

March 16, 2023

The Honorable Shailen Bhatt  
Administrator  
Federal Highway Administration  
1200 New Jersey Ave, SE  
Washington, D.C. 20590

Dear Administrator Bhatt,

On behalf of our millions of members and supporters, we write to express that we oppose the recent approach of rescinding the original Federal Highway Administration (“FHWA”) guidance. We urge you to work with states to support IIJA implementation plans that live up to the Administration’s climate and environmental justice commitments, in order to reduce the disproportionate impacts that transportation policies have on communities of color and low-income populations.

All Presidential administrations, whether Democratic or Republican, have policy priorities. These priorities guide the actions of federal agencies during the administration, and the practice of issuing guidance for staff is a decades-old means for not only effective personnel management, but for furthering the President’s mandates through Executive Order (“EO”). By law, federal agencies must take their direction from the Executive Branch’s guidance, agenda, and EOs.

On day one, the Biden Administration stated its commitment to equity and to addressing the climate crisis through the issuance of EO 14008 and EO 13985, both of which charged the Federal Government with considering the climate crisis in all actions and advancing equity for all including communities that have long been underserved, and addressing systemic racism in our Nation’s policies and programs. The White House underscored this priority by issuing EO 14091, further emphasizing the importance of advancing equity and underserved communities through federal government spending.

For the first time in history, this Administration has the potential and ability to address these historic inequities and the climate crisis by putting once-in-a-lifetime federal investments in climate and infrastructure where it’s needed most. This is especially important for the \$300 billion going directly to states through FHWA under formula grants. It has been proven time and again that state implementation of this federal funding is a linchpin to addressing equity and the climate crisis in this country (see, for example, this Georgetown Climate Center analysis: <https://www.georgetownclimate.org/articles/federal-infrastructure-investment-analysis.html>).

Consistent with historical administrative policymaking, a month after the enactment of the Infrastructure Investment and Jobs Act (“IIJA”), on December 16, 2021, the FHWA issued a memorandum titled Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America (the “BIL Memorandum”). This BIL Memorandum provided guidance on setting equity, safety, and sustainability as priorities for its transportation programs. None of these references in the original memo reduced state-level authorities as claimed by Republicans.

Since then, we have been working with the Biden Administration and the Department of Transportation on climate and equity forward transportation policies and practices, including ensuring that this federal historic investment does not serve to exacerbate past harms, or spur new inequities. Yet in a stunning and ultimately dangerous move, on February 24th, you issued a memorandum (the “Memorandum”) superseding the BIL Memorandum, flying in the face of all of those efforts and President Biden’s priorities.

This memo is a serious failure of leadership. First, it removes all reference to existing EOs relating to equity and the prioritization of communities in need under Justice40. Second, it removes the critical need - and mandate by President Biden - for federal agencies to consider the climate crisis in all decision making, including federal distribution of funds. And third, it undermines FHWA’s authority to promulgate internal guidance for implementing the National Environmental Policy Act (“NEPA”) guidance by removing all references to equity and climate considerations in NEPA.

This Memorandum not only shows unnecessary deference to the whims of some in Congress, it signals to the environmental justice community and climate advocates the Administration’s move away from its equity and climate commitments. Moreover, this Memorandum sets dangerous precedent for other federal agencies that will only serve to further undermine the President’s efforts to address equity and the climate crises.

A supplementary or substitute memo could instead take the opportunity to reinforce the first BIL Memorandum, which delivered clear guidance to FHWA staff regarding an array of equity and climate priorities, including badly needed road repairs and maximizing efficient use of existing roads, transferring flexible highway funding to transit projects, and changing FHWA guidance or regulations as warranted pursuant to Title VI of the Civil Rights Act (prohibiting racist exclusion or discrimination in federal programs) and NEPA. Not only would this move help alleviate the grave concerns shared by the climate advocacy and environmental justice community, it would also protect the President’s agenda and preserve precedent for other federal agencies.

We understand the importance for States to have flexibility and the final authority over formula funding. However, FHWA has regulatory authority under NEPA and oversight responsibility that it must use to further the Administration’s agenda and directives.

In contrast, this new Memorandum fails to affirm the agency’s commitment to uphold and enforce Title VI, NEPA, and other relevant laws that protect communities of color and the environment. At your earliest convenience, we request a meeting to discuss how you plan to fix this error, and to fix it fast.

Sincerely,

America Walks  
Citizen Action of Wisconsin  
Elders Climate Action  
Evergreen Action

GreenLatinos  
Greenprint Partners  
Institute for Transportation and Development Policy  
Just Strategy  
Lawyers for Good Government  
League of Conservation Voters  
Michigan Sustainable Business Forum  
Natural Resources Defense Council  
PeopleForBikes  
Public Citizen  
Rails-to-Trails Conservancy  
Ride New Orleans  
Riders Alliance  
Shared-Use Mobility Center  
Sierra Club  
The Greenlining Institute  
Transportation Choices Coalition  
Unlimited Potential

Cc: Secretary Pete Buttigieg, U.S. DOT  
Evan Ryan, White House  
Mitch Landrieu, White House  
Brenda Mallory, CEQ  
Austin Brown, CEQ