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Highway Trust Fund Deadline Looms

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Short-Term Funding Extension: Deal or No Deal?

Highway Trust Fund authorization expires on May 31, and the actual deadline for congressional passage of a reauthorization funding fix is the end of this week. For now, Congress is likely to pass a two-month authorization extension, through July 31. The House is expected to vote on a two-month bill later today. A two-month reauthorization would not require a General Fund of the Treasury transfer, eliminating the need for offsets.

Continued federal support for critical road and bridge construction projects hangs in the balance. In order to prevent any lapse, the House Ways and Means Committee and Senate Finance Committee have spent weeks exploring options for a surface transportation extension bill. As the deadline looms, a bipartisan group of lawmakers has coalesced around a two-month reauthorization at baseline levels.

The challenge of finding funds to cover highways is far from new: Since 2001, spending from the Highway Trust Fund has consistently and increasingly outpaced revenues. The Trust Fund currently is insolvent. Unfortunately, patches have become a necessary substitute for a long-term solution to the fund's insolvency. Agreeing on a new six-year funding bill, for example, would require approximately $90 billion to somehow make up the difference between the spending called for and the revenues projected to flow into the fund.

According to the Congressional Budget Office's (CBO's) most recent March baseline, the Trust Fund's programs are spending more slowly than anticipated. The Department of Transportation (DOT) projected last August that the fund would run out of money by June. With the new CBO baseline, no reductions in state reimbursements are likely before August, eliminating the need for offsets with a two-month patch. By contrast, extending Trust Fund spending for seven months would require offsets of about $11 billion.

The 2014 Highway and Transportation Funding Act enacted last August transferred $10.8 billion to the Highway Trust Fund: $9.8 billion from the General Fund and $1 billion from the Leaking Underground

Storage Tank Trust Fund. Since 2008, the federal government has transferred $65.3 billion to the Trust Fund: $61.9 billion from the General Fund and $3.4 billion from the Leaking Underground Storage Tank Trust Fund. With the current highway legislation, if lawmakers opt for reauthorization through the end of the year, they will need to determine the source of the $11 billion in offsets.

History of Federal Highway Funding

The federal government has worked to develop a national network of highways since the early 20th century. At first, the General Fund financed several small road construction bills. Then the Federal Aid Highway Act of 1956 created the Interstate Highway System and established the Highway Trust Fund. The 1956 law also increased the federal gas tax to 3 cents per gallon and directed that the revenue only be used for highway construction and maintenance. Previously, a smaller gas tax had supported budget balancing and war funding, not road projects.

Over the next several decades, Congress periodically raised the gas tax as Highway Trust Fund uses expanded to cover such areas as transit. The last gas tax increase was in 1993, to 18.4 cents on gasoline and 24.4 cents on diesel. Today, the Trust Fund covers more than a million miles of eligible U.S. road projects.

Given the fund's financial difficulties in recent years, it may be surprising to learn that Congress was concerned about the opposite problem in 1998 when debating the highway bill TEA-21. At that time, the Trust Fund balance was positive and growing, and Congress decided to make a concerted effort to spend down the balance. To do that, TEA-21 created Revenue Aligned Budget Authority (RABA), which allowed spending to increase when revenue into the fund improved and to decrease when it declined. RABA met with nearly universal approval for several years while revenues were increasing. When revenues eventually fell off in 2003, however, Congress stepped in to prevent the negative RABA adjustment from taking effect.

As spending increasingly outpaced revenues, the fund's balance declined over time. Preventing a collapse has required $65.3 billion in transfers since 2008, with offsets including interest payments, transfers from the Leaking Underground Storage Tank Trust Fund, and a "pension smoothing" timing shift.

Fund's Financial Problems Continue

Under current CBO baseline levels of spending, the Highway Trust Fund likely will experience a $169 billion shortfall over the next 10 years, requiring approximately $175 billion in additional transfers to remain solvent. This disparity is due to DOT's preference for maintaining a Trust Fund cash balance of $5 billion to $6 billion in order to meet state requests for reimbursements on an incoming basis. This practice guards against delays in payments, particularly during the busiest construction months, as construction spendout rates fluctuate monthly, as well as vary from state to state.

Meanwhile, the gas tax—the fund's major source of revenue—has not seen an increase since 1993, despite the increase in the number of projects seeking federal financing. Trust Fund revenues are forecast to total approximately $39 billion per year for the next 10 years, while today's annual expenditures total

$53 billion. Trust Fund spending outpaces revenues from the gas tax by approximately $14 billion, and that number is expected to rise to $21 billion by 2025.

In addition to these spending and revenue challenges, the unique budgetary treatment of Highway Trust Fund spending creates unusual complications. Contract authority for Trust Fund spending—budget authority that permits the federal government and states to enter into contracts and obligate funds for highway and transit construction projects—is classified as mandatory and therefore is under the jurisdiction of authorizing committees and derived from authorizing legislation. But outlays—spending that flows out of the fund as states spend money on transportation projects and apply for federal reimbursement—is classified as discretionary and under the jurisdiction of the Appropriations Committee.

Under this bifurcated budgeting structure, spending from the fund escapes budgetary enforcement. Discretionary spending caps limit discretionary budget authority, not discretionary outlays. In addition, statutory PAYGO rules limit mandatory outlays, not mandatory budget authority, and General Fund transfers to the Highway Trust Fund are classified as intra-governmental and so not scored as having a cost to the federal government.

Congress has attempted to resolve this issue. The fiscal year 2016 Senate budget resolution contains a deficit-neutral reserve fund requiring General Fund transfers to the Highway Trust Fund to be offset over 10 fiscal years. In addition, the House adopted a scoring rule in 2012 that classifies transfers from the General Fund to the Trust Fund as new mandatory budget authority and outlays requiring offsets in the year in which the transfers occur. The House has waived this rule, however, for past highway reauthorization bills because it could not find sufficient offsets for the year in which the General Fund transfers to the Trust Fund occurred.

Section 401(a) of the Congressional Budget Act of 1974 allows members of Congress to raise a budget point of order against a bill that provides new contract authority that flows from a trust fund for which less than 90 percent of its expenditures are supported by dedicated revenues. Because of the General Fund transfers to the Highway Trust Fund over the past several years, expenditures supported by dedicated revenue have fallen below 90 percent. This point of order requires a simple majority to waive in the Senate, but to date no senator has used this procedural tool to challenge a highway reauthorization bill.