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# FEDERAL-AID HIGHWAYS --REVISITED

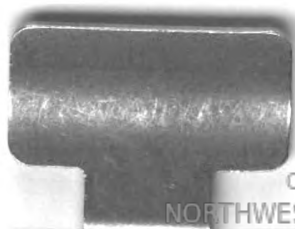
U.S. DEPARTMENT OF TRANSPORTATION  
Federal Highway Administration

July 1976

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**FINANCING  
FEDERAL-AID HIGHWAYS  
REVISITED**

by  
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July 1976

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## PREFACE

The financing of the Federal-aid highway program is a process fraught with misunderstanding. The complexity of the financing mechanisms and their associated jargon lead to considerable confusion and misinterpretation with regard to the funding process.

Recent legislative actions, particularly the "Congressional Budget and Impoundment Control Act of 1974" and the "Federal-Aid Highway Act of 1976" have resulted in major modifications to prior processes.

Because of these latter changes and the latent demand for information concerning the financing of Federal-aid highways, the report entitled Financing Federal-Aid Highways--An Amplification, Highway Planning Technical Report Number 37, July 1974, is brought up to date in this volume. Hopefully, this revised report will meld the new procedures into the existing financial operations so as to clarify this phase of the operations of the Federal-aid highway program.

NOTE: The procedures described herein generally were in effect on the date of publication. Some, such as the transferability of primary, secondary, and urban system funds take effect with the Fiscal Year 1977 apportionment. There are also several temporary procedures relating to the transition quarter (July 1, 1976, through September 30, 1976) which are not included due to their interim nature. However, all the provisions described in this report are applicable to authorizations for Fiscal Year 1978.

CONGRESSIONAL PROCEDURES

The financial aspects of the highway program are continuous and cyclical. Rarely does there come a time when the program is at a standstill awaiting new congressional funding. However, for discussion purposes, the process can be considered to begin with the authorizing legislation.

Usually in the spring before the beginning of the last fiscal year for which authorizations were previously made, Congress holds hearings on the Federal-aid highway program. The purpose of these public hearings is to give interested organizations, citizens, congressmen, and the executive branch an opportunity to testify on the future direction of the highway program. Testimony may be by oral presentation before the appropriate legislative bodies or submitted in writing. It may also be by invitation, request, or at the initiative of the testifier.

Regardless of the manner of testifying, the hearings on the Federal-aid highway program are held by the Transportation Subcommittee of the Committee on Public Works in the Senate and by the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation in the House of Representatives. These subcommittees are the groups which carry the primary responsibility for preparing highway legislation.

Subsequent to conducting hearings, the subcommittees prepare, or "mark up," their respective versions of the Federal-Aid Highway Act for that

year. Each of these may be the same as a previously tendered Administration bill (the recommended bill of the President); it may be a modification of the Administration's bill; or it may be an entirely different bill drafted by the subcommittee or submitted to it by other members of Congress. Actually, the ways in which a bill may be introduced include:

- a. Introduction by various congressmen early in the legislative session, or carried over from prior sessions.
- b. Introduction of the Administration (executive branch) bill, often "by request." A bill introduced "by request" signifies that the sponsors were asked to introduce it and does not necessarily constitute an endorsement of all provisions of the bill.
- c. Sponsorship of a substantive bill by the chairman or top-ranking members of the full committee or subcommittee prior to holding hearings. This is often the bill on which the hearings are held.

All such bills are referred to the above-named committees and subcommittees. Bills impinging on other areas are also sent to other committees which have jurisdiction over those subjects e.g., in the Senate, bills which affect environmental legislation are sent to the Interior and Insular Affairs Committee and in the House, highway revenue legislation (i.e., Trust Fund changes) would be sent to the Committee on Ways and Means for consideration .

After due deliberation, the subcommittees "mark up" a bill, usually entitled the "Federal-Aid Highway Act of 19xx" (where xx is the appropriate year), and submit it for approval to their parent bodies, the Public Works Committee in the Senate and the Public Works and Transportation Committee in the House.

At this point the full committee considers the bill, alters it, or if it desires, prepares its own version, although the latter is rarely done. Once voted upon and approved by the entire committee, the bill is sent to the full chamber of its respective body of Congress.<sup>1/</sup>

On the floors of the House of Representatives and the Senate, the bills are debated, amended, and voted upon. Assuming both the Senate and House bills pass their respective bodies and have different provisions contained within them, which they usually do, a conference committee is formed to reconcile the differences and arrive at a mutually acceptable compromise. Members of the conference committee are formally appointed by the Speaker of the House and the Presiding Officer of the Senate but in reality are recommendations from the full committee chairmen. The conference committees are thus comprised of members from the full committees (i.e., Public Works and Public Works and Transportation).

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<sup>1/</sup> Although there are additional steps between committee approval and consideration on the floor of Congress, such as passing through the Rules Committee in the House, they do not affect the typical flow of a highway bill and are omitted for brevity.

The number of conferees varies but is generally between ten and twenty members.<sup>2/</sup>

The conference committee discusses the various merits of the different proposals, airs the disagreements, and hopefully arrives at a satisfactory compromise. It is worthwhile to mention that the conference committee deliberations, the mark-up sessions of the full committees and subcommittees, as well as the initial hearings, are usually open to the public.

Upon agreement in conference, the bill is sent back to each body of Congress for final passage. Amendments to conference bills are usually not permitted--they must be voted on in their entirety exactly as presented by the conferees. When the bill has passed each House in identical form, it is transmitted to the President for his signature.

Although the above discussion is admittedly simplified, it does reflect the principal steps in the congressional process. It is recognized that the conferees may not be able to reach agreement (as happened in 1972), that the President may veto it, etc. However, it is beyond the scope of this report to describe every possible deviation and nuance entailed in making a bill become law. It is sufficient to state that digressions do occur.

Figure 1 displays the typical process described above.

<sup>2/</sup> The conference committee composition for the last four highway acts is shown below:

<u>Act of:</u>	<u>Number of:</u>		<u>Total</u>
	<u>Senators</u>	<u>Representatives</u>	
1976	11	10	21
1974	5	5	10
1973	6	7	13
1970	11	10	21

# CONGRESSIONAL PROCEDURES (SIMPLIFIED, TYPICAL PROCESS)

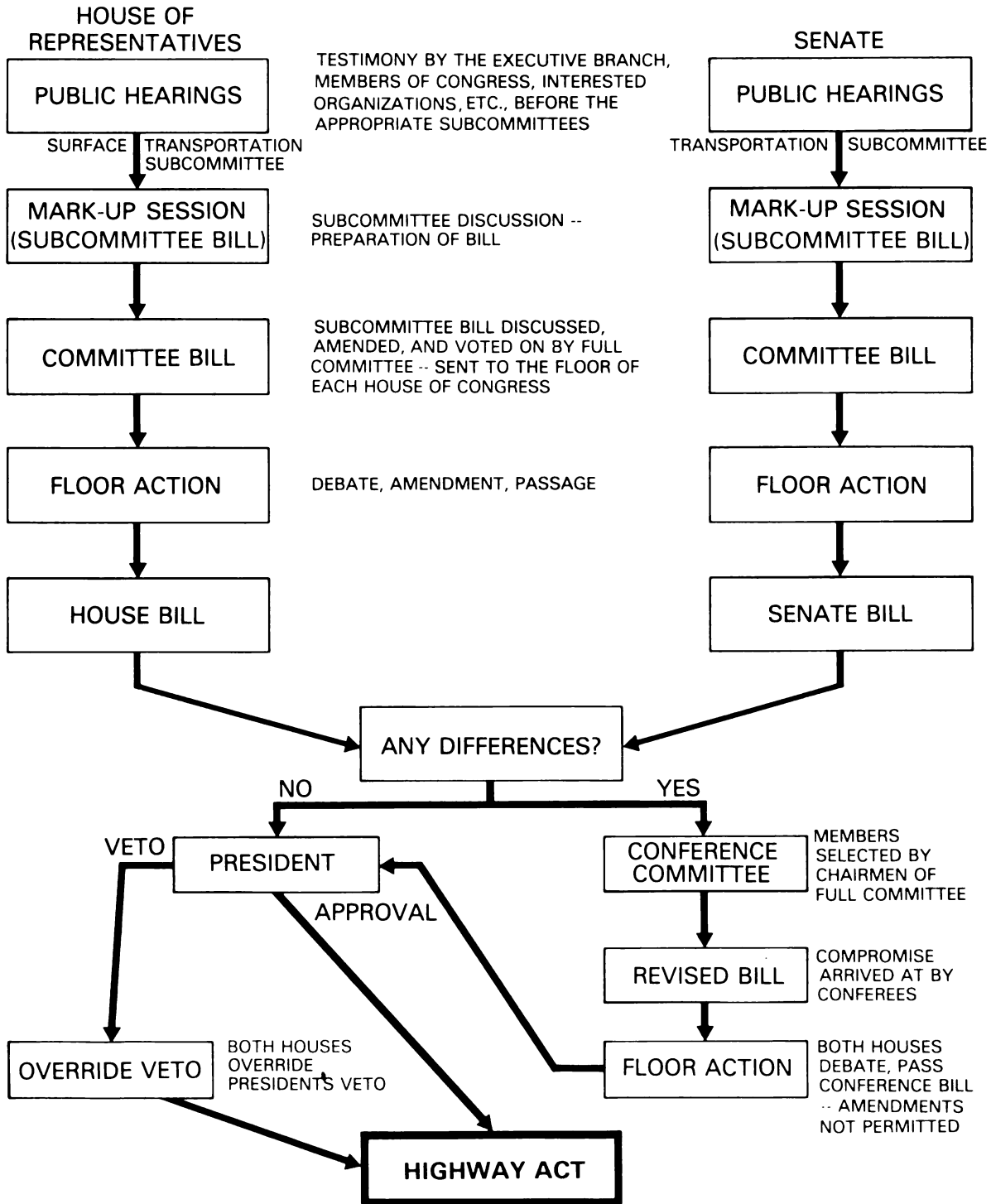


FIGURE 1

FEDERAL-AID HIGHWAY ACT

The congressional procedures described in the previous chapter refer to the consideration of Federal-aid highway acts. These are what are often called substantive or authorizing legislation, to differentiate them from appropriation acts, which will be discussed later. Though the content of the acts vary from year to year, they generally contain one or more of the following three ingredients: authority to start new, or revise existing programs; specific project authorizations or requests for reports; and, funding for the many highway programs.

For example, the 1976 Highway Act created an Interstate System resurfacing and restoration program; a program to demonstrate the impact of new traffic signalization technology on highway efficiency, air and noise quality, and safety; and a program to eliminate the hazards at rail-highway crossings for roads not on a Federal-aid highway system. At the same time, the Act modified several existing programs such as broadening the use of funds available from the withdrawal of Interstate routes to include improvements to other highways in the same vicinity (in addition to the previously permitted transit improvement) and making several amendments to the existing program to control outdoor advertising along certain Federal-aid routes.

Examples of specific projects to be undertaken, vis-a-vis nationwide programs, are best evidenced by the demonstration projects to relocate

rail lines in Metairie, Louisiana; Augusta, Georgia; Sherman, Texas; and Pine Bluff, Arkansas. The 1976 highway legislation also required reports to be submitted to Congress on such diverse subjects as identifying optional financing methods to complete the Interstate System and investigating the relationship of the gross load on truck tractor front steering axles to the safe operation of the vehicle.

The third category of provisions concerns the funding of the highway programs. It is this funding category that is most relevant to subsequent discussion. The Federal-Aid Highway Act has traditionally provided funds, termed "authorizations," for the Federal-aid programs for multiple (usually 2) years. [Over the past 50 years, the Federal-aid highway program has expanded from only two program categories (Primary and Forest Highways) to over 40 categories, each having a separate authorization.] It is these authorizations which lead directly to the financing procedures of the highway program.



## FEDERAL-AID FINANCING PROCEDURES

### Authorizations and Budget Authority

The authorizations contained in the highway acts are amounts of money which the Secretary of Transportation is permitted to obligate on behalf of the Federal Government. They are the upper limits on debts which the Government can incur.

Before proceeding, there are two points which need to be made. First, the Federal-aid highway program is unusual among Federal programs in its fiscal operations. Most Federal programs require a two-step process to implement a program. The initial step is the congressional passage of authorizations. This, in itself, does not permit the program to begin but only sets an upper limit on the amount of Federal funds which can be spent on the program. The program may start, or the authorizations may be used, only after passage of the second piece of legislation, the appropriation act. In this second act, the Congress will usually appropriate an amount to be used for the program which is less than, and may never exceed, the amount contained in the authorizing legislation. It is at this point, through the provision of appropriations, that the program may proceed. This license to proceed is termed "budget authority" (the empowerment to spend, loan, or obligate money--see Glossary) and most Federal programs receive their budget authority through appropriations acts.

