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Transportation Trust Funds: Budgetary Treatment

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ABSTRACT

This report addresses issues associated with the purpose and use of transportation trust funds. Understanding how the trust funds operate and how they relate to the federal unified budget is, in reality, complex and difficult. As a result, there is considerable latitude for differing views as to whether the trust funds are meeting their intended goals. This report explores these differing views in the context of legislation that would change the budgetary treatment of transportation trust funds.

This report will be updated as action on legislation is completed. The budget treatment issue has now become part of the debate about reauthorization of federal surface transportation programs. For the most current information on surface transportation reauthorization see: U.S. Library of Congress. Congressional Research Service. *ISTEA Reauthorization: Highway and Transit Legislative Proposals in the 105th Congress, 2nd Session*. CRS Report 98-221. by John W. Fischer.

Transportation Trust Funds: Budgetary Treatment

Summary

Some Members of Congress believe that the transportation trust funds should be viewed independently of other federal programs, and that federal transportation program spending should closely track revenues collected for the funds. Other Members of Congress believe that the transportation trust funds must be viewed as components of the entire federal budget and not as a separate element of the budget.

Supporters of changing the budget treatment of trust funds, and especially those in favor of moving the trust funds off-budget, state that such a change would create the equivalent of a fire wall around federal transportation programs similar to, but not the same as, the one that exists for the Social Security program. They believe that this mechanism would provide an incentive for budget discipline and reserve the full value of user-fee-funded programs for their mandated purposes. Most importantly, this action would fulfill what they view as a “contract” between the taxpayer and the federal government to spend what are essentially viewed by supporters as user fees.

The basic argument of those opposed to changing the treatment of trust funds is the need to maintain the accountability and integrity of the unified federal budget. They assert that the “surpluses” in the transportation trust funds do not exist because the federal government underspends on transportation programs. Transportation spending increased significantly until FY1995 - FY1996 and then increased slightly in FY1997. In FY1998, transportation spending is again appropriated at an increased level. To opponents of changing the treatment of trust funds, this situation demonstrates that special budget treatment of trust funds is not needed to facilitate necessary federal expenditures on transportation programs.

The 1st Session of the 105th Congress ended without floor action on legislation that would change the budgetary treatment of transportation trust funds. Legislation giving the transportation trust funds off-budget status was introduced in the House early in the 105th Congress. The Truth in Budgeting Act, H.R. 4, attracted wide support in the House and had 242 cosponsors listed as of September 4, 1997. In addition, the provisions of H.R. 4 were incorporated in H.R. 2400, the Building Efficient Surface Transportation and Equity Act of 1997, (BESTEA) as Title VII. In committee markup on March 24, 1998, this title has been modified to take only the highway trust fund off-budget. Floor action on this legislation occurred on April 1, 1998.

The Senate did not consider off-budget legislation in the 1st Session. Instead, legislation that could be viewed as a counterproposal to the off-budget initiative has been introduced. S. 404, the Highway Trust Fund Integrity Act of 1997, proposes the creation of a “revenue constrained fund” within the federal budget that would have some, but not all, of the same spending results as the off-budget bill. The Senate did not consider the budgetary treatment of trust funds during its recently completed floor action on S. 1173, the Intermodal Surface Transportation Efficiency Act of 1997 (ISTEA II), which provides for the long term reauthorization of surface transportation programs. It is likely that the budgetary treatment of trust funds will become an issue in conference on surface transportation legislation.

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Transportation Trust Funds: Budgetary Treatment

The 1st Session of the 105th Congress ended without floor action on legislation that would change the budgetary treatment of transportation trust funds. Legislation giving the transportation trust funds off-budget status was introduced in the House early in the 105th Congress.¹ The Truth in Budgeting Act, H.R. 4, attracted wide support in the House and had 242 cosponsors listed as of September 4, 1997. In addition, the provisions of H.R. 4 were incorporated in H.R. 2400, the Building Efficient Surface Transportation and Equity Act of 1997 (BESTEA), as Title VII. This legislation, which is designed to reauthorize federal surface transportation programs was marked-up in the Committee on Transportation and Infrastructure on September 24, 1997, but was not reported at that time. In committee markup on March 24, 1998, this title has been modified to take only the highway trust fund off-budget. Floor action occurred on April 1, 1998.

The Senate did not consider off-budget legislation in the 1st Session. Instead, legislation that could be viewed as a counterproposal to the off-budget initiative has been introduced. S. 404, the Highway Trust Fund Integrity Act of 1997, proposes the creation of a “revenue constrained fund” within the federal budget that would have some, but not all, of the same spending results as the off-budget bill. The Senate did not consider the budgetary treatment of trust funds during its recently completed floor action on S. 1173, the Intermodal Surface Transportation Efficiency Act of 1997 (ISTEA II), which provides for the long term reauthorization of surface transportation programs. It is likely that the budgetary treatment of trust funds will become an issue in conference on surface transportation legislation.

The activity in the 105th Congress on this issue builds on the relative success of off-budget legislation in the 104th Congress. The 104th Congress was something of a milestone for supporters of the off-budget concept because it was the first time that either body of Congress had voted in favor of giving the trust funds off-budget status. The 104th Congress concluded without Senate action on off-budget legislation.

Prior to the 104th Congress this issue was last addressed by the Senate in 1991 and by the Congress as a whole in the 1980s. All of the attempts to move the transportation trust funds off-budget in the 1980s failed, in one case by a very narrow margin. The issue pits those who believe that trust fund revenues should be reserved

¹This report discusses major issues relating to proposals to change the budget treatment of transportation trust funds. It will be updated as issues develop and new legislation is introduced. For the most current information about pending legislation, please consult the Legislative Information System (LIS) at <http://www.congress.gov>.

only for spending on specific programs, against those who believe that trust fund revenues should remain an intrinsic part of the unified federal budget.

