create barriers to accessing program funding for tribal applicants.

**Tribal capacity.** The lack of administrative resources can act as a barrier to accessing federal programs for Tribes and Indigenous communities. For example, both agency officials and representatives from tribal organizations stated that some tribal recipients lack the staff necessary to apply for and manage grants, particularly smaller Tribes.

Additionally, for remote Tribes and Native villages, limited internet bandwidth can also present challenges with communication with agencies, such as when applying online for grant and funding opportunities. For example, one USDA official told us that a tribal grant writer with whom they work prints out grant applications so others can use the Tribe's limited internet bandwidth. In our 2020 report, we found that the lack of resources—including staff and connectivity—can cause challenges that hinder access to federal funding.<sup>1</sup>

**Agency capacity.** The lack of agency staff can also cause challenges for tribal recipients. The number of Tribes in each region varies, resulting in different needs for agency staff (see fig. 5). We have previously reported that lack of staff capacity for agencies can create administrative challenges meeting the customer service needs of tribal recipients. For example, Treasury officials reported that they faced administrative challenges meeting Tribes' customer service needs, such as helping Tribes with limited internet connectivity submit data.<sup>2</sup>

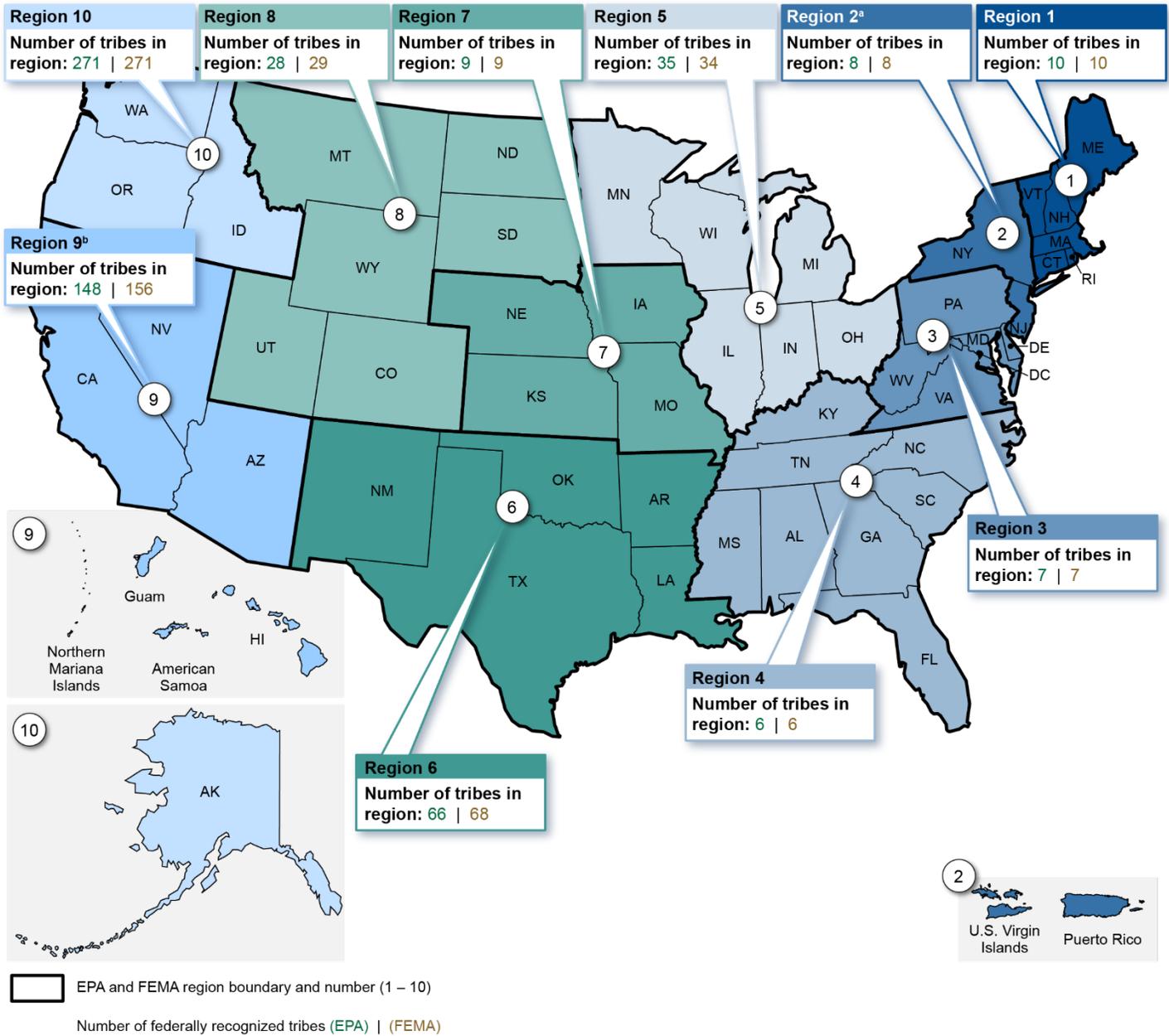
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<sup>1</sup>See [GAO-21-150](#).

