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# The Transportation Equity Act for the 21st Century (TEA21) and the Federal Budget

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(name redacted)
Specialist in Transportation
Economics Division

## ABSTRACT

TEA21 creates a new and complex environment for federal transportation policy. This report discusses the dynamics of the new relationship between federal spending for surface transportation, the highway trust fund, and the budget. The report also focuses on the possible effects of revised budget procedures for all transportation programs, not just programs reauthorized by TEA21. This report will be updated as legislative activity warrants.

# The Transportation Equity Act for the 21st Century (TEA21) and the Federal Budget

## Summary

The Transportation Equity Act for the 21st Century (P.L. 105-178)(TEA21) changes the relationship between the highway trust fund and the federal budget process. Spending for highway programs is now linked directly to annual revenue collections for the highway trust fund. Core highway and mass transit program funding has been given special status in the discretionary portion of the federal budget by virtue of the creation of two new budget categories. As a result, highway and transit programs become similar to entitlement programs during the period FY2000 through FY2003.

From the perspective of the authors of TEA21 the Act creates a virtual "firewall" around highway and mass transportation spending programs. That is, the levels of funding enunciated in the Act are described as a "transportation discretionary spending guarantee." The funding guarantees are set up in a way that makes it difficult for funding levels to be altered as part of the annual budget/appropriations process.

The budget system initiated by TEA21 could be viewed as an experiment in federal budgeting. The outcome of the experiment will obviously play an important role in determining how federal transportation programs will operate in the future. The change in budget treatment of the highway trust fund has implications for spending not only on highways and mass transit, but may have an effect on the availability of annual funding for other transportation and discretionary budget programs. TEA21's budget provisions expire at the end of FY2003. As a result, Congress will be dealing with transportation budget issues again in the not too distant future.

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# The Transportation Equity Act for the 21st Century (TEA21) and the Federal Budget

The Transportation Equity Act for the 21st Century (P.L. 105-178)(TEA21) is the provisional end point of a decade long congressional debate about the relationship between the highway trust fund and federal spending for highway, highway safety, and transit programs.[1] The Act adopts the perspective of those who believe that the existence of the highway trust fund should give federal highway and transit program spending special status within the federal budget. TEA21 does not take the trust fund off-budget as many of the supporters of this position had sought during the last few years.[2] Rather, the Act creates two new categories within the federal discretionary budget. A new highway category provides spending for core highway programs at a level dictated by revenue accruing to the highway account of the fund. The authors of TEA21 assert that this arrangement creates a so-called "firewall" around the core highway program. A new transit category also provides a firewall for core transit programs, but, unlike core highway programs, these funds are not subject to annual adjustment based on revenue accruing to the mass transit account of the fund. While firewalls are the term of art used in the discussion of the TEA21 budget provisions it is important to recognize that this is not a budget term per se.

A net effect of linking trust fund revenues to spending for the highway, highway safety, and transit programs is a dramatic increase in spending for these programs. TEA21 authorizes funding at a level of almost $218.0 billion for the period FY1998 through FY2003. Of this total $177 billion is provided for a broad range of highway and highway safety programs and just under $41.0 billion is provided for transit programs.[3] The total TEA21 authorization is about 40% more than what had been provided in the previous 6-year program authorization, ISTEA (Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240). Of the total TEA21 authorization, $198.0 billion is guaranteed, that is, these funds are not subject to reduction as part of the annual budget/appropriations process (the mechanics of the guarantee will be explained later in this report).

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[1]This report discusses TEA21 as amended by the Technical Corrections to Transportation Equity Act for the 21st Century (Title IX, P.L. 105-206)

[2]For a historical discussion of congressional attempts to change the budget treatment of trust funds see: U.S. Library of Congress. Congressional Research Service. *Transportation Trust Funds and the Budget.* by (name redacted). CRS Report 98-63.

[3]For the purposes of this report, the highway program refers to spending for all activities funded through the highway account of the highway trust fund. This includes monies for highways, highway safety and a wide range of other activities. Transit refers to federal mass transportation programs, which includes aid to bus systems, subway systems, etcetera.

# Background

## Highway Trust Fund Origins

The highway trust fund consists of two separate accounts — highway and transit — which are sometimes mistakenly referred to as separate trust funds. In practice, the highway account and the transit account are discussed as though they were separate entities, with the highway trust fund being synonymous with the highway account.

