

**CONFLICT ASSESSMENT:**  
**FEDERAL OUTDOOR ADVERTISING  
CONTROL PROGRAM**

~ A Report to ~

The U.S. Institute for Environmental Conflict Resolution

~ Prepared by ~

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## I. EXECUTIVE SUMMARY

The Federal Highway Administration (FHWA) has been responsible for the implementation of the Highway Beautification Act (HBA) since its passage in 1965 through its Outdoor Advertising Control (OAC) Program. In addition to the traveling public, key stakeholders affected by the OAC Program include members of the outdoor advertising industry (sign owners, advertisers, suppliers, and landowners), groups concerned about maintaining and improving scenic views, local governments, and state and Federal regulators. Various conflicts have surfaced among these stakeholders over the years. FHWA decided to pursue a conflict assessment to reach out to parties interested in OAC to identify issues that cause controversy and suggest appropriate methods for addressing conflicts and improving program results.

Through over 100 personal interviews, focus groups and public meetings in seven cities, and over 1,800 comments in the Federal Register, this Assessment has gathered perspectives about the OAC Program. The assessment team has reached several fundamental conclusions:

1. Conflict about the OAC Program is substantive, organizational and attitudinal.
2. Although there are many issues in conflict, the key issues that are perceived as both important to the stakeholders and having reasonable potential for agreement are:
  - The use of new technology in outdoor advertising
  - Abuses of signage in commercial and industrial areas
  - The future of nonconforming signs
  - Control of vegetation in public right-of-way around billboards
  - Inconsistent regulation and enforcement
  - The organization of the OAC Program within FHWA
3. OAC Program organizational issues at FHWA warrant attention and should be addressed through a forum that includes state regulators.
4. A well-structured collaborative process holds promise as a means to address substantive issues. However, there are a number of conditions that need to be met for a collaborative policy dialogue to succeed. Most important among these are:
  - FHWA leadership, endorsement and active participation
  - Good faith participation by key stakeholders
  - Limited scope of issues
  - Commitment to produce results within a specified time period



5. We recommend either a National Policy Dialogue or a Multi-State Policy Dialogue, as the first step toward resolving key substantive issues. Given the range of issues in conflict, we believe that, if a single approach is pursued, the National Policy Dialogue is preferred. We also identify other processes that can complement either of these approaches.

Although dialogue is not an end in itself, a well-conducted process is likely to generate a range of potential actions to enhance OAC effectiveness, from legislative proposals to regulatory and administrative changes. If mutually agreeable proposals are generated by a process that involves all key affected interests the chances of their successful implementation rise dramatically.



## II. BACKGROUND

### THE HIGHWAY BEAUTIFICATION ACT

The Highway Beautification Act (HBA) was passed in 1965 to: 1) protect the public investment in highways, 2) promote the safety and recreational value of public travel, and 3) preserve natural beauty. Since its passage the HBA has been amended several times.

The HBA established Federal government control of outdoor advertising along over 300,000 miles of highways. This network includes Interstate Highways, National Highways and various other highways constructed with Federal funding. States were required to develop Federal-state agreements and then to administer their programs in a manner consistent with Federal law and regulations, with oversight by the Federal Highway Administration (FHWA) through its Outdoor Advertising Control (OAC) Program.

In brief, the HBA limits outdoor advertising to zoned and unzoned commercial and industrial areas and to the sites where advertised goods or services are offered. Signs that were legally erected prior to the enactment of the HBA, but did not conform to HBA restrictions are called “nonconforming signs.” The law addresses their removal and the provision of just compensation. Signs along scenic byways as designated by the states were also included under the purview of the Act. In the event of a state’s failure to provide effective control, the Act calls for withholding 10 percent of Federal highway funding apportioned to the state.

There are 46 states and several U.S. territories that regulate outdoor advertising under the HBA. Alaska, Hawaii, Maine and Vermont opted to exclude billboards. In general, states, counties and municipalities may adopt regulations that are more restrictive to the billboard industry than the Federal law as long as their programs are consistent with Federal law.<sup>1</sup>

### CONFLICT AROUND THE OUTDOOR ADVERTISING CONTROL PROGRAM

The HBA has engendered conflict on a range of issues over the years from if and how nonconforming billboards are removed to the definition of commercial businesses. Some issues have been addressed legislatively and some through rulemaking. However, there remain a number of issues that create controversy. The FHWA wanted a neutral assessment about these issues to provide input into its decision making on ways to improve Program results. The assessment also serves to inform all stakeholders about the range of issues and the potential for resolution.

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<sup>1</sup> For additional background on the Highway Beautification Act, see: [www.fhwa.dot.gov/realestate/oacprog.htm](http://www.fhwa.dot.gov/realestate/oacprog.htm) and [http://www.fhwa.dot.gov/realestate/out\\_ad.htm](http://www.fhwa.dot.gov/realestate/out_ad.htm)



## BACKGROUND ABOUT THE ASSESSMENT

In 2005 the Office of Real Estate Services at FHWA Headquarters contacted the U.S. Institute for Environmental Conflict Resolution for assistance in understanding and resolving OAC-related conflicts.<sup>2</sup> The U.S. Institute convened a group of representative stakeholders (called the Assessment Resource Group or ARG) representing diverse interests with respect to outdoor advertising to help guide the Assessment process.<sup>3</sup> The ARG:

- Developed criteria for assessor selection.
- Participated in the assessor selection process, facilitated by the U.S. Institute.<sup>4</sup>
- Provided early guidance about who should be interviewed.
- Suggested which cities across the country should be visited.
- Offered technical assistance and offered individual perspectives about a range of issues.
- Gave early input about the question areas to be explored.
- Helped publicize the assessment effort and identify specific individuals to be interviewed and to participate in the focus groups.

## PURPOSE OF THE ASSESSMENT

FHWA and the U.S. Institute jointly issued a Federal Register notice defining the purpose of the Assessment as follows:

The goal of the assessment is to reach out, through a neutral entity, to parties interested in OAC to identify issues that cause controversy, perspectives of the various stakeholders, and appropriate methods for addressing conflicts and improving program results.... The FHWA wishes to better understand the nature and complexity of the conflicts that have developed in connection with the HBA, and what paths toward resolution are available.

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<sup>2</sup> The U.S. Institute for Environmental Conflict Resolution is a Federal agency that provides alternative dispute resolution and conflict management services for conflicts involving Federal agencies or Federal interests. The U.S. Institute “provides a neutral place inside the Federal government, but independent of other agencies, where public and private interests can reach common ground through the use of non-adversarial, interest-based negotiation. For additional information see [www.ecr.gov](http://www.ecr.gov)

<sup>3</sup> See Appendix A for a listing of ARG membership.

<sup>4</sup> In March 2006, the U.S. Institute issued a letter requesting “expressions of interest and statements of qualifications for conducting a conflict/situation assessment related to outdoor advertising and its regulation at the Federal level.” The ARG interviewed all candidates and selected the Osprey Group, a dispute resolution and mediation firm based in Boulder, Colorado, and its partner, HNTB, to conduct the Assessment. For more information about the Osprey Group, see [www.theospreygroup.com](http://www.theospreygroup.com)



## HOW WE CONDUCTED THIS ASSESSMENT

In conducting this Assessment, information was solicited through four primary mechanisms: personal interviews, focus group discussions, public listening sessions and comments to an open docket in the Federal Register. We also attended the National Alliance of Highway Beautification Agencies conference in August 2006 that was helpful in introducing us to a range of outdoor advertising control issues.<sup>5</sup>

During the Assessment, we visited seven cities<sup>6</sup> where we interviewed 103 individuals, conducted focus group discussions with 50 people, and had over 200 individuals attend public “listening” sessions. A methodical process was initiated to solicit nominations for interviews. For personal interviews, names were provided by ARG members, interviewees were asked to suggest other names, and input was received through the Federal Register.

The majority of the personal interviews were conducted face-to-face; these were augmented by telephone interviews.<sup>7</sup> Focus groups were by invitation, representative of various interests, and sought to address selected issues in depth through interactive discussion among the participants. Public listening sessions offered an opportunity for members of the general public to offer their perspectives.

In addition to the in-person mechanisms mentioned above, FHWA solicited public comment on OAC issues through a notice in the Federal Register and the opening of a docket for comment. The U.S. Institute provided us with a summary of these comments so that the docket information could also inform this Assessment. In the period of almost five months during which the docket was open approximately 1,800 comments were received, several of which are included in this Assessment.

All personal interviews were conducted in confidence. The results of these interviews are synthesized in this report without attribution. This report is our summary of the issues and challenges facing the implementation of the HBA through the OAC Program. It reflects the issues and concerns expressed by various stakeholders and interested parties as we heard and understood them. We have tried to impartially reflect what we heard about the nature of the challenges and the potential for solutions. To the extent there are errors, they belong solely to us.

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<sup>5</sup> Throughout this report we have inserted quotes from our interviews and the Federal Register in italics. On a few occasions, we have included comments made at the NAHBA conference without attribution. These are not distinguished from other quotes in any way.

<sup>6</sup> The cities visited were selected with the assistance of the ARG, and were, in chronological order: Sacramento, Cleveland, Austin, Atlanta, Salt Lake City, Kansas City and Philadelphia.

<sup>7</sup> A list of those who were interviewed may be found in Appendix B. The distribution of interviewees and focus group participants was spread among four stakeholder groups: Federal and state government, local government, industry (sign owners, advertisers, suppliers, landowners), and scenic (environmental interests including garden clubs and scenic organizations). A table that summarizes the sectors which interviewees and focus group participants represented is presented in Appendix C.



### III. THE ISSUES

#### OVERVIEW

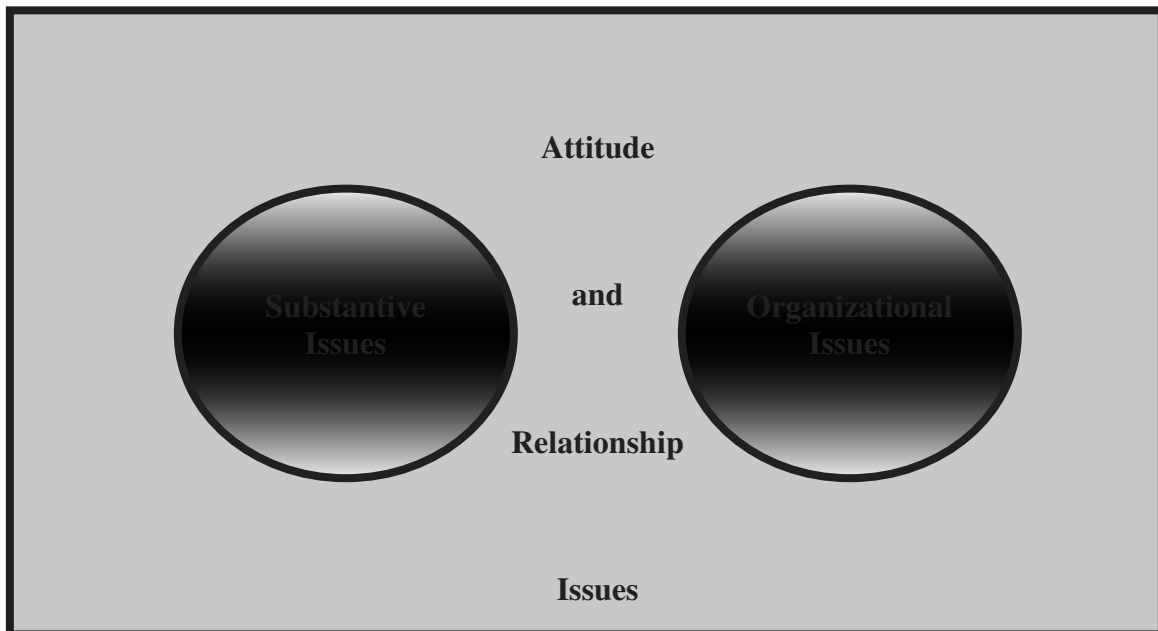
We have identified three types of issues that impact OAC Program effectiveness. These are:

- Attitude and Relationship Issues
- Organizational Issues
- Substantive Issues

At the outset of this Assessment we thought the most challenging issues would relate to substantive topics, such as how to deal with new technologies or nonconforming signs. These are indeed tough and important issues. But, the context in which they exist is just as important.