The philosophical issues surrounding the transportation trust fund debate are often viewed as being straightforward and relatively easy to understand. Understanding how the trust funds operate and how they relate to the federal unified budget is, in reality, complex and difficult. As a result, there is considerable latitude for differing views as to whether the trust funds are meeting their intended goals. In addition, there is also considerable room for debate about how much spending the trust funds can support.

Trust Fund Origins

Two major transportation trust funds exist: the highway trust fund and the airport and airway trust fund. The highway trust fund consists of two separate accounts — highways 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. There are other smaller transportation trust funds, but they generally are not the focus of the budget treatment debate. These include the inland waterways trust fund, the harbor maintenance trust fund, and the national recreational trails trust fund. The national recreational trails trust fund is actually a set-aside within the highway trust fund and would be affected by any decision to change the budget treatment of the highway trust fund.

The oldest and largest of the trust funds is the highway trust fund. This 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 Interstate Highway System. In addition, the 1956 Act provided some funding for other federal highway programs. The highway trust fund was established as a way to provide funding for capital construction, and this remains its principal focus.

In light of the current budgetary climate, it is interesting to note that the Eisenhower Administration did not originally propose the trust fund “pay-as-you-go” financing system established in the 1956 Act. The Administration, concerned about increasing federal spending, instead proposed the creation of a Federal Highway Corporation with bonding authority; it was to receive a specific portion of the federal gasoline tax to fund its activities. The Administration viewed this mechanism as preferable to incurring an increase in general revenue spending.

Over the last 40 years, the highway trust fund and the federal program it supports have been changed numerous times.² In almost every instance, Congress has chosen to expand the scope of the federal highway program. At various times

²For 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.

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 occurred with enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) (ISTEA). ISTEA also reauthorized the trust fund revenue title. The last change in the levels of revenue dedicated to the trust fund occurred in 1990, as part of the Omnibus Budget Reconciliation Act of 1990 (OBRA90) (P.L. 101-508).³

The second transportation trust fund to be established, the airport and airway trust fund, was created by the revenue title of the Airport and Airway Development Act of 1970 (P.L. 91-258). The “aviation trust fund,” as it is also known, was established to provide funding for capital improvements to the Nation’s airport and airway system. The scope of the aviation trust fund, like the highway trust fund, has been expanded over time. The most recent reauthorization of aviation programs occurred with passage of Federal Aviation Administration Authorization Act of 1996 (P.L. 104-264). The most recent change in the levels of revenue dedicated to the trust fund occurred as part of the Taxpayers Relief Act of 1996 (P.L. 105-34).

The transit account, created by the Surface Transportation Assistance Act of 1982 (P.L. 97-424), represented the provisional culmination of a long-term congressional debate about the position of transit as part of the national transportation system. The transit account gave the transit industry a consistent federal funding source for capital spending on new and rehabilitated infrastructure and for other purposes.

Revenue sources differ for the various trust funds. 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.⁴ 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 this, 18.3 cents is dedicated directly to the highway trust fund. The transit account receives an allocation equivalent to the revenue generated by 2.85 cents of the tax on motor fuels dedicated to the highway trust fund. The remaining 0.1 cents goes into the leaking underground storage tank (LUST) trust fund. In addition, the fund receives interest on the balances of the fund held in the U.S. Treasury securities.

The aviation trust fund normally receives the vast majority of its funding from a percentage tax on domestic airline tickets (9% in FY1998, dropping to 8.0% in FY1999, and 7.5% in FY2000) and a flight segment tax (\$1.00 per segment in FY1998. This tax rises gradually to \$3.00 in FY2003, and is thereafter subject to indexation for inflation). Additional funding is obtained from taxes on aviation fuels,

³Federal fuel taxes were raised 4.3 cents by the Omnibus Budget Reconciliation Act of 1993 (OBRA93)(P.L. 103-66). This permanent tax was originally levied for deficit reduction purposes and was deposited in the Treasury’s general funds account. As will be discussed later in this report, these revenues are now being deposited in the highway trust fund.

⁴For a discussion of federal transportation fuel taxes see: U.S. Library of Congress. Congressional Research Service. *Transportation Fuel Taxes: What the Taxpayer Relief Act Has Wrought*. CRS Report 97-824E, by Bernard A. Gelb.

cargo waybills, and international departures and arrivals. The aviation trust fund also receives interest on the balances of the fund held in U.S. Treasury securities.

The Genesis of the Off-Budget Debate

Two philosophically different views about how trust funds relate to the budget frame the current debate. According to off-budget proponents, the trust fund mechanism represents a contract with the taxpayers to spend revenues on the specific activities identified as the purpose of the trust fund. In the view of those who support the unified budget approach, a dollar of federal revenue is a dollar of federal revenue. Spending decisions, therefore, need to be in the context of national rather than programmatic requirements.

In straightforward terms, the debate about the budget status of the transportation trust funds is about the allocation and control of federal spending. The transportation trust funds have enjoyed consistent congressional support as the principal funding sources for highway, transit, and aviation activities. There are, however, two longstanding issues — balance and appropriate use — that have periodically arisen over whether this funding mechanism is succeeding in meeting its stated objective.

The balance issue is the most visible of the two and drives the budget treatment debate to a large extent. By far the most contentious disagreement over trust fund spending arises because actual federal spending for trust fund programs often does not match program spending levels set in authorizing legislation. The disagreement over spending levels usually reflects the differing priorities that congressional committees face. For example, the authorizing committees with authority over transportation programs often support full funding for these programs. Budget and appropriations committees, by contrast, often view transportation spending as competing with other federal needs within a broader context of fiscal policy.

