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October 1, 2014

Mr. Gregory G. Nadeau
Acting Administrator, Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Comments on Proposed Rulemaking on Statewide, Nonmetropolitan, and Metropolitan
Transportation Planning; Docket No. FHWA-2013-0037

Dear Acting Administrator Nadeau:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 210 national organizations to promote and protect the civil and human rights of all persons in the United States, we submit these comments on the proposed rulemaking on Statewide, Nonmetropolitan, and Metropolitan Transportation Planning to the U.S. Department of Transportation's (U.S. DOT) Federal Highway Administration (FHWA) and Federal Transit Authority (FTA). As a leader in the movement to ensure fair and accessible transportation policies, and a co-chair of The Transportation Equity Caucus—a broad coalition of organizations working on transportation policies that advance economic and social equity—The Leadership Conference is deeply invested in planning guidance that prioritizes the equitable investments needed to make sure all communities thrive.

For The Leadership Conference, transportation policy is a key civil rights issue and one that is critical to ensuring opportunity for all. As our nation begins to recover from the recession, the federal government must help lead the way through sensible infrastructure investments. Making necessary repairs and updates to our network of roads, ports, bridges, and railways will improve our country's competitiveness and enhance our shared prosperity, while creating and preserving jobs. However, we know that some communities, particularly low-income communities, communities of color, and people with disabilities, lack access to transportation infrastructure that promote access to life's critical resources—jobs, schools, grocery stores, and healthcare. Nearly 20 percent of African-American households, 14 percent of Latino households, and 13 percent of Asian households live without a car¹. Nearly one in five Americans has a disability² and relies on accessible transportation infrastructure (i.e. curb ramps, wheelchair-accessible subways and buses, elevators, etc.) to contribute and remain active participants in their communities. Without equitable investment, these communities miss out on the benefits of transportation

We appreciate U.S. DOT's work to set clear, consistent and measurable rules regarding state and metropolitan planning. However, we believe the proposed guidance can be strengthened in three key ways: U.S. DOT should incorporate civil rights and environmental justice guidance into certification requirements; U.S. DOT should require MPOs to establish

governing bodies that are inclusive of the communities they serve; and U.S. DOT should collect and share data on travel behavior that is disaggregated by race and income.

1. U.S. DOT should incorporate civil rights and environmental justice guidance into self- and federal-certification requirements for state and metropolitan planning.

Current certification requirements require compliance with Title VI of the Civil Rights Act through implementation of an equity analysis in order to assess the impact that investments may have on communities. To guard against this outcome, best practices from academic research should be used in equity analysis design and recommended by U.S. DOT. Furthermore, to strengthen and illustrate compliance with Title VI certification, local and regional transportation commissions should be required to complete a comprehensive study and presentation of current conditions of targeted communities— low-income communities, people of color, and people with disabilities—and integrate findings into an equity analysis for submission and review by U.S. DOT. By requiring a targeted collection and analysis of information, planning agencies will be better equipped to set and reach goals to enhance access to transportation for all communities and compliance with Title VI.

The proposed guidance outlines self-certification and federal-certification requirements that states and metropolitan planning organizations (MPOs) must achieve through the planning process. There is a strong statement about FTA and FHWA fund recipients incorporating environmental justice into planning processes. U.S. DOT has the opportunity to strengthen the requirements, by including this type of process in the self- and federal-certification processes. Specifically, state and MPO planning must outline how the proposed planning will advance several regulatory guidelines under the provision. This process for implementing the certification requirements must be illustrated in the planning and investments made by states and MPOs in order to ensure compliance with U.S. DOT's certification requirements.

Incorporating U.S. DOT's environmental justice strategy in the certification process provides further support to enable prioritization of investments that bring broad benefits to all communities— particularly low-income people and communities of color. Specifically, including Executive Order 12898³ among certification requirements would establish a framework through which states and metropolitan planning organizations (MPOs) would be required to prioritize planning and transportation projects that address the disproportionate barriers in access to transportation facing low-income communities and communities of color. Furthermore, state DOTs and MPOs should be required to demonstrate to U.S. DOT and the local community how they are incorporating Executive Order 12898 into their planning process with the guidance one year after its enactment, and certifications should be conducted every three years thereafter, instead of every four years.

To enforce more equitable development, U.S. DOT should prepare a quadrennial national report of non-discrimination that will include: demographic data; inventory of complaints filed and compliance reviews conducted; and an assessment of impediments to non-discrimination, with recommendations for compliance. The information collected will aid U.S. DOT in monitoring states and MPOs progress in prioritizing investments that increase mobility and access to centers of employment.

2. U.S. DOT should require MPOs to establish governing bodies and engagement strategies that are inclusive of the communities they serve.