This context includes the attitudes and relationships of various interests and organizational issues at both FHWA and the state Departments of Transportation (state DOTs). Recognizing the attitude and relationship issues and addressing the organizational issues will increase the likelihood that the OAC program can be improved at the Federal and state levels. As the diagram below reflects, the attitude and relationship issues are pervasive. They both underlie and impact the organizational and substantive issues.

FIGURE 1. OAC CONFLICT LANDSCAPE



In the sections that follow, we describe the most important issues in each of these three categories.

### A. ATTITUDE AND RELATIONSHIP ISSUES

The potential to resolve organizational or substantive issues depends, at least in part, on the willingness of stakeholders to negotiate in good faith and the attitudes and preconceptions they bring to the table. We have identified several issues:

- Value Differences
- Trust
- Discouragement

For each, we describe the issue and offer several quotes to provide perspectives from stakeholders.

#### VALUE DIFFERENCES

Fundamental differences in values emerged early in the course of this Assessment. There are those who view outdoor advertising primarily through economic lenses and those who view it primarily through aesthetic lenses. Many people commented on the employment generated by outdoor advertising, the importance of the medium to local businesses, and the current growth of the industry relative to other forms of advertising. Many others commented that billboards are unsightly, that they constitute an imposition on the traveling public, and that regulation should be more stringent and more strictly enforced to preserve vistas. As one person noted, *“We’ve helped the industry create a very profitable marketplace, all in the name of aesthetics. They are protected from uncompensated removal and the marketplace is limited, to their great profit.”* From another perspective, *“It is clear that billboard opponents feel that their aesthetic values are ‘correct’ and they are willing to impose these values on all citizens.”* Another added, *“There’s the perception that OAAA likes the old system and doesn’t want any changes. They use the Act as a way to restrict competition.”*<sup>8</sup> And, finally, there are those who offer the ostensibly balanced view, *“Both sides have accountability issues – as do the regulators.”*

#### TRUST

Irrespective of the perspectives they represented, many of those with whom we spoke articulated a low level of trust for those they see as being on the “other side.” Some of this goes back to the inception of the HBA and its attempt to strike a balance that was acceptable, but not ideal to any side. In addition, the early history of implementation,

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<sup>8</sup> OAAA is the Outdoor Advertising Association of America.



amendments to the Act, political tactics and tough rhetoric further lessened trust over time. People from both the industry and scenic perspectives told us (not without irony) that the “other side” was extreme in its viewpoints and that they would be loathe to trust them to negotiate in good faith. The trust issue is exacerbated by the disparity in resources. As one person said, *“The scenic group fighting the billboard industry is like baby sister fighting Goliath.”* A similar comment: *“There’s a very uneasy balance between these two forces – zero sum game is the overall philosophy. Scenics don’t have the political power that the industry has.”* Clearly, for some, there is a real question about whether a useful civil dialogue can occur between representatives of two key interests, the industry and the scenic advocates, when such polarization has developed over the years and trust is low.

Trust is principally an issue between the industry and the scenic interests. At the same time, it is a mistake to characterize all industry as being the same. As one person noted, *“The industry is not a monolithic group. There’s a big difference between small operators and large corporate entities.”* One interviewee addressed the trust issue between the scenic interests and industry by flatly stating, *“There is often zero trust between the parties.”* Another said, *“Facts are generally not in dispute, it’s the perceptions of how each side operates. There is very low trust level between scenic folks and the outdoor advertising industry. But, I believe the state folks are relatively neutral.”* This more neutral reaction about the agency staff is generally held, although there is clear variability. Some are characterized as inflexible and having a bias against the industry (e.g., *“the bureaucratic folks from FHWA”*) while others are seen as doing a reasonable job without being ideologically opposed to the billboard industry. One person said, *“By and large the DOTs are sincere people trying to do their jobs. They don’t have a personal agenda. They’re trying to do the best they can. They’re trying to be fair and reasonable.”*

In spite of pervasive distrust, particularly between the industry and those with the scenic perspective, people overwhelmingly expressed willingness to engage in a properly-structured collaborative effort, indicating that they would approach the table with caution and suspicion, but with a willingness to try to help change the prevailing dynamics for the better. As one person said, *“The context is one of distrust and mythology. We need to build an atmosphere of trust, openness and honesty.”*

#### DISCOURAGEMENT

Discouragement and frustration are particularly observable among many of those charged with enforcing OAC. At both the state DOT and the Federal division levels, those responsible for implementing the law frequently cite lack of support from higher levels in their respective organizations, inadequate staffing and monetary resources, inefficient structure and the frequency with which people attempt to “end run” their enforcement efforts by involving legislators and administrators who are politically elected or



appointed. One regulator noted, *“The Program is so controversial. Whichever stakeholder is offended, the strategy is to go political.”*

At municipal and county levels, frustrations are similar. Even though local jurisdictions often have standards that are more restrictive than state or Federal requirements, we found practical limitations for a number of local governments. We were told that many jurisdictions lack the resources to effectively deal with the billboard industry in court and that, similar to the situation in many state DOTs, staff responsible for outdoor advertising at local levels of government is often inexperienced and unlikely to have long term continuity in their positions. Commenting on municipal capacity one person noted, *“It’s really hard to explain to people what the regulations mean and there’s little to no enforcement so there’s a lot of illegal signage.”* Another noted, *“Locals get lots of challenges about their ordinances and don’t have the money to either fight the lawsuits or buy out signs.”* For most municipalities, staffing of OAC involves only a part of the duties and responsibilities of employees with this assignment. One city official expressed frustration about the city’s inability to control signs saying, *“It’s awful. We would like to be able to control our own image. HBA was passed with a purpose. It was to control aesthetics along the highway. Certainly, it was not intended to limit the city’s ability to control its aesthetics.”*

## B. ORGANIZATIONAL ISSUES

Organizational issues came up during the Assessment at two levels.<sup>9</sup> First the Federal program is considered and then the state DOT programs. Based on input from our interviews, we believe both the Federal and the state programs are operating at substandard levels because of choices made within the respective agencies. These choices reflect priorities and decisions related to organizational structure, staffing and funding. In the case of both the FHWA, at its headquarters and divisional levels, and the state DOTs, most perceive that the agencies do not see outdoor advertising control as integral to their core business.

### OAC PROGRAM ORGANIZATION WITHIN FHWA

#### The issue

The Outdoor Advertising Control Program is seen by many as a *“step-child”* program within the agency. In our interviews, industry representatives, people with a scenic perspective, employees of various state DOTs and some employees of FHWA itself, noted that OAC is not integral to the FHWA mission. One person commented, *“Outdoor advertising control is just not a high political priority relative to highway construction, potholes, or safety. It’s a black hat issue. It is not a popular program with the states or*

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<sup>9</sup> There is, of course, a third level -- local jurisdictions. As might be expected, these jurisdictions control outdoor advertising in many ways with great variability across the country. Generally, local government ordinances may be more restrictive than state and Federal regulations.



with FHWA for that matter.” As a result of this “step-child” position, stakeholders observed that within FHWA OAC has received limited resources and organizational support.

Federal OAC Program managers are frequently criticized for their inability to make hard and timely decisions. Some add that they believe the OAC Program is weak and unduly influenced by political pressure. In the words of one, *“The biggest problem is that FHWA does not have a backbone.”* Another stakeholder spoke to FHWA’s lack of responsiveness, saying that, *“FHWA speaks of a large game but has no intention of really getting into it in that way. Their involvement is minimal, for example, when asked to back or explain their decisions, they don’t really do it. They don’t know what decisions to make. And, they take forever. They claim that politics precludes them from doing anything. But, it really looks like stonewalling.”*

Many people, particularly those employed by state DOTs, noted that the involvement of FHWA divisions in OAC is quite variable, but often minimal. This variability, they said, is frequently a function of the interest level of the division administrator or other division employees. This interest level is generally seen as low. Others related their experience that FHWA divisions only become involved when there is a “crisis” and then may or may not have, in their opinion, a deep substantive background in the Program. Divisions often feel caught between the states and FHWA Headquarters and find it difficult to be as responsive as they would like to the state DOTs.

Many people, both within and outside of the outdoor industry, see the need for a stronger and more effective Federal OAC Program. Some see greater centralization as part of the solution while others suggest that devolving the program even further to the states is preferable. As one person noted, *“I truly feel that the current regulations are grossly outdated and should be changed. The FHWA should consider relinquishing the control and regulation of advertising devices to the states.”* Conversely, some feel that the states would not adequately control outdoor advertising without the benefit of an effective Federal OAC Program. Reflecting this view, one person said, *“I would advocate getting rid of the HBA except that the state legislatures are beholden to the billboard companies. Therefore, the Federal government is a very important big brother.”*

#### Potential Focus Areas

- Structure. Address where the OAC Program is located within FHWA to enhance its effectiveness through higher visibility and profile.
- Resources. Assure that the resources available to the Federal OAC Program, in terms of both funding and personnel, including the quality and continuity of leadership, are adequate to provide effective control and coordination with the states.



- Centralization. Address whether FHWA should centralize its OAC resources and reduce the role of its divisions in OAC implementation. This concept is supported by representatives of some state DOTs and some people from the outdoor industry, but is not widely embraced.

## STATE DOT OAC PROGRAM ORGANIZATION

### The issue

State DOTs often find the OAC Program to be a difficult fit with the agencies' overall mission or core business. As with FHWA, it is frequently a program that is not embraced by the state transportation agency itself: *"The states are the implementers of the law. But, they are not happy about getting stuck with this task."* Again, similar to the FHWA, political influence is often cited as playing a role: *"DOTs are the primary control factor, for better or worse. In most states a low paid administrator is making important financial decisions. Any denial often leads to a call to an Assemblyman who calls the DOT Director. The implementation of the program is always under attack politically."*

Many state programs have been moved several times within the structure of their DOTs and those involved in leading these programs are often not seen as being in key positions within the state DOT hierarchy. A recent survey found that the outdoor advertising control program in state DOTs is housed at various locations including right of way, maintenance, traffic operations, administration and contracts.<sup>10</sup> It is also often observed that OAC effectiveness varies widely among the states. We heard a number of examples of OAC programs not receiving the support and resources they need. *"States get permit fees, but they are not adequate to cover costs of the program. Those running the program are not in "career-enhancing" positions. It's a no-where position within the DOTs."*

The survey cited above reported that outdoor advertising control is often a *"collateral duty and the majority indicated they needed more time/staff to address program needs."* Some maintain that the shortage of resources reflects the relative unimportance of OAC compared with other state priorities.

