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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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

October 6, 2023

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

Dear Secretary Buttigieg:

We write to follow up on letters to the Department of Transportation (DOT) earlier this year. In February, Senators Cruz, Thune, and Fischer sent a letter (“the February letter”) asking the administrators of the Federal Railroad Administration (FRA) and the Federal Transit Administration (FTA) about those agencies’ support and oversight of the Amtrak-New York-New Jersey Gateway Program (“the Gateway Program”).¹ In April, Republican senators of the Committee on Commerce, Science, and Transportation wrote asking you to amend funding notices for a major rail grant program that had been drafted to unfairly favor the Northeast and the Gateway Program to the detriment of projects elsewhere in the country (“the April letter”).²

You did not respond to the April letter, instead tasking the FRA administrator to respond. Moreover, the agency’s responses failed to either fully answer the questions posed or commit to improving DOT’s approach. DOT’s lack of transparency with Congress and potential misadministration of grant programs, particularly with respect to the billions of dollars in DOT funding for the Gateway Program, are deeply concerning. We request that you rectify the inadequate responses to our past letters by personally answering this letter and including (1) a description of how DOT will use its authorities to provide oversight and (2) the commitments that we have requested or an explanation why you are refusing to make those commitments.

In February 2022, Amtrak’s Office of Inspector General (OIG) released a report finding that Amtrak lacked a comprehensive framework to manage its commitments to the Gateway Program.³ Among other concerns, Amtrak lacked an integrated master schedule; a program management plan; and mechanisms to collect and provide information regarding the program’s status, including its budget and schedule. The report indicated a risk to Amtrak’s ability to “meet its commitments in scope, on time, and in budget,” warning that “assessments of prior complex

¹ Feb. 7, 2023 Letters from Senators Thune, Fischer, and Cruz to FRA Adm’r Bose and FTA Adm’r Fernandez.

² Apr. 19, 2023 Letter from Senator Cruz et al. to Secretary Buttigieg.

³ *Governance: Company Needs a Comprehensive Framework to Successfully Manage its Commitments to the Gateway Program*, Amtrak OIG (Feb. 4, 2022), <https://amtrakoig.gov/sites/default/files/reports/OIG-A-2022-006%20Gateway%20%28REDACTED%29.pdf>.

construction and acquisition programs found that when [Amtrak] did not put this framework in place early enough, it experienced cost increases, schedule delays, and stress on its partner relationships as projects matured.”⁴

DOT has awarded more than \$8 billion in federal funding to the Gateway Program, despite the Amtrak OIG’s serious concerns about potential cost overruns and schedule delays. Based on the latest estimates from the Gateway Development Commission, the nine projects that comprise the Gateway Program will cost \$37 billion over the next 15 years.⁵ Grants that DOT has awarded to the Gateway Program include an unprecedented single grant of nearly \$7 billion for the Hudson Tunnel project via a Capital Investment Grant (“CIG”),⁶ as well as:

- \$91.5 million via a Federal-State Partnership for Intercity Passenger Rail (“Fed-State”) grant for the Portal North Bridge and Substation 41, awarded May 2020;⁷
- \$766.5 million via a CIG for the Portal North Bridge, awarded January 2021;⁸
- \$45 million via a Fed-State grant for the Sawtooth Bridges, awarded August 2022;⁹
- \$292 million via a National Infrastructure Project Assistance (Mega) grant for the Hudson Tunnel, awarded January 2023;¹⁰ and
- \$25 million via a Local and Regional Project Assistance (RAISE) grant for the Tonnelle Avenue bridge and utility work (for the Hudson Tunnel), awarded June 2023.¹¹

In this period of historically high inflation, it is especially important that you be judicious with taxpayer dollars and resist political pressure to simply cut checks to this or any other project. Both the law and simple prudence demand a real evaluation of the huge cost estimates and verification that Gateway Program grantees have the capacity to deliver the planned

⁴ *Id.* at 11, 3–4.

⁵ Editorial, *The Lateway Tunnel Project*, N.Y. DAILY NEWS (Sept. 6, 2022), <https://www.nydailynews.com/2022/09/06/the-lateway-tunnel-project-the-new-hudson-rail-tubes-are-delayed-three-years-before-they-even-start/>; see also Press Release, Gateway Development Commission to Seek Newly Available Federal Funding Based on New Cost Estimate and Schedule for Hudson Tunnel Project Reflecting Current Economic Climate (Aug. 31, 2022), <https://www.gatewayprogram.org/wp-content/uploads/2022/09/GDC-Release-Hudson-Tunnel-Project-Cost-Schedule.pdf> (raising estimated cost of the Hudson Tunnel project to \$16.1 billion).

⁶ Press Release, The White House, FACT SHEET: Biden-Harris Administration Advances Gateway Hudson Tunnel Project (July 6, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/06/fact-sheet-biden-harris-administration-advances-gateway-hudson-river-tunnel-project/>.

⁷ Press Release, FRA, U.S. Transportation Secretary Elaine L. Chao Announces \$302.6 Million in ‘State of Good Repair’ Grants (May 27, 2020), <https://railroads.dot.gov/newsroom/press-releases/us-transportation-secretary-elaine-l-chao-announces-3026-million-state-0>.

⁸ Press Release, DOT, U.S. Department of Transportation Announces \$766.5 Million Grant Agreement to New Jersey Transit for the Portal North Bridge Project in Hudson County, New Jersey (Jan. 11, 2021), <https://www.transit.dot.gov/about/news/us-department-transportation-announces-7665-million-grant-agreement-new-jersey-transit>.

