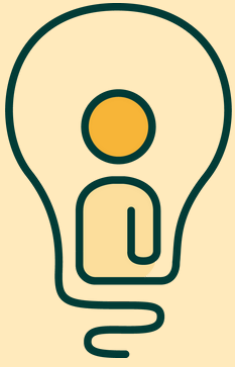


WHITE PAPER

JUNE 2024



# COMMUNITY BENEFITS POLICY AND ENERGY JUSTICE



INITIATIVE FOR ENERGY JUSTICE

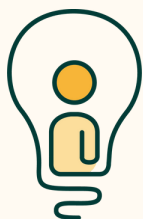
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## THE INITIATIVE FOR ENERGY JUSTICE

IEJ conducts research, provides policy analysis, and facilitates dialogue to advance concrete policy pathways towards energy justice. We partner with frontline organizing groups and allies who are striving for universal access to affordable, renewable, and democratically managed energy.

### ACKNOWLEDGEMENTS

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# EXECUTIVE SUMMARY

## OVERVIEW

Energy infrastructure development has always benefited certain communities and individuals, while burdening others. This white paper examines how the benefits from energy infrastructure investments can be redirected to underserved and overburdened communities through benefits reallocation policies at three different levels of governance: local, state, and federal. At the local level, community-led campaigns to negotiate community benefits agreements (CBAs) have allowed coalitions to directly hold developers and, in certain cases, their local governments, accountable for fulfilling the benefits promised in CBAs. CBAs and a similar benefits reallocation tool, Host Community Agreements (HCAs), have been increasingly promoted as tools for advancing energy justice in the development of energy infrastructure projects.

At the state level, various types of environmental justice policies have reallocated investments and co-benefits of investments to underserved and overburdened communities. These environmental justice policies have been recently joined by state legislation requiring CBAs or HCAs for certain development projects. And at the federal level, the Department of Energy's requirement that applicants for DOE funding submit a Community Benefits Plan (CBP) as part of their application has expanded the federal Justice40 Initiative's goal of institutionalizing environmental and energy justice in federal policy decisions, with a focus on community investments and co-benefits.

These examples of benefits reallocation policies (CBAs and HCAs, state EJ policies and CBA requirements, and CBPs) have the potential to ensure that there is a solid policy platform upon which to build future energy justice work—such as advancing labor agreements, pollution reduction, and energy democracy. However, further energy justice policy interventions focused on increasing community control, governance, and democracy are necessary in order to fully realize the potential of benefits reallocation policies; otherwise, institutionalizing benefits reallocation in policy risks simply reproducing the same inequitable structures, the same distribution of benefits and harms, of our current energy system.

## FINDINGS

- **CBAs fill a niche in energy policy:** Communities in the immediate vicinity of utility-scale energy projects will generally not receive benefits from the project without an externally imposed benefits reallocation framework. CBAs can fill this niche and ensure that benefits are flowing to communities that would otherwise not benefit directly from a project.

- **Institutionalizing CBAs can weaken effectiveness:** In creating a predictable environment for CBAs, expediting the development process tends to be prioritized over maximizing community benefits and engagement. Community benefits ordinances have generally led to non-binding agreements, excluded grassroots groups from the negotiation process, treated community benefits as a box-ticking exercise, and provided community benefits ceilings instead of starting points.
- **CBAs only apply to utility-scale, privately owned projects:** CBAs are only a useful policy tool when the project being developed is large and/or owned by a private entity; community- or individually-owned distributed generation projects, such as rooftop or community solar, or demand reduction mechanisms, such as energy efficiency and heat pumps, do not create a need for negotiated CBAs. CBAs can be useful policy tools for non-renewable energy projects, such as oil refineries, hydrogen projects, gas-fired power plants, radioactive waste disposal sites, and nuclear plants. CBAs are not a silver bullet solution to energy injustice; instituting benefits reallocation mechanisms for infrastructure based on fossil fuel and other extractive industries only expedites and structures the process by which these projects are developed, facilitating the exchange of community buy-in and benefits.

## RECOMMENDATIONS

- 1) Establish transparency and accountability mechanisms in CBPs:** Energy justice requires that marginalized communities participate meaningfully in the policymaking process—not only during CBA negotiations, but in the process of deciding whether the projects are funded and sited in the first place, and in developer creation of CBPs.
- 2) Center disadvantaged communities in CBAs:** The public sector should recognize that HCAs may not fulfill benefits reallocation goals for disadvantaged communities based on the characteristics of the host community, and should require additional benefits reallocation mechanisms to advance substantive, procedural, and restorative energy justice.
- 3) Create benefits reallocation mechanisms for large-scale projects:** Large-scale project developers should be required to ensure that marginalized communities are benefitting from the development and operation of the projects through first-source hiring programs, revenue sharing, community program funding, community or public ownership requirements, and other state-initiated mechanisms.
- 4) Share co-benefit methodologies across states:** Policymakers involved in benefits reallocation policy should look to the local, state, and federal levels for examples of how investments and co-benefits are measured and tracked across different policies. Ensuring that the investments and co-benefits in a policy or CBA are measurable and trackable increases likelihood that these policies/agreements can be enforced.

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# I. INTRODUCTION

Energy infrastructure development has always benefited certain communities and individuals while burdening others. CEOs and shareholders of investor-owned utilities (IOUs) reap profits from building and maintaining the power grid, while ratepayers contribute often unsustainable portions of their income to pay their energy bills, endure rate hikes to ensure profit margins are maintained, and lose access to electricity, heat, and other basic human necessities when they can't pay their bills.<sup>1</sup> Fossil fuel companies reap massive profits as they devastate ecosystems and biodiversity, dispossess Indigenous peoples, and cause premature mortality and reduced quality of life in frontline communities all over the world against the backdrop of climate change.<sup>2</sup> The regulatory agencies that are meant to protect the public from disproportionate harm do not represent the demographics and lived experiences of that same public.<sup>3</sup> Today, private energy companies maintain ownership over renewable energy generation and infrastructure, and “carbon free” solutions such as carbon capture and storage and hydrogen risk further lock-in of fossil fuel use. The energy transition in the United States has the potential to simply reproduce these same inequitable structures, the same distribution of benefits and harms, without intervention.

In this context, new policy tools and frameworks around benefits reallocation have emerged. These “benefits reallocation” policy tools draw from two key areas of policymaking: state environmental justice benefits policy, and community-led campaigns to negotiate community benefits agreements (CBAs). The most clear indications of this framing shift are the creation of the federal Justice40 Initiative and the benefits reallocation policy tools adopted by the Department of Energy (DOE). The Justice40 Initiative promises that 40 percent of benefits from certain federal investments in energy and climate flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution, and is being implemented by the Biden Administration across the whole of the federal government.<sup>4</sup>

The federal focus on benefits reallocation policy tools can help ensure that the energy transition actually advances energy justice. **Energy justice requires achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on marginalized communities.**<sup>5</sup> Without incorporating energy justice into energy public policy, the same powerful energy and utility actors will own, operate, and benefit from a new renewable-based energy system, leaving marginalized communities behind.

