

**Questions for the Record for the Honorable Joel Szabat  
U.S. Senate Committee on Commerce, Science, and Transportation  
“Nominations Hearing”  
June 16, 2020**

**Questions Submitted by the Hon. Maria Cantwell to the Hon. Joel Szabat, Nominated to be Under Secretary of Transportation for Policy of the U.S. Department of Transportation.**

***Equity in Transportation.*** During the last Administration, the Department of Transportation undertook several activities designed to address transportation equity, including establishing the Transportation Equity Advisory Committee to provide comprehensive and inclusive advice to the Secretary to advance the principles of providing transportation opportunity and access to everyone. The Department also instituted a Local Labor Hiring Pilot Program to ensure that infrastructure investments in minority communities resulted in job creation within those communities. Unfortunately, this Administration ended both of those initiatives, with the pilot program disbanded before it could collect or analyze data to determine the program’s impact.

***Question 1.*** What is the Department of Transportation doing to ensure equity in transportation opportunity and access?

***Answer.*** *Transportation should be an avenue that eases social equality and upward economic mobility, not an obstacle. It should be accessible for all.*

***One of the lessons we have learned during this pandemic is that new transportation technologies can be used to meet our most pressing needs. We want to harness the power of this innovation to enhance quality of life for all Americans.***

***Disability advocates often remark that “technology is the great equalizer.” The Department has implemented accessible transportation initiatives that aim to harness the equalizing power of technology to improve mobility for people with disabilities. At the October 2019 Access and Mobility for All Summit, Secretary Chao announced almost \$50 million in new initiatives as part of the Complete Trip Portfolio to develop and deploy innovations in technology and further interagency partnerships to improve mobility. This includes \$3.5 million for the Federal Transit Administration’s Mobility for All Pilot Program, \$40 million for the Complete Trip - ITS4US Deployment Program, and \$5 million for the Inclusive Design Challenge.***

***We are prioritizing accessibility because 25.5 million Americans have disabilities that make traveling outside the home difficult, according to the 2017 National Household Travel Survey. While access to critical services, including medical care, is always vital, the pandemic has underscored the importance of meeting transportation needs. It is critical that people with disabilities have access to the transportation they need to get to workplaces, the doctor, the grocery store, and all the destinations they need and want to get to as the nation recovers.***

***This month we celebrate the 30<sup>th</sup> anniversary of the passage of the Americans with Disabilities Act. The spirit of the ADA was to ensure the full participation of people with disabilities in all aspects of community life. This landmark civil rights law has led to major improvements in***

*transit systems across the country; however, there are still barriers that we need to address, such as access to on-demand, accessible transportation services. As we celebrate many accomplishments stemming from the ADA over the past three decades, we have an opportunity to build on its success.*

*Perhaps one of the opportunities we're most hopeful about is automated vehicles. To help us all plan for the future of automation with the goal of developing truly inclusive approaches to passenger vehicles, the Department launched the Inclusive Design Challenge on April 21. The Inclusive Design Challenge is a prize competition that rewards innovative ideas and design solutions to enable people with disabilities to use automated vehicles independently. By using a prize competition format, DOT seeks to draw attention to the topic of passenger vehicle accessibility; encourage new cross-disciplinary collaborations; incentivize the development of new approaches and technologies to improve mobility; and tap into the creativity and knowledge of the disability community, researchers, advocates, manufacturers, and entrepreneurs.*

*Our federal partners at the Department of Labor are examining how accessible AVs can bridge transportation gaps and connect people with disabilities to jobs. This is more important now than ever as states, businesses and jobs reopen and the economy revs up. We partnered with DOL to host a series of 4 listening sessions with our federal partners, AV companies, disability advocates, and researchers to gather information on this topic, and learned a lot about the transportation and accessibility needs of the disability community. There is a report with all the findings on the Office of Disability Employment Policy's website at [dol.gov/odep](http://dol.gov/odep). We listed this report as a resource for teams that are participating in the Inclusive Design Challenge.*

*We believe that technology innovation holds the promise to make our lives better, so we are investing in solutions that can be used to make them work for all of us. We will be announcing some new projects in our accessibility initiative on July 30 at a virtual event we are planning to celebrate the 30<sup>th</sup> Anniversary of the ADA and we hope you can join us!*

**Freight Policy.** I am concerned that the Department of Transportation is not making freight policy a priority. It has been nearly five years since the enactment of the FAST Act, which required the Department to create a national strategic freight plan and develop a national freight network. However, it was not until earlier this year that the Department began requesting input from the public on a freight plan.

