



July 2, 2021

Shalanda Young
Acting Director
Office of Management and Budget
725 17th St., NW
Washington, DC 02503

Re: Methods and Leading Practices for Advancing Equity and Support of Underserved Communities through Government

Dear Director Young,

Thank you for the opportunity to comment on effective methods for assessing whether federal agencies' policies equitably serve all eligible individuals and communities, particularly the underserved. For the past 15 years, we at the Institute for Child, Youth and Family Policy (ICYFP) at Brandeis University's Heller School for Social Policy have developed methods and conducted analyses of social policies focused on whether they serve all children and families equitably and effectively. Through our research project, diversitydatakids.org, we provide policymakers a comprehensive data system that examines who our children are, whether they have what they need to grow up healthy and achieve their full potential, whether social policies are well designed to improve children's lives and how to make them better to improve equity.

This comment focuses on Area 1, Equity Assessments and Strategies and Area 2, Barrier and Burden Reduction. We present our policy equity assessment (PEA) framework that identifies inequities, burdens and access issues to federal policies and suggests solutions to address these issues and improve policy effectiveness.

In 2014, we published our PEA framework in the journal, *Health Affairs*. The PEA combines methods of policy analysis and rigorous equity analysis that guides policy analysts' synthesis of existing research and identification and design of new analyses of policies' ability to reduce racial/ethnic and other inequities. The PEA framework embeds equity within each step of the policy assessment. Furthermore, it moves beyond the question of whether a policy is working as intended and asks whether the policy actually reduces racial/ethnic gaps in access and outcomes. The PEA emphasizes significant differences by race/ethnicity and other dimensions of inequality including access to and quality of services and whether there are differential policy impacts. By use of the PEA, analysts are able to identify specific solutions that reduce and eliminate inequities by race and ethnicity and to identify the data gaps to more fully answer these research questions.

The PEA is a comprehensive framework that would help the OMB work across federal agencies to develop Equity Action Plans. The Policy Equity Assessment can help policymakers and analysts identify whether a policy's design and implementation are equity-conscious and identifies actions to eliminate inequities in a policy's design, implementation and outcomes. A

PEA begins with an examination of a policy's logic, to evaluate if a policy's justification and development, history, explicit and implicit goals, population targeting, and data considerations are equity focused. Next, it examines the policy's capacity: how the policy will serve everyone who needs it, how it meets the needs of different groups, how adequate in quality and intensity the resources allocated for its implementation are relative to the needs of the different groups, and how administrative burdens vary by race/ethnicity. Finally, the PEA looks for evidence of the policy's short- and long-term impacts (i.e. effectiveness in improving outcomes) by race/ethnicity and other factors such as immigrant status, evidence of differential implementation, cost and data availability by subgroup. This public comment provides an overview of the PEA methodology and an example of a PEA analysis.

1. The Policy Equity Assessment can show the inequitable effects of a policy or program on particular communities or populations.

The PEA combines policy assessment and rigorous equity analysis methods to both synthesize existing research and identify and conduct analyses of new policies' ability to redress racial/ethnic inequities. It integrates equity-focused research questions into a traditional, three-stage policy assessment approach. The PEA's three stages ask the following key questions:

- **Logic:** Does the policy acknowledge racial/ethnic and other inequities? Is it designed or targeted to address racial/ethnic and other inequities explicitly or implicitly?
- **Capacity:** Does the policy implementation serve and distribute benefits that meet the needs of the overall population and those of each racial/ethnic subgroup? Does the policy have the capacity to provide adequate quality and intensity of services to all eligible individuals who could benefit from it? Are certain racial/ethnic groups more likely to face participation barriers? Are certain racial/ethnic groups more likely to face poorer program quality?
- **Research evidence:** Is the policy effective in improving outcomes for all groups? Does the policy work to reduce racial/ethnic inequities?

The PEA's three stages—logic, capacity, research evidence—ensure that the equity analyses cover all the areas covered in a typical policy assessment. This approach can assist policymakers, implementers, and analysts throughout a policy cycle, including design, implementation, evaluation and redesign as part of continuous quality improvement.

Logic

PEA's Logic step examines whether a policy/program acknowledges, identifies, and is designed to explicitly and implicitly address racial/ethnic or other inequities (see table 1 for an example of questions asked and the attached appendix for the full set of questions). It requires a detailed examination of legislation and rule changes over time. The logic stage of the Policy Equity Assessment determines whether policy goals acknowledge and identify racial/ethnic inequities and whether services are designed or targeted to explicitly or implicitly address them.

