



# EXPLAINER

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## A Roadmap to Sustainable and Equitable Implementation of the Infrastructure Investment and Jobs Act

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### Overview

The \$1.2 trillion bipartisan “Infrastructure Investment and Jobs Act” (IIJA/P.L. 117-58), signed into law by President Biden on November 15, 2021, represents a historic investment to restore the country’s crumbling infrastructure and create millions of good-paying union jobs.

IIJA also takes many important steps to confront the climate crisis, including investments to upgrade transit systems, electrify school buses and ports, and improve grid resilience. The bipartisan infrastructure law also includes the largest ever U.S. investment in water infrastructure to remediate lead pipes and clean up toxic “forever chemicals” known as PFAS, more than \$5 billion to reduce wildfire risk and restore forest ecosystems, and \$7.5 billion to build out a nationwide electric vehicle (EV) charging network.<sup>1</sup>

To ensure the law helps [achieve](#) President Biden’s emissions reduction goals by 2050, there are a number of important steps the Administration can take. The transportation sector is the [largest contributor](#) to U.S. greenhouse gas emissions. Thus, it is important to ensure that the law is not implemented in a way that results in more vehicles miles traveled. Successful implementation of the bipartisan infrastructure law requires maximizing U.S. greenhouse gas emissions reductions and achieving President Biden’s [Justice40 Initiative](#), a government-wide pledge to commit 40 percent of federal investments to disadvantaged communities. To accomplish this second goal, the White House Office of Management and Budget (OMB) must issue [final guidance](#) as soon as possible that includes both quantitative and qualitative metrics to assess agencies’ progress.

### IIJA Implementation: Areas of Opportunity and Concern

**Surface Transportation:** IIJA included a five-year transportation reauthorization for 2022-2026, more than doubling the amount provided in the Fixing America’s Surface

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<sup>1</sup> See “A Guidebook to the Bipartisan Infrastructure Law for State, Local, Tribal, and Territorial Governments, and Other Partners.” *The White House*. January 31, 2022.

Transportation (FAST) Act of 2015, from \$305 billion to \$643 billion.<sup>2</sup> For the first time, Congress also included \$1 billion for the Reconnecting Communities Fund, acknowledging and addressing the [racist and damaging history](#) of highway building that displaced more than one million Americans, most of whom were African-American, in the 1950s and 1960s. Compared to the FAST Act, IJJA includes a 90 percent increase in highway program funding (\$226 to \$432 billion), a 79 percent increase in public transportation funding (\$61 to \$109 billion), and a 750 percent increase in railroad infrastructure funding (\$12 to \$102 billion).

The vast majority of transportation funding — approximately 70 percent — will be distributed by the Department of Transportation (DOT) to states through [formula programs](#). There are about \$3 in formula grants for every \$1 in discretionary and competitive grants, and 87 percent of highway funds — the largest single pot in the bipartisan infrastructure law — are distributed as formula grants.<sup>3</sup> Because formula funding is distributed directly to states, DOT has limited ability to shape how these dollars are spent. As a consequence, states typically use formula funding to widen highways and build more roads instead of maintaining existing infrastructure. This increases both congestion and carbon emissions.

To avoid this outcome, the Federal Highways Administration (FHWA) issued an unprecedented [memorandum of administrative guidance](#) encouraging states to adopt a fix-it-first approach and reminding them of their responsibility to repair existing infrastructure (23 USC 116) to participate in the federal transportation program. The memo also included a reminder that state formula funding can be used to repair “off-system” roads and bridges not owned by the state.

To encourage states to adopt a “fix-it first approach” DOT should develop robust performance measures for Statewide Transportation Improvement Programs (STIP). US Code (23 USC 119 (e)) provides a particularly strong framework for DOT to generate more stringent regulations clarifying expectations on asset management plans for the use of [National Highway Performance Program](#) (NHPP) dollars.<sup>4</sup> DOT should also set data standards for STIPs that would make it easier to quantify the impacts of federal dollars towards carbon reductions and increased equity and safety.