Energy justice requires achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on marginalized communities.

Benefits reallocation policies have the potential to advance energy justice. However, in conjunction with these tools, it is necessary to develop policy tools that advance community decision-making power. Examples of community decision-making policy tools include codifying community right-to-refuse or consent-based siting;<sup>6</sup> the principle of free and prior informed consent (FPIC);<sup>7</sup> establishing democratically-governed funds and trusts;<sup>8</sup> and community or public ownership of the energy infrastructure being built.<sup>9</sup>

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This white paper analyzes how energy justice can be advanced through benefits reallocation policy tools at the federal and state level, while providing a critique of the institutionalization of these policy tools, especially when they are not coupled with community decision-making power. We focus on the most common benefits reallocation policy tools currently in use in the United States: local-level community benefit agreements (CBAs), federal-level community benefit plans (CBPs), and environmental justice benefits reallocation policies. Though our policy recommendations are focused on the public sector decision-makers advancing or implementing benefits reallocation policies, we hope that this white paper will also be useful and informative for advocates considering whether to engage in a CBA/CBP process with a developer.

## 2. COMMUNITY BENEFITS AGREEMENTS USE

### 2.1 Introduction to CBAs

There is debate among scholars and practitioners about what type of negotiation and agreement constitutes a CBA and whether CBAs tend to be effective tools for delivering the promised benefits. In spite of this debate, there is a general consensus on a definition of CBAs: CBAs are enforceable contracts between developers and community coalitions which provide benefits for the community in order to mitigate negative impacts of the project.<sup>10</sup> Some scholars explicitly state that, in exchange for these benefits, community organizations and coalitions pledge to support (or at least not work against) the project moving forward, effectively giving the development project community permission to operate.<sup>11</sup> Some scholars have framed CBAs as restorative justice tools that can make up for historical harm, including redlining, slum clearing, urban renewal, and discriminatory hiring practices.<sup>12</sup> It is not clear that CBAs are effective restorative justice tools, given the relatively limited focus of benefits promised and the focus on mitigating future negative impacts. However, there is potential for CBAs to be used as part of a larger, more comprehensive restorative justice process in historically overburdened and underserved communities.

CBAs can be categorized as “direct” or “indirect.” Direct CBAs are solely between a community coalition and the developer. Indirect CBAs consist of two agreements: one between a community coalition and a local government entity, and another between the local government entity and the developer (often known as the development agreement) which references the terms of the first agreement as conditions for development. These contexts may also be called bilateral agreements (between either the community coalition and developer, or between the local government and developer), or multilateral agreements, when both types of bilateral agreements are present and intertwined.<sup>13</sup> In situations where an indirect CBA exists, coalitions are able to legally hold their local government accountable for failure to enforce the terms of the developer agreement, instead of only the developer. However, not all states authorize local governments to enter into development agreements, though it is unclear whether local governments need authorization to do so.<sup>14</sup> In the case of indirect CBAs, the contract is only enforceable by the signatory community organizations, not any governmental entity.<sup>15</sup>

## 2.2 CBAs in Urban Planning

CBAs have been in use since the 1990s in the United States at the local level in urban planning projects.<sup>16</sup> These urban planning projects tend to be large-scale developments such as stadiums, convention centers, or airports. Communities and grassroots organizations began to recognize the negative impacts of these projects, including rent hikes and gentrification, non-local job sourcing, and increased traffic and pollution. CBAs were taken up as a tool that could reduce these negative impacts through workforce and housing benefits agreements, and occasionally, environmental monitoring or funding of community programs. Justice-focused coalitions and organizations began building social and technical infrastructure for negotiating CBAs that still exist today.

### Negative Impact Reduction through an Urban Planning CBA

The proposal to expand LAX in the late 1990's and early 2000's led to public concern over the negative effects of the expansion, including the effect on children in schools in the flight path. Community groups, environmental groups, and labor groups had varying critiques and concerns with the proposed expansion plans, and eventually formed a coalition (the LAX Coalition). The developer, Los Angeles World Airports, was ordered by the mayor to directly negotiate with the coalition, and a CBA was negotiated and approved that delivered an estimated \$500 million of community benefits, including \$230 million to soundproof schools in the flight path.<sup>18</sup>

The question of community decision-making and representation is contested in the CBA scholarship. Many scholars argue that CBAs, by definition, are only CBAs if they are negotiated by “truly representative CBOs.”<sup>19</sup> Though the subjective question of whether a coalition of CBOs is representative of the community remains, and will likely remain, unanswerable, there are examples of obvious representation failures in urban planning CBAs that scholars and CBA activists have agreed do not represent the recommended CBA process. These examples often include a lack of legal enforceability, an overly narrow focus, or inappropriate interference by elected or government officials in the CBA process.

Urban development CBAs tend to include negotiation over the following types of benefits: building or maintaining affordable housing near the site of the project; first-source employment opportunity and job training for local residents; and funding for community programs. These benefits are generally economic in nature and aim to either (a) mitigate the negative housing and transportation effects of the project, or (b) capture some of the revenue and jobs that would otherwise go to the developer or other communities and populations.<sup>24</sup>

There are certain factors identified by urban planning and legal researchers that make CBA enactment more likely: the negotiating coalition is inclusive of labor groups; the development project is large and includes substantial public sector money invested; and the development market is robust or rapidly emerging.<sup>25</sup> These factors generally align with the conditions around certain urban development projects, but also can align with the utility-scale energy infrastructure landscape, especially for renewable energy projects. CBAs therefore have the potential to fill a niche in the energy development landscape and advance aspects of energy justice.

## The Brooklyn Model

According to leading CBA scholar Julian Gross, the issue of non-representative CBAs are exemplified most prominently in CBAs negotiated in New York City in the mid-2000's, including the Bronx Terminal Market Agreement and the Yankee Stadium Agreement.<sup>20</sup> In the 2006 negotiations over the development of the Bronx Terminal Market, the agreement was signed by only four entities—the developer, a local community college, the local chamber of commerce chapter, and a nonprofit housing developer—with allegations that the Bronx Borough President at the time, Adolfo Carrion, had handpicked the organizations involved in the negotiations and excluded organizations that raised critiques of the process.<sup>21</sup> This absence of community representation may have led to the lack of enforcement mechanisms in the agreement, undercutting effectiveness. The 2006 development of the Yankee Stadium seemed to dispense of even a facade of representation for community-based organizations or members, and resulted in a “community benefits agreement” signed only by elected officials and the Yankees.

