GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

B-337137

February 25, 2025

Mr. Gregory Cote
Principal Deputy General Counsel
U.S. Department of Transportation

Subject: *U.S. Department of Transportation, Federal Highway Administration—Applicability of the Impoundment Control Act to Memorandum Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans*

Dear Mr. Cote:

On January 20, 2025, President Trump issued an executive order directing all agencies to "immediately pause the disbursement of funds appropriated through" the Inflation Reduction Act of 2022 or the Infrastructure Investment and Jobs Act (IIJA).[1] In particular, the Order states that "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" are included.[2] The Order directs agencies to "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 the Order.[3]

Subsequently, on February 6, 2025, the U.S. Department of Transportation (DOT), Federal Highway Administration issued a memorandum stating that it was rescinding all previously issued guidance implementing the National Electric Vehicle Infrastructure (NEVI) Formula Program and "immediately suspending the approval of all State Electric Vehicle Infrastructure Deployment plans for all fiscal years."[4] The DOT Memo further

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[1] Exec. Order No. 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 20, 2025).

[2] *Id.*

[3] *Id.*

[4] DOT, *Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans* (DOT Memo) (Feb. 6, 2025), *available at* https://www.fhwa.dot.gov/environment/nevi/resources/state-plan-approval-suspension.pdf (last accessed Feb. 12, 2025).

states that “no new obligations may occur under the NEVI Formula Program” until new guidance is issued and new state plans are submitted and approved.[5]

The Impoundment Control Act[6] operates on the premise that when Congress appropriates money to the executive branch, the President is required to obligate and expend the funds. B-329092, Dec. 12, 2017. The President may impound funds—that is, withhold them from obligation—only under specified circumstances and only if the President follows procedures set forth in the Act. *See* 2 U.S.C. §§ 683–684. These procedures require the President to transmit a “special message” to Congress concerning the impoundment. *Id.* If the Comptroller General becomes aware of a possible impoundment for which the President has not transmitted a special message, the Comptroller General must report the impoundment to Congress. *Id.* § 686(a).

It is our practice to investigate potential impoundments and to report to Congress when an agency fails to comply with the Impoundment Control Act’s requirements. In accordance with our regular practice, the purpose of this letter is to seek additional facts and DOT’s legal views on this matter. *See* GAO, *GAO’s Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), *available at* https://www.gao.gov/products/gao-24-107329. In this context, we would appreciate your responses to the following inquiries, together with supporting documentation:

1. Please explain whether pausing the disbursement of funds made available through the NEVI Formula Program constitutes a withholding subject to the Impoundment Control Act’s special message requirements. In addition, if the withholding would constitute an impoundment as defined by the Impoundment Control Act, please explain whether withholding these amounts is consistent with 2 U.S.C. § 681(4), which provides that the Impoundment Control Act does not supersede any provision of law which requires the obligation of budget authority or the making of outlays thereunder.

2. To the extent that budget authority is being withheld pursuant to the DOT Memo, please provide the amounts and accounts affected.

3. Please explain whether the President plans to send a special message to Congress in connection with the DOT Memo.

4. Please explain whether DOT has authority to withhold or withdraw funding pursuant to the NEVI Formula Program, other than in instances where a state fails to submit a required plan or if the Secretary determines that a state has not taken action to carry out its plan. *See* IIJA, Pub. L. No. 117-58, div. J, title VIII, 135 Stat. 429, 1422 (Nov. 15, 2021). To the extent that budget authority is being

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[5] *Id.*

[6] Pub. L. No. 93-344, §§ 1001–1017, 88 Stat. 297, 332–39 (July 12, 1974), classified at 2 U.S.C. §§ 681–688.

withheld under the authority outlined in IIJA, please identify whether state plans have not been submitted or if the Secretary has made a determination that a state has not taken action to carry out its plan.

5. Please identify and explain DOT's statutory authority to approve state plans under the NEVI Formula Program. Please also identify and explain DOT's statutory authority to suspend the approval of state plans. *See* DOT Memo.

6. Please identify and explain any relevant statutory provisions, regulations, or DOT policies governing the manner in which DOT obligates appropriations for the NEVI Formula Program and records such obligations. Please provide copies of any identified DOT policies.

7. Please explain whether grants to states under the NEVI Formula program are required to be paid in specific amounts fixed by law or under formulas prescribed by law. If so, please identify the relevant statutes that establish amounts owed to states or prescribe formulas for the grants.

8. Please clarify the current status of the NEVI Formula Program, including whether funds apportioned to states under previous state plans for fiscal years 2022 through 2025 remain available for obligation.

9. Please identify whether any budget authority previously obligated by DOT has been deobligated, providing the amounts and authority for the deobligations.

10. Please identify whether other formula grant programs administered by DOT have been paused or suspended pursuant to the Executive Order.

Please provide your responses, and any other information and documentation pertaining to this matter by March 12, 2025. Shirley A. Jones, Managing Associate General Counsel for Appropriations Law, of my staff is working on this matter. If you have any questions or wish to provide additional information, please contact us. Thank you for your prompt attention to this matter.

Sincerely,

Edda Emmanuelli Perez

Edda Emmanuelli Perez
General Counsel