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INSIGHT

$7.569 Billion Highway Rescission Approaches

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Current funding for the Federal-Aid Highway Program is authorized through September 30, 2020, by the Fixing America's Surface Transportation Act (FAST Act; P.L. 114-94). However, Section 1438 of the act directs that on July 1, 2020, $7.569 billion of the unobligated balances of highway formula funds apportioned to the states under the law be permanently rescinded.

Rescissions are provisions in law that cancel the availability of previously enacted budget authority before the budget authority would otherwise expire.

Why the Rescission Was Included in the FAST Act

The Highway Trust Fund (HTF), which is supported mostly by taxes on gasoline and diesel, has been receiving insufficient tax revenue and interest to support the authorizations that Congress has passed. Since 2008 Congress has been using transfers, mostly from the Treasury general fund, to make up the shortfalls. The FAST Act transferred $70 billion in Treasury general funds to the HTF.

Under the FAST Act, 92.5% of the funding was authorized to be apportioned among the states by formula on an annual basis for the planning, design, and construction of highway projects. The rescission would, in effect, take back some of this money as well as some funds from older authorization acts. The FAST Act rescission had two purposes. Under congressional budget rules, it lowered the total cost of the five-year bill by $7.569 billion. It also lowered the size of the general fund transfers and related offsets needed to provide the HTF with sufficient balances to support the FAST Act's total authorizations.

When the FAST Act was passed in 2015, it seemed likely that even if Congress did not later block the rescission, the amount of federal highway funds available to the states would not be affected. Federal highway funds are distributed as contract authority subject to an annual obligation limitation rather than annual appropriations. The obligation limitation may mean that a state is unable to use all its contract

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authority in a given year. If each year a state has greater contract authority than it can use under the obligation limitation, the accumulated amount of unusable contract authority can be counted against the amount of the rescission without canceling planned highway work. However, if a state's accumulated balance of unobligated contract authority is less than its rescission amount, the rescission could lead to a real loss of spending.

Not all federal highway funds distributed by formula are subject to the rescission. Highway Safety Improvement Program and Surface Transportation Block Grant Program funds that are suballocated within the states based on population are exempt. Discretionary programs, such as Federal Lands and Tribal Transportation programs, the Transportation Infrastructure Finance and Innovation Act Program (TIFIA), and Federal Highway Administration (FHWA) administrative expenses are also not subject to the rescission.

Rescission Implementation Timeline

September 30, 2019

The rescission is to be distributed across the states based on each state's share of the unobligated balances of contract authority as of September 30, 2019. States that have allowed their balances to build up will bear a larger rescission burden than states that have obligated their apportioned funding more completely. This gave states an incentive to speed up the obligation process by committing federal funds to specific projects in the months prior to September 30, 2019. During October, FHWA determined each state's September 30, 2019, balance and calculated the rescission by state and program.

Early November 2019

FHWA is to release a notice including its calculation of states' shares of the rescission amount, including the rescission amounts for each state by program, in November 2019. By July 1, 2020, each state must take steps to ensure that there are sufficient contract authority balances in each program fund source to satisfy the state's share of the rescission. If the unobligated balances as of September 30, 2019, are insufficient to fulfill the entire $7.569 billion, states will have to obligate less of their FY2020 federal grants to be assured they will have the specified amounts available for rescission in each program subject to Section 1438.

July 1, 2020

Assuming Congress does not repeal Section 1438, the $7.569 billion in contract authority will be canceled and the amounts specified in the FHWA rescission notice will no longer be available to the states.

Implications of the Rescission Process

Because of the long lead times involved in obligating funds to highway projects, states will need to begin implementing the rescission long before the effective date of July 1, 2020. From a budget planning perspective, the important date for the states will be the date of the FHWA's formal rescission notice, likely in early November. Should Congress repeal the rescission after November, the states would have to reverse course again and plan for full funding. This uncertainty as well as the potential loss of funding could disrupt the planning and delivery of highway projects.

The rescission could also have an impact on the upcoming FAST Act reauthorization. Congressional Budget Office (CBO) baseline calculations—estimates of the future spending needed to maintain the Federal-Aid Highway Program at its existing level—are based on the last year of the existing authorization law. As authorized, the rescission would reduce the FY2020 baseline from $46.4 billion to

$38.8 billion. CBO would use this lower figure to project the baseline for future authorizations. Advocates of increased highway spending see the lowering of the FY2020 baseline as not just a cut in the baseline year but also a cut in potential spending increases in future years under any FAST Act reauthorization.