Approximately 30 percent of surface transportation funding in IJJA is discretionary. DOT distributes these funds on a competitive basis, giving the agency immense opportunity to shape transportation policy for the better across the country. Proposal review and scoring rubrics should be weighted to prioritize low-income and minority

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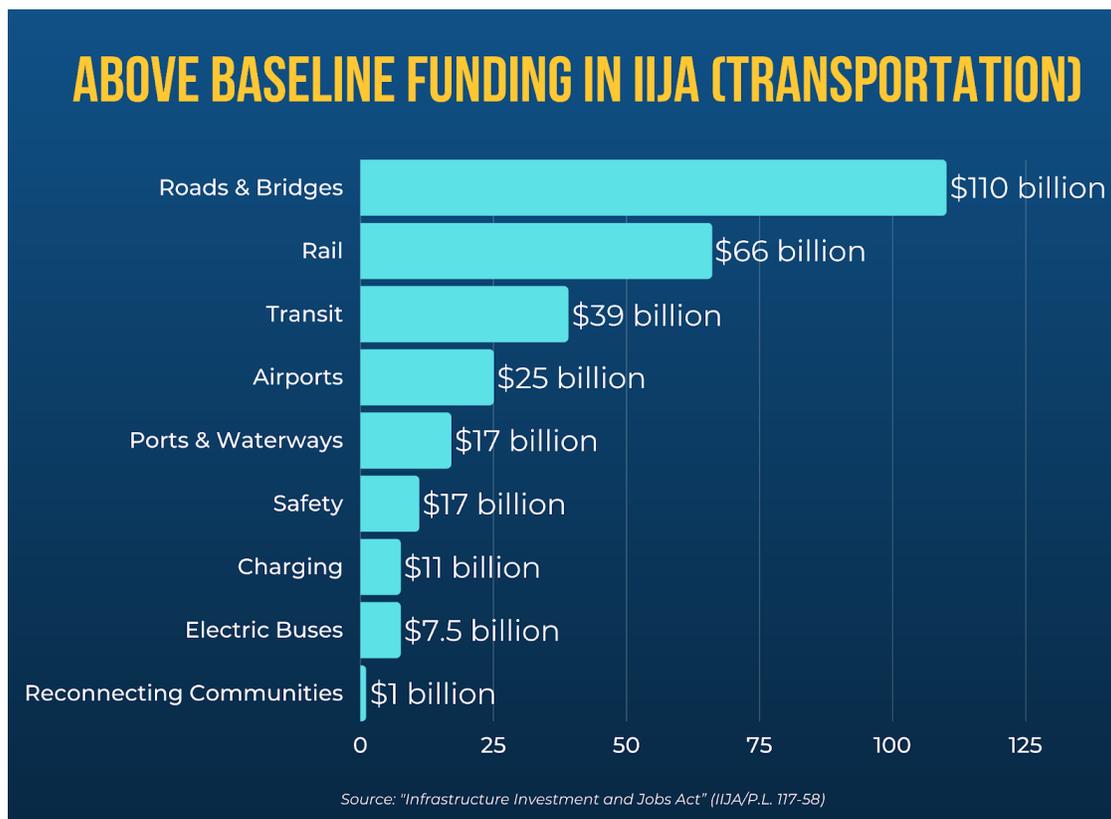
<sup>2</sup> “Show me the money: Financial breakdown of the infrastructure law.” *Transportation for America*. December 15, 2021.

<sup>3</sup> Of the \$432 billion in IJJA for highways, approximately \$312 billion is sourced from the gas-tax-funded Highway Trust Fund (HTF) and \$110 billion is sourced from general funds from the US Treasury. IJJA also provides \$91 billion for transit, \$12 billion for highway safety, and \$66 billion for passenger rail.

<sup>4</sup> IJJA §11105.

communities.<sup>5</sup> Successful proposals should also require a demonstrated track record of community engagement in proposal narratives. When prioritizing applications, DOT should also factor in how projects fit into the broader transportation context. Historically, DOT has assessed individual grant applications in isolation, but this approach fails to hold local and state governments accountable for the choices they make with formula funds.<sup>6</sup> For example, a state may apply for DOT funding to make improvements to commuter rail service while at the same time spending billions of formula dollars on highway-widening projects that significantly increase air pollution — projects like Louisiana’s \$750 million [I-49 inner-city connector](#) that would bulldoze a Black neighborhood in Shreveport. Consequently, DOT discretionary funding is also an opportunity to indirectly influence states’ use of formula funding. Fortunately, DOT has already begun to enact some of these changes, most notably in January’s [Notice of Funding Opportunity](#) (NOFO) for Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grants.

**Figure 1**



<sup>5</sup> “Rewarding Regional and Statewide Progress Through Competitive Federal Grant Applications.” *Center for American Progress*. December 13, 2021.

<sup>6</sup> Under 49 U.S.C. 5304(g), states are required to develop a Statewide Transportation Improvement Program (STIP), a statewide prioritized listing of transportation projects consistent with the long-range statewide transportation plan, metropolitan transportation plans, and transportation improvement programs (TIPs). A project must be listed in a STIP to receive federal funds.

