

United States Senate

WASHINGTON, DC 20510

May 28, 2014

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Secretary Foxx:

One of the hallmarks of the Moving Ahead for Progress in the 21st Century Act (MAP-21)(P.L. 112-141) transportation law was the creation of national performance goals and measures to improve the accountability of federal transportation dollars. MAP-21's new performance-based structure gives the U.S. Department of Transportation (DOT) a rare opportunity to refocus federal programs to ensure that taxpayers are getting the most for their money, and set a high standard for infrastructure investments for decades to come.

Safety is the first national performance goal, and MAP-21 calls for a Federal-aid highway program that will achieve a significant reduction in traffic fatalities and serious injuries on all public roads. On March 11, DOT released its notice of proposed rulemaking (NPRM) for the Highway Safety Improvement Program [Docket No. FHWA-2013-0020]. We believe that the proposed rule does not meet the standard envisioned by Congress, and respectfully request that you consider significantly strengthening the rule before it is finalized.

The NPRM establishes performance measures in four areas related to fatalities and serious injuries, and requires States to set their own targets in each of these categories. To assess whether States are making adequate progress, the proposed rule creates a two-part system—assessing whether States have achieved their targets, then, for those that do not, whether they have at least made significant progress towards achieving their targets. Under the first part of the system, the proposed rule allows States to fail in reaching half of the four targets and still be considered to have achieved their goal. Given that the focus of this program is to save lives and prevent serious injuries, we feel that a 50 percent passing grade is too low to create real accountability.

For those States that fail to meet even half of their own targets, they are then given a second chance and vetted under the other part of the system—whether they have achieved significant progress. This section allows States to show progress merely by showing little deviation from pre-existing 10-year trend lines. In the illustrative example included in the NPRM, DOT envisions a scenario where a State could project having 810 fatalities in a given year, set a target of 759 fatalities, but be deemed to have made significant progress as long as there are less than 825 fatalities—15 more fatalities than projected and 66 more than the target. Additionally, the

same standard of a 50 percent passing grade would be applied, meaning that States that track somewhat closely with historical trends in two of the four categories are considered to be in compliance. Under no circumstances should rising fatality numbers be deemed “significant progress” by your Department.

MAP-21 provided significant new flexibility for States to program federal dollars as they wish—however, Congress intended this flexibility to be paired with new accountability to ensure the best possible outcomes for the traveling public, a standard which the NPRM does not meet. We urge you to consider strengthening the standard for States to achieve their targets. We also urge you to consider eliminating the provision assessing significant progress using an even lower standard that could provide States that have increasing fatality numbers with a stamp of approval from your Department.

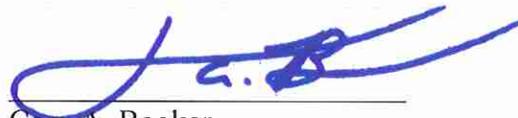
The NPRM also declined to create a measure for nonmotorized transportation users, and we encourage you to reevaluate the performance measure to positively address the safety of all users of our public roadways. While highway fatalities have decreased overall, fatalities for pedestrians and bicyclists are on the rise, and the strategies needed to address their safety tend to differ greatly from the traditional safety measures for motorists. The final rule should address this issue by developing separate measures for motorized and non-motorized transportation. We recognize the challenges of creating a valid and distinct nonmotorized measure, and ask that you bring the expertise of the department to bear to find a solution that improves safety for all travelers.

We understand that your number one priority is improving the nation’s transportation safety, and we stand squarely behind you in this effort. We urge you to consider strengthening the safety performance rule to ensure true accountability and set the nation on a path to realizing significant reductions in traffic fatalities and serious injuries on all public roads. The performance-based system developed by DOT will be a legacy for our Federal-aid highway program, and we thank you for your efforts to deliver the safest possible transportation system for the American people.

Sincerely,



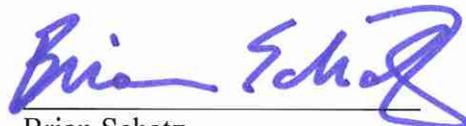
Robert Menendez
United States Senator



Cory A. Booker
United States Senator



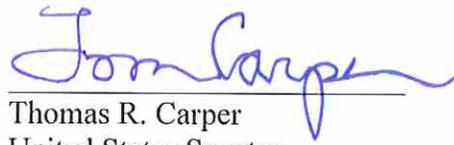
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