FINANCING FEDERAL-AID HIGHWAYS

U.S. DEPARTMENT OF TRANSPORTATION
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FINANCING

FEDERAL-AID HIGHWAYS

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INTRODUCTION

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 of the funding process. Periodic congressional actions, particularly passage of a new Federal-aid highway act, often result in major modifications, thus making it a changing and dynamic process.

Because of the continuing demand for information concerning the financing of Federal-aid highways, the Federal Highway Administration prepared a report describing the basic process involved. This report, "Financing Federal-Aid Highways," was published in January 1974 and was updated twice: "Financing Federal-Aid Highways--An Amplification, July 1974" and "Financing Federal-Aid Highways--Revisited, July 1976."

Enactment of PL 95-599, the Surface Transportation Assistance Act (STAA) of 1978, on November 6, 1978, generated a need to revise the 1976 report. Thus, this report has been written to incorporate the changes in the financing procedures brought about by the 1978 STAA. In a few cases, "old" rules may still apply to already authorized funds. However, all the financing provisions described in this report are applicable to new authorizations beginning with FY 1979.

As shown in the preceding table of contents, the report follows the financial process from inception in an authorization act to payment from the Highway Trust Fund, and includes discussion of the congressional and Federal agency actions which occur throughout.

CONGRESSIONAL PROCEDURES

The first step, and the most crucial, in financing the Federal-aid highway program is the authorizing legislation, which is commonly called the highway act. (In 1978, highway legislation was passed as part of the Surface Transportation Assistance Act.) This is not necessarily true for all Federal programs, since for many, as explained later, a second or appropriations act is of equal or greater importance to their financing sequence.

As a springboard for drawing up authorizing legislation, Congress holds hearings on the Federal-aid highway program, usually about 9 months to a year before new funding is needed. The purpose of the congressional hearings is to give interested organizations, citizens, members of Congress and the executive branch an opportunity to publicly present their views on the future direction of the highway program. Testimony, oral or written, may be by invitation or request of congressional committees or at the initiative of the witness.

The Surface Transportation Subcommittee of the Committee on Public Works and Transportation in the House of Representatives and the Subcommittee on Surface Transportation of the Committee on Environment and Public Works in the Senate are responsible for conducting hearings and for the subsequent drafting of highway legislation. The jurisdiction of the House committee extends to mass transit and safety. In the Senate, however, the Commerce, Science, and Transportation Committee handles safety while the mass transit area comes under Banking, Housing and Urban Affairs Committee. Trust Fund or revenue matters fall in the purview of the House Ways and Means Committee and the Senate Finance Committee.

After the hearings are completed, the staffs of the subcommittees prepare their respective versions of new highway legislation. Each of these drafts is often based on information obtained during the hearings or on bills submitted earlier in that session of Congress that were referred to the above named committees. The initial bills may have been introduced in several ways, including:

A. Introduction by various members of Congress who have an interest in the program. Usually these bills concern only one facet of the program such as bridge replacement and rehabilitation. However, some propose comprehensive changes in the program.

B. Introduction of an Administration (executive branch) bill prepared by the Department of Transportation. The Administration's bill is often introduced "by request", signifying that the sponsors in Congress were asked to introduce it and do not necessarily endorse all provisions of the bill.

C. Introduction of a comprehensive bill sponsored by the chairman or top-ranking members of the full committee or subcommittee combining the views from several sources. This bill often serves as the basis for the hearings and goes on to be used as the primary document in preparing the draft legislation.

It is important to keep in mind that the Senate and House work independently on their separate highway bills, each with its own schedule for hearings, committee meetings, etc. Not until a conference committee reaches agreement (discussed below) is there a single highway bill.

The subcommittees then "mark up" (amend) the staff-prepared draft bills by adding and dropping provisions and by compromising on any controversial provisions. When a bill is finally voted on favorably by the subcommittee, it is submitted for approval to the parent committee--the Environment and Public Works Committee in the Senate and the Public Works and Transportation Committee in the House.

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, usually entitled the "Federal-Aid Highway Act of 19XX (where XX is the appropriate year), is sent to the full chamber of its respective body of Congress.[1/]

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 contain different provisions, which they usually do, a conference committee is formed to reconcile the differences and arrive at a mutually acceptable compromise. Members of

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1/ 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 conference committee are formally appointed by the Speaker of the House and the Presiding Officer of the Senate, based on recommendations from the committee chairmen. The conference committees are thus comprised of members from both the House and Senate committees that have jurisdiction over the areas encompassed by the bill.

The conference committee discusses the merits of the different proposals, airs the disagreements, and 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 both the House and Senate 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 entailed in making a bill become law. It is sufficient to state that digressions do occur.

Figure 1 displays the typical process described above.

CONGRESSIONAL PROCEDURES
(SIMPLIFIED, TYPICAL PROCESS)

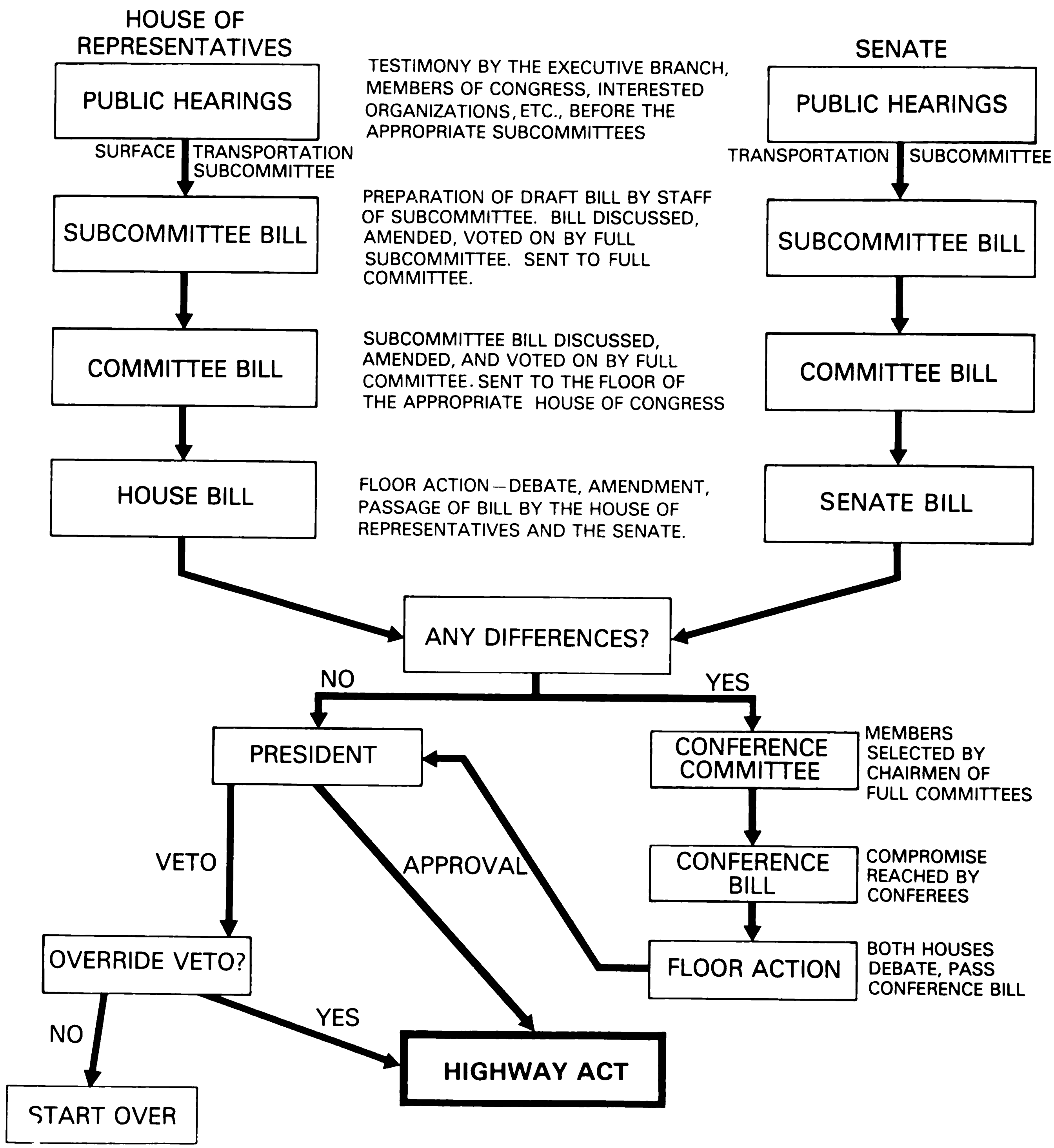

FIGURE 1

FEDERAL-AID HIGHWAY ACT

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

It should be noted that when discussing financing or other characteristics of Federal aid, the term "program" often has several meanings. First, the "Federal-aid highway program" is an umbrella term generally referring to all activities funded through the Federal Highway Administration and administered by the States' highway or transportation agencies. Second, the word "program" is used to refer to one of the many components that make up the overall Federal-aid highway program. These programs are those categories with specific funding and, thus, are sometimes referred to as funding categories. For example, within the Federal-aid highway program there is specific funding for a bridge replacement and rehabilitation program, a primary program, a safer off-system roads program, an Interstate program, etc. In addition, there are many important activities that do not have separate funding but are eligible items under one or more of the funding categories. For example, replacement housing, preliminary engineering, fringe and corridor parking, etc., are eligible activities, but often they are also referred to as "programs."

The 1978 STAA created new programs such as the hazard elimination program, essentially a consolidation of several existing highway safety construction programs,[2/] and at the same time, the Act modified several existing programs. The bridge replacement program now includes rehabilitation projects, and funds are available for bridges not on a Federal-aid system;[3/] the Federal share for the primary, secondary, and urban programs was raised from 70 percent to 75 percent;[4/] and the Interstate funds are available for 2 years instead of 4 years.[5/] Such program changes as these ordinarily are incorporated into Title 23 of the United States Code. The contents of Title 23 are explained in Appendix D.

