



State of California  
Office of the Attorney General

**ROB BONTA**  
ATTORNEY GENERAL

July 6, 2021

*Via e-filing at [www.regulations.gov](http://www.regulations.gov)*

Acting Director Shalanda Young  
The Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

RE: “Request for Information regarding Methods and Leading Practices for Advancing Equity and Support for Underserved Communities through Government.”  
86 Fed. Reg. 24029 (May 5, 2021)

Dear Director Young:

I write today in response to the Office of Management and Budget’s May 5, 2021, “Request for Information regarding Methods and Leading Practices for Advancing Equity and Support for Underserved Communities through Government.” I applaud your agency’s efforts to implement Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government issued on January 20, 2021.”<sup>1</sup>

I greatly appreciate the leadership of OMB in the face of unprecedented public health challenges. My office is committed to collaborating with the Biden Administration on these efforts. The California Attorney General has a strong interest in promoting equity broadly and I have a mandate to advance the civil rights of all Californians. Health equity is an essential piece of that mandate—especially in the wake of the ongoing COVID-19 crisis. Californians have faced extraordinary challenges during this pandemic, including equitable access to healthcare.

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<sup>1</sup> See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

We have seen stark disparities in our healthcare systems throughout the nation, as we have all grappled to meet and recover from the challenges of the COVID-19 pandemic.

The following comments focus on the importance of considering the health equity impacts of agency actions. Specifically, I propose that federal agencies, as part of their regular regulatory processes, assess the impact of agency policies, regulations and actions on health equities and underserved communities, and consider whether they advance health equity or reinforce existing health inequities. One method of achieving such a goal would be conducting a Health Impact Assessment (HIA) for federal actions, including procurement, programs, policies, rule promulgation and legislation.

Institutionalizing health impact assessments would put health and equity on equal footing with other types of impact assessments already conducted by federal agencies to protect non-health values such as freedom from paperwork, economic protection, and religious liberty.<sup>2</sup> Health and equity should be placed on equal footing with these other priorities, thus ensuring our nation is stronger and better prepared for the next pandemic crisis or other national emergency.

## **I. Health Equity and Equity Are Inextricably Intertwined**

“[G]ood health is crucial to U.S. democracy, national security, and economic vitality.”<sup>3</sup> Yet, inequitable distribution of social, environmental, economic, and structural resources shapes our health. But inequity and inequality are not inevitable. “We as a society have created” these inequities—and we must act to address them.<sup>4</sup> As recognized by President Biden in Executive Order 13985, “the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”

Laws and policies play a central role in reducing or exacerbating health disparities. For example, before the pandemic, existing federal and state programs and laws did not sufficiently protect workers and families in the United States from many forms of insecurity and inequity in

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<sup>2</sup> Ho, *Legislating A Negative Right to Health: Health Impact Assessments* (2019) 50 Seton Hall Law Review 643, 647 (hereafter *Legislating A Negative Right to Health*).

<sup>3</sup> National Academies of Sciences, Engineering, and Medicine, *Communities in Action: Pathways to Health Equity* (2017), 38-44, <https://www.ncbi.nlm.nih.gov/books/NBK425853/>.

<sup>4</sup> Burris et al., (Eds.) *COVID-19 Policy Playbook: Legal Recommendations for a Safer, More Equitable Future, Volume II* (2021), 9-10, [https://static1.squarespace.com/static/5956e16e6b8f5b8c45f1c216/t/60995942ea2dbf3f3bc31788/1620662599928/COVIDPolicyPlaybook-v2\\_May2021.pdf](https://static1.squarespace.com/static/5956e16e6b8f5b8c45f1c216/t/60995942ea2dbf3f3bc31788/1620662599928/COVIDPolicyPlaybook-v2_May2021.pdf). See also Burris et al., (Eds.) *Assessing Legal Responses to COVID-19* (2020), *Volume I* (2020) <https://www.publichealthlawwatch.org/covid19-policy-playbook>.

jobs, income, housing, food, or access to healthcare.<sup>5</sup> Inequity thus left these groups more vulnerable to the COVID-19 virus and its attendant consequences.

