



We're leading the movement to build a Bicycle-Friendly America for Everyone

1612 K STREET NW, SUITE 1102, WASHINGTON, DC 20006

| phone 202-822-1333 | fax 202-822-1334 |

WWW.BIKELEAGUE.ORG

May 23, 2022

Dear Acting Associate Administrator Sauer,

The League of American Bicyclists appreciates the opportunity to comment on the National Highway Traffic Safety Administration (NHTSA)'s Uniform Procedures for State Highway Safety Grant Programs (docket: NHTSA-2022-0036-0001). Our comment consists of a written copy of the statement read by our Policy Director during the public meeting on May 2nd and responses to the questions provided by NHTSA.

Please find both below. If you have any questions, please contact Ken McLeod, Policy Director, at ken@bikeleague.org.

Statement from May 2nd, 2022:

My name is Ken McLeod, and I am the Policy Director at the League of American Bicyclists. The League of American Bicyclists, founded in 1880, is a non-profit bicycling education and advocacy organization whose mission is to lead the movement to build a Bicycle Friendly America for everyone. The League has a strong interest in state Highway Safety Grant Programs. Since the 1970's the League has had an education program to train people to feel safer and more confident while riding a bicycle in their community. Curriculums developed by the League and taught by a network of nearly 7,000 League Cycling Instructors make up the base of most bicycling education in the United States.

Through our Smart Cycling program, we continue to train coaches and instructors; organizations and individuals; bicyclists and drivers; about how people biking and driving can safely co-exist on the roadways of the United States of America. This weekend – to kick start National Bike Month - we released 13 videos – in English and Spanish - to educate both bicyclists and motorists on how to safely and responsibly share the road.

State Highway Safety Grant programs have provided critical support to bicyclist and motorist education efforts for decades. The League's review of state Strategic Highway Safety Plans in 2022 found that 35 states currently indicate that bicyclist safety is an emphasis area and that education is the most common strategy indicated by states. These state choices often lead to bicyclist education efforts that use or build upon League education resources. Well-functioning State Highway Safety Grant programs are important to delivering bicycle education in the United States and the League strongly supports these programs in their delivery of bicycle education.

In the opportunity to comment today, I want to address three topics that NHTSA identified for discussion: Topic 1 - the National Roadway Safety Strategy, topic 2 - Reducing Disparities and Increasing Community Participation, and topic 5 - Performance Measures.

The League enthusiastically welcomes the National Roadway Safety Strategy and sincerely hopes that it provides a decisive impact on traffic safety in the United States. It has been more than 70 years – seven

decades - since fewer than 30,000 people per year have died on our nation's roadways. For about 50 years the state Highway Safety Grant programs we are invited to comment on today have attempted to halt this public health crisis and so far, have failed to do so.

While progress has been made, the National Roadway Safety Strategy and its call for a Safe System Approach that recognizes the goal of reaching zero traffic deaths represents a necessary change to a system that has largely accepted traffic deaths as an outcome of individual behaviors that NHTSA, FHWA, USDOT, state DOTs, and the Governors that administer state Highway Safety Grant programs may mitigate but are not responsible for preventing. As Secretary Buttigieg says at the start of the National Roadway Safety Strategy, "The status quo is unacceptable, and it is preventable."

One of the principles of the Safe System Approach that may be challenging to the traditional administration of state Highway Safety Grant programs by NHTSA and states is that "Humans Make Mistakes." Much effort has been expended on perfecting human behavior, with NHTSA in the past saying that 94% of crashes were due to human error. The Safe System Approach calls for NHTSA and the states who administer its grants to reduce deaths and injuries even when people make errors, through systemic changes.

As FHWA stated in its primer on the Safe System Approach for Pedestrians and Bicyclists, "[i]n the context of pedestrian and bicyclist safety, [shared responsibility] means that there will be a need to rebalance responsibility that has largely been placed on individual road users themselves." We hope that NHTSA follows this direction when acting upon the National Roadway Safety Strategy's action item to "Update Departmental safety messaging so that it is unified across the entire Department and reflects the Safe System Approach principle of human fragility." The safety of people biking depends upon far more than wearing helmets, it is impacted by the design and speed of roadway; the design, size, and speed of vehicles; and driver beliefs, attitudes, and behaviors towards people biking.