The nebulous legality of this type of agreement seems to have resulted in a complete abandonment of implementation efforts.<sup>22</sup> These failures have also led to a distrust of negotiations labeled as CBAs, and, as argued by Neil DeMause in *City Limits*, an abandonment of the process by developers in New York City.<sup>23</sup> Misuse and co-optation of the CBA process has real effects on whether CBAs can be a trusted policy tool in communities for future development projects.

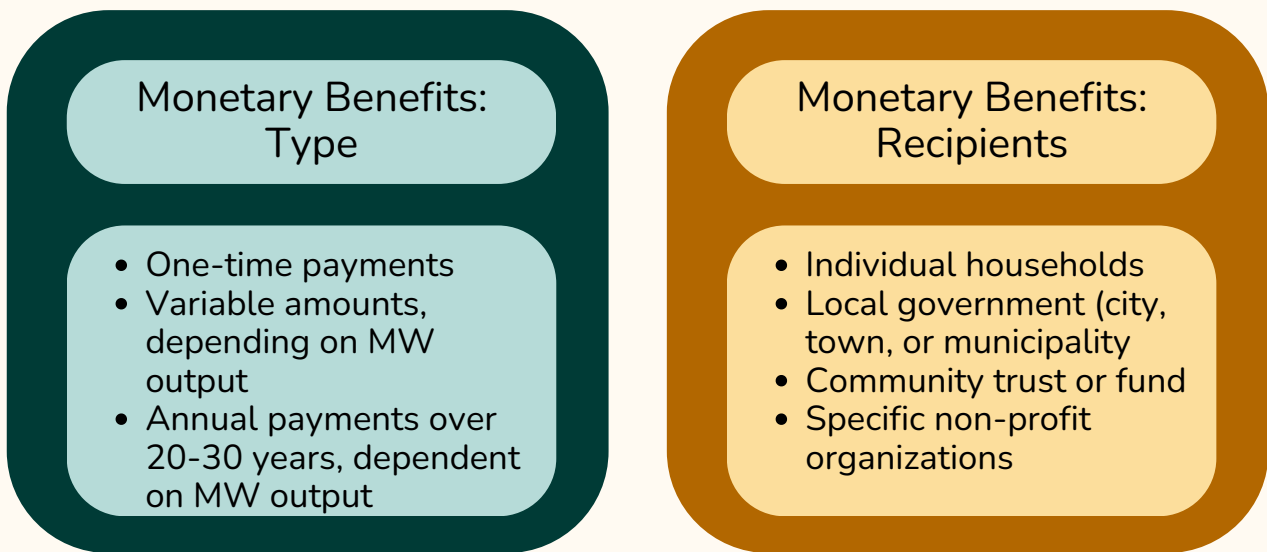
## 2.3 CBAs in Utility-Scale Energy Infrastructure Projects

Recently, CBAs have been framed as a useful policy tool for advancing utility-scale renewable or clean energy infrastructure projects in the United States by reducing community opposition to the projects and facilitating benefits reallocation.<sup>26</sup> CBAs have been used in the United Kingdom for energy infrastructure projects, most often for onshore wind, and to a lesser extent, for nuclear disposal, fracking, offshore wind, and utility-scale solar projects.<sup>27</sup> The Sabin Center for Climate Change Law has compiled a database of publicly available energy-related CBAs in the United States, categorized by project type.<sup>28</sup> The Sabin Center CBA database consists predominantly of CBAs negotiated between developers and towns or municipalities, as these agreements are publicly available through records requests. These are often referred to as Host Community Agreements (HCAs). An important area for future energy justice research is to expand such databases to include CBAs between community-based organizations or coalitions and developers in order to build transparency and accountability norms in CBA negotiations and scholarship.

Based on the Sabin Center CBA Database and other research on renewable energy CBAs, there are some key findings relevant to energy justice advocates, practitioners, and policymakers. United States solar and wind energy infrastructure projects linked to a CBA in the Sabin Center CBA Database are utility scale (over 10 MW and often up to 1,000 MW), and tend to be sited in the northeastern United States. Solar and wind infrastructure CBAs generally focus on monetary benefits, which can be one-time lump sums, variable amounts based on energy output or profit, or an annual sum for a specified amount of time, often based on the scale of the project.<sup>29</sup>



Monetary benefits can be paid to individual households, to a town or municipality, to specific non-profit organizations, or to a community trust or fund. In the last case, community decision-making mechanisms are necessary to allocate the funding according to community priorities.



**Figure 1:** Monetary benefit trends in utility-scale solar and wind project developments.  
**Source:** Author

The types of communities hosting utility-scale energy development projects may differ significantly from the disadvantaged communities identified by the federal Justice40 Initiative.<sup>30</sup> Further research and data on energy infrastructure CBAs is needed to determine the characteristics of these host communities and how local government involvement may differ in urban development and energy infrastructure project CBAs. However, it is clear that there are some significant differences between energy infrastructure project CBAs and urban development project CBAs, including the spatial distribution of impacts and the types of benefits negotiated.

Utility-scale energy infrastructure projects tend to have impact at the state and national level, given the structure of the United States transmission grid and the level of governance at which climate goals and energy generation are decided. In contrast, urban development projects generally operate at the local governance level, where the economic benefits accrue locally in the form of job growth, infrastructure buildout, increased tourism or other local economic effects. Communities in the immediate vicinity of utility-scale energy projects will generally not receive direct benefits from the project without an externally-imposed benefits reallocation framework, in contrast to other energy projects such as rooftop solar, energy efficiency, and residential storage, which by definition accrue benefits directly to households. Without a benefits reallocation policy, the host community of a utility-scale energy infrastructure project will only receive the same potential benefits of the project (such as reduced energy bills) as any other customer of the managing utility.<sup>31</sup>

The National Renewable Energy Laboratory (NREL) conducted an analysis of equity in land-based wind projects to establish a baseline understanding of how equity concerns are incorporated into the process of these projects. Through interviews, the NREL found that “increasing community feelings of respect and ownership in a project” leads to the project being seen as equitable by project stakeholders. However, **the NREL also found that it is difficult to operationalize community ownership of utility-scale renewable energy infrastructure; instead, the NREL recommends a focus on material, salient benefits and respect.**<sup>32</sup> **This gap highlights the limited nature of CBAs negotiated for a utility-scale project and the gap in decision-making justice that exists in this policy space.**

The NREL also found that it is difficult to operationalize community ownership of utility-scale renewable energy infrastructure; instead, the NREL recommends a focus on material, salient benefits and respect. This gap highlights the limited nature of CBAs negotiated for a utility-scale project and the gap in decision-making justice that exists in this policy space.