However, just as law and policies can reinforce inequities, they can also be crafted to “change the fundamental drivers of inequity and increase health equity.”<sup>6</sup> Systemic, institutionalized processes and procedures are key to ensuring the public health.<sup>7</sup> Public health in turn is a crucial precondition for national growth and economic stability as well as national security. There are many ways that OMB can foster these important goals. Promoting a detailed analysis of the health impacts of proposed federal actions is one method to ensure health equity.

Recent federal regulatory actions, particularly during the prior administration, demonstrate that federal agencies have failed to devote deliberate attention to health equity impacts. Indeed, in recent years, the federal government adopted a number of major rule changes that were later found to be arbitrary and capricious in part because of their disparate—and often unassessed—health impacts. See, e.g., *New York v. United States Department of Homeland Security*, 475 F.Supp.3d 208, 221, 227 (S.D. N.Y. 2020) (holding that public charge rule likely lacked rational basis because of its disproportionate health impacts on noncitizens of color, disproportionate impacts on essential workers); *Mayor and City Council of Baltimore v. Azar*, 439 F.Supp.3d 591, 608 (D.Md. 2020) (holding that Title X rule was arbitrary and capricious in part because agency failed to consider is disproportionate impact on women patients); *District of Columbia v. United States Department of Agriculture*, 496 F.Supp.3d 213, 256-57 (D.D.C. 2020) (holding revisions of Supplemental Nutrition Assistance Programs arbitrary and capricious in part because of the agency’s “dismissive treatment” of adverse impacts on “minorities, women, and persons with disabilities”).

To avoid situations in which an agency notes health equity impacts and offers only blunt conclusory statements that acknowledge and disregard such impacts, a meaningful assessment of health equity would require agencies to quantify and analyze those impacts. Therefore, OMB should consider steps to ensure that agencies assess the potential benefits or burdens to health flowing from proposed federal agency actions. This will not only inform the public, but help ensure that health impacts are assessed also at the state, local, territorial, and tribal levels.

## **II. Health Impact Assessments Advance Equity Broadly, and Health Equity Specifically**

One method of ensuring federal agencies adequately quantify and evaluate the impacts of federal actions on health equity and underserved communities are Health Impact Assessments. HIAs are a tool for advancing population health, safeguarding public health and safety, and protecting our economy and national security, particularly as significant and meaningful public

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<sup>5</sup> Burris, *COVID-19 Policy Playbook II*, *supra* fn. 4.

<sup>6</sup> *Id.* Volume II at 7.

<sup>7</sup> *Id.* at 7-9.

health powers rest with states and local jurisdictions. Moreover, during the COVID-19 global pandemic, federal leadership, resources, and tools have proven essential to managing this crisis and ameliorating the pandemic's snowballing, multisector effects. HIAs are one method to counterbalance and mitigate public health shortfalls.

#### **A. Health Impact Assessments Are Explicitly Grounded in Equity**

A HIA is “a combination of procedures, methods, and tools by which a policy, program, or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population.... [and] provides recommendations on monitoring and managing those effects.”<sup>8</sup> HIAs consider “input from stakeholders to determine...potential effects” and can involve stages of screening; scoping, assessment, recommendation, reporting, and evaluation.<sup>9</sup>

HIAs promote health equity by: (1) identifying affected groups and communities; (2) assessing health disparity by screening for differential impact; (3) detecting disparities in baseline health in the process of measuring for differential impact; (4) involving stakeholders in contributing information or data to be considered; and (5) identifying policies that deepen inequality, which is a major determinant of poor health outcomes.<sup>10</sup> HIAs have been used around the world since the 1980s, originating in the World Health Organization Ottawa Charter on Health Promotion of 1986.<sup>11</sup> They are used globally, including by the International Finance Corporation, the World Bank, the European Community, Canada, and Australia.<sup>12</sup>

While HIAs are becoming more common in the United States, they remain largely underutilized and ad hoc. Many state laws require the consideration of health effects in decisions made by non-health policymakers, but not necessarily in accordance with HIA methodology and practice. Many U.S. states, including California, and localities have made some legal provision for HIAs when environmental, energy, agricultural, or transportation policies are considered. And sometimes health impacts are also considered where environmental impact assessments are

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<sup>8</sup> Ho, *Legislating A Negative Right to Health* at 654, *supra* fn. 2, citing Dannenberg et al. (2008) *Use of Health Impact Assessment in the U.S.: 27 Case Studies, 1999-2007*, 34 Am.J.Preventative Med. 241, 241.

