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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>

April 19, 2023

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

Dear Secretary Buttigieg:

We write to you today regarding the recent notices of funding opportunity for the Federal-State Partnership Intercity Passenger Rail (Fed-State) discretionary grant program.¹ Rather than having one consistent set of criteria, the Department of Transportation's Federal Railroad Administration (FRA) decided to split the Fed-State program into projects on the Northeast Corridor (NEC)² and those projects off the NEC (i.e., the rest of the country).³ In doing so, the administration predetermined that the NEC would receive the absolute maximum percentage of the \$36 billion for the Fed-State program made available by the Infrastructure Investment and Jobs Act⁴ (hereinafter "the IIJA money"). This decision has effectively deprived the vast majority of the country from even having a chance to compete for more than \$7 billion over the five years covered by the law.

When awarding grants under the statutory Fed-State program, FRA is required to spend forty-five percent on projects on the NEC between Washington, DC, and Boston, MA.⁵ FRA is also required to spend forty-five percent on projects off the NEC—in other words, in the remaining 42 states in the country.⁶ FRA retains discretion regarding where to spend the balance of ten percent. FRA recognized this flexibility for the Fed-State program funded with annual appropriations, indicating that projects located in 42 states could apply for a potential award between \$83.7 million and \$102.3 million (i.e., between forty-five percent and fifty-five percent of the \$186 million total, after set asides, for fiscal year (FY) 2022 and FY 2023).⁷ With this approach, FRA appropriately refrained from deciding in advance that more money would

¹ 49 U.S.C. § 24911.

² 87 Fed. Reg. 79421 (Dec. 27, 2022).

³ 88 Fed. Reg. 7517 (Feb. 3, 2023). This notice updated an earlier off-NEC Fed-State notice of funding opportunity. 87 Fed. Reg. 75119 (Dec. 7, 2022).

⁴ P.L. 117-58.

⁵ 49 U.S.C. § 24911(d)(3)(B). For purposes of the Fed-State program, the NEC is defined as the main line from Washington, DC, to Boston, MA, including its branches to Harrisburg, PA; Springfield, MA; and Spuyten Duyvil, NY. 49 U.S.C. § 24911(a)(3).

⁶ 49 U.S.C. § 24911(d)(3)(A).

⁷ 88 Fed. Reg. 7517, 7517.

automatically be spent on the NEC to the disadvantage of projects in the vast majority of the country.

Curiously, FRA overlooked similar flexibility with respect to the IJA money. The relevant appropriations language increased the “ceiling” that could be spent on the NEC to two-thirds (and implicitly cut the minimum amount that must be spent in the rest of the country to one-third rather than forty-five percent).⁸ Nevertheless, FRA retains flexibility when spending the IJA money: the agency could still spend as much as fifty-five percent on projects located in the 42 states outside the NEC and remain consistent with the law. In advertising the IJA money, FRA could have indicated this flexibility by providing a range of funding amounts similar to how the agency has crafted notices for funding from annual appropriations as described previously.

Instead, FRA advertised only the minimum required amount of IJA money for projects in the rest of the country in the relevant notice of funding opportunity (just one-third, even though FRA could spend as much as fifty-five percent consistent with the law).⁹ Meanwhile, FRA advertised the maximum allowed amount of the IJA money for NEC projects in the relevant notice of funding opportunity (fully two-thirds, even though FRA could spend as little as forty-five percent consistent with the law).¹⁰ FRA has thus made a sweeping decision to favor jurisdictions served by the NEC and disfavor projects serving the nearly 270 million Americans who live elsewhere in the country without even considering the relative merits of the applications. For the IJA money allocated to FY 2022 and FY 2023, this approach deprives projects in 42 states from the opportunity to even compete for at least \$2.9 billion.¹¹

If FRA applies this approach to all of the IJA money, it will deprive potential projects from 42 states (and even the western rail lines of states served by the NEC) of the opportunity to compete for more than \$7 billion in potential funding. Dozens of states not served by the NEC have plans for new or expanded passenger rail service and could benefit from this funding. Some of these projects would require significant up-front investment, and FRA should remain open to using the statutory flexibility in the Fed-State program to support projects that serve the vast majority of Americans who live outside the large cities in the Northeast.

Please provide written answers to the following questions regarding the Department of Transportation’s administration of the Fed-State program and other discretionary grant programs no later than May 3, 2023:

1. What was your rationale for limiting the amount of Fed-State funding from IJA advanced appropriations that is available to projects off the Northeast Corridor to the absolute minimum that would comply with the law?

⁸ P.L. 117-58, Div. J, Title VIII, “Federal-State Partnership for Intercity Passenger Rail Grants.”

⁹ 88 Fed. Reg. 7517, 7517.

¹⁰ 87 Fed. Reg. 79421, 79423.

¹¹ \$2.9 billion is the difference between the required minimum (one-third) and the allowed maximum (fifty-five percent) that could be spent off the NEC of the nearly \$13.4 billion from the IJA money allocated to FY 2022 and FY 2023, assuming maximum use of set asides for corridor planning and project management oversight by FRA.

2. Will you commit to correcting Fed-State program notices of funding opportunity to reflect the full range of amounts from IIIA advanced appropriations that could be spent on projects outside the Northeast Corridor?
3. Have you pre-selected any other projects for funding under other discretionary grant programs in advance of reviewing the full range of applications received? If so, will you refrain from doing so in the future?
4. Will you commit to giving states outside the Northeast the opportunity to compete for the Fed-State and other discretionary grant programs administered by the Department of Transportation to the fullest extent consistent with the law?

We appreciate your prompt attention to this matter.

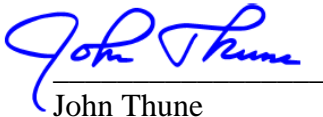
Sincerely,



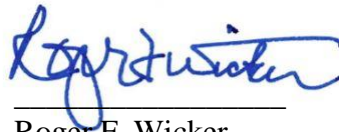
Ted Cruz
United States Senator



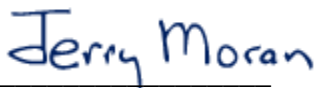
Todd Young
United States Senator



John Thune
United States Senator



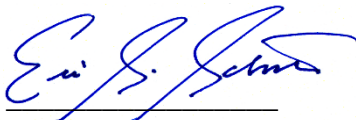
Roger F. Wicker
United States Senator



Jerry Moran
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Marsha Blackburn
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