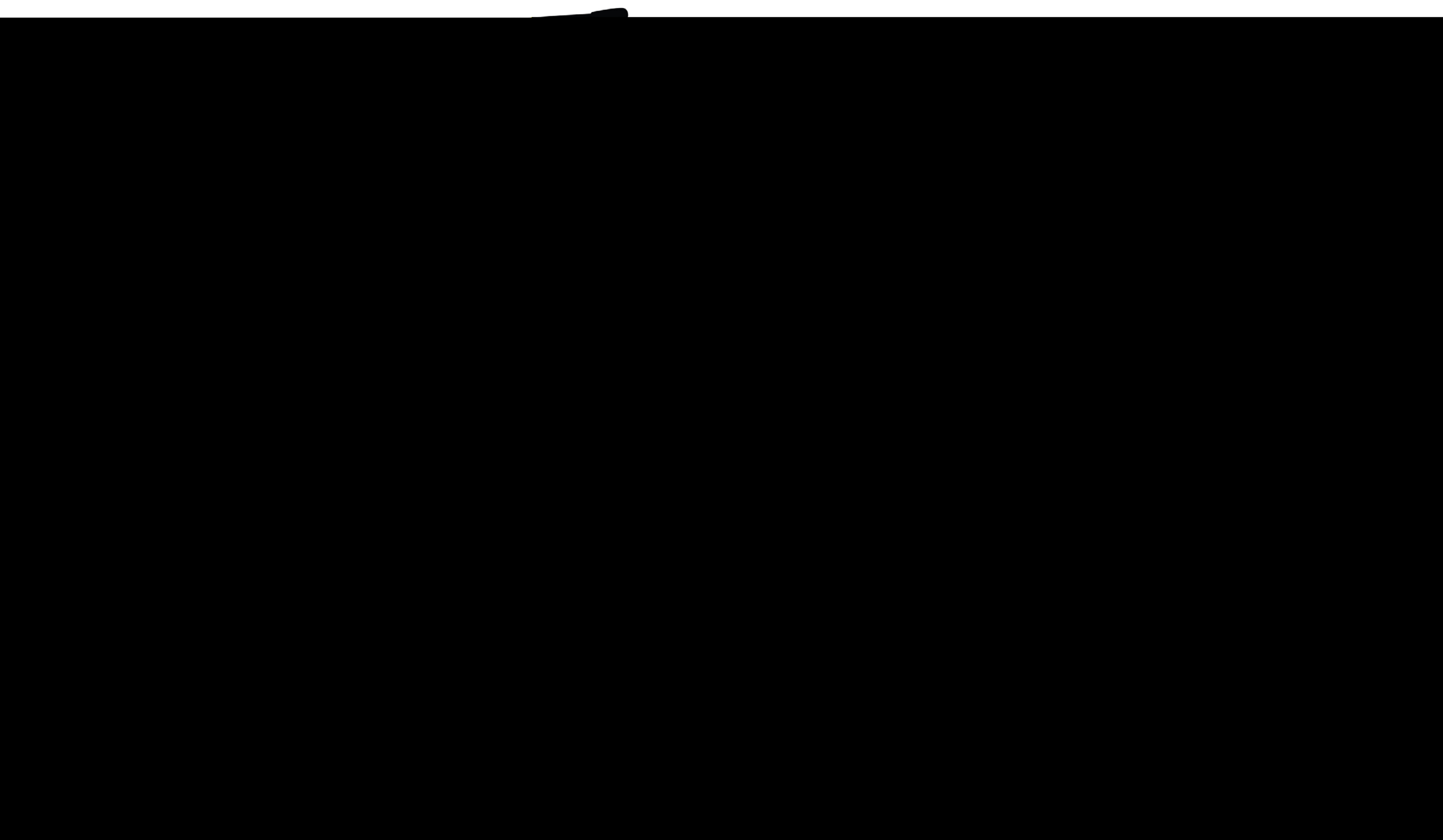
Highway Trust Fund

Eno Center for Transportation



A document similar to this was published by the Federal Highway Administration in November 1998 but now contains significantly outdated information. The Eno Center for Transportation has produced this updated and expanded version. The original document **can be viewed here**.