Based on a review of CBA databases, urban development CBAs generally do not include environmental, energy, or climate-related provisions and instead focus on workforce development, anti-displacement, and community program funding in negotiations over benefits reallocation. There are some exceptions to this trend, including requiring energy efficiency standards for buildings;<sup>33</sup> incorporating renewable energy careers into job training programs;<sup>34</sup> and funding environmental monitoring and environmental impact studies for the project.<sup>35</sup> In contrast, utility-scale wind projects tend to only incorporate monetary benefits in their CBAs, though there are a variety of mechanisms by which the revenue is transferred and utilized by the local government.

Waste disposal projects and fossil fuel infrastructure projects are likely to include environmental monitoring, education, and protection mechanisms, as well as funding for property value protection plans.<sup>36</sup> Property value protection plans tend to accrue benefits to residents who own property, not renters. Overall, CBAs for wind and solar projects tend to use a narrow definition of benefits as solely monetary, or with workforce development requirements, instead of more comprehensively defined co-benefits.

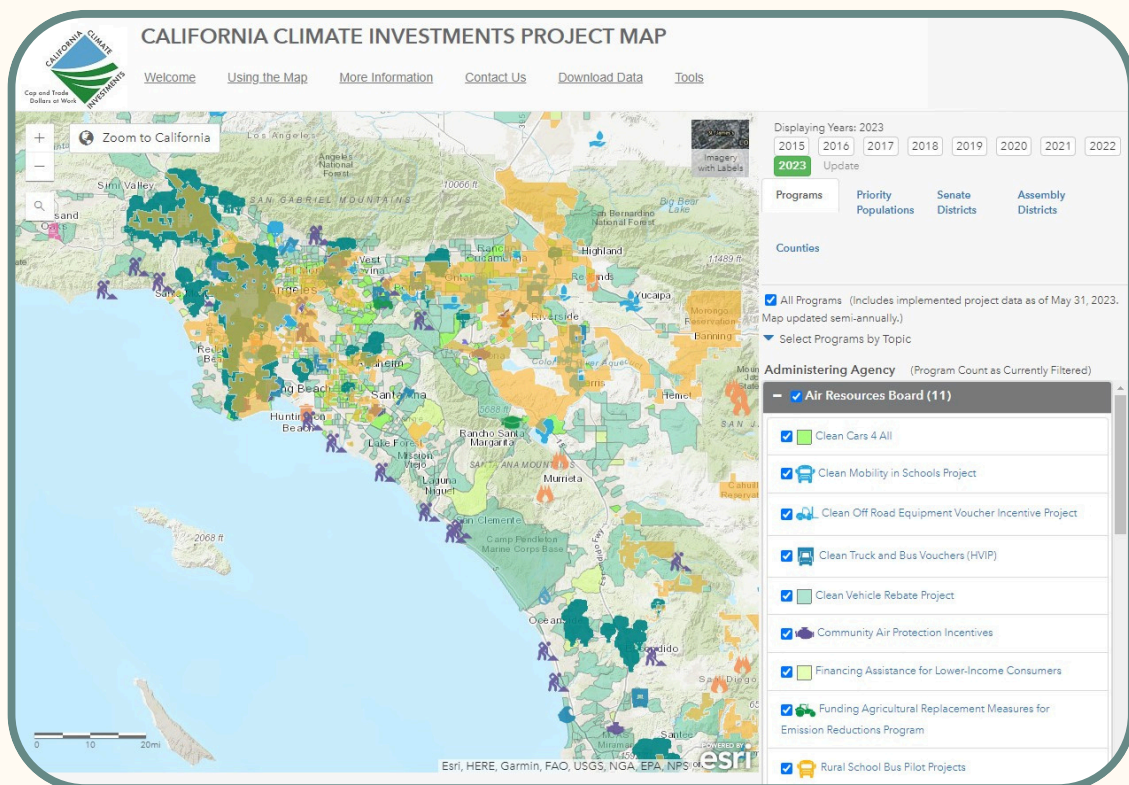
## 3. BENEFITS REALLOCATION IN STATE POLICY

### 3.1 State Environmental Justice Policy

In the past decade, a state-level environmental justice policy approach has emerged that institutionalizes a benefits reallocation framework. California’s slate of 2012 climate legislation provided the blueprint for this approach by creating a state cap-and-trade program, designating

the Greenhouse Gas Reduction Fund (GGRF) as the account receiving the cap-and-trade revenue, and appropriating the GGRF funding for various climate, energy, and environmental programs. A certain percentage of the state’s GGRF revenue is required to fund projects located in or benefitting disadvantaged communities and low-income households.<sup>37</sup> The legislation also instructed the California Environmental Protection Agency (CalEPA) to define disadvantaged communities; the agency first did so in 2014, with various updates in methodology in the years since using the CalEPA’s environmental justice mapping tool, CalEnviroScreen.<sup>38</sup> In the latest update, 28.6 percent of California’s population reside in a census tract designated as a disadvantaged community.<sup>39</sup>

The projects funded through California’s cap-and-trade program are wide-ranging and include air monitoring, emissions reduction incentive grants, environmental restoration, research and development of clean energy projects, resilience planning, transportation, water quality monitoring and improvements, weatherization, workforce and training development, and other environmental, energy, and climate programs.<sup>40</sup> The California Climate Investments Data Dashboard shows the location of projects funded through the state cap-and-trade program, the investment amount, whether that project is located in or benefits disadvantaged communities, low-income households, or low-income communities, and the non-monetary co-benefits associated with the project (see Figure 2).<sup>41</sup> Co-benefits include energy savings, vehicle mile reductions, travel cost savings, reduction in pollution, amount of renewable energy generated, job growth, and negative health outcomes avoided.<sup>42</sup>



**Figure 2:** California Climate Investments Project Map, which shows disadvantaged and low-income communities, as well as projects, by agency and year, that are funded by the GGRF.