The highway trust fund is the oldest and largest of the transportation trust funds. The fund was created by a separate revenue title in the Federal-Aid Highway Act of 1956 (1956 Act) (P.L. 84-627). The 1956 Act provided funding for construction of the now virtually complete Dwight D. Eisenhower System of Interstate and Defense Highways. In addition, the 1956 Act provided some funding for other federal highway programs.

Over the last 40 plus years, the highway trust fund and the federal programs it supports have been changed numerous times.[4] In almost every instance, Congress has chosen to expand the scope of the federal highway program. At various times over the same period Congress has also chosen concomitantly to increase the revenue stream into the trust fund by raising federal excise taxes on motor fuels. The most recent change in the structure of the federal highway program is TEA21. TEA21 also reauthorizes the trust fund revenue system through FY2005.

The transit account was created by the Surface Transportation Assistance Act of 1982 (P.L. 97-424). The transit account gave the transit industry a consistent federal funding source for capital spending on new and rehabilitated infrastructure and for other purposes, such as operating assistance funding. TEA21, in line with recent year appropriations legislation, eliminates operating assistance for all urban areas with populations of 200,000 or more and refocuses these funds on capital related activities.

The highway trust fund is financed by sales taxes on tires, trucks, buses, and trailers as well as truck usage taxes, but approximately 90% of trust fund revenue comes from excise taxes on motor fuels.[5] The majority of the motor fuel revenue dedicated to the trust fund is derived from an 18.4 cents per gallon tax on gasoline of which 18.3 cents is dedicated directly to the highway trust fund. The highway account receives an allocation equivalent to 15.44 cents of the tax and the transit account receives the revenue generated by 2.86 cents of the tax. The remaining 0.1 cents goes into the leaking underground storage tank (LUST) trust fund.

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[4]For a more detailed history of the trust fund see: U.S. Library of Congress. Congressional Research Service. *Federal Excise Taxes on Gasoline and the Highway Trust Fund: A Short History*. CRS Report 97-853E. by Louis Alan Talley.

[5]For a discussion of federal transportation fuel taxes see: U.S. Library of Congress. Congressional Research Service. *Transportation Fuel Taxes, Legislative Issues, and the Transportation Equity Act.* CRS Report 98-555E. by (name redacted).

## Transportation Budget Terminology

Transportation budgeting uses a confusing lexicon (for those unfamiliar with the process) of budget authority and contract authority — the latter, a form of budget authority. Contract authority, provides obligational authority for the funding of trust fund financed programs, such as the federal-aid highway program. Prior to TEA21, changes in spending in the annual transportation budget component had been achieved in the appropriations process by combining changes in budget/contract authority and placing limitations on obligations. The principal function of the limitation on obligations is to control outlays in a manner that corresponds to congressional budget agreements.

Contract authority is tantamount to, but does not actually involve, entering into a contract to pay for a project at some future date. Under this arrangement, specified in Title 23 U.S.C., which TEA21 amends, authorized funds are automatically made available to the states at the beginning of each fiscal year and may be obligated without appropriations legislation. Appropriations are required to make outlays at some future date to cover these obligations. As will be discussed, TEA21 greatly limits the role of the appropriations process in core highway and transit programs because the Act sets the limitation on obligations level for the period FY1999 through FY2003.

Highway and transit grant programs work on a reimbursable basis: states pay for projects up front and federal payments are made to them only when work is completed and vouchers are presented, perhaps months or even years after the project has begun. Work in progress is represented in the trust fund as obligated funds and although they are considered "used" and remain as commitments against the trust fund balances, they are not subtracted from balances. Trust fund balances, therefore, appear high in part because funds sufficient to cover actual and expected future commitments must remain available.

Both the highway and transit accounts have substantial short- and long-term commitments. These include payments that will be made in the current fiscal year as projects are completed and, to a much greater extent, outstanding obligations to be made at some unspecified future date. Additionally, there are unobligated amounts that are still dedicated to highway and transit projects, but have not been committed to specific projects.

Two terms are associated with the distribution of contract authority funds to the states and to particular programs. The first of these, apportionments, refers to funds distributed to the states for formula driven programs. For example, all national highway system (NHS) funds are apportioned to the states. Allocated funds, are funds distributed on an administrative basis, typically to programs under direct federal control. For example, federal lands highway program monies are allocated; the allocation can be to another federal agency, to a state, to an Indian tribe, or to some other governmental entity. These terms do not refer to the federal budget process, but often provide a frame of reference for highway program recipients, who may assume, albeit incorrectly, that a state apportionment is part of the federal budget per se.

