Written Statement of

Ali Mills
President
Plum Contracting

On behalf of

The Associated General Contractors of America

to the

United States Senate

Committee on Environment and Public Works

For a hearing on

"Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective"

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The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

2300 Wilson Boulevard, Suite 300 • Arlington, VA 22201 • Phone: (703) 548-3118

I. Introduction

Chairman Carper, Ranking Member Capito, and members of the Committee on Environment and Public Works thank you for inviting me to testify on this vitally important topic. My name is Ali Mills. I am the President of Plum Contracting in Pennsylvania and an active member of the Associated General Contractors of America (AGC).

AGC is the leading association in the construction industry representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms, many of which are small businesses. Many of the nation's service providers and suppliers are also associated with AGC through a nationwide network of chapters. AGC contractors are both union and open shop and are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

Plum Contracting, Inc. is a family operated business for 42 years located just east of Pittsburgh, Pennsylvania. In that time, we have become a high valued highway and bridge contractor in Pennsylvania while also having a successful subcontracting division installing highway edge drains along the east coast.

In my testimony today, I will discuss current issues facing the construction industry just a year after passage of the Infrastructure Investment and Jobs Act (IIJA). I want to take a moment to thank the Committee for their work and leadership in the development of that bill. The IIJA represents the most significant infusion of investment in our infrastructure since the enactment of the Interstate Highway System in the mid-1950's.

II. Maximize the Benefits of the IIJA

Supply Chain Challenges

A recent survey of AGC members found that 93 percent of construction companies are experiencing long lead times and/or allocations (less-than-full shipments) for construction materials[1]. Infrastructure project costs continue to climb amid rising construction materials prices and shortages. Material price increases have doubled or even tripled in some cases[2]. The construction industry is facing material challenges that reach far and wide. Supply chain disruptions from the pandemic have inflated the cost of construction materials and made project delivery schedules and product availability more uncertain.

As a result, crucial infrastructure projects across the country run the risk of delay. Construction firms, in situations where they are able to, will pass along the rising materials prices in order to remain successful. Unfortunately, the lead time in bidding these projects is so long that they are unable to predict the availability and price of some of these materials. Today, we are experiencing an unprecedented burden with bidding and procurement of new projects. We are bidding jobs plugging numbers because suppliers will not quote projects due to fluctuations in material pricing and lack of material supply. We are seeing suppliers quote projects but not sign purchase orders so they are not

[1]https://www.agc.org/sites/default/files/users/user33405/Buy%20America/2022%20Materials%20Survey%20Results%20Data.pdf

[2]https://www.agc.org/sites/default/files/users/user21902/Construction%20Inflation%20Alert%20Cover_Jul2022_V4.pdf

held responsible honoring their price if material pricing increases. Once we begin construction, the new "normal" is delays on the project because of supply issues. From a project scheduling perspective, it has turned into a nightmare.

In addition, companies are unable to foresee things like significant world events, spiking oil prices, and soaring inflation and therefore, in some instances, are forced to absorb these increases because there is no price escalation clause available to them. Currently in PA, there are only escalation clauses for steel & asphalt, and diesel fuel adjustments for larger quantity items of work on projects. When a supplier raises their prices, Plum Contracting is forced to absorb this cost hindering the profitability of the project. Long term this is unsustainable for companies such as ours.

The impacts of this have been especially devastating to small and DBE construction firms that lack the resources to absorb these unexpected costs. While contractors are in the business of managing risk, the events and circumstances of the last two years have led to such unparalleled unpredictability in the supply chain and market that contracting firms of all sizes are at greater risk now than in recent history of business failure.

Implementation of the Build America, Buy America Act (BABAA)

AGC supports sensible efforts to incentivize the growth of America's domestic manufacturing capacity to restore balance to the supply chain. As you know, the IIJA included the Build America, Buy America Act (BABAA) which expands domestic sourcing requirements to all construction materials on federally assisted projects such as affordable housing, drinking water, transportation projects and more.

The Office of Management & Budget (OMB), who oversees implementation of BABAA, issued preliminary guidance defining construction materials on April 18 and told agencies to include BABAA requirements in all new contracts on May 14. OMB issued these "rules" before conducting significant research on the supply chain, as it put forth a request for information within the guidance and has yet to issue final guidance. The Department of Transportation (U.S. DOT) initially issued a transitional waiver for six months which has since expired. We believe that U.S. DOT should issue another transitional waiver of six months to a year, or until the Department can provide clarifying guidance and ensure there is adequate time for public owners and contractors to understand these new requirements.