Table 1. Equity-Focused Questions for the Logic Stage of Policy Equity Assessment

Policy Assessment Stage	Equity-Focused Questions
Historical context	<ul style="list-style-type: none"> ▪ Are racial/ethnic inequities considered in the policy’s justification and development? ▪ Does the policy change over time to address any documented racial/ethnic exclusionary practices or barriers to participation?
Primary purpose and other goals	<ul style="list-style-type: none"> ▪ Are racial/ethnic inequities discussed in the policy’s targeted outcomes? ▪ Is discrimination against particular racial/ethnic groups addressed? ▪ Does the theory of change explicitly account for the different circumstances of particular racial/ethnic groups?
Targeting	<ul style="list-style-type: none"> ▪ Do eligibility requirements disproportionately exclude racial/ethnic groups? ▪ Does the policy target funding and enrollment by characteristics correlated with racial/ethnic groups (e.g., income, wealth, poverty, health)? ▪ Does the policy target access in terms of affordability that may disproportionately affect racial/ethnic groups?
Data	<ul style="list-style-type: none"> ▪ Are historical outcome and participation data available by race/ethnicity? ▪ Have racial/ethnic policy assessments already been conducted?

Example sources: Original legislation, reauthorizing legislation, regulations, peer-reviewed published accounts of legislative history and stakeholder interviews.

Capacity

PEA’s Policy Capacity step examines a policy/program’s ability to provide adequate service quality and intensity to all eligible individuals who could benefit from it, and to reduce any identified racial/ethnic inequities in the distribution of benefits (see table 2). This stage requires attention to whether certain racial/ethnic groups are less likely than others to meet eligibility requirements and more likely to face participation barriers or experience poorer program quality. Barriers to program access may decrease a program’s effectiveness for the most economically disadvantaged participants. The capacity stage entails a thorough examination of all available data sources and data limitations. This analysis is because a lack of information to assess equity is itself often an equity concern.

Table 2. Equity-Focused Questions for the Capacity Stage of Policy Equity Assessment

Policy Assessment Stage	Equity-Focused Questions
Policy eligibility and access	<ul style="list-style-type: none"> ▪ Are there racial/ethnic differences in the need for the policy? ▪ Does the policy serve the total eligible population by race/ethnicity? ▪ What is the extent of racial/ethnic differences in unmet need (need/eligible) and is it concentrated in areas with high racial/ethnic segregation? ▪ To what extent do waiting lists, utilization and turnover vary by need and by race/ethnicity?
Policy resources	<ul style="list-style-type: none"> ▪ Are resources allocated to target outreach to racial/ethnic populations with barriers to participation? ▪ Is there supplemental public/private funding for culturally relevant services targeting particular racial/ethnic populations? ▪ Are resources channeled towards policy enhancements or expansions that could reduce racial/ethnic inequities?
Policy/services implementation	<ul style="list-style-type: none"> ▪ Do implementation practices differentially affect administrative burden by race/ethnicity (e.g., language barriers, document requirements)? ▪ Is there variation in quality or dosage by race/ethnicity? ▪ Are evidence-based practices relevant to different racial/ethnic populations available and used? ▪ Are outcome assessments and monitoring standards appropriate for different racial/ethnic populations (e.g., language, test settings)?
Coordination/collaboration	<ul style="list-style-type: none"> ▪ Are the service components coordinated within the program to more effectively serve the specialized needs of specific racial/ethnic populations? ▪ Does the program include a collaborative aspect (i.e., across departments, levels of government, sectors) in order to more effectively address racial/ethnic inequities?
Data	<ul style="list-style-type: none"> ▪ Is policy waiting lists, participation, quality, and dosage of services data available by race/ethnicity? ▪ Is funding data available to quantify racial funding gaps?

Example sources: Regulations, Congressional appropriations and budgets, program administrative data, program participant and provider survey data, U.S. Census Bureau data, qualitative interviews with technical assistance providers.

