United States Senate
COMMITTEE ON APPROPRIATIONS
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April 25, 2018

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Secretary Chao,

We write to thank you for issuing the Notice of Funding Opportunity (NOFO) for the tenth round of TIGER (BUILD) grants. The fiscal year (FY) 2018 Consolidated Appropriations Act tripled the size of the TIGER grant program to $1.5 billion, and we believe this level of investment in infrastructure will make much-needed improvements across the country. However, we are concerned with the Department's decision to insert controversial policies from the Administration's infrastructure proposal into the TIGER grant program, which could diminish the effectiveness of this grant program. These policies have not been agreed to or voted on by Congress, and there is clear bipartisan opposition to some of them.

Our primary concern is the use of non-Federal revenue for transportation infrastructure investment as merit criteria in evaluating applications. The NOFO requires applicants to secure and commit new, non-Federal revenue for transportation infrastructure investment, which will effectively force states to increase taxes or raise revenue through tolls or other fees. As you know, most state departments of transportation, transit agencies, port authorities, and metropolitan planning organizations are not able to raise revenue without enactment of a law by an independent legislative body. Holding transportation agencies responsible for raising revenue is simply unrealistic and detrimental to this grant program. While the NOFO allows applicants to describe broader legal or fiscal constraints that affect their ability to generate non-Federal revenue, it is unfair to ask transportation agencies that are in the business of building infrastructure to explain and defend the policy decisions made by an independent and political legislative body.

The NOFO also includes a look back period, which benefits areas that have generated non-Federal revenue since January 1, 2015. However, the look back period punishes states that raised their own gas tax revenue prior to January 1, 2015. For example, Maine has a state gas tax rate of 30 cents per gallon, which is higher than most other states, but it was last increased in 2011. Similarly, Rhode Island's gas tax stands at 34 cents per gallon as the result of legislation enacted in 2014. Although Rhode Island indexed its tax to inflation every two years, this funding is already committed to transportation and may not be treated as "new revenue" under the terms of the NOFO. Meanwhile, other states with a lower state gas tax rate but with more recent increases to the state gas tax rate will unfairly benefit, even though their total state and local funding levels for infrastructure may be lower.

The NOFO does consider new revenue to include innovative financing mechanisms such as asset recycling, tolling, and tax-increment financing, but these mechanisms require a broader policy conversations at the state and local level that cannot occur by the NOFO deadline of June 4, 2018, particularly in states that currently prohibit some of these practices. The merits of policies such as asset recycling also remain unproven and controversial at this time.

The Department clearly recognizes that there may be broader legal or fiscal constraints that affect an applicant's ability to generate non-Federal revenue, but this simply reinforces our point that TIGER/BUILD is not suitable for testing new policies at this time. The criteria will be particularly detrimental to rural areas that are often least able to raise local revenue for transportation infrastructure. As the NOFO states, rural roads have higher fatality rates and maintain a greater share of road miles than others, but it is unclear how the Department will balance the needs of rural America with its new criteria to generate non-Federal revenue.

As you know, we had similar concerns with the Administration's proposal to reduce the Federal cost-share for surface transportation programs, and prohibited the Department from using such criteria in FY 2018. We urge you to continue the success of past rounds of TIGER grants and remove unnecessary barriers to funding much-need infrastructure projects going forward.

Thank you for your attention to this matter. We look forward to your prompt reply.

Sincerely,

Susan M. Collins

Susan Collins
Chairman,
Subcommittee on Transportation, Housing and Urban Development, and Related Agencies

Jack Reed

Jack Reed
Ranking Member
Subcommittee on Transportation, Housing and Urban Development, and Related Agencies