**Conservation and Forestry:** IJJA makes historic investments to restore ecosystems, protect America's national parks, forests, and grasslands, and to uphold trust responsibilities to deliver long-promised water resources to tribal communities. To ensure these programs help to achieve the Biden Administration's goal of conserving 30 percent of our lands and waters by 2030, the Forest Service must issue clear, concrete guidance and direction for the implementation of IJJA, clarifying that the influx of funding should be spent on projects that:

- Maintain or restore the ecological integrity and connectivity of forests and grasslands to mitigate and adapt to climate change.
- Provide habitat for plant and animal diversity and species conservation to keep common native species common, contribute to the recovery of threatened and endangered species, conserve proposed and candidate species, and protect species of conservation concern under the Endangered Species Act and complementary state regulations.
- Maintain or restore watersheds, water resources, water quality (including clean drinking water), and the ecological integrity of riparian areas.
- Maintain or restore carbon capture and storage potential on national forests by conserving old and mature forests.
- Provide opportunities to connect people with nature through sustainable recreation.
- Meaningful consultation with stakeholders, including Nation-to-Nation consultation with tribes, and the allocation of resources to support Indigenous lands.
- Prioritize funding projects that advance recovery actions in the recovery plans of threatened and endangered species and ensure that vegetation treatment projects do not impede their recovery.
- Restoration projects should promote biodiversity through the use of locally adapted native seeds and plants to promote biodiversity and restore native plant communities.

The bipartisan infrastructure law also provides \$5.16 billion for hazardous fuels reduction projects to reduce community wildfire risk.<sup>7</sup> Guidance for hazardous fuels and vegetation management spending should establish that the health, retention, and restoration of populations of old and mature trees is a USDA Forest Service management priority in accordance with the intent above. A top priority for projects carried out through this section should be the protection of communities, and projects should be designed based on the best available science and should be carried out in a manner that protects wildlife habitat, water quality, and other important forest values. Public input should be emphasized, and approved projects should be collaboratively developed, where possible. The guidance should also make

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<sup>7</sup> IJJA §40803.

it clear that hazardous fuels reduction projects outside the Wildland-Urban Interface (WUI) should also be non-commercial, collaboratively developed, and prioritize prescribed fire over thinning.

Finally, IJJA created a new legislative Categorical Exclusion (CE) for fuel breaks allowing for up to 24.5 miles of 1,000-foot-wide clearings to be established without environmental review.<sup>8</sup> Clear guidance and limitations are essential to ensure this provision is implemented appropriately. While 1,000 feet is the maximum, the Forest Service should determine the appropriate size for each fuel break project and not default to the maximum. The Forest Service's Washington Office should create the process for determining the appropriateness of fuel break size. Furthermore, linear features should be defined as only those listed in the bill — roads, water infrastructure, transmission and distribution lines, and pipelines. Forest Service guidance should also prevent improper segmentation of treatment units to circumvent acreage limits, and public collaboration must include public notice, comment, and scoping and must facilitate collaboration by interested persons.

Similarly, the Forest Service (and, if feasible, BLM) need to firmly establish that protecting and restoring populations of [old and mature trees](#) are priorities for the agencies to ensure ecological integrity and protect functional values, such as watershed protection, carbon storage, and connectivity. To achieve this goal, the Forest Service should appoint a federal advisory committee including scientists, tribal representatives, and stakeholders to help develop and implement a scientifically sound and culturally informed management policy for older and mature forests, advising both the inventory and regulatory processes recommended above.

Examples of recommendations that could inform such a strategy include:

- Pause all logging of trees over 150 years old on federal lands nationwide until a federal strategy is developed.
- Require a national inventory of existing old and mature forests (old forests and mature forests that are highly productive at capturing and storing carbon are two attributes that should be included in the American Conservation and Stewardship Atlas).
- Implement the stated strategy through measures designed to establish durable protections for older and mature forests, like a regional or national rulemaking.

**Drinking Water and Wastewater Infrastructure:** IJJA included nearly \$36 billion in total investments for Environmental Protection Agency (EPA) programs for drinking water infrastructure. This includes \$15 billion for lead service line replacement under the Drinking Water State Revolving Fund (DWSRF) and \$4 billion for PFAS/emerging

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<sup>8</sup> IJJA §40806.

contaminants allocated to the DWSRF.<sup>9</sup> This single largest investment in water infrastructure in U.S. history is especially important given lead contamination continues to affect millions of homes, businesses, and schools and is linked to a variety of health problems. According to the [EPA](#), children are most at risk.

On March 8, 2022, the EPA released a [memo](#) outlining an implementation strategy for the \$43 billion in water infrastructure under the State Revolving Fund (SRF) programs made available by IJJA. The memo is a strong first step and a positive indicator that the EPA is committed to prioritizing equity in its implementation of the bipartisan infrastructure law.

