PolicyLink

Building for the All!
Anti-Displacement Standards for Equitable Housing Futures

Introduction

The Invest in America agenda—and particularly the Infrastructure Investment and Jobs Act (IIJA)—ushers in a new era of growth and is designed with intent to connect diverse, vulnerable, and marginalized people and communities to mobility, environmental justice, and economic opportunity.[1] The IIJA, along with the more recent Inflation Reduction Act (IRA), exemplifies Congress's renewed commitment to supporting transportation and mobility, clean energy, broadband access, climate action, resilient communities, and good jobs. These two acts, in their sweep and scope, complement and honor the commitment of the Biden–Harris Administration to racial equity—a commitment that offers the promise of spatial justice and distributional equity[2] in the built environment.

With these expansive investments come significant opportunities to reckon with and repair historical trends of disinvestment, gentrification, and market-based displacement in low-income communities, and particularly communities where people of color live. More importantly, though, these investments hold the opportunity to catalyze spatial justice—not just repairing harm, but actively, equitably, and responsibly investing in communities with a vision for all people to thrive. Cornerstone to this is centering housing: it is a human right, a public good, and a critical facet of the nation's infrastructure.

This memo offers equity standards and policy interventions that support active anti-displacement strategies as a critical pillar of both equitable housing policy and place-based development. These standards and policy interventions account for existing market pressures currently exacerbating

1 *See, e.g.,* IIJA Sec. 60101 *et seq.* (supporting greater broadband access to underserved communities as part of "full participation in modern life in the United States").

2 *See* Edward W. Soja, "The city and spatial justice," Justice Spatial | Spatial Justice, Jan. 2009, p. 2, https://www.jssj.org/wp-content/uploads/2012/12/JSSJ1-1en4.pdf. Soja defines spatial [in]justice as "an intentional and focused emphasis on the spatial or geographical aspects of justice and injustice. As a starting point, this involves the fair and equitable distribution in space of socially valued resources and the opportunities to use them."

gentrification and displacement, and offer opportunities to leverage federal and local policy interventions to not only prevent and mitigate these pressures but also proactively stabilize and build housing opportunities for people who are most marginalized in the housing market and most at risk of displacement. These standards and policy priorities have been built to acknowledge the unique legal pressures facing government-led equity efforts and to present proactive and principled ways in which public expenditures can and should seek to remedy past harms and advance spatial equity.

The Affirmative Duty of Government to Prevent Gentrification and Market-Based Displacement

Gentrification is defined by the Environmental Protection Agency (EPA) as "the process of neighborhood change that occurs as places of lower real estate value are transformed into places of higher real estate value."[3] The original definition, however, was developed by urban sociologist Ruth Glass as "the making of upper class."[4] Glass notes that "[o]nce this process of 'gentrification' starts in a district, it goes on until all or most of the original working-class occupiers are displaced, and the whole social character of the district is changed."[5]

Community-based research has conceptualized gentrification as taking place along an extended time period characterized by four stages: disinvestment and decline, devaluation, reinvestment, and displacement.[6] Recognizing the catalytic effects of gentrification, the standards presented throughout this brief acknowledge that while displacement may be caused by infrastructure development and reinvestment, a long history of federal and local disinvestment has contributed to making the conditions of gentrification possible. As such, in discussing displacement, we are not divorcing displacement from gentrification, as this would be akin to divorcing extreme weather events from climate change. Instead, the standards prioritize attention and solutions to market-based displacement as a starting point, while understanding and acknowledging that gentrification has root causes in our country's discriminatory and complex history of housing policy.

Notably, displacement—and displacement explicitly caused by market pressures—can be both direct (e.g., physical home, business, and neighborhood demolition due to public housing conversion, eminent domain, climate disasters, etc.) and indirect (e.g., increased rent due to rising property values, cultural displacement due to shifting demographics, environmental degradation, and changes that preclude access to housing and community infrastructure by low-to-moderate-income families). Direct physical displacement has policy and regulatory protections and vehicles for relief for affected individuals, even though there is room for improvement. Indirect displacement, conversely, has

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3 "Equitable Development and Environmental Justice," U.S. Environmental Protection Agency (EPA), https://www.epa.gov/environmentaljustice/equitable-development-and-environmental-justice.

4 Divya Subramanian, "Ruth Glass: Beyond 'Gentrification'," *The New York Review of Books*, January 20, 2020, https://www.nybooks.com/online/2020/01/20/ruth-glass-beyond-gentrification/. (This is a review of Ruth Glass's original essay.)

5 Ibid.

6 Goetz, Edward G., Brittany Lewis, Anthony Damiano, Molly Calhoun, *The Diversity of Gentrification: Multiple Forms of Gentrification in Minneapolis and St. Paul*, Center for Urban and Regional Affairs, University of Minnesota. January 25, 2019. https://gentrification.umn.edu/sites/gentrification.umn.edu/files/files/media/diversity-of-gentrification-012519.pdf.

little protection and less relief for persons in impacted communities. The standards discussed in this memo focus on combating the wide array of indirect displacement pressures that push individuals away from their homes, businesses, and communities.[7] Current legislation, specifically, Title VI of the Civil Rights Act, the Fair Housing Act (FHA) and the Affirmatively Furthering Fair Housing (AFFH) rule, and the National Environmental Policy Act (NEPA), provide avenues for strengthened standards against indirect displacement as further described below. The Supreme Court decision related to lawsuits filed by Students for Fair Admissions (SFFA) against various institutions of higher education does not affect government's ability to take certain actions to avoid, prohibit, or remedy the effects of racial discrimination; these actions are generally permitted, and in some cases required as an affirmative duty of the government. Therefore, the decision does not impact the government's responsibilities to Title VI, FHA and AFFH, and NEPA.

