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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
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LILA HELMS, MAJORITY STAFF DIRECTOR
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July 27, 2023

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller Dodaro:

On June 23, 2023, the Secretary of Transportation issued the “Notice of Funding Opportunity for the Department of Transportation’s FY 2023-2024 Multimodal Project Discretionary Grant Opportunity (MPDG)” (hereinafter “Multimodal NOFO”). I write to ask for your determination as to whether the Multimodal NOFO constitutes a “rule” for purposes of the Congressional Review Act, 5 U.S.C. § 801 *et seq.*

The Multimodal NOFO advertises funding for three discretionary grant programs: the Nationally Significant Multimodal Freight and Highway Projects program (“INFRA,” 23 U.S.C. § 117), the National Infrastructure Project Assistance program (“Mega,” 49 U.S.C. § 6701), and the Rural Surface Transportation Grant Program (“Rural,” 23 U.S.C. § 173). The Multimodal NOFO is designed to implement the laws that created and funded those programs. The Multimodal NOFO also has prospective effect by describing procedures for applications and requirements for receipt of grant funding, if selected. Note that the Multimodal NOFO sets generally-applicable requirements for grant application and receipt of funding and that it affects external parties, not just internal agency matters. *See* 5 U.S.C. §§ 804(3), 551(4); *U.S. Department of Agriculture—Applicability of the Congressional Review Act to Documents Implementing Four Financial Assistance Programs*, GAO File B-334146 (June 5, 2023).

I request your determination using an expedited process. The Multimodal NOFO sets an application deadline of August 21, 2023. The Department of Transportation could be expected to make awards in the first quarter of 2024, if not sooner. If your review were to take longer than the selection process, many of the effects of the Multimodal NOFO would have played out without an opportunity to utilize the Congressional Review Act process. I therefore appreciate your prompt attention to this matter, including interim updates if the review process extends beyond the application deadline.

Sincerely,



Ted Cruz
Ranking Member