# TEA21 Budget Provisions

## Discretionary Spending Guarantees (Firewalls) and Limitations on Obligations

Transportation is Function 400 in the annual unified congressional budget. It is also considered part of the discretionary budget. Highway and transit funding are the largest components of this budget category, and can account for 60% - 70% of total federal transportation spending in any given year. As mentioned previously, most highway, and the majority of transit, programs are funded with contract authority. This is very significant from a budgeting standpoint. Contract authority can be thought of as preexisting budget authority. Where most federal programs require new budget authority as part of the annual appropriations process, transportation appropriators are faced with the opposite situation. That is, the authority to spend already exists and the mechanism to obligate is also in place. Transportation appropriations provide a mechanism to expend these funds. What this has meant in the past for transportation appropriations subcommittees is that budget goals set in congressional budget resolutions could only be met by limiting actual outlays. The mechanism used to accomplish this is the limitation on obligations.

Authority to set a limitation on obligations for contract authority programs gave appropriators considerable leeway in allocating funds between the various federal transportation activities in function 400, which includes agencies such as the Coast Guard and the Federal Aviation Administration. In addition, the inclusion of the highway and transit programs and their trust fund generated revenue streams in the discretionary budget and provided appropriators with some additional flexibility as part of the annual process by which available funds were allocated amongst the 13 standing appropriations subcommittees in the House and the Senate.[6]

TEA21 changes this procedure in two ways. First by creating new budget categories and second by setting statutory limitations on obligations. The Act amends the Balanced Budget and Emergency Deficit Control Act of 1985 to create two new budget categories: highway and mass transit. The Act further amends the budget process by creating a statutory level for the limitation on obligations in each fiscal year from FY1999 to FY2003. In addition, TEA21 provides a mechanism to adjust these amounts in the highway account, but not the transit account, to correspond with increased or decreased receipts in highway generated revenues.

The net effect of the creation of these budget categories is a predetermined level of funding for core highway and transit programs, referred to in TEA21 as a discretionary spending guarantee. These categories are separated from the rest of the discretionary budget in a way that prevents the use of funds assigned to these categories for any other purpose. These so called "firewalls" are viewed, in the TEA21 context, as guaranteed and/or minimum levels of funding for highway and

[6]For a detailed discussion of the appropriations process see: U.S. Library of Congress. Congressional Research Service. *The Congressional Appropriations Process: An Introduction.* CRS Report 97-684 GOV. By (name redacted).

transit programs. Additional funds above the firewall level can be made available for highway and transit programs through the annual appropriations process. TEA21, in fact, provides additional authorizations of approximately $15 billion in highway money and $5 billion in transit money above the firewall level.

## Revenue Aligned Budget Authority

TEA21 provides a link between the highway generated revenues that flow into the highway account and highway spending. This relationship has long been sought by advocates of increased highway spending who have contended that highway user fees should be available only for highway programs.

The Act requires that the Secretary of Transportation make an annual evaluation of revenues into the highway account during the previous fiscal year vis-a-vis spending authorized within the highway firewall for the new fiscal year. If revenues go up, program spending is increased. Conversely, spending can go down if revenues go down. The Act uses a formula to determine the direction and amount of highway funding adjustment. This mechanism is employed beginning in FY2000 and an annual computation is required on October 15$^{th}$ of each successive fiscal year through the life of the Act.

If a funding adjustment is required, an apportionment is made to the core highway programs in each state. In addition, apportionments are made to other federal aid highway and highway safety programs. Finally, funds are reserved on a proportional basis for programs allocated by the Federal Highway Administration (FHWA), such as the federal lands highway program.

Both the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) predict that revenues to the highway account will grow at a level that exceeds the highway authorization provided within the highway firewall. The OMB estimates are for somewhat more growth than those projected by CBO. By one analysis, looking at a best case scenario (best case from the perspective of an analysis that favors additional spending) the revenue alignment provisions of the bill could provide as much as $3.5 billion in additional contract authority for core highway programs during the life of the legislation.[7]

## Enforcement Guarantee

The authors of TEA21 were concerned that some Members of Congress might, at some future time, try to reduce highway and transit spending. TEA21, therefore, includes a provision in section 8101 that amends Rule XXI of the House of Representatives to allow a point of order challenge to any legislation, of any type, that might seek to reduce the limitation on obligations for highways and transit during the life of the Act. As will be discussed later in this report, point of order language also seems to extend to individual programs and projects, based on House

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[7] *The Transportation Equity Act for the 21$^{st}$ Century: An Analysis by the American Road & Transportation Builders Association.* American Road & Transportation Builders Association. July 1998. p. 2.

consideration of FY1999 transportation appropriations legislation. The existence of the point of order will make it very difficult for any Member to seek a reduction in highway and transit spending in the House, regardless of reason. It should be pointed out, however, that the House does waive its rules from time to time. There are no provisions in the Act affecting Senate rules.