Questions Addressed

Summary

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Why don’t the Budget Control Act’s spending caps or sequestration affect HTF spending?

Wasn’t the HTF supposed to be at least 90 percent self-sufficient?

Summary

This document updates the Federal Highway Administration's (FHWA) Highway Trust Fund Primer that was released in 1998. This updated document provides basic information about the Highway Trust Fund (HTF), including how the fund works, its sources of revenue and

The Highway Trust Fund

What is the HTF?

The Highway Revenue Act of 1956 (P. L. 84-627) introduced the HTF, the funding mechanism for the Federal surface transportation grant-in-aid program. The HTF was created, in large part, to create a dedicated funding stream to finance the Interstate Highway System. Prior to 1956, while gasoline and diesel excise taxes were collected at the federal level, they were applied to the general fund of the U.S. Treasury and there was no formal relationship between transportation taxes that were collected and federal money that was spent on surface transportation.

The 1956 Act created the budgetary mechanism to ensure that specific highway user excise taxes would be dedicated to the HTF, which is the primary funding stream for the federal highway program. The 1956 Act authorized the HTF through the end of fiscal year 1972.[1] Legislation has periodically extended the imposition of the taxes and their transfer to the HTF. MAP-21 extended the imposition of the user taxes and their transfer to the HTF through September 30, 2016.[2]

The HTF is a financing mechanism established by Congress that accounts for transportation related excise taxes that are collected by the federal government and are hypothecated for expenditure on surface transportation. When the HTF was created, those revenues were dedicated only to highways, but in the 1970s Congress allowed some HTF revenues to fund transit. In 1983, the Mass Transit Account was created within the HTF.[3] Since its creation, a share of the HTF's revenues have been credited directly to the Mass Transit Account. HTF Revenues that are not dedicated to the Mass Transit Account are colloquially referred to as the Highway Account.

What constitutes HTF income?

Excise taxes on highway motor fuel and truck-related taxes on truck tires, sales of trucks and trailers, and heavy vehicle use are dedicated to the HTF. The Mass Transit Account usually receives 2.86 cents per gallon; the Leaking Underground Storage Tank (LUST) Trust Fund[4] usually receives 0.1 cent per gallon. As of October 1, 2014, the 18.4 cents per gallon gasoline tax was split as follows: 2.86 cents per gallon to the Mass Transit Account, 0.1 cent per gallon

1 At the time, the Federal fiscal year began July 1 and ended June 30. The HTF was created effective July 1, 1956, the first day of fiscal year 1957. Under the Highway Revenue Act of 1956, transfer of the proceeds of the various highway user taxes to the HTF would end after June 30, 1972, the last day of fiscal year 1972. Thus the fiscal "life" of the HTF was to be 16 years.

2 A portion of the motor fuel tax (4.3 cents per gallon on most highway fuels) does not expire and will continue to be imposed after September 30, 2016.

3 The Mass Transit Account was established by the Highway Revenue Act of 1982 (Public Law 97-424).

4 The Leaking Underground Storage Tank Trust Fund, administered by the Environmental Protection Agency, funds leaking underground storage tank cleanup activities.

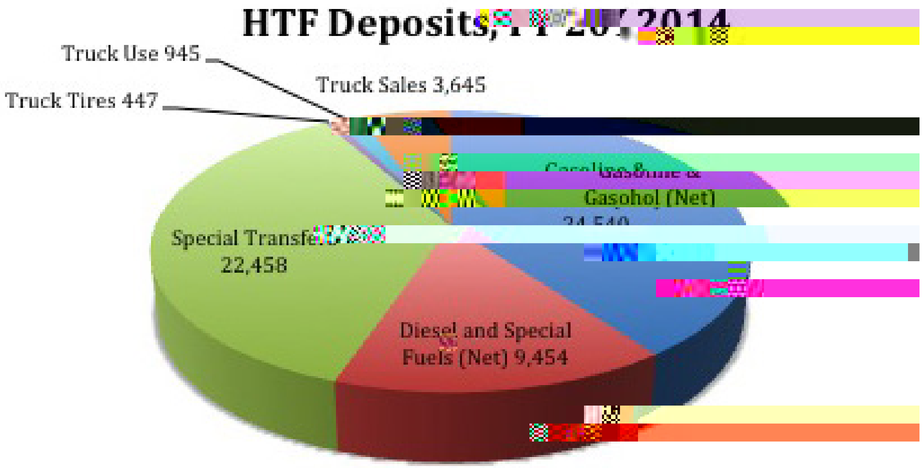
to the LUST Trust Fund, and 15.44 cents to the Highway Account. The Highway Account receives all receipts from non-fuel taxes. More detail can be found in Table 1.