<sup>2</sup>See [GAO-22-104349](#).

Appendix I: Capacity Challenges to Accessing Justice40 Programs for Tribal Recipients

Figure 5: Environmental Protection Agency (EPA) and Federal Emergency Management Agency (FEMA) Regions and Number of Federally Recognized Tribes within Each Region



Sources: GAO analysis of EPA and FEMA data and information; Map Resources (Map). | GAO-24-106511

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**Appendix I: Capacity Challenges to Accessing Justice40 Programs for Tribal Recipients**

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<sup>a</sup>Region 2 also serves Puerto Rico and the U.S. Virgin Islands, however these territories do not contain federally recognized Tribes.

<sup>b</sup>Region 9 also serves American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, and the Republic of Palau, however these territories do not contain federally recognized Tribes.

An additional challenge for agencies can be a limited understanding of the unique needs of tribal recipients. For example, representatives from two tribal organizations we spoke with stated that federal programs often do not consider Indigenous traditional ecological knowledge and stewardship practices that tribal recipients want to pursue, such as nature-based solutions, which can hinder their applications. Representatives from another tribal organization reported that their efforts to communicate with agencies' program staff may not adequately convey the situations some communities face, and that direct visits to small, underserved communities could help agency officials understand tribal needs more fully. We have previously reported that agency officials' limited understanding of Tribes can be a challenge for tribal recipients accessing federal funding.<sup>3</sup>

Finally, the timeliness of agency actions can be a barrier to accessing program funding for tribal recipients. For example, tribal leadership stated that sometimes the Tribe does not know it has won an award until the funds' disbursement. They stated that the Tribe managed and planned to get the funds in a timely manner to do the work. Then it must wait for the agency to come through with the funds, and the lack of timely communication makes planning harder, according to tribal leadership. Further, tribal officials said that sometimes the Tribe receives a 120-day window from an agency for receiving funds and then must incur unnecessary costs because it must put other projects on hold or reprioritize projects due to the short advance notification. Similarly, representatives from tribal organizations we spoke with stated that short time frames for notifications of funding opportunities can be a challenge and result in tribal recipients not applying for funding. We have previously reported that the lack of timeliness in program funding can be the result of agencies' lack of experience working with tribal recipients, which can affect access to funding, such as delayed disbursements.<sup>4</sup>

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<sup>3</sup>See [GAO-22-104349](#).

<sup>4</sup>See [GAO-23-105473](#).

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# Appendix II: Examples of Agency Guidance and Actions Consistent with Elements of United Nations Technical Guidance for Implementing FPIC

According to our analysis of agency guidance, interviews with officials, and United Nations technical guidelines for implementing free, prior, and informed consent (FPIC), we identified additional examples of agency actions that could provide opportunities for respecting Tribes' and Indigenous communities' FPIC. These examples are consistent with the following elements of FPIC implementation: carrying out iterative consultations and information-sharing, laying the ground for implementation, and identifying decision-making institutions and representatives.