Under the Equal Protection Clause of the 14th Amendment to the United States Constitution, government actors are always permitted to:

- evaluate the potential racial equity impacts of actions under consideration, and make decisions so as to avoid actions that would have disparate impacts on the basis of race;
- take steps to avoid perpetuating patterns of past discrimination by others—or to affirmatively remedy those patterns; and
- gather data about impacts of existing programs and past decisions, and adjust decisions to avoid continued disparate impacts.

Additionally, under the Equal Protection Clause, government actors are always required to avoid becoming a "passive participant" in racial discrimination by funding or subsidizing clearly discriminatory behavior by private actors. "[I]t is ... axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish."[8] The above responsibilities can and should be implemented in a manner that complies with all legal obligations—including the obligation to satisfy strict scrutiny under the Equal Protection Clause if taking steps that are explicitly race-conscious. However, it is important to note that the above approaches can all be advanced through race-neutral decisions and actions that are on strong ground legally, and do not implicate the strict scrutiny analysis that courts have imposed on affirmative action programs.

In addition to the permissible scope of action under the Equal Protection Clause, federal regulations guiding implementation of Title VI of the Civil Rights Act of 1964 prohibit discrimination in operations of programs that receive federal financial assistance.[9] Title VI prohibits both intentional discrimination and actions that have a discriminatory "disparate impact," regardless of intent.

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7 Other legislation that addresses direct physical displacement includes 42 U.S.C. § 4601 *et seq*. (Uniform Relocation Assistance and Real Property Acquisition Act); 24 C.F.R. § 578.1; 42 U.S. Code § 1437v (Quality Housing and Work Responsibility Act of 1998); 42 U.S.C. § 5304(d) (Housing and Community Development Act of 1974).

8 *Norwood v. Harrison, 413 U.S. 455, 492 (1973). See also Croson, 488 U.S. at 491:* "It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice."

9 *See* U.S. Department of Justice (DOJ), *Title VI Legal Manual*, last updated Apr. 22, 2021, https://www.justice.gov/crt/fcs/T6Manual7.

Title VI regulations direct agencies receiving federal funds to avoid, prevent, and mitigate "disproportionately adverse effects" on protected classes that are independent of any discriminatory intent.[10] Prohibited discrimination comprises not only the intentional exclusion and/or unjust treatment of protected categories of people, but also policies and practices that are racially neutral but that have the effect of discriminating, causing harm, and excluding protected classes. Title VI provides one avenue for setting standards that combat uneven market-based displacement of protected classes. Title VI prohibits discrimination under federally assisted programs as follows:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[11]

Each federal agency stewarding infrastructure funds has promulgated Title VI regulations that prohibit discriminatory actions constituting disparate treatment or disparate impacts.[12] "Adverse effects" that have disparate impacts can be physical, economic, social, cultural, and/or psychological.[13] These descriptors are sufficiently broad enough to capture contributions to displacement as adverse effects that Title VI regulations intend to prohibit.[14]

In addition, the U.S. Department of Transportation's (DOT) Title VI regulations include a provision that could be interpreted to prohibit displacement effects:

> In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.[15]

The decision to locate a facility in a certain place may have the "effect of excluding persons" or "denying them the benefits of" a program by creating disparate displacement pressures (e.g., by raising property values that effectively push people of color out of the program's intended areas

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10 Id. at VII.3.

11 42 U.S.C. § 200d.

12 This report refers to "infrastructure agencies" collectively as the Department of Transportation (DOT, 49 C.F.R. Part 21), Department of Energy (DOE, 10 C.F.R. Part 1040), Environmental Protection Agency (EPA, 40 C.F.R. Part 7), Federal Emergency Management Agency (FEMA, 44 C.F.R. Part 7), Department of Commerce (Commerce, 15 C.F.R. Part 8), Department of Agriculture (USDA, 7 C.F.R. Part 15), and Department of Interior (DOI, 43 C.F.R. Part 17); DOJ, *Title VI Legal Manual*, Section VII(A) ("The Supreme Court has repeatedly held that Title VI regulations validly prohibit practices having a discriminatory effect on protected groups, even if the actions or practices are not intentionally discriminatory."); *see, e.g.*, 49 C.F.R. § 21.5 (prohibiting funding recipients from denying, differentiating, or restricting program benefits "on the grounds of race, color, or national origin," either "directly or through contractual or other arrangements[.]").

13 DOJ, *Title VI Legal Manual*, page VII.12.

14 *See id.* at VII.13 (recognizing that "establishing adversity in most cases presents a low bar" and that adverse impacts can include: "harm[s] [to] protected class members even without the loss of specific services or benefits," "threatened or imminent harm," and a "[m]ix of costs and benefits, effects that are difficult to quantify.")

15 49 C.F.R. § 21.5(b)(3).

of benefit). Thus, Title VI can be understood to prohibit infrastructure funding recipients from contributing to gentrifying impacts, such as indirect displacement pressures that disparately impact protected communities.

Similarly, the Fair Housing Act supports federal standards that require both analysis and mitigation of displacement pressures on protected classes. The Fair Housing Act requires "[a]ll executive departments and agencies" to:

> Administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and ... cooperate with the Secretary to further such purposes.[16]

This duty, known as "Affirmatively Furthering Fair Housing" (AFFH), requires federal funding agencies to take "meaningful actions" in their "activities and programs relating to housing and urban development" to "overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."[17] Those "barriers" include displacement pressures that hinder impacted residents' ability to access "educational, transportation, economic, and other important opportunities in a community."[18] To meet this duty, agencies must "address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws."[19] Thus, this duty to affirmatively further fair housing requires federal infrastructure agencies to analyze and mitigate indirect displacement pressures associated with their infrastructure investments.