Transportation programs have been subject to obligation limitations or ceilings (usually in appropriations legislation) with a resultant decrease in transportation program spending vis-a-vis authorized levels. The obligation limitation mechanism allows Congress to control outlays for programs operating with contract authority. The obligation limitation does not, however, represent a permanent cutback in funding, as these funds are retained as unobligated balances for later use. Higher obligation levels could, therefore, be required in future years to facilitate spending down unobligated balances should Congress deem this desirable.

The appropriate use issue is rooted in an ideological debate over the intended use of trust fund revenues. One school of thought advocates that trust funds should only be expended for capital transportation projects. Another school believes trust funds should pay, at least in part, for the administrative costs of providing transportation services. Use of trust funds to pay for transit operating expenses, for example, is viewed by some as outside the intended scope of the trust fund mandate. Perhaps the longest running dispute of this type involves the level of the trust fund contribution to the operation and maintenance expenses of the Federal Aviation

Administration (FAA). This dispute, apparently settled for the moment, dates back to the Nixon Administration.

Understanding Trust Fund Balances

Unexpended balances exist in both the highway and aviation trust funds. The significance of these balances and the reasons for them differ. A complete understanding of these balances is difficult, in part because of the complexity of trust fund accounting and because of the policy framework in which these funds have existed.⁵

The Highway Trust Fund

The trust fund, and the programs operating out of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) that it supports, must be periodically reauthorized by Congress. The ISTEA provided this authority through FY1997. At the beginning of FY1998 these programs are continuing to operate as a result of a short term authorization approved near the end of the 1st Session of the 105th Congress.

At the end of FY1996, as shown in appendix table 1, the highway account of the highway trust fund had an unexpended balance of \$12.1 billion. The transit account, as shown in appendix table 2, had an unexpended balance of \$9.5 billion for the same period. It should be understood, however, that there are future commitments against these balances. Hence, they do not represent cash balances available for immediate use. A reason for this is that highway programs operate with contract authority rather than budget authority.

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 USC, 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 still required, however, to make outlays at some future date to cover these obligations. States, therefore, may obligate more funds than they actually could outlay at that time, although this does not appear to have drawn down the trust fund balance. For budgetary reasons, Congress routinely limits how much may be obligated in appropriations acts, which does not eliminate these funds, but only delays the timing of their actual use.

Highway and transit grant programs work on a reimbursable basis: states pay for projects up front and federal outlays are made to them only when work is completed and vouchers are presented to the U.S. Department of Transportation (DOT), 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

⁵Detailed financial information about the trust funds is found in the appendix at the end of this report.

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.

In FY1994, for example, the highway account showed future commitments of \$42.6 billion. If these commitments had been charged against the balance in the highway account at that time, it actually would have shown a deficit. To guarantee the ability to make good on these commitments, Congress, through the Byrd amendment to the Federal-Aid Highway Act of 1956, as amended, restricted the growth of these commitments to a level not to exceed the current year's unexpended balance plus projected income for the following two fiscal years. The Byrd amendment is an automatic device that requires no additional congressional action to implement.

To develop a more meaningful account balance, it is necessary to calculate what would be available at the end of a fiscal year, including expected future revenues and unpaid commitments. The resulting figure is often referred to as the "surplus." Obviously, this process is very sensitive to both expenditure and revenue estimates. In addition, the figure adjusted for the Byrd amendment can be either higher or lower than the unadjusted number, depending on the level of commitments against the unexpended balance and whether the adjustment includes expected interest earnings or changes in anticipated excise tax collections.

Whether this ending balance is a "true" surplus is subject to debate. Although this figure represents uncommitted funds that theoretically could be used for highway projects, the FHWA has argued that maintaining a safe "cushion" of between \$1-3 billion is necessary for the highway account to ensure adequate liquidity against changing revenue projections or unanticipated problems. Equally important, these funds are not lost to the states (unless they lapse), but remain in each of their accounts as unobligated balances. To date, no federal transportation funds have ever lapsed because of a limitation placed on obligation levels. Based on projections by the Congressional Budget Office, it would appear that the trust fund could support additional spending on highway and transit programs over the next few years, without creating conflict with the above-mentioned criteria.

A similar procedure can be used to calculate an available spending balance for the transit account. A mechanism similar to the Byrd amendment, but requiring only one additional year's revenue in the calculation, limits commitments from the transit account. The idea of maintaining a safe "cushion" would be equally valid for the transit account, reducing the amount of funds conceivably available for a one-time increase in obligations.

In part because of its effect on the federal deficit, Presidents have often discouraged increased program spending by requesting obligation limitations. If

more trust fund money were used, the federal government would have to either decrease spending on other programs, raise taxes, or increase borrowing to prevent an increase in the deficit. This suggests that although surplus balances in the highway trust fund do exist and at times may be either larger or smaller than generally thought, they exist at least partially because of budgetary considerations.

The Airport and Airway Trust Fund

Balances in the aviation trust fund are more difficult to understand against the backdrop of legislative provisions mandating certain spending priorities and recent events that allowed the fund to lapse for extended periods of time. Nonetheless, it is clear that the aviation trust fund maintained a sizable balance for much of its existence. As shown in appendix table 3, the aviation trust fund had an unexpended balance of \$11.4 billion at the end of FY1995. After accounting for commitments against the unexpended balance, the fund showed an uncommitted balance, or “surplus,” of \$5.1 billion. At the end of FY1996, the unexpended balance had dropped to \$2.5 billion and the uncommitted balance had dropped to \$2.3 billion. This dramatic one-year change was due to a confluence of events beginning in 1996 which severely affected fund revenues without a concomitant change in federal program spending. This situation will be described in more detail subsequently, but it is indicative of the peculiarities that have been associated with the history of this trust fund. Another example, was the legal restriction placed on use of the fund to pay FAA operational expenses in the 1980s, but since dropped, that had a significant effect on the fund balances.

