June 1, 2023

Mr. Andrew Rogers
Deputy Administrator
Federal Highway Administration
1200 New Jersey Ave. SE
Washington, DC 20590

Re: Inflation Reduction Act, Request for Information, 88 Fed. Reg. 23499 (April 17, 2023), Docket No. FHWA-2023-0004

Dear Mr. Rogers:

The Bipartisan Policy Center (BPC) appreciates this opportunity to provide input into the Federal Highway Administration’s (FHWA) deployment of the Environmental Review Implementation Funds made available by Section 60505 of the Inflation Reduction Act (IRA). Over the past two decades, BPC has led several initiatives to develop and advocate for consensus-driven, cost-effective, and bipartisan infrastructure policies, including recommendations to improve the federal permitting and environmental review process. With the IRA and Bipartisan Infrastructure Law (BIL) poised to deliver a historic level of investment, it is more important than ever that we eliminate unnecessary roadblocks to delivering cleaner, more modern infrastructure for the benefit of all Americans.

FHWA’s Environmental Review Implementation Funds can play an important role in that process. The law provides FHWA with flexibility to determine the most effective use of these funds to improve permitting in the context of surface transportation, an area that has already seen significant reform in recent years with the codification of “One Federal Decision.” Still, there is more that can be done to accelerate environmental reviews while maintaining necessary protections for the environment and the public. To that end, BPC offers the following recommendations for FHWA’s IRA funding.

**FHWA Activities**

The Environmental Review Implementation Funds may be used to support FHWA’s development of “guidance, technical assistance, templates, training, or tools to facilitate an efficient and effective environmental review process for surface transportation projects.” (23 U.S.C. §178) There are several ways in which FHWA can use this authority to improve the environmental review process.

*Encourage greater use of promising strategies.*

FHWA has both studied and embraced many innovative practices over the years to reduce the time and cost involved in environmental reviews. Practices which have been shown to be effective in meeting this goal without sacrificing environmental safeguards should be highlighted and expanded further.
Programmatic reviews form one element of a coordinated approach to permitting, outlining procedures for consultation and review on a program level, rather than project by project. Programmatic agreements form a part of such reviews and have been found to have a positive cost-benefit ratio, i.e., they save more money through implementation than they cost to develop and update. While FHWA maintains a library of information on programmatic agreements covering specific issues commonly found in transportation projects, these represent only a subset of potential areas in which PAs could be utilized. In consultation with state and local agencies, FHWA should identify the next set of programmatic agreements that would be most beneficial to transportation agencies and establish a schedule for their development. FHWA should also update its webpages dedicated to programmatic agreements so that the most current information is available to stakeholders.

The Surface Transportation Project Delivery Program, also known as the assignment program, was created as a pilot for a limited number of states in SAFETEA-LU and later opened to all states. The assignment program allows states to assume DOT’s responsibilities under NEPA for environmental reviews, with oversight from FHWA. The program has been shown to reduce the time involved in NEPA reviews. Still, a decade after it was made available to all states, uptake by the states has been slow, with only seven states currently participating in the program. FHWA could do more to highlight the benefits of the program, such as clarifying and streamlining the application process and providing technical assistance to states concerned about their capacity to apply for the program.

Categorial exclusions (CEs) save time and money in the permitting process by identifying types of projects that are unlikely to cause environmental harm and allowing them to use a simplified environmental review process. FHWA should maximize the use of CEs, including by adopting CEs for relevant project types that are currently available at other agencies. For example, the Department of Energy has an existing CE that covers the installation, modification, operation, and removal of electric vehicle charging stations, using commercially available technology, within a previously disturbed or developed area. Extending this CE to FHWA’s projects could be an advantage for a quicker, more efficient build-out of zero-emission infrastructure.

The concept of “Dig Once” refers to the practice of coordination among federal, state, and local agencies to plan infrastructure projects to accomplish multiple goals, such as laying fiber-optic cables during road

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construction or repair. Last fall, the Biden administration announced an effort by the Departments of Commerce, Transportation, and Energy to advance “Dig Once” for broadband, transportation, and electrification projects.\(^6\) FHWA should work with its federal partners to provide technical assistance to state DOTs and local agencies on this initiative so that no further resources are wasted on multiple excavations.

**Provide new templates and tools.**

FHWA maintains an online toolkit of resources for project sponsors engaged in the environmental review process. A portion of the Environmental Review Implementation Funds could be directed toward supplementing these resources.

Memorandums of understanding (MOUs) are an emerging best practice for harmonizing state and federal permitting and environmental review processes. MOUs outline the responsibilities of all parties, including both federal and state agencies, with regard to scheduling and deadlines, methodologies for review, and decision-making. To avoid having to start fresh each time a state is interested in pursuing an MOU, FHWA could make available a template or templates covering a range of possible issues that states could pull from in developing draft MOUs.