However, most categories in the Federal-aid highway program do not require this two-step authorization-appropriation process to obligate Federal funds. Through what is termed "contract authority," sums authorized in the Federal-Aid Highway Acts are available for obligation prior to their being appropriated. Federal highway law requires that authorized sums be "apportioned" (divided up among the States) by a specified date and "On or after the date (of apportionment). . . the sums apportioned. . . shall be available for expenditure. . . ." <sup>3/</sup>

This ability to enter into obligations without waiting for appropriations allows State highway agencies to plan their programs ahead in time and to make the required financial arrangements. The use of contract authority, first legislated in the Federal-aid Highway Act of 1922, gives the States advance notice of the size of the Federal-aid program and eliminates the uncertainty contained in the authorization-appropriation sequence.

The second point is that the Federal-aid highway program is a reimbursable one; that is, the Federal Government only reimburses the States for costs they have incurred. There is no cash initially disbursed by the Federal Government to start projects; rather, there is the ability only to incur a debt to be followed later by actual reimbursement.

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<sup>3/</sup> 23 U.S.C. 118(a)--Section 118(a) of Title 23, "Highways," of the United States Code.

These two characteristics, contract authority and the reimbursable nature of the program, differentiate it from the typical Federal grant.

### Deductions

Before debts are permitted to be incurred, certain deductions are made from the authorizations. The first of these is a statutory allowance of "not to exceed 3-3/4 per centum,"<sup>4/</sup> for administering the provisions of Title 23 of the United States Code (U.S.C.—see Appendix D for a description of Title 23) and for conducting certain research. The law in this instance is flexible and although 3-3/4 per cent may be deducted, the amount has been closer to 2 to 3 percent as the full deduction has not been necessary to administer the program.

This administrative deduction is used to pay the salaries of Federal Highway Administration (FHWA) employees, reimburse travel expenses, pay for supplies, etc., and is also used for FHWA-sponsored contract research on highway construction, planning, design, etc.<sup>5/</sup> Research financed from these administrative funds is supplementary to that carried out by the States as discussed below.

The "not to exceed 3-3/4 percent" deduction is made from the authorized sums which are to be apportioned for use on the Federal-aid systems.

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<sup>4/</sup> 23 U.S.C. 104(a).

<sup>5/</sup> 23 U.S.C. 307(a) contains the permissible research activities.

Administrative funds for other programs are sometimes contained in separate authorizations, as is the case for the highway beautification program. The highway safety program (23 U.S.C. 402) contains a provision which permits administrative deductions of "not to exceed 5 per centum"<sup>6/</sup> of the sums authorized.

The second deduction is used to finance the urban transportation planning activities mandated by Section 134 of Title 23. This deduction is equivalent to one-half percent of the remaining authorizations after the first deduction is made.<sup>7/</sup>

Although these are the only two deductions required, there are often other funds which are earmarked for particular purposes. For example, up to \$10 million per fiscal year may be used for skill training programs to be conducted by governmental or private agencies.<sup>8/</sup>

In total, the deductions for administration (say 3 percent) and urban transportation planning (one-half percent) leave approximately 96-1/2 percent of the funds authorized to be apportioned among the States.

#### Apportionments and Allocations

Subsequent to the above deductions, the FHWA apportions, or divides, the sums authorized for the various programs among the States. The apportionment is based on several formulas prescribed by law. For example, urban

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<sup>6/</sup> 23 U.S.C. 402(c).

<sup>7/</sup> 23 U.S.C. 104(f)(1).

<sup>8/</sup> 23 U.S.C. 140(b).

system funds are apportioned to each State on its percentage of the Nation's urban area population (places of 5,000 or more persons), primary system apportionments use factors such as land area, population, and road mileage, etc. Appendix B-1 contains a list of apportionment formulas.

Not all funds are apportioned, however. Some funds do not contain a legislatively mandated apportionment formula. In these cases the sums are to be divided among the States at the discretion of the Secretary of Transportation. These discretionary or administrative divisions are called "allocations," as compared to the statutory formula divisions or apportionments. Funds for such programs as the Bridge Replacement Program and Economic Growth Center Development Highway Program are examples of allocated funds. Appendix B-2 contains a list of allocated fund programs. It should be noted that allocated funds are not subject to the deductions for administration and urban planning described previously.

Federal highway legislation requires that certain apportioned sums be earmarked. One and one-half percent of most of the apportionments can only be used for highway planning and research activities.<sup>9/</sup> These amounts are available to the States to conduct State-sponsored research and statewide planning activities. They may also be used to supplement the previously mentioned one-half percent urban

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<sup>9/</sup> 23 U.S.C. 307(c)(2).

transportation planning funds. Although not mandatory, an additional one-half percent of certain apportionments may also be used, at the State's option, for these planning and research activities.<sup>10/</sup>

The remainder of the funds, about 95 percent of the authorized amounts, is then available for construction and related activities (see Table 1).

At the time of an apportionment, certificates, denoting the sums deducted and the exact amount of each apportionment, are transmitted to each of the State highway agencies. It is through these certificates that the States receive the ability to obligate the Federal Government to repay debts incurred by the States. Thus, each apportionment connotes the granting of new "obligational authority." Again, it is not cash which is apportioned, it is only new obligational authority.

#### Availability

The synonym for apportionments, "new obligational authority," is used to distinguish them from the unused parts of previous apportionments, or the "old obligational authority." The distinction is necessary because whenever an apportionment is made, there is almost always an unused portion of prior apportionments. This situation arises because Federal-aid highway funds are available for use, or available for obligation, for a specified number of years. Their availability does not

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<sup>10/</sup> 23 U.S.C. 307(c)(3).

DEDUCTIONS AND EARMARKING  
OF APPORTIONED FUNDS

<u>Item</u>	<u>Percent of Authorization</u>
<u>Authorization</u>	100.00
<b>Less: <u>Deductions</u></b>	
Administration--Research	- <u>3.00</u>
	97.00
<b>Less: Urban Transportation Planning</b> (0.5 percent of 97.00 percent)	- <u>.49</u>
<u>Available for apportionment</u>	96.51
<b>Less: <u>Earmarking</u></b>	
Highway Planning and Research (1.5 percent of 96.51 percent)	- <u>1.45</u>
Available for Construction and Related Activities	95.06
Maximum deduction, including full 3 3/4 percent for administration-research, and 1/2 percent optional planning and research funds equals 6.15 percent, leaving for construction and related activities.....	93.85

Table 1

terminate at the end of 1 year as is the case for most other Federal programs.

Specifically, Federal-aid funds are available for obligation for a period of 4 years. Interstate System funds are to be apportioned on October 1, 1 year in advance of the beginning of the fiscal year for which they are authorized,<sup>11/</sup> and they remain available for a period of 2 years beyond the close of the fiscal year for which they are authorized.<sup>12/</sup> Hence, they are available the entire year prior to the fiscal year designation of the funds, the fiscal year itself, and for 2 years after the end of that fiscal year (see Figure 2).

Federal-aid funds for use on other than the Interstate System are to be apportioned on October 1, the first day of the fiscal year for which they are authorized.<sup>13/</sup> These non-Interstate funds are available "for a period of three years after the close of the fiscal year for which such sums are authorized . . . ."<sup>14/</sup> Thus, they too are available for 4 years (see Figure 2).<sup>15/</sup>

Should a State not obligate its entire apportionment within this 4-year period, the authority to obligate the remainder lapses--it is no longer available.<sup>16/</sup> No cash need be returned to the Federal Government since

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<sup>11/</sup> 23 U.S.C. 104(b)(5)(A).

<sup>12/</sup> 23 U.S.C. 118(b).

<sup>13/</sup> 23 U.S.C. 104(b).

<sup>14/</sup> 23 U.S.C. 118(b).

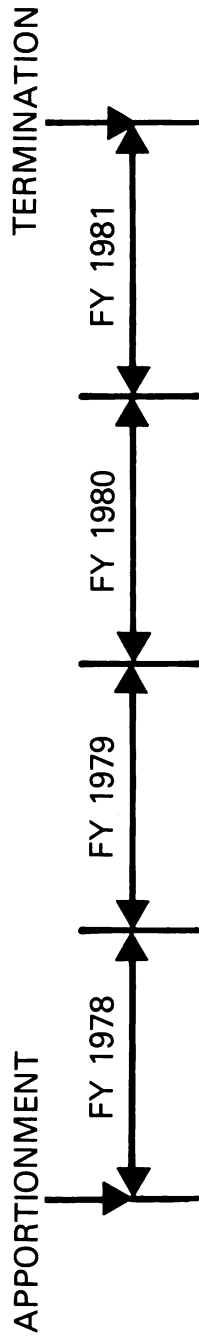
<sup>15/</sup> 23 U.S.C. 104(e) requires the Secretary of Transportation to give at least 90 days advance notice of the sums to be apportioned. However, this is for planning purposes only and does not constitute the granting of obligational authority.

<sup>16/</sup> 23 U.S.C. 118(b).



# AVAILABILITY OF NEW OBLIGATIONAL AUTHORITY (FISCAL YEAR 1978 AUTHORIZATIONS)

## NON-INTERSTATE FUNDS



## INTERSTATE FUNDS

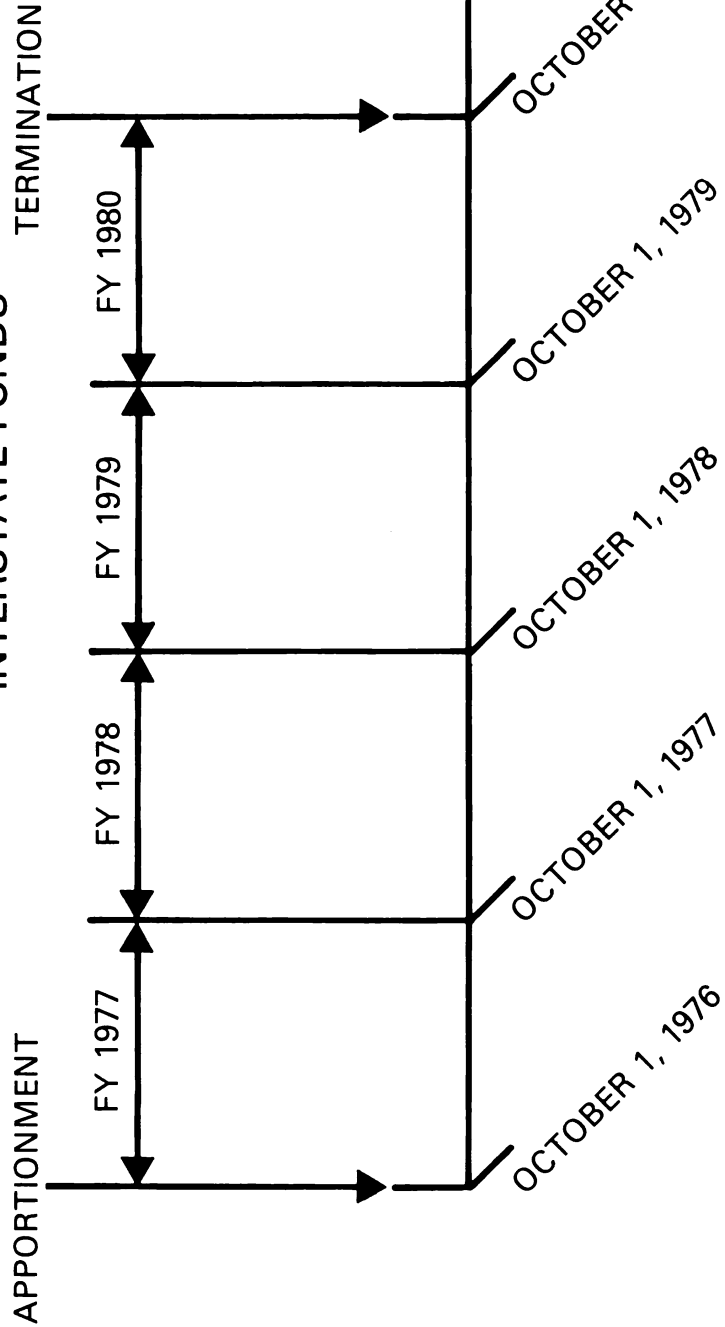


FIGURE 2

there was never any cash disbursed—only obligational authority which is, in essence, a bookkeeping entry. An exception to this lapsing provision is sums apportioned under Section 104(b)(5)(A) of Title 23, United States Code, for completion of the Interstate System. Any of these sums which lapse are to be immediately reapportioned among the non-lapsing States;<sup>17/</sup> thus, Interstate completion funds never lapse but only get reassigned among the States.

### Transferability

Authorizations reflect Congress' relative priority among the many Federal-aid programs and the apportionment formulas are intended to reflect the relative needs of the States for each authorization. Yet it is impossible to arrive at the correct amount of funds for each program within each State. To provide for flexibility in the use of specific sums, Federal law permits transfers to be made among program funds.

First, funds apportioned to the Federal-aid primary system may be transferred for use on the Federal-aid secondary system and vice-versa. However, the amounts transferred may not increase nor decrease the original apportionment for such system by more than 40 percent.<sup>18/</sup> This effectively limits the amount which can be transferred to 40 percent of the smaller of the two apportionments.