During the 1980s, restrictions on the use of the aviation trust fund monies were legislated by the authorizing committees because of policy differences with the executive branch and the appropriations and budget committees in Congress. These restrictions included mechanisms that automatically limited the availability of trust fund monies in certain instances under the guises of a “cap” and a “penalty clause.” The major disagreements centered on how much of the trust fund should support FAA operations vis-a-vis Treasury general funds.. The net result of these restrictions was a several year increase in an already uneven relationship between fund revenues and spending and a concomitant build up in the unexpended balance in the fund.

Another reason the aviation trust fund balance grew in the 1980s was related to delays and problems in implementing the FAA’s National Airspace System (NAS) Plan, now known as the Capital Investment Plan (CIP). It entails installation of a complex advanced automation system (AAS) and other equipment related to air traffic control. The AAS integrates considerable new capital investment in computers, radar, and weather monitoring equipment required for managing the explosive growth in air traffic that took place over the last decade. As the NAS implementation plan continued to slip, primarily for technical and procurement reasons, trust fund revenues accumulated faster than they were spent. This action accelerated the surplus buildup, which increased even faster as interest accrued on the balance. In recent years, supporters of the off-budget position have also argued that airport improvement program spending, at below authorized levels, was responsible for additional growth in the surplus

All of the previous problems associated with the balances in the aviation trust fund pale in importance in view of unexpected events affecting the trust fund that occurred initially in 1996 and reoccurred in early 1997. On January 1, 1996, and again on January 1, 1997, authority to collect taxes for the aviation trust fund expired. The first expiration lasted almost 8 months and cost the trust fund approximately \$4.0 billion in revenues. The second expiration was much briefer, about two months, costing the trust fund an additional \$1 billion. To a significant extent the "surplus" in the aviation trust fund was greatly diminished by these events. The taxes would have expired again on September 30, 1997, without further reauthorization.

After a spring and summer of uncertainty, the aviation tax reauthorization unexpectedly became part of the revenue debate about the balanced budget. The result of this debate was the Taxpayer Relief Act of 1997 (P.L. 105-34) which imposed a new system of aviation taxation effective October 1, 1997. The new system is a compromise that tries to accommodate a demand by some parts of the industry for a tax system related to aviation activity (in this case flight segments were used), but at the same time maintain the strength of the old system by retaining a somewhat reduced ticket tax. The new taxes will raise an additional \$3 billion during the next 5 years, over what might have been expected if the old system had been reauthorized without change

The 4.3 Cents Dilemma

The Taxpayer Relief Act of 1997 made another major change in the revenue stream for the transportation trust funds. Prior to October 1, 1997, 4.3 cents of the fuel tax had been deposited in the Treasury general fund for deficit reduction. Transportation interest groups have long argued that it was inappropriate to use fuel taxes for deficit reduction, arguing instead that all fuel taxes be reserved for transportation purposes. Congress had not accepted this logic when the 4.3 cent charge was enacted as part of OBRA93. During consideration of the Taxpayer Relief Act of 1997, however, the Senate added a provision, later accepted in conference, that redirected the 4.3 cent tax to the highway trust fund or the airport and airway trust fund in most instances. For those funds designated for the highway trust fund there was a further split that provides 3.45 cents to the highway account and reserves the remaining 0.85 cents for the transit account.

This change provides the trust funds, and especially the highway trust fund, with a dramatically increased revenue base. A 1.0 cent increase in the federal fuel tax is generally viewed as providing something over \$1.2 billion in new revenue for the highway trust fund. As a result, the highway trust fund could receive over \$5.0 billion in additional revenue during FY1998.⁶ Growth also occurs in the airport and airway trust fund as a result of the redirection of the 4.3 cents associated with

⁶There are several estimates that indicate that the actual increase in revenue could equate to as much as \$6.2 billion per year depending on increased fuel use associated with economic growth and the increasing popularity of sport-utility vehicles.

aviation fuel use, but the growth is not as dramatic, given the context of the new overall aviation taxing structure discussed in the previous section of this report.

The redirection of the 4.3 cent tax was not accompanied by an increase in transportation spending authority as part of the balanced budget agreement. Hence, while these funds will be assigned to the trust funds, and will count toward the balance in the fund for the purpose of determining interest payments, the funds are not available for transportation activities. Instead, the balanced budget agreement continues to assign spending of these revenues without regard to their changed actuarial placement. The net result of this situation is the likelihood of significant growth in the unexpended balance of all affected transportation trust funds. The highway trust fund will be particularly affected by this situation.

This situation has incensed supporters of increased spending for federal transportation who, as previously mentioned, believe that trust fund revenues and transportation program spending should be linked. Supporters of this position, and this includes some Members of Congress, have vowed to make increased transportation spending, linked to the 4.3 cent revenue stream, a major component of the FY1999 budget agreement debate.

It appears that the supporters of spending the 4.3 cent revenue stream have won their case, at least for the moment. H.R. 2400 and S. 1173 both rely on the additional funding provided by this revenue stream to pay for the large increases in transportation spending found in each of these bills. What remains to be determined is how this increases will be accommodated by offsets and other actions in the FY1999 congressional budget agreement.

Budget Treatment of Transportation Trust Funds

Only the highway trust fund predates the adaptation of the unified budget concept that began in FY1969. Prior to the unified budget, the federal government operated with essentially three budgets: administrative, consolidated cash, and national income accounts. All federal trust fund activities were accounted for in the consolidated cash budget and the national income accounts budget.