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## Carrying out Iterative Consultations and Information-Sharing

**Environmental Protection Agency (EPA).** EPA officials from three regional offices said that their offices engage in regular outreach with tribal partners. According to EPA's website, EPA offices use the Regional Tribal Operations Committees to meet regularly with Tribes and tribal representatives, foster and encourage partnerships, promote understanding, and build relationships to improve environmental and public health protection on Indian lands.<sup>1</sup> For example, officials from EPA Regions 4, 6, and 10 said their regions hold regular meetings throughout the year with tribal partners to discuss different programs, including Justice40 covered programs, and available funding opportunities. Officials said they occasionally invite national-level agency officials and subject matter experts to participate in meetings. In October 2020, we reported that these regularly occurring meetings help address grant deadline concerns; Tribes and EPA frequently connect and discuss upcoming opportunities, and Tribes are able to learn from other Tribes in the region.<sup>2</sup>

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## Laying the Ground for Implementation

**Federal Emergency Management Agency (FEMA).** According to FEMA's August 2022 National Tribal Strategy, the agency developed three national tribal strategy goals to better support Tribal Nations during emergency management activities.<sup>3</sup> For example, to partially address its first goal to instill equity as a foundation of emergency management, the agency plans to develop tribal-specific technical assistance resources to offer opportunities for in-person technical assistance and other outreach

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<sup>1</sup>According to EPA's website, the Regional Tribal Operations Committee is a working committee of EPA and tribal personnel co-chaired by an EPA representative and a tribal representative. EPA designates its committee representatives through internal mechanisms. Environmental Protection Agency, *Regional Tribal Operations Committee (RTOC)*, accessed on January 3, 2024, <https://www.epa.gov/tribal-pacific-sw/regional-tribal-operations-committee-rtoc>.

<sup>2</sup>See [GAO-21-150](#).

<sup>3</sup>Federal Emergency Management Agency, *2022 – 2026 FEMA National Tribal Strategy*.

activities. Also, they plan to connect tribal and FEMA leadership through annual updates on priorities and additional outreach efforts during national and regional tribal events.

To help achieve its second goal to lead the whole of community in climate resilience, FEMA plans to develop standardized tribal consultation training for agency staff. Also, they plan to develop other training opportunities for Tribes through technical assistance and partnerships to improve awareness of FEMA grant programs and increase application rates for these programs. To promote and sustain a ready FEMA and prepared nation, FEMA plans to take steps to improve tribal awareness of federal resources availability. The agency plans to do this by working across the federal government to share information and available resources, organizing monthly FEMA tribal affairs meetings with tribal emergency managers to enhance government-to-government relationships, and collaborating with Tribes to offer tribal-specific national and regional outreach opportunities to broaden awareness of federal resources.<sup>4</sup>

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### Identifying Decision-Making Institutions and Representatives

**United States Department of Agriculture (USDA).** According to USDA's Natural Resources Conservation Service's Equity Action Update, the agency's Environmental Quality Incentives Program (EQIP) developed a new Conservation Evaluation Monitoring Activity for tribal communities called the Indigenous Stewardship Methods Evaluation.<sup>5</sup> The Indigenous stewardship evaluation provides funding that assists in the sharing of Indigenous knowledge between tribal subject matter experts and producers. EQIP agreements for the Indigenous stewardship evaluation compensate participants for obtaining an evaluation of a planning area with respect to Indigenous stewardship methods that inform the conservation planning process. This enables EQIP participants to use the financial assistance to hire a qualified individual to complete and provide the conservation evaluation. As sovereigns, Tribal Nations and Indigenous communities are able to decide if, when, and who they will designate as the qualified individual to provide the Indigenous stewardship evaluation.

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<sup>4</sup>One tribal organization representative told us there has been movement within FEMA to streamline a few programs and to provide technical assistance. For example, the agency selected the representative to be on a working group to discuss hazard mitigation assistance grants and to make access to the grants more equitable to Tribal Nations.

<sup>5</sup>U.S. Department of Agriculture, Natural Resources Conservation Service, *NRCS Equity Action Update: Update July 2023* (Washington, D.C.: July 2023).

# Appendix III: Agency Comments from the Environmental Protection Agency



## OFFICE OF ENVIRONMENTAL JUSTICE AND EXTERNAL CIVIL RIGHTS

WASHINGTON, D.C. 20460

March 20, 2024

Mr. Alfredo Gomez  
Director  
Natural Resources and Environment  
U.S. Government Accountability Office  
Washington, D.C. 20548

Dear Mr. Gomez:

Thank you for the opportunity to review and comment on the Government Accountability Office's draft report, "Justice40: Additional Efforts Needed to Improve Tribal Applicants' Access to Federal Programs under Environmental Justice Initiative (GAO-24-106511)." This letter provides the U.S. Environmental Protection Agency's response to GAO recommendations. EPA agrees with the GAO's findings, conclusions, and recommendations. Through technical comments enclosed with this letter, EPA is also providing additional information for GAO to consider including in the final report.