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<sup>17/</sup> 23 U.S.C. 118(b).

<sup>18/</sup> 23 U.S.C. 104(c)(1) and (d)(1).

Similarly, primary system and urban system apportionments may be transferred from one category to the other with a proviso limiting such transfers to 20 percent of the smaller of the two apportionments.<sup>19/</sup> Transfers among apportionments may only be made once during a fiscal year.<sup>20/</sup>

All of the above transfers may be made upon request by the State highway agency and approval by the Secretary of Transportation and the Governor of the State with the exception that urban system funds allocated to urbanized areas of 200,000 population or more may not be transferred without the approval of the local officials of such urbanized area.

Transfers may also be made among the following safety programs: Special Bridge Replacement, High-Hazard Locations and Elimination of Roadside Obstacles, and Rail-Highway Crossings which are on a Federal-aid system. Not more than 40 percent of the amount apportioned or allocated to a State may be transferred. However, up to 100 percent of any of the above apportionments or allocations may be transferred if a State shows and the Secretary agrees that the purposes of that program have been achieved.<sup>21/</sup>

Finally, all or any part of the funds apportioned for the off-system rail-highway crossing program may be transferred to the apportionment

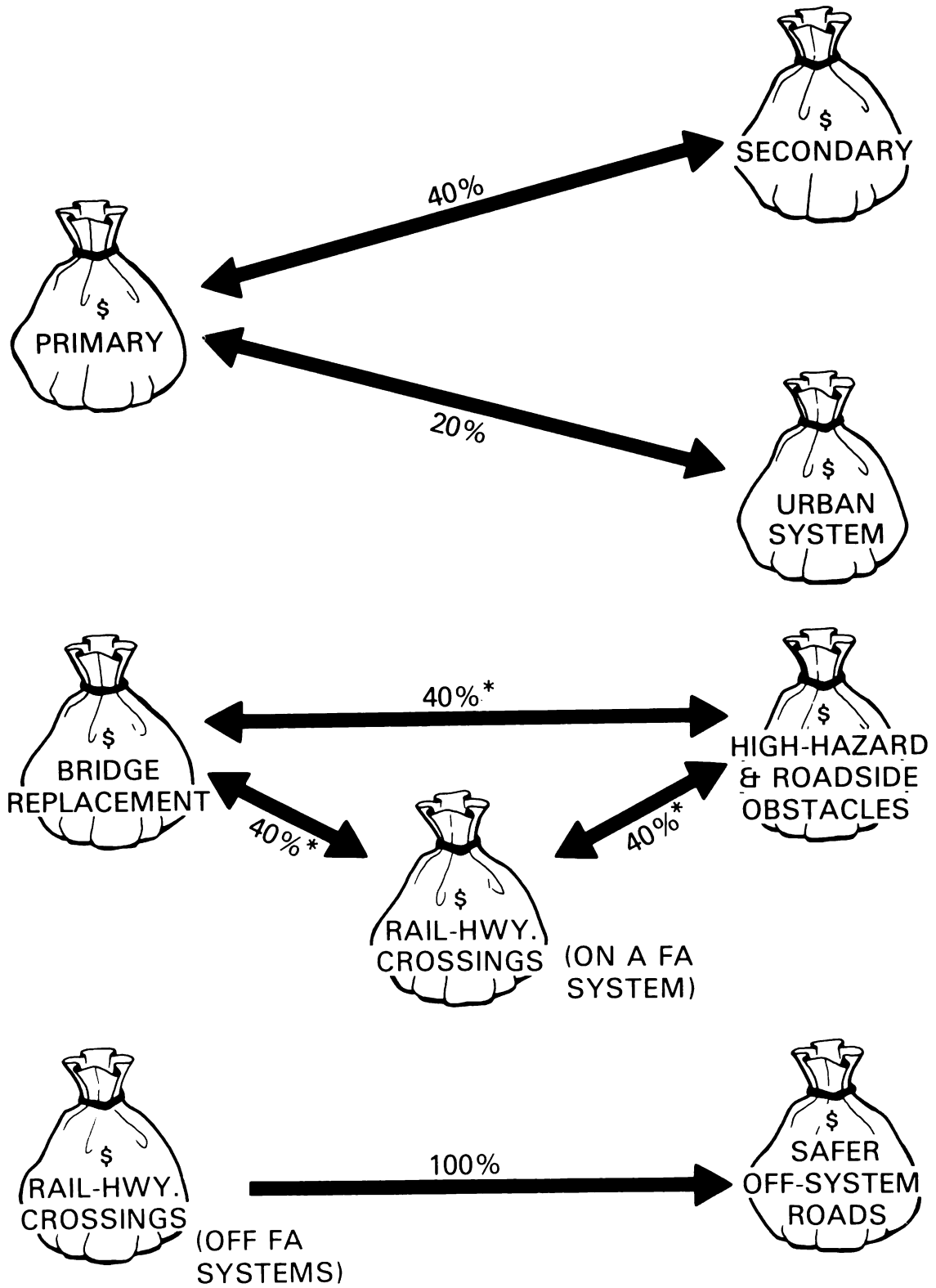
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<sup>19/</sup> 23 U.S.C. 104(c)(2) and (d)(2).

<sup>20/</sup> 23 U.S.C. 104(d)(3) and (d)(4).

<sup>21/</sup> 23 U.S.C. 104(g).

# TRANSFERABILITY



\* MAY BE AS HIGH AS 100%

FIGURE 3

for the safer off-system roads program if the purposes of the rail highway crossing program have been met.<sup>22/</sup>

Figure 3 illustrates the possible transfers.

### Obligations

The term "obligation" has been used frequently. An obligation is a commitment made by the Federal Highway Administration to reimburse a State for the Federal share of a project's cost. Obligations are made for the entire Federal share of the project, even when a project may take several years to complete. The FHWA division administrators have been delegated the authority to enter into these contractual agreements for reimbursement on behalf of the United States Government.

### Federal Share

With a few exceptions, the Federal Government does not pay for the entire cost of construction of Federal-aid highways. Federal funds are normally "matched" with State and/or local government funds to account for the necessary dollars to complete the project. The Federal share usually is based on a percentage of the total cost of the project. Interstate System projects are normally funded 90 percent Federal/10 percent State and most other projects on a 70/30 basis. The above figures do not reflect the increased Federal share payable to States with

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<sup>22/</sup> 23 U.S.C. 104(g)

large amounts of Federal lands. Such States have the Federal share increased in relation to the percentage of total State land area under Federal control.<sup>23/</sup> Table 2 shows the maximum Federal share permissible for several funds.

### Reimbursement

As stated in previous sections, the Federal-aid highway program is a reimbursable program; what is apportioned to the States is not cash but obligational authority. Thus, it is up to the States to provide the initial funds to get a project underway. Although funds are obligated to cover the Federal share of the total project cost, the project need not be completed before the State begins to receive reimbursement. Progress payments are permitted so long as a project agreement has been executed pursuant to 23 U.S.C. 110 and the payments made do not exceed the Federal share of the total cost incurred for work done up to the date of the voucher.

Therefore, the normal sequence of events is:

1. Work done by a contractor.
2. Payments to the contractor by the State.
3. Reimbursement for the Federal share of the project's cost to the State by the Federal Highway Administration.

### Impoundments

The foregoing discussion described some of the financing procedures of the Federal-aid highway program as prescribed in Title 23 of the

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<sup>23/</sup> 23 U.S.C. 120(a), (c), and (f).

FEDERAL SHARE OF PROJECT COST

Fund	Section	Federal Share (percent)
Interstate	103 23 U.S.C.	90*
Primary	103 23 U.S.C.	70*
Secondary	103 23 U.S.C.	70*
Urban System	103 23 U.S.C.	70*
Emergency Relief	125 23 U.S.C.	70**
Railway-Highway Crossings	130 23 U.S.C.	70**
Outdoor Advertising	131 23 U.S.C.	75
Control of Junkyards	136 23 U.S.C.	75
Economic Growth Centers	143 23 U.S.C.	70***
Bridge Replacement	144 23 U.S.C.	75
Great River Road	148 23 U.S.C.	70*
Pavement Marking	151 23 U.S.C.	100
High Hazard Locations and Roadside Obstacles	152 and 153 23 U.S.C.	90
Access Highways to Lakes	155 23 U.S.C.	70
Highways Crossing Federal Projects	156 23 U.S.C.	100
Forest Highways	204 23 U.S.C.	100
Parkways	207 23 U.S.C.	100
Public Lands Highways	209 23 U.S.C.	100
Territorial Highways (Virgin Islands, Guam, American Samoa)	215 23 U.S.C.	70
Safer Off-System Roads	219 23 U.S.C.	****
Highway Safety Programs	402 23 U.S.C.	70*
Rural Highway Public Transportation Demonstration Program	147 1973 Act	100
Overseas Highway	118 1974 Act	70
Demonstration Projects-Railroad Highway Crossings	163 1973 Act	70*
Acceleration of Projects	141 1976 Act	100
Traffic Control Signalization Demonstration Projects	146 1976 Act	100
Rail-Highway Crossings (on/off a Federal-aid system)	203 1973 Act	90

\* May be increased up to 95 percent for States with large areas of "public lands."

\*\* May be increased to 100 percent.

\*\*\* May be increased to 100 percent for engineering and economic surveys.

\*\*\*\* Unknown at this date.

United States Code. However, the highway program, like other Federal programs, must be subject to other overriding national concerns. In the past, the rising rate of inflation has led to non-Title 23 controls being placed on highway spending. From Fiscal Year 1966 through Fiscal Year 1975, the Office of Management and Budget, through authority delegated to it by the President, regulated the rate at which Federal-aid highway funds were obligated. That is, limitations were established for the amount of Federal funds which could be obligated in a given time period. At first, obligational limitations were established on a quarterly basis, later they were set on a fiscal year basis. On occasion limitations were established by program (urban, rural, etc.) or system (Interstate, urban system) and usually allocated by State, though there have also been only national totals created.

The above types of limitations have gone by several names; cutbacks, limitations on obligations, holdbacks, reimbursement planning, contract controls, deferrals, impoundments, and rescissions. Whatever they're called, they are all types of impoundments; i.e., actions which prohibit or delay the obligation of budget authority granted by Congress. At the present time, there are three types of impoundments related to the highway program; deferrals, rescissions, and legislative limitations on obligations.

#### Deferrals

Deferrals are the equivalent of the previous type of impoundment action experienced in the highway program. They are executive branch actions which delay the obligation of budget authority; that is, they limit the rate at which Federal-aid highway apportionments or allocations may be



obligated. These restrictions, at least in more recent times, affect the total amount of obligations which can be made in a given time period, usually during 1 fiscal year. Limitations ordinarily are established only for the Nation and may be reached on a first-come, first-served basis (as in Fiscal Year 1976 and the transition quarter) or there may be State allocations made, usually in the same State-to-State ratio as apportionments for that fiscal year. The latter suballocations are made to achieve some measure of equity among the States by proportionately reducing their apportionment level by the same percentage. In either case, once the limitations, either nationwide or statewide, have been reached, obligations will no longer be permitted during that fiscal year.

Although limitations are established for a given fiscal year, there is no direct relationship between them and the amounts apportioned or allocated for that fiscal year. Recalling that Federal-aid funds are available for 4 years and that Interstate funds for a fiscal year are apportioned 1 year in advance of the non-Interstate funds for that same fiscal year, as many as 5 fiscal year apportionments may be being obligated. This occurs not only because of the availability periods and off-set apportionment dates but also because of the differing rates of obligation among the States. For example, Figure 4 depicts the relationship of Interstate obligation versus fiscal year apportionment as of March 31, 1976. As can be seen from the figure, the 50 States participating in the Interstate program were obligating funds from 4 different fiscal years'