**Source:** California Air Resources Board, 2023. Retrieved from <https://webmaps.arb.ca.gov/ccimap/>.

Other states have mirrored this approach by establishing cap-and-trade programs to fund climate, energy, and environmental programs (for example, Washington’s Climate Commitment Act), or using other forms of revenue to fund government programs (for example, Illinois’s Solar for All program) with a funding or co-benefits carve-out for environmental justice communities.<sup>43</sup>

Just as CBAs can include monetary and non-monetary benefits, state-level environmental justice benefits reallocation policies can track investments (monetary) and co-benefits (non-monetary). Co-benefits tracked by states with these environmental justice benefits reallocation policies include air pollution reduction, economic advancement, pollution remediation, investments in energy infrastructure, and other metrics. These benefits definition and tracking methods used by states are useful resources for community coalitions engaging in CBA negotiations, as they lay out methodology and reporting systems that could be adopted by government signatories or an external oversight entity. California has published methodology on how co-benefits for GGRF projects are calculated, and New York has published a draft methodology on measuring benefits for public comment.<sup>44</sup>

### 3.2 State CBA Policy

Some states have enacted legislation that require a form of CBA or HCA for certain development projects. New Jersey’s Economic Recovery Act of 2020 requires that the developer and the host county or municipality sign a “community benefits agreement” for projects, including redevelopment projects, with a total cost of \$10 million or more. This agreement is required to create a community advisory committee to “oversee the implementation of the agreement, monitor successes, ensure compliance with the terms of the agreement, and produce an annual public report.” This requirement, however, can be waived through a certification process between the developer and the host county or municipality that includes certain benefits provisions.<sup>45</sup>

Michigan and California have enacted legislation that has requirements for solar, wind, or storage projects (defined as non-fossil fuel projects, as referenced in California’s legislation). Michigan’s policy stipulates that the energy facility owner and the host community negotiate the required agreement, and that the energy facility owner pay \$2,000 per MW of nameplate capacity to the host community in addition to other optional benefits. If the host community refuses to negotiate the HCA, a CBA is required between the energy facility owner and one or more community-based organizations, with the total payment amount transferred equal to the \$2,000 per MW HCA requirement.<sup>46</sup> California’s policy requires that the developers enter into “one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or more community-based organizations,” though there is no required amount of funding for these agreements.<sup>47</sup> Local government entities are included in the definition of community-based organizations in both Michigan and California’s policies.

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# 4. BENEFITS REALLOCATION AT THE DEPARTMENT OF ENERGY

## 4.1 Overview of Community Benefits Plans

In 2023, the Department of Energy (DOE) instituted a requirement that applicants for Inflation Reduction Act (IRA) and Bipartisan Infrastructure Law (BIL) funding opportunity announcements (FOAs) and loan applications must submit a community benefits plan (CBP) as part of the application process. The DOE has released a detailed CBP template for FOA applicants to use in their application materials, and provided guidance for applicants to the Loan Programs Office (LPO) to submit CBPs when required.<sup>48</sup>

The DOE has put forward several funding priorities for clean energy infrastructure programs, including buildings, carbon management, hydrogen, electric grid, energy storage, energy supply, manufacturing and energy supply chains, research and development, and work with public partners.<sup>49</sup> The DOE funding announcements for these priority areas are updated online with the latest announcements, categorized by BIL and IRA provision.<sup>50</sup> All of these projects have CBP requirements associated with the application. Providing a comprehensive overview of the many funding opportunities through the DOE is beyond the scope of this white paper.<sup>51</sup> According to the DOE, the goal of CBPs is to encourage grantees to commit to outreach and partnerships with local communities and organizations, to outline their approach to community engagement, and to strongly encourage the use of labor agreements and CBAs.<sup>52</sup>

The DOE CBP template requests general information on the project by project location(s); an overview of the communities that are geographically near the proposed project location(s) and/or will be part of the proposed project's supply or waste life cycle; plans for and progress on engaging with community and labor stakeholders; intended outcomes of community and labor engagement; commitment to workforce and community agreements; defining specific objectives related to job quality; diversity, equity, inclusion and accessibility (DEIA); and Justice40 Initiative commitments. The four main sections of the CBP (Community and Labor Engagement; Investing in Job Quality and a Skilled Workforce; DEIA; and Justice40) will each make up 5 percent of a proposal's technical merit review score, for a total of 20 percent for the entire CBP (though the DOE notes that this is the case for most grants, not a universal rule).<sup>53</sup>

## 4.2 Metrics for Benefits Planning

The Justice40 Initiative section of the CBP asks developers to discuss how disadvantaged communities will benefit from the proposed funding—specifically, which disadvantaged communities will benefit from the project, how and when the benefits are expected to flow to communities, milestones and metrics associated with progress on delivering benefits, and community-based organizations involved in identifying, negotiating, or delivering benefits.

The DOE provides a list of policy priorities (investments and outcomes) that applicants should report on in the Justice40 sections of the CBP application.<sup>54</sup> The Justice40 benefits that applicants should consider are defined as “measurable direct or indirect investments or positive project outcomes that achieve or contribute” to the policy priorities in disadvantaged communities:

- 1) A decrease in energy burden
- 2) A decrease in environmental exposure and burdens
- 3) An increase in access to low-cost capital
- 4) An increase in job creation and job training for individuals
- 5) Increases in clean energy enterprise creation and contracting (e.g., minority-owned or disadvantaged business enterprises)
- 6) Increases in energy democracy, including community ownership
- 7) Increased parity in clean energy technology access and adoption
- 8) Increase in energy resilience

The DOE further provides benefit metrics and units for each policy priority (see [Table 1](#)). As an example, increasing energy democracy in federally-defined disadvantaged communities (DACs)<sup>55</sup> can be measured by metrics such as:

- 1) The number of stakeholder events, participants, and/or dollars spent to engage with organizations and residents of DACs, including participation and notification of how input was used
- 2) Number of tools, trainings for datasets/tools, people trained and/or hours dedicated to dataset/tool and technical assistance and knowledge transfer efforts to DACs
- 3) Dollars spent or number of hours spent on technical assistance for DACs
- 4) Dollar value and number of clean energy assets owned by DACs members

POLICY PRIORITY	BENEFIT METRIC AND UNITS
Justice40 Efforts	Dollars spent by DOE Covered Programs in DAC
Decrease energy burden in DACs	Dollars saved in energy expenditures due to technology adoption in DACs
	Energy saved [MMBTU or MWh] or reduction in fuel [GGe] by DACs
	Avoided air pollutants (CO2 equivalents, NOx, SO2, and/or PM2.5) in DACs

Decrease environmental exposures and burdens for DACs	Remediation impacts on surface water, groundwater, and soil in DACs
	Reduction of legacy contaminated waste in DACs
Increase clean energy jobs, job pipeline and access, and career-track job training for individuals from DACs	Dollars spent and/or number or percentage of participants from DACs in career-track job training programs, registered apprenticeship programs, quality pre-apprenticeship programs, labor-management training partnerships, engaged community college programs, and engaged STEM education programs and/or dollars spent on tuition, scholarships, and recruitment activities for individuals from DACs
	Number of new hires and/or percent of total project jobs filled by residents of DACs
	Number of jobs created for DACs because of DOE program
	Number of and/or dollar value of partnerships, contracts or training with Minority Serving Institutions and DAC-serving community-based organizations
Increase clean energy enterprise creation and contracting in DACs	Number of contracts and/or dollar value awarded to businesses that are principally owned by women, minorities, disabled veterans, and/or LGBT persons
Increase energy democracy in DACs	Number of stakeholder events, participants, and/or dollars spent to engage with organizations and residents of DACs, including participation and notification of how input was used
	Number of tools, trainings for datasets/tools, people trained and/or hours dedicated to dataset/tool and technical assistance and knowledge transfer efforts to DACs
	Dollars spent or number of hours spent on technical assistance for DACs

