

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

August 1, 2013

The Honorable Edmund G. Brown, Jr.
Governor of California
Sacramento, CA 95814

Dear Governor Brown:

I write in response to your letter of May 29, 2013, in which you urge the Department of Labor (Department) to “certify the release of grants by the Federal Transit Administration (FTA) to California’s mass transit providers,” which totals \$1.6 billion for Fiscal Year 2013. Over the past several months, we have continued to work with your staff in an effort to address the issues outlined in your letter. The Department appreciates the fiscal challenges faced by California, including the solvency of the State’s public pension systems. We also share your commitment to the collective bargaining rights of public employees.

At the same time, we understand the devastating impact that a loss of federal transit dollars would have on transit services, commuters, jobs, and economic development in California. Therefore, in order to give the State additional time to resolve the impact of its newly-enacted Public Employee Pension Reform Act (PEPRA) on transit workers who are protected by Section 5333(b) of the Federal Transit Act, commonly referred to as Section 13(c), we will wait until August 16, 2013, before we issue a determination on releasing federal funds to the Los Angeles County Metropolitan Transportation Authority or any other transit district in which such impacts remain unmitigated.

Before the FTA may release funding to transit providers, Section 13(c) requires this Department to certify that protective arrangements are in place that preserve the collective bargaining rights of transit workers (including their pension rights and benefits) and continue their right to engage in collective bargaining. Recently, Wisconsin, New Jersey, Ohio and Massachusetts all passed laws that reformed the collective bargaining process, but in each case the transit agency, unions and the state came up with solutions in order to avoid a conflict with Section 13(c). These solutions ranged from carving out exemptions for mass transit workers to negotiating supplemental agreements to having the state Attorney General’s office provide assurance that the changes would not affect the ability of transit workers to collectively bargain.

In processing grants for certification, the Department has studied carefully the impact of PEPRA on the existing bargaining rights of union-represented transit employees who work for LACMTA, as well as in other jurisdictions. We are concerned that PEPRA diminishes both the substantive rights of transit employees under current collective bargaining agreements and narrows the future scope of collective bargaining over pensions. We base these concerns on a variety of considerations, including analyses of PEPRA prepared by the State, input from LACTMA and the unions, pension calculations verified by the parties, and legal principles that have historically governed the Department’s 13(c) determinations.

As you know, we have been working with your staff to help California resolve the Section 13(c) issues that result from PEPRA. In November 2012, when we received objections from the affected unions to certification of the LACMTA grants, we gave the parties 30 days to come up with a negotiated solution, as provided under our guidelines, and extended that period upon request. When that yielded no results we asked them for a detailed briefing so that we could pinpoint the areas of conflict between PEPRA and Section 13(c). In June, we brought the LACMTA parties together to see if they could find a negotiated solution, but they adjourned without resolution.

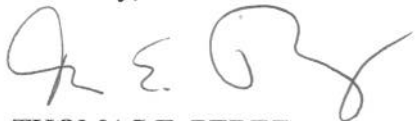
Anticipating that PEPRA's substantial changes to public pensions would implicate Section 13(c) in many transit districts, we have engaged directly with your office to seek a comprehensive solution. As we have discussed, a bill pending in the California Legislature, AB 160, would exempt mass transit workers from PEPRA. Such an exemption has historically provided a solution in situations such as this one.

I write to urge California to act immediately to develop a solution on this issue. As you know, PEPRA impacts 83 of California's 95 FTA grantees. These transit agencies are eligible for more than \$1.6 billion in funding for FY 2013. This includes over \$530 million in FTA grants awaiting certification as of the end of June, and an additional \$1.1 billion for 99 grants still under development.

There are significant negative consequences that a lack of resolution on this issue will have for service providers, employees, and transit users who depend on mass transit in California. Indeed, some grantees have informed the FTA that without federal funding they will face both service cuts and layoffs this year.

With these consequences in mind, we will refrain from issuing a determination for LACMTA until August 16. We hope that this additional time will provide an opportunity for your state to work out a possible resolution, as other states have done. In the meantime, the Department stands ready to assist you and your staff in any way possible to find an acceptable solution.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. E. Perez', written in a cursive style.

THOMAS E. PEREZ