

Developing an Equity Impact Statement

A Tool for Policymaking



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Developing an Equity Impact Statement for Local Policymaking

Why measure equity impact?

Equity and fairness in policymaking is no accident. Legislative bodies must pay close attention to the impact of their policies and play an active role in ensuring that both their intent and impact are consistent with a jurisdiction's expressed values. By measuring equity impact in a few representative areas, a legislative body can assess whether laws and rulemaking advance a shared agenda of fairness; spread the burden of regulation fairly; and help address historic patterns of institutional bias and discrimination.

There is another critical reason to develop ongoing measures of equity in policymaking. Jurisdictions are under "strict scrutiny" by the Courts when undertaking race conscious remedies and "intermediate scrutiny" when undertaking gender conscious remedies. The two-pronged test of strict scrutiny is:

- compelling government interest
- the intervention is narrowly tailored to address the effects of demonstrated discrimination

A jurisdiction will find it difficult to meet these standards without identifying compelling interest and building a body of evidence of local decisionmaking and its impact on its various constituents.

In implementing this process, it is highly recommended that the jurisdiction considers awarding an assessment contract out to an appropriate research entity in much the same way as a jurisdiction would identify an agency to conduct an environmental impact statement. Larger, more complex projects may benefit from the input of an organization experienced in this kind of evaluation.

Defining the concern and scope of the process

It is important to clearly identify the communities of concern to this process (racial and ethnic, gender, disabled, low-income, etc.) and establish definitions for these communities. Most jurisdictions have already defined these communities using some version of national or regional government guidelines. Be sure to include whatever relevant definitions in use in the enabling policy.

Adverse Effects. A jurisdiction should also clearly define what constitutes adverse effects on the communities of concern. The US Executive Order 12898 offers useful language as a departure point in this regard:

Adverse Effects means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption

of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in or significant delay in the receipt of, benefits of [jurisdiction] programs, policies, or activities.

Developing mechanisms for assessing equity impact

The following is a process that local governments can enact in order to *institutionalize* a mechanism for assessing the impact of their policies on equity and fairness. Enacting this procedure will require that a jurisdiction amend and expand the rulemaking process:

Amend or revise jurisdiction's value statements (or develop a set of findings and values) to guide this process.

A jurisdiction should articulate clear statements or findings that support policymaking that takes into account equity, fairness and historic institutional bias. A set of value statements could include the following:

- The [jurisdiction] is committed to ensuring that each and every policy enacted reflects democratic principles of equity and fairness.
- The [jurisdiction] understands that carrying on its business in a fair and equitable manner that takes into account critical issues of bias and discrimination requires concerted and purposeful action.
- The [jurisdiction] recognizes that institutions can play a negative role in issues of racial equity. It seeks to proactively and positively address both present day and past patterns of bias and discrimination in a way that truly creates equitable opportunities for all of its residents.

Findings could include:

- Local policymaking is a critical factor in the creation of opportunities for its residents. Local policies help create jobs, markets, housing; decide matters of land use and land value; and set code and rules for the administration of key public functions like law enforcement, health and sanitation, and access to recreation.
- Low-income, communities of color have been traditionally victimized by institutional bias and discrimination. Studies by the federal Office on Civil Rights, University of Michigan, Applied Research Center and others have shown that local government policies play a significant role in this victimization by enacting policies that exacerbate and/or maintain inequity.

- Local budget and resource allocation practices are traditionally biased toward more affluent and white residents of local jurisdictions. Studies by the Applied Research Center and the Institute on Race and Poverty have found that local governments that pay attention to these traditional biases and act consciously to address them develop fairer and more equitable policies that result in fairer more equitable development.
- As [jurisdiction] is committed to the fair and equitable treatment of all its residents, policymaking will reflect these values at every level of the process. Therefore, it is the [jurisdiction's] policy to actively administer and monitor operations and decision making to assure that nondiscrimination is an integral part of its programs, policies, and activities.
- There is relationship between the siting of certain negative and positive uses and the quality of life of those who reside near these uses. The [jurisdiction's] commitment to ensuring that all of its residents have a decent quality of life requires that its residents share both the burdens of necessary negative uses and the benefits of positive uses in a fair and equitable manner.
- These policies are enacted in accordance with several UN conventions including the International Convention on the Elimination of All Forms of Racial Discrimination adopted by the United Nations and ratified by many governments worldwide in order that [jurisdiction] become a world citizen accountable to the highest standards of fairness.
- Accountability to the [jurisdiction's] constituents is important to the Council. The Council asserts the importance of evaluating the impact of its policymaking on constituents over time and utilizing this evaluation in the development of new policy initiatives.
- As part of the [jurisdiction's] commitment to accountability and impact in this area, it will increase its enforcement efforts as enforcement of policies to address bias and discrimination is as important as enacting the policies in the first place. The [jurisdiction] will commit adequate resources to support enforcement, implementation and evaluation of policies in this area.

