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April 16, 2015

Karen M. Torre
Acting Chief, Division of Statutory Programs
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

**Re: FTA Application
Los Angeles County Metropolitan Transportation Authority
CA-54-0032**

Dear Ms. Torre:

I am writing on behalf of the Los Angeles County Metropolitan Transportation Authority (LACMTA) in response to your letter of March 27, 2015. In your letter, you ask for LACMTA's position on the issue of whether the exemption of transit employees from PEPPRA set forth in AB 1222 remains in full force and effect following the December 30, 2014 Federal District Court decision.

For the two reasons stated below, the exemption is clearly no longer in effect. First, the California Public Employees' Retirement System (CalPERS) is the state agency with the constitutional and statutory authority and responsibility for administering the State's public retirement system and for determining, among other things, public employee retirement benefits. See California Constitution, Article XVI, Section 17; California Public Employee Retirement Law, Section 20120 et seq. In exercising this authority, CalPERS has determined as follows:

"The recent decision in the State of California v. United States Department of Labor . . . ends the exemption from the Public Employees' Pension Reform Act (PEPPRA) for transit employees . . . In its December 30, 2014, decision, the court concluded that the U.S. Department of Labor erred in determining that PEPPRA prevented certification under Section 13(c). Under [the State law], the court's decision triggers the end of the exemption." CalPERS Circular Letter to all Public Agency Employers, February 25, 2015.

In administering the retirement plans of LACMTA employees covered by CalPERS, LACMTA intends to follow the directive set forth in the CalPERS Circular Letter. CalPERS is responsible for administering the public retirement system in accordance with State law. CalPERS has made a clear determination as to the effect of the court decision, in light of the exemption language in AB 1222. LACMTA does not have the legal authority to ignore State law and refuse to comply with the CalPERS directive.

Second, LACMTA's own reading of the court decision is fully consistent with CalPERS' conclusion. The U. S. District Court found, under the standards of the Administrative Procedure Act (APA), that the Department of Labor (DOL) determination was arbitrary and capricious, a misinterpretation of the law, and in excess of DOL's authority. In any reasonable interpretation, that means the DOL erred in its determination. The court made the following specific findings and conclusions:

1. "DOL thus erred in its interpretation of the intersection between federal labor policy and a state's system-wide changes in . . . public employment." Id. at 24.
2. "In issuing its denial letters, DOL relied on Donovan reflexively, without properly distinguishing its factual context." Id.
3. "DOL's failure to consider the realities of the process of public sector bargaining renders its decision arbitrary and capricious." Id. at 25.
4. "DOL misapplied federal labor policy in relying on the cases it did to evaluate PEPRA's impact on the preservation of collective bargaining rights." Id. at 27.
5. "In rejecting certification based on its evaluation of PEPRA's impact on new employees, DOL misinterpreted the law." Id. (emphasis supplied)

Based on the above, DOL's view that the decision "did not determine that the DOL erred" is simply not credible—it is refuted by the clear language in the decision. DOL is certainly within its rights to disagree with the decision on the merits and to seek its reversal on appeal, but it should not be free to disregard an order of the U.S. District Court; nor should it base its actions on its "interpretation" of a State statute over which it has no jurisdiction or authority.

Moreover, in seeking a response on the exemption issue from LACMTA and other transit agencies, DOL's actions are both transparent and troubling. DOL's actions in not certifying Federal transit grants has created uncertainty and placed transit agencies in a conflicted position. Given the content of the unions' objections, the clear implication is that any transit agency that follows the CalPERS determination and the clear findings of the court ruling, and disagrees with the DOL and union views on the exemption issue,

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will find itself in the lengthy DOL objection process, with its Federal grants delayed and potentially denied. However, a transit agency that ignores the CalPERS directive and says that it agrees with DOL's views will be able to get its Federal grant funds released and avoid the DOL objection process. In effect, DOL is putting agencies in the position where they have to violate State law in order to receive their Federal grants. Such an action raises serious legal and public policy issues.

We urge DOL to reconsider the path it is on and not take the unprecedented action of requiring transit agencies in California to violate State law in order to receive Federal grants. We recommend that DOL, at a minimum, conditionally certify LACMTA's grants.

Very truly yours,

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