

STATEMENT OF
THOMAS G. ECHIKSON
CHIEF COUNSEL
FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON TRANSPORTATION AND PUBLIC ASSETS
U.S. HOUSE OF REPRESENTATIVES

HEARING ON

MAP-21 PROGRAM CONSOLIDATION

DECEMBER 8, 2015

Chairman Mica, Ranking Member Duckworth, and Members of the Subcommittee, thank you for the invitation to appear before you today on behalf of the Federal Highway Administration (FHWA) to discuss program consolidation under the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the implementation of key provisions designed to improve administrative flexibility and efficiency and accelerate project delivery. Accompanying me today are Brian Bezio, FHWA Chief Financial Officer, and Peter Stephanos, Director of FHWA's Office of Transportation Performance Management.

Consolidation of Programs

MAP-21 consolidated a complex array of FHWA programs into a smaller number of broader programs, with the eligibilities generally continuing under such programs. This revised program structure has helped provide our grantees with flexibility to deliver projects more efficiently. It also anticipates the flexibility grantees will need to make data-driven investment decisions to meet performance targets. However, while FHWA programs were consolidated for funding purposes, the same activities previously authorized remained eligible for funding under MAP-21. As such, FHWA remains responsible for administering a \$42 billion program with eligible projects of a comparable number and breadth as under the pre-MAP 21 program. Because FHWA still must review and approve the eligibility of projects, including projects using funding still available under pre-MAP-21 authorities, neither the number nor the complexity of the projects we review has diminished. In order to carry out our dual mission of protecting taxpayers and advancing national goals, FHWA must still provide effective oversight of State implementation of the Federal-aid highway program. FHWA personnel remain focused on providing appropriate oversight, shortening project delivery, and advancing innovation.

In the past decade, while funding for the Federal-aid highway program has grown, the number of full-time employees (FTEs) employed to support this growth has remained relatively constant. In Fiscal Year (FY) 2003, 2,366 FTEs were dedicated to administer a \$30.8 billion program. In FY 2012, FHWA used 2,302 FTEs to administer a \$40 billion program; in FY 2014, FHWA

used 2,281 FTEs to administer a \$42 billion program. It is important to note that FHWA is organized around areas of expertise, including safety, infrastructure, operations, environment, and planning, rather than by program, meaning the FTEs are not specifically dedicated to specific programs. Therefore, disaggregating an individual's time based on a particular program is not possible. Many discontinued or streamlined programs are still active as grantees spend down prior balances. Similarly, projects that were eligible under these discontinued programs still remain eligible under the larger, consolidated programs. While the structure under MAP-21 provides greater flexibility to the States using these funds, the program still requires the same amount of Federal oversight. In short, FHWA still has many of the same responsibilities for programs under MAP-21 as existed prior to MAP-21.

The areas around which FHWA has been and continues to be organized remain critical to delivering the consolidated program structure under MAP-21. More than two-thirds of FHWA's employees are located in our field offices, providing valuable expertise and working directly with State departments of transportation and other partners to deliver projects. FHWA staff workload is a function of the number and complexity of projects that FHWA oversees, not the number of programs.

Performance Management

The cornerstone of MAP-21's Federal highway program transformation is the transition to a performance-based program, which sets the stage for States and metropolitan planning organizations (MPOs) to make more strategic and efficient investment of Federal-aid highway funds through performance-based planning and programming. The performance-based structure promotes the use of system information to make informed investment and policy decisions to achieve the national performance goals established in statute. These performance measures are intended to assist States and MPOs in making data-driven funding and investment decisions.

The Department has been working diligently to finalize the performance management rules as quickly as possible. The MAP-21 requirements cover a number of performance areas that vary in maturity levels. In some cases, we have had to establish the new methods, standards, and data sources necessary to implement an effective national program. In addition, all States and MPOs receiving Federal-aid highway funds will need to comply with these new requirements. For these reasons, we have worked through many proposed implementation options, carefully considering the impact on these entities. Additionally, the Department felt strongly about engaging the public early before the formal rulemaking process began. Right after President Obama signed MAP-21 into law, the Department began a series of stakeholder engagements in which nearly 10,000 people participated.

FHWA is using a comprehensive approach to implement performance management, publishing rulemakings in three phases related to safety; infrastructure; and freight, traffic congestion, and air quality. In timeframes coinciding with these phases, FHWA also is issuing three program-related rulemakings: planning, highway safety improvement, and asset management. FHWA has published notices of proposed rulemaking (NPRM) for all but one of these rulemakings and anticipates publishing the final rules in the first half of next year. FHWA expects to publish the final NPRM focused on measures for the performance of the National Highway System, the

Congestion Mitigation and Air Quality Improvement program, and freight movement on the Interstate System soon. To provide transparency regarding these rulemakings, the Department updates the schedules on a monthly basis on its website:

<http://www.transportation.gov/regulations/report-on-significant-rulemakings>.

At FHWA, we are looking forward to reaping the benefits that the performance-based policy framework in MAP-21 will create in terms of helping maximize investments. By focusing on national goals and increasing accountability and transparency, these changes will improve decision-making in States and MPOs through more informed planning and programming. Implementing the performance management requirements and assisting States and MPOs as they transition toward this framework remains a priority at FHWA. We believe performance management is a key tool in preparation for the Federal-aid highway program of the future.