Many states think the help and support they receive from FHWA is minimal. A number like it that way but some worry about potential intervention if FHWA perceives a *"crisis"* or is pushed to become more involved. Most states find coordination and communication with FHWA to be quite limited regarding the OAC Program.

State DOT programs are often strengthened when FHWA shows an interest or places pressure on the states; however, a number of the states do not find FHWA to be a strong partner in implementing the OAC Program. As one stakeholder observed, *"There are*

<sup>10</sup> Clyde Johnson conducted this survey; he was formerly with FHWA and is currently employed by TBE Group.



*real concerns with the trust factor between states and the Feds.”* The relationships between FHWA Divisions and state DOTs are often strained. Addressing the focus areas below might help improve OAC effectiveness.

#### Potential Focus Areas

- **Structure.** Examine which states have the most effective OAC programs and how the structure of the program within these state DOTs enhances this effectiveness. Determine the extent to which the placement of the Program within the state DOT detracts or enhances its effectiveness.
- **Coordination with FHWA.** Determine how the state DOTs and FHWA can establish more effective partnerships perhaps by identifying the particular characteristics of the exemplar states that demonstrate the best relationships with FHWA or by identifying communication mechanisms that would enhance coordination.
- **Resources.** Explore the correlation between resources and OAC program effectiveness in various states. Determine ways to ensure that adequate resources exist to effectively implement OAC at the state level.

### C. SUBSTANTIVE ISSUES

Many substantive issues came up during the Assessment. Substantive issues emerged as major when they were mentioned frequently, elicited strong opinions from various individuals and, in our opinion, hold adequate potential for agreement. A number of other issues, even though important, did not make our list as major.<sup>11</sup> Each of the issues below is, based on our various sources of input, a major substantive issue.

- New Billboard Technology
- Commercial and Industrial Areas
- Nonconforming Signs
- Vegetation Control
- Inconsistent Regulation and Enforcement



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<sup>11</sup>Substantive issues that are not defined on our list as “major” include: variability in the quality of billboard inventories in different states, traffic safety, on-premise versus off-premise definitions, scenic byways and segmentation, advertisement copy and content, perceptions about the original intent of the Act, the removal of illegal signs, adequacy of permitting fees, taxes on billboards, valuation practices, amortization, just compensation, condemnation and right-of-way expansion, profitability of the industry, consolidation of the industry, the economic impact of outdoor advertising, signage for small rural enterprises, logo signs, TOD signs, specifics about lighting, spacing and size, Indian lands, and outright bans on billboards.



- The Bonus Program
- FHWA’s 10% Penalty
- Federal-state Agreements
- HBA Scope: Ongoing state Responsibility for the Federal Aid Primary System

Based upon what we heard, the first five substantive issues are judged as the most important and are perceived to have the highest potential for agreement. We have called these the Tier I issues as illustrated in the Table below.

TABLE A ILLUSTRATIVE PRIORITY ISSUES MATRIX			
	Perceived Importance 		
Potential for Agreement 	Tier II Issues	Tier I Issues	
	Tier II Issues		
	Tier II Issues	Tier II Issues	Tier II Issues

The others, or the Tier II issues, are seen as either not quite as important or more challenging in terms of reaching acceptable agreements on how to improve them. In some instances, they are lower on the potential for agreement scale because of the anticipated difficulty in achieving either regulatory or legislative change.<sup>12</sup> Each of the substantive issues listed above is discussed in the pages that follow with more detail presented about the Tier I issues.

<sup>12</sup> Even though some issues would appear to require legislative change for resolution, administrative discretion may be available. As one person noted, “*There’s great untapped potential for dispute resolution in HBA. Section 131 allows the Secretary to suspend provisions of the Act when he finds it in the ‘public interest.’ There’s broad discretion – both an opportunity and a burden.*” The extent of Secretary discretion, if any, to address these issues is beyond the scope of this Assessment.



## THE USE OF NEW BILLBOARD TECHNOLOGY IN OUTDOOR ADVERTISING

### The Issue

Technological advances are creating more and more friction among people concerned with outdoor advertising. Often, state and Federal regulators feel unprepared to address the challenges posed by new billboard technology. In general, the outdoor advertising industry sees regulators as inhibiting important advancement of the field, while environmental and scenic interests see technology-based signs as further deterioration of the scenic and safety qualities of the highway system. Some background may be helpful.

Historically, the word “billboard” originated because of the practice of posting “bills” on “boards.” This may have begun as an alternative to posting them on trees, walls or fences. Over time the “technology” of billboard advertising has evolved in many ways, from the days in which billboards were hand painted, to printed strips of paper, to the use of larger graphics printed on vinyl. Similarly, over time, signs have been lit in various ways, neon was introduced, and various mechanisms made signs moveable.

Today technology is continuing to evolve in the outdoor advertising industry. LED (Light Emitting Diode) technology is becoming increasingly popular in billboard advertising. These signs are visible night and day. Changes in the advertising displayed are initiated by computer.

The HBA and, subsequently, most Federal-state agreements did not anticipate the technological changes now occurring in the outdoor advertising industry. To date, the FHWA has allowed liberal interpretation of these agreements and given the states discretion in their control of these signs (e.g., the frequency of message change).<sup>13</sup> FHWA has determined that flashing, intermittent or moving lights to display animated or scrolling advertisements are not permissible, though changeable message signs are allowed. A number of states have addressed the new technologies at least to some degree with many allowing some form of changeable-message technology.

From the industry perspective, new technology signs that are able to convey shorter, multiple or more time-sensitive messages are more cost-effective for advertisers and more lucrative for sign companies. The industry sees these new updated structures as more attractive and effective marketing tools. Currently, these signs are most likely to be found in urban, high traffic areas. The OAAA has recognized and addressed some of the concerns voiced by opponents of new technology signs.<sup>14</sup>

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<sup>13</sup> A July 1996 FHWA memorandum stated in part: “FHWA will concur with a State that can reasonably interpret the State/Federal agreement to allow changeable message signs if such interpretation is consistent with State law. The frequency of message change and limitation in spacing for these signs should be determined by the State. This interpretation is limited to conforming signs . . .”

<sup>14</sup> The Outdoor Advertising Association of America (OAAA) updated its Code of Industry Principles in 2006 regarding digital billboards, adding: “We are committed to ensuring that the commercial and



For many opponents, these signs represent a step in the wrong direction, further diminishing the aesthetics of the highway landscape while posing a safety hazard to the traveling public. While some opponents believe standards could address the major issues, some opponents argue that the debate should be over whether to have such signs at all, not over issues related to brightness or message frequency. Conversely, from an advertising perspective, not allowing LED signs inhibits the logical evolution of advertising technology.

There appears to be interest and a general openness among most parties for some form of national technology standards. State regulators are looking to the Federal government to provide clearer and more comprehensive guidance and, as mentioned, the industry trade group, the OAAA, has adopted standards for its members. It should also be mentioned that for some, developing standards is seen as inappropriate since they oppose the new LED signs in any form.

The distinction between on-premise and off-premise signs is important and potentially confusing. The HBA exempts on-premise signs from its control. Many, if not most, of the signs commonly seen in urban areas are on-premise signs. There is a debate about the line that distinguishes on-premise from off-premise signs. On-premise signs represent a unique challenge to regulators and the industry. These signs are owned and operated by business owners for the exclusive benefit of the establishment on which they are located. On-premise signs cannot be used to advertise goods and services not sold on site. Common examples are signs at the locations of restaurants, motels or gas stations. One of the advantages of LED signs from an advertising perspective is their high visibility. As highly visible on-premise LED signs become more and more common confusion is likely to grow about the distinction between on-premise and off-premise signs and how they are regulated.

#### Illustrative quotes

*“We have not addressed technology at all. It’s just not in the law. FHWA has some opinion letters, but there is no real action to date.”*

*“The FHWA and the states are now caught with people playing incredible games to do what they want and stay within compliance. We don’t even know how to regulate. The signs are like a huge flat-screen TV. We don’t have good information about the safety implications. The rules are built around moving parts and flashing lights. Now it’s much different.”*

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noncommercial messages disseminated on standard-size digital billboards will be static messages and the content shall not include animated, flashing, scrolling intermittent or full-motion video elements (outside entertainment areas). We are committed to ensuring that the ambient light conditions associated with standard-size digital billboards are monitored by a light sensing device at all times and that display brightness will be appropriately adjusted as ambient light levels change.”



*“I would regulate electronic moving billboards so they aren’t at major intersections. Or that they don’t show too many messages. Trivision could be regulated safely.<sup>15</sup> Avoid inundation that constitutes distraction. Regulate it so it’s consistent across the country. We should anticipate more technological changes, such as electronic chips that transmit to Blackberry’s.<sup>16</sup>”*

*“The industry can see multiple ways to inundate the public. But cars are a bullet going down the highway and safety should be the first consideration. The Feds should step up to the plate.”*

*“In the last five years, digital signage is becoming cost effective. When the three big companies adopt a new technology, it will happen across the industry.”*

*“We have ancient laws and regulations and the technology is way out ahead of us.”*

*“The line between on premise and off premise signs is increasingly vague with electronic signs.”*

*“Billboards by their nature are changeable displays. Digital is a natural evolution.”*

#### Potential Focus Areas

- Safety. Arguably, new high technology signs are safer for employees in the outdoor advertising industry since they are programmable by remote computer and do not involve the physical changing of advertising copy on billboards. And, arguably, changeable LED signs constitute an increased safety risk to the traveling public since the level of distraction is probably higher. The challenge is to understand the safety impact of LED signs for the traveling public.
- Standards. Aspects ripe for consistent regulation include brightness, minimum spacing, message cycle times and location.
- On-Premise Signs. Regulators should consider whether or not changeable message signs that are on-premise, but have the potential to distract motorists using a Federal highway, should be subject to Federal regulation. They currently may be subject to state regulation.

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<sup>15</sup> Trivision signs are signs that allow three messages to be shown consecutively by mechanical means.

<sup>16</sup> A Blackberry is an example of the many electronic devices currently available to consumers.



## ABUSES OF SIGNAGE IN COMMERCIAL AND INDUSTRIAL AREAS

### The issue

The intent of the HBA was to limit, not prohibit outdoor advertising. To this end, billboards were limited to areas that were commercial and industrial by zoning or use. Other areas, such as rural landscapes, were to be protected from outdoor advertising. In conducting this Assessment we heard widespread agreement that billboards should be limited to legitimate commercial and industrial areas only. In addition, there was broad consensus that there are landscapes where billboards clearly do not belong. Nevertheless, abuses have occurred.

Numerous examples were reported where zoning decisions were made for the specific purpose of allowing the permitting of billboards. This practice is referred to as “sham zoning.” Another example is when “sham” businesses were established in unzoned commercial or industrial areas and used as justification for sign permitting. Both of these tactics are circumventions of the HBA and receive little support from those we interviewed. Most believe that stronger regulations and/or enforcement would help remedy this problem.

