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Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Federal Highway Administration, Docket No. FHWA-2022-0008

To the Department of Transportation:

Thank you for the opportunity to provide input on the new National Electric Vehicle Infrastructure Formula Program (EV Charging Program) that the U.S. Department of Transportation (USDOT) will be administering pursuant to the recently passed Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58). We offer these comments in response to the Federal Highway Administration (FHWA) notice of proposed rulemaking published on June 22, 2022, requesting Comments to inform the development of the EV Charging Program. Our comments address Sections 680.106, 680.112, and 680.116 of the proposed regulations, as well as our general concerns regarding access for low-income consumers.

The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, including energy affordability. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of practice treatises on consumer credit laws and unfair and deceptive practices. NCLC attorneys have written and advocated extensively on all aspects of consumer law and energy justice matters affecting low-income people, conducted trainings for tens of thousands of legal services and private attorneys, and provided extensive oral and written testimony to numerous Congressional committees on various topics. In addition, NCLC attorneys regularly provide comprehensive comments to federal agencies on the regulations under consumer laws that affect low-income consumers. These comments were written by NCLC attorneys Jenifer Bosco, John Van Alst, Olivia Wein, senior policy analyst John Howat, and legal intern Nketiah Berko and are submitted on behalf of our low-income clients.

As an overall recommendation we urge the Federal Highway Administration (FHWA) to continue to prioritize the needs of low-income households and residents of environmental justice communities by basing program design on stakeholder input from members of the affected communities, taking measures to hold low-income households harmless from financial impacts of EV charging programs, ensuring that low-income households can access the financial and other benefits of electric vehicles, adopting measures to address racial disparities, and dedicating an equitable share of resources to low-income, environmental justice and vulnerable households and communities. At a minimum, investments should meet the Administration's Justice40 goals. Input from affected, traditionally underserved communities can ensure that the EV charging program is designed with local needs in mind, thus promoting an equitable distribution of program benefits.

We note that these comments apply only to charging infrastructure for electric vehicles, and we are not addressing hydrogen, propane, or natural gas fueling.

Charging Station Accessibility

Section 680.106 (b)(2) of the proposed regulations requires charging stations to "have at least four charging network-connected Direct Current Fast Charger (DCFC) ports and be capable of simultaneously charging at least four EVs." Older electric vehicles, however, may not be compatible with DCFC ports. Additionally, DCFCs, due to their higher installation and operation costs, will likely be more expensive for consumers, even those whose EVs are compatible with DCFC ports. We therefore recommend that the FHWA also require NEVI-funded charging stations to also have at least two charging network-connected Level 2 AC charging ports and consideration for a Level 1 charging port for emergencies and for e-bikes and micro mobility devices.

We recommend that charging stations accept physical chip card readers in addition to contactless charging. We also recommend that the FHWA require states to provide EV drivers with a payment card at no cost. Nearly twenty percent of Americans are unbanked or underbanked, with markedly higher rates for Black and Hispanic Americans. As the proposed regulations stand, however, charging stations could either exclude unbanked drivers entirely or force them to rely on prepaid cards, which may require reload fees as high as \$5.95 per reload. Providing consumers with a no-cost payment card is therefore vital for ensuring that low-income, particularly Black and Hispanic, drivers can take advantage of EV charging stations. Additionally, states should work to establish locations where consumers can load these cards. Alternatively, the FHWA could explore models such as the Lime Access system, which allows consumers to pay with cash after showing their payment code at a "participating payment location."

Additionally, we believe the proposed regulations should specify in greater detail requirements for charging stations to ensure equitable access for persons with disabilities. These should include, but not be limited to, the ADA requirements outlined by the Department of Energy in its November 2014 guidance, such as pedestal-mounted charging stations, accessible ramps or

curb-cuts, and barrier-free routes to charging equipment). Additionally, the proposed regulations should reference current Access Board recommendations on EV charging stations in the Architectural Barriers Act standards; recommend that charging stations provide attendant services whenever possible and advertise provision of such services on publicly available lists, per the Consortium for Citizens with Disabilities' (CCD) response to FHWA's earlier request for information.

California Plug-In Electric Vehicle Collaborative (40 pages of guidance for accessibility):
https://www.calbo.org/sites/main/files/file-attachments/ca_accessibility_for_ev_charging.pdf?1524861081

Similarly, while we applaud § 680.106(f)(4) for requiring charging station payment instructions to “provide multilingual access,” we urge the FHWA to outline more specific requirements to guarantee drivers with limited English proficiency are receiving full access. According to the 2017 American Community Survey, approximately 25.9 million individuals, or roughly 9% of the U.S. population, were considered limited English proficient (LEP). LEP refers to anyone above the age of five who reported speaking English less than “very well,” according to the U.S. Census Bureau. Consequently, the proposed regulations should require that not only payment instructions but also all disclosures (e.g., regarding price changes) and other communications at the charging station be translated, at a minimum, in Spanish, and into other languages as needed. This requirement should extend to smartphone apps that associated with the charging station. Approximately five-sixths (83.4%) of all LEP residents speak one of eight languages: Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole. About 64% of the LEP population speaks Spanish, followed by Chinese, spoken by 7% of the LEP population. Charging station operators should be required to analyze existing regional language preference data and provide other language options accordingly. FHWA should also consider requiring adequate signage to direct drivers to chargers; signs in English, Spanish and other languages as needed; and directions on charging stations themselves in multiple languages (e.g., the ability to select the appropriate language from a list on the home screen). The regulations could require, at a minimum, access to translations with a QR code, though this might inhibit the ability of LEP drivers without a smartphone to access such translations.