Early identification of environmental issues can help project sponsors develop designs and plans to mitigate those issues, removing barriers to approval during the permitting process. Community-wide mapping of potential issues is one way to assist in early identification. FHWA could develop and promote tools that could help communities create GIS maps of historic preservation sites or environmentally sensitive areas, similar to EPA’s EJSCREEN.\(^7\)

**Increase transparency.**

The environmental review process is inherently a public one, with requirements for public comment at various stages of the process. Yet it is not always easy for stakeholders to track the progress of environmental work or to hold government officials accountable for meeting deadlines. While EPA maintains a database of environmental impact statements across agencies,\(^8\) and FTA publishes a list of environmental actions for transit projects,\(^9\) FHWA does not provide a comparable resource specific to FHWA-funded projects. Moreover, the databases that do exist do not support convenient tracking of the time it takes for environmental reviews to be completed, one of the key metrics for determining the outcome of permitting reforms. As FHWA implements Section 60505 of the IRA, it should use some of

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\(^7\) See [https://www.epa.gov/ejscreen](https://www.epa.gov/ejscreen).

\(^8\) See [https://cdxapps.epa.gov/cdx-enepa-ll/public/action/eis/search/search#results/](https://cdxapps.epa.gov/cdx-enepa-ll/public/action/eis/search/search#results/).

the resources to develop an easy-to-use, public database of all environmental actions taken or in progress for highway, rail, and transit projects, including the dates of key milestones and links to relevant documents.

*Coordinate with other federal agencies.*

FHWA is only one of many federal agencies with a role in the permitting process for transportation projects and should be proactive in its outreach to other agencies to coordinate environmental reviews. One promising tool to encourage coordination and expedite reviews is the Permitting Dashboard created by FAST-41 and maintained by the Federal Permitting Improvement Steering Council (FPISC). The Permitting Dashboard provides an easily accessible resource so all stakeholders will have a shared understanding of the process and timelines for reviews. FHWA should seek to maximize the use of this resource for transportation projects and not restrict it to only the largest or most complex projects.

Another challenge stemming from the number of federal agencies involved in project reviews is differences in protocols and platforms for sharing relevant materials and submissions. There is currently no single portal for sharing environmental documents; in some cases, documents cannot even be submitted electronically but must be mailed. FHWA could pool funds with other agencies, including FPISC, to develop a single federal platform for submitting and sharing documents across the government.

**Grants to Eligible Entities**

FHWA can also use these funds to provide grants to states, local governments, metropolitan planning organizations, and tribal governments to build their capacity or otherwise facilitate the environmental review process. Simply using these funds to pay for the cost of carrying out reviews would quickly drain these resources and is unlikely to lead to long-term reform. Therefore, BPC recommends two targeted grant programs to carry out this section of the IRA.

The first would be a competitive grant program to fund public engagement activities early in project development, even before the environmental review process is formally initiated. As FHWA notes in the RFI, lack of consensus and local controversy can be bigger barriers to project delivery than environmental reviews, as can inadequate funding and changes in project scope. All of these issues can be mitigated through early, effective outreach to local stakeholders. When local leaders and community members are given the opportunity to influence projects early on, they develop a stake in the outcome, making it more likely that the project will withstand challenges that inevitably arise.

Grants under this program should not fund the basic costs of hosting public meetings, as that is a fundamental function of government agencies and should be within their capacity without additional federal support. Instead, these funds should be focused on building out agency capacity to use different engagement tools and to reach traditionally underrepresented groups, as well as building local stakeholder capacity to effectively participate in the project development process. Activities could
include charrettes, public design challenges, educational videos, and other activities such as those listed in USDOT’s guide to promising practices for public involvement in transportation decision-making.10

Funding should not be limited to public agencies. Community-based organizations should be eligible sub-recipients of funds to allow them to participate effectively in the process, including hiring third-party experts to help them understand relevant technical issues.

FHWA could also dedicate a small portion of the funds for a “challenge fund” to support innovative activities at the state or local level to expedite project approvals. Funds could be used to update mapping or analytical technology, develop community benefits agreements, revise state and local permitting requirements and processes (to harmonize them with federal permitting), create state permitting councils, and other activities targeted toward catalyzing long-term improvements in permitting. These grant funds could be pooled with similar technical assistance grants from other federal agencies to better leverage the opportunity to make meaningful change.

Taking the actions outlined above would empower state and local transportation agencies to make effective use of the permitting reforms enacted in the Bipartisan Infrastructure Law and the Inflation Reduction Act. With hundreds of billions of dollars being invested over the next few years to make the transportation system cleaner, safer, and more resilient, environmental reviews must be done efficiently and without unnecessary delay at any level of government. We look forward to working with you on this important topic. Please reach out to me at (202) 204-2400 or awinkler@bipartisanpolicy.org with any questions.

Sincerely,

Andy Winkler
Director, Housing and Infrastructure Project
Bipartisan Policy Center

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