

**SUMMARY OF U.S. DOT NOTICE OF FUNDING OPPORTUNITY
FY 2017 & FY 2018 “INFRA” GRANTS**
*Prepared by Committee on Transportation & Infrastructure Democratic Staff
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On June 29, the U.S. Department of Transportation (DOT) released a Notice of Funding Opportunity (Notice) for \$1.5 billion in grants under the Nationally Significant Freight and Highway Projects program, authorized by Congress in Section 1105 of the FAST Act. This program, named FASTLANE under the Obama Administration, is being renamed as INFRA by the Trump Administration.

This Notice alters the focus of the program and rewrites the intent of Congress, which was a hallmark provision of the bipartisan FAST Act negotiations. The Trump Administration is forcing States and cities to expend time and money to resubmit their FY 2017 grant applications, and is using this program to pursue its goals of (1) diminishing and weakening the Federal role in surface transportation and (2) incentivizing privatization.

FAST Act Nationally Significant Freight and Highway Projects Grants

In the FAST Act, Congress authorized a total of \$4.5 billion in FY 2016 - FY 2020 in guaranteed Federal funding under a new discretionary grant program to fund nationally and regionally significant freight and highway projects that are beyond the ability of one State to tackle with formula highway funding, but which will reap nation-wide benefits.

Under the first round of competition, DOT issued FY 2016 FASTLANE grants in September 2016 to 18 projects. In November 2016, the Obama Administration published a notice to solicit applications for nearly \$800 million FY 2017 grants. States and other project sponsors submitted hundreds of applications by the December 15, 2016 deadline. To date, the Trump Administration has not given out a single dollar of the FY 2017 grant funding.

Instead, DOT announced today that it intends to award \$78 million in “small grants” (defined as grants of at least \$5 million under FAST) at some point in FY 2017. However, the vast majority of the FY 2017 funds for which States have already applied are being withheld by the Department and combined with the FY 2018 funds authorized by the FAST Act. States and project sponsors who have already applied for a grant in FY2017 will have to resubmit their grant applications under the new criteria. States will have 120 days to submit a new application for this round.

INFRA grant award criteria

According to the Notice, DOT intends to advance the following objectives through INFRA grants. These are also the criteria against which projects will be judged:

- (1) Supporting Economic Vitality;
- (2) Leveraging of Federal Funding;
- (3) Innovation (including Environmental Review and Permitting, and special authorities to waive Federal requirements); and
- (4) Performance and Accountability.

Significantly, the Notice makes very little mention of freight mobility, freight projects, or focus on freight of any kind. This is a significant shift from both the focus under FASTLANE and a central reason Congress established the program. The Joint Explanatory Statement accompanying the Conference Report on the FAST Act states:

The FAST Act focuses on the importance of goods movement to the U.S. economy by establishing a new formula program for highway freight projects, and emphasizes the need to address large-scale projects of national or regional importance by establishing a new competitive grant program, the Nationally Significant Freight and Highway Projects (NSFHP) program.

Instead, the Trump Administration is using this pot of money as a slush fund to carry out its agenda to privatize and skirt Federal rules.

Leveraging Federal Funding

The Notice states that projects that use public-private partnerships (P3s) or private funds will get priority over projects using traditional funding. In fact, if an applicant “omits information on the applicability and pursuit of private funds, the Department may conclude that the applicant has not considered viable non-Federal funding alternatives and an INFRA award would be premature.” Section 1105 of the FAST Act clearly did not intend to demand privatization schemes to fund projects of regional and national significance and freight projects. Given the mixed record of P3 highway projects to date, this criterion will undermine the intent of the program.

The Notice also makes clear that DOT will give priority to projects that maximize non-Federal revenues (local, State, and private dollars) and that “a project that proposes a 20 percent Federal share will be more competitive than an otherwise identical application proposing 50 percent Federal share.” This criterion appears based on the false premise, which DOT includes in the Notice, that State and local agencies substitute Federal dollars for their own funds, and therefore Federal grants do not increase the amount of infrastructure investment. However, contrary to this assertion, a longer-term look at Congressional Budget Office data on Federal, State and local infrastructure investment shows that there is no substitution effect.