Diesel fuel is taxed at a rate of six cents more per gallon than gasoline. This is because of a change made in the Deficit Reduction Act of 1984 (P.L. 98-369), which decreased the use tax on the heaviest trucks while simultaneously increasing the diesel fuel tax paid by all truckers to raise an equivalent amount of revenue.

The HTF earns interest from investments of the portion of the balance that is not needed for immediate use through U.S. Treasury securities known as “special certificates of indebtedness.” However, from October 1, 1998 through March 18, 2010, HTF balances were invested in non-interest bearing Treasury securities. Although

How do fuel taxes relate to HTF income?

On average, each penny of the Federal motor fuel tax produces over $1.7 billion in revenues annually. Fuel taxes are the largest part of HTF tax income, constituting 87 percent of the Trust Fund's actual tax revenues in FY 2014. (However, the fuel taxes only constituted 55 percent of the Trust Fund's total deposits due to a huge special transfer by Congress in FY 2014 – Congress does not make the special transfers on a regular basis, so one year's transfers can dwarf prior and subsequent years.) The following chart



How does the Treasury Department account for HTF revenues?

Receipts in federal trust funds are accounted for separately from the U.S. General Fund. Each month the Treasury Department estimates the amount of highway-user taxes that will be collected. Based on those estimates, an accounting transaction is made that credits the HTF for the estimated amount of revenue twice a month. The revenue is distributed to the Highway Account, the Mass Transit Account, and the Leaking Underground Storage Tank Trust Fund. This accounting function is executed through crediting non-negotiable securities to the HTF. Periodically, transactions are made to bring the deposits that are originally based on estimates to equal actual tax collections.

What expenses are drawn on the HTF?

The Internal Revenue Code (26 U.S.C. section 9503(c)(1) and (e)(3)) provides that only expenses incurred pursuant to certain laws listed in that section can be paid out of the HTF. That section of the IRC is updated every time a new surface transportation authorization law is enacted to allow authorizations under such authorization law to be drawn from the HTF.

Surface transportation authorization laws create contract authority (a kind of budget authority that can be obligated in advance of appropriations) drawn on the HTF. Once new contract authority becomes available, it can be obligated (usually in cooperation with a state department of transportation or a local mass transit agency or metropolitan planning agency). Congress then enacts an annual appropriations law allowing a certain amount of money to be drawn on the HTF to liquidate those obligations, and eventually, the Treasury Department writes a check or makes a wire transfer drawn on the Trust Fund to liquidate the obligation (an outlay).

New HTF contract authority under the 2012 MAP-21 law averaged $50.5 billion per year, which is in excess of the $37.7 billion in average annual HTF tax receipts and interest over that period. Table 4 at the end of this primer delineates all contract authority created by MAP-21.

How does the HTF operate?

Each fiscal year the HTF begins with the balance that remains from the previous year. Twice a month income from the various highway-related excise taxes is transferred from the Treasury into the Trust Fund account. During the year, a small number of transfers (e.g., to other trust funds in the case of motorboat gasoline and small engine gasoline and special fuel) and tax refunds (e.g., to farmers and others exempt from paying particular fuel or vehicle taxes) are made from the account. Special transfers to the fund are sometimes made by an act of Congress. From the net income, a portion is spent or disbursed during the year; if that amount is less than the net income, the following year's balance will increase. Table 3 shows the financial operations of the HTF in FY 2014.

How are funds transferred between HTF accounts?

Since 1991, provisions in law (principally 23 U.S.C. section 104(f)) allow states to transfer certain amounts of their apportioned highway contract authority to mass transit projects. (The law also allows transit agencies or states to transfer transit money for use on highway projects, but this amount is usually de minimis.) This transfers the administration of the project from the Federal Highway Administration to the Federal Transit Administration. Accordingly, the money is transferred from the Highway Account of the HTF to the Mass Transit Account to await expenditure.