<sup>9</sup> *Id.* at 654-659.

<sup>10</sup> *Id.* at 656.

<sup>11</sup> See generally [https://www.who.int/health-topics/health-impact-assessment#tab=tab\\_1](https://www.who.int/health-topics/health-impact-assessment#tab=tab_1).

<sup>12</sup> Ho, *Legislating A Negative Right to Health* at 657, *supra* fn. 2.

required by the National Environmental Policy Act.<sup>13</sup> As some commenters have noted, a formal HIA requirement enshrined in federal law would standardize HIA practice in the U.S.<sup>14</sup>

## **B. HIAs Are Similar to Other Regulatory Impact Statements Privileging Other Rights—including Paperwork Reduction**

In the U.S., HIAs are like other regulatory impact assessments, such as religious liberty, economic freedom for small business, freedom from paperwork, economic protection for states and localities, all privileging non-health values.<sup>15</sup> A HIA would provide an assessment of all federal regulation and legislation for its potential impact on human health, even if the policies lie outside of what is traditionally considered the health sector. Explicitly assessing health impacts would place health on equal footing with these other regulatory impact assessment requirements.<sup>16</sup> HIAs can help decision makers at all levels of government “craft smarter policies that protect the public’s health, facilitate collaboration, and streamline the way health concerns are integrated into policy decisions.”<sup>17</sup> One key feature of HIAs is that they are inherently inclusive and participatory. Stakeholder engagement is a key feature of HIAs, particularly at the level of community engagement to ensure “that decision-making processes informed by the public’s health concerns and analysis of health impacts, can lead to health-responsive actions.”<sup>18</sup> Given the centrality of public health to overall national well-being and

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<sup>13</sup> Public Law 91-190, 42 U.S.C. § 4321 et seq.

<sup>14</sup> See Health Impact Project, *Legal Review Concerning the Use of Health Impact Assessments in Non-Health Sectors*, Robert Wood Johnson and The Pew Charitable Trusts (2012), [https://www.pewtrusts.org/-/media/legacy/uploadedfiles/phg/content\\_level\\_pages/reports/asufullwebsitep15webpdf.pdf](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/phg/content_level_pages/reports/asufullwebsitep15webpdf.pdf). See also *HIAs and Other Resources to Advance Health-Informed Decisions*, <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/hia-map?sortBy=relevance&sortOrder=asc&page=1>.

<sup>15</sup> For example, the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., governs how federal agencies collect information from the American public. It seeks to minimize the burden on the public’s time and avoid unnecessary or duplicative requests for information from the public by (1) requiring sufficiency of purpose, i.e., need and practical utility (§ 3506); and (2) minimizing the burden of the collection of information, particularly on small businesses (§ 3506 (c)(2)(A)). Similarly, when federal activities such as airports, buildings, military complexes, highways, parkland purchases, and other federal activities are proposed, the National Environmental Policy Act requires Environmental Assessments and Environmental Impact Statements. These are assessments of the likelihood of impacts from alternative courses of action, including the environmentally preferable alternative. 43 U.S.C. § 4321 et seq.

<sup>16</sup> Ho, *Legislating A Negative Right to Health* at 647, *supra* fn. 2.

<sup>17</sup> Health Impact Project, *National Health Impact Assessment Legislation in the States*, Robert Wood Johnson and The Pew Charitable Trusts (2015), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/02/health-impact-assessment-legislation-in-the-states>. See also <https://www.pewtrusts.org/en/projects/health-impact-project/health-impact-assessment>.

<sup>18</sup> Bhatia, *A Guide to Health Impact Assessment: Working Draft Provided for Review and Use by the California Department of Public Health* (2009). See also Bhatia, *Health Impact Assessment: A Guide for Practice* (2011), <https://humanimpact.org/wp-content/uploads/2011/01/HIA-Guide-for-Practice.pdf>.

security across critical domains, mainstreaming HIAs across the federal government would ultimately enhance the United States' ability to withstand the next inevitable crisis.

