The National Beat

October 9, 2025

In This Issue

Feature Focus

USDOT IFR on DBE Program, USDOT Holds $18 Billion in New York Transit Funding, FY 26 FHWA Apportionment of Funds

USDOT Issues Interim Final Rule on the Disadvantaged Business Enterprise Program

On October 3, USDOT published an Interim Final Rule (IFR) modifying the Disadvantaged Business Enterprise (DBE) and Airport Concessions DBE (ACDBE) programs under 49 CFR Parts 26 and 23.

The rule removes long-standing race- and sex-based presumptions of social and economic disadvantage**, requiring all applicants to demonstrate disadvantage on an individual, case-by-case basis**. The rule took **immediate effect upon publication**, with a public comment period open through November 3, 2025.

USDOT states that the changes are necessary to ensure the programs operate "**in a nondiscriminatory manner and in line with constitutional requirements**." The move follows a series of court decisions and executive orders (EO) requiring agencies to review and eliminate race- and sex-based classifications in federal programs.

Background

The DBE and ACDBE programs were created to help small businesses owned and operated by socially and economically disadvantaged individuals compete for federally assisted contracts and airport concessions. Historically, federal law presumed that certain groups, including women and members of specified racial and ethnic communities, **met that definition automatically**.

In September 2024, a federal district court in Kentucky (***Mid-America Milling Co. v. USDOT***) noted that these presumptions likely violate the Constitution's equal protection guarantees (Fifth amendment), setting off a series of legal and administrative reviews. Subsequently:

1. The DOJ concluded that the **DBE presumptions were unconstitutional** and announced it would no longer defend them in court.
2. The Attorney General and White House issued guidance **and EOs directing agencies to end race- and sex-based contracting preferences** across the federal government.
3. USDOT's new rule implements these directives **immediately**.

Key Developments

A series of court decisions and EOs in 2024 through 2025 have influenced this outcome including:

- ***Mid-America Milling Co. v. USDOT*** (E.D. Ky., Sept 23, 2024) noted that the DBE **program's presumptions likely failed strict scrutiny**.
  - Order to grant preliminary injunction and enjoin them from enforcing it.
- ***Ultima Servs. Corp. v. USDA*** (2023) and ***Nuziard v. MBDA*** (2024) similarly **invalidated federal race-based business preferences**.
- ***Students for Fair Admissions v. Harvard*** (2023) applied the **same equal-protection standards** to race-based admissions programs.
- **EOs 14151**, **14173**, and **14219** (Jan–Feb 2025) directed all agencies to **terminate "illegal preferences" and align programs** with constitutional nondiscrimination requirements.

Check out AMPO's Litigation Tracker and **Friday Docket Newsletter** for federal court updates and analysis.

Key Provisions

- **Elimination of Presumptions**: All references to race- and sex-based presumptions of disadvantage **are removed from DBE and ACDBE regulations**.
    - Individuals of any background may apply, but all applicants must now provide documentation proving social and economic disadvantage through personal experience and financial data.
- **Case-by-Case Certification Process**: Applicants must submit:
    - A **personal narrative** describing specific instances of disadvantage or barriers in education, employment, or business.
    - A **personal net worth statement** and supporting financial documentation.
    - Evidence showing how these **impediments resulted in measurable economic harm**.

  The **burden of proof** lies with the applicant to demonstrate disadvantage by a "preponderance of the evidence."
- **Reevaluation of Existing DBEs**: Every currently certified DBE and ACDBE must undergo reevaluation. Unified Certification Programs (UCPs) must:
    - **Recertify** firms that meet the new individualized standard; and
    - **Decertify** those that do not.

  Standard decertification appeal procedures do not apply during this process.
- **Temporary Suspension of DBE Goal-Setting and Counting**: Until reevaluations are complete, recipients of federal funds:
    - **Cannot set new DBE contract goals** or
    - **Count DBE participation** toward existing goals.

  This pause is intended to ensure all certifications comply with the revised standards before they are used in federal reporting.
- **Data Collection and Reporting Changes**: Recipients are no longer required to collect or report data on a firm owner's race or sex. Bidders' lists and certification records will now be maintained in a **race- and gender-neutral format**.
- **Alignment with the Airport Concessions Program**: Parallel changes apply to the **ACDBE program (49 CFR Part 23)** to ensure consistency across all USDOT programs.

Implementation and Next Steps

USDOT estimates that ~ **40,000 firms** nationwide will need to be reevaluated. The one-time implementation cost is estimated at **$95 million**, primarily reflecting administrative workload for certifying agencies.