The amount of such "flex" transfers in an upcoming year cannot be predicted with any certainty. The Congressional Budget Office assumes $1.0 billion per year while the Department of Transportation assumes $1.3 billion per year. The actual net amount of such highway to transit transfers in FY 2014 was $1.108 billion.

What is the HTF balance?

Over the lifetime of the Trust Fund, total expenditures have exceeded dedicated taxes and interest earnings. From fiscal years 1957-2014, tax receipts and interest totaled

$1.047 trillion ($1,016.4 billion from tax receipts and $30.6 billion from interest earnings and miscellaneous fees) while outlays totaled $1.082 trillion. Any positive year-end balances in the Trust Fund since 2008 are due to the $65 billion in special transfers enacted by Congress from time to time between September 2008 and August 2014.

Why are positive balances necessary?

Both accounts of the Trust Fund must maintain a positive balance to ensure that prior obligations can be liquidated. Programs financed by the HTF spend out slowly and the amount of revenue needed to liquidate obligations is difficult to accurately forecast. Therefore, withdrawals that are required from the HTF may exceed the HTF's income for any given year. When balances get very low, the need of the Department of Transportation to make hundreds of millions of dollars in payments every business day conflicts with the Treasury Department's practice of only transferring estimated tax receipts into the Trust Fund twice a month.

Therefore, the trust fund must maintain a minimum balance. Safety cushions at the end of a fiscal year equal to $4 billion for the Highway Account and $1 billion for the Mass Transit Account are recommended to ensure that obligations could be liquidated (funds available to reimburse States) during an emergency until Congress acted to reduce future commitments or to increase future revenues.

Positive balances are also necessary to prevent automatic reductions in Trust Fund contract authority under the Byrd and Rostenkowski tests (see below).

the eventual release of cash from the HTF to liquidate contract authority (the outlays) is technically controlled, for the most part,[5] by the Appropriations Committees through the annual obligation limitation and is thus classified as discretionary. The HTF contains the only accounts in the entire federal budget[6], save one, that are split-classified with the budget authority being on the mandatory ledger and the outlays on the discretionary ledger.

The current statutory budget enforcement regime has two different control systems. The control system for mandatory spending (PAYGO) is only triggered by changes in mandatory outlays, not budget authority. The control system for discretionary spending (the spending caps under the Budget Control Act of 2011) only affects budget authority, not outlays. Because of this discrepancy, HTF contract authority and obligation limitations, and outlays, are effectively exempt from both budget control systems.

Sequestration (across-the-board percentage cuts in certain programs) is a tool used to enforce both budget control systems (PAYGO and the spending caps), but since the HTF accounts are exempt from both control systems, the HTF accounts are also almost entirely exempted from sequestration.

Any change in the budgetary treatment of these accounts would require bipartisan agreement between House and Senate Budget and Appropriations committees and the White House, as well as some technical changes in budget law.

Wasn't the HTF supposed to be at least 90 percent self-sufficient?

One of the main purposes of the Congressional Budget Act of 1974 was to restrict the ability of Congress to create new "backdoor spending" (programs funded outside of the annual appropriations process). Section 401 of that law contains an internal prohibition within Congress against bringing up legislation creating new backdoor spending – including contract authority – unless grandfathered into the Social Security or Medicare Trust Funds or unless the money is drawn "from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made). . ." The 90 percent threshold was established in a Senate floor amendment in 1974 by Sen. Sam Nunn (D-GA).

However, the prohibition in section 401 only applies inside Congress and is cumbersome to use. Even if a Member of Congress raises a point of order, it can be waived by a simple majority vote of the House and Senate. And unlike PAYGO or the Byrd test or sequestration, there is no automatic enforcement procedure for section 401 outside the halls of Congress. As a result, the 90 percent self-sufficiency threshold has not prevented the HTF from sliding into insolvency and becoming reliant on special transfers from the general fund that exceed 10 percent of its annual revenues.

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5 A small amount of annual highway contract authority – currently $739 million per year – is exempt from the annual obligation limitation. Its outlays are thus classified as mandatory and so that contract authority is subject to budget sequestration.