Research evidence

PEA’s Research evidence step shows what works for whom, what works to reduce inequities, and what works under what conditions (see table 3). The research evidence stage of the PEA considers three crucial questions. The first—what works for whom? —investigates whether the policy improves outcomes for participants of particular racial/ethnic groups. The second—what works to reduce racial/ethnic inequities? —considers whether gap analyses, or calculations of differences between groups’ health outcomes, have been conducted to track whether the average

outcomes of all groups and the differences between groups improve over time. And because implementation variation can influence outcomes, the third question—what works under what conditions? —considers how service delivery, program resources, and quality may vary by race/ethnicity.

Table 3. Equity-Focused Questions for the Capacity Stage of Policy Equity Assessment

Policy Assessment Stage	Equity-Focused Questions
Rigorous evidence of policy (or expanded policy) effectiveness	<ul style="list-style-type: none"> ▪ What are the findings from subgroup analyses by race/ethnicity for short- and long-term impacts? ▪ What are the findings from analyses of racial/ethnic inequities in outcomes between the most and least vulnerable participant subgroups? ▪ What are the findings from analyses of reduction in racial/ethnic inequities in outcomes between participants and other population groups? ▪ Are there any documented unintended effects that vary by race/ethnicity? ▪ Does the research design and policy evaluation include input and interpretation of results from affected/targeted groups?
Implementation	<ul style="list-style-type: none"> ▪ Does available data document how implementation procedures differ by subgroups of participants or by sites that serve different race/ethnic populations? ▪ Are a racially/ethnically diverse group of policy participants interviewed about policy effectiveness and enhancements?
Cost effectiveness	<ul style="list-style-type: none"> ▪ Do cost studies simulate different program components and eligibility scenarios that account for differential unmet need of racial/ethnic subgroups? ▪ Are equity weights focused on race/ethnicity used in cost-effectiveness studies (in primary models or as part of sensitivity analyses)? ▪ What is the funding gap to serve the eligible population? If the entire eligible population is not served, how much additional funding would be needed to serve it?
Data	<ul style="list-style-type: none"> ▪ Do data collection and analyses include findings by race/ethnicity of participants, family members, or staff? ▪ Is relevant outcome and implementation data broken down by race/ethnicity?

Example sources: Experimental studies; quasi-experimental studies, systematic literature reviews, implementation evaluations.

Results from the three steps

When results from these three steps are presented in summary form, a policymaker has a comprehensive synthesis of policy impacts on racial/ethnic inequities; racial/ethnic subgroup results; the necessary information about logic, capacity, and implementation needed to contextualize racial/ethnic subgroup findings of effectiveness; and an assessment of data gaps

that may make it impossible to answer certain questions related to equity in a program's implementation. The attached articles are examples of a PEA for policies and programs in parental employment, early childhood education, and housing – the Family and Medical Leave Act, Head Start, and the Section 8 housing program, respectively – to illustrate how the PEA can be used across sectors to assess policy impacts. The next section provides a summary of a PEA on the Family and Medical Leave Act.

2. The PEA shows that the Family and Medical Leave Act has explicit gender-equity goals but it limits access to Black and Hispanic workers. There are specific solutions that can reduce access barriers and inequities in outcomes.

The FMLA entitles eligible employees to take up to twelve weeks of job-protected, unpaid leave for a qualifying reason in any 12-month period. Employers that are legally obligated to provide FMLA leave include: all public sector agencies, all public or private elementary and secondary schools, and private employers with at least 50 employees. For more detail on FMLA parameters, see the attached PEA.

Logic

The FMLA is federal legislation guaranteeing job-protected unpaid leave to certain eligible workers to care for themselves or an immediate family member in times of illness, birth, or adoption. The FMLA has explicit and implicit equity goals. The first explicit equity goal is to minimize gender discrimination and promote equitable employment opportunities for all genders. Another explicit equity focus of the FMLA is to promote equitable employment security by giving job protection to health-vulnerable employees and their families by guaranteeing job-protected family or medical leave for eligible employees. An implicit goal of the FMLA is to increase leave taking and work-family balance for families with health needs and to improve health outcomes. While the FMLA does not explicitly list health as a goal, the FMLA is designed to help workers address their own or a close family member's health.

However, the FMLA's benefits are not universal and leave out many workers. Limited access to leave due to affordability and eligibility means that the FMLA exacerbates existing inequities. Specifically, because the FMLA provides only unpaid leave with strict eligibility criteria, the policy deepens existing inequities between lower-wage and higher-wage workers in access to employment protection and disproportionately excludes Hispanic and Black workers. The case of the FMLA illustrates that for a given policy, explicit equity goals may be present for a particular subgroup (e.g., women) but not addressed for others (e.g., low-income workers).