# INTERSTATE OBLIGATIONS IN RELATION TO FISCAL YEAR APPORTIONMENT (AS OF MARCH 31, 1976)

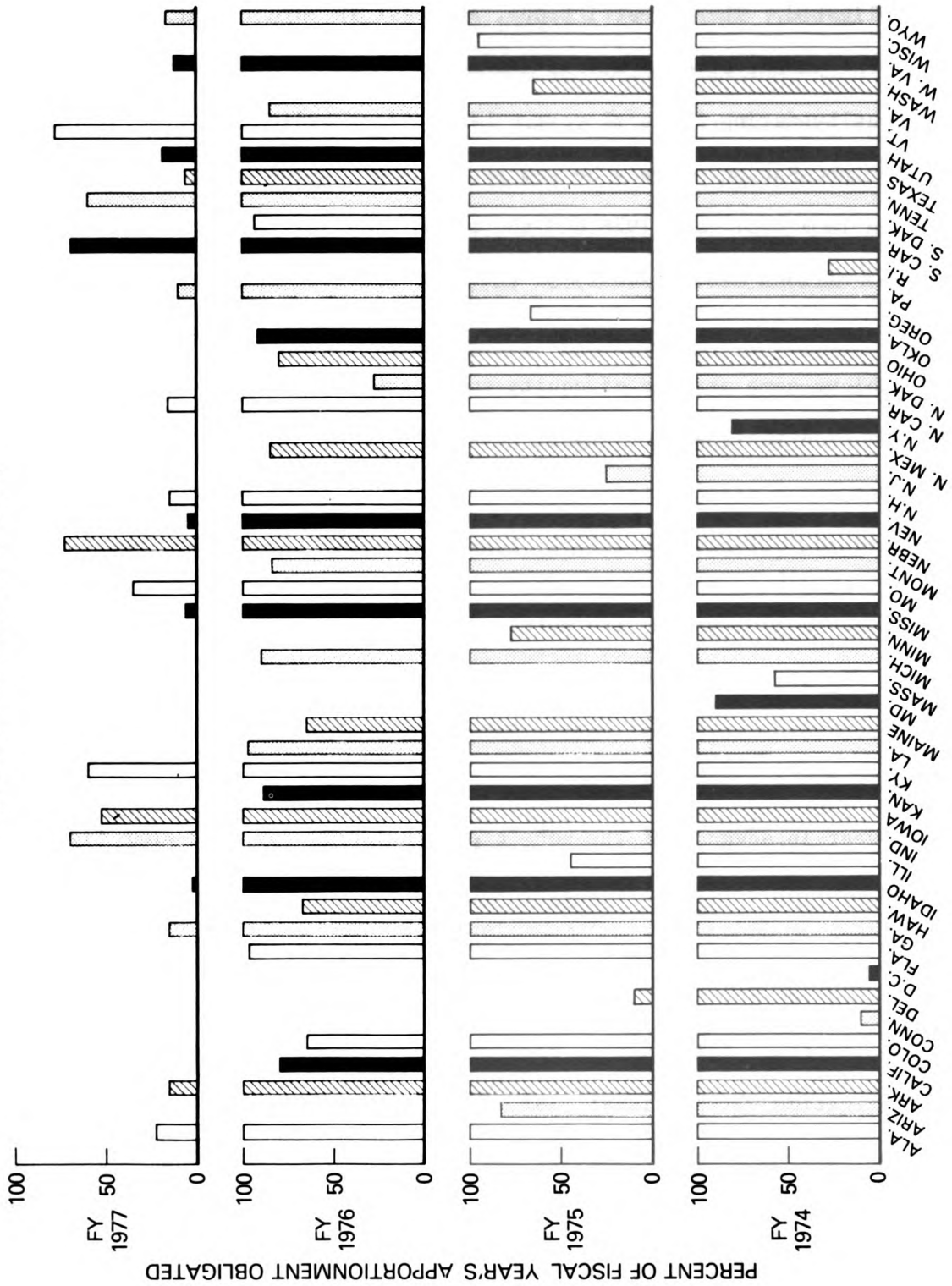


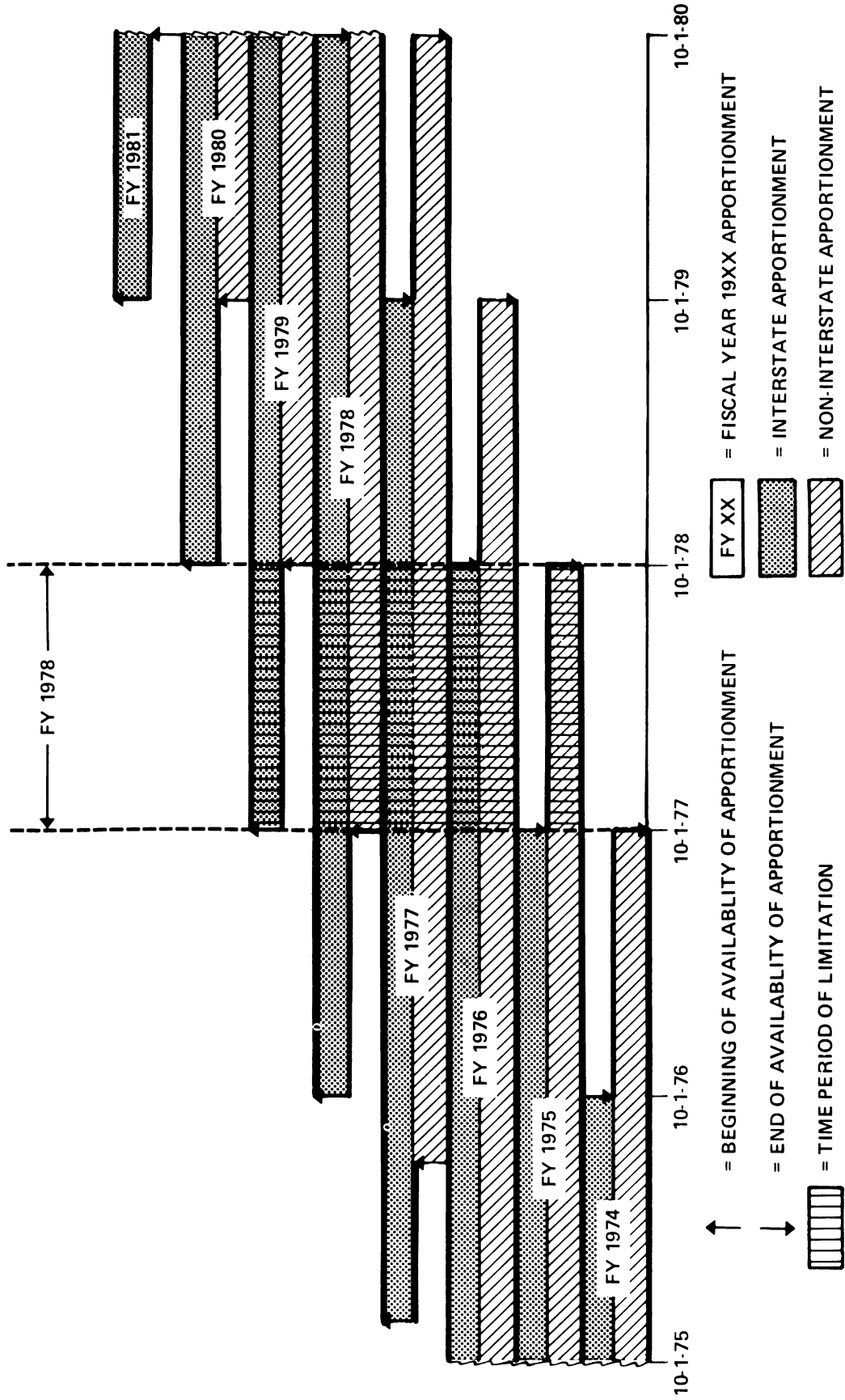
FIGURE 4

apportionments, ranging from 77 percent of the FY 1977 Interstate apportionment obligated in Vermont to only 7 percent of the FY 1974 apportionment obligated in the District of Columbia. Six States were still obligating FY 1974 funds as of March 31, 1976, 8 were obligating FY 1975 funds, 15 were part way through their FY 1976 funds, and 21 had begun obligating FY 1977 funds.

Stated briefly, apportionments for a given fiscal year need not be obligated in that year. Conversely, sums obligated within a given fiscal year come not only from that fiscal year's apportionment but from many (up to 5) fiscal years' apportionments.

With this in mind, it must be understood that any limitation on obligations refers not to any year's apportionment but to the sum of obligations within a specified time period, regardless of which fiscal year's apportionments are being obligated. Figure 5 illustrates this point by showing the relationship between the availability of apportionments and the time period of the limitation. As shown, any limitation on obligations for FY 1978 applies only to the sum of obligations during that 12-month period and has no relation to the amount of the FY 1978 apportionment. Indeed, during a FY 1978 limitation States could be obligating their non-Interstate FY 1975 apportionments, all of their FY 1976, FY 1977, and FY 1978 apportionments, as well as their FY 1979 Interstate apportionments.

### AVAILABILITY AND LIMITATION ON OBLIGATIONS



DURING A LIMITATION ON OBLIGATIONS FOR FY 1978 (OCT. 1, 1977 - SEPT. 30, 1978), STATES COULD BE OBLIGATING FUNDS FROM FIVE DIFFERENT FISCAL YEAR APPORTIONMENTS; THE NON-INTERSTATE APPORTIONMENTS FOR FY 1975, ALL APPORTIONMENTS FOR FYS 1976 - 1978, AND THE INTERSTATE APPORTIONMENT FOR FY 1979.

FIGURE 5

Since there is no relationship between a fiscal year's apportionment and a limitation on obligations for that fiscal year, it is incorrect to subtract the limitation from the apportionment and claim that that is the amount impounded. What is impounded, or deferred, is the difference between the total amount of obligational authority available during that year [any apportionments made during that year (new obligational authority) plus the unused (unobligated) portions of prior apportionments] and the limitation on how much of that authority can be used during that year. This difference is the amount of the deferral.

Although deferrals do certainly slow down the rate of obligations and hence retard those States willing to proceed, and they do affect program planning because of the uncertainty of their amount until the fiscal year begins, there has been little lapsing of Federal funds because of them. This happens because of the long availability period for use of these funds—previously at least 3-1/2, now 4 years. Any funds not obligated during a year of impoundment are normally still available for obligation in future years. Although Interstate System funds for several States have been lapsing over the past few years, the reasons are more related to opposition to freeway construction than to impoundment. Also, since Interstate funds are apportioned on each State's relative share of the cost to complete the System, any State lapsing Interstate funds will receive a larger share of future apportionments, thus getting back any funds that lapsed.

The previous discussion concerns the first type of impoundment action, deferrals. Passage of the Congressional Budget and Impoundment Control Act of 1974<sup>24/</sup> significantly affected such actions. Prior to passage of the Budget Act, deferrals were instituted by the executive branch without any way for Congress to overturn them. Under the new procedures, the executive branch still initiates deferrals but under certain constraints and congressional review. First, any deferral must be accompanied by a special message to the Congress. This message must contain: (1) the amount of budget authority proposed to be deferred; (2) the Government agency or program affected; (3) the period for which the budget authority is to be deferred; (4) the reasons for the deferral; (5) the estimated fiscal, economic, and budgetary effects of the proposal; and (6) the estimated effect of the deferral on the goals of the program affected.<sup>25/</sup>

Second, deferrals are only effective during the fiscal year in which the special message is sent;<sup>26/</sup> multiyear deferrals are not permitted. However, deferrals for any program may be reinstated, with another special message, in the following fiscal year.

And third, deferrals are effective only until such time as either House of Congress overturns it.<sup>27/</sup> Thus, the President can still defer obligational authority for the Federal-aid program but he must now formally notify the Congress of such an action, must justify the deferral,

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<sup>24/</sup> Public Law 93-344, enacted July 12, 1974.

<sup>25/</sup> Public Law 93-344, Section 1013(a) 31 U.S.C. 1403 .

<sup>26/</sup> Public Law 93-344, Sec. 1013(a).

<sup>27/</sup> Public Law 93-344, Sec. 1013(b).

and can have his deferral disapproved by only a majority in either the Senate or the House of Representatives. Once Congress overturns the deferral, those sums must be made available to the States.

All phases of the above situation occurred during FY 1975. At the beginning of that year, July 1, 1974, the executive branch limited obligations for Federal-aid highways to \$4.6 billion, even though nearly \$16 billion would be available during that year. In accordance with the new impoundment control procedures, a special deferral message was sent to the Congress by President Ford on September 20, 1974,<sup>28/</sup> denoting a proposed deferral of \$10.7 billion. This figure was comprised of the \$9.0 billion in unobligated apportionments and allocations available at the beginning of the fiscal year, plus \$6.3 billion in new obligational authority to be available in the middle of the fiscal year, less the obligational limitation of \$4.6 billion. This deferral was increased to \$11.1 billion when the Federal-Aid Highway Amendments of 1974 were enacted<sup>29/</sup> and additional obligational authority became available. On February 11, 1975, the President released an additional \$2 billion of obligational authority in order to spur employment in the construction industry. Finally, on April 24, 1975, the Senate disapproved the deferral by a 77-7 vote,<sup>30/</sup> thus freeing the entire \$15.7 billion for obligation. Table 3 depicts the sequence of events.

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<sup>28/</sup> Printed as House Document No. 93-361, September 23, 1974.

<sup>29/</sup> P. L. 93-643, enacted January 4, 1975.

<sup>30/</sup> Senate Resolution 69.

FISCAL YEAR 1975 PROGRAM LEVEL<sup>1/</sup>

<u>Date</u>	(1) Cumulative Availability of Obligational Authority	(2) Limitation on Obligations	Deferrals (1)-(2)	FY 1975 Obligations to Date
7-1-74	\$9.0	\$4.6	\$4.4	\$0.0
12-11-74 <sup>2/</sup>	15.3	4.6	10.7	2.1
1-4-75 <sup>3/</sup>	15.7	4.6	11.1	2.3
2-11-75 <sup>4/</sup>	15.7	6.6	9.1	2.8
4-24-75 <sup>5/</sup>	15.7	---	-0-	4.6
6-30-75	15.7	---	-0-	7.7

<sup>1/</sup> In billions.

<sup>2/</sup> Apportionment of FY 1976 funds.

