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October 31, 2022

RE: Uniform Procedures for State Highway Safety Grant Programs Proposed Rule
Docket: NHTSA-2022-0036

Dear Acting Administrator Carlson,

The League of American Bicyclists (League) appreciates the opportunity to comment on the National Highway Traffic Safety Administration (NHTSA)'s Uniform Procedures for State Highway Safety Grant Programs (docket: [NHTSA-2022-0036-0058](#)). We thank NHTSA for the attention paid to our previous comments and believe that the issuance of a Final Rule with sufficient time for States to rely on the rule for their FY24 grant applications will further attempts to address the traffic safety crisis on our nation's roadways.

In addressing comments from the League and others, NHTSA addressed several comments by promising to share information, identify best practices, or otherwise promote better understanding of its processes and state uses of its funds. Examples include:

- What is meant by “equitable enforcement” and how states approach equitable outcomes of enforcement;
- Alternative strategies to enforcement for behavioral traffic safety;
- Providing “best practices and effective strategies to increase community engagement;”
- “strategies that incorporate the Safe Systems Approach and to facilitate the sharing of innovative strategies among states;”

There were also several places where NHTSA mentioned the collection of information or provision of technical assistance, but did not state that information would be shared, best practices identified, or other public-facing activities to further understanding of NHTSA programs, processes, and state uses of NHTSA funds. Examples include:

- Technical assistance for the Section 1906 program, which the League suggested should be done by a third-party. We are concerned that if NHTSA provides technical assistance and does not commit to publishing information about best practices, barriers to state use of funds, or other issues, then NHTSA's provision of technical assistance will provide less insight into the Section 1906 program than would be developed by a third-party providing that assistance.
- NHTSA proposes to implement 23 USC 402(b)(1)(E) by “requiring States to discuss in the annual report the community collaboration efforts that are part of the States' evidence-based enforcement program,” but does not commit to do anything publicly with this information. It would be helpful to have this information available in a searchable database or available in a manner that helps develop best practices.
- The use of NHTSA funds for “educational efforts on the interaction between the built environment and behavior.” Elsewhere, NHTSA notes that “States may use grant funds for expanded eligible uses, such as Walking Safety Assessments, nonmotorized

community traffic safety programs, costs related to outreach, and staffing a pop-up bicycle lane.” The implementation of educational efforts that focus on the interaction between the built environment and behavior, and the use of public message campaigns that build support for built environment changes because they impact behavior, are priorities of the League. The League believes that changes to 23 USC 405(g) reflect Congressional intent to promote speed management and infrastructure as part of improving behaviors by people driving towards nonmotorized road users and that there should not be strict siloes between educating about behavior and infrastructure that improve traffic safety.

- Qualification criteria for Driver and Officer Safety Education Grants and Racial Profiling Data Collection Grants include official documents, curricula, and other information that would be valuable to the public. Making those materials more readily available, coding the type of document(s) used for qualification, and analyzing those materials for content would be valuable to the public, states interested in accessing those grants, and Congressional understanding of grant implementation.

The League strongly supports NHTSA publishing information about its programs and state practices. While we recognize that the Final Rule does not commit NHTSA to prepare any particular publications about state practices, we hope that NHTSA publishes reports that analyze state practices based on the types of data, programs, and grants mentioned above.

NHTSA proposes to use several guidance documents in its implementation of its programs. The League would like to note the following guidance documents have not been updated in several years that NHTSA asks states to rely upon when implementing NHTSA grant funds:

- “the most recent version of Highway Safety Program Guideline No. 8—Impaired Driving” is a guidance document that appears to be last updated in 2006;
- “Speed Enforcement Camera Systems Operational Guidelines” is a guidance document that appears to be last updated in 2008;
- “Model Performance Measures for State Traffic Records Systems” is a guidance document that appears to be last updated in 2011;
- “guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police” is a guidance document that appears to be last updated in [2019](#) and which “does not adopt or promote any specific approach.”

Specific to the use of “Speed Enforcement Camera Systems Operational Guidelines” the League raises concerns that there appears to be no or limited discussion of operational impacts on underserved communities, no or limited discussion of site selection considerations that potentially impact underserved communities, no or limited discussion of how associated fines and fees can potentially impact underserved communities; and no or limited discussion about how, over-time, infrastructure can support speed compliance in areas that have continued speeding issues. NHTSA stated that “agencies are currently in the process of revising” those guidelines and the League hopes that the issues we raise concerns about are addressed in the update. The League hopes there is a review and update of all guidance that states are supposed to use in implementation of NHTSA funds.