Increase energy democracy in DACs (con't)	Dollar value and number of clean energy assets owned by DACs members
Increase access to low-cost capital in DACs	Dollars spent by source and purpose and location
	Leverage ratio of private to public dollars
	Loan performance impact through dollar value of current loans and of delinquent loans (30-day or 90-day) and/or number of loans (30-day delinquent or 90-day default)
Increase parity to clean energy technology access and adoption in DACs	Clean energy resource [MWh] adopted in DACs
Increase reliability, resilience, and infrastructure to support reliability and resilience in DACs	Increase in community resilience hubs in DACs Number and size [MWh] of community resilience infrastructure deployed in DACs (e.g., distributed solar plus storage, utility scale, DERs, microgrids)

**Table 1:** *Reproduction of policy priorities and example associated benefit metrics and units for developers to include in their applications to the DOE.*

**Source:** Department of Energy, 2023. Retrieved from:

<https://www.energy.gov/infrastructure/about-community-benefits-plans>

These metrics align with the NREL’s findings in wind energy equity ([see Section 2.3](#)) that developer willingness to engage with communities, to adapt and change their plans as a result of community feedback, to institute bidirectional learning, and to prioritize community feelings of respect and ownership all contribute to stakeholders viewing the development process as equitable. The first three examples of metrics for energy democracy are procedurally focused, and seek to measure how community input was incorporated into the planning process. Only the last metric measures energy infrastructure ownership, a key aspect of energy democracy.<sup>56</sup> This is an area that the NREL has found is difficult to operationalize, especially for utility-scale energy projects; this difficulty is demonstrated in the lack of ownership and decision-making metrics in the DOE benefit metrics.<sup>57</sup> In general, the framing of these benefit metrics as options, or examples, provides the DOE with significant latitude in deciding whether an applicant’s CBP contributes to the Justice40 Initiative and other equity commitments.



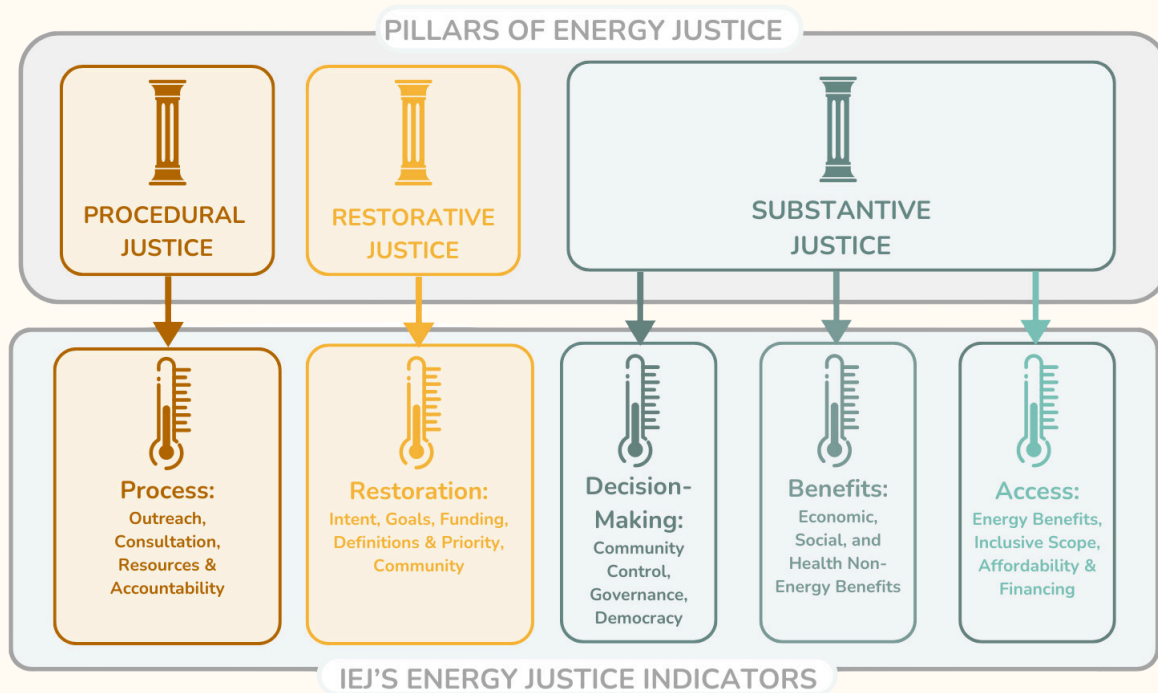
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## 5. INSTITUTIONALIZATION OF BENEFITS ALLOCATION MECHANISMS

The Institute of Energy Justice's (IEJ) conceptualization of energy justice includes the three pillars of energy justice (procedural, restorative, and substantive justice), and five associated energy justice indicators that operationalize these pillars (process, restoration, decision-making, benefits, and access) ([see Figure 3](#)). Benefits reallocation policies most directly operationalize the benefits and access indicators associated with substantive energy justice. Benefits involve economic, social, health, and other non-energy benefits. Examples include the monetary transfers that developers send to host communities and specific organizations or coalitions through policy or CBAs, but also non-monetary benefits such as job training programs, funding schools and scholarships, and infrastructure projects like broadband expansion or road repair. Access involves energy benefits, which can be addressed in policy or CBAs through funding for energy efficiency retrofits or bill credits. The DOE's CBP requirements have indicators that advance procedural justice and process, asking developers to report on engagement with the communities affected by a project ([see Table 1](#)). There is potential for restorative justice in benefits reallocation policies, if these policies ensure that benefits are allocated in a way that remedies past and current harms disproportionately burdening disadvantaged communities.

Overall, institutionalizing benefits reallocation mechanisms in the form of CBAs, state policies, and CBPs can be framed as an important step towards implementing aspects of energy justice in energy transition policy. However, benefits reallocation policies have so far not advanced decision-making justice in the energy system—this would require ownership and control over the projects developed in a community. The lack of decision-making justice is a serious gap in benefits reallocation policies; policymakers should consider whether existing benefits reallocation policies are capable of incorporating decision-making justice, or whether additional policy interventions are necessary to fully realize energy justice.

This section includes three findings on how the institutionalization of benefits reallocation policies has affected the energy policy sphere and energy justice.