## Offsets

The House version of what became TEA21, H.R. 2400, included a provision that required that the final act identify specific spending offsets to comply with the Balanced Budget Act of 1997. The Act adopts this provision and after considerable debate Congress settled on two basic sources for budget offsets. The primary source of these is a provision that eliminates veterans' benefits for smoking related illness. This source provides approximately $15.4 billion in offsetting budget authority. There was considerable controversy associated with this offset, because it was opposed by veterans' groups and because the dollar amount of the offset is an estimate based on the unknown cost of a benefit that had not yet been adjudicated.[8]

The second significant offset is a reduction in title XX, Social Services Block Grants (42 USC 1397b(c)). This offset provides approximately $2.6 billion by reducing authorizations for this program in FY2001, FY2002, and FY2003. This offset is also controversial and was opposed by supporters of the block grant program.[9]

The offset provisions in TEA21 provide the necessary funds to meet the budget agreement for highway and transit programs within the firewalls. TEA21, as mentioned earlier, provides $15 billion in authorizations for highways and $5 billion for transit that are above the firewall limits. Any spending of these funds accomplished in the annual appropriations process must be accompanied by an additional offset in the discretionary budget category. During final consideration of TEA21 it was suggested in many quarters that this need for further offsets will make appropriation of these funds difficult.

## Highway Trust Fund Operations

TEA21 made basic changes in the operation of the trust fund. Primary among these is a provision that precludes the payment of interest on any unexpended balance in the trust fund effective September 30, 1998. The payment of interest was always a controversial element of the trust fund process. Since the interest payments were made by the Treasury on funds held by the Treasury, they were viewed by many as nothing more than an intergovernmental fund transfer. Interest has for many years been a significant source of income for the trust fund and according to some

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[8]The Act also includes provisions that increase certain other veterans benefits. For more information see: U.S. Library of Congress. Congressional Research Service. *Veterans and Smoking-Related Illnesses: Congress Enacts Limits to Compensation.* By Dennis W. Snook. CRS Report 98-373 EPW.

[9]For a discussion of the Title XX program see: U.S. Library of Congress. Congressional Research Service. *Social Services Block Grants*. by (name redacted). CRS Report 94-953 EPW.

estimates was a principal reason for the continued large unexpended balance in the fund. As can be seen in the appendix, the highway and transit accounts received interest of $1.44 billion in FY1997 alone.

Another major change is the elimination of much of the unexpended balance in the highway account (referred to by some inaccurately as the "surplus"). Effective September 30, 1998 the balance in the account is reduced to $8.0 billion. The unexpended balance above this amount reverts to the Treasury's general fund account. The $8 billion amount is the sum that allows the trust fund to meet its Byrd Amendment mandated level of fiduciary responsibility[10] and provide a small additional cushion for future, as yet unknown, emergencies that might otherwise drain the fund.

## Highway Trust Fund Balances

The changes made by TEA21 do not eliminate the potential for growth in the unexpended balances. The previously stated core principal of TEA21 is the concept that trust fund revenues should drive spending. For a couple of reasons this link is likely to lead to new growth in the unexpended balance.

Highway and transit programs are slow spending programs. What this means is that actual outlays for a project may not occur until some time after the contract authority for the project was made available. This lag can be a period of years for some complex projects. This lag, by itself, will cause a growth in the unexpended balance exclusive of the annual adjustments required by the revenue aligned budget authority provisions. In addition, the authors of TEA21 sought to reduce the need for offsets by spreading outlays for some programs like the high priority projects over the life of the bill. This built in lag will also contribute to a growth in the unexpended balance.

The unexpended balance in the transit account is not subject to any immediate reduction. The existing unexpended balance in the fund is crucial to the higher spending levels for transit found in the Act. In most years, TEA21 authorizes more transit spending than the transit account annual revenue stream could accommodate. This increased spending, therefore, is accommodated by the existing unexpended balance and by funding a significant portion of the transit program from Treasury general funds.

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[10]The Byrd Amendment to the Federal-Aid Highway Act of 1956, as amended, restricts the growth of new funding commitments to a level which is not to exceed the current year's unexpended balance, plus projected income to the highway account for the following two fiscal years. The Byrd Amendment is an automatic device that requires no additional congressional action to implement. As a result of TEA21 the transit account is now subject to the same process.