Examples of specific projects or requests directed to be undertaken by the 1978 Surface Transportation Assistance Act include, among others, a study of the feasibility of designating Interstate routes in Alaska and Puerto Rico,[6/] a demonstration project to permit placement of vending machines in rest areas along the Interstate,[7/] and an investigation of the impact on communities of increased unit train traffic to meet national energy requirements.[8/]

The third group of provisions in highway legislation, the funding of the highway programs, relates most directly to the subject of this report. Federal-aid highway acts have traditionally provided funds, termed "authorizations," for the Federal-aid programs for 2 or more years.

2/ PL 95-599 (STAA of 1978), Section 168.
3/ Ibid, Section 124.
4/ Ibid, Section 129.
5/ Ibid, Section 115.
6/ Ibid, Section 156.
7/ Ibid, Section 153.
8/ Ibid, Section 162.

It is these authorizations that spell out the amount and purposes for which Federal-aid funds for highways are to be expended and lead directly to the financing procedures of the program.

Appendix B lists the categories for which new or continued authorizations were provided by the STAA of 1978.

FEDERAL-AID FINANCING PROCEDURES

Authorizations and Budget Authority

The authorizations contained in the highway acts are amounts of funds that the Secretary of Transportation is permitted to obligate on behalf of the Federal Government. They are the upper limits on commitments that the administering agency can incur.

Before proceeding, there are two points which need to be understood. 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 can be less than, and may not 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 in Appendix A), and most Federal programs receive their budget authority through appropriation 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," which is another type of budget 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 among the States) by a specified date and "On or after the date [of apportionment] . . . the sums apportioned . . . shall be available for expenditure. . . ."[9/] This and other wording confers contract authority on most programs described in Chapter 1 of Title 23. Other programs not covered in Chapter 1 may receive it by reference, e.g., "sums available" may be obligated in the same manner and to the same extent as funds apportioned under Chapter 1, Title 23. The use of contract authority, first legislated in the Federal-aid Highway Act of 1921, gives the States advance notice of the size of the Federal-aid program (as soon as an authorization act is enacted) and eliminates the uncertainty contained in the authorization-appropriation sequence. To distinguish between the two ways of receiving budget authority--contract authority and the regular two-step process--the latter is referred to as "appropriated budget authority" throughout this discussion.

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

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9/ 23 U.S.C. 118(a)--Section 118(a) of Title 23, "Highways," of the United States Code.

Federal Government to start projects; rather, the States can incur debts with the assurance that reimbursement for the Federal share of the project will follow. The authority to disburse cash to the States is granted through an appropriations act which will be discussed later.

These two characteristics of the program--contract authority and reimbursement--differentiate it from the typical Federal grant. The typical financial procedures for contract authority programs and appropriated budget authority programs are shown in Figures 2 and 3.

Deductions

Before these Federal funds are released, two deductions are made from the authorizations. The first of these is a statutory allowance of "not to exceed 3-3/4 per centum,"[10/] for administering the provisions of Title 23 of the United States Code (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 percent may be deducted, the amount has been closer to 2 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.[11/] Research

10/ 23 U.S.C. 104(a).
11/ 23 U.S.C. 307(a) contains the permissible research activities.

FINANCIAL PROCEDURES FOR CONTRACT AUTHORITY PROGRAMS

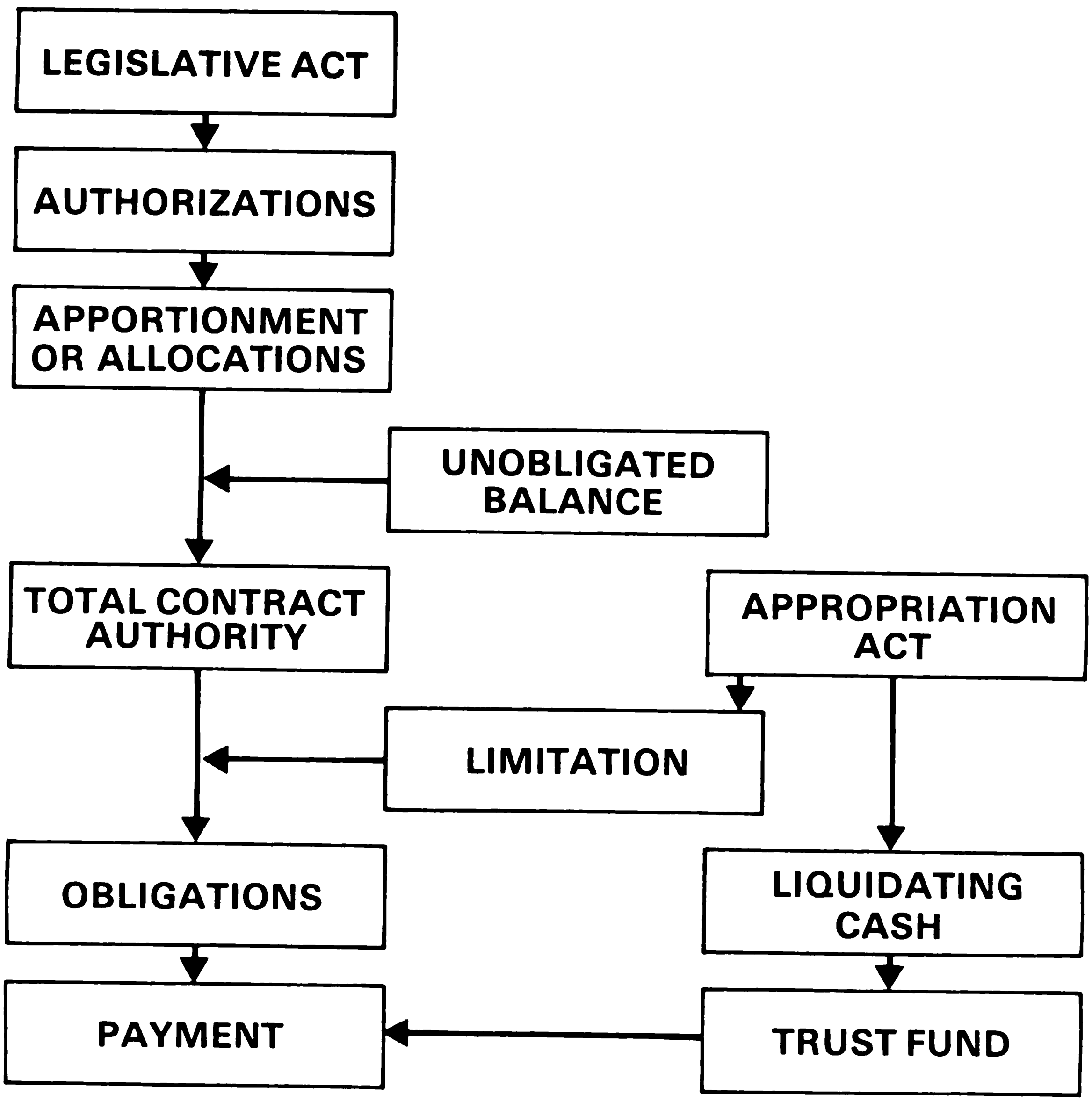


FIGURE 2

FINANCIAL PROCEDURES FOR APPROPRIATED BUDGET AUTHORITY PROGRAMS

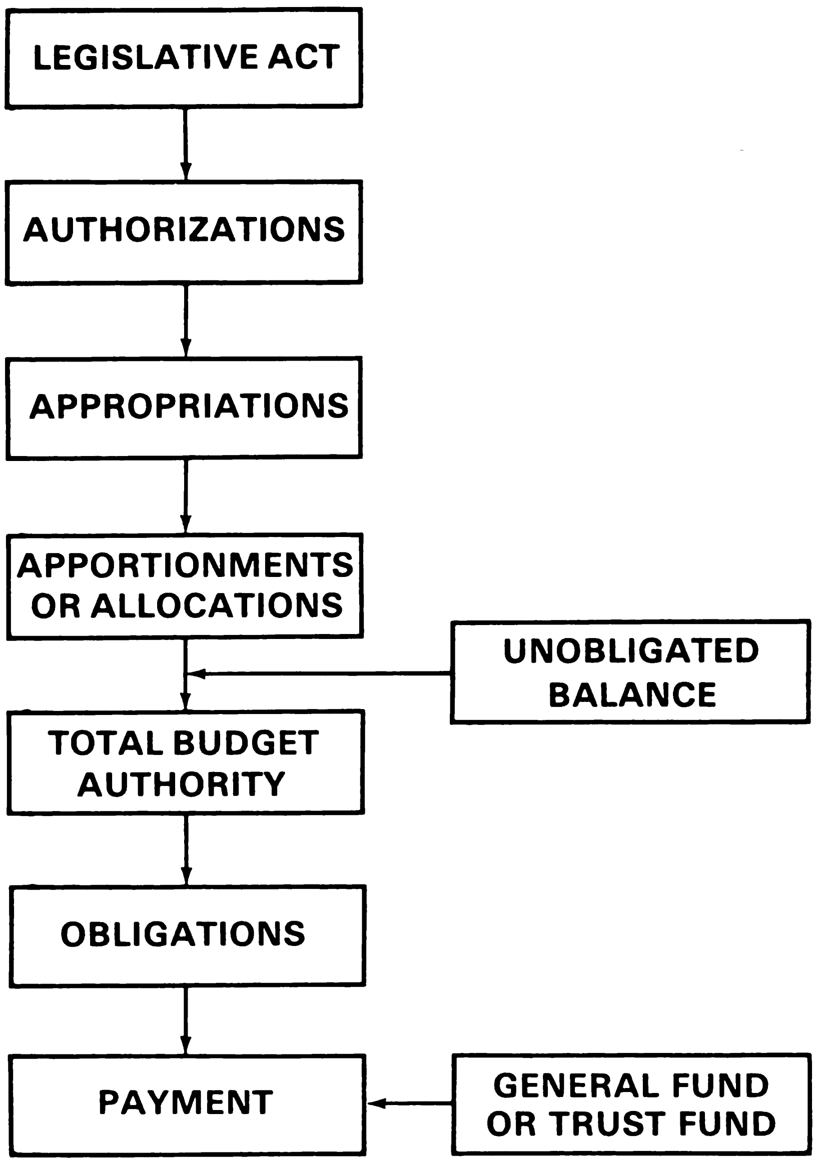


FIGURE 3

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 most of the authorized sums that are to be divided among the States.