GAO reviewed examples of three agencies' implementation of the Justice40 Initiative with respect to Tribal applicants: the EPA, the Federal Emergency Management Agency, and the U.S. Department of Agriculture. GAO selected two Justice40 covered programs within the EPA to include in its review: 1) Brownfields State and Tribal Response Program and 2) Drinking Water State Revolving Fund.

GAO found that the EPA took action to increase access for underserved communities, including Tribes and eligible Indigenous communities, to the Justice40 covered programs selected for review. However, GAO concluded that some statutory and regulatory barriers remain, and the EPA has not fully documented identified barriers to access for Tribal recipients for Justice40 covered programs. In addition, GAO found that the EPA consulted with Tribes, but the extent to which those efforts informed agency implementation of Justice40 in those programs is unclear because the EPA did not make consultation results publicly available. Furthermore, GAO found that the EPA did not consult with Tribes specifically about the implementation of the Justice40 Initiative.

Overall, EPA supports findings in this report which are aimed at improving government-to-government relationships with federally recognized Tribes and engagement with Indigenous Peoples. This effort strengthens federal efforts to advance the Justice40 Initiative. GAO made three recommendations to the EPA: 1) document and address barriers; 2) maintain records pertaining to Justice40 Tribal consultation and, as appropriate, share a high-level summary of results, and 3) conduct Tribal consultation with Tribes on Justice40 covered program benefits and implementation.

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**Appendix III: Agency Comments from the  
Environmental Protection Agency**

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EPA agrees:

- EPA Justice40 pilot programs identified significant barriers or constraints to maximize benefits to disadvantaged communities, under the Justice40 Interim Guidance M-21-28 (Guidance).
- Stakeholder engagement should include “Tribal governments as well as Native communities.”
- Programs implementing Justice40 covered programs should maintain records as outlined by federal records management, policy, and guidance.
- Government-to-government Tribal consultation should be conducted on Justice40 covered programs.

As a result of GAO’s recommendations, EPA plans to conduct Agency-wide Tribal consultation(s) for appropriate Justice40 programs in 2024 to allow Tribal leaders an opportunity to provide feedback on Justice40 covered program barriers, benefits, and implementation. EPA will retain records on the Justice40 Tribal consultation, and publicly share a high-level summary of input, as appropriate. EPA’s responses below provide additional details and feedback to GAO.

**GAO Recommendation 1:** The Administrator of EPA should ensure that the program offices of EPA Justice40 covered programs document previously identified statutory and regulatory barriers to access for tribal applicants informing their implementation of the Justice40 Initiative. As a part of this process, the agency should--with input from tribes--identify any additional changes necessary to address remaining statutory and regulatory barriers, recommending legislative changes where the agency determines appropriate. A summary of the results of this process should be made publicly available.

EPA agrees and EPA’s Justice40 pilot programs identified significant barriers or constraints to maximize benefits to disadvantaged communities under the [Justice40 Interim Guidance M-21-28](#). The Guidance directed Justice40 pilot programs to identify “significant” and not require identifying specifically statutory and regulatory barriers. As such, Justice40 pilot programs broadly identified different barriers and ways to maximize benefits to disadvantaged communities, including identifying the lack of state and community capacity to apply for and implement funding, statutory barriers in general to disadvantaged communities, and ways to maximize state and Tribal benefits. Additionally, consistent with the requirements of [Executive Order 14091](#), EPA developed and published a 2023 revision to its [Equity Action Plan](#). In the development of this plan, EPA identified significant barriers, previous actions taken to reduce those barriers, and further solutions to the aforementioned barriers in each of the Agency’s eight priority strategies.

EPA agrees that Tribal consultation and stakeholder engagement, as directed under the Guidance, should include “Tribal governments as well as Native communities.” Tribal governments and stakeholders are meaningfully involved in what constitutes the “benefits” of a program. EPA plans to conduct Agency-wide Tribal consultation(s) as appropriate in 2024 on Justice40 covered programs, which will allow participants an opportunity to provide feedback on benefits and broader identified barriers, including statutory and regulatory barriers, as identified and appropriate. The Agency will also create a public, high-level summary of Tribal input received as an output of Justice40 covered program Tribal consultation in 2024.