Reducing Disparities and Increasing Community Participation should be important goals for NHTSA in its state Highway Safety Grant programs. As the National Roadway Safety Strategy notes, "fatalities impact communities differently, particularly for people not in a vehicle" with "American Indian or Alaska Native," "Black or African American," and "Hispanic or Latino" communities having higher per capita bicyclist fatalities compared to the US population as a whole.

The League of American Bicyclists has worked with the Transportation Equity Caucus to understand and propose improvements to state Highway Safety Grant programs to reduce disparities and increase community participation. In our recommendations published in May 2021, we called for new performance measures, greater data collection to understand and address disparities, changes to eligibility to promote a Safe System Approach that positively engage communities in improving roadway safety, and removing the requirement for enforcement in the use of funds under 23 USC 402.

While NHTSA cannot act on all of our recommendations, some require Congressional action, we are excited to continue our efforts to address transportation equity with the Transportation Equity Caucus and NHTSA. One of the key efforts we would like to see better supported by NHTSA and states administering state Highway Safety Grant programs is engaging community groups to build support for infrastructure safety improvements that will influence road user behavior and address systemic racism that have led to disparities in roadway fatalities. One change from the Bipartisan Infrastructure Law that promotes this engagement is the update to 23 USC 405 that allows funds to be used for public education and awareness on the importance of speed management and infrastructure designed to improve nonmotorized road user safety. There are two important issues that the League of American Bicyclists would like to highlight about performance measures. First is that states have not been required to set goals that decrease traffic fatalities. While we recognize that this is consistent with the increase in traffic deaths, particularly among people biking

and walking over the last decade, it is inconsistent with the goal of zero traffic deaths expressed in the National Roadway Safety Strategy. Establishing a process for performance measures that credibly reduce traffic deaths over time is a key need of instituting the Safe System Approach and creating a traffic safety culture within responsible state and federal agencies where roadway deaths are unacceptable and preventable.

Second, all current performance measures related to activities performed by states with state Highway Safety Grant program funds involve police enforcement of traffic laws, either through citations or arrests. To reduce disparities and increase community participation, the League believes that performance measures should include quantifying activities related to those goals. Examples could be performance measures quantifying disparities in traffic citations by race and efforts to reduce them; quantifying the number of people educated by safety education programming; or quantifying the number of community groups partnered with as part of public service messages, in-person safety education, or other program delivery.

A 2021 Government Accountability Office report (GAO-21-405) on state Highway Safety Grant programs found that in the last decade there have been limited advancements in Countermeasures that Work for bicycle and pedestrian safety, limited information on commonly implemented countermeasures, and limited context on countermeasure effectiveness. Performance measures that include implementation of countermeasures and community partnership may address these issues and spur productive feedback from community organizations that produce advancements, information, and context for state Highway Safety Grant programs moving forward.

The League of American Bicyclists, and people who advocate for bicycling and walking throughout the United States, are some of the strongest supporters of safer streets and creating places where people feel safe biking and walking in America. NHTSA's state Highway Safety Grant programs should be key efforts in supporting the work of these advocates and building a culture of traffic safety where traffic deaths are recognized as unacceptable and preventable. We look forward to working with NHTSA and state Highway Safety Offices to make that vision come true.

Responses to NHTSA's questions

1. How can NHTSA, States, and their partners successfully implement NRSS and the SSA within the formula grant program to support the requirements in Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117-58)?

- NHTSA, states and their partners should better publicize their planning processes, and encourage states to use planning funds to compensate costs for travel, child care, and other expenses for low income and non-traditional partners to participate.
- In the spirit of a Safe System Approach, NHTSA, states and partners should promote solutions that promote a shared responsibility to road safety. That should include removing activity measures based on citations, and focus on community involvement.
- NHTSA must not have conflicting messages with other U.S. Department of Transportation agencies. The NHTSA discussion on bicycle education as a safety countermeasure actually says that bike education encourages individuals to bike, which puts them at risk of traffic violence. Specifically, Countermeasures that Work 10th edition on page A9-10 says "most of the studies reviewed reported that [adult bicycle education] programs increased the frequency of bicycling to work and overall bicycle use among adults, which may increase bicyclist exposure to risk." That sort of bias must be removed to ensure NHTSA is consistent with overall messaging of the US DOT (as required in the NRSS). Bicycling is promoted by other USDOT agencies and bicycling is a fundamentally safe mode of transportation, posing little threat to other road users due to the low kinetic energy of a person bicycling. If NHTSA and states cannot distinguish between the systemic dangers posed by different

modes of transportation then the US will struggle to realize the benefits of people choosing safer modes of transportation.