The adoption of the unified budget made all trust fund receipts and expenditures part of the annual budget process on an actuarial basis. In making its decision to include trust funds in the unified budget, Congress apparently relied on the recommendations of President Johnson's Commission on Budget Concepts. The Commission identified several major justifications for the inclusion of all trust funds in the budget including: Congress' ongoing responsibility to establish taxes for and benefits to be derived from trust funds; the possible "incentive to finagle budget totals by inventing new trust fund expenditures, ... outside the budget;" and the possibility that trust funds outside the budget "distort priorities of social choice and

lead to bad program decisions.”⁷ The Commission recognized that arguments could be made to support the exclusion of trust funds from the budget. However, it argued successfully that better budget accountability necessitated that trust funds be examined as part of the overall budget.

Comparisons with the Social Security Trust Fund

Those who seek to move the transportation trust funds off-budget frequently refer to the off-budget status of the social security trust fund as a potential model. As a result of OBRA90, the social security trust fund was specifically excluded from budget calculations for the unified federal budget. The legislation did not, however, remove the costs of administering the social security program from the budget. This is worth noting because all of the administrative expenses of the FHWA and a large portion of the FAA’s operating and maintenance expenses are derived from the trust funds.

A further, and very important, difference from the transportation trust funds is the social security system’s permanent appropriation. This allows the Social Security Administration to distribute funds on a formula basis without any congressional action. Although Congress can, and does, revisit the issue of social security spending from time to time, there is no annual appropriations process or periodic authorization process as there is for transportation programs.

Finally, the total federal deficit is the difference between all federal revenues and outlays including both on-budget and off-budget accounts. The outlays and revenues of the social security system are part of this computation.

The Arguments For and Against Changing the Budget Treatment of Trust Funds (i.e. Off-Budget)

The budget status of the transportation trust funds is at its root a discussion about money and who should have the authority to spend it. What follows is a synopsis of the major arguments that have been put forward to support and oppose taking the trust funds off-budget.⁸

⁷Tax Institute. *Federal Trust Funds: Budgetary and Other Implications*. New York, 1970. p. 20

⁸For a discussion of the proponents positions on the off-budget debate see: Shuster, Bud. Money to Get America Moving. *Washington Post*. September 15, 1997 (also available at www.house.gov/transportation/beste/shuster.htm) and Young, J.T. Phantom Highway Surplus. *Journal of Commerce*. November 5, 1997. p. 7A

Arguments for Changing the Budget Treatment of Trust Funds (i.e. Off-Budget)

- The transportation trust funds represent a contract with the Nation's taxpayers. Motorists, airline passengers, and others are paying user fees with the expectation that these fees will be utilized for the programs with which they are associated. If the trust funds are not going to be used for their stated purposes, the excise taxes that fund them should be eliminated.
- According to the Federal Highway Administration and others, there are significant infrastructure needs nationwide that are not being met. If the trust funds were made available by changing the budget treatment of trust funds, they could support needed additional federal transportation spending. Prior to the increase in revenues to the highway fund discussed earlier, proponents have sometimes identified the possible additional spending as being up to \$2 billion annually on highways and transit, and \$1 billion annually on aviation. Given the new revenues to the fund these estimates are now likely to be much higher.
- Inclusion of the trust funds in the unified budget subjects their outlays to the budget process, thereby making them liable to legislated spending limitations, which are not based on an analysis of national transportation spending needs.
- Using the trust fund balances to help mask the size of the overall federal deficit perverts the unified budget process by giving a false impression of the magnitude of the deficit and thereby distorts the overall budget process.
- Taking the transportation trust funds off-budget, or otherwise changing their budget treatment, would not encourage others to seek changes to additional trust funds. This is because transportation trust funds differ from other trust funds by being user-fee financed, having a self-regulating deficit precluding mechanism in the form of the Byrd amendment, and by funding long-term programs.
- Proponents of the off-budget position reject the argument that trust fund surpluses are the result of intergovernmental transfers resultant from the payment of interest on balances in the fund. They argue that interest payments are a fair mechanism for compensating the funds for their temporary use to fund other federal activities. In addition, the regulations requiring interest payments predate the transportation trust funds and are applied to all trust funds.
- Taking the trust funds off-budget would eliminate the temptation they present to those seeking funding sources for other projects.

Arguments Against Changing the Budget Treatment of Trust Funds (i.e. Off-Budget)

- The unified budget is an essential tool for understanding how the federal government collects and spends **all** of its funds. Any federal activity affects the economy as a whole. Attempts to isolate specific activities, such as transportation, from view could distort overall federal economic policy formulation.
- Many of the “surpluses” in the transportation trust funds are derived, at least in part, from intergovernmental transfers, in large part as a result of interest paid by the treasury on trust fund balances. These payments could be viewed as subsidies to transportation at the expense of other federal programs. As a result, the surpluses have often distorted the trust fund balances in the same way that off-budget advocates claim that the surpluses distort the federal deficit.
- When viewed from a historical perspective, outlays from the trust funds have exceeded revenues into the funds in many years, particularly in the 1980s and well into the 1990s. This is only possible because of the aforementioned intergovernmental transfers and the compounding of the interest payments. This is particularly true for the highway trust fund. This situation shows that the federal government’s transportation program spending in recent times is in line with, or exceeds, what the trust funds should provide by way of outlays.
- Changing the budget treatment of transportation trust funds could encourage the advocates of other federal spending programs to seek similar status. If a significant number of these requests were granted the unified budget process would cease to afford Congress the ability to determine national priorities on a recurring basis.
- Off-budget programs with automatic spending authority dilute the control of Congress over policy decisions. Such a situation is at odds with the constitutional mandate for Congress to approve all federal spending.
- Off-budget status for specific transportation activities, such as highways, could decimate funding for non-trust fund federal transportation programs that would have to take the brunt of any deficit reduction efforts because they are all part of the same budget function area (function 400).
- The unified budget does not prevent Congress from spending more on transportation if it so chooses. In fact, transportation spending has risen significantly over the last four decades.