Capacity

The FMLA has increased the number of U.S. workers eligible for unpaid family and medical leave, but the policy also harbors capacity constraints that present equity challenges. A national survey found that FMLA-eligible employees who needed leave but did not take it were more likely to be female, Hispanic, Black, single-parent households, or without college education. The most common reasons reported for not taking needed family and medical leave was affordability of unpaid leave (66 percent) and fear of job loss (30 percent).

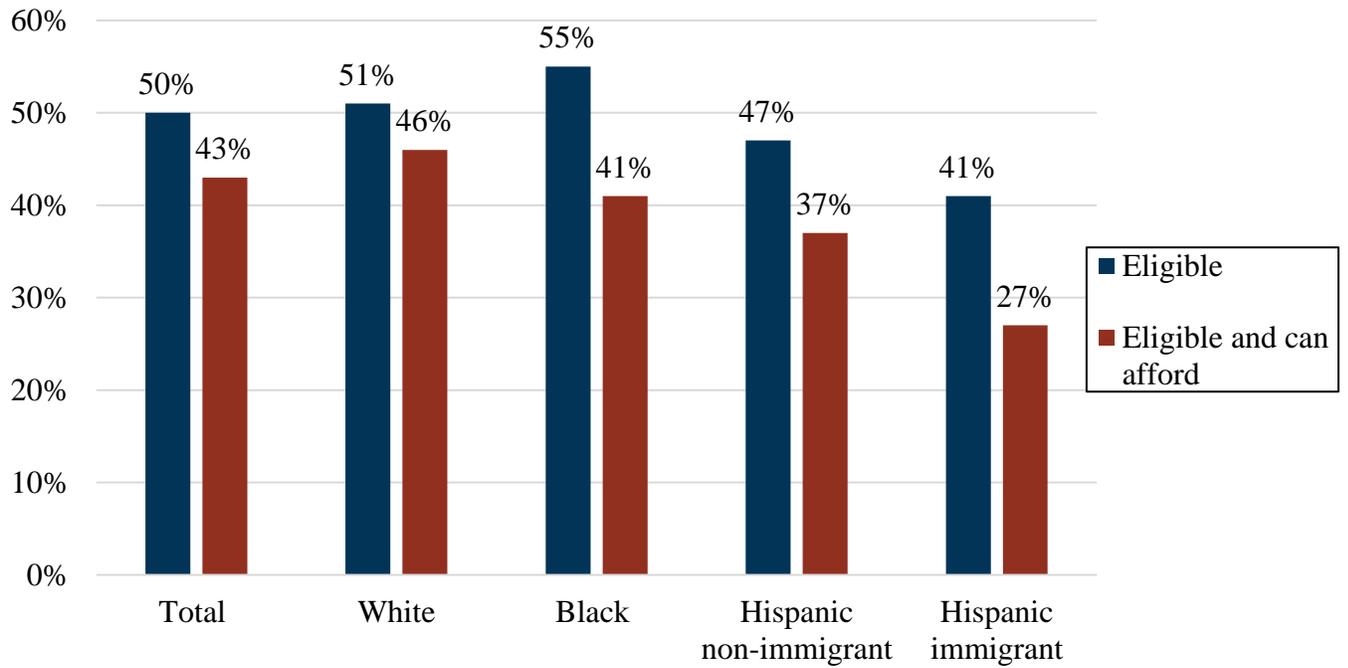
FMLA capacity is shaped by two central factors: eligibility and affordability. The FMLA has strict eligibility requirements based on employer and employee characteristics. Figure 1 presents the eligibility and affordability of the FMLA by race/ethnicity and nativity. A simple policy analysis would find that 50 percent of employees are eligible for family and medical leave. However, disaggregating eligibility and affordability by race/ethnicity and nativity shows disparate access. A higher proportion of Black workers are eligible for FMLA due to high employment rates in the public sector. A lower proportion of Hispanic workers, particularly Hispanic immigrant workers, are estimated to be eligible. Since leave is unpaid, affordability is embedded in accessing coverage. When we account for lower family income, we see that a lower proportion of Black and Hispanic workers are both eligible and could potentially afford FMLA. Thus, both eligibility and affordability constrain Black and Hispanic workers FMLA access.