Finally, the National Environmental Policy Act (NEPA) provides another avenue for setting standards to combat displacement pressures. NEPA requires federal agencies to consider the environmental impacts of federal actions,[20] including certain federal funding decisions.[21] Environmental impacts include factors that affect "the quality of the human environment"[22] or "the quality of life in the

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16 42 U.S.C. § 3608(d).

17 24 C.F.R. § 5.151.

18 *id.*

19 *id.*

20 42 U.S.C. § 4331; *see also* "What Is the National Environmental Policy Act?," EPA, https://www.epa.gov/nepa/what-national-environmental-policy-act.

21 Whether a federally funded project constitutes a federal action is a nuanced inquiry that focuses on the federal agency's degree of control and discretion. *See, e.g., Touret v. NASA*, 485 F. Supp. 2d 38, 43 (D.R.I. 2007) ("an agency's 'ability to influence or control the outcome in material respect' is the dominant factor in determining whether a project amounts to 'major federal action'") (quoting *Save Barton Creek Ass'n v. Fed. Hwy. Admin.*, 950 F.2d 1129, 1134 (5th Cir. 1992). For purposes of funding infrastructure projects, we assume that there is sufficient federal involvement to support NEPA review. *See* 40 C.F.R. § 1508.18 (defining federal action to include all actions "potentially subject to Federal control" including "projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies").

22 42 U.S.C. § 4332©. For many proposed actions, agencies may first prepare an environmental assessment (EA) to determine whether the "significantly affecting" threshold is reached. 40 C.F.R. § 1508.9.

urban setting,"[23] and extend into the social and economic spheres.[24] Social and economic impacts can include displacement pressures (through rising property values, transit access, or other physical infrastructure changes) that are proximately related to infrastructure investments.[25] Indeed, at least one environmental impact statement has considered the indirect displacement impacts on businesses and residents in evaluating a new transportation infrastructure project.[26] Moreover, the White House Center for Environmental Quality (CEQ), the Environmental Protection Agency (EPA), and Executive Order (EO) 12898 have made clear that environmental justice concerns are relevant to NEPA analysis.[27] Indeed, the EPA's National Environmental Justice Advisory Council has recognized displacement as an environmental justice concern.[28]

Equity Standards and Strategies to Prevent Gentrification and Displacement

No one questions the need for community development and economic growth. However, the means to getting there is just as important as the ends. Infrastructure investments that simply improve the environment and boost the economy, while failing to redress, prevent, minimize, and mitigate disproportionate harm and failing to promote equitable outcomes for low-income communities and communities of color, are not sustainable. Furthermore, while these investments may be environmentally friendly, resource efficient, climate resilient, or profitable, if they fail the test of the affirmative duty of government for equal protection, they are not just. As such, and based on the legal precedent detailed above, the following overarching standard and related practices are proposed to help government jurisdictions live into their affirmative duty to prevent, avoid, minimize, and mitigate inequitable market-based displacement of protected classes of citizens.

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23 *WATCH (Waterbury Action to Conserve Our Heritage Inc.) v. Harris*, 603 F.2d 310, 327 (2d Cir. 1979) ("Our own cases very clearly make NEPA applicable to the quality of life in the urban setting.").

24 40 C.F.R. § 1508.14; *see also Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (discussing proximate affects); *Hanly v. Mitchell*, 460 F.2d 640, 647 (2d Cir. 1972) (finding that NEPA "must be construed to include protection of the quality of life for city residents" such as the issues of "[n]oise, traffic, overburdened mass transportation systems, crime, congestion and even availability of drugs.")

25 *See Como-Falcon Community Coalition, Inc. v. U.S. Dept. of Labor*, 609 F.2d 342, 345 (8th Cir. 1979) (referring to alleged impacts such as increased congestion, local commercial and utility impacts, and altering neighborhood character as "social and economic" impacts).

26 *St. Paul Branch of the NAACP v. U.S. DOT*, 764 F. Supp. 2d 1092 (D. Minn. 2011).

27 "CEQ – Environmental Justice Guidance Under the National Environmental Policy Act," EPA, https://www.epa.gov/environmentaljustice/ceq-environmental-justice-guidance-under-national-environmental-policy-act; "Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analysis" EPA (1998), https://www.epa.gov/sites/default/files/2014-08/documents/ej_guidance_nepa_epa0498.pdf ; Exec. Order No. 12898, 59 Fed. Reg. 32 (Feb. 11, 1994) (requiring consideration of disparate environmental impacts).

28 NEJAC, "Unintended Impacts of Redevelopment and Revitalization Efforts in Five Env't. Justice Communities" page 2 (Aug. 2006), https://www.epa.gov/environmentaljustice/unintended-impacts-redevelopment-and-revitalization-efforts-five-environmental (setting forth reasons why gentrification and displacement are environmental justice issues); *see also* NEJAC, "Border Environmental Justice Report," page 95, developed from the Proceedings of the NEJAC Int'l Roundtable on Env't. Justice on the U.S. Mex. Border (Aug. 19-21, 1999), https://www.epa.gov/environmentaljustice/epa-border-environmental-justice-report (recommending the development of a committee to determine "whether just compensation has been received by affected parties for issues related to health, environmental contamination, and worker displacement").

Equity Standard: Disproportionate involuntary displacement of protected classes, whether direct or due to market pressures, is neither just nor legal.

Define displacement and market pressure. Standardized data categories (e.g., fields, geographic fidelity, time frame, etc.) should be developed to support measurement of the harm of market pressure that catalyzes higher housing costs, evictions, and foreclosures. Clearly defined and objective data and analysis can identify patterns of discrimination and, in some cases, establish a compelling interest supporting a narrowly tailored race-conscious program, or demonstrate the need for other tools to prevent or remedy discrimination.

