June 8, 2026

The Honorable Sean Duffy
Secretary
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Duffy,

We write with deep concern that the Department of Transportation's ("the Department") Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications Interim Final Rule (the IFR)[1] risks destabilizing transportation contracting and concessionaire markets nationwide. The Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs have played a vital role in advancing the physical, social, and economic mobility of all Americans, while growing thousands of small businesses that help drive the nation's transportation economy.

These programs have increased competition, expanded contractor and concessionaire capacity, and supported the timely and cost-effective delivery of federally-assisted transportation projects. At a time when transportation construction costs continue to outpace inflation[2] and construction workforce shortages are the leading cause of project delays,[3] any action that disrupts the participation of experienced DBE and ACDBE firms threatens to increase costs, delay delivery, and reduce competition across our transportation economy.

Congress created the DBE program in 1983 to help women- and minority-owned small businesses, which face severe and pervasive discrimination, fairly compete for federally assisted transportation and infrastructure projects. Despite progress, in the years since, these small businesses have faced well-documented, persistent, and at times intentionally discriminatory barriers from public and private actors in their attempts to establish, grow, and operate construction and concessionaire businesses.[4]

[1] Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications, 90 Fed. Reg. 47969 (Oct. 3, 2025) (to be codified at 49 C.F.R. pt. 23, 26).
[2] Jeff Davis, *Highway Construction Costs Continue to Rise at 9.6% Annual Rate*, Eno Center for Transportation (Oct. 1, 2024), https://enotrans.org/article/highway-construction-costs-continue-to-rise-at-9-6-annual-rate.
[3] *Construction Workforce Shortages Are Leading Cause of Project Delays as Immigration Enforcement Affects Nearly 1/3 of Firms*, Associated General Contractors of America (Aug. 28, 2025), https://www.agc.org/news/2025/08/28/construction-workforce-shortages-are-leading-cause-project-delays-immigration-enforcement-affects.
[4] *See The Compelling Interest to Remedy the Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence*, U.S. Department of Justice (Jan. 31, 2022), https://www.justice.gov/crt/page/file/1463921/dl?inline at 16-26 (listing dozens of studies examining government contracts in all 50 states as well as qualitative evidence of specific incidents of "outright prejudicial treatment, attitudes, [and] stereotypes," e.g., minority contractors being called the n-word); *Contracting Barriers and Factors Affecting Minority Business Enterprises: A Review of Existing Disparity Studies*, Minority Business Development Agency (Dec. 2016), https://library.mbda.gov/view/mbda/8 at

These persistent discriminatory barriers are why Congress has repeatedly affirmed its support for these programs, most recently in the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58)[5] and the FAA Reauthorization Act of 2024 (P.L. 118-63).[6]

The DBE and ACDBE programs not only help remedy pervasive and, at times, intentional discrimination, but they also play a unique role in creating a diverse transportation contractor and supplier base that increases competition, lowers costs for America's commuters, and drives new wealth creation. As of October 1, 2025, there were nearly 50,000 certified DBE businesses nationwide[7] supporting an estimated more than 500,000 jobs,[8] many of which would not exist without the DBE program.[9] Since 2023, DBE certifications have increased nearly 20 percent, reflecting both growing entrepreneurial participation and continued demand for these firms' services.[10]

The DBE and ACDBE programs also represent a strong return on federal investment. According to the Department, the ACDBE program alone generated $2.7 billion in concessionaire revenues in 2022.[11] More broadly, small businesses have accounted for roughly two thirds of net job creation over the past 25 years.[12] Nationally, minority-owned businesses, nearly all of which are small businesses,[13] have contributed hundreds of billions of dollars in annual economic output,

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61, 64 (describing incidents of minority contractors receiving feedback such as "I will never use a minority firm for the service that I do" or upon asking why his firm was not selected to subcontract, being told his surname was the reason); *Racial Disparities in Government Contracting*, White House Council on Economic Advisors (Dec. 20, 2024), https://web.archive.org/web/20250515213459/https:/bidenwhitehouse.archives.gov/cea/written-materials/2024/12/20/racial-disparities-in-government-contracting (finding that "contracting gaps are larger in places with more racial bias" through a statistical analysis showing that "[m]inority-owned businesses in high-bias places receive about 30 percent less government contracting dollars than similar businesses in low-bias places.").

[5] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 11101(e) (finding that "discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in Federally assisted surface transportation markets across the United States.").

[6] FAA Reauthorization Act of 2024, Pub. L. No. 118-63, § 730 (finding that "discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in airport-related markets across the Nation.").

[7] *USDOT Significantly Modernizes the Disadvantaged Business Enterprise Program and Airport Concession Disadvantaged Business Enterprise Program Regulations*, U.S. Department of Transportation (Apr. 9, 2024), https://www.transportation.gov/briefing-room/usdot-significantly-modernizes-disadvantaged-business-enterprise-program-and-airport.

[8] *The Economic Impact of the Disadvantaged Business Enterprise (DBE) Program*, Amazing Traditions LLC (Dec. 2025) (PDF on file with authors); *Employment Impacts of Highway Infrastructure Investment*, Federal Highway Administration, https://www.fhwa.dot.gov/policy/otps/pubs/impacts (last modified Mar. 2, 2026).

[9] *Driving Equity: The U.S. Department of Transportation's Disadvantaged Business Enterprise Program: Remote Hearing Before the U.S. House of Representatives Committee on Transportation and Infrastructure*, 116th Cong. (Sept. 23, 2020) (Letter from Lawrence T. Green, President, Divine Cement, Inc.), https://www.govinfo.gov/content/pkg/CHRG-116hhrg43413/pdf/CHRG-116hhrg43413.pdf at 134-36; *Id.* at 144 (Letter from Sarah Imberman, S. Levy Foods); *Id.* at 147 (Letter from Katey Doman, President, TyE Bar LLC).

