



The Honorable Secretary Peter Buttigieg
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, D.C. 20590

Dear Secretary Buttigieg,

We are writing concerning the flawed and inadequate environmental assessment for congestion pricing in New York City's Central Business District. Specifically, we believe that the review of one of the economic justice populations, namely For-Hire-Vehicle ("FHV") drivers, ignored the most glaring and important disparate impact. Therefore that population needs to be exempted from any new tax, or that portion of the assessment must be redone before any action is taken. Ignoring this disparate impact will not only result in the loss of thousands of jobs, but a surge of bankruptcies and economic devastation for thousands of immigrant, black and brown families. No community, especially not an economic justice population, should have to suffer the resulting wave of homelessness, malnutrition, and mental illness when there are better ways available that would get the benefits of congestion pricing.

The assessment correctly identifies FHV drivers, 91% of whom are immigrants, as an economic justice population. Almost all of the scenarios considered would create a second tax for taxi drivers and FHV drivers who, as part of the congestion pricing plan established in 2018, have already been saddled with a \$2.50 (taxi)/\$2.75 (FHV) tax for every trip below 96th street in Manhattan, a zone that encompasses the entire Central Business District. Under all of the proposals analyzed in the assessment, only a variation of one scenario, Scenario D, would not create a double tax for FHV drivers.

Under the remaining scenarios, only FHV drivers, or only FHV drivers and taxi drivers (another economic justice population), would be subject to double taxation. Under no scenario would any population that isn't an economic justice population be subject to double taxation. The high-income, predominately white population that lives and works within the Central Business District would pay no tax at all to drive to and from work.

The assessment points out that this second tax would devastate this population leading to a reduction of approximately 15,000 jobs within this one economic justice population. The law is clear that you and your department must prevent this from happening unless 1) it is unavoidable, and/or 2) there is appropriate mitigation. Neither is the case here.



JusticeForAppWorkers.org



[@JusticeForAppWorkers](https://www.facebook.com/JusticeForAppWorkers)



[@StandWithJFAW](https://twitter.com/StandWithJFAW)



First, the assessment offers one scenario, a variation on Scenario D, where the goals of the program are met and no population, economic justice or otherwise, faces double taxation. Second, the mitigation offered to drivers for the loss of their income and leaving them saddled with tens of thousands of dollars in debt from car loans and other expenses, is a coupon for a fee waiver on a bus driving test worth \$70.

Since this disparate impact is neither unavoidable nor appropriately mitigated, you and your department must either order a re-evaluation that shows why this disparate impact is unavoidable and offers appropriate mitigation, or you and your department must reject all scenarios that include the double taxation on this economic justice population leaving only the variation of Scenario D that prevents the double taxation.

Attached is a short summary of the relevant law.

We look forward to your timely response to this pressing matter.

Sincerely,

Aziz Bah
Justice for App Workers Co-Chair

Dachuan Nie
Justice for App Workers Co-Chair

Naomi Ogutu
Justice for App Workers Co-Chair

Justice for App Workers is a national coalition movement representing 270,000 rideshare drivers and delivery workers from the East Coast to the Midwest, united in our demands to transform our industry.

We are the drivers and delivery workers who keep communities running, getting our neighbors what they need and where they need to go. Together, we are taking on the multi-billion dollar app industry to win dignity at work. This means living wages, a safe working environment, an end to unfair deactivation, quality healthcare benefits, reliable bathroom access, and the right to form a union.



JusticeForAppWorkers.org



[@JusticeForAppWorkers](https://www.facebook.com/JusticeForAppWorkers)



[@StandWithJFAW](https://twitter.com/StandWithJFAW)

Summary of the Law Requiring the Federal Highway Administration to Reject Double Taxation of the Economic Justice Population “For-Hire-Vehicle Drivers”

Order 5610.2C and FHWA Order 6640.23A require the FHWA to identify whether its actions could have a disproportionately high and adverse effect on low-income and minority populations, after accounting for mitigation and offsetting benefits.

USDOT Order 5610.2C and FHWA Order 6640.23A both define a disproportionately high and adverse effect on an environmental justice population as happening when the following occurs:

1. An adverse effect is predominantly borne by a minority population and/or a low-income population; or
2. An adverse effect would occur to a minority population and/or low-income population that would be appreciably more severe or greater in magnitude than the adverse effect that would occur to the non-minority population and/or non-low-income population.

Under either of these prongs, the double taxation is “disproportionately high and adversely affects” this population.

1. The double taxation would fall not just “predominantly” but exclusively on one or two economic justice populations - FHV and Taxi drivers; AND
2. The double taxation would fall on no non-minority and/or non-low-income population, only one or both of these minority and low-come populations.

So we must conclude that this economic justice population would feel a disproportionately high and adverse impact.

The law does allow the FHWA to approve the scenarios that have a disparate and adverse effect on FHV drivers under certain circumstances. These circumstances are not met in this case, however.

Specifically, Order 5610.2C and FHWA Order 6640.23A state that the FHWA will ensure that any actions that have the potential for a disproportionately high and adverse effect on minority or low-income populations will only be carried out if ALL of the following three prongs are met:

1. Further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable.
2. A substantial need for the program, policy or activity exists, based on the overall public interest.
3. Alternatives that would have less adverse effects on protected populations have either: (a) adverse social, economic, environmental, or human health impacts that are severe; or (b) would involve increased costs of extraordinary magnitude.” USDOT Order 5610.2C and FHWA Order 6640.23A further explain, “In determining whether a mitigation measure or an alternative is ‘practicable,’ the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.



In this case, the second prong is met, but if the FHWA allows FHV drivers to be double taxed, the first and third are not. The second prong requires that there be a substantial need for the program. In this case, reducing congestion and increasing funding for public transportation alternatives are needed.

However, the first prong is not met. Mitigation policies suggested in the environmental assessment are meager at best. In cases where a highway policy costs an individual tens of thousands of dollars, say by running a highway through their property, the government pays the individual for the loss in full. In this case, double taxation would destroy the livelihood of tens of thousands of individuals and give them little more than a \$70 coupon for a driving test.

Most importantly, the final prong requires the FHWA to see if there are any alternatives to disproportionately adversely impacting the economic justice population while still achieving the overall policy goals. The environmental assessment does include one scenario in which the FHV and Taxi drivers are not double taxed, and the program raises the targeted amount of funds and reduces congestion. That is a variation of Scenario D in which these economic justice populations are not double taxed, and it can be found in the environmental assessment on page 16-20.

Therefore, the FHWA must reject all of the scenarios in the environmental assessment as not meeting the standards as they relate to economic justice populations, except for the variation of Scenario D that does not double taxing these populations.