In addition, there are certain “gray area” circumstances that do not constitute outright violations of the HBA but represent situations where the intention of the Act was thwarted. One such circumstance occurs when commercial and industrial zoning is established and billboards are erected long before commercial development occurs. Another gray area occurs when a legitimate business that was used as a basis for permitting a billboard goes out of business after the billboard is erected, but the billboard operation then continues as a legal enterprise.

Many point to the irony that once a billboard is built, whether or not it was erected for a “sham” business or in a “sham” zone, it is difficult and time-consuming to have it removed. During the time when its legitimacy is being contested, the billboard is likely to produce revenue well in excess of the appeal costs or fines that may eventually be imposed. In general, larger billboard companies assert that it is “mom and pop” or “renegade” businesses – with the former lacking knowledge of regulatory constraints and the latter stretching the boundaries of what might be legally acceptable -- that try to take advantage of “sham zoning” or intentionally create “sham businesses” in order to erect billboards.

There was widespread support for improved enforcement actions against “sham” businesses. While some suggested establishing more stringent standards for qualification as a legitimate business, others suggested increased surveillance and field enforcement activities. Many thought that more aggressive enforcement would dramatically curtail problems with sham businesses although they recognize several of the problems with



effective enforcement such as lack of adequate numbers of personnel or lack of funding for enforcement activities.

While the specific positions varied, there was broad recognition of the legitimate role of Federal and state regulation regarding the location of billboards. There was also recognition on the part of the industry that there are landscapes of sufficient aesthetic value or where visual impacts would be significant enough to justify the prohibition of billboards in such locations. In addition, a number of interviewees thought that commercial and industrial zoning alone was insufficient justification for billboard construction.

Some find regulations that require specific criteria to justify a business as providing a menu or checklist for those who want to push the limits of the regulations. A few of these individuals advocated totally different approaches, such as real estate or marketing appraisals, to determine the legitimacy of business operations.

Some also see a need to remove signs when a sham business site is no longer used for commercial or industrial purposes. There are those who think that if there were a strict approach for sign removal when a business no longer existed, the practice of creating sham businesses would largely disappear. Currently, if the sham business ceases to exist, the sign, which had been legally erected, becomes nonconforming. The current risk/reward system encourages efforts by some to stretch the legal interpretation of the law because the long-term gains can be so profitable.

#### Illustrative quotes

*“The HBA allows signs in ‘unzoned’ areas. One small business pops up and then it becomes the basis for eight billboards to be erected. It’s an enormous loophole.”*

*“We need to get aggressive about removing billboards in unzoned rural areas. They clearly should not be there.”*

*“We need to address zoning as a prerequisite to allow billboard construction. It is a false assumption that zoning corresponds with use of the property. It is often true in urban areas, but not in rural areas.”*

*“The Federal law is so goofy. It made some assumptions that were just not right. It assumed that signs could only be in commercial or industrial areas -- a poor assumption. Zoning might lead actual land use by years and years, and then billboards can be erected regardless of the actual underlying land use.”*

*“Zoning trends are moving in directions never anticipated.”*



## Potential Focus Areas

- Enforcement. The challenge is to have stronger enforcement that does not allow billboards to be permitted in areas improperly zoned or where “sham” businesses exist. From a regulatory perspective, this burden largely falls on the OAC program within the state DOT. Part of the challenge here is the limited state resources devoted to surveillance activities and the willingness of the states to actively pursue timely and aggressive enforcement action. There are other informal opportunities that might be pursued in which the industry can also help self- regulate these practices.
- Criteria. While the criteria approach used by many states to determine whether a business qualifies as a legitimate business enterprise creates certain problems in that it provides minimum guidelines for those who want to push the legal boundaries, a practical challenge remains in strengthening, communicating and enforcing these standards. Future deliberations might help update and improve unzoned commercial and industrial criteria.
- Consequences. When a billboard is erected using a “sham” business as justification, the billboard company should not gain from this practice. Consideration should be give to having regulations appropriately penalize those who attempt to gain an economic advantage from the use of “sham” businesses as the justification for billboard permitting. Only when the economic costs to using “sham” businesses outweighs the economic advantage is the practice likely to cease.

## THE FUTURE OF NONCONFORMING SIGNS

### The issue

Nonconforming signs might well be the most pervasive issue mentioned during the Assessment. This is an issue that generates considerable discussion, ranging from concerns that the intent of the Act has not been met to equally strong views that these signs are legal and should not be acquired “for free” through approaches such as amortization.<sup>17</sup> Beyond these broad views, there are many specific concerns and some interesting opportunities.

The enactment of the HBA created a number of legal, nonconforming signs across the country. These signs, which were erected legally but made nonconforming by not complying with the new HBA standards, could be maintained at levels established by the

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<sup>17</sup> Amortization would involve giving the nonconforming sign a specified period of time to exist before it must be removed without cash compensation; that is, the revenue generated by the sign over a specified period of time is assumed by the regulatory agency to compensate for the loss of the sign and the cost of the sign removal.



states consistent with the HBA. Many people assumed that these signs would come down over time as they deteriorated, were destroyed or were purchased by the states with Federal financial support. This assumption, that natural attrition or active removal would eventually eliminate nonconforming signs, has not been realized.

In addition, changing state laws and regulations have contributed to a substantial increase in the number of legal, nonconforming signs. A common example is when a state changes its requirements and mandates increased distances between signs. Such an action dramatically increases the number of legal but nonconforming signs.

The HBA requires states to remove nonconforming billboards if Federal funds are available for acquisition. In the early years after the Act was passed and the states signed their Federal-state agreements, Federal funds were made available to the states and the removal of nonconforming signs was pursued aggressively. However, Congress stopped appropriating such funds after 1981 and enforcement of this part of the OAC changed significantly. In 1991, the HBA was amended to allow funding for removal of billboards with transportation and highway funds allocated to the states. Then, in 1992, the HBA was amended to clarify that the purchase of nonconforming billboards for removal was discretionary on the part of the states. A most basic question related to the remaining legal but nonconforming signs is whether they should be intentionally removed or reduced in number and, if so, how should this be accomplished?

While billboard owners may not enlarge or improve legal, nonconforming signs, they may engage in customary maintenance and repairs. Many states have fairly liberal definitions of customary maintenance that essentially allow a total refurbishing of a billboard in a two-year period. The industry considers its inventory of legal, nonconforming signs a valuable asset and is committed to maintaining these signs. If the intention is to reduce the number of nonconforming signs, a trade-and-upgrade program, not currently permitted by law, may be worth considering. We heard a willingness to upgrade for aesthetics or to relocate some nonconforming signs to better advertising locations in exchange for a reduction in number. Without either new Federal appropriations for sign removal or a significant trade-and-upgrade program, many of these signs are expected to exist far into the future.

For those opposing billboards, the continued presence of nonconforming signs is a disappointment and frustration. Among many scenic and environmental interests, there is a strong desire for nonconforming signs to come down. Some continue to advocate amortization as a means to accomplish this, but widespread use of this approach was effectively prohibited by Federal legislation. The second level of concern relates to maintenance and the ability of a company to rebuild a sign after it is destroyed by some natural act. This became a lightning rod issue when recent hurricanes destroyed a number of signs, which were then rebuilt even though they had been effectively destroyed.



The options for actively reducing the total inventory of nonconforming signs are limited by the fact that Congress has stopped allocating funds for this purpose. While states may use other sources, including Transportation Enhancement Funds for sign removal, virtually all states allocate these funds to other higher priorities. Some see increased, dedicated funding as one of the few ways that the nonconforming sign inventory might be notably reduced. Others believe the likelihood of having any funding dedicated for the removal of nonconforming signs is a remote possibility.

Creative alternatives, such as trading mechanisms or relocation of signs, have been proposed as a means of removing some nonconforming signs, but few of these experiments have been conducted.

Few states seek to actively remove nonconforming signs today unless they are faced with right-of-way expansion. Under current HBA laws and regulations, nonconforming signs cannot be moved to another nonconforming location, so they must be purchased. There are those who advocate having more flexibility for how or when signs are acquired. For example, when a right-of-way expansion conflicts with the location of a nonconforming sign the state is faced with only one alternative: buy the sign. Some feel it would be a wiser and more cost-effective course to allow the states some flexibility (e.g., move the sign, but continue to have it in roughly the same location). Others, of course, find right-of-way expansion as the most effective means to remove nonconforming signs and would see additional flexibility as a move in the wrong direction.

#### Illustrative quotes

*“About 50 percent of the signs in my state are nonconforming. We face a number of challenges: dealing with storm damage, the allowance for maintenance, how to remove them and facing local government issues about removing them.”*

*“I would like to see two types of nonconforming billboards. One would be a board that would have no protection in the event of a storm or a highway widening. The other might be one that conforms to the basic Federal guidelines, but might not meet strict height or spacing requirements (and they are in appropriate business and industrial areas). This latter definition would allow boards to be moved or improved.”*

*“We need better national direction for nonconforming signs. There should be recognition that these signs cannot exist in perpetuity. The law was written to allow ordinary maintenance but this was not defined. It would be very helpful if there was a definition of what constitutes ‘ordinary maintenance.’”*

*“Where have things gone wrong? It’s in the fundamental assumption that indicated that by 1972 the nonconforming signs would be purchased. It never happened. Over the past 35 years, the bureaucratic folks from FHWA have been operating as though that will happen. It won’t. There are signs that are nonconforming that cities and states would*



*like to have addressed. But there is very little money funded for acquisition. The reality is these are valuable assets. Investing in these signs ensures they can be there forever. In the meantime, FHWA allows no changes.”*

*“These things should be given a useful life. We should not work under the assumption that they go on forever. If, in 1972, they had said that anything older than 50 years old would have to come down. We need to establish a time certain for their removal.”*

*“I would rather see the enforcement of the HBA than having some form of trading.”*

*“I would take the position that 95 percent of these nonconforming signs in our state have been illegally maintained.”*

*“Using ‘Act of God’ as justification to allow rebuilding the signs is moving in the wrong direction.”*

*“States need a clear, straightforward definition of ‘destroyed’ to avoid litigation.”*

*“Nonconforming signs are, ironically, more valuable because other signs cannot be constructed in the same area.”*

*“There was always the presumption that nonconforming signs were coming down.”*

#### Potential Focus Areas

- **Goal.** Clarify whether the goal of removing nonconforming signs over time is realistic and attainable. Determine if nonconforming signs can, for practical purposes, have a limitless lifespan.
- **Definition.** Determine if the definition of “nonconforming” should be updated. Consider, for example, distinguishing between signs that became nonconforming as a result of the HBA and others that have become nonconforming over time as a result of other state legislative action and whether these different categories of nonconforming signs should be regulated differently.
- **Customary Maintenance.** Examine the variability in the definition (at the states’ discretion) of what constitutes customary and reasonable maintenance. The definition of maintenance has grown in importance as nonconforming signs have an apparent indefinite life.
- **Acts of God.** Clarify and apply a consistent interpretation of what constitutes “acts of God” that destroy nonconforming signs. There is considerable variability across the country in what constitutes a destroyed sign.



- Flexibility. Identify acceptable methods, if any, that the states may use to remove nonconforming signs (e.g., trading programs) or to move or upgrade nonconforming signs and the legal and regulatory changes required to implement these methods.
- Funding. Examine if there is potential to obtain additional Federal funding to acquire nonconforming signs over time.