### **C. HIAs Advance Core Equity Concepts**

Advancing health equity requires both a state and federal approach. While significant public health powers rest with states and local jurisdictions, the COVID-19 global pandemic has made clear that federal leadership, resources, and tools are key to managing such crises. HIAs are one way to ensure that a built-in baseline is established across the whole of the federal government and through its programmatic and funding actions at the state and local level.<sup>19</sup> HIAs can advance equity in this way because they look both at structural inequities that result in unequal distribution of power and resources across race, ethnicity, national origin, gender, class, sexual orientation, gender identity and expression, and other dimensions of individual and group identity; and how that unequal allocation of power and resources manifests in unequal social, economic, and environmental conditions—i.e. the determinants of health.<sup>20</sup>

This framework recognizes that health is created by a multitude of factors beyond healthcare and “integrates and articulates health considerations into policymaking across sectors to improve the health of all communities and people.”<sup>21</sup>

### **III. California’s Experience and Leadership on Health Equity Demonstrates the Utility and Efficacy of Health Impact Assessments as a Tool to Advance Equity Across the United States**

California is a leader in proactively addressing health equity issues and is therefore well placed to advocate for adoption of a health assessment process at the federal level.<sup>22</sup> California has a strong track record in HIA projects.<sup>23</sup> In 2012, the Office of Health Equity was established

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<sup>19</sup> See e.g. Ho, *Legislating A Negative Right to Health*, *supra* fn. 2

<sup>20</sup> *Communities in Action: Pathways to Health Equity*, National Academies of Sciences, Engineering, and Medicine, National Academies Press, 2017, pages 99-184, <https://www.ncbi.nlm.nih.gov/books/NBK425853/>. <https://www.ncbi.nlm.nih.gov/books/NBK425853/>.

<sup>21</sup> See <https://www.cdc.gov/policy/hiap/index.html>; see also <https://www.apha.org/topics-and-issues/health-in-all-policies>.

<sup>22</sup> For example, the California Strategic Growth Council was charged by Executive Order S-04-10 in 2010 to identify priority programs, policies, and strategies to improve the health of Californians.

<sup>23</sup> See e.g., *A health impact assessment of California assembly bill 889: The California Domestic Work Employee Equality, Fairness, and Dignity Act of 2011*, San Francisco Department of Public Health (SFDPH), [https://www.sfdph.org/dph/files/EHSdocs/HIA/DomesticWorkerHIA\\_FullReport.pdf](https://www.sfdph.org/dph/files/EHSdocs/HIA/DomesticWorkerHIA_FullReport.pdf); *Health Impact Assessment: Cannabis Regulation: Health Equity Impacts of Cannabis Regulation in Los Angeles County* (July 2019), [http://publichealth.lacounty.gov/chie/reports/Cannabis\\_HIA\\_Final\\_7\\_15.pdf](http://publichealth.lacounty.gov/chie/reports/Cannabis_HIA_Final_7_15.pdf); *Health Impact Assessment: Mobility Plan Implementing the City of LA's Mobility Plan 2035: Public Health Implications* (May 2018), <http://publichealth.lacounty.gov/chie/reports/MobilityPlanHIA.pdf>; *Health Impact Assessment: Measure H: Preventing and Reducing Homelessness in Los Angeles County* (February 2017), <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/hia->



within the California Department of Public Health.<sup>24</sup> One of the key duties of the Office of Health Equity is the development of a report with demographic analyses on health and mental health disparities and inequities, “highlighting the underlying conditions that contribute to health and well-being, accompanied by a comprehensive, cross-sectoral strategic plan to eliminate health and mental health disparities.”<sup>25</sup>

In 2010, pursuant to Executive Order S-04-10, California established the Health in All Policies Task Force, charged with identifying “priority programs, policies, and strategies to improve the health of Californians while advancing the goals of improving air and water quality, protecting natural resources and agricultural lands, increasing the availability of affordable housing, improving infrastructure systems, promoting public health, planning sustainable communities, and meeting the climate change goals.” The Attorney General sits on the Task Force, along with officers of 18 other California state agencies, departments, and offices.<sup>26</sup> The Task Force was the first state-level initiative of its kind in the United States and has become a national and international model for promoting policies that improve health outcomes. “The HiAP Task Force assists departments as they integrate health and equity into programs and policies that advance State priorities, including active transportation, urban forestry, access to parks, violence prevention, access to healthy food, education, land use planning, and economic opportunities.”<sup>27</sup>