There is still significant confusion among industry, federal, state and local agencies remain regarding the difference between a construction material and a manufactured product and what manufacturing processes must occur domestically for construction materials. To address this issue, U.S. DOT must identify a specific list of which construction materials will have to be Buy America compliant and which materials will be considered a manufactured product. To date, they have not done this.

While we still await direction on what specific materials are a construction material versus a manufactured product, OMB added new uncertainty for the construction industry. For example, their April 18th, 2022 Memo[3] requires the Federal Highway Administration (FHWA) to reevaluate its existing 1983 manufactured products waiver. To date, FHWA has not issued a request for comment on such waiver.

[3] https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf

There is also heartburn within the construction industry about needing a Buy America waiver in the future and the low likelihood in being granted one based on history. To make the waiver process even more problematic, because of an executive order, federal agencies must submit waivers for items not made in America to OMB. They assure us though that OMB must approve or deny the waiver within 15 days. However, this does not detail when U.S. DOT or another agency received the waiver request first and only starts the 15-day deadline when the agency actually transmits the waiver request to OMB. We ask that the Committee conduct thorough oversight to ensure that the waiver process is transparent and does not get caught up in politics of the White House and OMB.

OMB and U.S. DOT should implement these new requirements on a product-by-product basis, after identifying manufacturing capacity. However, it appears as though they are choosing to charge full speed ahead amidst supply chain woes – like long lead times and material allocations. While we still await clarification from OMB, the initial Director of the Made in America Office has since left just weeks before implementation begins. Put nicely, implementation of the new Buy America requirements is off to a rocky start and the construction industry is very concerned and confused.

One thing FHWA has done is a Request for Information on the availability of Buy America compliant electric vehicle (EV) charges and then subsequently a proposed waiver for them. AGC offered support for such waiver.[4] However, it is disappointing that the agency did not undertake outreach and research to a similar degree of rigor on other manufactured products and construction materials subject to BABAA.[5] While this waiver will address the challenges present with EV charging

[4] https://www.regulations.gov/comment/FHWA-2022-0023-0037

[5] On November 24, 2021—14 days after President Biden signed the Infrastructure Investment and Jobs Act (IIJA) into law—USDOT and the Department of Energy published an RFI seeking comments within 47 days to discern whether EV charging stations could meet BABAA requirements. FHWA, on the other hand, issued an RFI to help understand the possible impacts of BABAA requirements on the vast field of construction materials utilized on federal-aid highway projects on July 28, 2022—225 days after IIJA enactment—and sought comments within 21 days.

stations, the manufactured product is merely one example of a much larger industry-wide problem when it comes to meeting these new requirements.

Greenhouse Gas Performance Measure

On July 15, 2022, FHWA proposed a rule to establish a greenhouse gas performance measure. During debate of the IIJA and prior surface transportation laws, Congress considered proposals that would provide FHWA with the authority to create a performance measure on greenhouse gas emissions but ultimately rejected them. AGC believes that this greenhouse gas performance measure would be a one-size-fits-all mandate that would limit a state's ability to choose transportation projects that fit its unique needs. We believe FHWA should follow congressional intent and refrain from reviving policy ideas that Congress considered and ultimately rejected.

A greenhouse gas performance measure will limit a state's options to connect people to jobs, healthcare, and education. The transportation needs faced by Americans living in urban areas are not the same as those living in rural parts of the country. Requiring New York to invest in the New York City subway rather than a roadway project might work for the transportation needs of their state. However, forcing my hometown of Greensburg, Pennsylvania to build a new bike lane instead of adding new roadway capacity would be impractical because of the hilly terrain and cold winters.

If the Administration insists on moving forward with this rulemaking, AGC believes that they should provide an exemption for low-population density states and focus on the states with the highest greenhouse gas emissions. Likewise, we believe that FHWA should not penalize states for not meeting their greenhouse gas emissions targets.

Disadvantaged Business Enterprise (DBE) Program

On July 21, 2022, the U.S. Department of Transportation announced a notice of proposed rulemaking on the Disadvantaged Business Enterprise (DBE) Program. AGC represents DBE and non-DBE firms and has identified many areas of agreement on how to improve the DBE program. For example, we are pleased that the Department is proposing to increase the personal net worth cap and exclude retirement assets from the calculation. DBE firms should be able to grow without punishing the owner of the company for planning for retirement. Likewise, we are pleased that the Department is taking steps to streamline the interstate certification process. This will enable these small companies to focus more of their time and resources on running their construction company and not forcing them to spend time on a duplicative paperwork process.