- States and partners should proactively share data on how funds are spent with local stakeholders, including data on stops and citations, and percent of citations issued that were for the purpose of the grant. In Connecticut, there was a study showing that a 402 grant meant to address drunk driving resulted in over 1600 citations, but only one of those citations was for driving under the influence.
- NHTSA should work with states to ensure their Highway Safety Plans are consistent with the state's Strategic Highway Safety Plan, including consistent performance measures, and ensure that proven safety countermeasures work together.
- NHTSA and its partners should use the grant programs to promote education about all five elements of a Safe System Approach, including the role of safe roads and engineering that promote safe roads and safe road users.
- NHTSA and its partners should ensure that the eligibility for funds for the nonmotorized safety priority program that can be used for "(C) public education and awareness programs designed to inform motorists and nonmotorized road users regarding— ... (iv) infrastructure designed to improve nonmotorized road user safety" is well utilized. Recent research by Bloomberg Philanthropies suggests that temporary infrastructure, including "asphalt art," can have a direct impact on traffic safety and build community support for infrastructure improvements (<https://assets.bbhub.io/dotorg/sites/43/2022/04/Asphalt-Art-Safety-Study.pdf>). The NRSS and SSA propose this type of comprehensive approach to traffic safety and NHTSA should promote ways in which its grant funds can build support for safer roads, safer speeds, and safer vehicles while also creating safer users.

2. What non-traditional partners and safety stakeholders can the States work with to implement NRSS and SSA?

- NHTSA, states and their partners should better publicize their planning processes, actively recruit stakeholders to participate and encourage states to use planning funds to compensate costs for travel, child care etc, for low income and non-traditional partners to participate. NHTSA may work through national stakeholder organizations focused on equity and transportation safety to advertise local opportunities for input.
- In the spirit of a Safe System Approach, NHTSA, states and partners should promote solutions that promote a shared responsibility to road safety. That should include removing activity measures based on citations, and focus on community involvement.
- The law requires 40% of grant funding benefits local governments, NHTSA should require reporting on how that funding benefits local communities not just by where the funding is spent but through requiring community support for that work. That should be measured by ensuring public involvement and letters of support of community partners that represent local communities. (Such letters are accepted in DOT discretionary grants.)
- NHTSA and states need to address how traffic safety behaviors are influenced by the built environment. While departments of transportation and public works may not be the typical non-traditional partners, it is unacceptable for behavior change programming to be isolated from the built environment, which has profound impacts on behavior. Law enforcement agencies that receive NHTSA grants should understand how the built environment influences behaviors like speeding and how effective changing the built environment can be to reduce speeding. NHTSA and states should conduct research on the current agency culture of grantees to gauge their understanding about the Safe System Approach and commitment to its elements. In the NRSS, USDOT says "Reaching zero will require USDOT to work with the entire roadway transportation community and the American people to lead a significant cultural shift that treats roadway deaths as unacceptable and preventable."

We need a baseline understanding of existing safety culture among NHTSA grantees in order to effectively implement a “significant cultural shift.”

3. How can the Sections 402, 405, and 1906 formula grant programs contribute to positive, equitable safety outcomes for all? How can states obtain meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities?