**Figure 3:** IEJ's five areas of energy justice, based on the three scholarship-based pillars of energy justice.

**Source:** Initiative for Energy Justice, 2019. Reproduced from <https://iejusa.org/workbook>

## 5.1 CBAs Fill a Niche in Energy Policy

Early CBA advocacy positioned CBAs as a mechanism for communities near a development project to get a cut of the benefits, monetary and otherwise, resulting from the project that would otherwise flow to other individuals and communities. In the context of utility-scale renewable energy development projects, such as solar, wind, and storage projects, the benefits are spread more equally across a larger geographic area (such as an electric grid or state), but there are negative externalities likely to affect the host community (such as noise pollution, and ecological disturbance and pollution, or infrastructure wear). In these contexts, CBAs or HCAs can ensure that the host community receives more than just the diffuse benefits received by all other communities in the wider area, and that benefits which would have otherwise gone to the developer are reallocated to the host community. The existence of numerous CBAs negotiated between local governments and utility-scale wind and solar developers illustrates the niche that CBAs are filling in the energy development space. CBAs negotiated between the developer and a coalition of community organizations can further serve the goal of energy justice by ensuring that community priorities are incorporated into the agreement, allowing community organizations to hold the developer accountable for promises made in the CBA, and funding capacity-building in these organizations to further the work of energy justice in the future.

## 5.2 Institutionalizing CBAs Can Weaken Effectiveness by Increasing Certainty

However, there are also drawbacks to institutionalizing benefits reallocation approaches in public policy. Urban planner scholar Murtaza Baxamusa argues that CBAs are successful because of the uncertainty of the project's outcome; this uncertainty derives from the very real risk that the community coalition demanding a CBA will be able to block the project from moving forward if the coalition's demands are not met. Baxamusa argues that government adoption, or co-optation, of CBA mechanisms leads to increased certainty of the project's outcome (as long as the developer follows the correct procedures), and re-silos community coalitions into public hearing contexts where their negotiating power is greatly reduced.<sup>58</sup>

As an example of these co-optation mechanisms, there have been some attempts to institute model CBAs or community benefits (CB) ordinances at the local level in Cleveland, Ohio; Detroit, Michigan; and Portland, Oregon. According to scholars Nicholas Belongie and Robert Mark Silverman, model CBAs and CB ordinances shorten the learning curve and "provide developers with a more predictable environment" for advancing projects.<sup>59</sup> This predictable environment, however, also has tended to result in a prioritization of expediting the development process over maximizing community benefits. Belongie and Silver find that in addition to prioritizing speed for developers, **these institutionalized CB ordinances tend to lead to non-binding agreements, exclude grassroots groups from the negotiation process, treat community benefits as a box-ticking exercise, and frame the model CBA as a ceiling instead of a floor or starting point of a negotiation.**<sup>60</sup>

These institutionalized CB ordinances tend to lead to non-binding agreements, exclude grassroots groups from the negotiation process, treat community benefits as a box-ticking exercise, and frame the model CBA as a ceiling instead of a floor or starting point of a negotiation.

It remains to be seen whether these outcomes will also be evident in the agreements that result from state legislation requiring CBAs or HCAs ([see Section 3.2](#)). These requirements do not impose a structure on the CBA negotiations; they only force the negotiations to occur. However, if strong norms develop around what types of clauses or investment amounts

are acceptable in a CBA under these state policies, there is a risk that these norms will exclude transformative ideas of energy justice (such as community ownership of projects or directing funding to underserved and overburdened communities). At the federal level, the CBP process may produce similar results as the local CB ordinances. Transparency and accountability questions still remain major obstacles in evaluating the efficacy of CBPs.

### 5.3 CBA Usefulness is Dependent on Project Type

CBAs are generally useful policy tools when the project being developed is utility-scale, and/or owned by someone else. Community- or individually-owned distributed generation projects, such as rooftop or community solar, or demand reduction mechanisms, such as energy efficiency and heat pumps, do not create a need for negotiated CBAs because these projects provide direct, tangible benefits such as energy savings and infrastructure ownership to households or communities, by definition.

CBAs made available to the public in the energy development sector have been disproportionately focused on utility-scale energy infrastructure projects, to the exclusion of distributed energy resources (whether owned by households, community-based organizations, local governments, or private sector actors). Therefore, focusing on the institutionalization of CBAs in the energy space is likely to center analysis on utility-scale infrastructure projects. CBA institutionalization will likely make the process through which these projects are advanced run more smoothly. This is not necessarily the same as advancing energy justice, especially given the wide range of utility-scale projects currently being advanced under the umbrella of clean energy. For example, CBAs have been used for oil refineries, hydrogen projects, gas-fired power plants, radioactive waste disposal sites, and nuclear plants.<sup>61</sup> **Instituting benefits reallocation mechanisms does not move energy policy away from these harmful technologies and fossil fuel infrastructure; it only expedites and structures the process by which community buy-in is exchanged for monetary, workforce, and other benefits.**

CBA coalitions are sometimes framed as separate from NIMBY advocates—according to this narrative, the former believe that benefits redistribution and increased democratic decision-making can improve large-scale development projects, while NIMBY advocates are against any large development projects at all.<sup>62</sup> Advocates who oppose large-scale development, including utility-scale projects, renewable or not, are therefore framed as invalid participants in the CBA process, and cast as unreasonable and incapable of acting in good faith.<sup>63</sup> This framing ignores the very real dangers of many large development projects for environmental justice communities, and excludes from the decision-making process those who recognize the energy injustice of certain clean energy projects.

Instituting benefits reallocation mechanisms does not move energy policy away from these harmful technologies and fossil fuel infrastructure; it only expedites and structures the process by which community buy-in is exchanged for monetary, workforce, and other benefits.

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## 6. RECOMMENDATIONS

These recommendations are intended for public sector officials at the local, state, or federal level who are engaging in negotiating CBAs or HCAs, negotiating with developers that are subject to DOE CBP requirements, or simply interested in advancing energy justice through benefits reallocation policy tools. Advocates and researchers may also find these recommendations useful for advancing energy justice through public policy.

### 6.1 Establish Transparency and Accountability Mechanisms in CBPs

It remains unclear how public accountability mechanisms will be incorporated into the DOE CBP process. The DOE has stated that when an applicant is selected to receive funding, the applicant's CBP will "be part of the contractual obligation of the funding recipient."<sup>64</sup> This is an important step forward for enforcement of benefit reallocation policies at the federal level.