AGC supports better alignment of the DBE program with the federal small business program under the Small Business Act. However, AGC warns U.S. DOT against a wholesale substitution of the existing rules for DBE size determination with that of the U.S. Small Business Administration's (SBA) without careful consideration and study.

AGC believes that U.S. DOT should ensure that DBE availability and capacity in an area does not diminish, which would undermine efforts to achieve programmatic goals. That is why AGC supports aligning the DBE statutory size standard—currently capped at $28.48 million gross annual revenue—with NAICS code 237310 (Highway, Street, and Bridge Construction) that sets a $39.5 million cap and is revised for industry trends and inflation at least every five years by the SBA.

And, rather than limiting DBEs to certain sub-sizes as specialty contractors—as NAICS codes for specialty contractors are generally capped at a $16.5 million gross annual revenue threshold—AGC supports maintaining just the one singular code and its accompanying threshold to avoid administrative confusion that could lead to DBEs being prematurely removed from the program. Also, DBE contractors can work as prime contractors on some transportation construction contracts and specialty contractors (i.e., subcontractors) on others. That flexibility maximizes their opportunity to bid on and win federally assisted transportation construction contracts.

Such a change is not unprecedented. In fact, Congress enacted this approach in section 150 of the Federal Aviation Administration Act of 2018 for the mode's DBE program.

As it stands, however, NAICS codes for the specialty construction sector were designed for vertical building construction, not transportation construction contractors. These codes do not account for the fact that in transportation construction, jobsites can span many miles and require more heavy equipment than for constructing a building. For example, to face a cap of $16.5 million can be especially challenging for a structural steel contractor that specializes in bridge work, as steel remains at elevated prices, is a ubiquitous material in bridges and whose placement requires significant investment in heavy equipment.

Instead of allowing room for DBE contractors to grow, the program is further handicapping their success. Instead of making it easier for prime contractors to utilize specialty DBE firms, it is making it more difficult. Finally, it is making it harder for states to meet or even exceed their DBE goals by limiting the work these DBE firms are able to perform. AGC looks forward to working with Congress and U.S. DOT to address the unintended consequences of the use of NAICS codes in transportation construction.

In my state of Pennsylvania, a very reputable DBE has been suspended from the program when ownership changed between one woman to another woman. The current owner has had numerous appeal hearings that have all been unsuccessful. She said the process has left her feeling that her and her business are being discriminated against by the certifying agency. If DBE contractors are forced out of the program it could put them out of business and also make it harder for the prime contractor and the state of Pennsylvania to meet its DBE goals. FHWA and Congress should prioritize policies that will attract new entrants into the program and policies that make it easier to do business with existing DBEs.

Facilitate Efficient Project Delivery

AGC believes a great way to maximize the investment in IIJA would be to implement the environmental review and permitting reforms that were mandated in the bill. The complicated operations of these current laws and the intersection of their requirements can delay projects that would improve the overall safety and efficiency of the surface transportation system. By implementing these provisions, we believe the costs associated with delivering projects will be reduced without jeopardizing environmental protections.

Specifically, we ask that the administration implement the provisions that would:

- Codify the One Federal Decision policy;
- Allow for utility relocation in the right of way prior to the National Environmental Policy Act (NEPA) review being completed; and
- Extend the time period for a state to assume the responsibility for small projects, that have little or no environmental impact, from a term of not more than 3 years, to a term of 5 years.

AGC also has concerns about recent changes to the National Environmental Policy Act (NEPA) in the Council on Environmental Quality's (CEQ) Phase I rulemaking. These changes add bureaucratic steps in an already onerous and slow process, require more time-consuming analyses, increase litigation risk for project decisions, and encourage agencies to impose requirements that go beyond CEQ regulations and would slow agency decision-making and discourage the transformational investments needed across the economy.

Federal agencies are not just making changes to NEPA, they are systematically reversing all streamlining reforms from recent years as well as introducing additional requirements that will delay projects. This can be seen in the major permitting programs such as Clean Water Act section 404 permitting, section 401 water quality certifications, threatened and endangered species, and migratory birds.