Administrative funds for other programs are sometimes contained in separate authorizations, as is the case for the highway beautification program. The highway safety program contains a provision which permits administrative deductions of "not to exceed 5 percentum"[12/] of the sums authorized.

The second deduction is used to finance the urban transportation planning activities mandated by 23 U.S.C. 134. This deduction is equivalent to one-half percent of the remaining authorizations after the first deduction is made and is distributed to the States by its own apportionment formula.[13/]

Although these are the only two deductions applied programwide, there are often other funds which are withheld or reserved for particular purposes. For example, failure of a State to enforce its maximum vehicle size and weight laws could result in a 10-percent reduction by the Secretary of certain of its funds.[14/] The 1978 STAA required that $125 million of the authorizations for the primary system be reserved for allocation by the Secretary only to designated priority primary routes.[15/]

12/ 23 U.S.C. 402(c).

13/ 23 U.S.C. 104(f)(1) and (f)(2). Funds are apportioned to each State according to its percentage of the Nation's total urbanized population.

14/ 23 U.S.C. 141(c)(2). The funds reduced are Interstate, Interstate 3R, primary, secondary, and urban.

15/ PL 95-599, Section 104(c).

In total, the deductions for administration (say 2 percent) and urban transportation planning (one-half percent) leave approximately 97-1/2 percent of the funds authorized to be divided among the States.

Apportionments and Allocations

Subsequent to the above deductions, the FHWA apportions, or divides, the remaining portion of the sums authorized for the various programs among the States. The apportionments are based on several formulas prescribed by law. For example, urban system funds are apportioned to each State according to 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 C-1 contains a list of apportionment formulas.

At the time of an apportionment, certificates, denoting the sums deducted and the exact amount of each apportionment, are issued by FHWA. It is through these certificates that the States are officially notified of the ability to go ahead and request the Federal Government to obligate funds for the repayment of debts incurred by the States.[16/] Thus, each apportionment grants new "obligation authority." Again, it is not cash which is apportioned, it is only new obligation authority or additions to a State's available line of credit.

16/ For funding categories without contract authority, States may obligate the apportioned funds only to the extent that sums are provided in the Appropriation Acts. 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 obligation authority.

Most, but not all, funds are apportioned in this manner. Some funding categories 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." Funds for such programs as Economic Growth Center Development Highways and Pavement Marking Demonstration are allocated. Appendix C-2 contains a list of allocated programs.

Earmarking

Federal highway legislation requires that certain sums be earmarked (set aside for special uses) once apportioned to the States. One and one-half percent of the major system apportionments can only be used for highway planning and research activities.[17/] 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 transportation planning funds.

Individual categories may also have mandatory restrictions. For example, at least 20 percent of a State's apportionment for primary and secondary must be used for resurfacing, restoration, and rehabilitation work on these systems.[18/]

17/ 23 U.S.C. 307(c)(2). Interstate, Interstate 3R, primary, secondary, and urban are the programs earmarked for highway planning and research.

18/ PL 95-599, Section 104(d).

Other earmarkings are not required but may be made at the State's option. A State can elect to use an extra one-half percent of certain apportionments for highway planning and research activities.19/ Another one-half percent of certain apportionments may be used at the State's discretion for education and training of State and local highway department employees.20/

Availability

The synonym for apportionments, "new obligation authority," is used to distinguish them from the unused parts of previous apportionments, or the "old obligation 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, i.e., available for obligation, for a specified number of years. Their availability does not terminate at the end of the fiscal year as is the case with many other Federal programs.

The Interstate funds are available for 2 years (instead of 4 years as they had been before passage of the STAA of 1978). They are apportioned on October 1, 1 year in advance of the beginning of the fiscal year for which they are authorized, 21/ and they remain available until the end of the fiscal year authorized.22/ Hence, they are available the entire

19/ 23 U.S.C. 307(c)(3). The optional one-half percent for highway planning and research is earmarked from the primary, secondary, and urban apportionments.

20/ 23 U.S.C. 321(b). The optional one-half percent for education and training is earmarked from the primary, secondary, and urban apportionments.

21/ 23 U.S.C. 104(b)(5)(A).

22/ 23 U.S.C. 118(b).

year prior to the fiscal year designation of the funds and for the fiscal year itself (see Figure 4).

Federal-aid funds for use on other than the Interstate System are apportioned on October 1, the first day of the fiscal year for which they are authorized.[23/] Most of these non-Interstate funds are available "for a period of 3 years after the close of the fiscal year for which such sums are authorized. . . ."[24/] Thus, they are available for 4 years (see Figure 4). Appendix B lists the categories for which new or continued authorizations were provided by the 1978 Surface Transportation Assistance Act and their availability.

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.[25/] No cash need be returned to the Federal Government since there was never any cash disbursed--only obligation authority is "returned" and this, in essence, is a bookkeeping entry. An exception to this lapsing provision is sums apportioned under 23 U.S.C. 104(b)(5)(A) for the Interstate System. Any of the Interstate completion funds still unobligated after 2 years are withdrawn from a State, but may be allocated to other States which have used up their own Interstate apportionment and still have projects ready to go.[26/] Thus, Interstate completion funds do not lapse but may be reassigned to other States.

23/ 23 U.S.C. 104(b).
24/ 23 U.S.C. 118(b).
25/ Ibid.
26/ Ibid.

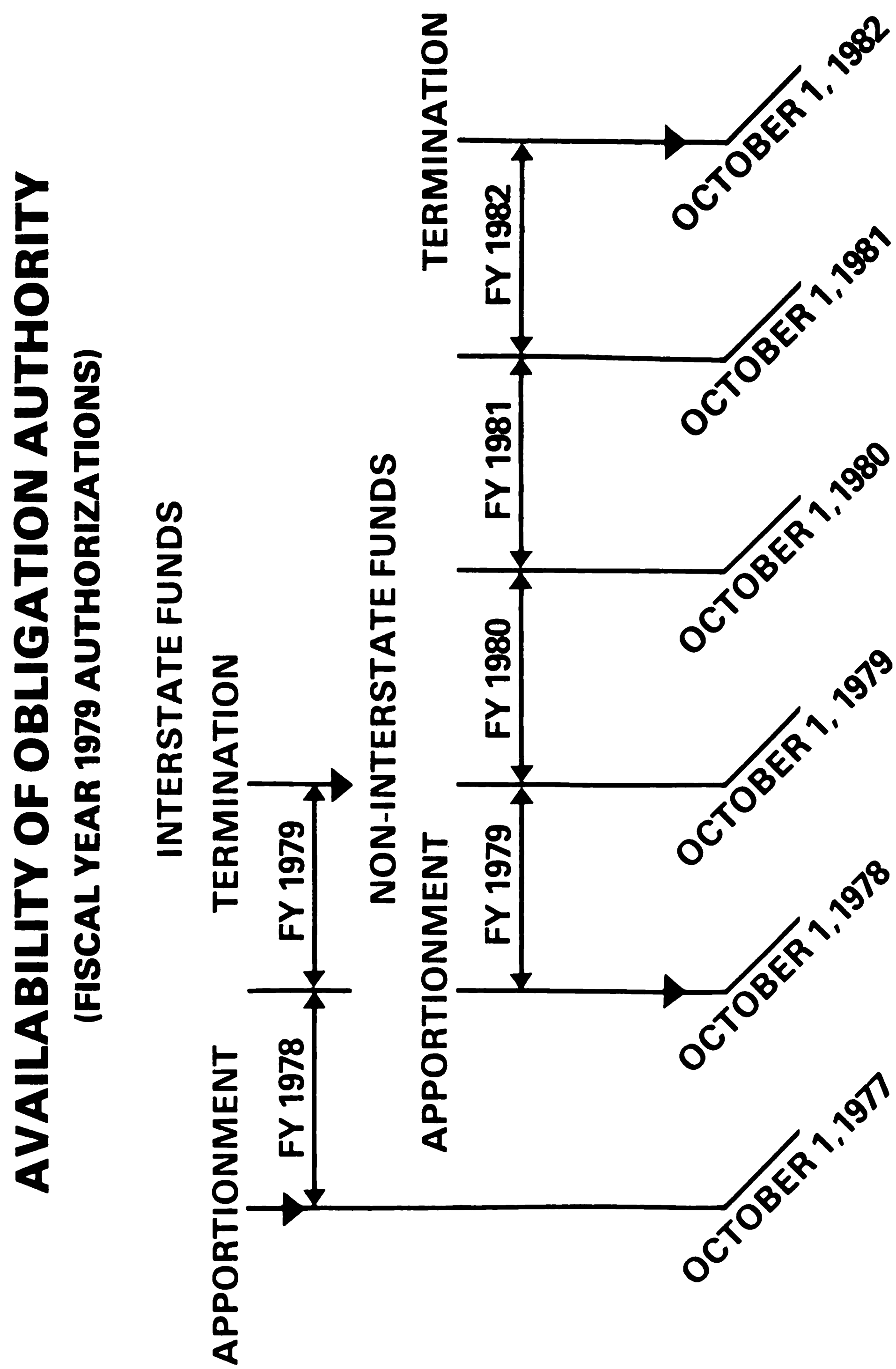

AVAILABILITY OF OBLIGATION AUTHORITY
(FISCAL YEAR 1979 AUTHORIZATIONS)
INTERSTATE FUNDS
APPORTIONMENT
TERMINATION
FY 1978
FY 1979
NON-INTERSTATE FUNDS
APPORTIONMENT
TERMINATION
FY 1979
FY 1980
FY 1981
FY 1982
OCTOBER 1, 1977
OCTOBER 1, 1978
OCTOBER 1, 1979
OCTOBER 1, 1980
OCTOBER 1, 1981
OCTOBER 1, 1982

FIGURE 4

Transferability

Authorizations reflect Congress' relative priority among the many Federal-aid funding categories, 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 funding category within each State. To provide for flexibility in the use of specific sums, Federal law permits transfers to be made among certain funds.

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 or decrease the original apportionment for such system by more than 50 percent.[27/] This effectively limits the amount which can be transferred to 50 percent of the smaller of the two apportionments.

