

Congress of the United States
House of Representatives
Washington, DC 20515-1806

March 17, 2021

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

Dear Secretary Buttigieg:

I am writing to request that you immediately pause implementation of the Fiscal Year 2021 round of the Infrastructure for Rebuilding America (INFRA) Grant Program.

The bipartisan Fixing America's Surface Transportation Act, or FAST Act (P.L. 114-94) resulted in a significant step forward in addressing our decades-old backlog of transportation projects. The law increased funding available for priority infrastructure projects and progressed efforts to improve the efficiency of the project development and implementation processes.

One key component of the FAST Act is Section 1105, the Nationally Significant Freight and Highway projects program (now known as INFRA). During drafting and deliberation, we worked on a bipartisan basis to ensure there were clear goals of the INFRA program codified in the law; including an amendment which I offered to help clarify these objectives. The law (23 U.S.C. § 117) clearly states that the objectives of the INFRA program include: (A) movement of freight and people, (B) economic benefits and improving global competitiveness of America, (C) reduce congestion and bottlenecks, (D) facilitating intermodalism, (E) improve resiliency of highway infrastructure and the environment, (F) improving roadways vital to national energy security, and (G) impacts of population growth on people and freight movements. Subsection (g) and 23 USC §150 provide additional guidance within the framework of the goals identified above.

As a conferee of the FAST Act, I was shocked to read the announcement from the U.S. Department of Transportation (DOT) seeking applications for the Fiscal Year 2021 round of INFRA grants. The announcement is completely divorced from the clear objectives established in the statute. The February 17, 2021, announcement states:

"For the first time, the USDOT seeks INFRA projects that address climate change and environmental justice. Projects will be evaluated on whether they were planned as part of a

comprehensive strategy to address climate change, or whether they support strategies to reduce greenhouse gas emissions such as deploying zero-emission-vehicle infrastructure or encouraging modal shift and a reduction in vehicle-miles-traveled.

“Racial equity will also be considered as a selection criterion, to the extent that project sponsors have completed equity-focused community outreach, and projects are designed to benefit underserved communities. The Department will also consider whether the project is located in a federally designated community development zone, including qualified Opportunity Zones, Empowerment Zones, Promise Zones, or Choice Neighborhoods.”

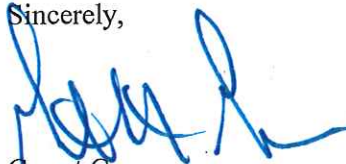
The 81-page Notice of Funding Opportunity identifies six “Key Program Objectives”, including: Supporting Economic Vitality, Climate Change and Environmental Justice Impacts, Racial Equity and Barriers to Opportunity, Leveraging of Federal Funding, Innovation, and Performance and Accountability. While fairness, justice and merit are goals which I believe we all share, the “key program objectives” established by the DOT distort, undermine, and even contradict the objectives actually required by law. If the Department seeks to modify or uproot their clear obligations under the law, there is a process by which that is done – changing the law.

Luckily, Congress will have an opportunity to address the underlying goals of the INFRA program and other surface transportation programs as we revisit the FAST Act for reauthorization this year. I would be happy to work with you and your department to incorporate efficiencies into our federal infrastructure programs; however, our constitutional framework does not provide for one person to simply change the law through press release.

Being intimately involved in the construction of the FAST Act, it is incredibly frustrating to see the apparent disregard for legal requirements in exchange for unquantifiable political objectives. INFRA is an *infrastructure* program. It was not intended to supplant or cloud real economic benefits and return on taxpayer user fees with unquantifiable objectives as listed in the Notice of Funding Opportunity (NOFO). DOT is the wrong agency to attempt to achieve such objectives without congressional direction and the benefit of a substantive rulemaking process. However, as it currently stands, the integrity of the economic calculations associated with the Department’s released objectives, which are critical to the assessment of the merits of each applicant, pale in comparison to the economic sciences required by the law.

I strongly urge you to pause the FY2021 INFRA program and recalibrate your NOFO to reflect the actual requirements in the law. Again, I would be happy to work with you to modify our laws in ways that reflect a greater return of taxpayer investment for all Americans.

Sincerely,



Garret Graves

Member of Congress