<sup>3/</sup> Apportionment of funds contained in 1974 Amendments.

<sup>4/</sup> Release of \$2 billion to fight unemployment.

<sup>5/</sup> Senate overturn of deferral.

Table 3



### Rescissions

The second type of impoundment action is a rescission. More severe than deferrals, which simply delay the obligation of budget authority, rescissions call for the repeal of the congressionally authorized budget authority. As with deferrals, the President must submit a rescission message specifying how much, why, and the effects of the proposed rescission.<sup>31/</sup> However, since rescissions in effect call for the "de-authorization" of budget authority, they do not take effect until Congress takes affirmative action on them. Should Congress not act on the rescission message, by passage of a rescission bill within a prescribed 45-day period, the budget authority proposed for rescission must be made available for obligation.<sup>32/</sup>

Thus, the more moderate type of impoundment, deferral, becomes effective with Congress' passive acceptance, while rescission, the more severe measure, can only take effect upon positive action by the Congress.

### Legislative Limitations On Obligations

The first two types of impoundments described above require executive branch initiative. However, the Congress itself may limit the obligation of previously authorized budget authority. In fact, this has occurred over the last several years for the State and community highway safety program (23 U.S.C. 402), wherein the Congress has annually limited

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<sup>31/</sup> Public Law 93-344, Section 1012(a) [31 U.S.C. 1402].

<sup>32/</sup> Public Law 93-344, Section 1012(b).

the amount of obligations which could be incurred in the coming fiscal year. More significant is the fact that Congress chose to put a similar limitation on the Federal-aid highway program for Fiscal Year 1976 and the transition quarter.<sup>33/</sup>

Section 316 of the Department of Transportation and Related Agencies Appropriation Act, 1976,<sup>34/</sup> limited the obligations for the Federal-aid program to \$9 billion for the period July 1, 1975, through September 30, 1976.<sup>35/</sup> This was the first time that the Congress itself had limited the amount of budget authority, which it itself had enacted, which could be used in a given time period. As such, there was no need for any executive branch impoundments during that period--the first time this had occurred in nearly 10 years.

In effect, the congressional limitation is equivalent to the executive branch deferral. They both limit the rate at which Federal-aid highway apportionments and allocations can be obligated. Thus, on its own initiative, or by mutual agreement with the Executive, the Congress can also exert additional fiscal control over the highway program.

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<sup>33/</sup> Section 501 of the Congressional Budget Act changed the Federal fiscal year from July 1 - June 30 to October 1 - September 30 beginning with FY 1977 (October 1, 1976). The period July 1, 1976 - September 30, 1976, does not fall in any fiscal year and is known as the transition quarter.

<sup>34/</sup> Public Law 94-134, enacted November 24, 1975.

<sup>35/</sup> Several programs were exempted from being included in this limitation, including the emergency relief, urban high density, and special bridge replacement programs.

## APPROPRIATIONS

The fiscal operations described so far relate either to Title 23, U.S.C., or to authorizations contained in the "highway acts." Yet, as the last section described, there are also appropriation acts affecting the highway program. Though these acts do not normally provide budget authority, as they do for most other Federal programs, they do have significant impacts on the fiscal process.

### Appropriation Act

Appropriations for the highway program are contained in the annual Department of Transportation and Related Agencies Appropriation Acts. In addition to affecting the Federal Highway Administration's programs, the law also impinges on all other DOT programs and those activities of the National Transportation Safety Board, the Civil Aeronautics Board, the Interstate Commerce Commission, Panama Canal Company and Canal Zone Government, United States Railway Association, and the Washington Metropolitan Area Transit Authority.

As related to the highway program, the Act does two things: one, it provides the cash necessary to reimburse the States for prior obligations; and, (2) it provides budget authority for several of the smaller highway programs.

Although obligations are commitments to reimburse the States for the Federal share of a project's cost, these reimbursements cannot

be made until the funds are appropriated. This then is the primary function of the Appropriation Act as it relates to the highway program--the provision of the "liquidating cash." Succinct in nature, the Act provides this cash in one sentence:

"FEDERAL-AID HIGHWAYS (Liquidation of Contract Authorization)  
(Trust Fund)

For carrying out the provisions of Title 23, United States Code, which are attributable to Federal-aid highways, not otherwise provided, . . . \$5,433,800,000 or so much thereof as may be available in and derived from the "Highway trust fund," to remain available until expended."<sup>36/</sup>

The \$5.4 billion provided by the 1976 Appropriations Act is the estimate of prior unpaid obligations, plus a percentage of new obligations incurred during FY 1976, for which vouchers are expected to be presented by the States for payments during the fiscal year.

The phrase in the Act "not otherwise provided" is important in that not all of the highway programs are reimbursed under the title of "Federal-Aid Highways." In fact, the Federal Highway Administration portion of the Act was divided into 17 sections, or accounts, of which Federal-aid highways was only one. Although this account includes most of the more significant, apportioned, trust-funded programs, the other accounts deserve some mention.

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<sup>36/</sup> Public Law 94-134, enacted November 24, 1975.

First, there are other accounts which also draw their liquidating cash from the Highway Trust Fund. These programs also have contract authority. They include Highway-Related Safety Grants (23 U.S.C. 402), the several Highway Safety Construction Programs, the Right-of-Way Revolving Fund, and the Highland Scenic Highway.

Several other programs, also had contract authority in FY 1976 (they no longer have it because of the provisions of the Congressional Budget Act of 1974--see next section) but did not draw their liquidating cash from the Trust Fund. These general-funded programs were the Highway Beautification,<sup>37/</sup> Territorial Highway,<sup>38/</sup> and Off-System Roads <sup>39/</sup> programs.

In addition, there are accounts for General Operating Expenses of FHWA, expenses for the Bureau of Motor Carrier Safety and for Highway Safety Research and Development (all non-contract authority accounts).

Finally, there are several programs which do not operate under contract authority and which obtain their budget authority through the appropriations process. Among these are the Railroad-Highway Crossings Demonstration Projects authorized by the 1973 Highway Act,<sup>40/</sup> the Rural Highway Public Transportation Demonstration Program,<sup>41/</sup> the Darien Gap Highway,<sup>42/</sup> and the Overseas Highway.<sup>43/</sup>

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<sup>37/</sup> 23 U.S.C. 131, 136, 319(b).

<sup>38/</sup> 23 U.S.C. 215, 402.

<sup>39/</sup> 23 U.S.C. 219, now called Safer Off-System Roads.

<sup>40/</sup> Public Law 93-87, enacted August 13, 1973, Section 163.

<sup>41/</sup> Public Law 93-87, Section 147.

<sup>42/</sup> 23 U.S.C. 216.

<sup>43/</sup> Federal-Aid Highway Amendments of 1974, Public Law 93-643, enacted January 4, 1975, Section 118.

As stated earlier, limitations on obligations may also be included in Appropriations Acts. These are usually found in the General Provisions section, or title, of the Act. The FY 1976 Act contained several of these limitations. In addition to the \$9 billion limitation for Federal-Aid Highways and Highway Safety Construction Programs, there were the following limitations instituted by the Act: \$40 million for Highway Beautification, \$150 million for State and Community Highway Safety and Highway-Related Safety Grants,<sup>44/</sup> and \$5.75 million for Territorial Highways, all for the 15-month period July 1, 1975--September 30, 1976.

As shown, then, the appropriations acts: (1) provide liquidating cash with which to reimburse the States; (2) provide budget authority for certain programs; and, (3) may provide limitations on obligations for certain programs.

#### Appropriations and Budget Authority

Although most Federal-aid highway programs obtain their budget authority in the form of contract authority, and not through appropriations, this situation could change. One of the main purposes of the previously mentioned Congressional Budget and Impoundment Control Act of 1974 was "to provide for the congressional determination each year of the appropriate level of Federal revenues and expenditures."<sup>45/</sup> To gain control over

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<sup>44/</sup> These are the 23 U.S.C. 402 programs administered jointly by FHWA and the National Highway Traffic Safety Administration.

<sup>45/</sup> Public Law 93-344, Section 2--emphasis added.

the budget, nearly 75 percent of which is "uncontrollable" and over 50 percent of which is not subject to the appropriations process, the Budget Act has as one of its main thrusts the elimination of "backdoor spending" of which contract authority is one type. The Act attempts to eliminate or reduce the setting of spending levels several years in advance of the actual spending and which is not later subject to congressional review. It does this by providing that it is not in order for Congress to consider enacting new budget authority unless it ". . . is to be effective for any fiscal year only to such extent and in such amounts as are provided in appropriation acts."<sup>46/</sup> Thus, the Budget Act requires that future Federal-Aid Highway Acts contain provisions limiting new budget authority to the amount provided in appropriation acts. This was first done with the Federal-Aid Highway Act of 1976.

Taken alone, this statement would seem to negate all contract authority, which is the granting of budget authority prior to passage of appropriation acts. However, recognizing that certain programs require advance knowledge of the size of future Federal funding commitments, the Act permits several exceptions. One of these is programs whose new budget authority is derived from trust funds, 90 percent or more of whose receipts are user-related taxes.<sup>47/</sup> The Highway Trust Fund, a wholly

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<sup>46/</sup> Public Law 93-344, Section 401(a).

<sup>47/</sup> Public Law 93-344, Section 401(d)(1)(B).

user-supported trust fund, meets the requirements for the exception. Thus, only trust-funded highway programs are excepted.

Even though the highway program is not affected by the requirement that budget authority be provided only as in appropriation acts, it nevertheless has serious implications. Paramount among these is that the retention of contract authority, in existence since 1922, is now tied to the future continuation of the Highway Trust Fund. Should the Trust Fund be terminated, or its uses or revenue altered so that it no longer meets the exception requirements, the highway program would have to obtain its budget authority through appropriation acts.

Advance knowledge of the size of the program in future years could still be obtained through multi-year authorizations and appropriations but there is some doubt about this given that one of the purposes of the Budget Act is to have an annual review of expenditures. Hence, multi-year budget authority could become a thing of the past should the Trust Fund be terminated.

### President's Budget

Omitted from the previous discussions was the justification of the numbers in the appropriation acts and how they were derived. In the usual course of events, in the spring of each year, about 1-1/2 years prior to the beginning of the fiscal year being addressed, the Federal Highway Administration begins work on the budget. To be included are



estimates of outlays (necessary cash to liquidate obligations), proposed budget authority for those programs which do not have contract authority, and a proposed level of obligations (i.e., amount of deferral) for the Federal-aid program, should some measure of control be necessary as determined by the Office of Management and Budget (OMB). Also discussed are policy issues which may affect the upcoming budget.

The above activities progress through FHWA, the Office of the Secretary of Transportation, and OMB, where decisions are made in early fall. Finally, the budget activities culminate in the submission to Congress of the President's Budget in January, less than 9 months before the fiscal year begins.

## THE HIGHWAY TRUST FUND

### Introduction

The previous sections have generally been silent about the Trust Fund. This has been intentional because the Trust Fund, prior to its being tied to the continuation of contract authority through the new Budget Act, does not greatly affect the manner in which the highway program operates. The following section briefly describes the operation of the Trust Fund.

### History

Prior to 1956, the year Interstate System authorizations were greatly increased, the Highway Trust Fund did not exist. Appropriations to liquidate previously incurred obligations for the Federal-aid highway program came from the General Fund of the Treasury. Budget authority came through the use of contract authority, as it does now. Although taxes on motor fuels and automotive products were in existence, they bore little relation to expenditures for highways. At that time financing for the highway program and revenues from automobile and related products were included under the public finance principle of "spend where you must, and get the money where you can." There was an insignificant, if any, relationship between the level of revenue obtained from the highway user taxes and the level of the highway program. Aside from this non-relationship, the program operated, in terms of authorizations, apportionments, obligations, and appropriations, much as it does now.

The Federal-Aid Highway Act of 1956, coupled with the Highway Revenue Act of that same year, increased authorizations for the primary and secondary systems, authorized significant funding of the Interstate System, and established the Highway Trust Fund as a mechanism for financing the accelerated highway program. In order to finance the increased authorizations, the Revenue Act increased some of the previously existing user taxes, established new ones, and provided that the revenues from some of these taxes should be credited to the Trust Fund. Revenues accruing to the Fund were dedicated to the financing of Federal-aid highways.

With the passage of the separate Highway Revenue Act of 1956 this landmark legislation increased the political acceptability of the additions in the user taxes, and provided earmarked revenues to finance the larger highway program. This Act put the highway program on a wholly user-supported, "pay-as-you-go" footing. The details of the types of revenues which are placed in the Fund and their magnitude are shown in Table 4.