## CONTROL OF VEGETATION AROUND BILLBOARDS

### The issue

Vegetation management is not addressed by the HBA. Nevertheless, it is an issue that causes a great deal of conflict among those concerned about OAC. The extent and nature of the conflict varies enormously in different parts of the country.

In parts of the country where vegetation grows profusely, issues about control of vegetation within the highway right of way and adjacent to billboards arise both before and after billboard construction. Many contend that no vegetation should be cleared in the public right-of-way for the sake of visibility of a new billboard. Some also contend that the state should not allow cutting of vegetation within the right-of-way to preserve the visibility of an existing sign. The outdoor advertising industry regards maintenance of visibility as inherent to the value of a legally-established sign. Numerous states have developed regulations that specify precise parameters in which vegetation control is permitted. In states where, for climate or other reasons, vegetation does not often grow in a way that impedes visibility, control of vegetation around billboards is generally less of an issue.

Some states have addressed vegetation control as a sequencing issue. That is, if vegetation did not preclude visibility of the sign at the time of construction, some believe that same level of visibility should be maintained over time. Most do not believe that a sign should be constructed where existing vegetation precludes visibility.

Examples of illegal vegetation cutting were reported. In some instances, it is reported that the vegetation was not only cut, often with little sensitivity to best management practices, but poisoned as well. This phenomenon raises questions about the level of oversight and enforcement.

In spite of the fact that the topic is not addressed by the HBA, we believe the control of vegetation within the highway right-of-way and adjacent to billboards causes enough conflict in the administration of OAC that it deserves to be addressed along with the other issues we have identified.



### Illustrative quotes

*“Another big emerging issue is vegetation. And, the ability to allow industry to cut down vegetation in the public right-of-way to allow clear views of the signs.”*

*“We need a rational approach to tree trimming, cutting and replanting. The object is to improve the viewshed of the billboard. The permitting process linked to a permitted board. The Federal government has a role in this because of planting in the right-of-way.”*

*“Vegetation management is a euphemism – it’s vegetation vandalism.”*

*“Vegetation can limit . . . visibility causing the value of the advertising to diminish and therefore reducing the effectiveness of the structure for both the operator and advertiser. I am not advocating that outdoor companies should be given carte blanche to clear cut publicly owned ROWs. I do, however, suggest that the ‘reasonable’ trimming of trees based on a permit process or state review is a perfectly viable request.”*

### Potential Focus Areas

- Education. This is an area in which there is an opportunity for the states to benefit from understanding how neighboring states are approaching vegetation control issues.
- Federal Role. Consideration should be given to whether there is an appropriate Federal role that clarifies vegetation control in the public right of way to maintain billboard visibility.
- Standards. Appropriate standards for vegetation control and landscaping should be reviewed for their consistency and effectiveness. Consideration should be given to whether the standards for vegetation control should vary depending on whether or not the sign is conforming or nonconforming.
- Enforcement. When there are clear abuses of vegetation control, timely and strong enforcement actions are needed. This, again, might be an area in which the states can productively learn from one another. Of course, effective enforcement can be largely a function of available resources and the inherent difficulty of observing and apprehending violators.



## INCONSISTENT REGULATION AND ENFORCEMENT

### The issue

Many people expressed a strong desire to have consistency in OAC regulations and stronger enforcement across and within states. Interestingly, many people also expressed the desire to maintain state flexibility in how the HBA is implemented. These two goals, consistency and flexibility, are inherently in conflict.

The HBA has been characterized as an Act that attempts to strike a balance between setting standards that the states must meet and allowing flexibility in how those standards are met. Nevertheless, inconsistent regulation and enforcement tend to produce inconsistent results.

We often heard about various states employing different interpretations of the Act and therefore having variations in their approach to enforcement. This can create an opportunity for advocates to use these variations as a way to justify a specific approach (e.g., “We don’t have to do it that way in X state.”).

A number of people we interviewed thought the rules and law were adequate, but that inconsistency in enforcement was the problem. This was particularly true when people spoke about illegal signs or “sham businesses.” Of course, inconsistency can be partially attributable to some of the organizational issues cited earlier (e.g., lack of resources and state-by-state enforcement). Part of the enforcement challenge also relates to adequacy of information. Some states are developing very comprehensive and modern approaches to conducting and maintaining their sign inventories. But there is also the perception that consistently-defined, up-to-date data is often not available at the state level and is certainly not available at the national level.

### Illustrative quotes

*“Most creative solutions would come through focusing on enforcement (bigger fines, reasonable fees).”*

*“We need to get the regulations up-to-date.”*

*“With a magic wand, I would start with consistent enforcement of what’s on the books.”*

*“Industry wants reasonable, but strong regulations with enforcement”*

*“The win-win scenario to deal with older inventory (like nonconforming signs) is to create more flexibility on the regulatory side. If states, counties, and cities had the ability to work with operators on issues of damage, maintenance, replacement, height adjustment, etc., we believe our industry would be able to assist in implementing new*



*technologies that would ultimately lead to fewer, more effective, aesthetically improved, outdoor advertising units.”*

### Potential Focus Areas

- Consistency versus Flexibility in Standards. Certain issues, such as the approach to new technology, are ripe for the development of greater consistency in regulation. The challenge could be to define which issues warrant consistent application across the country and which are appropriate for more flexible interpretation at the state level.
- Consistency versus Flexibility within States. At lower levels of government and within state DOTs (such as through district or division offices), there is the same challenge of seeking consistency while maintaining flexibility. Analysis of this issue at the state level combined with new direction and leadership from within the DOTs could improve the consistency and flexibility balance within states.
- Enforcement. Many believe that stronger state and Federal enforcement would address many of the inconsistencies associated with the implementation of the OAC program. This belief should be analyzed.
- Inventory. Consider a national inventory of signs subject to the HBA with consistent definitions so that the status of various enforcement and other issues can be more easily monitored over time.

### THE BONUS PROGRAM

#### The issue

The initial national attempt to control outdoor advertising was enacted in the Federal-Aid Highway Act of 1958. Section 122 of the Act was called the “Bonus Act.” It provided that states which voluntarily agreed to control outdoor advertising adjacent to Interstate Highways in accordance with national standards would receive a bonus payment of one-half of one percent of the cost of interstate highway construction projects.

The HBA did not eliminate the provisions of the Bonus Program and 23 states continue to operate under both the Bonus Program and the OAC.<sup>18</sup> A variety of people raised the question about the value of continuing to have the Bonus Program along with the HBA.

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<sup>18</sup> Bonus Act states include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, West Virginia, and Wisconsin.



No bonus payment has been made since the early 1980s.<sup>19</sup> Under the bonus agreements signed prior to 1965, the states promised to pay back all Federal bonus payments if the state failed to maintain control as required by the Bonus Act.

At the same time, some believe that the Bonus Act has been more effective than the subsequent HBA in controlling outdoor advertising. Those with this perspective think that amending and making the Bonus Act mandatory would have been preferable to the passage of the 1965 HBA.

#### Illustrative quotes

*“We tried to draft regulations that made sense of the HBA and the Bonus Act requirements and finally decided that there was no way to do it. We have not found a model from other states that would coordinate the Bonus and HBA requirements.”*

*“We ought to remove the Bonus State provisions. It has not been used in years. States would like to opt out of the program, but current policy is that states will need to repay previously received bonus payments.”*

*“The Bonus Program effectively died in 1982.”*

*“Provide a uniform system of sign control. Eliminate conflicting elements of the Federal-Aid Highway Act of 1958 . . . and the Highway Beautification Act of 1965 by merging these two regulatory frameworks.”*

*“This archaic law has exactly the opposite effect of what it was intended to achieve. The Bonus Act results in “clusters” of billboards on small tracts of land that were zoned commercial or industrial in 1959.”*

#### Potential Focus Areas

- Eliminate the Bonus Program. Some desire a uniform system of sign control and find the HBA and the Bonus Program to be in conflict. At the same time, there are those who believe that the Bonus Program, while voluntary, was effective and should be maintained. The value of the Bonus Program should be examined and a conscious decision to eliminate or reinforce the Program should be made.
- Adjustment of the Bonus Program. Consider turning the Bonus Program back to the states allowing them to continue, modify or abandon the program as they desire.

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<sup>19</sup> Bonus payments were made through general fund appropriations and were not appropriated from the Highway Trust Fund.



- Past Payments and Future Obligations. There are issues related to past payments and the extent to which the states would need to repay the Federal government for Bonus payments if the states were to individually opt out of the program or the program were to be turned back to the states. Currently, although no bonuses have been paid for years, failure to comply with Bonus Act requirements places the Bonus States in jeopardy of having to repay bonuses that have been paid in the past.

## FHWA'S 10% PENALTY

### The issue

All states must comply with the effective control requirements of the HBA or be subject to a ten percent reduction in their Federal-aid highway apportionments. The penalty has been used, but seldom.<sup>20</sup> It is such a draconian measure for FHWA to take that it is politically difficult to use. It is as if the penalty hammer is so large that it cannot be lifted. Some do not like having FHWA use it as a threat against them. Others believe FHWA only threatens instead of taking action when needed. Still others believe that if the threat were removed, FHWA would lose much of its enforcement capability.

### Illustrative quotes

*"FHWA only threatens to use the penalty if there is systemic inability to abide by the statute. Sloppy enforcement alone won't do it. It takes a long history of abuse and months and months to administer. A more flexible sanction package might result in more effective enforcement."*

*"The 10% threat of withholding gives an excuse for the Federal program."*

*"The HBA is a hostage law that allows the Feds to control things through funding, although the 10% penalty has never happened. They don't want to take the money from their programs which build highways because that's what they're about, building highways. They don't have a .22 or a 30-06 rifle as the 'stick.' They only have the atomic bomb: the 10% of funds."*

*"There's a lot of distance between no action and ten percent penalty."*

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<sup>20</sup> Secretary of Transportation Volpe did invoke the ten percent penalty after determining that South Dakota was not providing "effective control" after the state zoned most of the area along Interstate 90 as commercial. Subsequently, the withheld federal-aid highway funds were returned to the state. Other states have similarly been penalized with funds returned after compliance was achieved.



### Potential Focus Areas

- The Nature of the FHWA 10% Penalty. Consider the effectiveness of the 10% Penalty and whether new or different FHWA enforcement mechanisms are more appropriate.
- Increased Penalty Discretion. The penalty is so severe that it is little used. Consider the possibility of “right sizing” possible FHWA financial penalties so that the threat is commensurate with the violation.
- Alternative Penalty Approaches. A wide variety of alternative penalty or reward approaches is possible. For example, it has been suggested that the use of Federal-aid highway funds be prohibited on segments of roads where there are nonconforming signs.

### FEDERAL-STATE AGREEMENTS

#### The issue

Most Federal-state agreements are 30 to 40 years old and many have elements that are outdated or are in conflict with subsequent state laws.

Several state OAC employees told us that their legislative bodies had passed laws that are overtly or subtly in conflict with the HBA. This obviously makes enforcement difficult as state regulators try to determine what actions to take or not take.