**Question 1.** Does the Department need additional resources to focus on freight policy?

**Answer.** *No. At the direction of Secretary Chao, the Department has added Policy staff in the last year, several of whom are focused on the freight portfolio. I recognize that developing a truly intermodal national freight plan, and identifying the national network, are of crucial*

*importance. The main reason for our prior delay was the need to allow every State to complete its State Freight Plan and provide additional opportunities for public input.*

**Question 2.** When will the national strategic freight plan and the national freight network be finalized?

**Answer.** *The Department is working to complete the National Freight Strategic Plan by later this year. In December, the Department requested information from States, local governments, and other stakeholders to inform the development of the national freight strategy. The completion of the National Freight Strategic Plan will directly lead into the identification of the National Multimodal Freight Network.*

**Executive Branch Concerns with FCC's Ligado Decision.** The Departments of Commerce and Transportation (along with the entirety of the executive branch) believe that the Federal Communications Commission's ("FCC's") recent approval of Ligado's terrestrial wireless plans threatens the nation's global positioning system ("GPS") on which the safety and security of everything from civil aviation to military operations to weather forecasting rely. The FCC rejected the executive branch's concerns and related technical studies both from the government and the private sector showing that the precision and effectiveness of GPS could be impaired. Instead, the FCC relied on competing technical studies (some of which were funded by Ligado), and its own conclusion that the government studies measured the wrong things, to allow Ligado to move forward with its plans. Yet in its decision to allow Ligado to move forward, the FCC acknowledged that its "analysis [in the order] should not be construed to say there is no potential for harmful interference to any GPS device currently in operation in the marketplace."

**Question 1.** Did the FCC quantify the number of receivers that would be negatively impacted by its decision, or analyze the impact of its decision on the risk this interference could cause to safety of life or property?

**Answer.** *Not to my knowledge. One of the primary concerns of the Department of Transportation, discussed in the Executive Branch's reconsideration petition to the FCC, is that FCC's Ligado decision does not account for the significant damage Ligado's deployment would impose on the broad swathes of the economy that rely on position, navigation and timing devices. Nor can we see that the FCC sufficiently accounted for the impact of its decision upon emergency response systems and other applications used to promote transportation safety and efficiency.*

**Question 2.** Did the Department of Transportation or Commerce provide data in its study on the percentage of GPS receivers that would suffer interference from Ligado’s terrestrial operations at the power levels recently authorized by the FCC? Did the FCC ask for such information?

**Answer. Yes. The Department of Transportation conducted engineering studies that identified what interference would do to a range of different types of receivers. For each type, the Department identified interference up to total ‘loss-of-lock’ at the thresholds of 10%, 50%, and 90% of the types of receivers tested (high precision, timing, general location and navigation, general aviation, space-based, and cellular). This data is included in the DOT GPS Adjacent Band Compatibility Assessment Final Report and was provided to the FCC when the report was published in April 2018.**

**Question 3.** Do you agree that in high-profile spectrum decisions, particularly ones which create potential risk to safety of life, that it is in the greater public interest to reach consensus among and between the FCC and the expert federal agencies on aviation, transportation safety, and national defense?

**Answer. Yes. In the reconsideration petition and stay request in the Ligado proceeding, DOT and the rest of the Executive Branch have called upon the FCC to pause its decisionmaking process and revisit the important issues involved here. DOT remains ready to work with FCC, other agencies, and other stakeholders to address the critical national interests at stake.**

**The Jones Act.** The Jones Act is one of the foundational American maritime laws, supporting 650,000 jobs in the U.S. and generating \$150 billion in economic activity. Secretary Chao has been a vocal proponent of the Jones Act as Secretary of Transportation.

