



July 15<sup>th</sup>, 2021

Hon. Merrick B. Garland, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Re: PETITION FOR COMPETITIVE IMPACT STATEMENT  
ON INVEST IN AMERICA ACT**

Dear Attorney General Garland:

On July 1<sup>st</sup>, the House of Representatives approved the five-year \$715 billion highway and transit funding bill called the *INVEST in America Act*. Within this legislation, there is a provision to suddenly and significantly raise the minimum commercial trucking liability insurance required of regulated for-hire motor carriers to operate in interstate commerce from \$750,000 to \$2 million. The bill also directs this amount to be adjusted for inflation by the Federal Motor Carrier Safety Administration (FMCSA) every five years.

In 2012, Congress passed the *Moving Ahead for Progress in the 21<sup>st</sup> Century Act*, commonly referred to as "MAP-21." This bill, signed into law by then-President Obama, raised the financial security for transportation intermediaries from \$10,000 to \$75,000 in the form of a surety bond or trust fund agreement. According to FMCSA data, when the FMCSA implemented that sudden, steep increase in the bonding amount in December of 2013, over 9,800 small business transportation intermediaries (property brokers & surface freight forwarders) were thrown out of business within a matter of two weeks. Previous to MAP-21, FMCSA had determined during household goods broker rulemaking that bonds over \$25,000 would have "*anti-competitive effects*."<sup>1</sup>

SBTC contends this is the path we are on once again, should the *INVEST in America Act* be signed into law as passed by the House. We are therefore writing to ask if the Justice Department can please issue a **Competitive Impact Statement** to President Biden before he signs this volatile legislation.

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<sup>1</sup> <https://www.smalltransportation.org/files/130017067.pdf>

**Hon. Merrick B. Garland, U.S. Attorney General**

**July 15, 2021**

**Page 2 of 3**

While we can find authority for you to issue competitive impact statements in civil antitrust actions pursuant to Section 2(b) of the Antitrust Procedures and Penalties **Act**, 15 U.S.C. § 16 (b), we are unsure if the law allows you to guide the President as to the anti-competitive effects of legislation on small business entities as he considers whether or not to sign pending legislation such as the *INVEST in America Act*, if it is passed by the Senate.

According to FMCSA statistics, as of December 2020, there are currently 502,626 small motor carriers that operate between one and six vehicles comprising 86% of the regulated motor carrier industry. This includes one-man independent owner-operators. Collectively, these small businesses operate 924,467 power units, 19.81% of the total on the road in this group. Indeed, America's supply chain insofar as surface transportation of property is concerned is heavily dependent upon mom-and-pop independent owner operators and small business carriers.<sup>2</sup>

We do not need to remind you how America struggled last year to restock her shelves when the pandemic hit. Truckers were considered America's heroes, much like our first responders and medical personnel. If this bill becomes law, **SBTC anticipates that hundreds of thousands of independent truckers will be forced to close their businesses creating a devastating void in our supply chain.** Catering to the demands of personal injury attorneys is **not** the prudent way to "Build Back Better" or "Thank a Trucker."

The SBTC recognizes that financial security requirements set in the 1980's should be adjusted for inflation. This is why we believe the transportation intermediary bond should have been set at \$25,000 in accordance with the expertise and regulatory wisdom of the FMCSA to avoid those very destructive "anticompetitive effects" FMCSA warned of in 2007. Adjustments for inflation must be spoon-fed to the industry... in small amounts... over time as opposed to sudden, large increases that form a pill too hard to swallow by not only existing carriers but new entrants trying to pursue the "American Dream." It is not in America's public interest to set the bar too high and create unreasonable barriers to entry for would-be trucking entrepreneurs.

Lastly, we wish to remind you of the old adage "*insanity is doing the same thing over and over again and expecting different results.*" If this bill is signed into law, we believe we will see a repeat of the slaughter of small businesses that happened when the broker bond was suddenly raised more than seven-fold. We would hope when this matter is dealt with by the Senate and/or a conference committee, Congress will heed this warning and opt for a smaller increase to \$1m for now instead, which is the current industry standard for non-hazmat loads.

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<sup>2</sup> FMCSA, Motor Carrier Management Information System (MCMIS), data snapshot of interstate carriers as of December 2020.

**Hon. Merrick B. Garland, U.S. Attorney General**

**July 15, 2021**

**Page 3 of 3**

As the Department of Justice leads America's efforts to avoid the creation of monopolies and oligopolies, we hope you will act to guide President Biden to veto the bill to save America's small businesses from imminent destruction and keep our supply chain intact. We do not have to tell you that already increasing consumer prices will skyrocket if the supply of trucks is significantly and adversely affected causing growing inflation to get even worse.

Our attorney Laurence Socci is available to discuss this matter and answer any questions USDOJ may have. He can be reached on (202) 262-5843.

Thank you.

Sincerely,

/s/ JAMES LAMB

SBTC Executive Director

[www.truckers.com](http://www.truckers.com)

cc: Hon. Joe Biden, President of the United States

Hon. Members of Congress

Laurence Socci, Esq.