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U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: **UPDATE: Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America**

Date: February 24, 2023

From: Shailen P. Bhatt
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In Reply Refer To:
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To: Associate Administrators
Chief Counsel
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This memorandum describes an overarching framework of Administration priorities—based on existing law—to guide FHWA staff concerning the use of Bipartisan Infrastructure Law (BIL) (enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58, Nov. 15, 2021)) resources when working with State departments of transportation. As we continue to implement the historic provisions of the BIL, FHWA will publish periodic updates to our internal policy memorandums to provide clarity for the Division offices and other FHWA staff who must meet the needs and challenges of States and localities across the country.

This memorandum supersedes the December 16, 2021 internal memorandum entitled “Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America.”

The maintenance of existing roads and highways in a state of good repair is an important tool to ensure the effective use of Federal funding while also improving transportation safety, reducing surface transportation-related greenhouse gas emissions, delivering equitable transportation options and access, and accommodating new and emerging technologies by upgrading the nation's existing infrastructure. Proper maintenance is also an affirmative responsibility of the States as required by 23 U.S.C. 116.

As directed by 23 U.S.C. 145, States determine which of their projects shall be federally financed by Federal-aid highway formula dollars. Different States have different needs when it comes to transportation assets that must be reconfigured and modernized, expanded and added, or retired and replaced. FHWA recognizes and values the authority and role of the States in deciding how to prioritize the use of their Federal-aid

highway dollars and will continue to administer funds and programs consistent with all requisite statutory requirements and considerations.

While States are ultimately responsible for deciding how their formula and allocated funding is prioritized, FHWA as an agency, consistent with existing Administration policy, continues to support the following goals:

- Improving the condition, resilience, and safety of road and bridge assets consistent with asset management plans (including investing in preservation of those assets) [23 U.S.C 119];
- Promoting and improving safety for all road users, particularly vulnerable users, and supporting major actions and goals consistent with the U.S. Department of Transportation's January 2022 National Roadway Safety Strategy for safer people, safer roads, safer vehicles, safer speeds, and enhanced post-crash care [23 U.S.C. 148];
- Supporting accelerated project delivery and an efficient environmental review process through the One Federal Decision framework and by continuing to coordinate with other Federal partners to ensure that the benefits of projects are realized as soon as possible [23 USC 139];
- Making streets and other transportation facilities accessible to all users and compliant with the Americans with Disabilities Act [49 CFR 37];
- Addressing environmental impacts ranging from storm water runoff to greenhouse gas emissions [23 U.S.C. 175, 23 USC 176];
- Prioritizing infrastructure that is less vulnerable and more resilient to a changing climate [23 USC 101, 23 USC 119, 23 USC 176, 23 USC 520];
- Future-proofing our transportation infrastructure by accommodating new and emerging technologies like electric vehicle charging stations, renewable energy generation, and broadband deployment in transportation rights-of-way [sec. 11401 of BIL, 23 CFR 645]; and
- Reconnecting communities and reflecting the inclusion of disadvantaged and under-represented groups in the planning, project selection, and design process [sec. 11509 of BIL].

The Federal Highway Administration remains committed to ensuring progress in safety, resilience, and equity in the delivery of the Federal-aid Highway Program. We also recognize that States, territories, and local governments are on the front line of maintaining and building transportation infrastructure. Working together with our stakeholders we have begun the successful implementation of the largest investment in transportation in modern history. Together we will help State departments of transportation and other entities deliver good policies, programs, and projects for the American people as we undertake this transformational work.

Except for the statutes and regulations cited, the contents of this internal agency document do not have the force and effect of law. This document is intended only to provide information to Federal agency officials regarding existing requirements under the law or agency policies and does not affect the rights or obligations of States or the public in any way.