NHTSA also proposes to use its Countermeasures That Work (CTW) document for a variety of purposes. Unlike the guidance documents mentioned above, CTW is updated regularly. The League appreciates NHTSA identifying our recommendation that “NHTSA consider discriminatory outcomes of countermeasures when promoting our *Countermeasures That Work* guide,”

including “the costs of discriminatory enforcement and disparate impacts of required fines on low-income people.”

While we are glad that NHTSA states that “discriminatory enforcement has no place in NHTSA's grant programs or under Federal civil rights laws, and NHTSA will take prompt and appropriate action when it becomes aware of any such activity under NHTSA grant programs,” we would like to clarify our recommendation to NHTSA. The League does not accuse NHTSA or any state of using NHTSA funds for discriminatory enforcement. The League requests that NHTSA discuss potential and observed disparities in impact from enforcement or other countermeasures identified and given star ratings in CTW. Examples of this type of discussion might include discussion of research on racial disparities found in all types of traffic stops, racial disparities specific to CTW recommended traffic stops, and potential costs associated with racial disparities in traffic enforcement, including degradation of community relations, private settlements arising from traffic stops, and lower rates of biking, walking, or other mobility choices among groups that experience or perceive disparate enforcement.

Our concern related to disparate enforcement and an accounting of its costs is, in part, motivated by the choice of CTW to grade mandatory bicycle helmet laws as highly effective and low cost, but promoting bicycle helmet use as less effective and high cost. The League believes that this is an oversimplification of the research and ignores costs associated with a mandatory helmet law, which in the research cited by NHTSA often includes education efforts, the use of traffic law enforcement, and potential impacts on the bicycling public through discouraging cycling. The potential for disparities in enforcement and discouragement of cycling specifically among underserved populations are unaccounted for in NHTSA's evaluation. The League believes that NHTSA's evaluation and scoring overstate the effectiveness and underestimates the costs of mandatory bicycle helmet laws by drawing such a clear distinction between the two activities, while ignoring enforcement entirely.

In a 2021 Government Accountability Office report (GAO-21-405), the GAO “found that information on pedestrian and cyclist safety countermeasures has limitations in several areas that could affect its usefulness to states in selecting effective countermeasures, as well as NHTSA's use of the guide as a tool to monitor the effectiveness of states' projects. Specifically: ...Limited or no information on some commonly implemented countermeasures [and] Limited contextual information on countermeasures' effectiveness.” NHTSA's wide difference between scores for mandatory bicycle helmet laws and promoting bicycle helmet use are emblematic of a lack of information about implementation and context, where promotion of bicycle helmet use is commonly associated with the implementation of a law. While NHTSA may believe its cited research shows clear distinctions in effectiveness and cost, but those distinctions are unlikely to be as clear in practice.

For the reasons discussed above, and other concerns with mandatory helmet laws and their enforcement, the League opposes to states only needing to cite CTW for countermeasures rated 3 or more stars. For bicycle safety, the only countermeasures rated 3 or more stars are related to mandatory helmet laws. The impact of NHTSA's proposal would be to promote mandatory bicycle helmet laws over other countermeasures to a greater extent than currently done by CTW.

The League supports NHTSA defining a way to the use of Safe System Approach as a justification for countermeasures. An innovative countermeasure that is based on the Safe System Approach should be allowed and the Safe System Approach's principles and supporting concepts should be considered substantive anecdotal evidence.

An issue that the League mentioned in our prior comments and NHTSA did not address is the need to change transportation agency culture to accept and pursue the Safe System Approach. Agency culture plays a substantial role in traffic safety culture, which has significant impacts on individual behaviors. When a transportation agency does not prioritize safety or have a culture of providing safe infrastructure then individuals are placed in situations where dangerous behaviors are more likely and perceived as acceptable. NHTSA and the states using its grant funds will struggle to improve road user behaviors if system designers do not have a culture of providing safer contexts that reinforce safe behaviors.

The League reiterates its comment that “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.’”

The League appreciates NHTSA’s agreement on the need for states to provide information that “will show who receives grant funding and what the funding is used for in a manner that allows comparisons between States.” By requiring states “to identify projects and subrecipients: project name and description, project agreement number, subrecipient(s), Federal funding source(s), amount of Federal funds, eligible use of funds, identification of P & A costs, identification of costs subject to Section 1300.41(b), and the countermeasure strategy that the project supports” and making that information in a readily accessible and searchable format NHTSA will facilitate comparisons between states and a stronger understanding of uses of NHTSA funding.

