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August 19, 2016

The Honorable Anthony Foxx

Secretary

Department of Transportation

1200 New Jersey Avenue, SE

Washington, DC 20590

RE: Docket Number FHWA-2013-0054

Dear Secretary Foxx:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership to promote and protect the rights of all persons in the United States, and The Leadership Conference Education Fund,<sup>i</sup> its public education and communications arm (collectively, “The Leadership Conference”), we appreciate the opportunity to submit comments on the Department of Transportation’s Proposed National Performance Measures for the National Highway System (NHS) and Congestion Mitigation. The Leadership Conference supports policies that reduce disparities in the transportation system and promote equity and opportunity for all.

The creation of well-designed national performance measures for congestion mitigation and the NHS are long overdue and provide a critical opportunity to address economic mobility and poverty reduction for our most vulnerable communities. We believe that with improvement, DOT’s proposed national performance measures can achieve these aims. We hope that the issues we raise below are addressed in the final rule.

Getting the rule right is important because how we define and measure congestion will deeply affect the types of projects states and metro regions choose in the future. As the proposed rule now stands, the focus is on vehicles rather than people, and on cars, rather than multimodal transportation choices. **The final performance measures must focus on moving people, and not the delay of vehicles.** Many people of color, low-income people, and people with disabilities are transit dependent, and by focusing solely on the movement of cars, the proposed rule ignores existing disparities in access to transportation and undermines future investments in public transit.

Moreover, the proposed measures treat all vehicles the same, as if a bus and single occupant vehicle have the same impact on congestion. To improve the rule:

- The measures need to assess the actual carrying capacity of a roadway if they are to be meaningful and accurate.
- If that data is not currently available, every effort should be made to begin collecting it.
- In the same vein, the measures put forward under this rule must capture multimodal forms of transportation. Otherwise, those traveling by modes other than single occupancy



vehicles will not be counted, leaving out many low-income people and people of color in future transportation investment choices.

These individuals and how they engage with the transportation system must be counted if our nation is to have a true measure of congestion and an understanding for the value of different transportation investments in mitigating congestion. Multi-occupant vehicles—whether carpooling, rideshare, or transit—all decrease congestion and should be counted. The same is true for bicycles and pedestrians.

The stakes for getting the rule right are particularly high for our most vulnerable communities. As *The New York Times* noted last year, “commuting time has emerged as the single strongest factor in the odds of escaping poverty.”<sup>ii</sup> Congestion has a direct impact on commuting times, and if the final rule fails to fairly and accurately count all people and all the forms of transportation that they use, we fail to see how the final performance measures will come at all close to capturing an accurate picture of what congestion looks like, and what smart transportation choices should be in a given community. Failing to focus on total commute times would be a lost opportunity to address poverty and inequality in our nation.

Ultimately, the purpose of transportation is to reach a destination. Despite this, the measures included in this proposed rulemaking do not include any plans to implement an accessibility performance measure. Under your leadership, the DOT has prioritized creating more access to opportunity through our nation’s transportation investments and choices, elevating Ladders of Opportunity, creating the position of DOT’s first Chief Opportunities Officer (the first agency to ever have such a position), and speaking openly about how transportation choices in the past have all too often been used to cut vulnerable communities off from opportunity. It is therefore striking that the proposed rule does not include any plans on an accessibility measure. Measuring the ease or difficulty of reaching schools, jobs, grocery stores, child care, and health care is critically important to understanding whether we are making smart transportation investments that connect our most vulnerable communities to opportunity. **The final rule should provide a timeline for DOT to implement an accessibility performance measure.**

If you have any questions, please contact Emily Chatterjee, Senior Counsel at (202) 466-3648. Thank you for the opportunity to comment on the proposed rulemaking.

Sincerely,

Wade Henderson  
President & CEO

Nancy Zirkin  
Executive Vice President

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<sup>i</sup> Together with PolicyLink, The Leadership Conference Education Fund co-chairs the Transportation Equity Caucus, which is a driving force for advancing equitable policies in the federal transportation arena, and promotes policies that ensure access, mobility, and opportunity for all. Today, The Equity Caucus has more than 100 members, including national, state, and local organizations all over the country.

<sup>ii</sup> Mikayla Bouchard, “Transportation Emerges as Crucial to Escaping Poverty,” *The New York Times*, May 7, 2015 (<http://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html>)