The Nationally Significant Freight and Highway Projects program was authorized in the FAST Act with statutory limits on Federal cost share, 60 percent maximum share for these grant funds, and an 80 percent maximum share for all Federal funds, including Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) loans. However, this Notice bizarrely states that TIFIA and RRIF loans will not be considered “Federal” funds for the purposes of priority consideration for the maximum non-Federal share. In effect, the Administration is encouraging grant recipients to use Federal borrowing programs, and to avoid using direct Federal aid. Given that these loans are typically paid back with local and State funds, this compounds the effects of a higher non-Federal cost share.

The Notice also states that DOT will “give priority consideration to projects that use all available non-Federal resources for development, construction, operations, and maintenance.” The grant program favors projects that avoid using Federal funds for long-term life cycle costs. For

example, a P3 project with a revenue stream that can fund future roadwork such as repavements will get priority over a project that might use Federal funds in future years to repave. This provision encourages States to break their reliance on Federal funds, the first step to devolution, and is another nod to preference to a long-term P3 concession.

The Notice provides some loosely defined exceptions to this non-Federal funding priority. The program will have a lower bar for “rural or less wealthy applicants” than “urban or more wealthy applicants.” DOT will also protect a State that has a Federal funds swap or other scheme where the State buys back Federal funds at a discount from local areas (so that the local projects don’t have to meet Federal requirements such as Davis Bacon and Buy America) and directs the funds to a few large projects, because that would result in a higher Federal share.

Innovation

The Notice creates “Innovation” criteria that will be used to judge how applicants expedite environmental review and bypass other Federal requirements. Innovation Area #1 is the inclusion of “new approaches to the environmental review and permitting process” in their applications. The Notice includes inflammatory rhetoric about the delays and costs that are associated with environmental review. However, the “new approaches” to the environmental review process that the Notice specifically suggests are policies that have already been mandated by Congress, promoted by the Obama Administration, or both. These policies include:

- Identification of “liaisons” within each environmental resource agency to serve as the point person for the review of transportation projects. The Obama Administration identified liaisons at relevant resource agencies for highway projects and the FAST Act expanded the use of liaisons.
- Early coordination and definition of roles among environmental resource agencies. This is required by the FAST Act.
- Concurrent, rather than sequential, environmental reviews by resource agencies. This was required by SAFETEA-LU.
- Tracking progress of environmental reviews on a public “dashboard”. The Dashboard was created by the Obama Administration and expanded and codified by the FAST Act.

The Notice does not limit “innovative” review and permitting practices to those specifically listed in the Notice. Therefore, DOT could seek to fund projects that use other strategies to chip away at the environmental review process.

Innovation Area #2 is listed as Special Experimental Authorities. DOT encourages States and project applicants to apply for special authority under two waiver programs established in the 1990s (SEP-14 and SEP-15) which permit DOT to “waive statutory and regulatory requirements under title 23 on a project-by-project basis” to explore innovative processes. The Notice specifically states “the Department is interested in ensuring that [title 23] requirements do not unnecessarily impede project delivery.” Presumably, project sponsors who show intent to apply for and utilize SEP waivers will be viewed very favorably in the evaluation process.

Performance and Accountability

To meet the fourth objective of performance and accountability, DOT indicates that it may impose events to “trigger availability” of grant funds, including reaching project delivery milestones in a given time period, and “making specific State or local policy changes that advance desirable outcomes”. On this point, the Notice specifically states that “in some jurisdictions, administrative barriers to public-private partnerships prevent project sponsors from using an effective and proven method of project delivery...the Department can help dismantle those barriers by conditioning INFRA funds on local policy changes.” In other words, DOT wants to provide as few carrots as possible (with funding) but is happy to wield big sticks.

The cumulative effects of these INFRA program priorities is to force State and local funds to be spent on previously Federally-funded highway projects so the Trump Administration can falsely claim it is investing in infrastructure. More State and local funds will be necessary for the long-term repayment of P3 projects, which on average take decades to repay, as well as repayment of TIFIA and RRIF loans, and for future life-cycle costs. In reality, very few projects will actually be selected to receive funding, but all applicants will be made to jump through significant and misguided hoops in an attempt to be competitive.