California was also an early adopter of HIAs, such as the San Francisco Department of Public Health Central Corridor HIA project in 2011 through 2014.<sup>28</sup> The University of California Los Angeles School of Public Health and the Washington D.C. based Partnership for Prevention established the Health Impact Assessment project in 2003.<sup>29</sup> The state’s long-standing commitment to equity is intrinsic to its response to the COVID-19 crisis and is demonstrated by its approach to identifying communities most impacted and directing resources to address COVID-19 health inequities.<sup>30</sup> California’s efforts to mainstream health equity will

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[map/state/california/measure-h-preventing-and-reducing-homelessness-in-los-angeles-county](https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/nonprofithosp/adventist-sjhs-hia-r2-sthelenaclearlakevallejo-061419.pdf); *Health Impact Assessment prepared for the office of the Attorney General: Master Formation Agreement between Adventist Health System/West and St. Joseph Health System on the Availability and Accessibility of Healthcare Services*, <https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/nonprofithosp/adventist-sjhs-hia-r2-sthelenaclearlakevallejo-061419.pdf>.

<sup>24</sup> California Health and Safety Code §131019.5.

<sup>25</sup> See <https://www.cdph.ca.gov/Programs/OHE/Pages/OfficeHealthEquity.aspx>; see also *The California Statewide Plan to Promote Health and Mental Health Equity*, [https://www.cdph.ca.gov/Programs/OHE/CDPH%20Document%20Library/Accessible-CDPH\\_OHE\\_Disparity\\_Report\\_Final%20\(2\).pdf](https://www.cdph.ca.gov/Programs/OHE/CDPH%20Document%20Library/Accessible-CDPH_OHE_Disparity_Report_Final%20(2).pdf).

<sup>26</sup> One objective of the Task Force is to ensure that “California’s decision makers are informed about the health consequences of various policy options during the policy development process.” See <https://oag.ca.gov/environment/communities/policies>; see also <https://sgc.ca.gov/programs/hiap/>.

<sup>27</sup> See <https://sgc.ca.gov/programs/hiap/docs/20190925-HiAP-FactSheet.pdf>.

<sup>28</sup> See [https://www.cdc.gov/healthyplaces/stories/san\\_francisco.htm](https://www.cdc.gov/healthyplaces/stories/san_francisco.htm).

<sup>29</sup> See <http://www.ph.ucla.edu/hs/health-impact/index.htm>.

<sup>30</sup> See <https://covid19.ca.gov/equity/#addressing-health-equity>.

only be strengthened and enhanced by a federal process to incorporate such assessments into standard agency decision-making.<sup>31</sup> A federal requirement is likely to also facilitate adoption of HIAs in other states.

Finally, the process of HIAs are a crucial way for affected communities to be included in decision-making and to be heard and accounted to as governmental bodies seek to fashion an agreed way forward. HIAs provide a mechanism for advancing broad principles of general applicability in place-based, population-specific ways across different communities and identity groups with different issues, needs, and concerns. In this way HIAs can serve as excellent building blocks for ensuring equity across diverse geographic, social, political, and economic parts of the country.

In sum, my office strongly supports OMB's goal to advance equity and support underserved communities. I therefore urge OMB to consider various methods to incorporate health impact assessments into agency decision-making. I appreciate your consideration of these comments and look forward to a continued partnership to promote health equity and equity broadly in California and beyond. Please do not hesitate to contact our office if you have any follow up questions or concerns

Sincerely,



ROB BONTA  
California Attorney General

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<sup>31</sup> AB-1472, the California Healthy Places Act of 2008, unfortunately died before the Senate in 2007. See [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=200720080AB1472](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=200720080AB1472). However, California's commitment to health equity is ongoing and unwavering. See e.g. two of several pending health equity proposals included in current budget trailer language, *Children and Youth Behavioral Health Initiative* and *Annual Health Care Service Plan Health Equity and Quality Reviews*, available from <https://esd.dof.ca.gov/trailer-bill/trailerBill.html>.