**Question 1.** In your role as Assistant Secretary for Policy, will you also take steps to ensure the continuation of the Jones Act?

**Answer. Yes**

**Airline Passenger Consumer Protections.** In the 2016 Federal Aviation Administration (FAA) reauthorization, Congress specifically directed DOT to promulgate a rule requiring refunds for delayed checked baggage. The rule is now almost three years overdue, and consumers continue to lose thousands of dollars every day that DOT ignores its statutory mandate to protect consumers.<sup>1</sup> Similarly, in the 2018 FAA reauthorization, DOT was directed to require airlines to

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<sup>1</sup> FAA Extension, Safety, and Security Act of 2016, sec. 2305, P.L. 114-21 (July 15, 2016) (stating that the “Secretary of Transportation shall issue final regulations” requiring air carriers to refund fees for delayed checked baggage no later than July 16, 2017).

refund ancillary fees for products and services that are not delivered.<sup>2</sup> This requirement is almost one year overdue and, again, DOT has taken no action to protect consumers.

**Question 1.** When will DOT complete the delayed checked baggage refund rule and the ancillary fee refund rule?

**Answer.** *The Department is scheduled to issue this month the Notice of Proposed Rulemaking (NPRM) on refunds for delayed checked baggage fees and ancillary service fees. More specifically, the NPRM would require airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner as provided by the FAA Extension, Safety and Security Act of 2016. The NPRM would also require airlines to promptly provide a refund to a passenger of any ancillary fees paid for services that the passenger did not receive, as provided by the FAA Reauthorization Act of 2018. The rulemaking schedule is available in the Administration's Spring 2020 Unified Agenda of Regulatory and Deregulatory Actions.*

**FAA Information Regarding the 737 MAX Crashes.** Following the two crashes of Boeing 737 MAX aircraft in Indonesia and Ethiopia, Members of Congress, including myself and members of the Commerce Committee, have made repeated requests for information from the Federal Aviation Administration regarding that agency's decision to certify the model as a 737 derivative. Specifically, these parties have requested un-redacted versions of the Transport Airplane Risk Assessment Methodology (TARAM) and any risk analyses or other assessments conducted prior to and after the Lion Air and Ethiopian Airlines crashes. To date, we have not received a satisfactory reply from the FAA or DOT.

**Question 1.** When will DOT and the FAA comply with the Congressional requests for information regarding the FAA's certification activities for the 737 MAX, including any TARAMs, risk analyses, or similar assessments?

**Answer.** *FAA provided the unredacted TARAM in response to the Committee's request prior to Administrator Dickson's hearing on June 17, 2020. A copy of the TARAM is attached for your reference. FAA has and will continue to provide documents and information in response to requests from the Committee.*

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<sup>2</sup> FAA Reauthorization Act of 2018, sec. 421, P.L. 115-254 (Oct. 5, 2018) (stating that the "Secretary of Transportation shall promulgate regulations that require each covered air carrier to promptly provide a refund to a passenger of any ancillary fees paid for services related to air travel that the passenger does not receive" not later than Oct. 6, 2019).

**Questions Submitted by the Hon. Edward Markey to the Hon. Joel Szabat, Nominated to be Under Secretary of Transportation for Policy of the U.S. Department of Transportation.**

**Question 1.** As you know, our dependence on GPS for Positioning, Navigation, and Timing (PNT) is a single point of failure for critical infrastructure. To address this security concern, Congress passed and the President signed the *National Timing Resilience and Security Act of 2018*, which I sponsored. The law requires the Department of Transportation (DOT) to provide for the establishment, sustainment, and operation of a backup timing signal for GPS. The statute further establishes an implementation deadline of no later than two years from the date of the law's enactment.

If confirmed, will you devote and prioritize sufficient administrative and leadership resources to implementing the *National Timing Resilience and Security Act*?

**Answer.** *Yes*

**Question 2.** Although the DOT is currently behind on its interim implementation deadlines, are you committed, and is the DOT prepared, to ensuring the overall law is executed as written and fully implemented by Congress's statutory deadline at the end of this year? If not, why not? And if not by the end of this year, what is the DOT's schedule for having the backup system in operation?