- State DOTs, MPOs, transit agencies, and airports (as recipients or subrecipients of federal transportation funds) will need to **coordinate closely with their UCPs and state civil rights offices**.
- USDOT guidance directs that recipients **should not set or apply DBE goals until reevaluations are complete**.
- FHWA and FTA have not yet issued supplemental program-specific guidance, which may create **short-term uncertainty for ongoing or pending procurements**.
- **Existing contracts are not required to be re-bid or reopened**; however, new participation credit cannot be claimed until a firm's recertification is complete.

Implications for MPOs and Local Partners

While MPOs are not typically direct DBE certifiers, these changes may potentially affect regional planning and contracting processes in several ways:

- **Contract Goals:** Some procurements may lack active DBE goals until UCPs complete reevaluations, potentially affecting timelines or scoring.
- **Coordination with State DOTs:** MPOs involved in programming or oversight (TIP/STIP processes) may see adjustments in DBE participation reporting or local procurement requirements.
- **Reauthorization Context:** These regulatory changes may shape future congressional discussions about small business participation, administrative burden, and program simplification in the next surface transportation authorization.

Bottom Line. USDOT's IFR represents a major structural change to the DBE and ACDBE programs. While both programs remain in effect, eligibility criteria have been fundamentally restructured to remove race and gender as factors in certification. MPOs, state DOTs, and local partners may consider:

- **Pausing DBE goal-setting in new** procurements until UCPs provide updated certification lists.
- **Monitoring forthcoming USDOT implementation guidance** and supplemental FHWA/FTA instructions.
- **Anticipating transitional impacts** on procurement, reporting, and regional coordination.

MPOs should consider submitting comments to Docket **DOT-OST-2025-0897** by **November 3, 2025** (via regulations.gov). If you have any questions please reach out to Katie Economou, Legislative Director, at **keconomou@ampo.org**.

🔗 USDOT Suspends $18 Billion in New York Transit Funding and $2.1 Billion for Chicago Transit Projects

On October 1, The White House (via Office of Management and Budget Director Russell Vought) and USDOT announced the suspension of **~ $18 billion in federal funding** for two of the nation's largest transit projects in New York (the Gateway Hudson Tunnel and Second Avenue Subway) **citing constitutional and administrative concerns related to federal contracting practices**. Two days later, citing similar concerns, the administration paused **more than $2 billion in funds** for a project in Chicago. Many of the impacted projects are funded through a mix of formula-based grants, direct federal funding, discretionary grants, and state-local contributions. Both moves are likely to face legal challenges.

These actions represent one of the most significant uses of federal administrative authority over infrastructure funding in recent years and may have far-reaching implications for project delivery, state-federal relations, and long-term infrastructure funding considerations.

Background (New York)

The move coincides with the ongoing federal government shutdown and follows USDOT's release of the IFR revising the DBE Program (see analysis above).

- **Legal & Administrative Rationale:** As part of this DBE rule shift, USDOT has indicated it may **reexamine current and pending grant agreements** to ensure compliance with the revised program.
  - USDOT confirmed that both projects are under administrative review to determine whether their contracting practices comply with the Constitution following the recent DBE rule change.
  - These reviews appear to be the first such actions under the new policy.

The Gateway Program: a new Hudson River rail tunnel linking New York and New Jersey. The project has been considered one of the nation's most urgent infrastructure projects, with implications for Amtrak's entire Northeast Corridor.

The Second Avenue Subway: Designed to extend service into East Harlem, addressing a long-standing transit gap in Manhattan.

Note. Both projects are under way, and contractors have already mobilized, meaning any federal funding delays could significantly affect construction schedules and employment.

USDOT's statement also explained that, because of the government shutdown, its civil rights staff have been furloughed, delaying completion of that review and freezing reimbursements, including **a pending $300 million disbursement** for the Second Avenue Subway. Both projects are central to the Northeast Corridor and supported by bipartisan congressional funding under the IIJA.

Secretary Duffy said this week, "we're not trying to shut down these projects. To the contrary, we're trying to make sure they move forward and move forward fast." However, as [reported by POLITICO](), many observers (across both parties) note that the timing and scope of the suspension also reflect broader political tensions between the administration and Democratic-led states. New York officials, including Governor Kathy Hochul and Senate Majority Leader Chuck Schumer, have criticized the decision as punitive and harmful to job creation and regional mobility.

Background (Chicago)

On October 3, the **administration paused ~ $2.1 billion in federal funds** for Chicago Transit Authority (CTA) upgrades, including the Red Line Extension and Red and Purple Modernization projects. This move mirrors the actions in New York.