Various Federal-state agreements suffer from outdated elements. The advent of high technology signs and the evolution of freeway on-ramp design (that may make signs nonconforming) are examples of challenges that may not be adequately addressed in a state’s existing Federal-state agreement. Several states expressed concern about their agreements being inconsistent with new technologies.<sup>21</sup>

#### Illustrative quotes

*“It’s a good idea to update the Federal-state Agreements. FHWA could write a rule that would provide the floor about spacing of signs and so on, and could thus get a minimum common denominator across all states.”*

*“The Feds ought to be in the minimum standards business.”*

*“Each state is bound to their Federal-state agreement and those agreements are obsolete. Now there is no guidance from the Feds about how to effectively control the*

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<sup>21</sup> For example, Utah’s agreement states that signs that have intermittent lights are prohibited, except for public service information.



*new technologies. The rules are very different between states. Interstates should be regulated uniformly.”*

### Potential Focus Areas

- **Procedures.** The process for updating agreements is perceived by many to be exceedingly onerous. There might be ways in which FHWA could facilitate the updating of these agreements recognizing administrative procedure requirements, but being as accommodating as possible to those states that wish to update their Federal-state agreements. Updating a standard agreement might be a good candidate for a pilot project.
- **Minimum Standards.** Identify minimum standards that must be in all Federal-state agreements and update agreements as needed.
- **Dated Provisions.** Provisions that are in conflict with today’s reality or other state legislation should be reviewed. Many of the original agreements, for instance, are either silent about or in conflict with the new technologies being used in some signs.
- **Contradictions.** Some states have passed legislation that contradicts their original Federal-state agreements. Developing a national inventory or even a sampling of such contradictions might be a useful first step in updating agreements.

### HBA SCOPE: RESPONSIBILITY FOR THE FEDERAL AID PRIMARY SYSTEM

#### The issue

When the Intermodal Surface Transportation Efficiency Act (ISTEA) was passed in 1991, it made several changes to the HBA. For purposes of the HBA, states are required to control signs along any highway that was part of the Federal Aid Primary system as of June 1, 1991, regardless of subsequent changes in classification.<sup>22</sup> This is frequently referred to as the 6/1/91 problem.

Many states find this to be an annoyance with little justification. They now manage certain roads for one purpose and one purpose only: outdoor advertising control. A number of state managers we interviewed suggested that it would be appropriate to drop the state’s responsibility, which would then reside with the appropriate unit of local government. Many states feel their resources are already stretched in managing the OAC

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<sup>22</sup> Congress also indicated that states could use Highway Trust Fund monies to acquire nonconforming signs. With this in mind, the FHWA actively pursued the removal of nonconforming signs. However, Congress amended the HBA so that the decision to remove nonconforming billboards was up to the discretion of the states.



program. Lessening the state’s responsibility as suggested might allow them to operate their remaining OAC programs in a more focused and effective manner. A change such as this would require legislative action.

There are some, however, who express concern that not having the states continue to have this responsibility will lead to more signage and less control.

#### Illustrative quotes

*“The states should not have responsibility for primary routes that are no longer as part of the national system. We have responsibility for only OAC. It’s an annoyance.”*

*“Eliminate the requirement that states retain sign control along any highway on the Federal Aid Primary system as of June 1, 1991, regardless of any subsequent change in its functional classification. Highways that are dropped from the system should be dropped from enforcement after first providing notification to the succeeding local unit of government. . . . As a practical matter, state DOTs do not have people assigned to such highways to assist in detection and enforcement activities.”*

*“We need to bring this program into the 21<sup>st</sup> century. We need to critically evaluate our original paradigms. There is still a need for control to help aesthetics and safety. But, we need to be clear about our interests – does it still include the old primary system? Why not just be responsible for the interstate system and the scenic byways?”*

#### Potential Focus Areas

- **Scope of Responsibility.** Consider dropping the responsibility for sign control along highways that were part of the Federal Aid Primary system as of June 1, 1991 but have subsequently been reclassified. This responsibility would then reside not with the state, but with the appropriate local unit of government.

### SUMMARY



As we conducted interviews, a continuum of importance of issues became clear. We then began to explore the potential for gaining agreement about how the issues should or could be addressed collaboratively. By merging the dimensions -- perceived importance and potential to reach agreement -- a matrix was created.

Table B shows the major issues distributed along these two axes. We find it particularly revealing that, in our estimation, none of the issues, regardless of importance, can be placed in the highest row for potential for agreement. We arrived at these placement conclusions initially through the comments we received in the early interviews and subsequently by testing our judgments about issue placement with various individuals we interviewed and in the focus group discussions, and then with members of the ARG.



The issues having the most promise – because of both importance and potential to reach agreement – are highlighted in light gray in the table. These Tier I issues should be pursued first in any form of collaborative process. Again, it is revealing that no issues made the top row as having great potential for agreement. The remaining issues – i.e., Tier II – could be tackled after success has been achieved in addressing some or all of the Tier I issues.

The optimal approaches to pursuing these issues will vary depending on the nature of the issue, the extent of conflict, and the value in having balanced and representative interests as part of a collaborative process. The following section outlines several options for moving forward.

TABLE B PRIORITY SUBSTANTIVE AND ORGANIZATIONAL ISSUES MATRIX			
	Perceived Importance 		
Potential for Agreement 			
	<ul style="list-style-type: none"> <li>▪ Federal-state Agreements</li> <li>▪ FHWA 10% Penalty</li> </ul>	<ul style="list-style-type: none"> <li>▪ FHWA’s OAC Organization</li> <li>▪ Regulation &amp; Enforcement</li> </ul>	<ul style="list-style-type: none"> <li>▪ New Technology</li> <li>▪ Commercial and Industrial Areas</li> <li>▪ Nonconforming Signs</li> <li>▪ Vegetation Control</li> </ul>
	<ul style="list-style-type: none"> <li>▪ HBA Scope</li> <li>▪ Bonus Program</li> </ul>	<ul style="list-style-type: none"> <li>▪ State DOT Organization</li> </ul>	



## IV. OPTIONS FOR MOVING FORWARD

Three very different types of issues emerged during this Assessment. Two of the three warrant near-term attention. These are the organizational issues and substantive issues. They should be approached using different mechanisms. Organizational issues should be addressed first or concurrently with substantive issues.

### ORGANIZATIONAL ISSUES

We identified and detailed organizational issues at both the Federal and state DOT levels. This, however, is an Assessment of the Federal OAC Program. The effectiveness of the Federal program depends largely on its organization and resources. Given input we received throughout the Assessment, it is clear that the Federal program needs improvement.

We recommend that FHWA convene a small **ad hoc** forum consisting of current and former staff from FHWA, representatives from a few state DOTs, and others as needed to review and suggest improvements in structure, resources and the degree to which the program should be centralized. Given the need to have a tightly coordinated control Program that involves both Federal and state regulators, it is important to include a handful of state DOT representatives for their implementation experience and knowledge. Both state and Federal regulators want to see a more cohesive partnership between the two levels of government.

This forum should be responsive to the needs of the OAC Program and not have a long life. A thoughtful, experienced and committed group should be convened with a specific charge, meet on four to five occasions, and produce a recommended approach for improving the OAC Program within FHWA within six months.

There are clearly similar organizational issues within the state DOTs. As noted earlier, the issues at both the Federal and state levels are considered significant and impediments to an effective OAC Program. However, because of the relative ease of addressing a single entity as well as the importance of real and symbolic leadership from FHWA, it is imperative to address the FHWA organizational issues first.

### SUBSTANTIVE ISSUES

During the course of our interviews we asked people if, based on the problems and issues they had identified, they believed a diverse group of stakeholders might sit down together productively to resolve OAC program issues or challenges. While there generally was a positive response about the potential of a collaborative effort, many also expressed doubt about whether collaborative problem solving could succeed. This opinion was usually based on the attitude, relationship and organizational issues addressed earlier.



This section highlights a number of options for moving forward. We believe the substantive conflicts we have identified are particularly suitable to collaboration for several reasons:

- Interests. The interests of the major parties are interrelated.
- Knowledge and expertise. There is an enormous resource of experience and insight that could be tapped through an inclusive, collaborative process.
- Trust. The current high level of distrust could be lessened through successful collaborative interactions.
- Alternatives. The interest-based negotiation that characterizes collaborative efforts leads to the generation and analysis of multiple alternatives and selection based on mutual understanding of their implications.
- Implementation. Selected alternatives are less likely to be widely opposed when generated from a collaborative effort. This increases their chances for successful implementation.

Below are some considerations for successful collaborative efforts, including discussion about the motivations for the key interests to participate in a collaborative effort. We also describe a number of options, including two we believe have potential to lead to productive results, assuming the conditions for successful collaboration can be met.

#### Reality Check: Is There Sufficient Motivation to Collaborate?

Is there sufficient motivation for the variety of key interests to participate in a collaborative process? A range of reasons why interests might not want to collaborate is raised in the following paragraphs.

The state and Federal agencies might see collaboration as a mechanism that simply airs their shortcomings in administering the OAC Program. And, they might fear that a high profile process might increase pressure to shift organizational priorities away from areas the agencies (and possibly their constituencies) currently find important. Those from a scenic perspective might want to see more absolute boundaries for various issues, such as nonconforming signs or new technologies. They could fear that collaboration would lead toward lowest common denominator solutions that unacceptably compromise their positions. The industry might see collaboration as a move that might increase regulation in ways that would adversely affect their competitive advantage and ultimately profitability. With these potential real or perceived obstacles, is there sufficient motivation for the affected interests to want to participate in a collaborative problem solving effort?

FHWA is clearly a critically important participant. Many people told us that unless FHWA is actively engaged with others in the analysis of problems, the development of options, and the consideration, refinement and acceptance of the best alternatives, the time and effort involved in a collaborative process would likely be wasted. As one



person noted, *“I would like to see a diverse group get together. But it would need Federal buyoff and blessing in advance and a commitment that FHWA would actually listen. It might help get the feds off their ivory tower.”* We see FHWA as part of the problem, but also think that, as reflected by FHWA’s willingness to openly explore the issues through this Assessment, the agency is seeking ways it can make the OAC Program less acrimonious and contentious, and more up-to-date, well-coordinated and effective.

We believe that those from the scenic perspective or the state OAC regulatory programs could benefit from a dialogue that raises, clarifies and potentially resolves various issues. The scenic organizations could raise and articulate their concerns and they might be able to make progress on issues of interest to them, such as nonconforming signs. But, if scenic advocates were to come to the table with a fixed and unbending agenda, it is doubtful that meaningful progress would be made on any front. The state regulating community would find it advantageous to participate if the dialogue leads to greater clarity or simplification and consistency for their programs by addressing issues such as commercial and industrial area abuses or standards for new technology.

The benefits to the outdoor advertising industry from a collaborative policy dialogue process are less predictable. Our interviews suggested that the industry would like to see certain issues -- such as technology, vegetation control, and nonconforming signs – receive attention. Industry members generally perceive that the billboard industry is heavily regulated, although the industry also benefits from a number of provisions of the HBA and would want to ensure that future changes in law and regulation are not to their economic disadvantage. At the same time, those from industry express interest in moving forward on and enhancing understanding about certain issues. One individual noted, *“If we can begin to understand each other’s views, maybe we can begin to find solutions.”*

If a collaborative effort is pursued, it is important that the participants give the process ample opportunity to succeed. Unless the industry sees it as being in its best interests to participate in good faith it might try to scuttle the process through political or legal action. Scenic interests might do the same. One individual expressed some of these concerns: *“We would be skeptical if any changes were to be pursued by FHWA or the DOTs alone. We need the involvement of all the stakeholders. Not sure about what the group might accomplish. And, we believe that whatever good planning might be put together might get circumvented by money and politics that would undo everyone’s hard work overnight.”*

A collaborative effort will not be launched and will not be effective without individual leaders stepping up to make this a priority. Although we have highlighted the essential role FHWA must play, leaders or champions from industry, the scenic perspective, and the state regulating community need to demonstrate that improving OAC Program effectiveness is a worthy pursuit. This pursuit will require hard work, a commitment of



time and energy, and a willingness to tackle and negotiate pragmatic solutions to the challenging issues we have identified in this Assessment. Thus, what happens next logically depends on initiative and leadership.