Primary system and urban system apportionments may be transferred from one category to the other in the same manner.[28/] Transfers among apportionments may only be made once during a fiscal year.[29/]

All of the above transfers may be made upon request of 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 areas.[30/]

27/ 23 U.S.C. 104(c)(1) and (d)(1).
28/ 23 U.S.C. 104(c)(2) and (d)(2).
29/ 23 U.S.C. 104(d)(3) and (d)(4).
30/ 23 U.S.C. 104(c)(2).

Transfers may also be made among the following safety programs: Highway Bridge Replacement and Rehabilitation, Hazard Elimination, and Rail-Highway Crossings. Not more than 40 percent of the amount apportioned to a State may be transferred. However, up to 100 percent of any of the above apportionments may be transferred if a State shows and the Secretary agrees that the purposes of that program have been achieved.31/

Figure 5 illustrates the possible transfers.

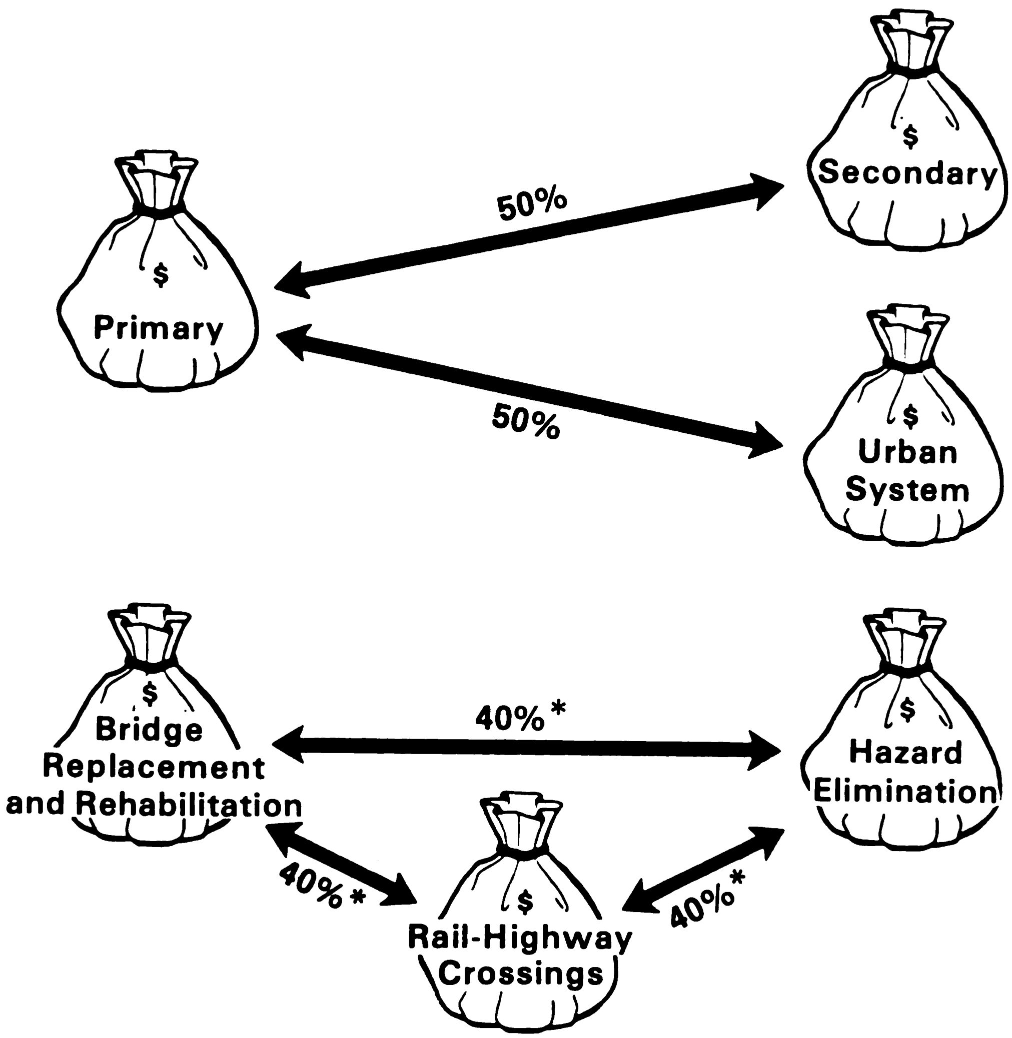
Obligations

The term "obligation" has been used frequently. An obligation is a commitment of the Federal Government to pay, through reimbursement to the States, the Federal share of a project's cost. The commitment is made when FHWA approves a State's proposal to use part of its total obligation authority or entitlement on a particular project. The FHWA Division Administrators have been delegated the authority to enter into these contractual agreements for reimbursement on behalf of the United States Government.

Obligation is a key step in financing; obligated funds are considered "expended" even though no cash is transferred. This is illustrated by the fact that funds are protected from lapsing when they are obligated.32/ Incurring an obligation is similar to the use of a credit card. The holder of the card is obligated to reimburse the credit card company when

31/ 23 U.S.C. 104(g).
32/ 23 U.S.C. 118(b).

Transferability



*May be as high as 100%

FIGURE 5

a purchase is made. Although no cash has changed hands, the money is as good as spent when the holder signs the charge receipt. Likewise, the Federal Government is beholden to provide cash to reimburse the States, once an obligation is made.[33/]

Hence, obligation is the last step in the financing process which can be controlled by the Federal budgeting process. If such controls are necessary, this is usually done by the imposition of limitations on the program obligations (discussed later).

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 is specified in the legislation authorizing the program. Interstate System and safety construction projects are normally funded 90 percent Federal/ 10 percent State and most other projects at a 75/25 ratio. States with large amounts of Federal lands have their Federal share of certain programs increased in relation to the percentage of their total land area that is under Federal control.[34/] Appendix B shows the Federal share payable for the program categories authorized by the STAA of 1978.

33/ 23 U.S.C. 106(a).
34/ 23 U.S.C. 120(a), (c), and (f).

Reimbursement

As mentioned previously, the Federal-aid highway program is a reimbursable program; what is apportioned to the States is not cash but obligation authority. It is up to the States to provide the initial cash to get a project underway. The project need not be completed, however, 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. The payments must 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. Vouchers by the State to the FHWA division to review and approve.
4. Transmission of vouchers to the regional office of the Treasury via the FHWA regional office.
5. Federal share of the project cost transferred directly from the Treasury Department to the State's bank account via electronic fund transfer except in a few instances where a check is issued to the State.

Limitation on Obligations

The foregoing discussion has described the routine procedures for financing Federal-aid highway programs that have contract authority--authorizing legislation, apportionments, obligations and reimbursements. Because of contract authority, the flow of these program funds is not directly affected by the annual appropriations process. But this very benefit which permits a smooth and stable flow of Federal aid to the States can be a disadvantage to overall Federal budgeting. A major function of the appropriations process is to assess the current need for and effect of Federal dollars on the economy and has been the traditional way to control Federal expenditures on an annual basis. But the highway program, with multiple-year authorizations and multiple-year availability of funds, is exempt from this annual review. The question arises--in view of the necessity to respond to current economic conditions (e.g., inflation)--how can the Federal highway program be covered under annual Federal budget decisions?

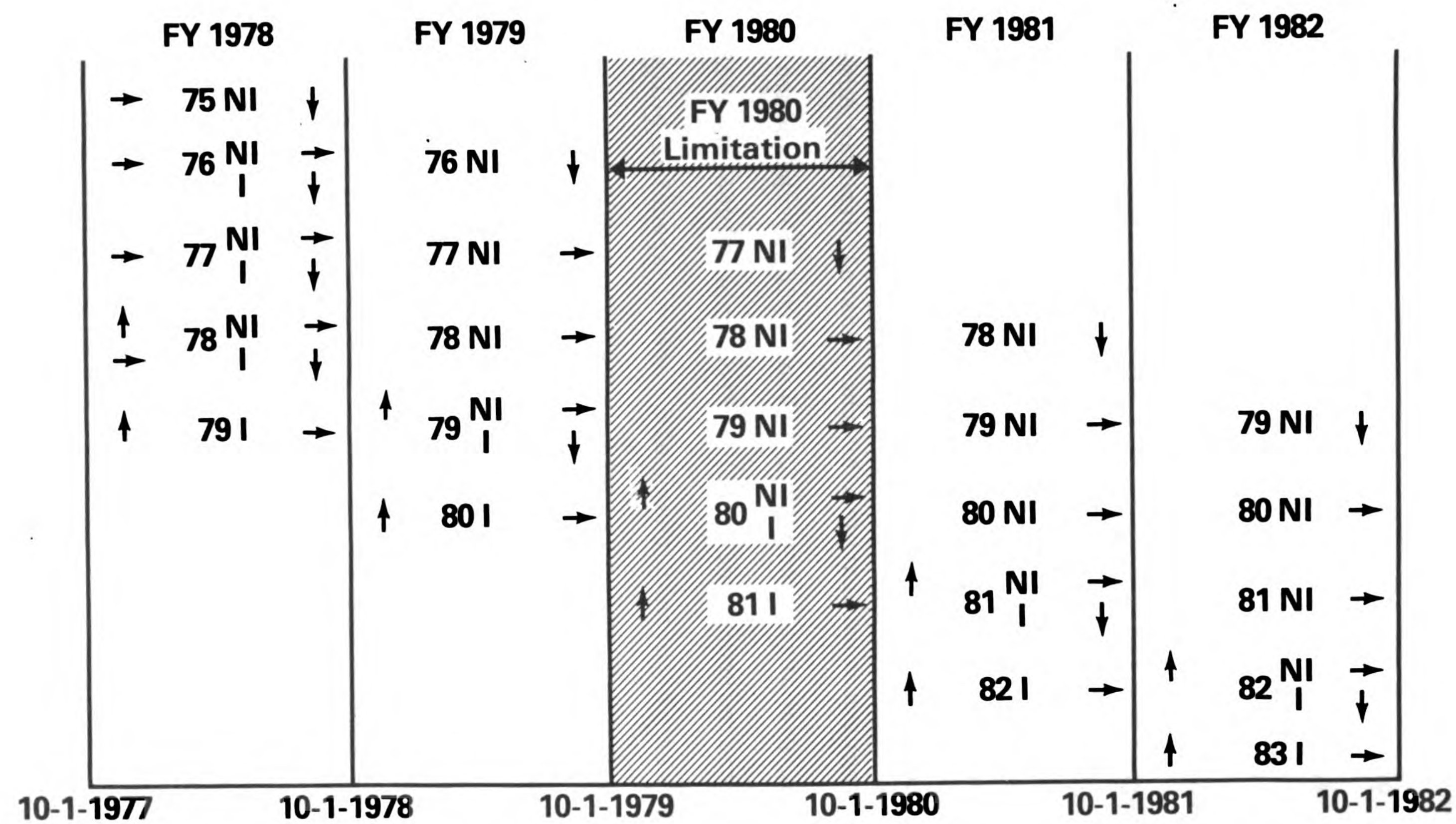
The answer in recent years has been to place a ceiling, a limit, on total obligations that can be incurred for Federal-aid highway programs during the year. By controlling expenditures (obligations) annually, the program is made more responsive to current budgetary goals. Yet, a limitation also retains flexibility by not interfering with the scheduled apportionment of Federal-aid highway funds upon authorization and the subsequent obligation of those funds in that or future fiscal years.