The Safe Drinking Water Act (SDWA) provides that the DWSRF funds can be used “only for expenditure...of a type or category which the [EPA] Administrator has determined, through guidance, will facilitate compliance with” EPA drinking water standards “or otherwise significantly further the health protection objectives of this subchapter.”<sup>10</sup> EPA’s memo indicates that this new will in fact be prioritized for disadvantaged communities that need it most. Specifically, EPA guidance makes clear that the “additional subsidies” of grants and 100 percent principal forgiveness in IJJA’s DWSRF provisions must be allocated to disadvantaged communities. The SDWA mandates that such funding be allocated to disadvantaged communities.<sup>11</sup> The memo also indicates that state intended use plans should prioritize funding infrastructure projects that benefit disadvantaged communities.

EPA’s memo also suggests it views the additional funding provided by IJJA as an opportunity to significantly reduce or eliminate impediments that make it difficult for disadvantaged communities to obtain funding for safe drinking water infrastructure, and the state requirements that communities fund the project upfront and then seek reimbursement. These impediments, including a lack of technical and financial expertise and resources to prepare applications for funding, make it virtually impossible for most disadvantaged communities to obtain funding. Critically, EPA’s memo prohibits funding of partial lead service line replacements or programs where residents must pay. Funding for partial service line replacements and requirements for residents to pay for lead line replacements create a perverse incentive for water systems to target lead service line replacements in wealthier, often predominantly white communities where property owners can more readily afford to pay for the replacement of “their portion” of the service line. This creates a serious environmental injustice and undermines the objectives of the SDWA and Civil Rights Act of 1964.

**Abandoned Mine Land Reclamation:** IJJA made historic investments to clean up legacy pollution including [\\$11.3 billion](#) for abandoned mine land (AML) and water

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<sup>9</sup> IJJA §13106.

<sup>10</sup> 42 U.S.C. 300j-12(a)(2)(B).

<sup>11</sup> 42 U.S.C. 300j-12(a)(2)(B) and 42 U.S.C. §§300f-300j.

reclamation projects, which will help communities eliminate environmental and public health hazards caused by past coal mining.<sup>12</sup> The AML program is unquestionably one of the most successful environmental cleanup programs in history, but in many states implementation of the program has not yet reached its [full potential](#).

First, program guidance must make clear that funds are to be distributed to maximize AML remediation in former coal mining areas across the country. Second, the Biden-Harris Administration must maximize the workforce potential of the AML program to support communities in economic transition. To accomplish this, the Office of Surface Mining Reclamation and Enforcement (OSMRE) must make job quality and other workforce components of AML reclamation core to the program. Specifically, program guidance should prioritize the creation of decent and living-wage jobs in coal communities for former coal miners. Ideally, the reclamation work should prioritize the employment of existing skilled workforce and local coal miners, contracts that offer prevailing wages, aggregating projects to attract union bids on contracts, and partnerships with nonprofits that have the expertise to support reclamation projects through administrative and program capabilities.

**Orphan Wells:** IJJA provides \$4.707 billion to plug, remediate, and restore orphaned oil and gas wells on federal, state, tribal, and private lands. The EPA estimates that there are more than a million so-called “orphan” wells abandoned by defunct companies that cannot afford to plug them. These wells often leak methane, a powerful greenhouse gas, and can leach toxins into groundwater. To address this growing problem, IJJA includes \$250 million for a new federal program, \$4.275 billion for states, and \$150 million for tribes.<sup>13</sup> Under the law, governments have broad latitude for ranking wells, but prioritization is supposed to be based on public health and safety, potential environmental harm, and other subsurface impacts or land-use priorities. Notably, funding for the new federal program requires new measures to track the emissions of methane and other gasses associated with orphaned wells. Three types of grants are available to states. They can be used for a variety of activities on state and privately-owned land.

- Initial Grants (\$775 million): Initial grants are designed to get funds out quickly to states to help unemployed oil and gas workers. States must submit applications within 180 days of enactment (May 15, 2022).
- Formula Grants (\$2 billion): Formula grants are larger, longer-term grants to help states reduce their orphaned well [inventories](#).
- Performance Grants (\$1.5 billion): Performance grants are designed to incentivize states to take fiscally and environmentally positive actions - namely, using funds to reduce unemployment and improve economic conditions in distressed areas of states.

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<sup>12</sup> IJJA §40701.

<sup>13</sup> IJJA §40601.