402/405

- For Sections 402 and 405 grants recipients should be required to work collaboratively with local community organizations to develop programs. This can include sub-contracting, but should require letters of support for the work undertaken.
- NHTSA must take into consideration discriminatory outcomes when promoting “Countermeasures that Work.” For instance, NHTSA rates mandatory helmet laws highly as a countermeasure that works, and yet studies have shown such laws result in discriminatory enforcement. (example- The US Department of Justice found that between Jan. 1, 2014 and Aug. 30, 2015, Tampa Police Department documented 9,121 bicycle stops. Though Blacks make up about a quarter of the city's population, they accounted for 7 out of every 10 bike stops. Among those stopped, Black bicyclists were more likely to get a ticket than white bicyclists. The DOJ's analysis found that “TPD's bicycle enforcement did not produce a community benefit in terms of bicycle safety, bicycle theft, or crime generally but did burden individual bicyclists, particularly Black bicyclists in high crime areas of Tampa.” <https://www.tampa.gov/police/info/doj-cops-report>)
- States and partners should be required to proactively reach out to community organizations and local organizations who work in affected and impacted communities, and be encouraged to fund pilot projects to test non-traditional methods.
- NHTSA must undertake efforts to address the use of its grant funds for pretextual stops that are not for traffic safety purposes. Pretextual stops undermine community understanding of traffic safety and support for traffic safety actions. (example - A Los Angeles Times investigation found deputies search 85% of bike riders they stop even though they often have no reason to suspect they'll find something illegal. <https://www.latimes.com/projects/la-county-sheriff-bike-stops-analysis/>)
- NHTSA must take into consideration traffic law enforcement costs and outcomes when promoting “Countermeasures that Work.” For instance, NHTSA rates mandatory helmet laws highly as a countermeasure that works, showing that its cost is lower than bicycle education. In finding that a helmet law is low-cost, Countermeasures that Work does not engage with direct costs of enforcement, indirect costs due to discriminatory enforcement, or costs to individuals in the forms of fines and fees. In NHTSA's accounting it is low-cost to ticket a person with a low income for not wearing a helmet and have them purchase a helmet, go to a court, and have their ticket dismissed due to the purchase of a helmet, which is a feature of several state laws. If the goal is to get helmets on heads then the individual costs of fines, fees, and time related to using enforcement to prompt helmet purchases should be considered and contrasted with free or subsidized helmet distribution.

1906

- NHTSA should Identify a third party to actively promote the program to states that qualify- both their Departments of Transportation and Justice, and encourage them to participate.

- NHTSA’s website should list the states that qualify for the 1906 programs, so that stakeholders can identify those states and work with them to develop a successful program. It should also highlight best practices.
- NHTSA should encourage states to apply the 1906 program not just to traffic stops of drivers, but to stops of pedestrians and bicyclists who are stopped from traffic violations such as jaywalking.

4. How can the formula grant program require practices to ensure affected communities have a meaningful voice in the highway safety planning process?

- NHTSA should encourage states to use formula grant funding to compensate members of affected communities to attend and participate in planning processes.

5. What varied data sources, in addition to crash-causation data, should States be required to consult as part of their Highway Safety Plan problem identification and planning processes to inform the degree to which traffic safety disparities exist on their roadways?

- States should be required to consult demographic data on traffic stops and citations to identify and racial and ethnic disparities, as well as the demographics of the areas.
- Information on where fatalities and serious injuries occur including: design speed, speed limit and speed of the vehicle, road classification and demographics of the area where the fatality took place. In the case of vulnerable road user fatalities and serious injuries, the presence of bicycling and walking facilities (including frequency of crosswalks and whether facilities meet ADA requirements), and lighting should be included.
 - NHTSA, and US DOT in general, should clarify the relationship between high risk roads and the demographics of the local community. As such, an emphasis must be placed on addressing the infrastructure features and elements that make those roads more dangerous. Emphasis should not be on the behavior of the most vulnerable road users. NHTSA’s role in this would be education of how road elements and design make said road high risk, and demonstration projects of infrastructure solutions.

6. How can the triennial cycle best assess longer-term behavior modification progress and connect year-to-year activities in a meaningful way?

- Longer-term behavior modification must be linked to investments in infrastructure and road design choices that impact behavior. Roadway design choices have significant long-term behavior modification that is constantly present and impactful on behavior. A long-term investment in bicyclist education will have limited impact on bicyclist safety if it is not paired with improved roadway design that slows vehicles speeds and provides separated space for people bicycling as recommended by the FHWA’s Bikeway Selection Guidelines or similar documents. Similarly, a long-term investment in driver education that is meant to change behavior around stopping or yielding to people walking in crosswalks will have limited impact if it is not paired with marking crosswalks, ensuring that current crosswalks are easily visible, or otherwise improving crossing treatments. Highway Safety Plans will miss opportunities for longer-term behavior modification progress if they do not connect to infrastructure improvements and better road design choices that reinforce the behavior modifications that they seek.