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**Appendix III: Agency Comments from the  
Environmental Protection Agency**

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In January 2024, EPA joined the interagency White House Council on Native American Affairs (WHCNAA) Implementation Committee and its supporting Task Forces on Executive Order 14112, Reforming Federal Funding and Support Tribal Nations to Better Embrace Our Trust Responsibilities and Next Era of Tribal Self-Determination. The WHCNAA Implementation Committee is charged with federal coordination to better support federally recognized Tribes and identifying opportunities for funding reform. EPA also established a workgroup to coordinate this work internally and to identify recommended approaches and actions for implementation of EO directives across the Agency. EPA anticipates these inter- and intra-agency workgroups may assess statutory and regulatory barriers, as appropriate.

**GAO Recommendation 4:** The Administrator of EPA should ensure that program offices implementing Justice40 covered programs maintain records of related consultation with tribes and consider—with tribal input—publicly sharing a high-level summary of consultation results, as appropriate, to improve tribal applicants’ access to information about tribal input on federal programs and decrease the burden on Tribes and eligible Indigenous communities.

EPA agrees with the recommendation that program offices implementing Justice40 covered programs should maintain records as outlined by federal records management, policy, and guidance. EPA also agrees, as appropriate and relevant, the Agency will create a public, high-level summary of Tribal input received as an output of Justice40 covered program Tribal consultation in 2024.

EPA, when appropriate, provides high-level summaries of Tribal input received during the consultation process. For example, EPA may provide a supplemental document into a rulemaking docket to describe Tribal input received and associated decision-making as a result of that feedback. In some cases, EPA may publish an official Tribal consultation letter provided by a Tribe that outlines particular input and feedback in a docket. EPA may also publicly speak and present feedback received by Tribes in the Tribal consultation process to show how input was used in decision-making, policy, and program outcomes.

**GAO Recommendation 7:** The Administrator of EPA should ensure that program offices consult with federally recognized tribes and conduct outreach to eligible Indigenous communities to ensure meaningful involvement when determining benefits for Justice40 covered programs and determine how to incorporate the input into future Justice40 implementation efforts.

EPA agrees that Tribal consultation should be conducted on Justice40 covered programs, as appropriate. EPA plans to conduct Agency-wide Tribal consultation(s) as appropriate in 2024 on Justice40 covered programs, which will allow appropriate programs an opportunity to solicit feedback on benefits and implementation of Justice40 to EPA. EPA will retain records for this Tribal consultation, and publicly share a high-level summary of input on EPA’s Justice40 website.

EPA agrees that program offices should continue to conduct outreach and education on Justice40 covered programs. EPA will include additional outreach to “Native communities” as appropriate. To-date, EPA interpreted M-21-28 Justice40 Interim Guidance on stakeholder engagement broadly and engaged federally recognized Tribes and Indigenous communities demonstrated by activities previously shared with GAO. For example, the Brownfields Program shared a number of Tribal engagements conducted since 2021, including a Bipartisan Infrastructure Law (BIL) Listening Session in 2021 where EPA solicited feedback on EPA’s Comprehensive Environmental Response, Compensation,

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**Appendix III: Agency Comments from the  
Environmental Protection Agency**

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and Liability Act (“CERCLA”) section 128(a) Program from Tribal partners where over 100 Tribal representatives attended. This engagement discussed the best ways to maximize the benefits of this historic investment in underserved communities.

In addition, the Office of Ground Water and Drinking Water conducted a ninety-day Tribal Consultation in 2022 to inform revisions of formulas used to allocate funding, including those allocated under BIL, for regions to support Tribal drinking water infrastructure. EPA’s Office of Water also issued the March 2022 [Memo on the Implementation of the Clean Water and Drinking Water State Revolving Fund \(SRF\) Provisions of the BIL](#), which reviewed key priorities for SRF BIL implementation and stated the intention to work closely with states, Tribes and territories to collaboratively accomplish these goals. This Memo also acknowledges that working collaboratively, EPA and SRF can make progress towards Justice40.

