NATIONAL TAXPAYERS UNION

June 17, 2020

The Honorable Peter DeFazio, Chairman
The Honorable Sam Graves, Ranking Member
House Committee on Transportation and Infrastructure
2164 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman DeFazio and Ranking Member Graves:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write to express our strong concerns regarding H.R. 2, the INVEST in America Act of 2020, which is slated for committee mark-up today. While NTU understands the importance of fixing America's infrastructure, unfortunately the proposed bill is not a fiscally responsible approach to meet those demands. We believe that instead, Congress should look toward the common sense, bipartisan solutions enumerated toward the end of this communication, such as regulatory reforms, new funding mechanisms, and efficient spending to improve our country's transportation systems. To better serve transportation providers and their customers, drivers, and taxpayers, we urge the committee to craft a new, pragmatic, yet bold reauthorization package in place of H.R. 2, retaining only a handful of the original bill's provisions.

NTU supports congressional efforts to rebuild and modernize transportation structures, encourage private-sector investment in broadband, and improve overall infrastructure. In addition to raising important public safety concerns, outdated infrastructure hampers the ability for American businesses to remain competitive in a globalized world. Meanwhile, workers and self-employed Americans lose the equivalent of tens of billions of dollars in time and productivity, whether through traffic congestion or severely damaged roadways. A modernized infrastructure and transportation system will ensure that individuals and businesses maximize their growth potential.

Unfortunately, H.R. 2 misses a prime opportunity to bring much needed reform to how the United States finances, regulates, and operates major infrastructure assets. The proposed legislation spends nearly $500 billion over five years, a significant increase compared to the 2015 surface transportation reauthorization bill. Worse yet, this bill continues the practice of raiding the Highway Trust Fund, which is funded by the federal gas tax, to finance projects outside its intended purpose of repairing roadways. Most notably, it authorizes billions in spending on "green" initiatives such as subsidizing electric-vehicle charging stations, handouts to states for reducing carbon emissions, mass transit and increased funding for walking and bicycling.

Given the precarious budget situation of the federal government, and what is likely to be a significant decline in both general revenues and gas tax revenues, this is not the time for the federal government to spend almost half a trillion dollars on Green New Deal-type pet projects.

H.R. 2 also doubles down on costly regulations and fails to address the underlying inefficiencies of expensive government mandates. Instead of identifying rules and regulations that artificially increase costs for projects with federal funding, H.R. 2 includes many provisions that increase these federal burdens. For example, proposed regulations targeting the freight rail industry, such as a ban on the railway transport of liquified natural gas over rail and two-crew mandates, will only increase costs on shippers and consumers. Multimodal transport, including rail, has served the nation spectacularly well during the COVID-19 crisis; the committee should not impose new restrictions that could undermine this success. Taxpayers will also be on the hook for higher construction costs as a result of greater "Buy American" requirements on federal projects.

The INVEST In America also invests $29 billion into the failing government-owned rail company, Amtrak, which hasn't had a profitable year since it began serving passengers fifty years ago. Of course, this is a no-strings attached bailout with no substantial reforms to get Amtrak on the track to profitability.

Instead of prioritizing reforms to how our government spends money, H.R. 2 simply pours more tax dollars into the problem. Lawmakers should focus on maximizing the value of every already-appropriated infrastructure dollar and retooling existing regulations that are inefficient or unnecessary. Such an approach could produce significant benefits, given the federal government's well-documented history of squandering taxpayer dollars on projects that could be funded by the private sector, state governments, or not funded at all.

While NTU is on balance strongly opposed to the bill in its current form, we are encouraged to see a few decent provisions that will bring improvements to America's infrastructure system. Specifically, we support Section 6020 (expanding state pilot programs to test alternative user-based alternative revenue mechanisms in place of the gas tax), Section 1106 (transparency for federal projects over $5 million), and Section 7001 (TIFIA adjustments to leverage more investment at a lower subsidy cost). We hope the committee includes these positive provisions in the final reauthorization package.