The Department of the Interior released a [memorandum of understanding](#) (MOU) on January 14 establishing a working group led by BLM to manage these much-needed federal investments. While encouraging, the MOU did not include any specific requirements for formal consultation with Indian tribes. Moreover, careful oversight to ensure that funds are spent as intended and not misused. For example, the states of [North Dakota](#) and [Wyoming](#) both used CARES Act funding to plug oil and gas wells that were not truly orphaned, but had solvent owners whose bonds were instead used to drill new wells. Accordingly, the Department of the Interior must ensure that state grant money is only spent on wells that are truly orphaned. Similar to the abandoned mine land program, federal grants should also prioritize the creation of decent and living-wage jobs for oil and gas workers. Ideally, projects would be aggregated to attract union bids on contracts that employ local workers.

IJJA funding for orphaned wells must also be matched with new policies to address the root causes of this crisis. Unlike the mining sector, state and federal oil and gas regulatory regimes do not require operators to post financial assurance designed to cover the full cost of plugging, remediation and reclamation. And, unlike the coal sector, there is no national fund for orphaned oil and gas wells that oil and gas operators pay into. Instead, oil and gas operators and regulators rely on revenue from operating wells to fund the plugging and reclamation of a company's end-of-life wells.

To address the root cause of the problem and prevent future orphan wells, BLM should use its authority to raise federal bond requirements, which have not been raised since the Eisenhower Administration.<sup>14</sup> Currently, a company can secure a statewide bond for all its federal oil and gas wells on public lands for only \$25,000 and an individual lease bond for only \$10,000. According to a recent [GAO report](#), the average cost of reclamation per federal well ranges between \$20,000 and \$145,000. Without strengthening federal bonding reform, fossil fuel companies will continue to pass on the financial burden of cleaning up idled and orphan wells to taxpayers in perpetuity.

**Alternative Fuels and Electric Vehicle Charging:** IJJA allocated \$7.5 billion for two complementary grant programs to build a nationwide electric vehicle (EV) charging network. The National Electric Vehicle Formula Program provides \$5 billion guaranteed for EV charging infrastructure. It is focused on building out charging capacity along the national highway system.<sup>15</sup> The Grants for Charging and Fueling Infrastructure program provides \$2.5 billion for a variety of alternative refueling

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<sup>14</sup> The current onshore royalty rate of 12.5% is also severely outdated. It has not been updated since the Mineral Leasing Act was signed into law by President Woodrow Wilson in 1920 and is dramatically lower than the rates charged by states and private landowners — in some cases by up to 25%.

<sup>15</sup> IJJA Division J.

infrastructure that includes EV charging stations as well as hydrogen, natural gas, and propane.<sup>16</sup> Approximately half of this funding would go towards infrastructure along the highway system, while the other half would go towards infrastructure at other publicly accessible locations such as schools, parks, and publicly accessible parking facilities. Importantly, the \$5 billion Clean School Bus program and many other carbon reduction programs in IJJA also include this alternative fuels language requiring EVs to compete against carbon-intensive technologies like hydrogen and natural gas for funding.<sup>17</sup> When implementing these programs, federal agencies must ensure that these “all of the above” programs prioritize projects that expand EVs and associated infrastructure over fossil fuel-based transportation alternatives.

More broadly, agencies should prioritize rural areas, low- and moderate-income communities with low ratios of private parking, and high ratios of multi-unit dwellings for EV charging investments, in view of the reality that people in these communities may lack access to a driveway or garage to charge a public vehicle. The White House Council on Environmental Quality (CEQ) is currently developing a Climate and Economic Justice Screening Tool, which could be a valuable resource for DOT, state, and local governments to identify these communities. Over the long term, building codes need to be amended to require charging access in multifamily housing parking, and local public agencies must develop [comprehensive and uniform policies](#) on curbside charging that prioritizes carshares, protects current and future bike and bus lanes, and ensures deployment of charging stations in low-income and minority communities.

Finally, while converting the transportation fleet to electric vehicles is essential, it is not sufficient to meet our greenhouse gas emissions targets. DOT cannot lose sight of the fact that building and maintaining the highways that serve them is expensive and environmentally damaging, regardless of whether private cars and SUVs are fueled by gas or electricity. Furthermore, cars are expensive to own, and subsidies for the purchase of new EVs disproportionately favor wealthier white households. To best promote equity and reduce carbon emissions, DOT should primarily focus on improving affordable public transit service and making streets safer to encourage more biking and walking.<sup>18</sup>

**Energy Demonstration Projects:** IJJA provides more than \$12 billion for carbon capture and storage (CCS) and \$8 billion to keep aging and economically troubled nuclear power plants online. It also includes \$9.5 billion for hydrogen projects, while providing significantly less — in the range of \$500 million — in direct authorizations for wind, solar, geothermal, and tidal energy.

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<sup>16</sup> IJJA §11401.

<sup>17</sup> IJJA §71101.