The promises to deliver timely and sorely needed infrastructure under the IIJA and the Inflation Reduction Act will be significantly challenged if projects are delayed and, in turn, face steep cost increases that block their construction. These delays will make it harder to achieve climate change goals, to make infrastructure more resilient, and to better prepare and protect communities from natural disasters, especially disadvantaged communities.

Buy Clean

Under Executive Order 14057 and provisions of the Inflation Reduction Act, federal agencies are looking at "Buy Clean" programs that would force material/product choices based on embodied carbon using Environmental Product Declarations (EPD). EPDs were initiated by industry to present general information about the environmental attributes of a product, including the carbon emissions associated with its development.

While EPDs are a tool for measuring embodied carbon, they can be varied in their approach, do not provide a full life cycle assessment, and are not universal. In addition, EPDs have limited functionality for making or comparing important design choices (such as for safety or performance) or calculating the embodied carbon of an entire infrastructure project—and/or comparing it to another project.

Buy Clean programs are new and have not been fully implemented even in the limited states - including California - that have begun to introduce them. Their impact on the supply chain is unknown. As is whether they will require more staff to administer and change traditional roles within the infrastructure development team - possibly resulting in new professional services or roles for the general contractor (e.g., a new environmental review akin to determining how to actually build a project) and introducing risk.

AGC asks that Congress and the Administration allow for an appropriate transition time to these new requirements. The uncertainties associated with Buy Clean programs could have serious implications if approached in a rushed/haphazard manner. In addition, we ask that they work with industry to implement these requirements. Recognizing the proactive role that industry has played in the development and adoption of EPDs, AGC encourages market-based incentives associated with embodied carbon. Furthermore, the government should continue to include industry in the EPD process moving forward, reward private sector innovation, and recognize the importance of consensus-based processes for industry standards.

III. Provide Flexibility for States and Construction Companies

Prioritize Formula Funding rather than Discretionary Funding

Historically, the federal-aid highway program has been federally funded and state administered. This ensures maximum flexibility for states to address their transportation needs and allows them to "flex" funding between programs when necessary.

We thank the Committee for their work on the IIJA, specifically on the surface transportation reauthorization that the Committee produced that was included in the final bill. We also thank the Committee for continuing to prioritize formula dollars to states through the core highway formula programs and ask that you continue to do so in the future rather than creating new grant programs - especially discretionary ones.

Continue to Allow Flexibility for States to Meet their Transportation Needs

AGC believes that FHWA must continue to provide state and local governments with the flexibility to address and prioritize their unique transportation needs as Congress intends. As each area of our country is diverse and unique, so are the transportation needs of each community. When standardized transportation solutions do not work in a community, too often the contractor gets blamed despite often not being involved in the selection or design of a project.

Earlier this year FHWA released a guidance memo highlighting, among other things, that states should focus exclusively on maintenance and repair work on existing roadways before building more or new roads.[6] This memo has caused confusion with state DOTs about the mismatch between this

[6] https://www.fhwa.dot.gov/bipartisan-infrastructure-law/building_a_better_america-policy_framework.cfm

guidance and the lack of corresponding requirements for such measures by the IIJA. This policy, which was rejected by Congress in IIJA negotiations, paints a false narrative based upon FHWA's own data which states that 80% of roadway construction projects already repair existing roads and bridges.[7] States are already fixing it first, thanks to the policies like performance management requirements – put in place by Congress. Our nation's interstate system was built and designed over 50 years ago, and it is past time that states modernize them to meet the current needs of the cities and populations they serve. Flexibility to add new capacity to meet these changed needs is crucial.

COVID Relief Funds

AGC also asks that Congress clarify that several categories of infrastructure investments - including transportation projects - and disaster relief are eligible for unspent COVID-19 relief dollars, eliminating ambiguity as to whether such projects could receive these funds. The COVID-19 pandemic ripped a gaping hole in the budgets of many state and local governments, making this assistance crucial as the nation's economic recovery continues. We applaud the U.S. Senate for passing a bill to clarify this eligibility and call on the House of Representatives to pass this legislation.[8] We thank Senator Padilla for his leadership on this issue and other members of this Committee for their support of this legislation.