Project Delivery and Innovation

MAP-21 included provisions designed to further increase innovation and improve efficiency in the delivery of transportation projects. Immediately after passage of MAP-21, FHWA began working aggressively to implement these provisions by conducting outreach sessions with stakeholders, issuing guidance, and working collaboratively with other Federal agencies. FHWA and the Federal Transit Administration (FTA) jointly took swift action to implement MAP-21 provisions requiring regulatory changes in the area of project delivery, including the exclusion from requirements under the National Environmental Policy Act to prepare an environmental impact statement or environmental assessment for actions following declarations of emergency. FHWA and FTA also published quickly an NPRM for new categorical exclusions related to actions within the operational right-of-way and for projects with limited Federal financial assistance.

Many MAP-21 provisions complement the successes of FHWA's Every Day Counts (EDC) partnership with States, local governments, and the private sector. EDC focuses on shortening project delivery and getting proven innovations quickly and broadly deployed to benefit road users. Designed to complement other initiatives centered on innovative technologies, practices and investment, EDC plays an important role in helping transportation agencies fulfill their obligation to the American people to deliver the greatest value for the tax dollars spent. Simply stated, EDC is a State-based model to identify and rapidly deploy proven, yet underutilized, innovations to move projects from concept to completion more efficiently, saving time and money, enhancing roadway safety, reducing congestion, and improving environmental sustainability.

Congress incorporated into MAP-21 process innovations advanced in EDC, such as Programmatic Agreements, and innovative contracting strategies such as Construction Manager/General Contractor (CM/GC). CM/GC and other innovative contracting methods allow a project owner to evaluate new ideas, receive constructability advice from the contractors, and consider approaches that have the potential to reduce time, cost, and overall risk in the construction of projects.

In addition to process innovations, technology innovations like Safety Edge_{SM} and High Friction Surface Treatments are improving safety. Other innovations are helping to deliver transportation projects faster and cheaper. Using Accelerated Bridge Construction (ABC), transportation agencies have been able to replace bridges over a weekend (within 48 to 72 hours), reducing overall project construction time by months to years in some cases. Most States now have a specification and/or contractual language for use of Warm Mix Asphalt, which is mixed and placed at lower temperatures—saving fuel used for production; extending the paving season; and reducing emissions, odors, and fumes.

Across the Nation, transportation stakeholders want to look beyond "business as usual" and become more innovative in the way they deliver projects. Through the EDC model, FHWA works with stakeholders to identify a new collection of market-ready innovations to champion every two years. After the process of selecting EDC innovations for deployment is completed, transportation leaders from across the country gather at regional summits. These summits provide transportation professionals the opportunity to learn about and assess the innovations being promoted through EDC, exchange ideas with their agency and industry counterparts in neighboring States, and provide feedback to FHWA on the support and resources needed to adopt the innovations in their own States. These summits also begin the process for States and locals to focus on the innovations that make the most sense for their unique program needs, establish performance goals, and commit to finding opportunities to get those innovations into practice.

Forty-nine States have created State Transportation Innovation Councils (STICs), which are often responsible for the evaluation of innovations and oversight of deployment efforts. Co-chaired by a State DOT leader and FHWA Division Administrator in each State, the STICs can encourage innovation and cooperation among a wide range of partners at the State and local levels and allow each State to customize EDC implementation to its own needs and challenges. The STICs have become an essential component in helping create a national network to deploy innovation and get the most value out of every Federal, State, and local transportation dollar.

Through three cycles of EDC, a total of 32 proven innovations and enhanced business processes have been promoted, saving millions that can be used to deliver more projects for the same investment. Since EDC's inception in 2010, every State transportation agency has used eight or more of the innovations promoted under the initiative, and some have adopted over twenty. Through EDC, we are saving money, saving time, and saving lives—exactly the results we believed were possible if we and our State partners made innovation a standard industry practice.

Conclusion

As you know, last week, Congress passed a long-term transportation authorization bill, finally ending the cycle of continued short-term patches that create uncertainty for project sponsors and inhibit their ability to plan effectively. FHWA will continue to help prepare States and locals to deliver the highway program of the future while providing appropriate oversight and effective implementation.

Thank you again for the invitation to appear before you today to discuss MAP-21 program consolidation and implementation. I will gladly answer any questions at this time.

###



Echikson, Thomas G.

Chief Counsel, Office Of The Chief Counsel

Tom Echikson joined FHWA as Chief Counsel in August 2014. As Chief Counsel, Tom is part of the Agency's leadership team and oversees a team of 49 lawyers responsible for all legal matters within FHWA. This work includes legal and policy matters arising under federal transportation, administrative and environmental laws and touches upon an extensive range of subjects. He works closely with Agency leadership and the Agency's program offices.

Before joining the FHWA, Tom spent more than 25 years in private practice at several law firms in Washington DC as an environmental counselor and litigator. His work focused on environmental enforcement, litigation, regulatory counseling, permitting, advocacy and toxic tort defense. He defended clients in civil and criminal enforcement matters under the Clean Air Act, Clean Water Act, RCRA, CERCLA, the Hazardous Materials Transportation Act, and the Energy Policy and Conservation Act. He also counseled clients and litigated cases involving claims for costs and damages associated with contaminated properties, including toxic tort defense, contaminated site cleanup, cost recovery and natural resource damage issues. Additionally, he represented clients in administrative and regulatory rulemaking, permitting and variance proceedings before the U.S. Environmental Protection Agency and agencies within the Department of Interior, including challenges to and defense of federal environmental and natural resource regulations in the District Courts and Courts of Appeal. A large part of his practice involved providing counsel to clients regarding compliance with and litigation arising under NEPA and other natural resource laws in the context of federal permitting and authorizations.

Tom received a B.A. in Earth Sciences and Environmental Studies from Dartmouth College, and a J.D. from Northwestern University School of Law. He is licensed to practice law in Washington, D.C. and New York.