



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

# Memorandum

Subject: **ACTION**: Cancellation of FHWA Directive:  
Order 5020.1A Repayment of Preliminary  
Engineering Costs

Date: December 20, 2024

From: Hari Kalla  
Associate Administrator for Infrastructure

In Reply Refer To:  
HISM-10

Thru: Arlan Finfrock  
Associate Administrator for Administration

To: Gloria M. Shepherd  
Executive Director

## **ACTION REQUESTED**

We request the cancellation of Federal Highway Administration (FHWA) Order 5020.1A, Repayment of Preliminary Engineering Costs, issued June 8, 2018 ([FHWA Order 5020.1A](#)).

## **SUMMARY**

We have determined that FHWA Order 5020.1A does not conform with current law, as amended by the Infrastructure Investment and Jobs Act (Public Law 117-58), also known as the Bipartisan Infrastructure Law (BIL). As a result, the Order should be cancelled and removed from the active FHWA directives Website.

## **BACKGROUND**

The BIL amended Section 102 of Title 23, United States Code (U.S.C.) by striking language in subsection (b) that required a State to repay preliminary engineering (PE) costs reimbursed with Federal-aid funds if a project did not advance to construction or right-of-way acquisition within 10 years of the funds becoming available (the “10-year PE rule”). As the revision to 23 U.S.C. 102(b) removed the 10-year PE rule, there is no longer a requirement for States to repay PE costs, and there is no authority for the Secretary to accept repayment of such funds as previously allowed under this provision of law.

On February 4, 2022, the Office of Infrastructure sent an email to the division offices informing them that because the 10-year PE rule had been struck, divisions and States

should temporarily hold any actions to identify PE projects that are nearing or beyond the 10-year limit and any repayment actions associated with Order 5020.1A until additional guidance was provided.

On December 9, 2022, the Office of Infrastructure provided such guidance in the form of a memorandum, “Actions Related to FHWA Order 5020.1A – Repayment of Preliminary Engineering Costs,” stating that if a determination was made prior to October 1, 2021, that PE costs must be repaid, the State must make such repayment; if a determination on repayment was not made prior to October 1, 2021 or the project was in compliance with the 10-year PE rule prior to the effective date of the BIL, then no repayment would be required. For projects where repayment was required, the memorandum stated that repayment must be completed within 90 days after the State was notified of the memorandum, in accordance with FHWA Order 5020.1A.

After review of FHWA Order 5020.1A, we determined that this Order does not conform with current law and should be cancelled and removed from the active FHWA directives Website. All Office of Inspector General recommendations on this subject have been closed (see [FHWA Does Not Effectively Ensure States Account for Preliminary Engineering Costs and Reimburse Funds as Required | DOT OIG](#)). A Question-and-Answer document linked to, and providing additional information about, the Order has been removed from FHWA Websites. In addition, the FHWA regulation on this subject (23 CFR part 630) is being revised and provisions related to the 10-year PE rule will be proposed for deletion.

With your approval, we will notify the directives program manager in the Office of Administration to officially cancel the Order and remove it from the active FHWA directives Website.

### **RECOMMENDATION**

I recommend that you approve the cancellation of Order 5020.1A.

Executive Director

APPROVED: 

DATE: 12.20.24

COMMENTS: \_\_\_\_\_