Additionally, AGC led a coalition letter to the Treasury Department asking that they clarify the use of Coronavirus State and Local Fiscal Recovery Funds from the American Rescue Plan Act (ARPA) by state and local governments to mitigate the effects of the supply chain. Allowing the use of these funds would these entities to mitigate the effects of supply chain delays and shortages and the effects

[7] See Appendix Figure 1 and Figure 2
[8] S.3011 and H.R. 5735

they are having on project costs. These continuing supply chain shortages and material price increases clearly initiated as a direct result of the pandemic, and we believe that this request falls well within the Congressional intent of this funding.

IV. Support the Construction Workforce

State of the Construction Workforce

The construction industry's labor shortages remain severe with most construction firms expecting labor conditions to remain tight. Despite firms increasing pay and benefits, the workforce shortage continues. A 2022 AGC survey found 83 percent of firms are having a hard time filling some or all salaried or hourly craft positions and that contractors have a low opinion of the pipeline of future workers. The industry is facing the effects of decades of policies directing students to attend four-year institutions as the only career option.

Currently only 21 percent of all total federal education funding goes to career or workforce education with the majority going to traditional four-year colleges.[9] That is why AGC supports increased funding for Career and Technical Education funding (Perkins Act.). Perkins is the primary federal program for developing and supporting career and technical education programs for secondary and post-secondary students. Exposing younger individuals to construction skills and careers is critical. However, these programs, especially construction focused ones, are expensive to operate and administer for local schools. And these programs face rising inflationary pressure and lingering pandemic impacts.

[9] https://opportunityamericaonline.org/

I am proud to be a female in a leadership role in the construction industry. I appreciate the opportunities I have had to attend career fairs where I can personally share my roots in this industry and the opportunities that await women who consider a career path in construction at any level. While the industry is making efforts to attract more women in construction the numbers continue to show a majority of construction workers are men. However, the pay gap for women in construction is significantly less than other fields. Women in construction earn 99.1 percent[10] compared to men in construction whereas the gender pay gap is 83.1 percent in other fields.[11]

The Jumpstart Our Businesses by Supporting Students (JOBS) Act of 2021

The bipartisan Jumpstart Our Businesses by Supporting Students (JOBS) Act of 2021, or S.864, is one legislative initiative that could help make a tangible impact on this problem. This bill would expand Pell Grants to all individuals seeking a career. These grants provide billions of federal aid to over seven million students in post-secondary programs of at least a semester in length. Currently, Pell Grant eligible programs must be a full-time semester in length which has largely limited student's ability to use Pell Grants to pursue short-term career education programs. Emphasizing competency and value of a program over instruction time metrics would allow for a host of craft worker industry-recognized certificate programs to become eligible for federal needs-based aid. I know many of you on this Committee are cosponsors of this legislation and we thank you for your support.

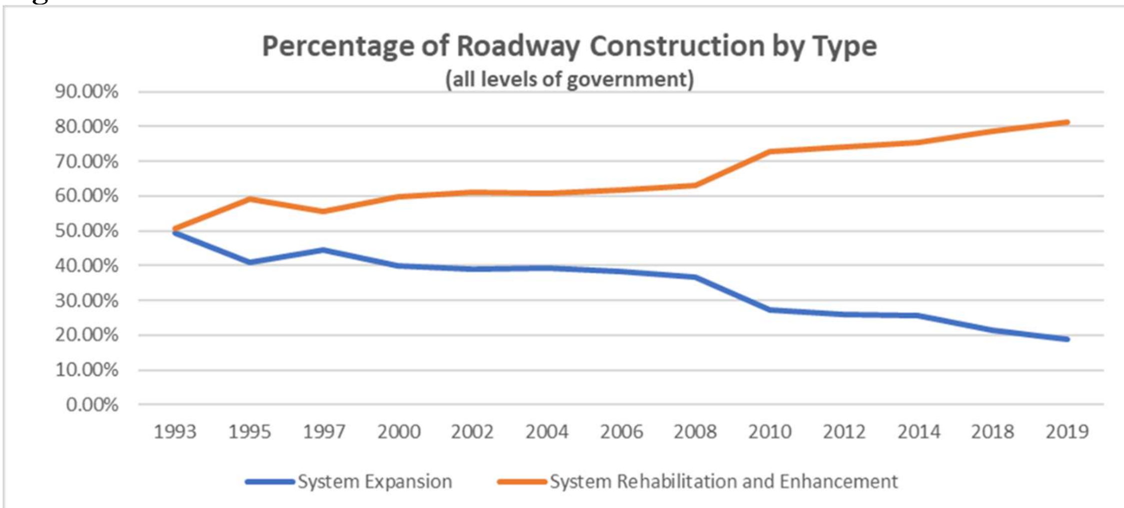
V. Conclusion

[10] https://www.bls.gov/opub/reports/womens-databook/2019/home.htm
[11] https://www.bls.gov/opub/ted/2022/median-earnings-for-women-in-2021-were-83-1-percent-of-the-median-for-men.htm

