



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

**OFFICE OF THE
GENERAL COUNSEL**

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

March 7, 2025

ACTION MEMORANDUM TO THE SECRETARY

From: Gregory D. Cote
Acting General Counsel
X6-9519

Prepared by: Daniel Cohen
Assistant General Counsel for Regulation and Legislation
X-6-3633

Subject: Federal Highway Administration Guidance Document: "Rescission of Build a Better America Memoranda"

ACTION REQUESTED

I request that you approve the issuance of the attached deregulatory guidance document "otherwise of importance to the Department's interests" from the Federal Highway Administration (FHWA) titled, "Rescission of Build a Better America Memoranda."

SUMMARY

This guidance document rescinds two controversial FHWA guidance documents: a memorandum titled, "Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America," which was issued on December 16, 2021; and a memorandum updating the "Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America," which was issued on February 24, 2023.

BACKGROUND

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) was enacted into law, providing funding for various modes of surface transportation such as highways, transit, and rail. This funding included about \$350.7 billion for FHWA to administer. To aid in implementing IIJA and to announce a preferred prioritization for projects, FHWA issued a memorandum titled, "Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America" on December 16, 2021. The intent of the memorandum was to ensure that the funding and eligibilities provided by IIJA were interpreted and implemented to encourage States and other funding recipients to prioritize

investing in projects that advanced policies of the prior administration, such as equity and responding to climate change.

This memorandum elicited significant confusion within the transportation community because it was issued without notice and comment, and it intended to serve as an overarching policy framework that prioritized IIJA resources toward certain projects inconsistent with the underlying statute. On December 15, 2022, the U.S. Government Accountability Office issued a decision stating that the memorandum was, in fact, a rule and should have followed certain congressional review procedures. Rather than rescind the memorandum, FHWA issued an updated version on February 24, 2023. The updated memorandum reaffirmed FHWA's commitment to the policy goals announced in the 2021 memorandum.

We are requesting that you approve the rescission of both guidance documents. We expect the transportation community to support this measure, as we have heard objections to the 2021 memorandum from many stakeholders.

This action will count as two deregulatory actions under Executive Order (EO) 14192, "Unleashing Prosperity Through Deregulation." This action will also respond to the President's direction provided in EO 14148, "Initial Rescissions of Harmful Executive Orders and Actions," and the implementing direction that you provided in a memorandum to departmental officials titled, "Implementation of Executive Orders Addressing Energy, Climate Change, Diversity, and Gender."

RECOMMENDATION

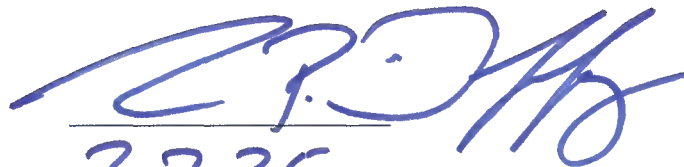
I recommend that you approve the issuance of the attached deregulatory guidance document "otherwise of importance to the Department's interests" from FHWA titled, "Rescission of Build a Better America Memoranda."

The Secretary

APPROVED:

DATE:

COMMENTS:


3-7-25

Attachment:

- FHWA Memo titled, "Rescission of Build a Better America Memoranda"



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Rescission of Build a
Better America Memoranda

Date: March 7, 2025

From: James O. Payne III
Chief Counsel

In Reply Refer To:
HCC-1

To: Associate Administrators
Chief Financial Officer
Directors of Field Services
Division Administrators
Division Directors

The Federal Highway Administration (FHWA) is responsible for ensuring that America's roads and highways are among the safest and most technologically sound in the world. Our focus should be on building big, beautiful, and durable projects that connect our country and people. President Trump has issued numerous Executive Orders¹ repealing the harmful policies that increased waste, threatened safety, and sought to divide. While purporting to implement the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58), the previous Administration attempted to impermissibly impose misguided policy mandates and other requirements that had no basis in the statute. In fact, many of these policies were specifically rejected by Congress while considering the IIJA. IIJA provided States broad flexibility to maximize the investments that were made to address their unique infrastructure challenges, and FHWA intends to ensure they retain that flexibility. Therefore, the following documents are rescinded in their entirety and have no effect:

1. The December 16, 2021 memorandum titled, "Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America"; and
2. The February 24, 2023 memorandum updating the "Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America".

State Departments of Transportation and other recipients must continue to comply with applicable statutory and regulatory requirements. FHWA is thoroughly reviewing all guidance documents that have been issued to implement the IIJA to ensure that they comport with the law and Administration policy.

¹ See e.g., Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions" (January 20, 2025); Executive Order 14154, "Unleashing American Energy" (January 20, 2025); Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" (January 21, 2025).

Please distribute this memorandum to your respective State Department of Transportation and other stakeholders as appropriate.

This document and the guidance documents referenced above do not have the force and effect of law and are not meant to bind the States or the public in any way, except to the extent that they reference applicable statutes and regulations.

If you have any questions about this memorandum, please contact Christopher Richardson, Assistant Chief Counsel for Administrative Law.