Establish tracking systems, evaluation and reporting mechanisms that building a body of evidence

Developing a body of reportage in these areas will require expanding the roles of the [jurisdiction] attorney functions and [jurisdiction] planning offices to conduct assessments in preparation for the discussion of proposed ordinances. Assess how to use processes already in place to minimize added workload. For example, some required data and/or analysis may already be available as part of a sustainability program or planning ordinance. Local jurisdictions already committed to a high level constituent accountability will have effective policy tracking systems in place. In these cases, a few added fields to the database will make a significant difference.

Adapt a set of normative questions to be addressed that are incorporated into the legislative process. A jurisdiction can choose to exclude certain actions (i.e., resolutions, minor code revisions, etc.) from this added review. It should also specifically mandate others (i.e., economic development, budgeting, siting, planning and zoning, etc.) for review.

This process should ask at least four main questions:

1. Will this proposed policy affect compliance with regional, national, and international anti-bias and anti-discrimination policies? In what ways? If there is a problem or conflict, how might it be resolved?
2. How will the proposed policy affect access to livelihood? (affordable housing, jobs for residents, transportation, food access, emergency services and medical care, school access and quality)?
3. Will the proposed policy compromise/improve quality of life? (i.e., reduce access to recreation, services, increase crime, etc.)
4. Which geographic and/or cultural communities will carry the greatest burden if the proposed policy is implemented? Gain the most benefit?

Develop mechanisms to identify, evaluate and address adverse effects

A jurisdiction should, when the scope and impact of a proposed policy is quite significant, convene key stakeholders and develop additional impacts to be assessed. For example, a proposed shopping center might require additional assessments related to the displacement of local business, property values and the negotiating of local hiring agreements.

When adverse effects are identified, mechanisms for addressing these impacts should include at least the following components as outlined in federal government policies to advance environmental justice:

Identify the risk of discrimination early in the development of the program, policy or activity, so that positive corrective action can be taken.

In implementing this process, the following information should be obtained where relevant and appropriate:

- Population served and/or affected by race, color or national origin, and income level;
- Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin;

- Present and proposed membership by race, color, or national origin, in any planning or advisory body that is part of the program, policy or activity.

Policies, programs and activities will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations by:

- (1) identifying and evaluating environmental, public health, socio-cultural and economic effects of programs, policies and activities;
- (2) proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by programs, policies and activities, where permitted by law and consistent with this rulemaking;
- (3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse impacts consistent with this rulemaking; and
- (4) eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority and low-income populations in considering alternatives.

This process, though challenging, is a rewarding one. It can help bring about greater collaboration in policymaking, strengthen public support and input, and develop policymaking mechanisms that advance equity and fairness. An abbreviated list of organizations follow that can provide technical support to this end. Of course, there are many other groups out there with great resources. In addition, some of the groups on this list have expertise across a wide range of issues but were only listed under two or three categories at most. In addition, please feel free to contact Higher Ground if we can be of assistance.

RESOURCES (a very abbreviated list)

American Planning Association

http://www.planning.org/switchbd/apadirec.html

Center for Budget and Policy Priorities

Website: <http://www.cbpp.org>

Center for Social Inclusion

www.thecsi.org

Earth Island Institute

Website: <http://www.earthisland.org/>

Land Use Law Center

Useful Gateway for planning issues

Website: <http://www.cyburbia.org/>

National Council on Disability

Website: <http://www.ncd.gov/>

National Low Income Housing Coalition (NLIHC)

Website: <http://www.nlihc.org/>

National Housing Institute

Website: <http://www.nhi.org/>

Poverty & Race Research Action Council

Website:

<http://www.prrac.org/topics/resources/hungerresources.htm>

Race Forward

Website: <http://www.raceforward.org/>

The Sentencing Project

Website: www.sentencingproject.org

US Human Rights Network

www.ushrnetwork.org