Assess potential gentrification and displacement impacts. Housing is infrastructure, therefore the prevention and mitigation of harmful impacts of gentrification and displacement is a crucial, indispensable part of planning for infrastructure and is not a separate or appendix issue. Local, regional, and state jurisdictions should assess the potential disproportionate impacts on protected classes that the proposed project may have on residential communities. *See Localized Anti-Displacement Policies*[29] and recommendations for analyzing neighborhood change as a useful proxy for the displacement that should be considered as a criterion for awarding funds. In the long term, discretionary grant programs for infrastructure investments should require anti-displacement plans with applications for discretionary funding. Assessments can be conducted by jurisdictions looking to ensure protection of residents most vulnerable to displacement in infrastructure-impacted communities. As a regulatory issue, gentrification and anti-displacement assessments should be incorporated in the environmental documentation process and should include a clear definition, a set of metrics, and publicly available data for determining the impact of market pressure.

Develop anti-displacement plans for protected classes. Assessment of potential gentrification and displacement impacts cannot be a stand-alone event and the assessment process should inform anti-displacement plans at all points/stages/phases. These plans should be community-centered and should reflect the impacted communities' articulated vision of and need for remaining in place. Elements of community-centered planning should include robust community participation and collaboration that yield "co-benefits" for the government and the governed. Responsive steps could include, for example, thresholds for affordable housing development[30] to enable people to remain in their communities. The requirements of AFFH, prohibitions against government's role as a passive participant in discrimination, and Title VI regulations around disparate impact require safeguards of protected classes against disproportionate market pressures. Current regulations for both federally funded and state-funded infrastructure projects fall short of this duty of governing.

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29 Justin Dorazio, *Localized Anti-Displacement Policies: Ways to Combat the Effects of Gentrification and Lack of Affordable Housing* (Center for American Progress, Sep. 26, 2022), https://www.americanprogress.org/article/localized-anti-displacement-policies/.

30 Carlos Martín, "Connecting Americans to Prosperity: How Infrastructure— Including Its Links to Housing—Can Become More Equitable," Joint Center for Housing Studies for Harvard University, Sep. 29, 2022, https://www.jchs.harvard.edu/blog/connecting-americans-prosperity-how-infrastructure-including-its-links-housing-can-become-more .

Use legally enforceable community benefits agreements to mitigate market failure. In lieu of, or in addition to, federal regulations and policies requiring efforts to avoid, prevent, and mitigate disproportionate market pressure on protected classes, community benefits agreements (CBAs) can be used to prevent or address disproportionate harm to communities' residential stability, business viability, and cultural assets resulting from the market-based pressures of infrastructure investments. While CBAs are not an option in all infrastructure development projects, these agreements offer a mechanism for addressing the market failure in the form of gentrification and the impact of displacement. CBAs can be a particularly powerful tool for public-private partnerships (P3s), including long-term asset concession projects, and for projects using public subsidy to support private development. CBAs can also be used for projects that are subsidized by tax incentives and tax credits as community-financed funding mechanisms for private developers and investors. As a negotiated agreement, CBAs can include funding to support affordable housing or other community-centered development goals and to prevent, avoid, or minimize the negative impacts of market pressure in low-income communities, community-serving commercial corridors, and cultural assets. As such, fund recipients should consider CBAs as a market-failure intervention to address gentrification and displacement in both public and private investments in the built environment. Because they are traditionally difficult to enforce, CBAs should be legislated or contractually designed with penalties for nonperformance.

Develop assurances that safeguard protected classes from market pressures that lead to disproportionate displacement impacts. Assurances around the affirmative duty of government to address market-based displacement are almost absent in federal regulations governing infrastructure investments. Agency guidance and regulations should reinforce the prohibition that funding recipients may not contribute to substantial and identifiable displacement of protected classes and their requirement to remedy, avoid, prevent, and/or mitigate involuntary displacement pressures. Compellingly, assurances represent the commitment of a federal fund recipient to the federal government—a promise of action that binds the recipient to the promise. Federal grant recipients assure federal agencies that they will abide by a list of laws and policies including Title VI, the Clean Air Act, and prevailing wage determinations and administrative cost limits. Abiding by the AFFH rule and avoiding, preventing, and/or mitigating displacement are not among these promises. An important first step in the near term should be to modify agencies' Title VI prefunding assurance forms to require fund recipients to commit to preventing, avoiding, and mitigating gentrification and market-based displacement pressure.[31]

Strengthen agencies' Title VI regulations and implementation. Federal agencies should adopt Title VI regulations that mirror DOT's Title VI affirmative action provisions.[32] The DOT's provisions (1) clarify that affirmative action entails explicit consideration of race, color, or national origin; (2) acknowledge that recipients should aim to minimize external factors that have caused and

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31 Title VI regulations require recipients to submit "an assurance that the program will be conducted, or the facility operated in compliance with" those regulations. *See, e.g.*, 49 C.F.R. § 21.7.

32 Most of the infrastructure agencies' regulations include provisions that *permit* recipients to undertake affirmative action in order to avoid excluding protected persons from participation in or the benefit of various programs or activities. *See, e.g.*, 49 C.F.R. § 21.5(b)(7); 10 C.F.R. § 1040.8(b). Most infrastructure agencies *require* affirmative action by fund recipients that have previously discriminated and *permit* affirmative action by fund recipients that have not. 10 C.F.R. § 1040.8; 15 C.F.R. § 8.4(b)(6); 7 C.F.R. § 15.3(b)(6); 43 C.F.R. § 7.3(b)(4); *but see* 40 C.F.R. § 7.35(a)(7), 44 C.F.R. § 7.924.

perpetuated discrimination; and (3) emphasize that recipients should always consider taking affirmative action, with additional modifications to clarify that affirmative action entails preventing displacement of protected classes.[33] This proactive approach to evaluating the need for affirmative action can be implemented under all of the existing federal agency frameworks. More robust regulatory direction—akin to DOT's—is appropriate to avoid disparate impacts on protected classes. In the meantime, state, tribal, and local governments can and should use the DOT provisions as a template for advancing equity in fulfillment of their affirmative duty to prevent discrimination and disproportionate harm.