We are pleased to see prioritization of inclusive governance and community engagement in the planning process (Sections 450.210 and 450.316 of the Guidance). Ensuring that decision-making bodies and the planning process reflect the diversity of residents will enhance efforts to prioritize plans and investments that benefit all communities. However, in order to strengthen support for inclusive governance within the guidance, U.S. DOT should require MPO boards to be representative of the economic and racial/ethnic composition of the communities served. Adjusting the composition in this way can increase the likelihood of transportation investments that reflect the needs of all residents in the community.

Low-income communities of color have less representation on critical decision-making bodies, and are less involved in the development of plans, and as a result, these communities often do not reap the benefits of infrastructure investments. The Brookings Institution's analysis of geographic and racial-ethnic patterns of less representative MPO boards revealed the tremendous risk for MPO decisions to be biased toward select residents and regions at the expense of others.⁴ The self- and federal-certification process can provide a structure to enforce MPOs' compliance with demographic representative standards so that they reflect the communities they serve. U.S. DOT can provide additional support to this effort through monitoring MPOs to ensure boards are representative of their encompassing communities.

3. U.S. DOT should collect and share data on travel behavior that is disaggregated by race and income.

Data serve a vital role in the identification of infrastructure deficits facing communities, especially where persistent barriers in access to mobility may exist. Successful identification of infrastructure needs can aid states and metropolitan areas in targeting investments in ways that promote mobility and access to economic opportunity for all. In addition, data can also be used to foster accountability and monitor progress on equitable planning and investment at the state and local level.

The proposed guidance does not require the collection or use of data to identify transportation infrastructure deficits that may exist in a particular community. Moreover, data are not consistently disaggregated by race and income, making it difficult to recognize how investments can contribute to persistent transportation barriers for low-income communities, communities of color, and people with disabilities. Requiring the collection and sharing of data on travel behavior by U.S. DOT will aid the administration, state DOTs, and MPOs in identifying where critical infrastructure investments are needed to enhance mobility and access to opportunity for all.

Currently, demographic data and travel trends by race/ethnicity and income are made available through the American Community Survey (ACS) and the National Household Travel Survey (NHTS). While the ACS collects information on the travel behavior of people with disabilities, the NHTS does not. Thus, U.S. DOT should request such information be collected in order to illuminate additional data about how people with disabilities access transportation and to further aid efforts to ensure transportation is accessible to all.⁵

Efforts to coordinate the dissemination of information among FHWA, FTA, the U.S. Census Bureau, and state DOTs should be executed to the fullest extent to ensure demographic and travel data are accessible, and are incorporated in planning and monitoring of progress toward achieving short- and long-term goals identified by states and MPOs.

States and metropolitan planning organizations should use demographic and travel data to identify investment priorities with regard to impact on mobility and access to employment centers. Data help state and local planning agencies identify investments that enhance connections to work and opportunity, as more than half of all riders use transit to travel to and from work while 11 percent rely on transit to commute to and from school.⁶ Data and maps can be effective in illustrating disparities and barriers to opportunity, and allow for monitoring of progress over time.

Conclusion

There is much at stake for the civil and human rights community in developing and improving our nation's transportation system. The choices we make with respect to federal transportation policy—what we build, where we build, who builds it, what energy powers it—have an enormous impact on our economy, our climate, our health, and on our ability as a society to achieve the American Dream. It is vital that the needs of communities of color, low-income people, people with disabilities, seniors, and the rural poor are considered and incorporated when targeting investments. By developing a state and metropolitan planning guidance that prioritizes enhanced mobility and opportunity for the most vulnerable and underserved populations, transit investments can go a long way to supporting improved social and economic outcomes, so that all communities may prosper.

Thank you for the opportunity to comment. The Leadership Conference applauds your leadership in this area.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

¹ Brookings Institution and UC-Berkeley, *Socioeconomic Differences in Household Automobile Ownership Rates*.

² US Census Bureau, 2005.

³ Summary of Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. United States Environmental Protection Agency.
<http://www2.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>

⁴Thomas W. Sanchez. “*An Inherent Bias? Geographic and Racial-Ethnic Patterns of Metropolitan Planning Organization Boards*”

http://www.brookings.edu/~media/research/files/reports/2006/6/01transportation%20sanchez/20060124_mpos.pdf;

Marcus Luna. “*Equity Analysis of Boston MPO: An Analysis of Representation and Voting Structure.*”

http://www.academia.edu/2109617/Equity_Analysis_of_Boston_MPO_An_Analysis_of_Representation_and_Voting_Structure. (Accessed October 1, 2014)

⁵This information is critical to local transit agencies compliance with the Americans with Disabilities Act.

Specifically, local transit authorities are required to provide accessible public transit, and use data on the number of individuals with functional limitations within their service area to ensure that they receive public transportation services that are comparable to those provided to individuals without disabilities. Consortium for Citizens with Disabilities & Partnership to Improve Patient Care. <http://dredf.org/wp-content/uploads/2012/08/ACS-disability-questions-7-16-14-final.pdf>

⁶http://www.apta.com/resources/statistics/Documents/FactBook/APTA_2007_Fact_Book.pdf.