The next step is to consider how eligibility could be changed to decrease racial/ethnic inequities. Hispanic workers have lower access to family and medical leave because they disproportionately work for small business that do not meet eligibility criteria. Figure 2 shows that if the firm size requirement is removed, we can increase racial/ethnic equity in access. For example, if the firm size was decreased from 50 employees (blue bar) to 10 employees (red bar), access to FMLA improves the most for Hispanic workers, although they still have lower access compared to White and Black workers. If the firm size requirement was entirely removed (green bar), we estimate that there would be no racial/ethnic difference in FMLA eligibility: 68% of workers across racial/ethnic groups would be eligible.

Given the affordability barriers, we estimated the share of workers that would experience economic hardship under six weeks of unpaid FMLA leave compared to paid leave based on California's program. Economic hardship is defined as below 200% of the federal poverty level. If the federal government created a paid leave program similar to California, we estimate that hardship from taking six weeks of leave during a three-month period would decrease from 18 percent under unpaid leave to 6 percent under paid leave, which much larger decreases for Black and Hispanic workers. Still, Black and Hispanic families have greater exposure to economic hardship under paid leave because a higher proportion of families have incomes much closer to the poverty level compared to White families. States have taken the lead in addressing FMLA affordability and other capacity challenges: nine states and Washington, D.C. have enacted paid family leave programs that cover most private sector employers. Some of these programs target low-wage workers with higher wage replacement rates (up to 90 percent).

Capacity is also shaped by implementation, employer compliance, and enforcement. The FMLA is a labor standard, rather than a program, and is overseen by the Wage and Hour Division (WHD) of the U.S. Department of Labor. Due to lack of data, we don't have a full picture of how FMLA compliance impacts vulnerable subgroups. But there is evidence that FMLA implementation, largely conducted by employers and employees, is hampered by lack of employee knowledge and a cumbersome process, which disproportionately burdens minority and low-income workers. FMLA enforcement historically has been reactive (i.e., dependent on employee complaints), a process which may inequitably disadvantage workers with less human capital or who do not know their FMLA benefits. Under the direction of David Weil at the WHD, the agency proactively engaged in strategic enforcement that targeted investigations into employer practices in low-wage industries.

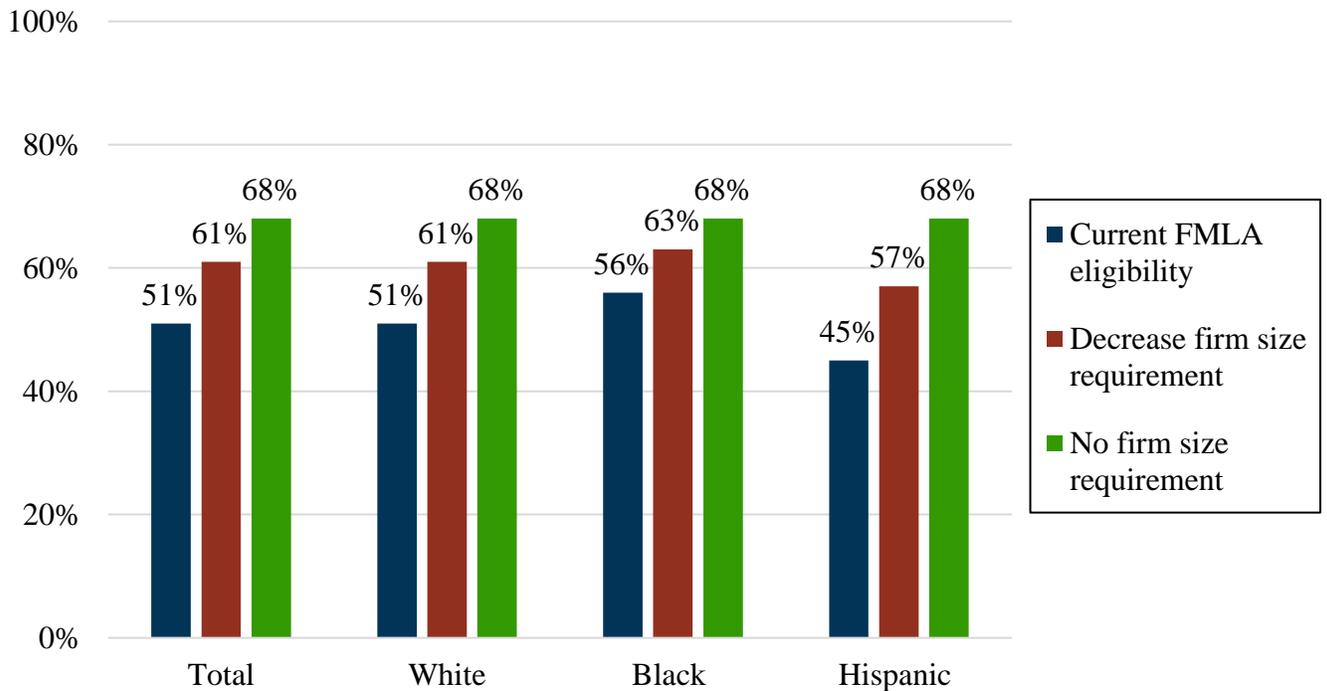
Figure 1. FMLA Eligibility and Affordability by Race/Ethnicity and Nativity