Pointing to USDOT's recent IFR, OMB Director Russ Vought said the pause aims to ensure federal dollars are not "flowing via race-based contracting," citing concerns with the agency's DBE program. Additionally, USDOT officials said the Chicago review will proceed "as fast as possible," but staffing limits from the shutdown could delay reimbursements, putting pressure on Democrats in Congress due to the continuing shutdown. Illinois Governor Pritzker criticized the decision as "holding bipartisan funding hostage," while USDOT defended its review as part of a broader effort to eliminate DEI-based contracting requirements across federal programs.

Potential Implications and Takeaways

- **Administrative Precedent:** The decision marks a new use of administrative review authority to condition or delay infrastructure funding based on compliance with internal rule changes.

   - This could set precedent for future reviews of grant agreements and project authorizations nationwide.
   - The incident underscores the importance of predictable and transparent federal funding mechanisms. Sudden administrative actions, even when tied to legitimate regulatory changes, can create uncertainty for long-term regional planning.
- **Programmatic Uncertainty:** The DBE rule change has created immediate implementation challenges for federal funding recipients.
   - Until USDOT clarifies how existing contracts and local DBE programs will be treated, recipients may potentially face uncertainty in contracting, reimbursement, and reporting.
   - MPOs, transit agencies, and local partners should monitor whether similar reviews arise in other jurisdictions as states recalibrate their certification programs.
- **Economic and Delivery Risks:** Temporary funding holds can disrupt project cash flow, escalate costs, and delay construction schedules. The prolonged suspension of reimbursements may potentially complicate multi-year grant management under the IIJA.
- **Legal Challenges:** Legal observers expect these actions to face judicial review, as similar administrative funding holds have previously been contested under the [Administrative Procedure Act (APA)]() and appropriations law. The outcome could shape future interpretations of executive authority to condition or suspend federal transportation funding.

USDOT's funding holds in New York and Chicago reflect a new phase of administrative oversight, linking project-level funding to compliance with the agency's constitutional interpretation of the DBE program. While USDOT has not rescinded the grants, the temporary suspension of reimbursements underscores how legal and regulatory shifts can impact major infrastructure investments.

🔗 FY 2026 IIJA Apportionments

On October 1, FHWA released the FY 2026 apportionments. This marks the final year of funding under the IIJA, distributing a total of **$56.81 billion** in formula funds to the states. The notice confirms that **funding levels remain stable** heading into reauthorization.

States will see modest year-over-year increases consistent with IIJA's growth guarantees (at least 1% higher than FY 2025 and 2% higher than FY 2021). **Funds are available immediately for obligation** and remain **available through September 30, 2029**. In addition to the core apportionments, FHWA also released separate HIP distributions totaling nearly **$6.2 billion** from the General Fund:

What a "Notice of Apportionment" does. Each October 1, FHWA issues official notices that formally distribute federal highway funding for the new fiscal year under the IIJA. The notices:

1. **Certify the total amounts available** for apportioned formula programs (**contract authority from the Highway Trust Fund**).
2. Compute each **State's share**.
3. Show how that share is **distributed across core formula** programs.

Note: Separate Highway Infrastructure Program (HIP) notices distribute General Fund appropriations (e.g., Bridge Formula, NEVI).

Annual apportionments provide the baseline for state DOTs and MPO programming federal funds.

- **Bridge Formula Program (BFP): $5.31 billion,** with a dedicated 15% off-system set-aside at a 100% federal share.
- **National Electric Vehicle Infrastructure (NEVI) Formula Program: $885 million**.

Key Program Highlights

All funding apportionment tables are available **here**.

Program	FY 2026 Amount	Share of Total Base	Availability (Obligation Period)
STBG	$14,975,886,615	26.36%	30-Sep-29
CMAQ	$2,745,579,213	4.83%	30-Sep-29
CRP	$1,335,349,889	2.35%	30-Sep-29
MPP (PL/5303)	$474,236,409	0.83%	30-Sep-29

Note: Figures are based on FHWA Notice **N 4510.905**. CMAQ and MPP amounts are fixed national set-asides from the total base apportionment of $56.81 billion. After those (and the NHFP set-aside) are deducted, FHWA applies IIJA's statutory distribution percentages—28.74% for STBG and 2.56% for CRP—to the remaining base ($52.11 billion). Each program's share of the total base was then calculated as a percentage of the full FY 2026 apportionment.

Together, these four programs (i.e., STBG, CMAQ, CRP, and MPP) account for ~ 1/3rd of all FY 2026 federal-aid highway formula funding distributed under the IIJA. They represent the core funding streams that most directly support MPO-led planning and local project implementation.