# TEA21 Funding Levels[11]

TEA21 creates the largest surface transportation program in U.S. history. For the most part, however, it does not create new programs. Rather, it continues most of the highway and transit programs that originated in its immediate predecessor legislation, ISTEA. Programmatically, TEA21 can be viewed as a refinement and update of the ISTEA process. There are a few new funding initiatives in the Act, such as the border infrastructure program, but the vast majority of funding is reserved for continuing programs.

**Table 1: TEA21 Authorizations: FY1998 - FY2003**
(thousands of dollars)

| | FY1998[a] | FY1999 | FY2000 | FY2001 | FY2002 | FY2003 | Total |
|---|---|---|---|---|---|---|---|
| Highway Firewall | 21,841[a] | 25,883 | 26,629 | 27,158 | 27,767 | 28,233 | 157,511 |
| Highway Exempt (Firewall) | 739[a] | 739 | 739 | 739 | 739 | 739 | 4,434 |
| Highway Firewall Total | NA | 26,622 | 27,368 | 27,897 | 28,506 | 28,972 | 161,945 |
| Additional Highway Authorization[b] | 2,045[b] | 2,553 | 2,564 | 2,654 | 2,504 | 2,634 | 14,945 |
| **Highway Total** | 24,625 | 29,175 | 29,932 | 30,542 | 31,010 | 31,606 | 176,890 |
| Transit Firewall | 4,644[a] | 5,365 | 5,797 | 6,271 | 6,747 | 7,226 | 36,250 |
| Additional Transit Authorization | —— | 976 | 1,013 | 1,003 | 990 | 968 | 4,950 |
| **Transit Total** | 4,644 | 6,341 | 6,810 | 7,274 | 7,737 | 8,194 | 41,000 |
| TEA21 Firewall Total | NA | 31,987 | 33,165 | 34,168 | 35,253 | 36,198 | 198,195 |
| **TEA21 Total** | 29,269 | 35,516 | 36,742 | 37,816 | 38,747 | 39,800 | 217,890 |

[a] Firewalls do not apply in FY1998

[b] Additional Highway Authorizations contain numerous programs outside the core highway programs, including items such as Maglev and light density rail

Source: P.L. 105-178, P.L. 105-206, and www.fhwa.dot.gov/tea21/

## Core Highway Programs

There are several groupings of highway programs within the highway firewall. Most of the funding is reserved for the major federal aid highway programs, which can be thought of as the core programs. These programs are: national highway system

[11]This section provides a brief overview of the distribution of TEA21 funding amongst eligible transportation programs. Additional details about individual programs can be found at http:www.dot.gov/tea21/

(NHS), interstate maintenance (IM), surface transportation program (STP), bridge replacement and rehabilitation, congestion mitigation and air quality improvement (CMAQ), federal lands, high priority projects (former demonstration project category), Appalachian roads (formerly ineligible for contract authority), minimum guarantee (most of the funding for this activity), and national corridor planning and border infrastructure (new program). All of these programs are subject to apportionment on an annual basis.

There is a second category of core highway funding within the firewalls. This so called "exempt" category consists of two elements; an additional annual authorization of minimum guarantee funding ($639 million per fiscal year) and emergency relief ($100 million per fiscal year). These funds are not subject to the annual limitation on obligations.

**Minimum Guarantee.** During the reauthorization debate leading to enactment of TEA21 a major issue of contention was the so-called equity debate. The debate focused on the fact that some states, known as donor states, contributed far more in taxes to the trust fund than they received back in federal aid highway assistance.

TEA21, like ISTEA before it, takes a compromise position on this issue. State revenue returns are increased from ISTEA levels. TEA21 includes a minimum guarantee of 90.5% of a state's revenue contribution to the highway account of the highway trust fund. For some donor states this guarantee will result in percentage funding increases well above those that would be provided alone by the overall 40% increase in spending realized by TEA21 over ISTEA.