<sup>18</sup> “Driving Down Emissions: Transportation, land use, and climate change.” *Smart Growth America* and *Transportation for America*. October 2020.

Although the industrial sector is responsible for nearly 40 percent of carbon emissions, with the exception of CCS, few technologies exist to decarbonize the industry. Funding for enhanced oil recovery (EOR) CCS projects, however, should be avoided. A recent report from [Global Witness](#) found that Shell's Quest CCS facility in Alberta is emitting more greenhouse gasses than it's capturing. Between 2015 and 2019, the facility captured 5 million tons of carbon dioxide and emitted 7.5 million tons of greenhouse gasses in the same timeframe. To avoid similar outcomes, DOE should respond to [recommendations](#) from the Government Accountability Office (GAO) on improving DOE management of CCS demonstration projects prior to the distribution of these funds..

A re-examination of DOE's Hydrogen Program is also an opportunity to maximize carbon reductions. Hydrogen, especially "[green hydrogen](#)," can play an important role in decarbonizing industries where direct electrification is not a feasible option, like heavy industry and some forms of transportation. In funding for regional [hydrogen hubs](#), DOE should prioritize funding for green hydrogen projects and hydrogen projects to retrofit existing facilities (as opposed to new facilities).

**Healthy Ports and Freight:** The freight transportation system is one of the largest sources of greenhouse gas pollution across the country and relies heavily on thousands of diesel trucks, locomotives. Reducing port and freight pollution is especially important given the fact that 13 million people (3.5 million of whom are children) live near major marine and inland ports or rail yards, the vast majority of whom are members of low-income communities of color. To confront this, IJJA included \$400 million for clean heavy-duty vehicles to reduce idling at ports as well as approximately \$50 billion in discretionary programs that are port and freight eligible (e.g., CRISI, RAISE, INFRA, and PROTECT grants).<sup>19</sup>

To maximize the impact of these new funding sources, EPA should use its rulemaking authority under the Clean Air Act to address freight-related sources of pollution. Many of EPA's existing rules on freight have not been amended for decades, and the most stringent standards imposed by those rules no longer require the emission reductions that could be achieved using modern technologies. Specifically, EPA must quickly move forward with new federal rulemakings for all of the following:

- **Heavy-Duty Truck Standards:** Improving zero-emission technology means that pollution from trucks can not only be lowered but eliminated. Zero-emission trucks are commercially available, economically compelling, and the single most effective solution for reducing freight emissions.<sup>20</sup> EPA's forthcoming Nitrogen Oxides (NOx) standards for heavy-duty trucks is a major opportunity

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<sup>19</sup> IJJA §11402.

<sup>20</sup> See Amol Phadke et al, "Why Regional and Long-Haul Trucks are Primed for Electrification Now." *Lawrence Berkeley National Laboratory*. March 2021.

to drive this transition.<sup>21</sup> EPA should set stringent emissions standards that include both limits on NOx emissions and escalating zero-emission sales mandates by no later than the end of 2022. At a minimum, the federal government should require that all new trucks be zero-emissions by 2035, with intermediate targets before then. Furthermore, EPA's medium- and heavy-duty vehicle emission standards must be additive to and not preempt state policies.

- Locomotives and Railyards: EPA should adopt a much-needed rulemaking by the end of 2022 to address the public health dirty air crisis caused by locomotive pollution. EPA should include a Tier 5 locomotive standard for all new freight locomotives that requires 100% of all new switchers to be zero-emission by 2025, and 100% of all new line-hauls to be zero-emission by 2030. EPA should also set significantly more stringent emission standards for all remanufactured locomotives and locomotive engines so that 100% of all remanufactured switchers meet the Tier 4 standard by 2025, and 100% of all line-haul locomotives meet the Tier 4 standard by 2027. EPA should require the forced retirement of any locomotives or locomotive engines that do not meet a zero-emission Tier 5 standard by 2045.
- Marine Vessels: To address the health risks associated with marine vessels, EPA must adopt a rulemaking by the end of 2022 that will maximize zero-emission requirements for marine engines. Specifically, EPA should include a Tier 5 zero-emission standard that will require 100% of new marine engines to be zero-emission by 2035. EPA should also require all remanufactured marine diesel engines to meet the Tier 4 standard by 2025 and the retirement of any marine engines that fail to meet the zero-emission standard by no later than 2045.

In addition, EPA should continue to provide grants for the installation of shore power infrastructure to support the shift towards zero-emission vessel operations and ship emission capture systems that reduce at-berth emissions. Moreover, EPA should direct all Regional Administrators to work with local state and port officials to incorporate shoreside power and ship emission capture standards into their STIPs. EPA should also require all ships at berth in U.S. ports to emit zero emissions under the U.S. port state control authority. Finally, because EPA's domestic regulations only apply to U.S. vessels, EPA should work with the U.S. Coast Guard, National Oceanic and Atmospheric Administration (NOAA), and the Department of State to push at the International Maritime Organization for strong international standards and other strategies to clean up toxic hotspots near seaports .