#### Operation of the Fund

The combination of increases in highway user taxes and the crediting of these revenues to the Highway Trust Fund was a publicly acceptable method of financing the increased highway construction activity. It must be remembered, however, that the Trust Fund is only an accounting arrangement whereby certain revenues (i.e., highway user taxes) accruing to the Federal Government are separated from other sources of income. These are credited to an account which can only accept withdrawals which fund

HIGHWAY TRUST FUND RECEIPTS

Tax rates during fiscal year 1975 were:

	<u>Rate</u>
Gasoline, diesel fuel, special motor fuel	4 cents per gallon
Trucks, buses, etc.	10 percent of price
Highway tires and inner tubes	10 cents per pound
Other tires (except laminated tires, 1 cent per pound)	5 cents per pound
Highway use of heavy vehicles (over 26,000 pounds)	\$3 per 1,000 pounds per year
Lubricating oil	6 cents per gallon
Parts and accessories for trucks, buses, etc. (over 10,000 pounds GVW)	8 percent of price
Tread rubber	5 cents per pound

Table 4

congressionally approved appropriations to liquidate authorized highway and highway-related obligations.

The Trust Fund is not a physical entity in which revenues are deposited. It is only a bookkeeping entry in the U.S. Treasury. User taxes are not deposited in the Trust Fund but in the General Fund of the Treasury. Amounts equivalent to these taxes are then transferred from the General Fund to the Trust Fund. Transfers are made at least monthly on the basis of estimates by the Secretary of the Treasury and later adjusted on the basis of actual tax receipts.<sup>48/</sup>

Amounts available in the Fund in excess of expenditure requirements are invested in public debt securities and interest from these securities is credited to the Fund.<sup>49/</sup> For example, Fiscal Year 1975 saw the Trust Fund credited with \$586 million in interest payments. The Fund can also receive money from the General Fund should there not be sufficient revenues in the Fund to reimburse the States for completed work.<sup>50/</sup> Any such amounts must be repaid, with interest,<sup>51/</sup> to the General Fund. However, such advances from the General Fund have not occurred since FY 1966. If it is determined that, after these repayable advances are made, there still will not be sufficient funds to defray anticipated expenditures, then the Interstate System apportionments for that fiscal

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<sup>48/</sup> Highway Revenue Act of 1956, Section 209(c)(4).

<sup>49/</sup> Ibid, Section 209(e)(2).

<sup>50/</sup> Ibid, Section 209(d).

<sup>51/</sup> Ibid, Section 209(f)(2).

year are reduced.<sup>52/</sup> Thus, although the Interstate System receives the bulk of Federal funds, it has the lowest priority in case of a "financial squeeze." Any part of Interstate apportionments so withheld is reapportioned when the Trust Fund has sufficient revenues to defray the anticipated expenditures.

It is also possible for the Trust Fund to advance funds to the General Fund. This occurs in the emergency relief program wherein the Federal share is initially paid from the Trust Fund with 40 percent of this amount to be later appropriated from the General Fund back to the Trust Fund.<sup>53/</sup>

Payments from the Trust Fund include not only those required for reimbursement to the States for Federal-aid highway expenditures and the repayments to the General Fund mentioned above, but also transfers to the Land and Water Conservation Fund for taxes received from the sale of special motor fuels and gasoline used in motorboats (\$29 million in FY 1975), and refunds of certain taxes. These latter refunds consist of full repayment to taxpayers of the tax on gasoline used for farming, refunds of 2 cents of the 4-cent tax for gasoline and oil used for other nonhighway purposes and in transit buses. Tax credits for this activity amounted to \$146 million in FY 1975. Table 5 summarizes the activities of the Trust Fund for FY 1975.

The excise taxes credited to the Fund are not collected directly from the consumer. They are, instead, paid to the Internal Revenue Service by the producer of the taxed product (except in the cases of diesel and special

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<sup>52/</sup> Ibid, Section 209(g).

<sup>53/</sup> 23 U.S.C. 125(a).

OPERATION OF THE HIGHWAY TRUST FUND  
Fiscal Year 1975

	Millions of Dollars
Balance at close of FY 1974	\$7,667
<u>Receipts</u>	
Motor fuel:	
Gasoline	\$4,098
Diesel and Special Fuels	<u>402</u>
Total	\$4,500
Vehicles and Automotive Products:	
Tires	\$ 744
Tread Rubber	20
Trucks, Buses, and Trailers	602
Highway Use of Heavy Vehicles	221
Inner Tubes	33
Parts and Accessories	143
Lubricating Oils	<u>100</u>
Total	<u>1,863</u>
Total Excises	6,363
Interest	<u>586</u>
Total Income	\$6,949
<u>Disbursements</u>	
Transfer to Land and Water Conservation Fund	\$ 29
Tax Refunds	146
Federal-Aid Highways	<u>4,843</u>
Total Expenditures	\$5,018
Receipts Less Expenditures	1,931
Balance at Close of FY 1975	\$9,597*

\* Does not add due to rounding

Table 5

fuels where they are paid by the retailer, and the heavy vehicle tax which is paid by the consumer). Thus, any tabulation showing taxes paid into the Fund by State are only estimates of what is ultimately paid by consumers in those States and do not show precisely where travel has occurred. As a point of interest, because of the home office locations of major producers of taxable products, over one-half of all Federal gasoline tax revenues are received from just three States, New York, Pennsylvania, and Texas; most of the rubber tax is paid in Ohio; and most of the new motor vehicle-tax payments come from Michigan. Hence, Federal gasoline taxes are not paid directly by the consumer nor are they collected as taxes at the pump.

The existence of the Trust Fund as a mechanism for financing Federal-aid highways in no manner requires that highway authorizations keep pace with its revenue. Congress could decrease authorizations immediately if it so desired. In that case, assuming no changes in the tax structure, balances would accumulate in the Fund. There is nothing in the law to prevent this. It has been argued that during the late fifties and early sixties, when highway building was progressing at a rapid pace, the existence of the Trust Fund actually held back the program by limiting obligations so that those obligations would not exceed expected future revenues in the Fund required to liquidate them. Thus, in theory at least, the Trust Fund acts as an upper boundary on the highway program, rather than as a lower one as is usually thought.<sup>54/</sup>

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<sup>54/</sup> To complete the argument it should be stated that Congress could, if it so desired, authorize funds for highway purposes which could be reimbursed by the General Fund. This would allow the program size to exceed Trust Fund revenues.



One last point will be made. This concerns the alleged "surplus" or "balance" of the Fund.

The operation of the Federal-aid highway program can be likened to a charge account. Incurring an obligation is analogous to the use of a credit card. The holder of the card is obligated to reimburse the credit card company. Similarly, the Federal Government agrees to reimburse the States. Payments to the credit card company come from a checking account, while funds used to reimburse the States are withdrawn from the Highway Trust Fund.

Each month a statement is prepared showing deposits, withdrawals, etc. During the month of March 1976, \$462 million was credited to the Trust Fund, \$433 million was expended, and at the end of the month the Fund had a balance of \$8,754 million. Similarly, one receives a statement from the credit card company, writes a check for the amount owed, and subtracts that from the previous checking account balance. This new balance is similar to the aforementioned balance in the Trust Fund.

However, additional charges may have been made which are not reflected in the statement from the credit company. These outstanding charges may even exceed the balance in the checking account, creating a net deficit. But as long as money is deposited in the checking account before the bills are presented for payment there is no problem.

This is exactly how the Trust Fund operates. Although there was a cash balance of approximately \$8.8 billion at the end of March 1976, there were

also, at the same time, unpaid authorizations of the Trust Fund totaling \$19.2 billion.

If highway revenues were to have stopped completely at that date, the debts (unpaid obligations and authorizations) would exceed the cash on hand by over \$10 billion. Since the highway program functions as a reimbursable program, with cash outlays following obligations at a later date, this operation is quite proper. The Revenue Act did not state that obligations should not exceed the balance in the Fund, but that they should not exceed the anticipated amounts that could be liquidated from Trust Fund revenues at a future date, i.e., when the vouchers were submitted for payment. Present authorizations are thus geared to predicted future revenues at the time reimbursement is expected.

### SUMMARY

The preceding sections have traced the flow of fiscal authority for the Federal-aid highway program from authorization through reimbursement. In capsule form, the cycle can be considered to begin with the authorizing legislation. These acts set the upper limits on debts which can be incurred for Federal-aid highways. Deductions from the authorized levels are then made for administration of the program and urban transportation planning with additional amounts earmarked for other planning and research activities. These normally amount to about 4 to 5 percent of the authorizations.

The remaining amounts are then apportioned or allocated (divided) among the States. Apportionments and allocations are considered "new obligational authority" and, when added to the unobligated balances of previous apportionments and allocations, constitute the total amount of obligational authority available to the States. It must be remembered that what is made available is not money but authority to incur obligations.

Interstate apportionments are made 1 year in advance of the beginning of the fiscal year for which they were authorized and remain available for obligation until 2 years after that fiscal year ends. Non-Interstate apportionments are made on the first day of the fiscal year for which authorized and remain available until 3 years after that fiscal year ends. Thus, all funds remain available for obligation for 4 years.

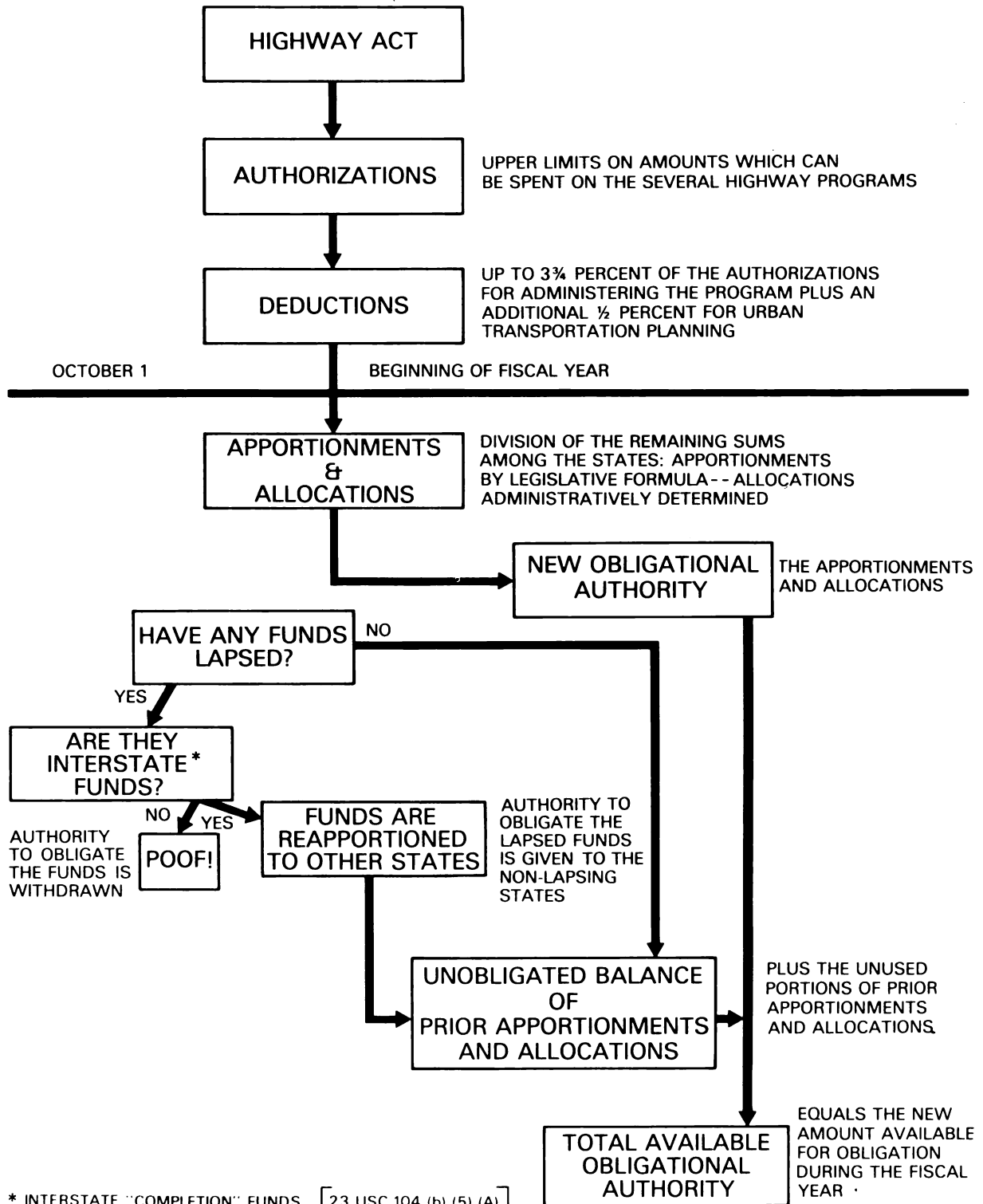
States may obligate funds (i.e., acquire rights-of-way, award construction contracts, etc.) subject to the availability of apportionments and allocations

and to any limitations on obligations which may have been imposed for that fiscal year. Limitations regulate the rate of obligations by imposing a maximum amount on obligations which can be incurred during a given fiscal year.

Once funds are obligated and a project is underway, progress payments may be made to the States for completed work. This liquidating cash is appropriated annually by Congress and is derived from revenues accruing to the Highway Trust Fund.