Overall, EPA conducted numerous engagements, outreach efforts, education sessions, and/or discussions related to Justice40 activities with Tribal representatives, including:

- In November 2021, EPA conducted the Environmental Justice Webinar for Tribes and Indigenous Peoples on the [Justice 40 Initiative – A Whole-of-Government Approach to Advance Environmental Justice](#).
- From August-December 2021, EPA hosted bi-weekly [National Environmental Justice Community Engagement Calls](#) that featured EPA’s six programs in the Justice40 pilot.
- In April 2022, Justice40 and investments were discussed at the [National Environmental Justice Advisory Council](#) and is a topic of ongoing discussions with the [White House Environmental Justice Advisory Council](#).
- From October to December 2022, EPA conducted a 60-day Tribal consultation for programs funded by the Inflation Reduction Act (IRA) to collect input from Tribes. Since OMB had not identified IRA programs as being covered under Justice40 at that time, this consultation did not specifically discuss Justice40. As of November 2023, many of the IRA-funded programs have since been identified as being covered under Justice40 at EPA. In response to Tribal input from Tribes and Tribal organizations before, during and after this consultation, EPA has implemented J40 covered programs that have included Tribal set-asides, separate notices of funding abilities with reduced reporting requirements, and longer response dates for Tribes.
- EPA discussed Justice40 programs with various Tribal partners and with Tribal Partnership Groups, such as the National Tribal Air Association, the National Tribal Operations Committee, and Regional Tribal Operation Committees. Information sharing included other related topics such as IRA-related funding and technical assistance.

EPA agrees with the GAO’s recommendations and appreciates the opportunity to review the draft report. If you have questions or need further information, please contact Edith Chu, OEJECR’s Audit Liaison, at (202) 250-8737 or chu.edith@epa.gov.

Sincerely,



Theresa Segovia  
Principal Deputy Assistant Administrator

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**Appendix III: Agency Comments from the  
Environmental Protection Agency**

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Enclosure: Technical Comments

cc: EPA GAO Liaison Team  
Edith Chu, OEJECR  
Lenore Connell, OITA  
Kecia Thornton, OLEM  
Carla Hagerman, OW

# Appendix IV: Agency Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

March 7, 2024

Anna Maria Ortiz  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548-0001

Re: Management Response to Draft Report GAO-24-106511, "JUSTICE40:  
Additional Efforts Needed to Improve Tribal Applicants' Access to Federal  
Programs under Environmental Justice Initiative"

Dear Ms. Ortiz:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

DHS leadership is pleased to note GAO's positive recognition of actions taken by the Federal Emergency Management Agency (FEMA) to improve Tribal Nations' access to federal programs by adjusting program mechanisms to increase access to funding for underserved communities, including Tribal Nations and eligible Indigenous communities, such as by increasing Tribal set-aside for the Building Resilient Infrastructure and Communities (BRIC) program. DHS remains committed to improving access to federal programs for Tribal Nations and organizations in line with Justice40 and Executive Order 14112,<sup>1</sup> continuing engagement efforts through government-to-government consultation with Tribal Nations, and conducting outreach to eligible applicants and communities to help FEMA identify and mitigate any barriers to preventing various Tribal Nations from accessing FEMA resources.

The draft report contained nine recommendations, including three for FEMA with which the Department concurs. Enclosed find our detailed response to each recommendation.

<sup>1</sup> "Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination," dated December 6, 2023.  
<https://www.govinfo.gov/content/pkg/FR-2023-12-11/pdf/2023-27318.pdf>

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**Appendix IV: Agency Comments from the  
Department of Homeland Security**

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DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER Digitally signed by JIM H  
CRUMPACKER  
Date: 2024.03.07 08:55:21 -05'00'

JIM H. CRUMPACKER  
Director  
Departmental GAO-OIG Liaison Office

Enclosure

**Enclosure: Management Response to Recommendations  
Contained in GAO-24-106511**

GAO recommended that the Administrator of FEMA:

**Recommendation 2:** Ensure that program offices of FEMA Justice40 covered programs document previously identified statutory and regulatory barriers to access for tribal applicants informing their implementation of the Justice40 Initiative. As a part of this process, the agency should—with input from Tribes—identify any additional changes necessary to address remaining statutory and regulatory barriers, recommending legislative changes where the agency determines appropriate. A summary of the results of this process should be made publicly available.

