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ALERT

DOT Order Links Federal Transportation Funds to Marriage and Birth Rates

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On January 29, 2025, Transportation Secretary Sean Duffy issued an Order announcing that the U.S. Department of Transportation (DOT) would prioritize issuing grants, loans, and contracts to communities with "marriage and birth rates higher than the national average."

The Order took effect immediately upon its execution, and applies to all current and future DOT-supported and assisted state and local contracts, grants, and loans. Under the terms of the Order, DOT will implement its preferential plan for high marriage and birth rate communities "to the extent practicable, relevant, appropriate, and consistent with law," although it did not expressly state how much weight DOT would give to those preferences when making future federal transportation funding decisions.

The Order mandates that all of DOT's grantmaking, lending, policymaking, and rulemaking are supported by a rigorous cost-benefit analysis regardless of whether the activities are beneath the Office of Information and Regulatory Affairs' (OIRA) economic threshold for review. The Order further prohibits the calculation of the "social cost of carbon" in DOT's cost-benefit analyses, pending supplemental guidance to be issued by the U.S. Environmental Protection Agency.

In addition to the marriage and birth rate prioritization, the Order announced several additional DOT policy directives. The Order prohibits recipients of DOT funding from imposing vaccine or mask requirements. Similar to Orders and Memoranda from other agencies, such as the February 5 "Sanctuary Cities" memo from the U.S. Department of Justice, the Order also requires that recipients cooperate with federal immigration enforcement efforts and "other

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goals and objectives" of the President or the Secretary as a condition of funding. Lastly, the Order directs DOT to prioritize transportation projects that utilize user-pay models.

IMPACT: This Order could have a significant impact on state and local government access to federal funding for transportation projects, including electric vehicle infrastructure, highway and mass transit projects, rural and urban public transportation, and bicycle and pedestrian infrastructure. DOT is one of the largest sources of federal grant funds, with its FY23 budget containing over $32 billion for such projects, and states rely on these federal funds for a significant portion of their transportation budgets. DOT state grant funding allocations are largely the result of congressionally required formulas of which birth and marriage rates are not a factor, but the Trump Administration has signaled that it may ignore any such restrictions on its spending.

Because the Order directs DOT administrators to review existing "grant agreements, loan agreements, and contracts" and if necessary to "unilaterally amend the general terms and conditions" to ensure compliance with the policy directives laid out in the Order, current DOT grant, contract, and loan holders should be on the lookout for any related changes. States with higher marriage and birth rates, such as Nebraska and South Dakota, stand to gain the most under this new policy, while states with lower birth and marriage rates, such as Massachusetts and Maine, may be the most negatively impacted.

Consistent with the Trump Administration's overall goal to reduce discretionary spending, the preference for user-pay models signals more transportation initiatives will be funded through contributions from those who use the transportation services at issue – such as through tolls or fees – rather than through federal funds. An increased reliance on public-private partnerships is likely, as states are forced to rely on private investment in exchange for future toll revenues to make up any federal funding shortfall.

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