Note: Excludes the self-employed.

Source: Authors' calculation of *Current Population Survey*, 2014-2017.

Figure 2. FMLA Eligibility by Firm Size Threshold



Note: Excludes the self-employed.

Source: Authors' calculation of *Current Population Survey*, 2014-2017.

Research Evidence

Synthesizing the research evidence on FMLA's effectiveness involves analyzing the available evidence on the policy's achievement of its explicit and implicit goals and assessing its equity impact. The key equity-related questions for the FMLA are:

- Does the FMLA help to close any identified socioeconomic or racial/ethnic gaps in taking of parental and medical leave?
- Does the FMLA help to close any identified socioeconomic or racial/ethnic gaps in economic or health outcomes associated with leave taking?

The PEA of the FMLA finds evidence that it is successful in achieving one state objective of removing some barriers for working parents to take parental leave, although there is no data on the racial/ethnic distribution of workers who benefit. The analysis also finds the affordability constraints limit the effectiveness of the FMLA in ways that disproportionately impact Black and Hispanic workers. Some evidence finds that the FMLA is associated with improved outcomes, but only for college-education and married mothers.

Policy recommendations

Based on the PEA of the FMLA we identify three policy recommendations that could eliminate and reduce racial/ethnic disparity in accessing family and medical leave.

Cover more workers. We estimate that 51% of the workforce (excluding the self-employed) are eligible for the FMLA. Our estimates show that if the small business criteria were removed, FMLA eligibility would increase markedly, particularly for Hispanic workers and immigrant workers.

Make leave paid. Paid family and medical leave increases utilization among Black and Hispanic working mothers. Paid leave is also known to improve mothers' job retention and child health outcomes, though due to data constraints, we don't know if these improvements hold true for all racial/ethnic groups. Our analysis finds that making unpaid leave paid would greatly benefit Black and Hispanic working families, who rely more on one earner's wages and have less wealth to keep families afloat if there is a precipitous drop in wages. Paid leave helps prevent economic hardship for all working families, but a greater proportion of Black and Hispanic working families will be exposed to economic hardship if they need leave because their incomes are much closer to the poverty line compared to White working families. More equitable family and medical leave policies should target higher wage replacement to working families with less financial cushion.

Improve enforcement and outreach. The FMLA is a labor standard rather than a program; enforcement is overseen by the U.S. Department of Labor. Ensuring employers' FMLA compliance can be hampered by employees' limited knowledge of their rights or resources to bring a complaint. It is also a cumbersome process, which disproportionately burdens minority and low-income workers. Expanding strategic enforcement such as targeted investigations into employer practices in low-wage industries that disproportionately employ Black, Hispanic and

immigrant workers, and increasing funding for monitoring staff, could potentially increase compliance and decrease employee burden.

3. Conclusion

The Policy Equity Assessment can identify policies and practices to advance equity and support underserved communities through government. The PEA can assist policymakers and analysts design, implement, and evaluate policies or actions to reduce and eliminate racial/ethnic and other inequities. As illustrated in the FMLA example, it identifies multiple mechanisms that create inequities and produces actionable recommendations.

Should you have any questions regarding these comments, please contact Pamela Joshi, Senior Scientist, at pamjoshi@brandeis.edu

Sincerely,

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