In reality this 90.5% return is unlikely to be an absolute on a year-to-year basis. There are several reasons for this. First, there are significant concerns about the Internal Revenue Service data that is used to determine the annual state revenue contribution. These data were not previously envisioned as a basis for the formula distribution of federal funds. Some states have already indicated that they believe the data undercounts their contribution to the highway account. Second, there are administrative take downs for certain items such as FHWA operating costs, that are part of the total limitation on obligations that will be unavailable during the state apportionment process. Third, many observers are likely to note the relative total surface transportation funding disparities between states that will exist because of the distribution of mass transit funds, some of which may be transferred to highway activities. This will occur regardless of the fact that trust fund revenues directed to the mass transit account are not part of the minimum guarantee. Finally, the Act requires the use of the most recent data in its annual program formula distributions. Many of these variables will change during the life of the Act, especially after the year 2000 census. The 90.5% process set up in the Act uses current data. As program distribution changes, the role of the minimum allocation process is likely to grow in relative importance.

The minimum guarantee computation is obviously complicated and likely to engender some criticism. Any criticism is likely to be directed at the FHWA which is the only organization that has access to all the data required for the formula and minimum allocation distributions. The TEA21 funding calculation is made first for apportioned programs using all the formula variables associated with each program.

The state shares derived from this process are then adjusted up or down to reach the 90.5% guarantee level, which equates, at this point in the calculation, to a comparable percentage guarantee of apportionments rather then of actual dollar revenue contributions to the highway account.

### Highway Safety and Other Highway Category Programs

The highway firewalls also include a number of highway and highway safety contract authority programs that are normally viewed as being separate from the core federal aid highway program. Included in this category are highway safety programs administered by the National Highway Traffic Safety Administration (NHTSA), motor carrier programs administered by FHWA, intelligent transportation systems (ITS) programs, and several different research activities. While each of these programs receives only a small amount of funding vis-a-vis federal aid highway programs such as the national highway system, they are nonetheless significant. Highway safety activities will, for example, receive $1.7 billion over the life of TEA21.

### Transit

The total authorization for transit in the Act is $41 billion. The firewall, however, only guarantees $36.2 billion. In addition, the transit firewall does not guarantee entire programs as is the case in the highway firewall. For example, the two largest transit programs — urbanized area formula grants and transit capital investment grants — have significant levels of authorization that are outside the firewall.

Another distinction between the highway and transit firewalls is the source of program funding. A significant portion of the transit guarantee, $6.65 billion is provided not by the mass transit account, but by U.S. Treasury general funds. This distribution appears to respond first to the historical role general funds have played in financing this program, and second to a realization that revenues to the mass transit account would be insufficient to fund the enlarged TEA21 transit program.

## Transportation Budget Process Issues

### FY1999 and Future Appropriations for Highway and Transit Programs

TEA21 changes the role of the House and Senate Appropriations and Budget Committees in determining annual spending levels for highway and transit programs. As mentioned earlier, the Appropriations Committees are precluded from their former role of setting an annual level of obligations. In addition, it appears that the Appropriations Committee, at least in the House, are precluded, at least in part, from exercising what some Members view as their traditional option of changing spending levels for any program or project within the firewalls.

The new relationship is not of the appropriators' making. As the FY1999 transportation appropriations bill works its way through Congress, there has been criticism of the new process from appropriators, particularly in the House:[12]

> The Committee has done the best it can considering the new firewalls. However, the Committee is concerned that this new legislation skews transportation priorities inappropriately, by providing a banquet of increases to highway and transit spending while leaving safety-related agencies such as the Coast Guard and FAA to scramble for remaining crumbs. ... The Committee has also been unable to consider increases above guaranteed levels for highways and transit programs, because it would have required even further reductions in critical FAA and Coast Guard programs.[13]

Throughout the process that led to TEA21, similar sentiments were expressed by individual Members of the Committees on Appropriations in both the House and the Senate.[14] This sentiment is also shared by individual Members of the Budget Committees in both bodies, who view the new budget categories as a potential balkanization of the unified budget process.[15] It should be pointed out, however, that other Members of the Appropriations/Budget Committees voted for and support the TEA21 budget process.

Members of the authorizing Committees take a counter, and for the moment, majority view. From their perspective, the new budget structure provides the necessary discipline to insure that transportation fuel taxes are spent for their intended purpose. As a result, highway and transit program funding levels have been virtually removed from the overall debate about the discretionary budget and instead tied to revenues.

> The fact is that TEA21, made more funds available for remaining discretionary programs. If certain non-firewall transportation programs remain underfunded, the cause is not TEA21, but rather decisions by the appropriators to spend money elsewhere.[16]

The appropriators can still appropriate TEA21 funds authorized outside the firewalls. As can be seen in Table 1 these funds are a relatively small portion of the total TEA21 authorization, however. Whether there is any incentive for the appropriators to appropriate these funds is an open question in light of the overall discussion of the restrictions placed on the budget/appropriations process by the

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[12]For a discussion of FY1999 transportation appropriations legislation see: U.S. Library of Congress. Congressional Research Service. *Appropriations for FY1999: Department of Transportation and Related Agencies.* CRS Report 98-208 STM. by Duane Thompson.

