



March 8, 2013

Mr. Seth D. Harris  
Acting Secretary of Labor  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Dear Acting Secretary Harris:

We are writing collectively to urge you to release federal transit funding currently being withheld by the Department of Labor (Department) from public transit agencies in California on the basis of alleged conflicts between Section 13(c) and the Public Employees' Pension Reform Act (PEPRA).

This dispute arose almost four months ago, triggered by organized labor's opposition to pension reforms enacted by the State Legislature in California. For our agencies alone, over \$145 million in federal grant dollars are being blocked by this dispute—funds that are critically needed and that have been allocated to us by the Congress. If the Department continues to withhold grants to California, California transit agencies stand to lose \$2 billion in transit assistance annually.

The Department is withholding this funding based on allegations by the unions that PEPRA violates transit agencies' Section 13(c) obligation to engage in collective bargaining over pension issues; it does not appear the Department has done any independent analysis of the law or the various fact situations presented. However, when this issue was analyzed in detail by the California Labor and Workforce Development Agency, that agency found no conflict between the requirements of PEPRA and 13(c) and determined that (a) PEPRA preserves the ability of current and future employees to engage in good faith bargaining, and (b) PEPRA does not permit employers to unilaterally determine and impose pension terms. See Letter from Secretary Marty Morgenstern to Acting Department Secretary Seth D. Harris, February 13, 2013. As stated in Secretary Morgenstern's letter: "My legal staff<sup>1</sup> and I have reviewed this matter carefully and concluded that PEPRA does not limit a local transit

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<sup>1</sup> The Secretary's letter is accompanied by a detailed legal opinion by the agency's General Counsel, Mark Woo-Sam, that examines the history and purpose of Section 13(c) (including Federal case law) and the specific changes to state pension law made by PEPRA, and concludes that PEPRA protects the rights of employees to bargain collectively over pension issues and is "fully consistent" with the requirements of Section 13(c).

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authority's ability to bargain or to enter into fair and equitable protective agreements or arrangements to satisfy 13(c)."

Furthermore, each of the transit agencies signatory hereto has determined that it has the legal authority to bargain collectively over pension issues, following the enactment of PEPRA, and that it is willing and able to engage in that collective bargaining with the affected unions. Bargaining over pension issues and compliance with PEPRA are not mutually exclusive endeavors.

Despite all of this, we find ourselves still waiting for critical grant funds, and unfortunately, we see no indication that the Department has a plan or timetable for addressing this issue. The Department has failed to meet its own guidelines regarding the process and timing for the resolution of 13(c) certification disputes. With all due respect, this is simply not acceptable. Our public transit agencies need these federal funds to buy rolling stock and equipment, to build and rehabilitate facilities, to pay transit workers, to maintain existing jobs and create new employment opportunities, and to do the day-to-day maintenance activities that are essential for public safety. To deny us these funds has a direct and immediate impact on public transit and on transit dependent riders. Due to the significant lead time required for transit agencies to make service changes in response to budget cuts, the continued delay and threats to this funding source will require California transit agencies to begin the service-cut planning and public hearing process within the next 30 days. This will include analyzing what routes and employee positions will be impacted and/or eliminated due to the loss of funding.

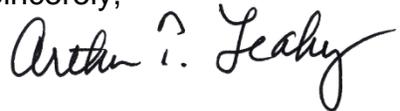
In the larger picture, the State of California, finally showing signs of economic recovery, needs these funds to foster infrastructure development and economic development and growth. We share with the Administration and the Department of Labor the desire to create jobs and improve economic conditions. The financial resources to transit agencies in California represented by these grants are essential to that economic recovery.

The only solution to this dilemma that has been offered by the labor unions is to change State law, a change that is not only legally unnecessary but has also gone from being uncertain to being unlikely. Moreover, for a Federal Department to dictate such a change would be to effectively override a state legislative decision on how best to manage and control public pension costs in the state -- costs that are borne by the State and by local entities, not by the Federal Government.

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We urge you to resolve this issue and allow this critical transit funding to be released.

Sincerely,



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Arthur T. Leahy  
Chief Executive Officer  
Los Angeles County Metropolitan Transportation Authority



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Darrell Johnson  
Chief Executive Officer  
Orange County Transportation Authority



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Paul C. Jablonski  
Chief Executive Officer  
San Diego Metropolitan Transit System



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Michael R. Wiley  
General Manager/CEO  
Sacramento Regional Transit District

c: California Congressional Delegation  
The Honorable Ray LaHood, Secretary of Transportation  
Peter Rogoff, FTA Administrator  
John Lund, Deputy Assistant Secretary, DOL