In sum, a collaborative effort will only work if the parties find there is potential benefit in being part of a transparent and open negotiating process. In this instance, as is often the case, there are differing values, distrust among the parties, varied financial incentives, disparities in resources, and organizational differences that need to be recognized. Some of these differences might prove to be high obstacles to overcome. We believe, however, there is sufficient interest in seeking improvement for several important issues and that a well-conceived collaborative process can lead to productive outcomes for issues amenable to agreement. We think five Tier I issues – new technology, abuses of signage in commercial and industrial areas, the future of nonconforming signs, vegetation control, and inconsistent regulation and enforcement – should be addressed first through a collaborative process. The process should explicitly include a phased approach with milestones to allow those participating to review progress and commit to ongoing participation. We are convinced that, on the heels of this Assessment, initiative and leadership to foster productive collaborative problem solving will need to come from FHWA and other key stakeholders.

#### Conditions for Successful Collaborative Problem Solving

There is a full range of optimism and pessimism about what might be accomplished through a collaborative process. Several comments reflect the varied sentiment: An early interviewee, who was being critical of FHWA's execution of the program, said *"I applaud them for this Assessment effort as a step in the right direction."* Another offered a more discouraging outlook, saying *"I have very little hope that this will lead to any significant, acceptable solutions. I am very pessimistic."* Another offered a more upbeat prognosis: *"What could be accomplished -- solid agreements among the groups. We would stop the renegade groups from coming in and pushing the boundaries of the law. We could move toward the 'right' amount of supply and demand that recognizes both the advertising and aesthetic values."*

One individual reflected the feeling that collaboration is needed, but, with history as prelude, the prospects for success are daunting: *"I hope this doesn't end up like the 1981 report where the conclusion was simply that there is no consensus. We need to talk. We're right to recognize that billboards won't go away and that there is new technology. Let's figure out how to live together. Even one major improvement would be progress. At a minimum, we can learn what the best things are that states are doing."*

Collaboration is not a panacea, but much has been learned about conditions that lead to both success and failure as the field of environmental conflict resolution has evolved. In the context of Outdoor Advertising Control, we offer these conditions for successful collaborative problem solving:



- All participants, both individuals and agencies or organizations, must be fully engaged and committed to participate in good faith.
- A specific charter and a defined duration for the process must be established.
- The process must be transparent and it must assure adequate inclusion of interests.
- The scope of issues addressed must be limited and clearly defined.
- Decision-making roles must be clearly defined.
- Those participating must be able to speak for their constituency or agency and be willing to negotiate in good faith.

In addition, on a practical level, specific guidelines are helpful:

- Develop and conduct the process according to operating agreements or groundrules agreed to by everyone.
- Consider taking a phased approach to issues, beginning with an attempt to reach agreements on issues that are both important and have the most promise for agreement (our Tier I issues identified in the previous section).
- Establish milestones for success at which participants evaluate and determine their ongoing commitment to the process. Often it is advisable to design a full process but get participants commitment in advance only to an initial phase. When this is done process adjustments can be made and commitments of participation reaffirmed at a preset milestone.
- Establish procedures and agreements so that relevant and needed information is available to all participants in a timely manner.
- Assure appropriate procedures for dealing with the media and the public.
- The use of a skilled and trusted third-party facilitator or mediator is helpful early in a process since process design, expectations and operating agreements are so important. It is also helpful as the process is implemented to enhance the likelihood that the process will be effective, that negotiations and products are timely, and that conflict is managed appropriately.
- Adequate financial resources for the effort should be in place in advance. At the outset, it is important that resources are available to permit equal participation by state and local governments and scenic or environmental interests.
- Ongoing, timely, inclusive communication with all involved is vital.
- Keep sight of the challenges of implementation throughout the discussions and agree on implementation steps with specific timeframes and accountability as part of final agreements.

Several process options are explained below. They range from continuing with a business-as-usual approach or “no action,” to creating education programs, to policy dialogues at two distinct scales.



## “No Action” Option

Because of the pervasiveness of pessimism expressed to us by some, one of the first options we considered was “no action.” What is implied in this alternative is “business-as-usual” in which parties continue to act largely independent of each other or in coalitions according to what they see as their best interests. If this course is followed, no concerted problem-solving process would be convened. The argument for such a course is the belief that the affected interests cannot reasonably be expected to make meaningful progress on any of the issues and that the current status quo is not sufficiently problematic to warrant any extraordinary effort to improve things.

We have concluded that this no-action course is undesirable for four primary reasons: 1) program inefficiencies are costly, 2) business-as-usual is likely to create more conflict and discontentment over time, 3) it makes sense to attempt to update a number of program components that originated when conditions were much different, and, 4) in spite of their skepticism, there is considerable desire on the part of many stakeholders to improve the program and contribute to that improvement.

## Recommended Options for Substantive Issues

We recommend two collaborative options:

- A National Policy Dialogue
- A Multi-State Policy Dialogue

Several other approaches that might be valuable complements are identified following the discussion of these two primary collaborative options.

### National Policy Dialogue

In a National Policy Dialogue, representative stakeholders would be convened from around the country. Issues that might be particularly appropriate for this option include: the use of new billboard technology in outdoor advertising, abuses of signage in commercial and industrial areas, the future of nonconforming signs, and inconsistent regulation and enforcement.

The key advantage of this option is that it matches the scope of many of the issues with a national process. Outdoor advertising control is mandated by Federal law; the HBA has been in force for over forty years and a number of its aspects are dated; and a number of issues warrant attention. Thus, a comprehensive, nationwide dialogue to address various challenges consistently across the states would be helpful. Another advantage of a National Policy Dialogue is that it makes it easier and more meaningful for national organizations to participate. A National Policy Dialogue would be a highly visible effort that could receive political and policy support at the national, state and local levels.



The key disadvantage of this option is its cost and complexity. In one setting, participants would have to deal with vastly different histories, perspectives, philosophies and geographies. Another problem might be the relative handicap that representative state agencies, local governments, scenic or environmental organizations might face because of staffing or budget constraints. This option is also likely to be the most time-consuming and the comprehensiveness of its scope might make it difficult to achieve meaningful results in an acceptable period of time.

Below is a list of conditions for success for a National Policy Dialogue:

- FHWA leadership, endorsement and active participation.
- Committed participation from selected states and key scenic and industry interests.
- Communication channels to inform all states and key interests that are not actively engaged in the Dialogue.
- A commitment by all participants to work through a structured and facilitated process.
- A commitment to work toward results, perhaps through a phased process that emphasizes first addressing important issues that are most amenable to agreement.
- An ability to identify and willingness to work on issues that are applicable to all or most states.
- Adequate time to work through substantive issues.
- Adequate inclusion of key interests.
- Participants who can speak for and commit their organizations or agencies.
- Willingness of the participants to negotiate in good faith.
- Availability of adequate resources in advance.

#### Multi-State Policy Dialogue

States have the primary responsibility for and considerable discretion in implementing the HBA. A Multi-State Dialogue could build on factors that specific states have in common (e.g., environmental and scenic conditions, types of vegetation, the fundamentals of the economy of the region, history and culture) or simply involve several states with evolved programs regardless of geographic commonality. A Multi-State Dialogue would involve FHWA, three to five states and representatives from the outdoor advertising industry, scenic organizations and local jurisdictions. Solutions developed could be broadly acceptable, supported by FHWA, implemented by the states at the table and ultimately advocated to a larger number of states over time as appropriate. A Multi-State Dialogue recognizes and builds on the fact that states have considerable discretion in their implementation of the HBA. It constitutes a “bottom-up” approach to seeking meaningful and relevant changes. Issues that might be particularly appropriate for this option include the control of signs in commercial and industrial areas, how the state



DOTs are organized to effectively implement control of outdoor advertising, and vegetation control.

The key advantage of this option is its manageability: it involves a sufficient number of states to have regional or perhaps national applicability but few enough to allow for efficiencies. Another advantage is that it builds on the natural incentive states have to learn from each other and to develop more effective, up-to-date regulation. This option also is conducive to allowing issues to be discussed in depth and resolved to the satisfaction of key constituencies in a limited geographic area. The states that would participate in a Multi-State Dialogue would likely be ones with engaged state DOT leadership. This option would be less costly and likely less time-consuming than a National Policy Dialogue.

The key disadvantage of this option is that only a limited number of state perspectives can be represented at the table. States are sufficiently different that the findings and conclusions from one state might not be relevant to other states or the FHWA national program. In addition, this approach could be more taxing on the resources of various agencies, companies and groups if more than one Multi-State Dialogue were to be pursued. As with a National Policy Dialogue, attention would need to be paid at the outset to assuring adequate participation from state and local agencies as well as scenic or environmental interests.

Conditions for success for a Multi-State Policy Dialogue include:

- FHWA leadership, endorsement and active participation.
- Enthusiastic participation from the selected states.
- Engaged participation from outdoor advertising representatives and key interest groups.
- States participating that are viewed with high credibility for their OAC programs
- An effective process to communicate with other states.
- A commitment to work through a structured and facilitated process.
- A commitment to work toward results, perhaps through a phased process that emphasizes first addressing important issues that are most amenable to agreement. An early milestone should be set to determine ongoing commitment to the process.
- Adequate time to work through substantive issues.
- Participants who can speak for and commit their organizations.
- Willingness to negotiate in good faith.
- Availability of adequate resources in advance.



## Supportive Processes

The National Policy or Multi-State Dialogue models could benefit from complementary and supportive processes. Several of these options are described below.

### Education Programs

A well-conceived and well-executed education program could bring greater understanding, consistency and predictability to OAC. Such a program could reduce the variability of enforcement by the state DOTs, could compensate through consistent education for the lack of resources faced by many regulators, could clarify the content and intent of the law, and could share best practices across various jurisdictions. The National Alliance of Highway Beautification Agencies (NAHBA) or FHWA itself could play an important leadership role in such an initiative. We believe that an education program would be helpful, but should not be considered at this point as a substitute for the recommended collaborative options. Rather, a well-executed educational program might constructively complement the results produced by collaborative efforts.

### One-State Pilot Program

Several states are interested in the potential for pilot programs. FHWA has issued guidance on requirements for pilot programs but, to date, no pilot has been approved.

The goal of the One-State Pilot Program described here is to experiment with ideas and approaches to outdoor advertising control so that results might have national applicability. This option would involve an experimental approach to one or more issues in the selected state. A hallmark of this option is a commitment to develop action and follow through on one or more reforms that would improve the regulation of billboards in a particular state. It might be considered a “test and invest” model that allows policy changes to be tested on a state basis before broader implementation.