Equity Standards and Strategies for Proactive Accountability

In addition to direct community involvement, existing legal mechanisms should be leveraged to support infrastructure projects' accountability to disadvantaged communities. Title VI, EO 11246, EO 14088, and EO 13985 offer opportunities for greater accountability. Title VI prohibits discrimination under federally assisted programs.[34] However, Title VI enforcement on infrastructure projects depends largely on federal agency action. Individuals do not have a right to bring Title VI disparate impact claims in federal court,[35] though they may bring disparate treatment claims in court[36] and disparate impact complaints to the relevant agencies for investigation.[37] In turn, federal agencies must monitor and enforce their Title VI regulations by investigating complaints and initiating affirmative compliance reviews.[38] Each infrastructure agency's regulations also contemplate proactive enforcement and provide procedures to adjudicate any termination of, or refusal to grant or continue funding to, a recipient for violating Title VI.[39] Title VI regulations also authorize agencies to seek judicial enforcement.[40]

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33 49 C.F.R. § 21.5(b)(7).

34 42 U.S.C. § 2000d.

35 *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001) (holding that Title VI does not create a private right of action to enforce Title VI regulations, including disparate impact regulations).

36 *Id*. at 279-80.

37 28 C.F.R. § 42.408(a) ("Federal agencies shall establish and publish in their guidelines procedures for the prompt processing and disposition of complaints.").

38 OJ, *Title VI Legal Manual*, page VII.5 ("Federal funding agencies should prioritize vigorous enforcement of their Title VI disparate impact provisions both through investigation of complaints and through compliance reviews."); 28 C.F.R. § 42.411(a) ("Effective enforcement of title VI requires that agencies take prompt action to achieve voluntary compliance in all instances in which noncompliance is found. Where such efforts have not been successful within a reasonable period of time, the agency shall initiate appropriate enforcement procedures as set forth in the 1965 Attorney General Guidelines, 28 C.F.R. 50.3.").

39 *See, e.g.*, 49 C.F.R. § 21.13(a) ("If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by...other means [] includ[ing]...: (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law."); *id*. at .15, .17.

40 *See,* e.g., 49 C.F.R. §§ 21.7(a)(1), 13(a)(1) ("[C]ompliance with this part may be effected by...(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking[.]").

Similarly, EO 11246 requires affirmative action by federal contractors in their employment practices and prohibits them from discriminating against employees and applicants on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin.[41] EO 11246 authorizes the Secretary of Labor (or U.S. Department of Labor [DOL]) to enforce the order,[42] and the EO authorizes the DOL to require prospective contractors to submit targeted race- and gender-conscious programs before entering federal agency contracts.[43] In addition to receiving and investigating discrimination complaints by employees or prospective employees of a government contractor, the DOL may also investigate employment practices of contractors to determine whether they have violated EO 11246.[44] Finally, EO 11246 states that the DOL shall use its best efforts to ensure relevant labor unions cooperate with the implementation of the EO, and shall notify the Equal Employment Opportunity Commission or DOJ if the DOL has reason to believe that a union has violated Title VI, Title VII, or other federal law.[45]

Despite the regulations and enforcement mechanisms discussed above, more support is needed to enable robust, proactive enforcement. As such, proactive and ongoing monitoring and reporting of all equal protection policies and regulations (reducing reliance on complaint-based enforcement), including Title VI, EO 11246, and environmental justice requirements is a recommended standard for infrastructure equity. Furthermore, infrastructure funding should be available to jurisdictions to support increased staffing to assist in meeting these responsibilities.

For example, HUD's Region VI Office of Fair Housing and Equal Opportunity found Title VI violations by the Texas General Land Office regarding the discriminatory distribution of Community Development Block Grant climate mitigation funds to communities of color.[46] However, even after finding ample evidence for this violation of Title VI, community advocates are still urging executive agencies to take enforcement actions against the Texas General Land Office so that they are rightfully adjusting their actions to be in alignment with Title VI. Without federal enforcement action in this case, the federal government risks institutions across the nation who receive federal dollars seeing this inaction setting a precedent for them to disregard federal statutes because they are aware their actions will not have consequences. Therefore, federal accountability for following through with enforcing the aforementioned laws is critical to achieving lasting impacts in disadvantaged communities. To that end, the following standard is proposed:

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41 EO 11246, Sec. 202.

42 EO 11246, Sec. 201, 205.

43 EO 11246, Sec. 211; 41 C.F.R. § 60-1.29. DOL's regulations identify the contractors upon which DOL has decided to impose this requirement: nonconstruction contractors with at least 50 employees and on a contract of at least $50,000, 41 C.F.R. §§ 60-1.40, 60-2.1 *et seq*., and construction contractors on a contract of at least $10,000. *Id*. at 60-4.1 *et seq*.

44 EO 11246, Sec. 206.

45 EO 11246, Sec. 207.

46 Dylan McGuinness, "Turner urges feds to enforce ruling over GLO discrimination," *Houston Chronicle*. Aug 24, 2022 https://www.houstonchronicle.com/news/houston-texas/houston/article/Turner-urges-feds-to-answer-the-phone-and-17395925.php.

Equity Standard: The duty of government to prevent discrimination is affirmative. Equal protection for all people and equitable investments in all places is more than the absence of complaints.