Federal Roundup

Congress: *Reauthorization, Nominations, Legislative Activity*
Administration & Agencies: *USDOT Updates*
NOFOs: *Fed-State Partnership for Intercity Passenger Rail*

Congress

Congressional "Vibe" Check

Government Shutdown. On **September 30**, the White House formally ordered federal agencies to implement their shutdown plans after a short-term funding measure failed to pass the Senate. This week, the stalemate deepened as the Senate failed to advance either party's proposal to fund the government, leaving agencies closed and federal workers unpaid. Republicans continue to push a House-passed stopgap bill to extend funding through November 21, while Democrats are demanding a permanent extension of health insurance tax credits as part of any deal. House Speaker Mike Johnson has refused to recall lawmakers to vote on a separate bill to pay the military, insisting the Senate act first. Read AMPO's analysis of the shutdown effects on USDOT here.

- 🔗 **White House Memo Raises Questions Over Federal Worker Back Pay**: A recent White House memo suggests furloughed federal employees may not be guaranteed back pay once the government shutdown ends, prompting confusion and pushback from lawmakers across both parties. The guidance appears to conflict with the **2019 Government Employee Fair Treatment Act,** which requires that federal workers receive retroactive pay after a lapse in appropriations. Administration officials argue the move is part of broader fiscal restraint efforts, while legal experts and the Office of Personnel Management maintain that the law is clear in protecting employee pay. The dispute comes as the shutdown continues to strain the federal workforce and pressure negotiations between the White House and Senate Democrats over a short-term spending agreement.

Reauthorization. Authorizing committees have been in the process of drafting base legislative text. The introduction of reauthorization bills and Committee markups are anticipated in the fall. Based on what we're hearing, base text in the house could be circulated sometime between late October and December. This is an opportune window for MPOs to elevate priorities directly with delegations (**Pro Tip:** use AMPO's **MPO Engagement Toolkit**).

What's Making Headlines?

- 🔗 **Key USDOT Nominees Advance in Senate:** The Senate advanced a group of key USDOT nominees, clearing a procedural hurdle toward confirmation. The en bloc vote moved forward the nominations of David Fink to lead the FRA, Derek Barrs to head the FMCSA, Michael Rutherford for

Assistant Secretary of Transportation, and Gregory Zerzan for USDOT general counsel.

- 🔗 **Senate Commerce Delays Vote on USDOT Research Nominee:** The Senate Commerce Committee abruptly postponed a scheduled markup on several remaining administration nominees, including Seval Oz, the president's pick to lead USDOT's Office of Research and Technology. This marks the second delay for Oz's nomination, previously postponed in July. Members have raised concerns about her commitment to transparency in developing national AV regulations. The postponement also affects two Commerce Department nominees and a bill to reauthorize the Pipeline and Hazardous Materials Safety Administration's (PHMSA) safety programs, leaving unclear when the committee will reschedule action.

Administration & Agencies

USDOT

- 🔗 **Essential Air Service Program Running Out of Funds**: Secretary Duffy warned Monday that the Essential Air Service (EAS) program, which provides federal subsidies to maintain air travel to small and rural communities, will run out of money within days if the government shutdown continues. USDOT has temporarily shifted unrelated FAA funds to sustain the program, but those reserves are nearly exhausted. EAS funding typically comes from fees paid by foreign aircraft flying through US airspace, supplemented by congressional appropriations that have halted under the shutdown. Duffy also expressed concern about air traffic controllers working without pay, noting that staffing shortages have caused sporadic reductions of up to 50% at some facilities, which could lead to flight delays or cancellations if the situation worsens.
    - 🔗 **Update - USDOT Secures Temporary Funding for EAS** : Secretary Duffy announced that USDOT has secured $41 million in emergency funding to sustain the EAS program through early November.

Notice of Funding Opportunities

Note: due to the government shutdown (read AMPO's summary **here**), expect delays in issuing new NOFOs, making selections, or signing/amending grant agreements until a CR/full-year law restores funding authority.

Open USDOT NOFOs

- 🔗 **Bridge Investment Program (BIP)**: BIP focuses on existing bridges to reduce the overall number of bridges in poor condition, or in fair condition at risk of falling into poor condition. There are three categories for applications:
    - **Note:** No new application window will be issued. Instead, grants not selected in the past round will be up for reconsideration.
    - **Bridge Project Grants Deadline:** November 1, 2025
    - 🔗 Read AMPO's BIP analysis ***here***

- 🔗 **Federal-State Partnership for Intercity Passenger Rail Grant Program – National** : This FRA program provides funding for capital projects that reduce the state of good repair backlog, improve performance, or expand or establish new intercity passenger rail service, including privately operated intercity passenger rail service.
  - **Deadline:** January 7, 2026

Upcoming NOFOs

- 🔗 **Strengthening Mobility and Revolutionizing Transportation (SMART) Grants – R2**: Stage 2 grants are up to $15,000,000 and 36 months. Only recipients of Stage 1 grants, or eligible entities designated by prior Stage 1 recipients, are eligible to apply for Stage 2.
  - **Expected Release:** Late fall.