[10] *Nationwide DBE Businesses*, Amazing Traditions LLC (Jul. 2025) (compiling figures from state DBE directories) (PDF on file with authors).

[11] *Regulatory Impact Analysis*, U.S. Department of Transportation (Apr. 9, 2024), https://www.transportation.gov/sites/dot.gov/files/2024-04/DBE%20RIA.pdf at 2.

[12] Daniel Wilmoth, *Small Business Job Creation*, U.S. Small Business Administration Office of Advocacy (Apr. 2022), https://advocacy.sba.gov/wp-content/uploads/2022/04/Small-Business-Job-Creation-Fact-Sheet-Apr2022.pdf.

supported millions of jobs nationwide, and have grown at rates substantially exceeding the national average in recent years.[14]

In 2024, leveraging less than $10 million in federal funding, Florida's Small Business Development Center helped small businesses create or retain nearly 20,000 jobs, generate $475 million in tax revenues, and produce $3.8 billion in sales for local economies.[15] These outcomes underscore a basic principle: policies that expand fair access to opportunity strengthen economic performance and fiscal outcomes alike.

Therefore, we were deeply concerned when the Department sidelined nearly 50,000 high-performing small businesses (representing approximately 500,000 employees) and froze a $37 billion investment program[16] – and the billions more in economic activity it supports – all at a cost of over $100 million to the American taxpayer.[17] This decision could not have come at a more inopportune time, with labor shortages already driving up costs[18] and documented capacity constraints within many state departments of transportation.[19]

The absence of a demonstrated transition plan, implementation capacity analysis, or disruption mitigation strategy raises serious concerns regarding project delivery, administrative feasibility, and the potential harm for small businesses and the communities they support.

If the Department proceeds with its murky implementation of the IFR, it will be solely responsible for the chaos that follows. As long as DBE and ACDBE small businesses remain sidelined, hardworking Americans will be faced with higher costs from reduced competition, increased traffic, longer commutes, and an incomplete transportation system that limits physical, social, and economic mobility.

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[13] Nora Esposito, *Spotlight on Minority-Owned Employer Businesses*, U.S. Small Business Administration Office of Advocacy (May 2019), https://advocacy.sba.gov/wp-content/uploads/2019/05/Small-Business-Facts-Spotlight-on-Minority-Owned-Employer-Businesses.pdf.
[14] *2024 Minority Businesses Impact*, National Minority Supplier Development Council (Nov. 2025), https://nmsdc.org/wp-content/uploads/2025/11/NMSDC-EIR-2024_FINAL.pdf; *2023 Minority Businesses Impact*, National Minority Supplier Development Council (Jun. 2024), https://nmsdc.org/wp-content/uploads/2024/06/2023-Minority-Businesses-Economic-Impact-Report-FINAL.pdf; *2022 Minority Businesses Impact*, National Minority Supplier Development Council (Aug. 2023), https://nmsdc.org/wp-content/uploads/2023/08/NMSDC-2022-Minority-Businesses-Economic-Impact-Report-May-2023.pdf (showing a 24% increase in total economic activity since 2023 and three consecutive years of growth).
[15] *Funding Disclosures*, Florida Small Business Development Center Network, https://floridasbdc.org/funding-disclosures (last visited Mar. 2, 2026); *Economic Impact*, Florida Small Business Development Center Network, https://floridasbdc.org/results/economic-impact (last visited Mar. 2, 2026).
[16] *FACT SHEET: The Bipartisan Infrastructure Law Will Revitalize Main Street*, White House (Nov. 23, 2021), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/11/23/fact-sheet-the-bipartisan-infrastructure-law-will-revitalize-main-street.
[17] Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications, 90 Fed. Reg. 47969 (Oct. 3, 2025) (to be codified at 49 C.F.R. pt. 23, 26).
[18] Davis, *supra* note 2.
[19] *AASHTO Panel Talks State DOT Workforce Challenges*, American Association of State Highway Transportation Officials (Nov. 8, 2024), https://aashtojournal.transportation.org/aashto-panel-talks-state-dot-workforce-challenges.

We urge the Department to work collaboratively with Congress to address any identified concerns rather than proceeding unilaterally to dismantle programs that have served as pillars of the nation's transportation economy and created opportunities for countless Americans. All of our nation's citizens deserve the equal opportunity—free from pervasive and ongoing discrimination—to contribute to building the country's infrastructure and build wealth for their families and their communities.

Sincerely,

Raphael Warnock
United States Senator

Angela D. Alsobrooks
United States Senator

Alex Padilla
United States Senator

Adam B. Schiff
United States Senator

Edward J. Markey
United States Senator

Lisa Blunt Rochester
United States Senator

Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs

Tammy Baldwin
United States Senator

Sheldon Whitehouse
United States Senator

Chris Van Hollen
United States Senator

Tammy Duckworth
United States Senator

Cory A. Booker
United States Senator

Mazie K. Hirono
United States Senator

Kirsten Gillibrand
United States Senator

Jon Ossoff
United States Senator

Jacky Rosen
United States Senator

Peter Welch
United States Senator

Ruben Gallego
United States Senator

Tim Kaine
United States Senator

Catherine Cortez Masto
United States Senator

Mark R. Warner
United States Senator

Patty Murray
United States Senator

Jack Reed
United States Senator

Jeffrey A. Merkley
United States Senator

Mark Kelly
United States Senator

John Hickenlooper
United States Senator

Richard J. Durbin
United States Senator

Andy Kim
United States Senator

Christopher A. Coons
United States Senator

Tina Smith
United States Senator

Bernard Sanders
United States Senator

Ron Wyden
United States Senator

Elissa Slotkin
United States Senator