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<sup>21</sup> President Biden's August 5, 2021 Executive Order on Strengthening American Leadership in Clean Cars and Trucks directs EPA to "consider the role that zero-emission heavy-duty vehicles might have in reducing emissions from certain market segments."

- Cargo Handling Equipment: Cargo handling equipment (e.g. forklifts, loaders, gantry cranes, tractor trucks, and yard hostlers) is an ineffectively regulated major source of pollution in port-adjacent communities. These pieces of equipment are regulated under EPA’s nonroad engine rule, which has not been amended since 2004. Like freight trucks, this equipment is ripe for electrification. The Clean Air Act directs the EPA, from time to time, to revise the standards for nonroad engines and vehicles to achieve the greatest degree of emission reductions achievable. It is beyond time for EPA to revise these standards and include zero-emission mandates for cargo handling equipment. By 2023, EPA should adopt new nonroad standards for port, warehouse, and railyard cargo handling equipment that achieves 100 percent zero-emission equipment by no later than 2026, the same date that the largest port complex in the U.S. also plans to achieve zero emissions.
- Indirect Source Review Rules: The rapid and unchecked growth in warehousing has created toxic hotspots around the country well beyond the traditional ports and railyards that have been the focus of freight regulations. EPA must use its authority to address this growing problem. In addition to directly regulating mobile sources with new federal standards, EPA should also support the electrification of freight operations by exercising its authority to adopt regulations on freight facilities that “indirectly” contribute to pollution hotspots by concentrating mobile source emissions. Indirect source requirements can support transportation electrification by encouraging zero-emission operational strategies for moving freight, and ensuring magnet sources have the infrastructure necessary to support zero-emission trucks and equipment.

Because of the expansive nature of warehouses across the country and lack of regulations protecting the health and safety of frontline communities, EPA’s timeline to move an indirect source rule and review process for warehouses must be aggressive. EPA has the authority to regulate “major federally assisted” indirect sources as part of a federal implementation plan.<sup>22</sup> EPA has used federal implementation plans to address point-source regional NOx pollution from power plants and should include federal indirect source rules as part of future federal NOx plans. These federal rules can serve as a model for states wishing to address these NOx sources, or provide a backstop for those states unable or unwilling to regulate these sources.<sup>23</sup>

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<sup>22</sup> See 42 U.S.C. §7410(a)(5)(C).

<sup>23</sup> The South Coast Air Quality Management District recently adopted a warehouse indirect source rule that promises to cut pollution from the trucks traveling to and from warehouses, electrify warehouses, and create local clean energy jobs. See Allyn Stern et al., “South Coast AQMD Adopts Warehouse Indirect Source Rule, First Reporting Months Away.” *National Law Review*. May 18, 2021.

**Labor Protections and Workforce Development:** IJJA is projected to create 800,000 good-paying jobs in the manufacturing and construction industries over the next decade revitalizing our country's infrastructure. Importantly, the bipartisan infrastructure law requires compliance with [Davis-Bacon](#) prevailing wage labor standards for most construction projects, meaning workers on these projects must be paid at least the local prevailing wage and fringe benefits required for the work they perform. Promoting the use of union labor is essential to increasing wages — a recent report from the [Bureau of Labor Statistics](#) found that nonunion construction workers make an average of 31 percent less than union workers. Prevailing wage laws are important because they also help to close the racial pay gap. Research [demonstrates](#) that prevailing wage laws reduce the income gap between white construction workers and African American construction workers by about 7 percentage points. The Department of Labor's (DOL) Wage and Hour Division (WHD) is responsible for enforcing this requirement, but DOL will require additional funding and staffing to ensure compliance with prevailing wage standards and combat violations like wage theft.

IJJA also included the "[Build America, Buy America Act](#)," which expanded Buy America requirements beyond transportation and water-related infrastructure to other infrastructure projects funded by federal grants, including transmission facilities, broadband infrastructure, and property and buildings.<sup>24</sup> Furthermore, IJJA closed longstanding loopholes in the Buy America statute, clarifying how domestic content is measured, increasing domestic content requirements, and strengthening the waiver process associated with Buy American provisions.<sup>25</sup> Despite these expanded requirements, there are numerous programs funded by IJJA that lack explicit Buy America references. The clean school bus program, which authorizes the purchase of electric school buses by local school districts, is one such example. In such cases, federal agencies should use their statutory discretion to extend Buy America requirements to these programs.