During a fiscal year, a State has not only its new apportionment or allocation for a given program available for obligation, but also any carryover (unobligated balances) from previous years. By State and by funding category, the amount of this carryover varies considerably. Some "fast-spending" States budget their Federal funds so that projects are ready to go (obligate) soon after funds become available. They use most of their Federal funds in the first year of availability and, consequently, have small carryover balances in most categories. Other States tend to be "slow-spending," generally using Federal-aid highway funds in the third or even last year of availability. There are numerous reasons for these differences between States and funding categories. However, multi-year availability provides the flexibility to accommodate both extremes in State budgetary practice.

The aggregate results of these different actions, however, is what affects the Federal budget. Since their inception, limitations on obligations have been placed annually on the aggregate total for the major contract authority programs administered by the Federal Highway Administration (Interstate, primary, secondary, urban, bridge replacement and rehabilitation, safety construction, etc.). From about 1966 to 1975, the limitations were strict in that they held Federal spending below anticipated obligation levels to combat severe inflationary pressures. During this era, the limitation was administratively pro-rated among the States to ensure each was able to obligate its fair share of the total. Since 1975, the limitations have been less restrictive and have operated on a first-come, first-served basis.

In actual application a limitation on obligations does not relate directly to any year's or one State's apportionment, but acts as a ceiling on the sum of all obligations within a specified time period, regardless of which fiscal year's apportionments are being obligated. Figure 6 illustrates the relationship between the availability of

AVAILABILITY AND LIMITATIONS ON OBLIGATIONS



↑ = BEGINNING OF AVAILABILITY

↓ = END OF AVAILABILITY

I = INTERSTATE

→ = CARRYOVER OF AVAILABILITY FROM PREVIOUS YEARS OR TO FUTURE YEARS

▨ = TIME PERIOD OF LIMITATION

NI = NON INTERSTATE

DURING A LIMITATION ON OBLIGATIONS FOR FY 1980 (OCT. 1, 1979—SEP. 30,1980), STATES COULD BE OBLIGATING FUNDS FROM 5 DIFFERENT FISCAL YEARS APPORTIONMENTS; THE NON-INTERSTATE APPORTIONMENTS FOR FYs 1977—79; ALL APPORTIONMENTS FOR FY 1980; AND THE INTERSTATE APPORTIONMENT FOR FY 1981.

FIGURE 6

apportionments and the time period of an obligation limitation. As shown, a limitation on obligations for FY 1980 would apply only to the national sum of obligations during that 12-month period and not to the amount of the total FY 1980 apportionment that may be used. Under a FY 1980 limitation, individual States could be using their non-Interstate FY 1977, 1978, or 1979 apportionments, all of their 1980 apportionments, or their FY 1981 Interstate apportionments, depending on the status of their individual program balances.

Table 1 exemplifies an actual limitation on obligations as applied to the highway program during FY 1979.

TABLE 1

EFFECT OF FY 1979 LIMITATION ON OBLIGATIONS

	$ millions
Unobligated Balance (October 1, 1978)*	5,600
New Obligation Authority**	7,900
Total Obligation Authority Available	13,500
Limitation***	8,500
Deferred Amount	5,000

* All Federal highway contract authority programs except Emergency Relief, 402 Highway Safety Grant, and Great River Road.

** Summary of Federal highway contract authority program authorizations in the 1978 STAA available for apportionment or allocation in FY 1979.

*** PL 95-599, Section 167.

At the beginning of FY 1979, unobligated balances of prior year authorizations for all contract authority programs administered by FHWA (except the Emergency Relief, 402 Highway Safety Grant, and Great River Road categories) totaled $5.6 billion nationwide. New obligation authority for FY 1979 for these funding categories equaled $7.9 billion, providing a total of $13.5 billion that potentially could be obligated in FY 1979, if all balances were exhausted by the end of the year. Such a possible, although not probable, level of activity could jeopardize overall Federal spending goals. To ensure against such a possibility, Congress has limited the total FY 1979 obligations from this reservoir to $8.5 billion, leaving $5 billion of obligation authority deferred for use in future years. Unless total obligations begin to approach this limit before the end of the fiscal year, this national limitation will have little effect on individual State programs. If that happens, however, some further action may be necessary to distribute the effect of the lid equitably.

The highway program has been subject to these limitations since 1966. In the early years, the executive branch limited obligations. The common term for this action was "impoundment." But since FY 1976, Congress is the branch of Government that has placed the ceiling on the program. The turnabout came with enactment of the Congressional Budget and Impoundment Control Act of 1974.[35/] Through this legislation, Congress sought to gain more control over the Federal budget. Prior to passage of the Budget Act, Congress had no way of overruling impoundment actions by the

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35/ PL 93-344, enacted July 12, 1974.

executive branch. Today the executive branch is not completely out of the picture with respect to initiating ceilings on obligations. To do so, however, the President must formally notify the Congress of such an action (called a "deferral") and must justify the action. His deferral can be disapproved by a majority in either the Senate or the House of Representatives.

Executive initiated limitations on the major contract authority highway program categories ceased in FY 1975 when Congress exercised its veto authority and overturned the Executive deferral for that year.[36/]

Beginning with FY 1976, Congress itself has limited annual program obligations through special provisions in the annual Department of Transportation Appropriations Acts. The 1979 Department of Transportation Appropriations Act placed a $7.95 billion ceiling on the program,[37/] but this ceiling was superseded by a $8.5 billion limitation through a provision in the STAA of 1978.[38/] This was the first time that a congressional limitation for the highway program was enacted through legislation other than the Appropriations Act, but nonetheless, the effect is the same.

In summary, the contract authority highway funding categories receive special consideration in the Federal budget in that funds can be expended (obligated) on the basis of an authorization act. By not going through the appropriations process before release, the funding categories are immune to the annual adjustments that are made to most Federal programs

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36/ Senate Resolution 69, April 24, 1975.
37/ PL 95-335, enacted August 4, 1978, Section 315.
38/ PL 95-599, Section 167.

in response to current economic and fiscal conditions. The mechanism that has been used to control the highway program has been the imposition of limits on the amount of multi-year Federal-aid highway apportionments and allocations that can be obligated each year. These limitations can be initiated by the executive branch subject to congressional review or by Congress as has been done since FY 1976.

Finally, there is another type of fiscal control which can be, but rarely has been, placed on the highway program. This is rescission. More severe than limitations, which simply delay the obligation of budget authority, rescissions call for the repeal of congressionally authorized budget authority. As with limitations, the executive branch or Congress can initiate rescissions, but all presidentially proposed rescissions are subject to approval by Congress before they are effective.

APPROPRIATIONS

The fiscal operations described so far relate to the law originating in authorization acts, often called highway acts. Yet, as the last section described, there are also appropriation acts that affect the highway program. Though most of the Federal-aid highway programs do not receive budget authority through appropriation acts as do most other Federal programs, the appropriation act does have an impact on the fiscal process.

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, these Acts also impinge on all other Department of Transportation 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.

The Federal Highway Administration part of the Act is divided into many accounts--18 in the 1979 Appropriations Act--each covering one or a group of highway funding categories. The accounts can be classified according to whether the type of programs composing them have budget authority or contract authority.

Appropriations and Contract Authority Programs

Funds for contract authority programs can be obligated upon apportionment of authorizations contained in the Highway Act. Although obligations are commitments to reimburse the States for the Federal share of a project's cost, actual cash reimbursements by the Treasury cannot be made until they are appropriated. This then is the primary function of an Appropriation Act as it relates to the major part of the highway program--the provision of the "liquidating cash." The Act provides the bulk of this cash in one account, "Federal-Aid Highways" which covers liquidating cash needs for most of the significant contract authority, trust-funded categories including:

Interstate	Bridge Replacement and Rehabilitation
Interstate 1/2% Minimum	Pavement Marking Demonstration
Interstate Resurfacing	Hazard Elimination
Primary System	Rail-Highway Crossings
Secondary System	Bridges on Federal Dams
Urban System	Urban High Density
Emergency Relief	Highway Planning and Research
Forest Highways	Metropolitan Planning
Economic Growth Centers	

plus a few special-purpose programs, plus unpaid balances remaining from terminated programs, such as the high hazard/roadside obstacle authorizations.

The $6.95 billion provided by the 1979 Appropriations Act[39/] in the Federal-aid highway account was derived from an estimate of prior unpaid obligations, plus new obligations incurred during FY 1979, for which vouchers are expected to be presented by the States for payments during

39/ PL 95-335, enacted August 4, 1978.

the fiscal year. Therefore, it is the consequence of the authorization/obligation process but equivalent to neither the amount authorized for or expected to be obligated in FY 1979.

There are a few other accounts that provide liquidating cash for contract authority programs. They include Highway Safety Grants (23 USC 402), National Scenic and Recreational Highway,[40/] and the Off-System Roads.[41/] (See Table 2 for list of contract authority--liquidating cash accounts.)