Ensure a proactive, comprehensive whole-of-project approach to equal protection, equity, and inclusion. State and federal environmental and related policies and plans include protections against noise and air quality impacts, community safety concerns, social and economic disruption, direct displacement, and disproportionate market pressures (e.g., gentrification), to name a few. Maximizing these protections requires proactive monitoring and enforcement, particularly in projects that are being developed in densely populated urban communities. Additionally, while each project's administering agency maintains responsibility for the environmental justice protections, compliance with federal and state requirements for diversity, equity, and inclusion are frequently incorporated in the contract between the agency and the prime contractor/developer of the infrastructure project. Construction activity involves multiple tiers of subcontractors and suppliers who should also be responsible for complying with all of these protections on infrastructure projects, including nondiscrimination, equal opportunity, use of DBEs, Davis-Bacon wages, and protections against a hostile work environment, as applicable.

As a part of a whole-of-project approach, civil rights and economic inclusion compliance language should be incorporated in contracts for all projects' participants at all levels (e.g., contractors, subcontractors, suppliers, engineers, project management firms) and should include monitoring and reporting requirements at all levels. Additionally, this approach also requires proactive monitoring of federal infrastructure work sites, and the surrounding community as warranted, by personnel with civil rights training. Compliance with all of the requirements noted here should involve more than a complaint form and a sign telling workers and community how to issue a complaint. Implementing jurisdictions and agencies should have the staff capacity for proactive monitoring and should explore opportunities to use federal infrastructure funds to staff proactive compliance monitoring and ensure the protections for communities and workers that are guaranteed in civil rights and environmental laws and environmental justice executive orders.

Use community participation in monitoring and compliance. Federally funded agencies require periodic compliance reports and documentation that these reports have been made available for review and feedback. Like most compliance processes, Title VI is a self-assessment process, requiring the funded agency to conduct the monitoring and develop the review. Recipients of federal funds can be encouraged to use public oversight committees for independent, third-party assessment of the agency's compliance with Title VI, EO 14088, and EO 13985 and other equity regulations, including environmental justice requirements and even Justice40 goals.

Anti-Displacement Strategies and Policy Tools

Our nation is experiencing a growing racial homeownership gap, the proliferation of private equity firms in the housing market, rising rents and rising evictions, and housing policies that have failed to repair the discriminatory harms of the past. In light of these realities, housing strategies that protect low-income tenants and homeowners, promote equitable land acquisition and access to both homeownership and wealth-building for people in low-income and communities of color are critical to building equitable communities. The proposed strategies support anti-displacement across three categories: preservation, production, and neighborhood stabilization. Combating displacement effectively across the spectrum of direct and indirect pressures requires a multipronged strategy.

Strategy: Increase Affordability – Expand and preserve affordability through inclusionary zoning and housing trust funds

1. **Federal**
    a. **Increase public financing for permanent affordability.** Rampant speculation in the housing market has perpetuated the treatment of housing as an asset rather than a public good. Public, not-for-profit financing is an important and urgent strategy to increase the stock of permanently affordable housing through government grants, low-interest public bank loans, bonds. Public banking must be expanded as part of the infrastructure to support permanently affordable housing. Democratic accountability, through ensuring that permanently affordable housing is owned by residents, a public entity, or a mission-driven nonprofit will also help ensure that housing remains permanently decommodified.
    b. **Increase the impact of the National Housing Trust Fund (NHTF).** Housing trust funds play an important role in comprehensive equitable housing solutions by providing resources to projects that support long-term affordability and serve very low-income households, people of color, and other historically disadvantaged communities, including those most at risk of displacement. While the NHTF is a critical source of funding for state and local housing trust funds, housing needs far exceed funding, making additional financing mechanisms critical to deliver on housing goals.

2. **Local**
    a. **Inclusionary zoning.** Inclusionary zoning policies aim to address historical patterns of exclusion and segregation by promoting housing availability for lower-wage workers, who are predominantly people of color. These policies work to prevent the concentration of poverty and affluence, allowing lower-income households to reside in neighborhoods that offer access to quality jobs, well-resourced schools, transportation options, services, and fresh-food stores. Typically, cities or counties adopt inclusionary zoning ordinances to increase the number of affordable homes available and ensure that lower-income households can afford to live in high-opportunity neighborhoods where they would otherwise face affordability challenges. These policies also help mitigate the negative impacts of gentrification, such as the displacement of low-income families. Moreover, inclusionary zoning policies that facilitate homeownership have the potential to reduce the racial wealth gap, as housing ownership is a significant factor contributing to this disparity.

In President Biden's Housing Supply Action Plan, the federal government has prioritized the promotion of inclusionary zoning. As an unprecedented step, the administration plans to recognize and incentivize jurisdictions that have implemented zoning and land-use policy reforms by assigning them higher scores in specific federal grant processes. This signifies a significant shift toward acknowledging and supporting inclusionary zoning on a larger scale. Inclusionary zoning also aligns with the objectives of the Fair Housing Act and the Affirmatively Furthering Fair Housing rule by fostering diverse and inclusive communities, reducing segregation, and expanding housing choices for low-income households. By incorporating affordable housing units within market-rate developments in desirable neighborhoods, inclusionary zoning helps to advance fair housing principles, promote socioeconomic integration, and combat housing discrimination. It plays a crucial role in the broader framework of fair housing planning, as it ensures that affordable housing is not concentrated solely in low-income areas but is dispersed throughout communities, offering greater access to opportunity and reducing disparities.

b. **Housing trust funds.** Housing trust funds (HTFs) are funds established by cities, counties, and states to provide dedicated, ongoing public revenue to support affordable housing. HTFs provide an important source of financing for affordable housing preservation and development, which may not otherwise be reliably funded by a jurisdiction's budget. HTFs can be leveraged in a variety of contexts, allowing local jurisdictions to maximize the impact of other housing development funds; create new jobs related to housing development; and generate local economic benefits through increased sales taxes, income taxes, and property taxes.