[13]U.S. Congress. House. Committee on Appropriations. Department of Transportation and Related Agencies Appropriations Bill, 1999. Report 105-648. July 24, 1998. p. 4.

[14]For example, see: Eilperin, Juliet. Highway Bill Lets Shuster Play His Trump Card. *The Washington Post.* August 6, 1998. p. A17.

[15]Ognanovich, Nancy and Bolen, Cheryl. GOP Leadership to Meet on ISTEA; Funding Plan Attacked by Budget Hawks. *Daily Report for Executives.* May 13, 1998. p. A-45.

[16]Congressional Record. House. July 29, 1998. p. H6738.

firewall system. It is instructive that FY1999 appropriations legislation under consideration at this time contains no additional funding from these sources.

This point-counterpoint debate may constitute the opening salvo of a new chapter in the long standing struggle between appropriators and authorizors over control of federal transportation programs. Although appropriators apparently lost much of their authority over spending within the firewalls, the situation could change in the years ahead. The consideration of the FY1999 transportation appropriations bill on the House floor raised a number of issues vis-a-vis what appropriations can, or cannot, control.[17] This debate was particularly telling in regards to use of the point-of-order provisions to prevent deletion of a project listed in the Act.[18] As a result of the actions on the House floor, the House Committee on Rules is expected to hold a meeting on these issues in September 1998.[19] The outcome of these discussions will likely have considerable influence on how the new TEA21 budget environment operates in the years ahead.

The outcome of this debate is also of great concern to the business and industry supporters of increased highway and transportation spending. These groups played a major role in pushing for the changed budget treatment of the highway trust fund. They are wary of possible attempts to breach the firewalls and are already warning their memberships to be vigilant in lobbying for the firewall system.[20]

Other groups such as the Concord Coalition have long opposed giving the highway trust fund special budget treatment.[21] From the perspective of these groups creating special categories within the federal budget distorts the overall view of how and/or whether the budget is in surplus or deficit. While groups such as the Concord Coalition have not yet taken a specific position on the repeal of the firewall system, it is possible that some, as of yet, unforseen budget conditions (i.e., a return to a deficit) could cause more activity on their part.

## Future Appropriations for non-TEA21 Transportation Programs

Chairman Shuster and other Members of the House Transportation and Infrastructure Committee have the stated position that all transportation trust fund programs should be outside the discretionary budget.[22] The other transportation trust funds had been part of proposed off-budget legislation considered in the 105th Congress. During consideration of the legislation that became TEA21 these trust funds were removed from the bill, apparently because including them further

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[17]*Congressional Record*. July 29, 1998. p. H6706 - H6739.

[18]Eilperin, Juliet. p. A17.

[19]*Washington Letter on Transportation.* Final Decisions on Year Ahead are Put on Hold. August 15, 1998. p. 3.

[20]American Road & Transportation Builders Association. p. 4.

[21]http://www.concordcoalition.org/news/releases/980323_transport_letter.html

[22]Shuster, Bud. Putting Trust Back in Trust Funds. http://www.house.gov/transportation/hotissue/tfobhill.htm

complicated the already controversial budget provisions of the bill, and because they funded activities not seen as germane to the programs authorized by TEA21.

It is widely believed that the budget treatment of the airport and airway trust fund (aviation trust fund) will become an issue in the 106th Congress. The congressional supporters of building firewalls around the aviation trust fund are often essentially the same Members that actively supported the change for the highway trust fund. There is also a possibility that Federal Aviation Administration reauthorization legislation will be required in the 106th Congress, thereby providing a legislative vehicle for a possible change.

In addition, the aviation trust fund is expected to have large unobligated balances in the years ahead unless spending from the fund is increased. This situation, combined with the belief in some quarters that FAA spending is constrained by the TEA21 firewalls in the appropriations process, may heighten interest in providing some sort of firewall protection for aviation.

Supporters of the Coast Guard are also concerned about the new transportation appropriations environment. The Coast Guard is not funded by a trust fund, and hence cannot claim a user fee base to support an argument for its own budget firewalls. The Coast Guard has a unique status within the transportation budget category because of its wartime role in national defense. It is not unusual for the Coast Guard to receive some funds from military appropriations during the annual appropriations process. It is possible that the Coast Guard will seek additional funding from the military side of the budget in the years ahead if additional funds for transportation do not become available.