**Response:** Concur. FEMA’s Hazard Mitigation Assistance (HMA) Division, which manages the Justice40 covered programs for BRIC and Flood Mitigation Assistance (FMA), will develop a Tribal Engagement Plan during calendar year (CY) 2024 that will identify Tribal engagement opportunities and actions to meet the intent of the recommendation in CY 2025. This will include documenting barriers to access for tribal applicants, identifying changes necessary to address these barriers, and making a summary of the results of this process publicly available, as appropriate. FEMA HMA will provide GAO updates on the Tribal Engagement Plan, as well as identify and share recommended administrative and/or legislative changes with GAO resulting from this activity, as appropriate, in accordance with the “2022-2026 FEMA National Tribal Strategy,” dated August 2022,<sup>2</sup> FEMA Policy 101-002-02, “FEMA Tribal Consultation Policy,” dated July 3, 2019,<sup>3</sup> and Office of Management and Budget Circular A-19, “Legislative Coordination and Clearance,” dated September 20, 1979.<sup>4</sup>

Estimated Completion Date (ECD): December 31, 2025.

**Recommendation 5:** Ensure that program offices implementing Justice40 covered programs maintain records of related consultations with Tribes and consider—with tribal input—publicly sharing a high-level summary of consultation results, as appropriate, to improve tribal applicants’ access to information about tribal input on federal programs and decrease the burden on Tribes and eligible Indigenous communities.

**Response:** Concur. As appropriate, FEMA HMA will publicly share a high-level summary of consultation results to improve Tribal applicants’ access to information regarding Tribal Nations input on federal programs such as BRIC and FMA. This effort

<sup>2</sup> [https://www.fema.gov/sites/default/files/documents/fema\\_national-tribal-strategy\\_08182022.pdf](https://www.fema.gov/sites/default/files/documents/fema_national-tribal-strategy_08182022.pdf)

<sup>3</sup> [https://www.fema.gov/sites/default/files/2020-04/CLEAN\\_FP\\_101-002-2\\_Tribal\\_Policy\\_June\\_2019\\_Signed.pdf](https://www.fema.gov/sites/default/files/2020-04/CLEAN_FP_101-002-2_Tribal_Policy_June_2019_Signed.pdf)

<sup>4</sup> [https://obamawhitehouse.archives.gov/omb/circulars\\_a019/](https://obamawhitehouse.archives.gov/omb/circulars_a019/)

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**Appendix IV: Agency Comments from the  
Department of Homeland Security**

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will be addressed as part of the Tribal Engagement Plan led by FEMA HMA during CY 2024 that will identify tribal engagement opportunities and actions to meet the intent of these recommendations in CY 2025.

This is consistent with FEMA Policy 101-002-02, which states:

“After FEMA consults with tribal officials and their appointed designees, FEMA considers the input received during the consultation period and incorporates that input into the Agency’s decision-making process. FEMA then follows up with all tribal officials who were engaged in consultation and communicates how tribal input was used to inform the final decision.”

ECD: December 31, 2025.

**Recommendation 8:** Ensure that program offices consult with federally recognized Tribes and conduct outreach to eligible Indigenous communities to ensure meaningful involvement when determining benefits for Justice40 covered programs and determine how to incorporate the input into future Justice40 implementation efforts.

**Response:** Concur. As previously mentioned, FEMA HMA will develop a Tribal Engagement Plan during CY 2024 that will identify tribal engagement opportunities and actions to meet the intent of this recommendation in CY 2025. This Tribal Engagement Plan and subsequent actions it identifies will help to ensure meaningful involvement for Tribal Nations, helping to incorporate their input into future Justice40 implementation efforts.

ECD: December 31, 2025.

# Appendix V: Agency Comments from the U.S. Department of Agriculture



United States Department of Agriculture

Office of the  
Under Secretary for  
Rural Development

1400 Independence  
Ave SW  
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Whitten Building  
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Voice 202.720.4581

March 19, 2024

Ms. Anna Maria Ortiz  
Director  
Natural Resources and Environment  
U.S. Government Accountability Office  
441 G St., NW  
Washington, DC 20548

Dear Ms. Anna Maria Ortiz:

The U.S. Department of Agriculture (USDA) Rural Business-Cooperative Service appreciates the opportunity to respond to the U.S. Government Accountability Office (GAO) draft report GAO-24-106511, "Justice40: Additional Efforts Needed to Improve Tribal Applicants' Access to Federal Programs under Environmental Justice Initiative," received on February 2, 2024. The report examines opportunities provided to Tribes and indigenous communities through two USDA programs—the Rural Energy for America Program (REAP) within USDA's Rural Development (RD) mission area and the Environmental Quality Incentives Program (EQIP) within USDA's Natural Resources Conservation Service (NRCS)—the barriers Tribes and indigenous communities experience to access these programs and their benefits, and presents recommendations for promoting Tribal and indigenous communities' access to these programs.