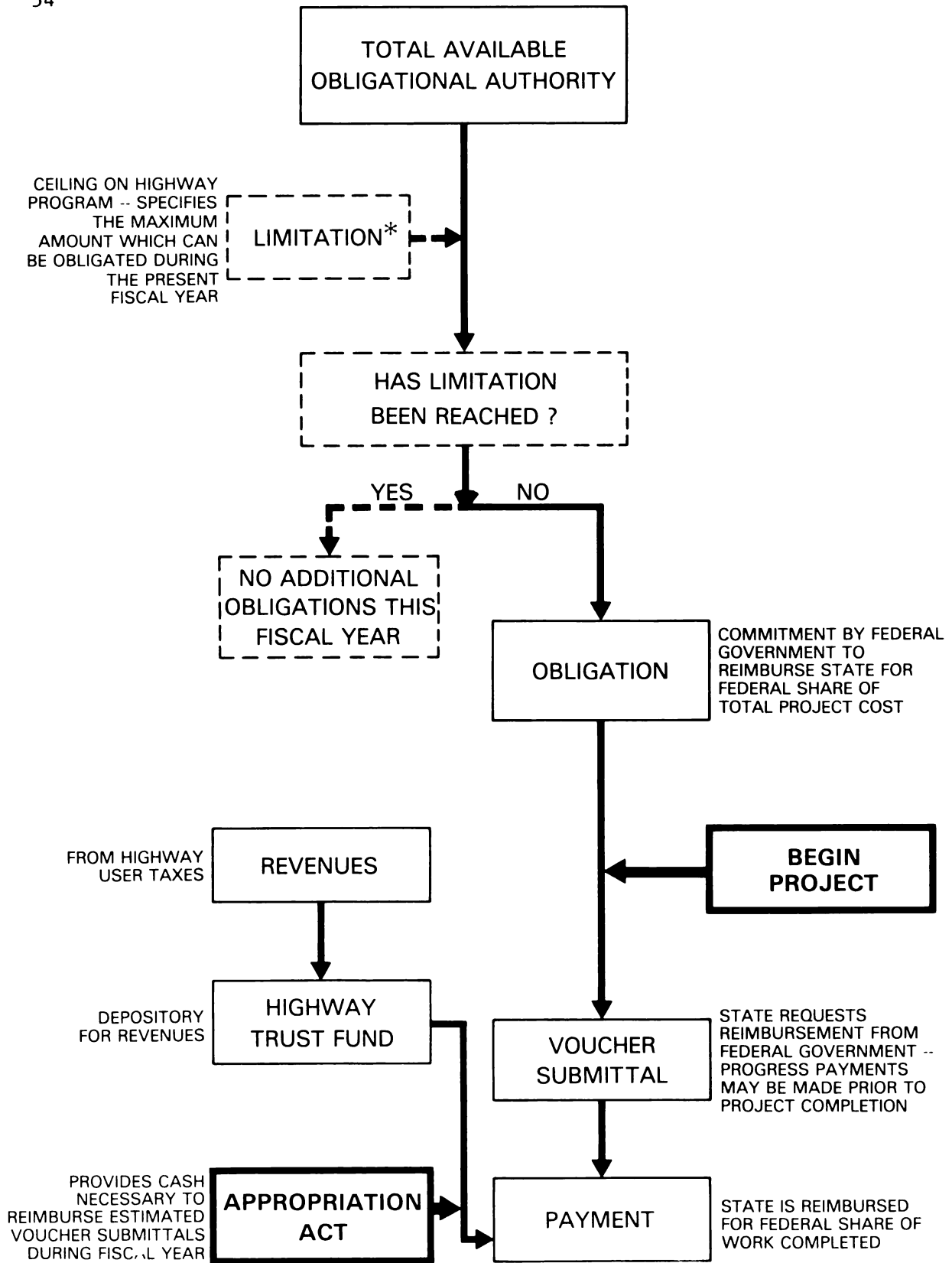
Figure 6 illustrates the above process.

# FINANCIAL PROCEDURES



\* INTERSTATE "COMPLETION" FUNDS [ 23 USC 104 (b) (5) (A) ]

FIGURE 6



\* LIMITATION MAY BE INITIATED BY THE EXECUTIVE BRANCH OR THE CONGRESS

FIGURE 6 (continued)

APPENDIX AGlossary

Allocation--An administrative distribution of funds among the States. This is done for funds which do not have legislatively mandated distribution formulas.

Apportionment--A term which refers to a legislatively described division or assignment of funds. An apportionment is based on prescribed formulas in the law and consists of dividing authorized obligational authority for a specific program among the States.

Appropriation--Act of legislative body which makes funds available for expenditure with specific limitations as to amount, purpose, and duration. In most cases, permits money previously authorized to be obligated and payments made. But, for the highway program operating under contract authority, appropriations chiefly specify amounts of funds which Congress will make available to liquidate prior obligations.

Authorization--Basic substantive legislation which empowers an agency to implement a particular program and which also, in many cases, establishes an upper limit on the amount of funds which can be appropriated for that program.

Backdoor Spending--Spending not subject to year-to-year congressional or executive scrutiny, usually because certain laws require payment and force Congress to appropriate funds to enable payments to be made. Backdoor spending is spending outside of the regular appropriations process.

Budget Authority--Empowerment by the Congress which allows Federal agencies to incur obligations to spend or lend money. This empowerment is generally in the form of appropriations. However, in the highway program it is in the form of "contract authority." Budget authority permits agencies to obligate all or part of the funds which were previously "authorized." Without budget authority, Federal agencies cannot commit the Government to make expenditures or loans.

Contract Authority--A form of budget authority which permits obligations to be made for the full amount of the authorization, i.e., the empowerment to enter into contracts in advance of appropriations. The Federal-aid highway program utilizes contract authority.

Deferral--Executive action or inaction which effectively delays the obligation or expenditure of budget authority. A deferral remains in effect until a majority of either House of Congress overturns it by passing an impoundment resolution or until the end of the fiscal year. A deferral is a type of impoundment action.

Expenditures (Outlays)--A term signifying disbursement of funds for repayment of obligations incurred. A check sent to a State highway department for voucher payment is an expenditure or outlay.



Fiscal Year (FY)--Until FY 1977, the yearly accounting period beginning July 1 and ending June 30 of the subsequent calendar year. Beginning in FY 1977, the fiscal year will start on October 1 and end the following September 30. Fiscal years are denoted by the calendar year in which they end; e.g., FY 1977 begins October 1, 1976, and ends September 30, 1977.

Impoundment--Any action or inaction by an officer or employee of the United States that precludes the obligation or expenditure of budget authority provided by Congress. Present law does not define impoundment, but replaces it with the terms "deferral" and "rescission."

Obligations--Commitments made by Federal agencies to pay out money, as distinct from the actual payments, which are "outlays." Generally, obligations are incurred after the enactment of budget authority. However, since budget authority in the highway program is in the form of contract authority, obligations are permitted to be incurred immediately after apportionment. The obligations are for the Federal share of the full cost of each project at the time it is started, regardless of when the actual payments are expected to be made or the expected time of project completion.

President's Budget--A document submitted annually (15 days after Congress convenes in January) by the President to Congress which sets forth the Executive recommendations for the Federal budget for the upcoming fiscal year. The President's budget submitted in January 1976 contained recommendations for FY 1977 which begins October 1, 1976.

Rescission--A legislative action to cancel the obligation of unused budget authority previously provided by Congress prior to the time when the authority would have otherwise lapsed. This is a type of impoundment action.

States--As defined in Chapter 1 of Title 23, the 50 States comprising the United States, plus the District of Columbia, and the Commonwealth of Puerto Rico. However, for the purposes of some programs (e.g., Highway Safety programs under 23 U.S.C. 402) the term may also include the Territories (Virgin Islands, Guam, and American Samoa) and the Secretary of the Interior (for Indian reservations).

Trust Funds--Are established by law to account for receipts which are held by the Government and earmarked for specific purposes and programs. These receipts are not available for the general purposes of the Government. The Highway Trust Fund is comprised of receipts from certain highway user taxes (e.g., excise taxes on gasoline, rubber, and heavy vehicles) and reserved for use for highway construction and related purposes.

APPENDIX B-1Apportionment Formulas

Formulas for apportioning authorized sums for certain classes of Federal-aid highways are specified by statute. These are shown below.

<u>Fund</u>	<u>Factors</u>	<u>Weight</u>	<u>Statute*</u>	<u>Minimum Apportionment</u>
Primary System	Area	2/9	104 (b) (1)	1/2 percent (except for D.C.)
	Rural Population	2/9		
	Rural Delivery	2/9		
	Route Mileage and Intercity Mail Route Mileage			
	Urban*** Popula- tion	1/3		
Secondary System	Area	1/3	104 (b) (2)	1/2 percent (except for D.C.)
	Rural Population	1/3		
	Rural Delivery	1/3		
	Route Mileage and Intercity Mail Route Mileage			
Interstate System (for completion only)	Relative Federal Share of Cost to Complete the System**	1	104 (b) (5) (A)	1/2 percent (including Alaska, as specified in section 105(b)(1) of the 1976 Highway Act)
Interstate System (resurfacing, restoration, and rehabilitation)	Interstate System lane miles in use for 5 or more years	1	104 (b) (5) (B)	1/2 percent (including Alaska, as specified in section 105(b)(1) of the 1976 Highway Act)
Urban System	Urban*** Population	1	104 (b) (6)	1/2 percent

<u>Fund</u>	<u>Factors</u>	<u>Weight</u>	<u>Statute*</u>	<u>Minimum Apportionment</u>
Urban Transportation Planning	Urbanized**** Population	1	104(f)(2)	1/2 percent
National Scenic and Recreational Highway (Great River Road)	Relative Needs	1	148(d)	-----
High-Hazard Locations & Roadside Obstacles	Total Population	3/4	152(d) & 153(d)	1/2 percent*****
	Public Road Mileage	1/4		
Forest Highways	Area of Forests	1/2	202(a)	-----
	Value of Forests	1/2		
Safer Off-System Roads	Area	2/9	219(b)	-----
	Rural Population	2/9		
	Off-System Road Mileage	2/9		
	Urban Population	1/3		
Highway Safety Programs	Total Population	3/4	402(c)	1/2 percent*****
	Public Road Mileage	1/4		
Rail-Highway Crossings (on a Federal-aid System)	Area	1/6	Sec. 203(d) of the 1973 Highway Act	-----
	Rural Population	1/6		
	Rural Delivery Route Mileage and Intercity Mail Route Mileage	1/6		
	Urban Population	1/2		
	Area	1/6		
	Rural Population	1/6		
	Rural Delivery Route Mileage and Intercity Mail Route Mileage	1/6		
Urban Population	1/2			
Rail-Highway Crossings (off-system)	Area	1/6	Sec. 203(d) of the 1973 Highway Act	-----
	Rural Population	1/6		
	Rural Delivery Route Mileage and Intercity Mail Route Mileage	1/6		
	Urban Population	1/2		
	Area	1/6		
	Rural Population	1/6		
	Rural Delivery Route Mileage and Intercity Mail Route Mileage	1/6		

\* Denotes appropriate section in Title 23, U.S.C., unless otherwise indicated.

\*\* Apportionment factors are contained in the periodic reports, "A Revised Estimate of the Cost of Completing the National System of Interstate and Defense Highways," submitted to Congress as required in 23 U.S.C. 104(b)(5)(A).

\*\*\* Places of 5,000 or more persons.

\*\*\*\* Usually places of 50,000 or more persons--definition contained in 23 U.S.C. 101(a).

\*\*\*\*\* Except that the Virgin Islands, Guam, and American Samoa each get only one-third percent.

APPENDIX B-2Allocated Funds

Not all authorizations are coupled with legislative apportionment formulas. Several of the major national programs do not have distributions specified by Congress. These are shown below. Excluded are programs of a relatively minor nature (in terms of funding) and which are less than national in scope (e.g., Overseas Highway authorizations which may only be used in the State of Florida).

<u>Fund</u>	<u>Distribution</u>
Emergency Relief	Project by project
Control of Outdoor Advertising	As requested by States
Control of Junkyards	As requested by States
Economic Growth Center Development Highways	Administratively derived formula giving equal weight to: area, mileage of rural delivery and intercity routes, and population outside of urbanized areas. One-half percent minimum.
Special Bridge Replacement	Relative needs
Priority Primary*	High cost projects which require long time periods for their construction.
Pavement Marking Demonstration	Two-lane hard-surfaced roads in rural areas.

\* In addition to the primary apportionment, under which priority primary routes may be funded, the 1976 Highway Act created a discretionary fund.

APPENDIX CSystems/Programs/Funds

Just as there is confusion about the distinction among authorizations, appropriations, allocations, apportionments, etc., there is also vagueness surrounding the differences among systems, funds and programs. Often the words are used interchangeably or incorrectly creating bewilderment. In this report "system" refers to one of the Federal-aid highway systems; "funds" to identifiable sums authorized for specific purposes; and "programs" to groupings of purposes toward which funds can be used.

Systems refers to the three Federal-aid systems described in Title 23.\* These are the primary, secondary, and urban systems. (The Interstate System is part of the primary system.\*\*\*) These are the routes, with certain exceptions, upon which Federal-aid highway funds may be used.