The League also appreciates NHTSA’s proposal to change the self-certification of nonmotorized safety grants to require states to submit a “list of project(s) and subrecipient(s) information the State plans to conduct.” This additional information will improve understanding of state use of NHTSA funds, facilitate comparisons and best practices, and align the nonmotorized safety grant requirements with other grant programs.

The League also welcomes NHTSA’s attention to equity and the specific actions that are discussed in the Notice of Proposed Rulemaking. The League is glad to see NHTSA’s strong support and commitment to Executive Order 13985 and hiring of staff for the Office of Civil Rights and Office of Grants Management and Operations. We look forward to the focus an insight provided by these new hires.

Similarly, NHTSA’s work with the Center for Policing Equity, National Sheriffs’ Association, and the International Association of Chiefs of Police to center equity should hopefully yield publicly available insights into state uses of NHTSA funds and how they currently center equity, or can better do so in the future. It would be very helpful for NHTSA to provide public definitions and examples of what NHTSA means by centering equity or “equitable enforcement” in order to build on those practices.

The League believes that NHTSA’s proposal to “add the requirement that State Highway Safety Agencies be authorized to foster such engagement and include demographic data in their highway safety programs” will be useful. Since, “NHTSA does not propose to require a specific form of public participation and engagement, nor to require specified outcomes” the value of the new authority and information about public engagement will be maximized if NHTSA analyzes what is done by states to foster greater understanding of the forms of public participation and engagement used by

states. While the League understands the diversity of federal and state laws that impact whether states can compensate community members for participation and attendance costs as part of public participation and engagement, the League believes NHTSA is in a position to understand state use of NHTSA funds for the purpose of community member compensation and report on those uses to promote greater equity in public participation and engagement.

The League is concerned about NHTSA continued support for Data-Driven Approaches to Crime and Traffic Safety (DDACTS). NHTSA states that “not all DDACTS-related activities are eligible uses of NHTSA’s highway traffic safety grant funds. NHTSA’s grant funds may only be used for traffic safety activities; any other use of law enforcement is not eligible for funding under the highway traffic safety grants. NHTSA will continue to evaluate DDACTS to ensure that it promotes only enforcement that is implemented fairly and equitably.” The League is concerned that the operational model of DDACTS that combines traffic safety and other law enforcement data makes determining eligible and non-eligible activities difficult. A traffic stop may be motivated by a non-traffic safety reason, but nevertheless generate a traffic law citation. Determining intent is very difficult in these situations and the League is not aware of a process for the public to gain an understanding of the use of DDACTS in a community without costly investigation.

The difficulty of determining whether a stop is a traffic stop or a stop for another law enforcement purpose is highlighted by NHTSA’s discussion of traffic stops of nonmotorized road users under the 1906 program. The League is glad to see that NHTSA proposes to allow the use of 1906 program funds to develop and implement programs to reduce the impact of racial profiling during traffic stops, including stops of nonmotorized road users. NHTSA’s guidance to states that the “statutory use of funds provision is limited to traffic stops, so any stop of a nonmotorized road user that is covered by the program would have to occur in that context” highlights the context and fact-specific nature of determining the eligibility of a stop for NHTSA funding. In the [Los Angeles Times](#) story that we referenced in our prior comments, “A missing reflector and other small equipment infractions, for example, were the basis for at least 44% of the Sheriff’s Department’s bike stops analyzed by The Times. More than 8 of every 10 of those stops led to searches.” These stops have a clear traffic safety context – the traffic law requiring a reflector is a valid law that can justify a stop – but context also shows that the purpose may actually be a non-traffic safety law enforcement purpose. Additional guidance on how states should differentiate between traffic stops and pretextual stops would be appreciated.

The League looks forward to working with NHTSA and states administering NHTSA grants in the future to improve traffic safety and equity. The Notice of Proposed Rulemaking is an important step towards states and NHTSA providing more accessible and understandable information on NHTSA grant uses. We sincerely hope that the implementation of the Final Rule will create greater transparency and foster the creation and use of more effective countermeasures. The United States has a traffic safety crisis and NHTSA grants should be an important part of addressing that crisis and changing the traffic safety culture of the United States. If you have any questions about the League’s comments, please contact Ken McLeod, policy director for the League, at ken@bikeleague.org.

Best,

Ken McLeod

Policy Director
The League of American Bicyclists