To that end, as the committee eventually works on a bipartisan package, we respectfully ask for the following improvements to how the federal government operates in the infrastructure space:

**Gas Tax**

- **Ensure every dollar raised through the federal gas tax is used for its intended purpose in the HTF**. An estimated 25 percent of gas tax revenues are diverted to non-highway projects. Congress should ensure all gas tax revenues go towards their intended purpose, not wasted on other special interest projects.
- **Set in motion a clear strategy to transition away from the federal gas tax.** To become a true user-fee model, Congress should begin the transition to a VMT fee, a much more inclusive and stable revenue source than the current gas tax.

**Retool Labor Regulations**

- **End Project Labor Agreements**. PLAs require the main contractor for government contracts to sign a collective bargaining agreement as a condition of winning a project bid. PLAs inflate construction costs by 12 percent to 18 percent on top of increased costs attributed to the Davis–Bacon Act and discriminate against the 87 percent of workers who are not members of a union. H.R. 1858/S. 907, the "Fair and Open Competition Act

- **End Davis-Bacon Mandates.** The 1931 Davis-Bacon Act is an expensive mandate requiring contractors for federal construction projects to pay prevailing union wages for non-union labor. On average, taxpayers are forced to pay wages that are 22 percent higher than market rates. The result, according to the Heritage Foundation, is more than $100 billion worth of additional costs over the next decade and fewer job opportunities on each project. DBA gives unionized firms an advantage when bidding on infrastructure projects, keeping taxpayer costs unnecessarily high and competition to a minimum. H.R.1319/S.2630, the "Davis-Bacon Repeal Act"

**Procurement Practices**

- **Open Competition of Construction Materials.** Under current law, the U.S. does not have an open and competitive bidding process for construction materials. Congress can change this to allow any type of material, thereby making project managers and engineers better able to evaluate different options and select materials for infrastructure projects that enhance performance, durability, and reduce costs to taxpayers. H.R. 4687, the bipartisan "Sustainable Municipal Access to Resilient Technology in Infrastructure (SMART Infrastructure) Act. We understand that Rep. Rouda, who sponsored H.R. 4687, will be introducing an amendment to H.R. 2 that would require the Secretary of Transportation to conduct a review of state materials procurement practices with projects involving federal highway aid. This proposal is definitely a step in the right direction and one that NTU would wholeheartedly support.
- **Buy American Restrictions and Other Trade Barriers.** These mandates require that certain components of products must be manufactured within the United States. Protectionist policies like "Buy American" laws limit selection and artificially limit competition, which often lead to higher costs. Essentially, these laws prohibit taxpayers and contractors from getting the best value on projects.

**National Environmental Policy Act**

- **Establish Deadlines for Federal Review of Infrastructure Projects.** There needs to be sensible reforms to ensure proposed infrastructure projects don't fail as a result of delayed bureaucratic review and redtape. There needs to be reform to the National Environmental Policy Act (NEPA) to accelerate the federal review process of infrastructure projects. S. 3926, the "Federal Permitting Modernization Act
- **Revamping American Infrastructure Act.** This legislation would create a process at the Department of Transportation to identify more opportunities for converting "prescriptive" federal dictates into outcome-based rules. Already in place and working well for truck safety, this approach incentivizes innovation for meeting regulatory benefits while controlling costs and should be expanded for freight rail and other forms of infrastructure.

Going "smart" and "bold" on a reauthorization package of surface transportation programs is not a mutually exclusive decision. There can be, and should be, a balance between reform to the laws that already exist and what lawmakers want to do with the available revenue streams. The best way to revitalize America's infrastructure and modernize the transportation system is to ensure tax dollars are allocated efficiently and projects are not unduly tangled in red tape. Capitalizing on the power of the free market will enable the infrastructure needs of the United States to be met in a fiscally responsible manner.

We appreciate the committee's consideration of our views and urge a significant overhaul of the bill before you. As currently written, H.R. 2 is inadequate to the task of providing sound federal infrastructure policy. We look forward to working with you in the future to craft a bipartisan solution that not only goes “smart” on infrastructure, but “bold” as well.

Sincerely,

Thomas Aiello
Policy and Government Affairs Manager