Limitations on obligations may also be included in appropriations acts. These are found in the General Provisions section of the act and apply to programs under contract authority accounts. The FY 1979 Act contained two of these limitations. A $7.95-billion limit was set for programs under the Federal-Aid Highways Account[42/] (later replaced by a $8.5-billion limitation in the STAA of 1978) and a $28-million limitation was set for Highway Related Safety Grants in FY 1979.[43/]

The liquidating cash provided in the accounts covering contract authority programs must come from the Highway Trust Fund. This link between the Fund and contract authority programs has existed only since passage of the Congressional Budget and Impoundment Control Act of 1974.[44/] Because one of the main purposes of the Act is "to provide for the congressional determination <u>each</u> year of the appropriate level of Federal revenues

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40/ 23 U.S.C. 148.
41/ 23 U.S.C. 219 (prior to 1976 Highway Act).
42/ PL 95-335, Section 315.
43/ PL 95-335, Section 304.
44/ General funded programs authorized before implementation of the 1974 Budget Act can continue to have contract authority until those authorizations are exhausted.

FHWA ACCOUNTS--1979 DOT APPROPRIATIONS ACT

ACCOUNT	MILLIONS $	SOURCE
Contract Authority (Liquidating Cash)		
Federal-Aid Highways	6,950.0	TF
Highway Related Safety Grants	23.0	TF
Great River Road	19.0	TF/GF */
Off-System Roads	44.0	GF */
Subtotal	7,036.0	
Appropriated Budget Authority		
Motor Carrier Safety	12.4	GF
Highway Safety Research and Development	9.0	TF
Highway Beautification **/	31.1	GF
Railroad-Highway Crossings Demo Projects	40.0	TF/GF
Off-System Railway-Highway Crossings	15.0	GF
Territorial Highways**/	12.1	GF
Safer Off-System Roads	15.0	GF
Access Highways to Public Recreation Areas on Certain Lakes	7.9	GF
Highways Crossing Federal Projects	16.0	GF
Overseas Highways	87.1	TF
Project Acceleration Demo Program	10.0	TF
Sandhill Crane Wildlife Refuge	4.0	GF
Alaska Highway	15.0	GF
Subtotal	274.6	
GRAND TOTAL	7,310.6	

*/ Contract authority (liquidating cash) accounts funded from the GF received authorizations prior to the 1976 Highway Act.

**/ Account provides both liquidating cash for the contract authority part of the program (i.e., from pre-1976 Highway Act authorizations) and appropriated budget authority for subsequent authorizations.

and expenditures"[45/] (i.e., to gain control over the budget), 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."[46/] Thus, the Budget Act requires that congressional acts contain provisions limiting new budget authority to the amount provided in appropriation acts. The first impact of this provision was on 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 Budget and Impoundment Control 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.[47/] The Highway Trust Fund, a user-supported trust fund, meets the requirements for the exception. Thus, only trust-funded highway funding categories are excepted, thereby providing the link between the Trust Fund and contract authority programs.

45/ PL 93-344, Section 2.
46/ Ibid, Section 401(a).
47/ Ibid, Section 401(d)(1)(B).

Even though the major highway funding categories are not affected by the requirement that budget authority be provided only in appropriation acts, it nevertheless has serious implications. Paramount among these is that the retention of contract authority, in existence since 1921, is now tied to the 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, all of the highway programs would have to obtain budget authority through appropriation acts.

Appropriations and Appropriated Budget Authority Programs

Most of the highway programs operate with contract authority, but some must obtain their budget authority through the appropriation process. The latter group has what is called "appropriated budget authority" because two steps--an authorization act and an appropriations act--are needed before obligations can be incurred. Thus, the appropriations act is crucial to these appropriated budget authority programs since it gives the go-ahead to obligate as well as the liquidating cash needed for reimbursement.

In the 1979 DOT Appropriations Act, 13 of the FHWA accounts provide budget authority (see Table 2). Among these are the Railroad-Highway Crossings Demonstration Projects authorized by the 1973 Highway Act,[48/] the Safer Off-System Roads,[49/] and the Overseas Highway.[50/] The total amount provided by these accounts in the DOT Act was $275 million, small compared to the $7 billion provided in the contract authority accounts.

48/ PL 93-87, enacted August 13, 1973, Section 163.
49/ 23 U.S.C. 219.
50/ PL 93-643, enacted January 4, 1975, Section 118.

The source of funding for the appropriated budget authority accounts can be either the General Fund of the Treasury or the Highway Trust Fund. Since implementation of the Budget Act of 1974, General Funded programs must have appropriated budget authority, i.e., cannot have contract authority. But the reverse is not true. The Budget Act required only that a contract authority program be trust funded, not that every trust-funded program have contract authority. Thus, there are trust-funded programs that operate with appropriated budget authority (e.g., Overseas Highway[51/] and Project Acceleration Demonstration Program[52/]).

The Federal Budget and Appropriations Acts

Omitted from the previous discussion was an explanation of how the numbers in the appropriation acts are derived. The usual course of events starts in the spring of each year, about 1-1/2 years prior to the beginning of the fiscal year being addressed, when the Federal Highway Administration begins work on the budget. Included in the budget 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 for the Federal-aid programs, should some measure of control be considered necessary. Also reviewed are policy issues which may affect the upcoming budget.

Development of the budget progresses through FHWA, the Office of the Secretary of Transportation, and the Office of Management and Budget, where final decisions are made in early fall.

51/ PL 93-643, Section 118.
52/ PL 94-280, enacted May 5, 1976, Section 141.

The executive branch's budget activities culminate in the submission to Congress of the President's Federal Budget in January, less than 9 months before the fiscal year begins. In the spring, Congress formulates its own version of the Federal Budget, using the President's Budget as input. This congressional budget guides the Appropriations Committees in both Houses of Congress in setting their levels. Finally, the DOT Appropriations Act, is passed and signed by the President (as are other appropriations acts covering other budget areas), usually before October 1 each year.

The congressional procedures for enacting an appropriation act are like those for enacting an authorization act described in the first chapter and illustrated in Figure 1. One major difference is that the committees with jurisdiction are the appropriations committees and their transportation subcommittees in both the House of Representatives and the Senate.

THE HIGHWAY TRUST FUND

The previous sections have generally been silent about the Trust Fund. This has been intentional because the Trust Fund, prior to being tied to the continuation of contract authority through the 1974 Budget Act, did not greatly affect the manner in which the highway program operated. 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. Cash to liquidate previously incurred obligations for the Federal-aid highway program came from the General Fund of the Treasury. Budget authority came through the granting 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 no formal relationship between the level of revenue obtained from the highway user taxes and the level of the highway program. Aside from this 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 most of these taxes should be credited to the Trust Fund. Revenues accruing to the Fund were dedicated to the financing of Federal-aid highways.

The passage of the Highway Revenue Act of 1956 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 user-supported, "pay-as-you-go" footing. Shown in Table 3 are the types of taxes placed in the Fund, the rates before and immediately after the Fund was established, and the current rates.

Operation of the Fund

The Trust Fund actually is 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 that can only accept withdrawals which fund congressionally approved appropriations to liquidate authorized highway and highway-related obligations. Thus, the Trust Fund is not a physical entity in which revenues are deposited. It is only a bookkeeping entry by the U.S. Treasury. User taxes are not deposited in the Trust Fund but in

TABLE 3

HIGHWAY TRUST FUND

FEDERAL EXCISE TAX RATES

TAX	1955	1956	1979
Gasoline & Diesel	2¢/Gallon	3¢/Gallon	4¢/Gallon
Trucks, Buses,*/ Trailers	8% Price	10% Price	10% Price
Highway Tires	5¢/LB.	8¢/LB.	10¢/LB.
Other Tires	5¢/LB.	5¢/LB.	5¢/LB.
Tubes	9¢/LB.	9¢/LB.	10¢/LB.
Tread Rubber	----------	3¢/LB.	5¢/LB.
Automobiles	10% Price	10% Price	---------
Highway Use of Heavy Vehicles	----------	$1.50/1000 LBS.	$3.00/1000 LBS.
Lubricating Oil	3¢/Gal Cutting Oil 6¢/Gal Other	3¢/Gal Cutting Oil 6¢/Gal Other	6¢/Gallon
Parts and Accessories	8% Price	8% Price	8% Price

*/ Effective December 1, 1978, the tax on new buses was removed. (PL 95-618, Sec. 231-3)

the General Fund of the Treasury. Amounts equivalent to these taxes are then transferred on paper 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.[53/]

Amounts in the Fund in excess of current expenditure requirements are invested in public debt securities and interest from these securities is credited to the Fund.[54/] For example, Fiscal Year 1978 saw the Trust Fund credited with $662 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.[55/] Any such amounts must be repaid, with interest,[56/] 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 all Trust Funded programs' apportionments for that fiscal year are reduced proportionately.[57/]

Payments from the Trust Fund include not only those required for reimbursement to the States for Federal-aid highway expenditures (and any repayments to the General Fund mentioned above) but also transfers to the Land and Water Conservation Fund for taxes received from the sale

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53/ Highway Revenue Act of 1956, Section 209(c)(4).
54/ Ibid, Section 209(e)(2).
55/ Ibid, Section 209(d).
56/ Ibid, Section 209(f)(2).
57/ Ibid, Section 209(g).

of special motor fuels and gasoline used in motorboats ($34 million in FY 1978), and refunds of certain taxes.

In FY 1978 these latter refunds included both full and partial refunds of the tax paid. Full refunds included the repayment of the 4-cents-per-gallon tax paid on gasoline used for farming purposes[58/] and 6-cents-per-gallon tax paid on lubricating oil used off highways. Partial refunds included the repayment of 2 cents of the 4-cents-per-gallon gasoline tax paid for nonhighway use and for use in certain local transit systems.[59/] These refunds amounted to $137 million in FY 1978. Table 4 summarizes the activities of the Trust Fund for FY 1978.

Recent legislation has expanded those activities eligible for refunds. The 1978 Surface Transportation Assistance Act added a 2-year experimental program under which taxicab owners practicing energy conservation (e.g., ride-sharing and operating non-gas guzzlers) would be fully refunded the motor fuel tax paid effective January 1, 1979.[60/] The Energy Tax Act of 1978 provided for the full refund of the taxes paid for motor fuel and lubricating oil used in intercity, local, and school buses and removed the taxes on new buses and the taxes on tires, tubes, tread rubber, and the parts and accessories for these buses effective December 1, 1978.[61/] The Energy Act also exempted motor fuel containing at least 10 percent alcohol from the Federal excise tax for the period January 1, 1979, to September 30, 1984.[62/]

58/ Internal Revenue Code, Section 6420.
59/ Ibid, Section 6421.
60/ PL 95-599, Section 505.
61/ PL 95-618, enacted November 9, 1978, Sections 231-233.
62/ Ibid, Section 221.