We generally agree with the report and recommendations as they pertain to the focal programs of the audit, the REAP and EQIP programs. However, USDA would like to note that leadership over the Justice40 Initiative sits with the Council on Environmental Quality (CEQ). How the initiative moves forward and whether and how benefits to communities are calculated and tracked as part of the Justice40 Initiative is therefore contingent on CEQ guidance. USDA therefore requests that Recommendation 9 be adjusted to indicate the limited authority of USDA (and other Executive Branch agencies) in the administration of the Justice40 Initiative.

While USDA fully intends to continue consulting and engaging with Tribes regarding the programs covered under the Initiative, this will continue regardless of changes to the administration of the Justice40 Initiative. USDA is cautious about being held to a standard of developing Justice40-specific benefits calculations or implementation processes, should the administration of the Justice40 Initiative shift in the future.

USDA would also like to request a modification to an inaccuracy within the document. On page 29, the report indicates: "According to USDA headquarters officials, Rural Development has not yet developed its stakeholder engagement plan or implementation plan and is currently in the process of compiling related materials for REAP." This statement is not accurate, as Rural Development has a stakeholder engagement and implementation plan for the Rural Energy for America Program, per guidance under M-21-28. Both plans are attached with this letter.

USDA is an equal opportunity provider, employer, and lender.

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**Appendix V: Agency Comments from the U.S. Department of  
Agriculture**

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Sincerely,

**Basil I.  
Gooden**  Digitally signed by Basil I.  
Gooden  
Date: 2024.03.19  
09:30:07 -04'00'

Basil I. Gooden, Ph.D.  
Under Secretary  
Rural Development

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# Appendix VI: GAO Contact and Staff Acknowledgments

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## GAO Contact

Anna Maria Ortiz, (202) 512-3841 or [OrtizA@gao.gov](mailto:OrtizA@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Lisa Van Arsdale (Assistant Director), Leah E. English (Analyst-in-Charge), John Delicath, Gina Hoover, Samantha Jorgensen, Patricia Moye, Craig Rossett, Sara Sullivan, and Courtney Tepera made key contributions to this report.

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# Related GAO Products

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COVID-19 Relief Funds: Lessons Learned Could Improve Future Distribution of Federal Emergency Relief to Tribal Recipients. [GAO-23-105473](#). Washington, D.C.: December 15, 2022.

Tribal Economic Development: Action Is Needed to Better Understand the Extent of Federal Support. [GAO-22-105215](#). Washington D.C.: August 30, 2022.

Tribal Funding: Actions Needed to Improve Information on Federal Funds That Benefit Native Americans. [GAO-22-104602](#). Washington, D.C.: May 19, 2022.

Alaska Native Issues: Federal Agencies Could Enhance Support for Native Village Efforts to Address Environmental Threats. [GAO-22-104241](#). Washington, D.C.: May 18, 2022.

COVID-19: Lessons Learned from Interior and Treasury's Administration of CARES Act Funds Could Improve Federal Emergency Relief to Tribes. [GAO-22-104349](#). Washington, D.C.: October 29, 2021.

EPA Grants to Tribes: Additional Actions Needed to Effectively Address Tribal Environmental Concerns. [GAO-21-150](#). Washington, D.C.: October 20, 2020.

Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects. [GAO-19-22](#). Washington, D.C.: March 20, 2019.

Flood Insurance: Participation of Indian Tribes in Federal and Private Programs. [GAO-13-226](#). Washington, D.C.: January 4, 2013.

Nonprofit Sector: Significant Federal Funds Reach the Sector through Various Mechanisms, but More Complete and Reliable Funding Data Are Needed. [GAO-09-193](#). Washington, D.C.: February 26, 2009.

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