**Answer.** *Both the Department and I are committed to executing the overall law as written, insofar as it is in our power to do so. If there is a delay in putting a backup system in operation, it will be because the importance of GPS cuts across every sector of the economy, and the development and deployment of a backup deserves a coordinated whole-of-government response.*

**Question 3.** After the attacks of September 11, 2001, the DOT immediately initiated steps to protect the security of airline passengers and aviation workers. By contrast, during the COVID-19 crisis, the DOT has stepped back and left questions about how to protect the health of passengers and employees up to a patchwork quilt of inconsistent and often conflicting policies introduced by individual airlines, airports, and states.

Do you believe the DOT has the authority to set baseline health and safety standards for airlines and airports? If no: What authority would it need? If yes: What specific steps will DOT take to set such standards, especially as more restrictions are being lifted and airline travel is slowly increasing?

**Answer.** *The Department of Transportation, specifically the FAA, unequivocally has the authority to set safety standards for airlines and airports. Across the Department, safety is our primary mission. Both before and during the spread of COVID-19, our position has been*

***consistent: directions and guidance for aircraft safety will come from FAA; directions and guidance for contagious diseases best comes from the medical professionals and public health experts at NIH, CDC and elsewhere in HHS.***

***Question 4.*** To address the patchwork of policies for air travel, I have introduced the *Ensuring Health Safety in the Skies Act* (S.3681). This legislation instructs the Departments of Transportation, Health and Human Services, and Homeland Security to establish a joint task force – advised by aviation, security and public health experts – that will develop recommended requirements, plans, and guidelines to ensure safe and healthy air travel during and after the coronavirus pandemic. Do you support the goals of my legislation?

***Answer. Yes, I support the goals of ensuring safe and healthy air travel.***

***Question 5.*** In an op-ed in *USA Today* in May, the Secretary of Transportation wrote about the importance of airlines following federal requirements to provide refunds to consumers when their flights are canceled or substantially changed. The Secretary went on to write: “Many Americans, who canceled their reservations based on COVID-19 health concerns, are seeking refunds for the non-refundable tickets they purchased but could not use . . . They deserve fair treatment.” However, subsequent reports indicate that the problem persists and consumers are not receiving refunds for unused airline tickets.

Is it unfair for the airlines to deny travelers refunds when they proactively cancel their own ticket due to concerns around COVID-19?

***Answer. Secretary Chao has been vocal about the urgent need to refund airline passengers, including passengers who choose not to travel due to safety or health concerns related to the COVID-19 public health emergency. However, under current law, passengers who purchase a non-refundable ticket on a flight that is still being operated without a significant change, but would like to change or cancel their reservation, are generally not entitled to a refund or a travel voucher for future use on the airline. This is true even if the passenger wishes to change or cancel due to concerns related to the COVID-19 public health emergency. Although not required, many airlines are providing travel credits or vouchers that can be used for future travel for those passengers electing to cancel their travel due to health or safety concerns related to COVID-19. The Department strongly encourages airlines to do even more and offer passengers the option of a refund, instead of a voucher, as many consumers may be under enormous financial strain given the COVID-19 public health emergency.***

***Question 6.*** What does the DOT consider “fair” treatment when it comes to airline refunds?

*Answer. Airlines have an obligation to provide a refund to a ticketed passenger when the carrier cancels or significantly changes the passenger's flight, and the passenger chooses not to accept an alternative offered by the carrier. The Department considers a practice of offering a refund to a ticketed passenger when an airline cancels a flight or significantly changes the passenger's flight to be "fair" treatment of passengers.*

**Question 7.** If the DOT finds that airlines are not treating consumers fairly, what steps will the agency take to address these refund issues?

*Answer. Given the unprecedented impact of the COVID-19 public health emergency on the aviation industry, the Department's Office of Aviation Consumer Protection is exercising its enforcement discretion and first providing carriers and ticket agents an opportunity to become compliant. However, the Office of Aviation Consumer Protection will take enforcement action as necessary and appropriate. Enforcement action may include, for example, seeking corrective actions through warning letters, issuing consent orders (which may include fines), or filing an enforcement proceeding in front of an Administrative Law Judge.*