The bipartisan infrastructure law also presents an opportunity for state and local governments to leverage Project Labor Agreements (PLAs) to promote good jobs. PLAs are collective bargaining agreements between unions and contractors that last for the duration of a construction project, specify wages and benefits, and promote hiring from local union halls. PLAs can also include hiring provisions that prioritize low-income community members. In February, President Biden signed an [Executive Order](#) requiring the use of PLAs for all federal construction projects over \$35 million. While this Executive Order does not cover state and local projects funded through federal grants, the Biden Administration should encourage states and local governments to adopt similar practices.

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<sup>24</sup> IJJA §11513.

<sup>25</sup> IJJA directs federal agencies to determine whether a domestic entity could supply any iron, steel, manufactured product, or construction material needed for an infrastructure project prior to granting a Buy America waiver.

Finally, IJJA's \$1 billion Reconnecting Neighborhoods Program, which prioritizes applications from communities with Community Benefit Agreements (CBAs) in place, offers a roadmap to further embed equity in federal grant programs. CBAs are contracts between developers and community groups that cover specific infrastructure or development projects, detail conditions under which projects can occur, and spell out how the community will benefit. These contracts can include provisions committing firms to hire local residents for the project, provide job training, pay high-quality wages, and offer benefits. Specifically, federal agencies should prioritize project applications that center job quality and workforce training and hire from underserved communities. DOT's [Notice of Funding Opportunity](#) for its RAISE grant program suggests the agency is already taking steps to implement these changes. DOT's NOFO indicated that it will give more weight to projects that include local or economic hire agreements and asked applicants to provide information on how they will create good-paying jobs, including through the use of PLAs.

**Environmental Review of Federal Projects:** Despite the lack of evidence that the federal environmental review process is a major cause of project delays, the bipartisan infrastructure law rolled back the National Environmental Policy Act (NEPA) by [extending](#) many of the [toxic permitting provisions](#) found in the "Fixing America's Surface Transportation Act" (FAST Act) and FAST-41.<sup>26</sup> Most egregiously, IJJA created a legislative [Categorical Exclusion](#) (CE) exempting thousands of natural gas, oil, and wastewater pipelines (known as "gathering lines"), compressors, and pumps from environmental review.<sup>27</sup> This provision was wholly unrelated to surface transportation and a clear giveaway to the fossil fuel industry.

By law, IJJA compels agencies to promulgate this and other legislative CEs. However, agencies still retain discretion in their application. If agencies decide that use of these CEs is in the public interest, they should do so with extreme care. Agencies should also publicly disclose the application of these and other legislative CEs where their use could be considered controversial.

**Critical Minerals:** The bipartisan infrastructure law includes more than \$9 billion to address the critical mineral supply chain, including \$3 billion for battery manufacturing and recycling and \$6 billion for battery processing.<sup>28</sup> To best minimize U.S. reliance on foreign-sourced critical minerals, DOE funding decisions should be informed by an overarching policy goal of upending the traditional "take-make-dispose" linear system in favor of a circular economy that incentivizes the recycling and reuse of critical materials needed for clean energy, national security, and an advanced economy.

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<sup>26</sup> IJJA §1301-1318; 6201; 30105; 40206; 40806; and, 70801.

<sup>27</sup> IJJA §1317-1318 and 40806.

<sup>28</sup> IJJA §40112 and 40207.

DOE grants should prioritize companies focused on recycling, companies focused on creating easily dismantlable products for recycling or reuse, and companies that are focused on partnering with communities. While recycling technology exists today, no end-refiner facilities are located in the U.S., in large part because of a lack of policy to increase economies of scale, thereby creating a market in the U.S. and allowing for these materials to be locally and sustainably sourced. Priority should also be given to minority-owned entities and companies operating under collective bargaining agreements.

## Conclusion

As outlined above, IIJA makes historic investments to upgrade the country's transportation and water infrastructure, build out a nationwide EV charging network, and electrify school buses and ports. The long overdue investments in the bipartisan infrastructure law are also historic in breadth, ranging from the cleanup of toxic pollution to the reclamation of abandoned mines and natural resources conservation. The \$550 billion in above baseline funding has great potential to be an important part of the U.S. response to climate change, provided it is implemented in a way that reduces greenhouse gas emissions. As analysis from the [Georgetown Climate Center](#) makes clear, how federal agencies implement IIJA and how states and local governments spend available funds will determine if this law is ultimately successful in decreasing U.S. greenhouse gas emissions. As the Biden Administration's [IIJA guidebook](#) underscores, programs must be carefully tracked to ensure that they are implemented equitably and achieve maximum emissions reductions.

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