7. How can the triennial HSP account for strategies that are proportionate to the State's highway safety challenges?

- Bicyclist crashes and injuries are under-reported. In a recent report, the D.C. Policy Center found that a third of crashes during a six-week period where a driver hit a cyclist or a pedestrian were not publicly reported by police. While it is generally laudable to be “data-driven,” being strictly proportionate to what is found in existing data is likely to miss opportunities to better address highway safety challenges over the long-term. The Safe System Approach correctly identifies speed as a factor that impacts the outcome of crashes regardless of the underlying behavior of a driver before a crash. If the HSP is narrowly focused on ensuring its strategies are proportionate to specific behaviors identified in existing data it may miss the larger picture of the SSA and opportunities for systemic changes which are not well accounted for in existing data.
- Research suggests that people choose not to ride their bicycle more often because they feel that roads are unsafe and that drivers engage in threatening behaviors. The consequences of under-reporting of crashes and suppression of bicycling through unsafe road design may lead to bicyclist safety seeming like a small safety challenge when it is in fact a large safety challenge. Bicycling is a safe mode of transportation that is extremely unlikely to result in serious injuries or deaths to other road users. If the HSP only accounts for proportions of reported serious injuries or fatalities then the HSP misses the important context of people biking, and walking, feeling unsafe due to poor road design and poor driver behavior. Allowing more people to feel safe while biking and walking, and accomplish more trips by biking and walking - which are fundamentally safer for other users - is a large safety challenge that NHTSA and states should address in every HSP.

8. What information is needed to ensure the HSP provides comprehensive, longer-term, and data-driven strategies to reduce roadway fatalities and serious injuries?

- It could be valuable for the HSP to be used to implement the Safe System Approach (SSA). The Governors Highway Safety Association (GHSA) may provide a constructive example of how the HSP could show how strategies can and should touch on the elements of the SSA. In its report, “Putting the Pieces Together: Addressing the Role of Behavioral Safety in the Safe System Approach,” the GHSA provides several tables that show how State Highway Safety Office programs related to the SSA elements of Safe Speeds, Safe Users, Safe Roads, Safe Vehicles, and Post-Crash Care. This type of table-rubric format may be something that NHTSA can promote to its state partners as a means of ensuring that strategies are comprehensive and align with the SSA. The GHSA report also highlights the need for NHTSA to partner with states on the SSA, so that comprehensive connections are made. In the GHSA report, nothing is listed suggesting that Engineering has a role in Safe Speeds when the National Roadway Safety Strategy identifies several roles for engineering under this element including “creating roadways that help to ‘self-enforce’ speed limits.”

9. What data elements should States submit to NHTSA in their annual grant application to allow for full transparency in the use of funds?

- Information on where fatalities and serious injuries occur including: design speed, speed limit and speed of the vehicle, road classification and demographics of the area where the fatality took place. In the case of vulnerable road user fatalities and serious injuries, the presence of bicycling and walking facilities (including frequency of crosswalks and whether facilities meet ADA requirements), and lighting should be included.
- The percentage of fatalities and serious injuries that were vulnerable road users.
- Who receives funding and what they do with that funding needs to be submitted in a manner that allows comparisons between states. It would be very valuable to know how different states allocate

their funding between uses such as paid media, in-person or virtual education, and enforcement and the types of organizations that administer or deliver that programming.

10. What types of data can be included in the annual grant application to ensure that projects are being funded in areas that include those of most significant need?

- States should report back on their public participation efforts including: how they advertised for input, the number and type of stakeholders that they actively contacted and asked for input, any compensation offered to individuals and community organizations in affected areas. States should also report back on the outcomes of those meetings and how they were incorporated into their actions.