Regarding § 680.106(i), which sets a minimum five-year period for maintenance in compliance with NEVI standards from the date of installation, we recommend the FHWA increase the minimum maintenance compliance period to 10 years. A significant amount of charging stations in many U.S. regions are either broken or awaiting service. As the EV charging program pursues increased EV uptake, therefore, the FHWA should ensure that program infrastructure is dependable. Absent stringent requirements, charging stations may fall into disrepair and eventual disuse, particularly in areas where it may be less profitable for private entities to conduct maintenance, such as rural or low-income communities. Too short a minimum maintenance period thus risks undermining the long-term viability and aims of the EV charging program. During this maintenance period states should have a robust complaint collection system that allows consumers to report problems and strict timelines for repairs to be made. These reports should be publicly accessible as part of the record keeping requirement.

In general, the proposed regulations should also incorporate and build upon the standards outlined in the FHWA's February 10, 2022, EV Charging Program guidance (Guidance). For instance, the Guidance helpfully encourages EV chargers to be spaced a maximum distance of 50 miles apart along designated alternate fuel corridors (AFCs). To provide more robust service for low-income consumers, we ask that the FHWA require this 50-mile-maximum in the proposed regulations as well. Setting this requirement would increase EV charger accessibility among underserved and disadvantaged communities, particularly those residing near rural corridors. Likewise, while we also applaud the Guidance for stating that State Plans should "target at least 40 percent of the benefits towards disadvantaged communities," we urge the FHWA to incorporate this target into the proposed regulations. Moreover, the FHWA should require that these benefits be economic in nature to ensure that benefits to disadvantaged communities are both quantifiable and trackable. For instance, the proposed regulations could require 40 percent of all revenue/savings from NEVI implementation be devoted to payment subsidies for low-income drivers. Alternatively, or in addition to this, the regulations could require that states establish job training programs in disadvantaged communities regarding the installation, operation, and maintenance of EV infrastructure to bolster sustainable, green employment in these communities. Yet another example of tangible benefits for disadvantaged communities could be a requirement that 40 percent of organizations that operate, maintain, and install EV infrastructure be businesses owned by economically disadvantaged individuals, such as women or minorities.

Finally, the Guidance directs states to develop their plans "through engagement with rural, underserved, and disadvantaged communities." We urge FHWA to codify this guidance in the proposed regulations. As NCLC noted in our previous comment, in some communities there may be considerable multifamily housing with little access to individual home charging, which may warrant nearby public charging. Other communities may be concerned that the installation of EV chargers signals gentrification. Furthermore, different communities may have varying notions of how close charging stations should be to the designated AFCs. Consequently, the proposed regulations should explicitly require partnership with low-income and environmental justice communities to ensure that EV chargers are located where community members see a need, in areas most frequented by low-income consumers.

Price Communication and Affordability

We commend the FHWA for requiring chargers to display and base the price for electricity to charge in \$/kWh in § 680.116, as well as the requirement that the price remain consistent throughout the session. In addition, however, we urge the FHWA to require that price structures and any fees besides the base price of electricity be clearly posted and explained at the charging station itself, in addition to providing the information in an application or website, as currently outlined in § 680.116(a)(3). Moreover, we ask that the FHWA explicitly state under which circumstances charging stations may deviate from the base price of electricity. Specifically, the proposed regulations should impose restrictions on parking

fees which otherwise might be added to charging fees and require reasonable notice prior to fee changes at charging stations.

Additionally, we urge the FHWA to limit charging stations from excessively increasing prices during periods of high demand. Electricity pricing is sometimes subject to "demand charges" that may create price spikes or price volatility at charging stations. For charging stations supported under this program, demand charges should not be passed along to the driver. The program should include some limits or caps on price increases charged to drivers, particularly increased prices due to high demand for charging stations or utility demand charges. For instance, DOT could consider a requirement that the NEVI-funded charging stations could not raise prices for drivers during times of high demand for charging more than 10% above the lowest cost or most typical cost of charging.

Furthermore, the FHWA should consider including in the proposed regulations policies to keep charging at public stations affordable for low-income drivers. Possibilities may include, but should not be limited to, the following:

- Limits on prices at chargers located in low-income and environmental justice communities
- Free or discounted charging for low-income drivers
- Subsidies or monthly credits for low-income drivers, such as pre-loaded debit cards sent to low-income drivers when they purchase used EVs

Other Comments

Data Collection and Equity Tracking

While we applaud the data submittal requirements outlined in § 680.112, in particular the annual community engagement outcomes report, the proposed regulations nonetheless could stand to be more robust. To adequately track equity outcomes, the FHWA should require states to collect and report the following information for each charging station: de-identified information about the location where the car is registered, payment method, type of EV driven, participation in a membership plan, language preference, revenue and usage, accessibility services, and any other factors which may be relevant. States should also collect information about reliability, such as the number of hours that chargers were not operational. Additionally, states should collect information about consumer complaints. Finally, much like the community engagement activities report, states should be required to make all of this information publicly available.

Public Transit Electrification Coordination

Furthermore, the proposed regulations are silent on the issue of coordinating public transit electrification efforts with state and local governments. We urge the FHWA to specify in greater detail the steps state and local governments should take to electrify their fleets of public transit

vehicles in order to avoid excessive load on the electrical grid, and to deploy infrastructure in an efficient manner.

Thank you for the opportunity to offer these comments on the development of the EV Charging Program. Please contact us if you have questions or would like additional information. We can be reached at jbosco@nclc.org, jhowat@nclc.org, jvanalst@nclc.org, and owein@nclc.org.