- 🔗 **Tribal Transportation Program Safety Fund (TTPSF)**: FHWA Program to address transportation fatalities and injuries severely impact the quality of life in Indian country. Multijurisdictional groups are eligible to apply.
  - **Expected Release:** October 1, 2025

➡️ Access **AMPO's NOFO Tracker** here.

National News

- 🔗 **Regionalism: The next wave of public-service delivery**: Amid shrinking federal support and tight state budgets, Roger J. Cohen argues regional bodies (COGs and MPOs) are well positioned to deliver more with less by pooling scale, coordinating across city–suburb–rural lines, and staying close to local needs. He cites historic and current models and a wide portfolio of regional programs (e.g., housing, mobility, aging services, emergency response, workforce, etc.). The promise: efficiency, consensus-building, and alignment with real travel and economic patterns. The hurdles: state and local skepticism, fuzzy regional identities that don't always match "living geographies," and outdated funding that relies on pass-through dollars and member dues; a **Brookings proposal** for regional block grants is flagged as a potential fix. Cohen concludes that expanding regional service delivery isn't a cure-all but could be a pragmatic path to modernize governance and meet rising demands.

- 🔗 **Billions in EV Funds Put to Use Across the US**: The administration's past hold on the National Electric Vehicle Infrastructure (NEVI) program has largely ended, with more than 40 states now unlocking billions in federal funds to expand EV charging networks. A June **court ruling** overturning the freeze and new USDOT NEVI guidance (read AMPO's analysis **here**) in August revived the $5 billion initiative, allowing states greater flexibility to choose charger locations beyond the former 50-mile spacing rule. Texas alone plans to deploy over 200 NEVI-funded stations using $350 million in released funds. While the companion

Charging and Fueling Infrastructure (CFI) program remains under review, the NEVI revival signals bipartisan momentum toward modernizing transportation infrastructure, even as federal climate spending undergoes sweeping policy changes.

- 🔗 **Portland's Zoning Dispute With ICE Raises Broader Land-Use Questions**: The City of Portland is preparing to cite U.S. Immigration and Customs Enforcement (ICE) for violating local zoning rules that prohibit overnight detention at a privately leased facility, setting up a potential legal test of local authority over federally operated sites. Because the property is not federally owned, Portland argues its land-use regulations apply, while federal officials may challenge that position in court. The case could have wider implications for Oregon's long-standing growth management laws and potentially for national zoning policy, as debates continue over how land-use regulations affect housing supply, transportation, property rights, and federal-local jurisdiction.

- 🔗 **TIFIA/RRIF Changes and Opportunities for Transit-Oriented Housing (TOD)**: Brookings argues that reforms to USDOT's TIFIA and RRIF programs through reauthorization could finance hundreds of thousands of homes near transit by fixing administrative, not fiscal, bottlenecks. They propose four moves: delegate loan origination/servicing to certified private lenders (with federal oversight) to speed smaller TOD deals; use pooled lending/master credit agreements to capitalize regional TOD funds that finance many station-area projects under one framework; streamline environmental review for low-impact infill (e.g., programmatic NEPA or narrow exemptions) so federal financing doesn't trigger years of added process; and drop TIFIA's investment-grade rating requirement for residential/mixed-use TOD in favor of rigorous internal underwriting, as RRIF and other federal loan programs do.

Recent Editions

October 1st (2025)

- **Federal Focus (10/1):** Government Shutdown, Grant Cancellations, Obligation Deadlines on IIJA Funds, FTA FY 25 Apportionments, & CEQ NEPA Implementation Guidance

August 29th (2025)

- **Federal Focus (8/29):** APTA Survey Preliminary Results & USDOT RFI Extension

August 22nd (2025)

- **Federal Focus (8/22):** USDOT's SAFE ROADS Initiative FAQ & USDOT's Reauthorization RFI Comment Period Extension

August 14th (2025)

- **Federal Focus (8/14):** NEVI Guidance & Executive Order on Oversight of Grantmaking

August 4th (2025)

- **Federal Focus (8/4):** USDOT Reauthorization RFI, AMPO Letter to EPW, Senate THUD Bill, EO 14321

➡️ View all past editions of the **National Beat** Policy Newsletter **here**