The major challenge, at the outset, would be what issue is selected for a pilot program, how it is selected, and by whom. This approach might be a useful vehicle for creatively addressing nonconforming signs or unzoned commercial and industrial areas. Some pilots have been suggested to FHWA already and these might be appropriate.

The key advantage of this approach is that it allows a single state experiment to see how OAC can be more effectively implemented and selected issues better addressed. It recognizes the desire on the part of several states to see near-term change. The single state chosen should be one with a strong, well-regarded program so its results would be meaningful to other states.

There are several disadvantages to this approach. One is that it may be hard to undo the results of an experiment if the experiment leads to less than desirable results. Another is



that FHWA has no history of approving pilot projects involving OAC. There also is the risk that significant programmatic changes at the state level might require additional staff and financial resources. Furthermore, changes pursued at the state level that are not ultimately seen as desirable or legal at the Federal level might lead to frustration on the part of industry, scenic advocates and the regulatory community.

We see a pilot program as a potentially useful complement to one of the collaborative approaches suggested above. It would demonstrate FHWA's support for creative, pragmatic and experimental thinking. To be most valuable, the selected state should have high credibility for its outdoor advertising control program nationally.

### OVERALL RECOMMENDATION

In this section of our report we have presented and discussed different approaches for addressing organizational and substantive issues.

To address its organization issues, we recommend that FHWA convene an **ad hoc** forum with a six-month timeline to address OAC Program organizational issues at the Federal level. It is important to address these issues early since they are fundamental to improving OAC effectiveness.

We also recommend a collaborative approach for addressing a range of substantive issues. We have shared our perspective about perceived motivations for various interests to participate in a collaborative process. We identified necessary conditions and suggested guidelines for successful collaborations. The most viable approaches involve collaborative effort that is characterized by inclusiveness and balanced participation. We believe that "no action" is undesirable for the four reasons given.

The two collaborative options we see as having particular merit are:

- A National Policy Dialogue
- A Multi-State Policy Dialogue

Table C on the following page summarizes the two recommended collaborative approaches, the Tier I issues that might be most applicable for each, and the focus areas that could be addressed.

These collaborative options are not either-or choices. They could be pursued sequentially, as complements to one another, or by investing in the one approach that is considered to have the greatest merit given the issues under consideration. The other supportive processes we have described could be useful complements to either option. If a single collaborative approach is pursued, we recommend a National Policy Dialogue. In either case, leadership and initiative from FHWA and other stakeholders will be essential to moving forward.



**TABLE C**  
**COLLABORATIVE OPTIONS WITH TIER I ISSUES**

Approach	Tier I Issue	Potential Focus Areas
National Policy Dialogue	<p>New Billboard Technology</p> <p>Abuses of Signage in Commercial and Industrial Areas</p> <p>The Future of Nonconforming Signs</p> <p>Inconsistent Regulation and Enforcement</p>	<ul style="list-style-type: none"> <li>▪ Safety</li> <li>▪ Standards</li> <li>▪ On-Premise Signs</li>   <li>▪ Enforcement</li> <li>▪ Criteria</li> <li>▪ Consequences</li>   <li>▪ Goal</li> <li>▪ Definition</li> <li>▪ Customary maintenance</li> <li>▪ Acts of God</li> <li>▪ Flexibility</li> <li>▪ Funding</li>   <li>▪ Consistency in standards</li> <li>▪ Consistency within states</li> <li>▪ Enforcement</li> <li>▪ Inventory</li> </ul>
Multi-State Policy Dialogue	<p>Abuses of Signage in Commercial and Industrial Areas</p> <p>Vegetation Control</p>	<ul style="list-style-type: none"> <li>▪ Enforcement</li> <li>▪ Criteria</li> <li>▪ Consequences</li>   <li>▪ Education</li> <li>▪ Federal role</li> <li>▪ Standards</li> <li>▪ Enforcement</li> </ul>



APPENDIX A  
MEMBERSHIP IN THE ASSESSMENT RESOURCE GROUP

Bethaney Bacher-Gresock  
Federal Highway Administration

Shawn McBurney  
American Hotel & Lodging Association

Rod Boehm  
Tennessee Department of Transportation  
and National Alliance of Highway  
Beautification Agencies

Lynn McConville  
Pennsylvania Resources Council, Inc.

Jeffrey Noland  
Fairway Outdoor Advertising

Bill Brinton  
Scenic America/Garden Club

Peter Nyberg  
Federal Highway Administration  
(retired)

Kevin Fry  
Scenic America

David Parkhurst  
National League of Cities

Janis Gramatins  
Federal Highway Administration

Jeff Soule  
American Planning Association

Myron Laible  
Outdoor Advertising Association of  
America

Barbara M. Wessinger  
South Carolina Department of  
Transportation and National Alliance of  
Highway Beautification Agencies

Joe Little  
CBS Outdoor



## APPENDIX B LIST OF INTERVIEWEES

Jim Arbis  
California Department of Transportation

Tim Anderson  
Clear Channel

Lois Arciszewski  
Adams Outdoor

Ken Baker  
Business Owner

Jim Barrett  
Virginia Department of Transportation

Joe Battisto  
Litter Control and Beautification  
Council

Marsha Bayer  
Federal Highway Administration

Ron Beals  
California Department of Transportation

Carlton Bernhard  
Texas Department of Transportation

William Bickley  
Massachusetts Department of  
Transportation

Rod Boehm  
Tennessee Department of Transportation

Bob Black  
Federal Highway Administration

Bill Brinton  
Scenic America/Garden Club

Gary Britton  
Nebraska Department of Roads

Deb Brucaya  
Wisconsin Department of Transportation

Jeffrey Buntin  
Buntin Group

Joanna Campbell  
Georgia Department of Transportation

Peggy Conlon  
Ad Council, Inc.

Skip Cramer  
Jacksonville Community Council, Inc.

Dennis Decker  
Federal Highway Administration

Doug Dixon  
Intercontinental Hotels Group

Tim Donovan  
Ohio and Erie Canalway

Nancy Fletcher  
Outdoor Advertising Association of  
America

Charles Floyd  
University of Georgia



Christine Freitag  
Scenic Ohio and Garden Club of  
America

Kevin Fry  
Scenic America

Chris Gagen  
Posterscope

John Garner  
Florida Department of Transportation

Janis Gramatins  
Federal Highway Administration

Howard Greiner  
Buntin Group

Juanice Hagan  
Florida Department of Transportation

Jacqui Hakim  
Litter Control and Beautification  
Council

Ruth Hawkins  
Arkansas State University

Dick Henry  
Federal Highway Administration

Peter Herschend  
Herschend Family Entertainment

Karen Hider  
Federal Highway Administration

Marion Hilliard  
Florida Federation of Garden Clubs

Darwin Hindman  
City of Columbia, Missouri

Bill Hooper  
Clear Channel Outdoor

Karen Huber  
Texas Hill Country Alliance

Darren Irby  
American Red Cross

Clyde Johnson  
TBE Group

Bill Jonson  
Citizens for a Scenic Florida

Amy Joyce  
Oregon Department of Transportation

Todd Kercheval  
Assistant to Texas Representative  
Hilderbran

Barbara Ketchum  
Garden Club of America

Girard Kinney  
Kinney & Associates

Don Keith  
Federal Highway Administration

Beverly Kelly  
Pennsylvania Department of  
Transportation

Walter Keuenhoff  
New Hampshire Department of  
Transportation

Karl Kruse  
Scenic Missouri

Edward Kussy  
Federal Highway Administration



Myron Laible  
Outdoor Advertising Association of  
America

Bill Lilley  
iMapData

Joe Little  
CBS Outdoor

David Lloyd  
City of Austin, Texas

Margaret Lloyd  
Scenic Texas

Dan Mandelker  
Washington University School of Law

Ed McMahon  
Urban Law Institute

Lynn McConville  
Pennsylvania Resources Council, Inc.

Paul Meyer  
Clear Channel Outdoor

Jim Moravec  
Stott Outdoor

Joyce Musick  
Missouri Department of Transportation

Janet Myers  
Federal Highway Administration

Jeff Noland  
Fairway Outdoor Advertiser

Tom Norton  
Norton Advertising

Sally Oldham  
Private citizen

Flow Oxley  
Lady Bird Johnson Wildflower Center

Mariann Patton  
Louisiana Department of Transportation

Bob Randolph  
Attorney at Law

Kevin Reilly, Jr.  
Lamar Advertising

Rand Richardson  
Federal Highway Administration

Scott Robinson  
Minnesota Department of Transportation

Jim Roddey  
The Hawthorne Group

Randy Romig  
Adams Advertising

Susan Rosetti  
TBE Group

Eric Rubin  
Rubin, Winston, Diercks, Harris &  
Cooke

Richard Saunders  
Saunders Outdoor Advertising

Ryan Saunders  
Saunders Outdoor Advertising

Jack Schenendorf  
Covington & Burling



Carroll Shaddock  
Locke, Liddell & Sapp

Congressman David Scott  
U.S. House of Representatives

John Sobotik  
Wisconsin Department of Transportation

Doug Smith  
Scenic Nevada

Nancy Stroud  
1,000 Friends of Florida

Jan Strough  
Idaho Department of Transportation

Charles R. Taylor, Ph.D.  
Villanova University

Bill Todd  
Federal Highway Administration

Craig Todd  
Litter Control and Beautification  
Council

Jean Todd  
Nebraska Department of Roads

Susan Trevarthen  
Weiss Serota Helfman  
Pastoriza Cole & Boniske, P.A.

Mark Ulmer  
Attorney-at-Law

Jerry Wachtell  
Veridian Group Inc.

John Welborne  
Scenic California

Alan Weinstein  
Cleveland State University

Barbara Wessinger  
South Carolina Department of  
Transportation

Scott Wheeler  
North Carolina Department of  
Transportation

Monica Wilson  
California Department of Transportation

John Woodling  
Litter Control and Beautification  
Council

Greg Woods  
Missouri Department of Transportation

Kerry Yoakum  
Ohio Department of Transportation

Michael Young  
Young Electric Sign Company



APPENDIX C  
INTERVIEW AND FOCUS GROUP PARTICIPATION  
BY CATEGORY AND LOCATION

City or Other	Federal or State Government	Local Government	Outdoor Advertising	Scenic	Total
<b>Personal Interviews</b>					
Sacramento	4	0	3	1	8
Cleveland	7	0	3	2	12
Austin	4	2	2	4	12
Atlanta	4	1	4	4	13
Salt Lake City	0	0	8	4	12
Kansas City	6	1	3	4	14
Philadelphia	6	0	4	4	14
ARG Members	4	0	3	3	10
Telephone Interviews	4	0	0	4	8
Total	39	4	30	30	103
Percent	37.9	3.9	29.1	29.1	100.0
<b>Focus Group Discussions</b>					
Sacramento	1	0	4	1	6
Cleveland	1	3	2	3	9
Austin	1	1	3	2	7
Atlanta	1	1	2	2	6
Salt Lake City	3	0	2	0	5
Kansas City	3	1	3	5	12
Philadelphia	1	0	3	1	5
Total	11	6	19	14	50
Percent	22.0	12.0	38.0	28.0	100.0
<b>Overall Total (Personal Interviews and Focus Group Participants)</b>					
Number	50	10	49	44	153
Percent	32.7	6.5	32.0	28.8	100