TABLE 4

OPERATION OF THE HIGHWAY TRUST FUND

FY 1978

		$ millions
Balance close of FY 1977		10,164
Receipts		
Excises	7,076	
Interest	662	
Total Receipts		7,738
Disbursements		
Transfer--Land & Water Conservation Fund	34	
Tax Refunds	137	
Federal-aid Highway Program	6,058	
Total Disbursements		6,229
Receipts Less Disbursements		1,509
Balance Close of FY 1978		11,673

Most of the excise taxes credited to the Fund are not collected by the Federal Government directly from the consumer. They are, instead, paid to the Internal Revenue Service by the producer of the taxable product (except in the cases of diesel and special fuels where they are paid by the retailer or consumer and the Federal use tax which is paid by the heavy vehicle owner). Thus, any tabulation showing taxes paid into the Fund by States are estimates of what is ultimately paid by users, not where the taxes were actually deposited. 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, the 4-cent Federal gasoline tax charged at the pump is in effect a reimbursement for taxes already paid.

The existence of the Trust Fund as a mechanism for financing Federal-aid highways does not require 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. On the other hand, 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 to those that could be liquidated from expected future revenues in the Fund when they come due. Since then, the balance has gradually increased so that this no longer occurs. In theory at least, the Trust Fund acts as an upper boundary on the highway program, rather than as a lower one as is sometimes thought.

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

The operation of the Federal-aid highway program in relation to the Trust Fund can be likened to a personal financial practice. Each month a statement is prepared showing deposits, withdrawals, etc. During the month of December 1978, $946 million was credited to the Trust Fund, $558 million was expended, and at the end of the month the Fund had a balance of $11,967 million. Similarly, one deposits money in a checking account (adding to money there already), writes checks 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, if one uses a credit card, the charges made against it may not come due for a month or so. But the liability for these purchases is still there. 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 $12 billion at the end of 1978, there were also, at the same time, <u>unpaid commitments</u> (authorizations already apportioned/allocated to the States) on the Trust Fund totaling $25 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 $13 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.[63/]

63/ Originally scheduled to terminate in 1971, the Highway Trust Fund has been extended several times. The currently scheduled termination date is October 1984; when it is estimated that the receipts will more than adequately cover all authorizations made through FY 1982 by the STAA of 1978.

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 liabilities the Federal Government can incur for Federal-aid highways. Deductions from the authorized levels are then made for administration of the program and for urban transportation planning, the total normally amounting to less than 3 percent of the authorizations.

The remaining amounts are then apportioned or allocated (divided) among the States. Apportionments and allocations are considered "new obligation authority" and, when added to the unobligated balances of previous apportionments and allocations, constitute the total amount of obligation authority available to the States. It must be remembered that what is made available is not money but authority to incur obligations; a "line of credit." A State does not receive this authority in one lump sum, but in some 20 or more different funding categories, each with a defined use (e.g., Interstate, primary highways, urban highways, hazard elimination, etc.).

Interstate apportionments are made 1 year in advance of the beginning of the fiscal year for which they were authorized and remain available until that fiscal year ends, or 2 years. 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, or 4 years.

States request the FHWA to obligate specified amounts of this authority (i.e., acquire rights-of-way, award construction contracts, etc.) for specific highway projects, 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 of total authority which can be committed during a given fiscal year. Federal approval of each request is a contractual agreement to pay the State the Federal share of work completed on that project.

Once the 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 7 illustrates the total process.

FINANCIAL PROCEDURES
(CONTRACT AUTHORITY PROGRAMS)

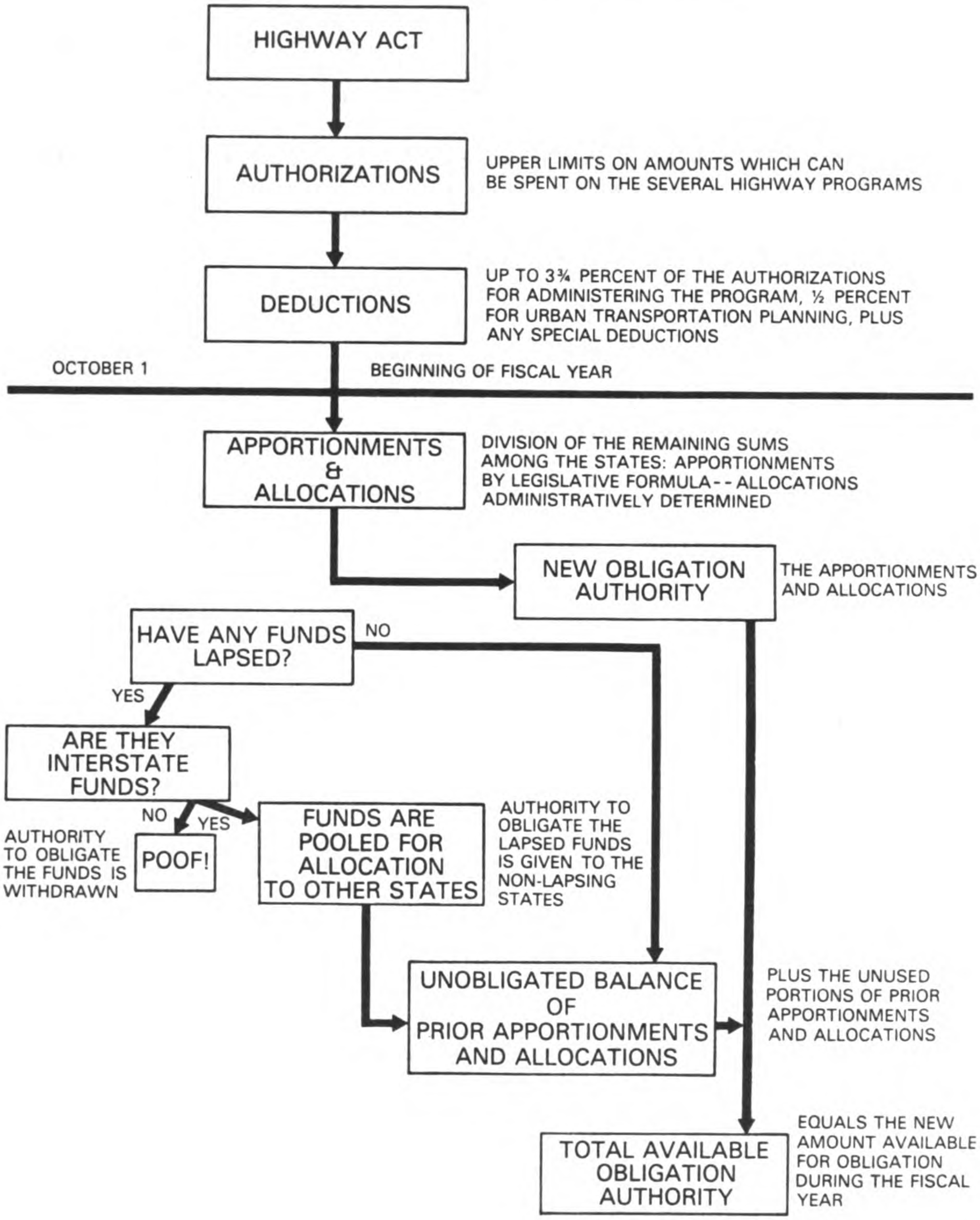
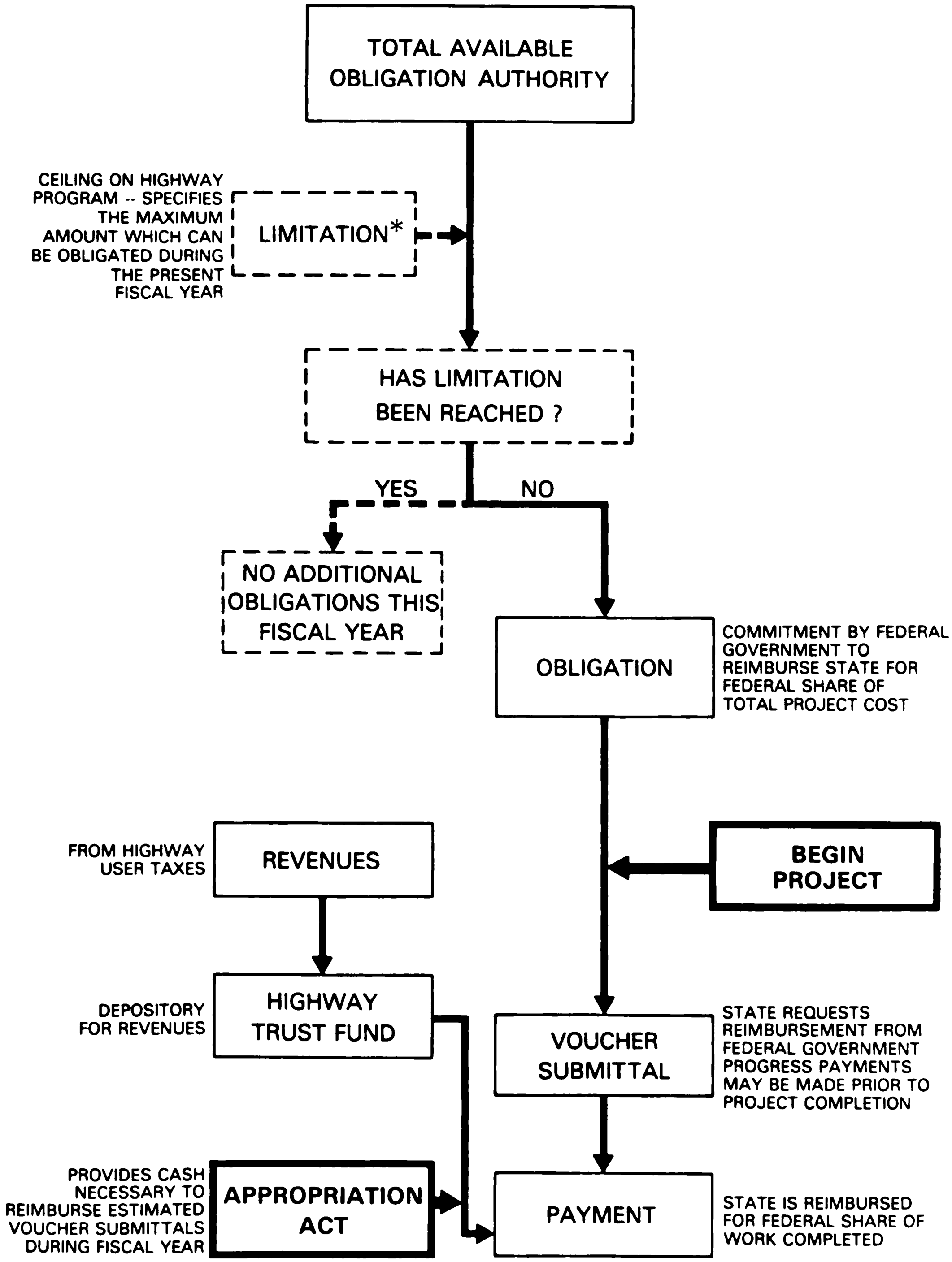


FIGURE 7



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

FIGURE 7 (cont.)