6 The Airport Improvement Program is also split-classified and is exempt from PAYGO and the discretionary spending caps.

Table 4: Highway Trust Fund Contract Authority For FY 2013-2014 Under the MAP-21 Law

		House T&I and Senate EPW - Federal Highway Administration		
Law Section	Program	FY 2013	FY 2014	2-Year Total
	Division A - Federal-aid Highways and Highway Safety Construction			
1101(a)(1)	Federal-aid Highway Program	$37,476,819,674	$37,798,000,000	$75,274,819,674
1101(a)(2)	TIFIA Credit Assistance	$750,000,000	$1,000,000,000	$1,750,000,000
1101(a)(3)(A)	Tribal Transportation Program	$450,000,000	$450,000,000	$900,000,000
1101(a)(3)(B)	Federal Lands Transportation Program	$300,000,000	$300,000,000	$600,000,000
1101(a)(3)(C)	Federal Lands Access Program	$250,000,000	$250,000,000	$500,000,000
1101(a)(4)	Territorial and Puerto Rico Highways	$190,000,000	$190,000,000	$380,000,000
1105(a)	FHWA Administrative Expenses	$454,180,326	$440,000,000	$894,180,326
1107	Emergency Relief	$100,000,000	$100,000,000	$200,000,000
1121	Ferry Boats and Terminal Facilities	$67,000,000	$67,000,000	$134,000,000
	Subtotal, Division A	$40,038,000,000	$40,595,000,000	$80,633,000,000
	Division E - Research and Education			
51001(a)(1)	Highway Research and Development	$115,000,000	$115,000,000	$230,000,000
51001(a)(2)	Technology and Innovation Deployment	$62,500,000	$62,500,000	$125,000,000
51001(a)(3)	Training and Education	$24,000,000	$24,000,000	$48,000,000
51001(a)(4)	Intelligent Transportation Systems	$100,000,000	$100,000,000	$200,000,000
51001(a)(5)	University Transportation Centers	$72,500,000	$72,500,000	$145,000,000
51001(a)(6)	Bureau of Transportation Statistics	$26,000,000	$26,000,000	$52,000,000
	Subtotal, Division E	$400,000,000	$400,000,000	$800,000,000
Total Federal Highway Administration HTF Contract Authority		$40,438,000,000	$40,995,000,000	$81,433,000,000
Minus HTF Contract Authority Exempt From Limitation:		-$739,000,000	-$739,000,000	-$1,478,000,000
Total FHWA HTF Contract Authority Subject To Limit		$39,699,000,000	$40,256,000,000	$79,955,000,000
1102	Recommended FAHP Obligation Limitation	$39,699,000,000	$40,256,000,000	$79,955,000,000

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Planning Programs (5305)	*$126,900,000*	*$128,800,000*	*$255,700,000*
Metropolitan Planning (new) (20005(b))	*$10,000,000*	*$10,000,000*	*$20,000,000*
Urbznized Area Formula Grants (5307)	*$4,397,950,000*	*$4,458,650,000*	*$8,856,600,000*
Elderly and Disabled Formula Grants (5310)	*$254,800,000*	*$258,300,000*	*$513,100,000*
Rural Area Formula Grants (5311)	*$599,500,000*	*$607,800,000*	*$1,207,300,000*
Bus Testing Facility (5318)	*$3,000,000*	*$3,000,000*	*$6,000,000*
National Transit Institute (5322(d))	*$5,000,000*	*$5,000,000*	*$10,000,000*
National Transit Database (5335)	*$3,850,000*	*$3,850,000*	*$7,700,000*
State of Good Repair Formula Grants (5337)	*$2,136,300,000*	*$2,165,900,000*	*$4,302,200,000*
Buses and Bus Facilities (5339)	*$422,000,000*	*$427,800,000*	*$849,800,000*
Fast Growth/High Density Formula Grants (5340)	*$518,700,000*	*$525,900,000*	*$1,044,600,000*
Total Federal Transit Administration HTF Contract Authority	$8,478,000,000	$8,595,000,000	$17,073,000,000

Total National Highway Traffic Safety Admin. Contract Authori	$670,000,000	$680,000,000	$1,350,000,000

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