Strategy: Create More Housing Opportunities – Ensure federal policies and investments foster healthy, economically integrated neighborhoods and community ownership through strategies such as tenant and community opportunity to purchase and community land trusts

1. Federal

a. **Strengthen and enforce the Affirmatively Furthering Fair Housing (AFFH) rule.** The AFFH rule helps to ensure that communities that have been systemically denied opportunities for fair housing over generations directly influence and exercise accountability over housing policies and investments in their communities. The AFFH must continue to be strengthened, defended, and enforced to its fullest extent.

b. **Establish an independent entity within the Department of Housing and Urban Development to acquire and maintain distressed real estate to stabilize communities and increase the supply of affordable housing.** An independent federal entity is needed to intervene in the housing market so as to develop a stock of permanently affordable, quality, publicly backed, and climate resilient housing that is shielded from market speculation. Specifically, the entity should be authorized and funded to create, acquire, maintain, and support the acquisition of property for community-owned and stewarded housing purposes as a strategy to not only expand the supply of housing, but to do so in communities that experience disproportionate rates of speculation and resultant displacement and gentrification.

c. **Prioritize preservation and rehabilitation of existing housing stock in communities that have experienced systemic disinvestment.** Wherever possible, increased utilization of federal resources is needed to build and preserve affordable housing in the communities as an active anti-displacement strategy. Improving models like the Low-Income Housing Tax Credit program (LIHTC), and particularly HOME-LIHTC, offers avenues for increasing capital flow for equitable development and preservation. Should LIHTC be expanded as a tool for preservation and rehabilitation, it is critical that the program be strengthened in the following ways: implement and enforce just cause eviction protections in all LIHTC properties, remove loopholes for allowing developers to shorten terms of affordability, deepen affordability by requiring more LIHTC units for people at or below 30% AMI, implement annual rent caps, and limit the frequency of rent increases in all LIHTC homes.

II. State and Local

a. **Tenant opportunity to purchase policies.** Tenant Opportunity to Purchase Act (TOPA) policies provide tenants living in multifamily buildings with advance notice that the landlord is planning to sell their building and an opportunity for them to collectively purchase the building. TOPA is an emerging anti-displacement tool that can be used to preserve affordable rental housing stock, keep housing within community hands, and stabilize Black and Brown communities that have long faced displacement, disinvestment, and exclusion. By providing renters with the right to negotiate and collectively bargain to purchase their buildings, TOPA policies level the playing field in highly speculative markets. Keys to successful TOPA programs include: 1) extending right of first purchase or right of first refusal to tenants so they have an opportunity to match an offer; and 2) requiring purchasers to preserve units as permanently affordable.

b. **Community opportunity to purchase policies.** Adjacent to TOPA policies, Community Opportunity to Purchase Act (COPA) policies allow a qualified nonprofit to make a first offer to purchase a building with low-income tenants if the property owner decides to sell. COPA should be carefully crafted with tenants and nonprofit partners such as community land trusts, limited equity housing cooperatives, and other affordable housing providers. While only a few cities and states have developed policies that allow for the purchase of unsubsidized housing, a number of cities and states have provisions that allow for the purchase of subsidized affordable housing in order to preserve affordability.

c. **Community land trusts.** Community land trusts (CLTs) also expand access to affordable housing by acquiring and managing both land and buildings to guarantee housing with lasting affordability and control. CLTs can promote equitable development in different market contexts—in hot markets, CLTs can provide long-term affordability and prevent displacement; in weaker markets, they can be used as a tool for neighborhood reinvestment and stabilization.

d. **Legacy homeowner tax abatement programs.** Legacy homeowner tax abatement programs provide financial relief to homeowners who are on the verge of being priced out of their homes by either paying completely or offsetting the cost of property taxes, which can be a substantial burden for families trying to stay in their homes. Considering the racial wealth inequality in America and the fact that home ownership accounts for a considerable portion of most people's wealth, losing housing can have a substantial negative impact on Black

families. Tax abatement programs allow individuals to maintain the wealth generated over time from land owning while mitigating or alleviating the loss associated with displacement due to rising indirect costs.

Strategy: Protect Tenants – Secure vulnerable renters and prevent displacement through legal representation, just cause legal protections, rental registries, and rent stabilization

I. Federal - *The following priorities align with the Biden-Harris Administration's Blueprint for a Renters Bill of Rights,*[47] *the development of which PolicyLink and partner organizations supported. In addition to the priorities below, we encourage additional federal action aligned with the Blueprint.*

a. **Improve multifamily tenant protections.** There is a strong need for the Federal Housing Finance Agency (FHFA) to support the transformation of the multifamily rental housing market into one that promotes equity and fairness as core values, and in which every tenant—especially those living in federally backed homes—is entitled to safe, stable, and affordable housing. To create more equitable practices and outcomes in the multifamily rental housing market, FHFA should leverage strong preexisting legal precedent to build in equitable requirements to federal financing, including changing tenant screening processes; banning source of income discrimination; regulating fair leasing practices; enforcing rent regulation; enforcing just cause eviction protections; requiring tenant right to counsel and to organize; enforcing safe, quality housing standards; and supporting tenant or community opportunity to purchase policies.

b. **Increase federal regulation over inequitable tenant screening processes and enforce the Fair Credit Reporting Act (FRCA).** The increased public availability of people's financial, rental, and criminal history data and the use of algorithmic data, or "risk evaluation," has made it challenging to regulate the tenant screening industry. The practices employed by landlords and tenant screening companies, and the lack of protections from unfair screening practices—and lack of enforcement of protections where they do exist—present significant equity and fair housing issues. The Federal Trade Commission and the Consumer Financial Protection Bureau should be encouraged and supported, in coordination with participating agencies, in issuing stronger regulations around tenant screening practices generally and enforcing the Fair Credit Reporting Act (FCRA), and specifically patterns of discrimination related to criminal background checks, eviction record reviews, and algorithmic biases. Congress should also reform the FCRA to exclude records of convictions of crimes older than seven years from consumer reports for tenant screening purposes.

c. **Establish a national eviction database.** Every year, about 3.6 million people across the country, disproportionately and increasingly Black and Latinx women, experience an eviction filing.[48] Evictions are not an episodic life event as people with an eviction record have a harder time accessing safe and affordable housing opportunities, regardless of the outcome of the

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47 United States Domestic Policy Council and National Economic Council. "The White House Blueprint for a Renters Bill of Rights." January 2023, available at https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf.