However, CBPs are not anticipated to be made public; instead, summaries have been promised to the public as part of the DOE's transparency efforts. In CBPs, developers are required to identify which communities will be impacted; their engagement with community and labor stakeholders and the intended outcomes of this engagement; progress on negotiating, or intention to negotiate, workforce and community agreements; specific objectives related to job quality; diversity, equity, inclusion and accessibility (DEIA); and Justice40 Initiative commitments. While the DOE has identified elements of procedural justice against which to score developer's applications (by requiring developers to report how much effort they have expended in bringing disadvantaged communities into the project-planning process), holistic procedural justice requires further that these efforts are made public, and paired with accountability mechanisms. Transparency is a key requirement not just for procedural justice, but for substantive and restorative justice tenets as well—otherwise, communities are relying solely on faith that benefits, access, and restoration are being incorporated into the project.

This lack of transparency appears to leave enforcement of the details of the CBP in the hands of the DOE, as the CBP is not a legally binding agreement itself, but part of a developer's funding application. The federal government has historically been responsible for environmental and energy injustice through systemic discrimination in the past;<sup>65</sup> the current lack of transparency and accountability mechanisms only perpetuates a lack of trust in the government to advance justice. Even if this historical precedent did not exist, allowing for public accountability mechanisms alongside DOE accountability mechanisms would strengthen enforcement of CBPs. Energy justice requires that marginalized communities participate meaningfully in the policymaking process—not only at a future possible point of CBA negotiations, but in the process of deciding whether the projects are funded in the first place, and in developer creation of CBPs.<sup>66</sup> The lack of transparency and accountability around CBPs at the federal level violates procedural justice requirements and is a major oversight in the federal approach to benefits reallocation policies.

## 6.2 Center Marginalized Communities in CBA Policy

HCAAs have been grouped together with CBAs as a tool for reallocating benefits to marginalized communities. However, energy development projects are not only being sited in marginalized communities, but also in wealthy and/or predominantly white communities. HCAAs can benefit communities through monetary transfers and investments into local infrastructure and social systems. To advance energy justice—and, in particular, restorative justice—the public sector should conceptualize CBAs as benefits reallocation policies that focus specifically on benefitting disadvantaged and marginalized communities and low-income individuals and households. The public sector should recognize that HCAAs may not fulfill benefits reallocation goals for disadvantaged communities (such as the federal Justice40 Initiative or state environmental justice policies), and should require additional benefits reallocation mechanisms that specifically benefit these communities.

In HCA negotiations, underserved populations residing within a host community can be identified and given decision-making power over what is included in the HCA. This could manifest as listening and dialogue sessions with local officials, incorporating community priorities into the HCA, or facilitating a parallel CBA process between the developer and a coalition of community organizations that work to advance justice for marginalized communities. Ensuring that benefits are carved out for renters, elderly and disabled populations, un- and under-employed people, and unhoused people can ensure that the spirit of Justice40 and energy justice is advanced through HCAAs. In addition, local governments can reallocate the funding received through the HCA to neighboring or sister communities that may be comparatively under-resourced, in the spirit of solidarity and justice.

## 6.3 Create Benefits Reallocation Mandates for Large-Scale Projects

As benefits reallocation policies are operationalized at the state level, there is a risk that the largest infrastructure projects may be exempted from benefits reallocation goals. Examples of these large projects include utility-scale infrastructure projects such as solar farms, onshore and offshore wind farms, energy storage projects, hydrogen facilities, and fossil gas power plants. States have taken different approaches to benefits reallocation requirements for utility-scale infrastructure projects. In New York's draft guidance on investments and benefits reporting for co-benefits, non-place based projects (defined as utility-scale projects in the guidance, as the benefits are not located in a specific place, but are diffuse across the electrical grid) are not subject to the state requirement that at least 35 percent of benefits from the New York Climate Act are directed to disadvantaged communities.<sup>67</sup> Exempting utility-scale projects from benefits reallocation goals dangerously reduces the efficacy of benefits reallocation policies, and upholds the existing inequitable distribution of benefits for these types of projects.

No state has put forward a comprehensive energy policy that requires benefits reallocation to marginalized communities for all energy infrastructure projects. Michigan, California, and New Jersey's CBA policies make progress in meeting this standard, but ultimately fall short due to exclusion of certain types of projects, or a focus on HCAs over CBAs ([see Section 3.2](#)). Large-scale projects should be required to ensure that marginalized communities are benefitting from the development and operation of the projects through first-source hiring programs, revenue sharing, community program funding, community or public ownership requirements, and other state-initiated mechanisms.

#### 6.4 Share Co-Benefit Tracking Methodologies Across States

Policymakers involved in benefits reallocation policy should look to the local, state, and federal levels for examples of how investments and co-benefits are measured and tracked across different policies. Ensuring that the investments and co-benefits in a policy or CBA are measurable and trackable increases likelihood that these policies/agreements can be enforced. In addition, sharing methodologies for tracking investments and co-benefits can facilitate the institutionalization of benefits reallocation policies, by building on existing, tested systems and supplying community coalitions with well established co-benefits to bring to negotiations.

At the federal level, the DOE has taken an important first step in referencing examples of specific benefit metrics that developers should include in their CBP applications ([see Section 4.2](#)). However, these metrics need further work to be operationalized in a way that is comparable across applicants and jurisdictions. Until CBPs are made public ([see Section 6.1](#)), it is not possible to compare metrics across applicants to ensure that the metrics are being operationalized in the same way. Co-benefit tracking methodologies for these metrics should be explicitly and publicly defined by the DOE, with reporting on progress made on co-benefit metrics for each funded project.

State benefits reallocation policies and CBAs are a more robust source of existing methodologies for measuring non-monetary benefits. CBAs, while not always available to the public, are a rich source of existing methodologies for measuring benefits. Often, these benefits are in monetary form, and the structure for transferring funding for specific purposes can be adapted from existing CBAs that have proved resilient.

### Examples of Existing Co-benefit Methodology Sources

- ReImagine Appalachia has created a resource hub related to community benefits with model CBA language.<sup>68</sup>
- California has developed co-benefits as part of the state’s California Climate Investments programs; the assessment methodologies were developed by the University of California at Berkeley in collaboration with the California Air Resources Board, and have been in use for years, making their methodology durable for use in CBAs.<sup>69</sup>
- New York had proposed draft guidance on investments and benefits reporting for co-benefits as part of the state’s Climate Leadership and Community Protection Act which, though still in draft form, provide additional examples of investment and co-benefit measurement methodologies.<sup>70</sup>

## 7. CONCLUSION

These examples of benefits reallocation policies (CBAs and HCAs, state EJ policies and CBA requirements, and CBPs) have the potential to ensure that there is a solid policy platform upon which to build future energy justice work—such as advancing labor agreements, pollution reduction, and energy democracy. However, further energy justice policy interventions focused on increasing community control, governance, and democracy are necessary in order to fully realize the potential of benefits reallocation policies; otherwise, institutionalizing benefits reallocation in policy risks simply reproducing the same inequitable structures, the same distribution of benefits and harms, of our current energy system.



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