The IIJA provides market opportunities for transportation contractors, heavy contractors, building contractors and utility contractors. And most importantly, it demonstrates to our existing and future workforce that there is sustainable work in the years to come. This historic level of funding in our infrastructure when combined with recovering from a global pandemic, addressing a supply chain crisis, and implementing new federal requirements that were a part of the IIJA will create challenges for those of us tasked with rebuilding our infrastructure. I thank the Committee for the opportunity to testify today. I appreciate its continued efforts to help improve our nation's infrastructure and enact policies that create good paying jobs in America. I look forward to answering any questions you may have.

Appendix

Figure 1[12]



[12] (https://www.transit.dot.gov/research-innovation/status-nations-highways-bridges-and-transit-condition-and-performance
https://www.fhwa.dot.gov/policyinformation/statistics/2018/fa10.cfm
https://www.fhwa.dot.gov/policyinformation/statistics/2019/fa10.cfm)

Figure 2[13]
(Spending in Thousands)

STATE	New Capacity (New Construction, Added Capacity, Major Widen, Minor Widen, New Bridge)	Total Spending	New Capacity as Percent of Total
Alabama	$207,881	$1,475,119	14.09%
Alaska	$111,115	$764,100	14.54%
Arizona	$974,995	$1,448,808	67.30%
Arkansas	$273,295	$924,723	29.55%
California	$136,628	$4,589,484	2.98%
Colorado	$132,782	$1,156,752	11.48%
Connecticut	$63,088	$924,960	6.82%
Delaware	$72,776	$586,608	12.41%
Dist. of Col.	$0	$456,835	0.00%
Florida	$1,664,800	$6,683,645	24.91%
Georgia	$460,056	$1,787,653	25.74%
Hawaii	$88,266	$239,670	36.83%
Idaho	$21,725	$660,149	3.29%
Illinois	$320,062	$3,186,325	10.04%
Indiana	$329,653	$1,552,336	21.24%
Iowa	$353,418	$1,009,846	35.00%
Kansas	$111,455	$557,572	19.99%
Kentucky	$509,449	$1,568,834	32.47%
Louisiana	$264,211	$887,562	29.77%
Maine	$4,508	$566,788	0.80%
Maryland	$271,139	$1,586,175	17.09%
Massachusetts	$5,139	$926,822	0.55%
Michigan	$51,378	$3,109,167	1.65%
Minnesota	$165,889	$1,191,844	13.92%
Mississippi	$161,918	$878,062	18.44%
Missouri	$55,352	$904,598	6.12%
Montana	$60,821	$524,006	11.61%
Nebraska	$12,704	$838,786	1.51%
Nevada	$343,017	$688,263	49.84%
New Hampshire	$55,658	$270,456	20.58%
New Jersey	$355,568	$2,941,537	12.09%
New Mexico	$79,321	$430,734	18.42%
New York	$214,189	$4,457,620	4.81%
North Carolina	$2,470,163	$4,843,286	51.00%
North Dakota	$10,643	$423,023	2.52%
Ohio	$204,264	$2,284,656	8.94%
Oklahoma	$129,939	$1,448,763	8.97%
Oregon	$153,614	$1,015,338	15.13%
Pennsylvania	$309,475	$4,007,533	7.72%
Rhode Island	$0	$46,702	0.00%
South Carolina	$60,002	$1,901,504	3.16%
South Dakota	$27,635	$310,987	8.89%
Tennessee	$435,099	$1,246,254	34.91%
Texas	$3,056,287	$9,843,960	31.05%
Utah	$460,689	$980,391	46.99%
Vermont	$16,347	$251,802	6.49%
Virginia	$446,957	$1,527,274	29.27%
Washington	$441,481	$2,084,743	21.18%
West Virginia	$318,833	$908,893	35.08%
Wisconsin	$631,230	$1,575,772	40.06%
Wyoming	$34,647	$368,914	9.39%
Total	**17,139,561**	**84,845,634**	**20.20%**

[13] https://www.fhwa.dot.gov/policyinformation/statistics/2019/sf12.cfm