APPENDIX A

Glossary

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 prescribed division or assignment of funds. An apportionment is based on prescribed formulas in the law and consists of dividing authorized obligation 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 specify amounts of funds that Congress will make available to liquidate prior obligations.

Authorization--Basic substantive legislation which empowers an agency to implement a particular program and which also 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 payments 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 that allows Federal agencies to incur obligations to spend or lend money. This empowerment is generally in the form of appropriations. However, for the major highway program categories, 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 authorizations, 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.

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)--Since FY 1977, the yearly accounting period beginning October 1 and ending September 30 of the subsequent calendar year. (Prior to FY 1977, the Federal fiscal year started on July 1 and ended the following June 30). Fiscal years are denoted by the calendar year in which they end; e.g., FY 1980 begins October 1, 1979, and ends September 30, 1980.

<u>Impoundment</u>--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."

<u>Limitation on Obligations</u>--Any action or inaction by an officer or employee of any branch of the United States Government that limits the amount of Federal assistance that may be obligated during a specified time period. A limitation on obligations does not affect the scheduled apportionment or allocation of funds; it just controls the rate at which these funds may be used.

<u>Obligations</u>--<u>Commitments</u> 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 many highway programs is in the form of contract authority, obligations in these cases are permitted to be incurred immediately after apportionment or allocation. The obligations are for the Federal share of the estimated full cost of each project at the time it is approved, regardless of when the actual payments are made or the expected time of project completion.

<u>President's Budget</u>--A document submitted annually (15 days after Congress convenes in January) by the President to Congress which sets forth the <u>Executive</u> recommendations for the Federal budget for the upcoming fiscal year. The President's budget submitted in January 1979 contains recommendations for FY 1980 which begins October 1, 1979.

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. Rescissions may be proposed by the executive branch but require legislative action to be effective.

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, American Samoa, and the Northern Mariana Islands) 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 motor fuel, rubber, and heavy vehicles) and reserved for use for highway construction and related purposes.

APPENDIX B

Fiscal Characteristics of Highway Programs Authorized by the Surface Transportation Assistance Act of 1978

The following table lists the highway and highway safety programs administered by the Department of Transportation that were authorized by the 1978 Surface Transportation Assistance Act of 1978 and summarizes the following important fiscal characteristics:

(1) Source of funding--Trust Fund or General Funds of the Treasury.
(2) Federal share of a project's cost.
(3) Type of budget authority--contract authority or appropriated budget authority.
(4) Period of availability of funds.

Major Program Category	Trust Fund or General Fund	Federal Share	Contract Authority or Appropriated Budget Authority	Availability of Authorizations (Years)
Interstate Completion	T	90*	C	2
Interstate Resurfacing	T	75*	C	2
Interstate One-Half Percent Minimum	T	75-90*	C	2 a/
Primary	T	75*	C	4
Secondary	T	75*	C	4
Urban	T	75*	C	4
Forest Highways	T	100	C	4
Public Lands Highways	T	100	C	4
Economic Growth Center Development Highways	T	75*	C	4
Emergency Relief	T	75-100*	C	3
Territorial Highways	G	100	AB	b/
Northern Mariana Islands	G	100	AB	b/
Northeast Corridor Demonstration Project	G	80-100	AB	c/
Great River Road				
a) On-System	T	75*	C	4
b) Off-System	G	75	AB	b/
Control of Outdoor Advertising	G	75	AB	b/
Safer Off-System Roads	G	75*	AB	b/
Access Highways to Lakes	G	75	AB	c/
Urban High Density	T	90	C	4
Special Carpool/Vanpool	T	75	AB	c/
Bridges on Federal Dams	T	100	C	-
Demonstration Projects--Railroad Highway Crossings	2/3 T 1/3 G	95	AB	c/
Special Bicycle Program	1/2 T 1/2 G	75	AB	c/
Overseas Highway	T	70	AB	d/
Access Control Demonstration	T	75	C	4
Bypass Highway Demonstration	T	90	C	-
Integrated Motorist Information System	T	90	C	4
Highway Safety Programs (23 USC 402)	T	75*	C	4
Safety Research and Development (23 USC 307(a) and 403)	T	100	AB	c/
Bridge Replacement and Rehabilitation	T	80	C	4
Pavement Marking	T	100	C	4 e/
Hazard Elimination	T	90	C	4
Rail-Highway Crossings	T	90	C	4
National Maximum Speed Limit	T	75	AB	b/
Schoolbus Driver Training	T	75	C	4
Innovative Project Grants	T	75	AB	b/
Accident Data	T	100	AB	c/
Highway Safety Education and Information	T	100	AB	d/

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

a/ Interstate one-half percent minimum funds are available for 2 years if used for Interstate purposes, for 4 years if transferred for use on other Federal-aid systems.

b/ Authorizations are available for appropriation for multiple fiscal years. Once appropriated, the funds are available as specified in the Appropriation Act.

c/ Authorizations are available for appropriation for one fiscal year only. Once appropriated funds are available as specified in the Appropriation Act.

d/ Authorizations are available for appropriation without time limit.

e/ Pavement Marking authorizations are available for 4 years; however, if not used by States in 2 years, they are withdrawn and reallocated to other States.

APPENDIX C-1

Apportionment Formulas

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

Fund	Factors	Weight	Statute*	Minimum Apportionment
Primary System	Area	2/9	104(b)(1)	1/2 percent (except for D.C.)
	Rural Population	2/9		
	Rural Delivery Route Mileage and Intercity Mail Route Mileage	2/9		
	Urban*** Population	1/3		
Secondary System	Area	1/3	104(b)(2)	1/2 percent (except for D.C.)
	Rural Population	1/3		
	Rural Delivery Route Mileage and Intercity Mail Route Mileage	1/3		
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 Sec. 104(b)(1) of the 1978 STAA
Interstate Resurfacing, Restoration, and Rehabilitation	Interstate System Lane Miles in Use for More than 5 Years	3/4	104(b)(5)(B)	---------------------
	Vehicle Miles Traveled on Interstate System Lanes in Use for More than 5 Years	1/4		
Urban System	Urban*** Population	1	104(b)(6)	1/2 percent
Urban Transportation Planning	Urbanized**** Population	1	104(f)(2)	1/2 percent
National Scenic & Recreational Highway (Great River Road)	Relative Needs	1	148(d)	---------------------
Hazard Elimination	Total Population	3/4	152(e)	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 Crossing	Area	1/12	Sec. 203(d) of the 1973 Highway Act	---------------------
	Rural Population	1/12		
	Rural Delivery Route Mileage and Intercity Mail Route Mileage	1/12		
	Urban Population	1/4		
	Number of Rail-Highway Crossings	1/2		
Bridge Replacement & Rehabilitation	Relative Needs	1	144(e)	1/4 percent (8 percent maximum)

* 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 C-2

Allocated 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).

Fund	Distribution
Emergency Relief	Project by project.
Control of Outdoor Advertising	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.
Priority Primary*	High-cost projects which require long time periods for their construction.
Pavement Marking Demonstration	Total paved mileage excluding Interstate.

* The 1978 STAA earmarked part of the primary apportionment for use on priority primary routes.

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 most of the laws that govern the Federal highway program. These laws are those substantive provisions that are permanent and need not be reenacted in each new highway act (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 provisions 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 1978 Highway Act) is presented below to familiarize the reader with its subject matter.

For various reasons, certain provisions of a substantive nature have not been incorporated into Title 23, but remain in effect as still valid sections of previous acts. Thus, Title II of the Federal-Aid Highway Act of 1956 still controls the operation of the Highway Trust Fund, Section 203 of the Federal-Aid Highway Act of 1973 remains the source law for the railroad-highway crossing safety program, etc. In addition, codification into titles is not practiced governmentwide. For example, the Urban Mass Transportation Act of 1964 is still the primary source law for the major Federal mass transportation assistance program.

Chapter 1.--FEDERAL-AID HIGHWAYS

Section	Title
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.

Section	Title
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.	Interstate System resurfacing.
120.	Federal share payable.
121.	Payment to States for construction.
122.	Payment to States for bond retirement.
123.	Relocation of utility facilities.
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.	Highway bridge replacement and rehabilitation program.
145.	Federal-State relationship.
146.	Carpool and vanpool projects.
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.	Hazard elimination program.
153.	Repealed.
154.	National maximum speed limit.
155.	Access highways to public recreation areas on certain lakes.
156.	Highways crossing Federal projects.

Chapter 2.--OTHER HIGHWAYS

Section	Title
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.
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.	Territorial highway program.
216.	Darien Gap Highway.
217.	Bicycle transportation and pedestrian walkways.
218.	Alaska Highway.
219.	Safer off-system roads.

Chapter 3.--GENERAL PROVISIONS

Section	Title
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.

Chapter 4.--HIGHWAY SAFETY

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