11. Should these measures be revised? If so, what changes are needed?

Activity Measures

- NHTSA should remove citations as activity measures. If citations are not removed as activity measures:
 - Reporting of citations must include the percent of citations issued that were for the purpose of the grant. A study under the 1906 program in Connecticut, found that a 402 grant meant to address drunk driving resulted in over 1600 citations, but only one of those citations was for driving under the influence.
 - Performance measures should also measure demographic information in aggregate of stops and citations issued. If that is not possible, law enforcement must report on the demographics of the community where the stop and/or citation was issued.
- If NHTSA is serious about engaging with non-traditional partners, then NHTSA needs to measure that by both having states report on who they worked with, and ensuring those stakeholders have an opportunity to comment on the success of the process.
- States should report back on their public participation efforts including: how they advertised for input, the number and type of stakeholders that they actively contacted and asked for input, any compensation offered to individuals and community organizations in affected areas. States should also report back on the outcomes of those meetings and how they were incorporated into their actions.

Performance Measures

- NHTSA performance measures should be consistent with FHWA measures. States must show evidence of 40% of the funding benefitting local governments, including proof of coordination with local governments.
- NHTSA performance measures should be consistent with FHWA performance measures. In order to be consistent with a Safe System Approach NHTSA should require that states are not allowed to set a goal that results in MORE or equal fatalities and serious injuries for any mode than the year before.

12. Section 24102 of the Bipartisan Infrastructure Law requires performance targets “that demonstrate constant or improved performance.” What information should NHTSA consider in implementing this requirement?

- NHTSA performance measures should be consistent with FHWA performance measures. This will help maintain consistency among agencies and partners, as well as maintain the trust of the public.

- In order to be consistent with a Safe System Approach NHTSA should require that states are not allowed to set a goal that results in MORE or equal fatalities and serious injuries for any mode than the year before.
 - GHSA and other stakeholders have voiced the concern of population growth, however we believe that the goal of a Safe System Approach is that safety can be improved, and that fatality and serious injuries can be reduced despite population growth.
 - In addition, reporting a failure to meet performance measures does not affect a state's ability to access 402 or 405 funding. The only consequence under FHWA for not meeting a safety goal, is that the state has to spend its safety formula funds on safety. That seems like a reasonable and prudent consequence.

13. What should be provided in the Annual Report to ensure performance target progress is assessed and that projects funded in the past fiscal year contributed to meeting performance targets?

- NHTSA performance measures should be consistent with FHWA performance measures. In order to be consistent with a Safe System Approach NHTSA should require that states are not allowed to set a goal that results in MORE or equal fatalities and serious injuries for any mode than the year before. Performance target progress must be based on coordinated activities that are consistent with infrastructure improvements and the Safe System Approach. NHTSA should help states adopt theories of change that are consistent with the Safe System Approach and coordinate messaging and activities so that they support key goals of the Safe System Approach such as reducing system kinetic energy by lowering speed limits, reducing speeding, and helping more people move by less deadly modes of transportation such as biking, walking, and public transit.
- Scattershot approaches to projects that are tied to data, but lack consistency with the goals of the Safe System Approach or improving traffic safety culture, including at agencies, should be discouraged. For example, it is difficult to see Hawaii’s reported pedestrian and bicyclist enforcement from its 2019 Annual Report as being consistent with a Safe System Approach focused on reducing system kinetic energy. Drivers pose the primary threat to pedestrians as they pilot large vehicles at speeds capable of causing serious injury or death, but Hawaii ticketed people walking at a rate of 122:1 over people driving with NHTSA grant funds (see page 49 of https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/2019_annrpt_hi.pdf). These tickets do nothing to address the dangers to pedestrians caused by drivers or the built environment and do not contribute to building a traffic safety culture that prioritizes safer speeds and safer roads. As FHWA says in its [Primer on the Safe System Approach for Bicyclists and Pedestrians](#), “[i]n the context of pedestrian and bicyclist safety, [shared responsibility] means that there will be a need to rebalance responsibility that has largely been placed on individual road users themselves.” Hawaii’s use of NHTSA funds to primarily ticket pedestrians does not reflect this necessary rebalancing.

14. How can the Annual Report best inform future HSPs?

- Annual Reports need to provide data that can be compared between states so that states can effectively learn from each other and improve over time. Comparative information on state activities, how states tie NHTSA funded work to infrastructure improvements and the SSA, and outcomes over time will lead to better future HSPs that reflect proactive long-term theories of change consistent with the SSA.
- FHWA’s use of Communities of Practice may provide a useful guide for how NHTSA can leverage Annual Report and HSP processes. E.g. <https://rspcb.safety.fhwa.dot.gov/VisionZero/Default.aspx>