The Off-Budget Debate in the 104th Congress

On February 7, 1995, Representative Shuster, Chairman of the House Committee on Transportation and Infrastructure, with cosponsorship from committee majority and minority leadership, introduced H.R. 842, the "Truth in Budgeting Act." The bill as introduced would have afforded the highway, aviation, inland waterways, and harbor maintenance trust funds off-budget status.

The proposed legislation enforced the off-budget status of the trust funds by prohibiting their inclusion in the budget of the United States and the congressional budget, and by exempting the trust funds from any general budget limitations. The bill detailed specific safeguards against deficit spending from the various trust funds and a process for determining the availability of funds for additional spending from the trust funds. The legislation did not call for a permanent appropriation, leaving the role of appropriation committees unchanged. On May 3, 1995, the House Committee on Transportation and Infrastructure reported H.R. 842 to the House. The legislation passed in committee on a unanimous voice vote without amendment.

The principal supporters of this legislation in the House were the aforementioned Chairman and leadership of the Committee on Transportation and Infrastructure. In addition, the legislation had the strong support of Representative Clinger, then Chairman of the House Committee on Government Reform and Oversight. The off-budget argument also had the ardent and active support of most transportation and construction trade interest groups. It also had the support of many business groups, such as the U.S. Chamber of Commerce. These organizations banded together in "The Alliance for Truth in Transportation Budgeting." This organization conducted a very visible effort in support of H.R. 842.

Opposition to the legislation in the House came largely from Members of the Budget and Appropriations Committees. The Chairman of the Subcommittee on Transportation of the House Committee on Appropriations, Representative Wolf, opposed taking the trust funds off-budget. Budget Committee Chairman Kasich also opposed to the legislation.

The Clinton Administration similarly took a strong stand against H.R. 842. In a March 27, 1995 letter to the Chairman and Ranking Members of the principal committees considering this legislation, the then Director of the Office of Management and Budget, Alice Rivlin, took a strong stand against efforts to move the trust funds off-budget. The letter detailed the Administration's objections to the legislation and discussed what it viewed as serious budgetary problems with the off-budget initiative. Opposition to this legislation outside of Congress and the Administration also exists.

The budget resolutions passed by Congress for FY1996 and FY1997 continued to treat the transportation trust funds as part of the unified budget. Both proposals required significant decreases in transportation program spending over the next 7 years as part of an overall federal deficit reduction program. As a result of these recommendations it is likely that all federal transportation programs supported either by the trust funds or by general funds would be subject to reduced funding.

Representative Shuster attempted to bring up the off-budget issue as part of the floor debate on the FY1996 House budget resolution. The Rules Committee, however, did not allow this issue to be brought to the floor at that time. Instead, Speaker Gingrich announced the formation of a Speaker's Task Force on Transportation in mid-1995 to address this issue and make a recommendation to the House on how transportation funding issues, including the off-budget issue should be addressed. The task force was to be chaired by the Speaker and included Representatives Shuster, Livingston, Wolf, Kasich, Molinari, Franks (NJ) and Hobson. No deadline for a task force recommendation was established. During the remainder of the 104th Congress, the task force met intermittently and has disbanded without putting forth any specific recommendations.

Pending the task force's recommendations there was little congressional attention to the off-budget issue during the summer of 1995. This situation changed briefly in September 1995, however. The House Committee on Transportation and Infrastructure reported H.R. 2274, the National Highway System Designation Act of 1995, which incorporated the provisions of H.R. 842. By agreement with the House leadership, the bill was stripped of its off-budget provisions during consideration by the Rules Committee. In return for dropping these provisions, proponents of H.R. 842 apparently were promised a floor debate and vote on the issue before the end of the first session of the 104th Congress. The crowded legislative calendar at the end of the first session precluded this debate.

House Floor consideration of H.R. 842 occurred on April 17, 1996. Several amendments were considered and all but two were defeated. The two amendments that were approved were both introduced by the sponsors of H.R. 842 and could be viewed as perfecting amendments. The amendments insured that future transportation program spending would be subject to the presidential line-item veto and required that the annual interest level accruing to the transportation trust funds not exceed the level accruing to other federal trust funds.

Final passage of H.R. 842 came on a vote of 284 to 143, with 5 Members not voting. This represented a much larger margin of success than many observers had forecast prior to the vote. Supporters of the legislation hoped that this high level of support would provide the bill with the momentum needed to bring about Senate action.

Interest in the off-budget debate in the Senate, however, could be viewed as tepid. Senators Lott and Baucus introduced legislation, S. 729, that would have the same effect as the H.R. 842. Lobbying efforts supporting the Senate legislation intensified following House passage of the legislation. Several Senators, including Environment and Public Works Committee Chairman Chafee and Budget Committee Chairman Domenici, are on record as opposing any change in the budgetary treatment of trust funds and circulated a "Dear Colleague" letter confirming this position. The 104th Congress ended without any Senate action on the off-budget proposal.

Efforts to Change the Budget Treatment of Trust Funds in the 1st Session of the 105th Congress

Chairman Shuster and other supporters of the off-budget concept frequently stated their intention to make an off-budget bill one of the first pieces of legislation introduced in the 105th Congress. They followed through on this promise by introducing H.R. 4, The Truth in Budgeting Act, on January 7, 1997. The bill also received expedited attention in the House Committee on Transportation and Infrastructure and was reported to the House on March 5, 1997. The legislation has attracted wide support in the House with 242 cosponsors listed as of September 24, 1997.