Other DOT agencies funded within the transportation component of the budget also operate without trust fund monies. As a result, they too will be affected by the new TEA21 driven appropriations process and may see their respective budgets constrained unless overall funding for the budget transportation component is increased.

The firewall system initiated by TEA21 could be viewed as an experiment in federal budgeting. The outcome of the experiment will obviously play an important role in determining how federal transportation programs will operate in the future. In addition, the firewall system could have implications for the funding of other federal transportation and non-transportation programs. TEA21's budget provisions expire at the end of FY2003. As a result, Congress will be dealing with transportation budget issues again in the not too distant future.

# Appendix

## Balances of the Highway Account of the Highway Trust Fund, FY1988-FY1997 (in millions of dollars)

| | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Tax Revenue During the Period** | | | | | | | | | | |
| Total Tax Revenue | 12,836 | 14,359 | 12,472 | 14,494 | 15,664 | 16,046 | 14,660* | 20,420 | 22,034 | 20,689 |
| **Cash Outlays During the Period** | | | | | | | | | | |
| Total Annual Outlays | 14,038 | 13,603 | 14,375 | 14,687 | 15,518 | 16,641 | 19,011 | 19,472 | 20,018 | 20,871 |
| Net Income Before Interest | -1,201 | 756 | -1,903 | -193 | 146 | -595 | -4,351* | 948 | 2,016 | -182 |
| Interest on Investments | 809 | 776 | 981 | 810 | 909 | 818 | 754 | 547 | 658 | 802 |
| Change in Cash | -392 | 1,532 | -922 | 617 | 1,055 | 223 | -3,597* | 1,495 | 2,674 | 620 |
| **Trust Fund Balances** | | | | | | | | | | |
| Unexpended Balance, Start of Year | 9,412 | 9,019 | 10,551 | 9,629 | 10,246 | 11,301 | 11,524 | 7,927 | 9,421 | 11,658 |
| Change in Cash | -392 | 1,532 | -922 | 617 | 1,055 | 223 | -3,598* | 1,495 | 2,674 | 620 |
| Unexpended Balance, End of Year | 9,019 | 10,551 | 9,629 | 10,246 | 11,301 | 11,524 | 7,926* | 9,421 | 12,095 | 12,278 |

*** The U.S. Treasury failed to credit the trust fund with $1.6 billion in tax revenues collected in FY1994. These revenues have been credited to the FY1995 beginning balance. This accounting situation distorts the FY1994 numbers.**

**Source: U.S. Government. Office of Management and Budget. *Budget of the United States Government,* various years.**

## Balances of the Transit Account of the Highway Trust Fund, FY1988-FY1997 (in millions of dollars)

| | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Tax Revenue During the Period** | | | | | | | | | | |
| **Total Tax Revenue** | **1,277** | **1,269** | **1,395** | **2,485*** | **1,070*** | **1,949** | **2,008** | **2,192** | **2,617** | **3,198** |
| **Cash Outlays During the Period** | | | | | | | | | | |
| **Total Outlays** | **696** | **849** | **879** | **1,054** | **1,268** | **1,916** | **3,364** | **3,179** | **3,336** | **3,663** |
| **Net Income Before Interest** | **582** | **420** | **516** | **1,431** | **-198** | **33** | **-1,355** | **-987** | **-719** | **-465** |
| **Interest on Investments** | **384** | **469** | **581** | **664** | **746** | **710** | **684** | **621** | **665** | **638** |
| **Change in Cash** | **966** | **889** | **1,097** | **2,095** | **548** | **743** | **-672** | **-366** | **-54** | **173** |
| **Trust Fund Balances** | | | | | | | | | | |
| **Unexpended Balance, Start of Year** | **4,202** | **5,168** | **6,057** | **7,154** | **9,249** | **9,797** | **10,617** | **9,945** | **9,579** | **9,525** |
| **Change in Cash** | **966** | **889** | **1,097** | **2,095** | **548** | **743** | **-672** | **-366** | **-54** | **173** |
| **Unexpended Balance, End of Year** | **5,168** | **6,057** | **7,154** | **9,249** | **9,797** | **10,474** | **9,945** | **9,579** | **9,525** | **9,698** |

*** The U.S. Treasury over credited FY1991 tax receipts and applied corrections in FY1992.**

**Source: U.S. Government. Office of Management and Budget. *Budget of the United States Government*, various years.**