⁹ FRA, Federal-State Partnership for State of Good Repair Program FY2021 Selections (Aug. 18, 2022), <https://railroads.dot.gov/elibrary/federal-state-partnership-state-good-repair-program-fy2021-selections>.

¹⁰ Josh Boak, *Biden Highlights Grant for Hudson Tunnel, Takes Aim at GOP*, ASSOCIATED PRESS (Jan. 31, 2023), <https://apnews.com/article/biden-new-york-city-business-94a9e170a3348c74a3545ece08f15687>.

¹¹ DOT, RAISE 2023 Award Fact Sheets (June 30, 2023), <https://www.transportation.gov/raisegrants/raise-2023-fact-sheets>.

infrastructure timely and on budget. The February letter inquired about the Gateway Program’s budget and readiness, but DOT failed to respond meaningfully. For example, FRA stated it would employ a “risk-based approach to provide targeted engagement” with Amtrak, without indicating what aspects of the Gateway Program, if any, would get independent review.¹² Awarding billions of taxpayer dollars to projects that Amtrak and other grantees may not be capable of delivering is financially irresponsible—opening the door to fraud, waste, and abuse.

This recent string of awards reflects what appears to be a troubling effort to prioritize the Gateway Program above deserving projects elsewhere in the country.¹³ Indeed, your Department seems to be maximizing the funding for the Gateway Program in many grant programs, whether a good fit or not. As pointed out in the April letter, DOT and FRA manipulated the massive Fed-State grant program to ensure the absolute maximum amount of funding from the 2021 infrastructure law will go to the Northeast (and Gateway), effectively depriving projects from the rest of the country of the opportunity to compete for as much as \$7 billion under that program. In his response, FRA Administrator Amit Bose refused to correct this.

In another example of favoritism, DOT awarded a \$25 million RAISE grant for the Tonelle Avenue bridge, a component project of the Gateway Program.¹⁴ This was the maximum amount allowed for RAISE grants. In fiscal year 2023, DOT received approximately 1,100 eligible local and regional project assistance grant applications requesting almost \$15 billion in grant funding, far more than the \$2.26 billion available.¹⁵ Given this context and the zero-sum nature of the grant funding available, every dollar awarded to one project is a dollar not awarded to others. As DOT acknowledges, the RAISE program is intended to address the infrastructure needs of smaller communities that might not compete as effectively as large projects and “otherwise cannot turn to the Federal government for support.”¹⁶ Yet DOT appears not to have applied that requirement to the Gateway Program, considering the projects received over \$8 billion in other grants from DOT.¹⁷

To assist us in evaluating the Department’s handling of taxpayer dollars and compliance with the law, please personally provide your detailed, written responses to the following questions within 30 days:

1. When and how did FTA and DOT determine to award the Hudson Tunnel project \$6.88 billion in CIG funding? Please provide documents sufficient to show who made the determination, including documents and communications by the White House and the

¹² May 30, 2023 Letter from FRA Adm’r Bose and FTA Adm’r Fernandez to Senators Thune, Fischer, and Cruz.

¹³ See Patrick McGeehan, *Hudson Tunnel Project to Get \$6.9 Billion in Largest U.S. Transit Grant*, N.Y. TIMES (July 6, 2023), <https://www.nytimes.com/2023/07/06/nyregion/nyc-penn-station-tunnel-gateway.html>.

¹⁴ Press Release, Gateway Development Commission Joint Statement on \$25 Million Grant for Tonelle Avenue Project (June 28, 2023), <https://www.gatewayprogram.org/wp-content/uploads/2023/06/GDC-StatementRAISEJune2023.pdf>.

¹⁵ Email from Office of the Sec’y of Transportation to Comm. on Commerce, Science, and Transportation (July 24, 2023, 10:38 EDT) (on file with Committee).

¹⁶ DOT, About RAISE Grants (updated July 5, 2023), <https://www.transportation.gov/RAISEgrants/about>.

¹⁷ Notes 6–11, *supra*.

Office of the Secretary of Transportation referring or relating to CIG funding for the Hudson Tunnel project since January 20, 2021.

2. How did a component of the Gateway Program, which received the nearly \$7 billion CIG in early July 2023, receive a RAISE grant award for projects that “otherwise cannot turn to the federal government” just over a week earlier, when hundreds of other applicants were denied?
3. Is the Gateway program primarily a project of local or regional significance?
4. Have you or anyone else at DOT approved but not yet announced any other award or funding to the Gateway Program beyond the grants outlined in this letter? If so, please describe the planned awards, specific projects, and amounts.
5. Can you provide a ceiling on the total amount of federal funding that the Gateway program could receive?
6. What specific efforts will FRA and DOT undertake, including but not limited to independent review, to confirm that Amtrak and other grantees involved in the Gateway Program can deliver the projects on time, on budget, and in scope?
7. Will you commit to updating the notices of funding opportunity for the Fed-State grant program, as discussed in the April letter, to allow for maximum competition consistent with the law?
8. Will you commit to giving states outside the Northeast the opportunity to compete for DOT-administered discretionary grant programs to the fullest extent consistent with the law?

Thank you for your prompt attention to this matter.

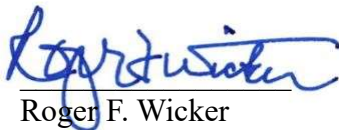
Sincerely,



Ted Cruz
United States Senator



John Thune
United States Senator



Roger F. Wicker
United States Senator



Deb Fischer
United States Senator

Marsha Blackburn
Marsha Blackburn
United States Senator

Ted Budd
Ted Budd
United States Senator