The off-budget debate has always been a major component of the argument about federal transportation program spending. The authority to operate these programs, contained in the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240)(ISTEA), expired at the end of FY1997.⁹ These programs are currently operating on an interim funding basis, but this interim funding will expire by the summer of 1998.

As part of the reauthorization debate there are a number of Members seeking major changes in the ISTEA structure. The seemingly most contentious change is a possible reallocation of assistance among states, combined with a significant increase in federal surface transportation program spending. The additional spending, required by these proposals, could come from off-budget legislation, creation of a "revenue constrained fund" (RCF)(discussed in the next section), and/or from tapping all, or part, of the 4.3 cent fuel tax that has been redirected to the highway trust fund.

Reauthorization legislation typically requires a revenue title, which means that the overall operation and funding of the highway trust fund will be part of the reauthorization debate. In fact, the off-budget issue has now become part of reauthorization legislation under consideration in the House. The provisions of H.R. 4 were incorporated in H.R. 2400, the Building Efficient Surface Transportation and Equity Act of 1997 (BESTEA), as Title VII (introduced September 4, 1997). This legislation was marked-up by the Committee on Transportation and Infrastructure on September 24, 1997, but was not reported at that time.

Proponents of the off-budget initiative have retained the same support base that promoted the effort in 104th Congress. The field of opponents is also essentially the same, with the leadership of the House Budget and Appropriations Committees actively opposing the off-budget bill.

⁹For a discussion of ISTEA issues and legislation see: U.S. Library of Congress. Congressional Research Service. *Highway and Transit Program Reauthorization: ISTEA Revisited?* CRS Report 97-194E. by John W. Fischer and William A. Lipford; and *ISTEA Reauthorization: Highway Related Legislative Proposals in the 105th Congress 2nd Session.* CRS Report 98-221E. by John W. Fischer.

The Revenue Constrained Fund (RCF) Option

Senators Chafee and Bond introduced legislation near the beginning of the 105th Congress that can be viewed as an alternative to the off-budget initiative. The Highway Trust Fund Integrity Act of 1997, S. 404, deals only with the highway account of the highway trust fund. The legislation would create a new budget category called a revenue constrained fund (RCF). The RCF would remain on budget, subject to special budget rules.

The RCF is straightforward in concept. The RCF links revenues to the fund and spending from the fund. Under the RCF spending for highways would equal last year's revenues. If revenues go down, spending goes down. Hence the description of this concept as "constrained".

Supporters of the RCF see it as a way to allow increased spending for highways based on actual trust fund revenues. This position is supported by historical growth in the trust fund revenue stream which has been gradual and sustained. From the perspective of the federal budget, supporters of the RCF view it as being essentially revenue neutral.

The RCF proposal is silent on how to treat existing unexpended balances in the highway trust fund. Supporters of the legislation view the RCF as a clean starting point for the future.

Supporters of the off-budget position have generally welcomed the RCF as a step in what they see as the right direction. They do not, however, view it as going far enough towards freeing the trust funds from the budget process.

The off-budget idea has known proponents in the Senate, but has not attracted the level of support seen in the House. It is also likely that the RCF proposal will compete with the off-budget initiative in the Senate. As a result, it is not possible to predict whether trust fund budget legislation will ultimately fare better in the Senate in the 105th Congress than it did in the 104th.

Efforts to Change the Budget Treatment of Trust Funds in the 2nd Session of the 105th Congress

In early February the Speaker of the House formed a task force charged with working out the Leadership's plan for the FY1999 budget cycle. Reauthorization of surface transportation programs was an important component in this discussion. Chairman Shuster apparently convinced the Leadership of the need to press forward on H.R. 2400 at the funding levels proposed in the 1st Session. As part of the agreement reached by the task force, the Transportation and Infrastructure Committee could move its reauthorization bill to the floor with off-budget provisions. These provisions, however, could only affect the highway trust fund and would affect the future operation of the fund.

On March 24, 1998, the House Committee on Transportation and Infrastructure marked-up H.R. 2400 and reported it. By prior agreement with the House leadership the manager's amendment to the bill modifies the off-budget provision so that it refers to only the highway trust fund. This provision takes the highway trust fund off-budget beginning in FY1999.

On March 26, 1998, the House Committee on Ways and Means reported the revenue title of H.R. 2400. As part of the same Leadership agreement this provision reduces the beginning of year unexpended balances for FY1999 in the highway account and mass transit account to \$8.0 million and \$5.5 million respectively. In addition, the title provides that interest paid on balances in the trust fund in future years will not accrue to the trust fund.

There are still a number of Members of the House known to be opposed to the off-budget provisions of H.R. 2400. Amendments to undue the leadership agreement were offered when H.R. 2400 was considered on the floor on April 1, 1998. All of these efforts were unsuccessful by wide margins.

The Senate in its consideration of reauthorization of surface transportation programs, S. 1173, did not address the budget treatment issue. This means that off-budget treatment may become an issue during conference on the respective House and Senate surface transportation reauthorization bills.

The FY1999 Budget Agreement

The budget status of the transportation trust funds is likely to become entangled in the debate about the FY1999 congressional budget resolution. The balanced budget agreement reached by the Clinton Administration and congressional leadership in FY1998 provided transportation programs in general, and surface transportation programs in particular, with only modest increases in funding during the life of the agreement. These levels are well below those in H.R. 2400 and S. 1173.