Funds refer to specific authorizations contained in the Highway Acts. For example, there is an Interstate fund, a primary fund, a secondary fund, an urban system fund, a bridge replacement fund, an economic growth center fund, etc. These funds constitute sums which may be obligated for the purposes enumerated in the authorization act. In general, funds are available for obligation on more than one Federal-aid system and in some instances off the Federal-aid systems.

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\* 23 U.S.C. 103.

\*\* 23 U.S.C. 103(e)(1).

Programs are groupings of funds which are used for related purposes. Programs are usually identified for budget purposes but the word is also used extensively in highway jargon. References are often made to the "rural highway program" or the "urban highway program," the "Interstate program," etc. As defined here, programs are neither system--nor fund--restrictive. That is, a program may be comprised of more than one fund and one fund may be used in more than one program. Likewise, a program may include more than one system and a system may be included in more than one program.

The relationship among systems/funds/programs, for those Title 23 programs national in scope, is shown in Figure 7.

# SYSTEMS/PROGRAMS/FUNDS (BEGINNING WITH FISCAL YEAR 1978 AUTHORIZATIONS)

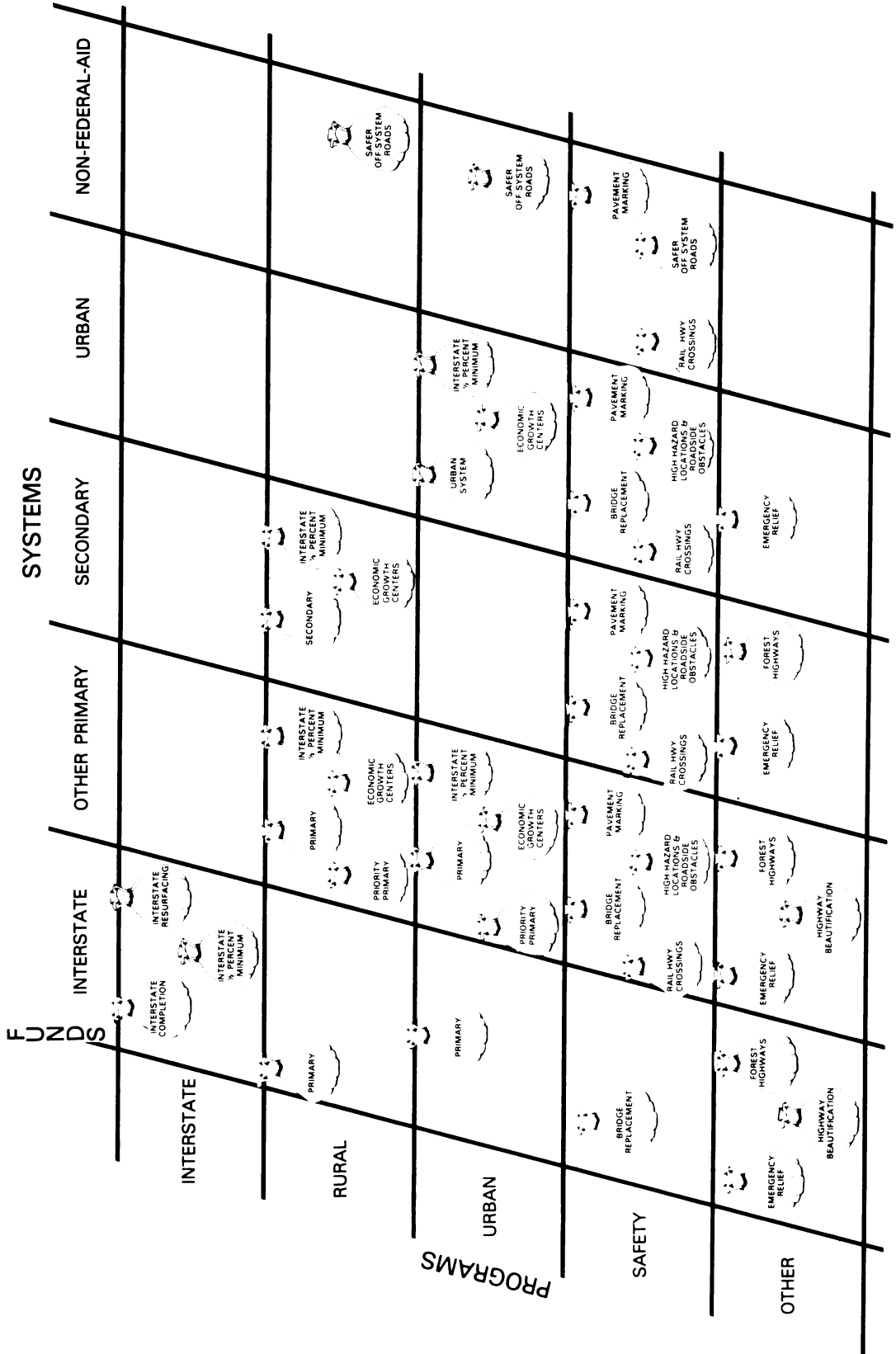


FIGURE 7



APPENDIX D

Title 23 of the United States Code

The United States Code (U.S.C.) contains the Federal laws which have been codified, or arranged in a systematized manner. Title 23 of the Code is titled "Highways" and embodies the laws that govern the Federal highway program. These laws are those substantive provisions contained in the authorization acts (thus they do not contain requests for studies, special projects, etc.). As new acts are passed, sections of Title 23 are amended, repealed, or added. The Code thus contains only those pertinent laws presently in effect.

The Code is divided into four chapters as shown below. This report has dealt mainly with Chapter 1, "Federal-Aid Highways" but also, to a lesser extent, with several of the other chapters. A table of contents of Title 23 (including provisions contained in the 1976 Highway Act) is presented below to familiarize the reader with its contents.

Chapter 1.--FEDERAL-AID HIGHWAYS

<u>Section</u>	<u>Title</u>
101.	Definitions and declaration of policy.
102.	Authorizations.
103.	Federal-aid systems.
104.	Apportionment.
105.	Programs.
106.	Plans, specifications, and estimates.
107.	Acquisition of rights-of-way--Interstate System.
108.	Advance acquisition of rights-of-way.
109.	Standards.
110.	Project agreements.
111.	Agreements relating to use of and access to rights-of-way-- Interstate System.
112.	Letting of contracts.
113.	Prevailing rate of wage.
114.	Construction.
115.	Construction by States in advance of apportionment.
116.	Maintenance.
117.	Certification acceptance.
118.	Availability of sums apportioned.
119.	Repealed.
120.	Federal share payable.
121.	Payment to States for construction.
122.	Payment to States for bond retirement.
123.	Relocation of utility facilities.

## Chapter 1.--FEDERAL-AID HIGHWAYS (Con'd.)

<u>Section</u>	<u>Title</u>
124.	Advances to States.
125.	Emergency relief.
126.	Diversion.
127.	Vehicle weight and width limitations--Interstate System.
128.	Public hearings.
129.	Toll roads, bridges, tunnels, and ferries.
130.	Railway-highway crossings.
131.	Control of outdoor advertising.
132.	Payments on Federal-aid projects undertaken by a Federal agency.
133.	Repealed.
134.	Transportation planning in certain urban areas.
135.	Traffic operations improvement programs.
136.	Control of junkyards.
137.	Fringe and corridor parking facilities.
138.	Preservation of parklands.
139.	Additions to Interstate System.
140.	Equal employment opportunity.
141.	Enforcement of requirements.
142.	Public transportation.
143.	Economic growth center development highways.
144.	Special bridge replacement program.
145.	Federal-State relationship.
146.	Repealed.
147.	Priority primary routes.
148.	Development of a national scenic and recreational highway.
149.	Truck lanes.
150.	Allocation of urban system funds.
151.	Pavement marking demonstration program.
152.	Projects for high-hazard locations.
153.	Program for the elimination of roadside obstacles.
154.	National maximum speed limit.
155.	Access highways to public recreation areas on certain lakes.
156.	Highways crossing Federal projects.

## Chapter 2.--OTHER HIGHWAYS

<u>Section</u>	<u>Title</u>
201.	Authorizations.
202.	Apportionment or allocation.
203.	Availability of funds.
204.	Forest highways.
205.	Forest development roads and trails.
206.	Park roads and trails.
207.	Parkways.

## Chapter 2.--OTHER HIGHWAYS (Con'd.)

<u>Section</u>	<u>Title</u>
208.	Indian reservation roads.
209.	Public lands highways.
210.	Defense access roads.
211.	Timber access road hearings.
212.	Inter-American Highway.
213.	Rama Road.
214.	Public lands development roads and trails.
215.	Territories highway development program.
216.	Darien Gap Highway.
217.	Bicycle transportation and pedestrian walkways.
218.	Alaska Highway.
219.	Safer off-system roads.

## Chapter 3.--GENERAL PROVISIONS

<u>Section</u>	<u>Title</u>
301.	Freedom from tolls.
302.	State highway department.
303.	Administration organization.
304.	Participation by small business enterprises.
305.	Archeological and paleontological salvage.
306.	Mapping.
307.	Research and planning.
308.	Cooperation with Federal and State agencies and foreign countries.
309.	Cooperation with other American Republics.
310.	Civil Defense.
311.	Highway improvements strategically important to the national defense.
312.	Detail of Army, Navy, and Air Force officers.
313.	Repealed.
314.	Relief of employees in hazardous work.
315.	Rules, regulations, and recommendations.
316.	Consent by United States to conveyance of property.
317.	Appropriation for highway purposes of lands or interests in lands owned by the United States.
318.	Highway relocation due to airport.
319.	Landscaping and scenic enhancement.
320.	Bridges on Federal dams.
321.	National Highway Institute.
322.	Demonstration project--rail crossings.
323.	Donations.
324.	Prohibition of discrimination on the basis of sex.

## Chapter 4.--HIGHWAY SAFETY

<u>Section</u>	<u>Title</u>
401.	Authority of the Secretary.
402.	Highway safety programs.
403.	Highway safety research and development.
404.	National Highway Safety Advisory Committee.
405.	Repealed.
406.	School bus driver training.

APPENDIX ESource of Funds

The following table shows the source of funds, either Trust Fund or general funds, and the percentage of each authorization financed by each source, for those authorizations contained in the 1976 Highway Act (i.e., FY 1977-78 authorizations).

<u>Fund</u>	<u>Percent Financed From</u>	
	<u>Trust Fund</u>	<u>General Funds</u>
Interstate Completion	100	
Interstate Resurfacing	100	
Interstate One-Half Percent Minimum	100	
Primary	100	
Secondary	100	
Urban System	100	
Forest Highways	100	
Public Lands Highways	100	
Forest Development Roads and Trails		100
Public Lands Development Roads and Trails		100
Park Roads and Trails		100
Parkways		100*
Indian Reservation Roads and Bridges		100
Economic Growth Center Development Highways	100	
Highway Beautification Administrative Expenses		100
Territorial Highways (Virgin Islands, Guam, American Samoa)		100
Landscaping and Litter Removal		100
Great River Road		
(a) on a Federal-aid System	100	
(b) off Federal-aid Systems		100
Control of Outdoor Advertising		100
Control of Junkyards		100
Safer Off-System Roads		100
Access Highways		100
Urban High Density	100	
Highways Crossing Federal Projects		100
Bridges on Federal Dams	100	
Overseas Highway	100	
Demonstration Projects-Railroad Highway		
Crossings	67	33
Acceleration of Projects	100	

<u>Fund</u>	<u>Percent Financed From</u>	
	<u>Trust Fund</u>	<u>General Funds</u>
Traffic Control Signalization Demonstration Projects	100	
Highway Safety Programs (23 U.S.C. 402)	100	
Safety Research and Development (23 U.S.C. 307(a) and 403)	100	
Bridge Reconstruction and Replacement	100	
Pavement Marking	100	
High-Hazard Locations and Roadside Obstacles	100	
Rail-Highway Crossings		
(a) on a Federal-aid System	100	
(b) off Federal-aid Systems		100

\* Except that projects on a Federal-aid system shall be financed from the Highway Trust Fund.



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AUTHORIZATION, ALLOCATION, TRUST FUND, IMPOUNDMENT, BUDGET AUTHORITY, AUTHORIZATION, OBLIGATION, TRUST FUND, RESCISSION, BUDGET AUTHORITY, APPROPRIATION, IMPOUNDMENT, DEFERRAL, RESCISSION, ALLOCATION, APPROPRIATION, IMPOUNDMENT, DEFERRAL, AUTHORITY, AUTHORIZATION, ALLOCATION, TRUST FUND, IMPOUNDMENT, BUDGET AUTHORITY, AUTHORITY, APPROPRIATION, OBLIGATION, TRUST FUND, RESCISSION, BUDGET AUTHORITY, APPROPRIATION, OBLIGATION, DEFERRAL, RESCISSION, BUDGET AUTHORITY, APPROPRIATION, OBLIGATION, IMPOUNDMENT, DEFERRAL, RESCISSION