48 United States Department of Housing and Urban Development, Office of Policy Development and Research. "Report to Congress on the Feasibility of Creating a National Evictions Database." October 2021, available at https://www.huduser.gov/portal/sites/default/files/pdf/Eviction-Database-Feasibility-Report-to-Congress-2021.pdf.

eviction case. While research has continued to show how a single eviction filing can trigger a slew of negative physical and mental health outcomes, comprehensive and real-time data on evictions across the nation is not currently available. Understanding the true impact of evictions, especially the ways in which they affect protected classes, by collecting national data on formal court-ordered evictions, extra-legal evictions, and administrative evictions requires federal support. A national eviction database should also identify targets to reduce evictions in federal housing programs to ensure that if housing providers must evict a household, evictions occur in accordance with fair housing protections and other guidelines aimed at reducing housing insecurity. HUD, in its 2021 Eviction Database Feasibility Report to Congress, also cites the necessity of funding for establishing such a database: "HUD would need additional appropriations to build the necessary, internal infrastructure to maintain the national database." (p. 59). Funding should also be provided to jurisdictions to improve local and state eviction data systems with the aim of reducing the harmful effects of evictions. Finally, a national eviction database must balance access to eviction records that perpetuate harmful and inequitable tenant screening practices and ensure adequate protections are in place, as described in "b" above.

II. State and Local

a. **Legal representation.** While the United States Constitution provides that all individuals facing criminal charges have a right to counsel, no such right exists in civil cases, including eviction cases. Low-income tenants are typically left to represent themselves against landlords who often have legal representation—and many are displaced from their homes. By providing a right to legal assistance to low-income renters facing eviction, cities and states can intervene to help stabilize households at a crucial moment—evictions increase individuals' and families' vulnerability to homelessness, resulting in negative consequences for their health, education, and economic mobility. There is existing precedent for federal support for legal representation for tenants facing eviction and displacement, including grants for legal representation provided by the HUD Office of Policy Development Research.[49] These policies have demonstrated favorable cost-benefit analyses in both cities and states. The White House Blueprint for a Renters Bill of Rights notes that in the event of an eviction filing, tenants should be provided with a 30-day notice prior to the eviction action and the right to legal representation during the eviction process.

b. **Just cause legal protections.** Just cause or "good cause" eviction protections are designed to prevent arbitrary, retaliatory, or discriminatory evictions by establishing that landlords can only evict renters for specific reasons—just causes—such as failure to pay rent. Just cause policies can help slow the processes of gentrification that can displace entire neighborhoods and maintain neighborhood stability. To prevent evictions, renters should have access to just or good cause eviction protections that require a justified cause to evict a tenant, and tenants need to receive adequate notice if their lease is not being renewed. Public housing authorities must have valid reasons to terminate a family's tenancy, both during and at the end of the

49 United States Department of Housing and Urban Development, Public Affairs. "HUD Expands Eviction Protection and Diversion Program with Additional $20 Million" (HUD No. 22-091), available at https://www.hud.gov/press/press_releases_media_advisories/hud_no_22_091.

lease term. Landlords participating in the Housing Choice Voucher program are not allowed to terminate tenancy unless there is a significant violation of the rental agreement, failure to fulfill obligations as outlined in state landlord-tenant laws, and other good cause reasons. The White House Blueprint for a Renters Bill of Rights also emphasizes the importance of preventing evictions by ensuring that renters have access to fair eviction protections, which require valid justifications for eviction and sufficient notice if their lease is not being renewed.

c. **Rental registries.** Currently, there is little to no comprehensive, timely data available to understand the housing conditions and experiences of renters across the country. The lack of information on rental properties promotes a housing market of minimal oversight and can create conditions for deferred maintenance and tenant mistreatment. Local rental registries can collect key information from property owners to ensure proper inspection, maintenance, and compliance with tenant protections, as well as data gathering for advocates and researchers to investigate housing market trends that may be fueling displacement of marginalized communities.

d. **Rent stabilization**. Rent stabilization, sometimes referred to as rent control, is an effective yet underutilized tool to increase housing stability and affordability for current tenants.[50] The increased stability and affordability created by rent stabilization also has positive consequences on mental and physical health, children's educational outcomes, and community stability.[51] Rent stabilization can be enacted at the city or state level through ordinances, funding, and administrative mechanisms. State legislators can also pass enabling legislation to protect the right of local officials to pass their own rent stabilization ordinance or statewide rent stabilization laws to account for prohibitive state preemption laws. Over 180 jurisdictions in the United States have some form of rent stabilization.[52]

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50 Manuel Pastor, Vanessa Carter, and Maya Abood, "Rent Matters: What Are the Impacts of Rent Stabilization Measures?", University of Southern California Dornsife Program for Environmental and Regional Equity. October 2018. https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf.

51 Chew, A., Treuhaft, S. *Our Homes, Our Future: How Rent Control Can Build Stable, Healthy Communities*. Right to the City Alliance, PolicyLink, The Center for Popular Democracy. (August 2019). https://www.policylink.org/resources-tools/our-homes-our-future.

52 Prasanna Rajasekaran, Mark Treskon, and Solomon Greene, "Rent Control: What Does the Research Tell Us about the Effectiveness of Local Action?" (Urban Institute, January 16, 2019), https://www.urban.org/research/publication/rent-control-what-does-research-tell-us-about-effectiveness-local-action.

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