

United States Senate
WASHINGTON, DC 20510

February 18, 2022

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, D.C. 20590

Dear Secretary Buttigieg:

On December 16, 2021, Federal Highway Administration (FHWA) issued a memorandum to FHWA staff entitled “Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America.” This memorandum puts forth concerning policies that differ from the provisions in the bipartisan *Infrastructure Investment and Jobs Act* (P.L. 117-58; hereinafter “IIJA”). Furthermore, this memorandum calls into question FHWA’s commitment to adhere to congressional intent in an objective and consistent manner. We request that you direct FHWA to rescind or substantially revise this memorandum to demonstrate that the agency intends to implement the IIJA as enacted.

The IIJA provides historic levels of funding to improve the nation’s surface transportation system, which will support economic growth and job creation in all communities. The IIJA distributes 90 percent of the federal-aid highway funding to states via formula and largely retains the existing core formula program structure that allows for states to have maximum flexibility to address their unique needs. The IIJA includes numerous provisions to facilitate the efficient delivery of all surface transportation projects, including reforms to the environmental review and permitting process. Congress thoughtfully confronted pressing issues in a manner that reflected bipartisan input and consensus while avoiding burdensome, prescriptive requirements that fail to reflect the different needs of states across the country. The law recognizes the specific, and at times different, needs of rural and urban communities and establishes new programs to tackle those needs head on.

The policies outlined in the memorandum reflect a decidedly different approach that appears to restrict the flexibility of states and impose one-size-fits-all solutions to solving communities’ surface transportation challenges. Specifically, the memorandum discourages states from moving forward with projects that add highway capacity and instead prioritizes projects that improve existing surface transportation assets. The IIJA does not include any provisions that restrict or discourage specific types of projects, and current programmatic and policy requirements ensure that states are good stewards of their existing assets. A state’s autonomy over decision making for the use of their federal funding must be preserved and attempts through

these policies in the memorandum to influence that autonomy run counter to congressional intent. Finally, the memorandum notes the different types of environmental reviews required pursuant to the National Environmental Policy Act for surface transportation projects. By highlighting projects that require only a categorical exclusion, the memorandum seeks to advance those projects regardless of whether they address the needs of a particular state or community. The IIJA includes numerous provisions to facilitate the efficient delivery of all projects. Notably, the law codifies the One Federal Decision policy, which requires a two-year goal for environmental impact statements and accountability for missed milestones in the review process. The timely implementation of these provisions will ensure that all communities can benefit from projects that improve the surface transportation system.

FHWA staff are directed to “encourage” and “where permitted by law, require” actions or considerations by certain entities, in particular states, to advance the policies in the memorandum. The memorandum lacks specificity about how FHWA staff should carry out that directive, which raises questions about how it will be implemented across the country. The memorandum also describes “additional planned actions” that FHWA will undertake to advance these policies. The additional planned actions may create uncertainty for states and other entities that receive federal funding, which can adversely impact their ability to move forward with surface transportation projects. Future actions by FHWA must be consistent with the IIJA and we urge transparency in the consideration, development, and implementation of those actions.

If implemented faithfully to the legislative text, the IIJA will upgrade and expand the surface transportation system in a manner that benefits all communities and the Nation. The provisions of the IIJA were carefully negotiated and reflect the input of both parties, the Biden Administration, and the broader stakeholder community. We urge recognition of the legislative process used to develop the IIJA and adherence to congressional intent as FHWA moves forward with implementing this historic legislation. Thank you for your attention to this important matter.

Sincerely,



Shelley Moore Capito
Ranking Member
Environment and Public Works Committee




Mitch McConnell
Senate Republican Leader

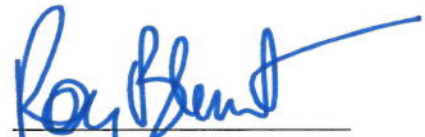


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Ranking Member
Environment and Public Works Committee
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