Under existing budget rules additional transportation spending must be offset by decreased spending on other governmental activities in the discretionary part of the budget. The Senate Budget Committee in its FY1999 budget proposal has accommodated the increased spending levels in S.1173, by using offsets proposed in the Clinton Administration budget. The Administration, however, had a different set of spending priorities in mind when it proposed these offsets and is expected to object to the Senate plan in its current form.

The House Budget Committee has not yet proposed an FY1999 budget plan. It is not expected to act until after the Easter district work period. H.R. 2400 accommodates this timetable by including a provision in Title 11 that requires that offsets be found in conference. It is not clear that the Senate will agree to this arrangement.

Conclusions

Regardless of where trust funds reside in terms of the unified budget, they remain federal accounts with a dedicated revenue stream. As such, they must still be accounted for from an actuarial standpoint. The observation that the “devil is in the details” would seem to be applicable in this context.

Congress, of course, can revisit any issue as changing situations may dictate. The current “security” of the social security trust fund occurred only after a decade of consideration and there are still those within Congress who would like to see the budget status of this trust fund revisited. The transportation trust fund’s budget status has now been revisited over the course of a decade as well. It remains to be seen whether Congress will decide to move the transportation trust funds out of the unified budget or leave their budget status unchanged.

For Additional Reading

- U.S. Congress. House. Committee on Transportation and Infrastructure. *Truth in Budgeting Act*. Report to accompany H.R. 842. Report 104-499, Part I. 104th Congress, 2nd Session. Washington, U.S. Govt. Print. Off., March 27, 1996. 19 p.
- U.S. Congress. House. Committee on the Budget. *Truth in Budgeting Act*. Adverse Report with Dissenting Views to accompany H.R. 842. Report 104-499, Part II. 104th Congress, 2nd Session. Washington, U.S. Govt. Print. Off., March 29, 1996. 18 p.
- U.S. Congress. House. Committee on the Budget. *The Implications of Taking the Transportation Trust Funds Off-Budget*. Hearings. Serial No. 104-25. 104th Congress, 2nd Session. Washington. U.S. Govt. Print. Off., March 28, 1996. 65 p.
- U.S. Congress. House. Joint Committee on Taxation. *Present Law and Background Information on Federal Transportation Excise Taxes and Trust Fund Expenditure Programs*. Report (unnumbered). Prepared for the use of the Committee on Ways and Means. Washington, U.S. Govt. Print. Off. November 14, 1996. 109 p.
- U.S. Congress. Senate. Committee on Appropriations. *Transportation Trust Funds, Fiscal Year 1990*. Hearings, 101st Congress, 1st Session. Washington, U.S. Govt. Print. Off., May 11, 1989.
- U.S. Congressional Budget Office. *Paying for Highways, Airways, and Waterways: How Can Users Be Charged?* CBO Study. May 1992. 75 p.
- U.S. General Accounting Office. *Airport and Airway Trust Fund: Effects of the Trust Fund Taxes' Lapsing on FAA's Budget*. GAO/RCED-96-130. Washington, U.S. Govt. Print. Off., April 1996. 10 p.
- U.S. Department of Transportation. Federal Highway Administration. *Financing Federal-Aid Highways*. FHWA-PL-92-016, May 1992.

Appendix

**Table 1. Balances of the Highway Account
of the Highway Trust Fund,
FY1988-FY1996 (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.

**Table 2. Balances of the Transit Account of the Highway Trust Fund,
FY1988-FY1996 (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.

**Table 3. Balances of the Airport and Airway Trust Fund,
FY1988-FY1996 (in millions of dollars)**

	1988	1989	1990	1991	1992	1993	1994	1995	1996 ^c	1997
Tax Revenue During the Period										
Passenger Ticket Tax	2,815	3,201	3,219	4,341	4,012	2,677	4,528	4,768	2,123	3,389
Waybill Tax	168	181	178	222	249	255	284	361	151	331
Fuel Tax	117	629	141	140	167	121	187	211	3	128
International Departure Tax	95	106	180	217	231	223	218	233	128	194
Total Tax Revenue ^a	3,189	3,665	3,700	4,910	4,644	3,261	5,217	6,363	2,369	4,027
Cash Outlays During the Period										
Federal Aviation Administration:										
Airport Grants-in-aid	825	1,135	1,220	1,541	1,672	1,931	1,620	1,826	1,450	1,489
Facilities & Equipment	1,043	1,088	1,317	1,512	1,885	2,166	2,434	2,639	1,866	2,310
Research, Engineering, & Development	170	128	154	179	214	212	226	232	186	218
FAA Operations	830	478	807	2,032	2,110	2,279	2,199	2,546	2,223	1,661
Total Annual Outlays ^b	2,896	2,858	3,528	5,299	5,978	6,654	6,547	7,384	5,806	5,758
Net Income Before Interest	293	807	172	-389	-1,334	-3,393	-1,330	-1,021	-3,437	-1,731
Interest on Investments	893	1,009	1,245	1,297	1,273	1,040	837	757	759	481
Change in Cash	1,185	1,816	1,417	908	-61	-2,353	-493	-264	-2,678	-1,250
Trust Fund Balances										
Unexpended Balance, Start of Year	9,935	11,120	12,936	14,353	15,261	15,200	12,851	12,386	5,167	4,355
Change in Cash	1,185	1,816	1,417	908	-61	-2,353	-465	-264	-2,678	-872
Unexpended Balance, End of Year	11,120	12,936	14,353	15,261	15,200	12,847	12,386	11,365	2,516	3,483

^a Includes refunds of taxes and offsetting collections.

^b Includes offsetting collections and additional payments.

^c All trust fund activities for FY1996 are affected by the lapse in revenue collection authority during the January - August 1996 period.

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

