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Sent: Wed, 22 Jan 2025 16:01:52 +0000
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Subject: FW: Payment hold
Importance: High

Sharing the below article FSA, in case you hadn't seen this.

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Sent: Tuesday, January 21, 2025 5:20 PM
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Subject: RE: Payment hold

From Eno:

FHWA Shuts Down All Payments Because of Poorly Worded Trump Order

JANUARY 21, 2025 | JEFF DAVIS

The Federal Highway Administration has shut down its computer systems that allow states to enter into new highway project agreements and to request reimbursements from FHWA for work already completed. This effectively shuts down the \$61 billion per year agency, temporarily and until further notice. We are still awaiting word on whether or not other transportation modes funded by the bipartisan infrastructure law (mass transit, highway safety, motor carrier safety) are following suit.

The culprit is a poorly worded executive order signed by President Trump yesterday (the order has no number, yet, but the text is [here](#)).

The order is entitled “Unleashing American Energy” and is, in part, about rolling back “Green New Deal” spending on renewables and electric vehicles. However, the actual wording of the order is far broader than that.

Section 7 of the order says:

“Sec. 7. Terminating the Green New Deal. (a) All agencies shall immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58), including but not limited to funds for electric vehicle charging stations made available through the National Electric Vehicle Infrastructure Formula Program and the Charging and Fueling Infrastructure Discretionary Grant Program, and shall review their processes, policies, and programs for issuing grants, loans, contracts, or any other financial disbursements of such appropriated funds for consistency with the law and the policy outlined in section 2 of this order.” (Section 2 is the policy statement.)

The problem is, whoever drafted that order was apparently unaware of two important things.

They did not understand the breadth of programs funded by IIJA

appropriations. The point of this part of the executive order is to put a hold on “Green New Deal” spending for environmental programs. But Division J of the IIJA funded a whole lot of traditional infrastructure as well – the kind that President Trump said he supports (and which Republicans in Congress wholeheartedly do support).

Even if you construe the phrase “appropriated through [the IIJA]” narrowly, Division J of the IIJA appropriated \$184 billion over five years to USDOT. Of that amount, \$5 billion went to electric vehicle charging stations (the NEVI program), \$250 million to reduce truck emissions, \$500 million for “reconnecting communities,” \$5.25 billion for zero-emission buses, and \$250 million for low-emission ferries. That’s \$11.25 billion for explicitly Green New Deal stuff, or 6 percent of the Division J total.

The rest of the money goes for regular roads and bridges (\$41.3 billion), the regular mass transit program (\$14.8 billion), Amtrak (\$22 billion), the CRISI and grade crossing railroad programs (\$8 billion), new intercity passenger rail (\$36 billion), airports (\$25 billion), the Secretary’s RAISE and MEGA multimodal grant programs (\$12.5 billion), seaports (\$2.25 billion), pipeline safety (\$1.0 billion), and various safety grants (\$7.3 billion).

But the IIJA also provided \$383 billion in contract authority from the Highway Trust Fund for five years, and FHWA is apparently interpreting the President’s order as calling

for a freeze on that as well. At that point, even though FHWA has a few other odds and ends paid for by other appropriations, it's easier just to shut down the whole computer system.

And the other problem that the President's lawyer was seemingly unaware of:

They did not understand what “disbursement” means. There are three separate stages of the federal budget's spending process, with separate nomenclature for each. And they always work in the exact same order:

1. Budget authority – some sort of legal permission slip, provided by Congress, that allows a federal employee to incur a binding financial obligation upon the federal government. It can be an appropriation, or contract authority, or borrowing authority, or the authority to spend receipts, but it has to exist. Power of the purse and all that.
2. Obligation – the signing of a contract or purchase agreement, or some other action that legally obligates the federal government to pay a non-federal entity some amount of money. Can be enforced in a court of law if one party reneges on the agreement.
3. Outlay (previously called “expenditure” or “disbursement”) – cash leaving the Treasury, via check or wire transfer, to pay off, or “liquidate,” an obligation. Refusal by the federal government to make outlays, when owed, can invite lawsuits under the Prompt Payment Act, which requires that the federal government pay interest on delayed outlays (currently 4.625 percent).

DOT grant programs work on a reimbursement basis – after the obligation (approval of the project grant agreement), the non-federal partner does the work building the project and pays out of pocket, and then after the work is done, the federal government reimburses them with the outlay/disbursement of funds for whatever the federal cost share of the project is (80 percent for most highway and transit projects, and can go as high as 100 percent, but new mass transit lines are around 50 percent). So focusing on disbursements does not stop projects from being built, it only means delays in reimbursements. And those delays can be solved by the state/local partner simply suing

the federal government and winning in court, in which case payment is made out of the Permanent Judgment Appropriation (31 U.S.C. § 1304).

What now? Things stay shut down, at FHWA and possibly at FTA, FMCSA, and NHTSA (and the Office of the Secretary grant programs RAISE and TIGER, in part), until some attorney in a position of authority gives them an official interpretation of the new order that allows them to repay states and continue ongoing programs.

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