

# Commission Briefing Paper 8D-02

## Issues and Options for Surface Transportation Program Reform

Prepared by: Commission staff  
Date: August 17, 2007

### Introduction

This paper summarizes deficiencies that result in large part from the structure of Federal programs and identifies specific options to address them. The intent is to highlight deficiencies that have been raised before the Commission, clarifying and distinguishing among their characteristics so that potential changes can be considered with a full understanding of the implications of various program design features. The charge by the Congress to the Commission is to provide a construct for future programs. A robust construct that goes beyond platitudes must deal with the issues of role and governance beyond the abstract. Therefore, the charts at the end of this briefing paper array issues and potential solutions along with the potential consequences in order to promote discussion and debate. Please note that this paper does not address issues associated with appropriate funding levels. They are grouped to deal with four categories of program level design issues and two categories of project delivery level issues:

- National program focus
- effectiveness of investment decisions,
- inefficiency of program finance
- National allocation decisions
- streamlining project development processes
- correlation with other policies

### Staff Comments

**Commission staff believe that the ability of the Commission to answer the following key questions will ultimately reflect whether its individual recommendations truly address any or all of the issues enumerated in the following pages.**

- **Can the Commission's recommendations be effective if they form a "clean slate" or instead, must they radically reform the existing set of Federal programs and processes?**
- **Are some classes of national priorities (as reflected in the Commission's themes) best embodied in accountability for State/local implementation, with performance conditions on participation in Federal programs? Which ones?**
- **Are some classes of national priorities incompatible with a more locally determined, performance approach? Can such national priorities be determined nationally but implemented through State, local, and private sector actions? Which ones?**

- **Are the “good practices” and policy “protections” currently built into Federal processes sufficiently adopted by State and local governments that eliminating a “one size fits all” set of requirements reduces waste? Or are there certain public interest protections that must be devised and/or streamlined at the Federal level?**
- **Are the potential benefits, including political “buy-in” and national support for pilots of new ideas, sufficient to compensate for the waste and political bias associated with discretionary programs at the Federal level?**

## **Lack of National Program Focus**

The absence of focus of investment and operation under our current surface transportation programs has been frequently raised, illustrated by long lists of highway and transit programs authorized in SAFETEA-LU. Such categorical programs appear to address narrow issue areas, arguably with meritorious intent, but with little or no overarching national interest.

Restructuring surface transportation programs could start from a “clean slate” or “radically reform” such programs. Elements for consideration in addressing program focus include the following.

**National Interest Themes.** In the course of their work, Commissioners have discussed several broad themes including freight, metropolitan mobility, intercity connectivity, safety, and energy. With the exception of safety, none of the existing Federal programs specifically address these themes. Transit and certain highway programs contribute to metropolitan mobility, but not in a comprehensive way. Likewise, certain highway programs address freight issues, but not in a way that targets potential multimodal freight improvements.

**Relative authority and responsibility.** Considerable attention has been paid to a desire to direct Federal programs to areas with national interests, however there is no consensus on what constitutes the national interest. Figure 1 (below) presents a continuum from high national interest to low national interest and from high State/local interest to low State/local interest and attempts to place key programmatic elements along the continuum. There may be some disagreement about exactly where on the continuum specific programmatic elements fall, but the chart does highlight the fact that not all elements have the same national or State/local interest.

It is important to note that the placement of programmatic elements along the national interest continuum does not reflect the relative level of need for Federal funds for each element. The Federal Lands program, for instance, is relatively small in size compared to the National Highway System, but its high Federal interest and low State and local interest suggest a greater need for Federal funding.

In general, one could adopt the premise that it would be appropriate for each level of government to contribute financial support for the various program elements in proportion to their relative interest compared to other levels of government. The private sector also has a greater interest in some program elements than others, especially those for which there is a revenue stream from which they can earn a return on their investment.

Another important point to consider is that within any of the program elements not all investments are equally important. For instance, bridges on the Interstate System are more

important than bridges on low-volume local roads, some parts of the National Highway System have a greater national interest than others, and certain intercity passenger rail projects will be more cost effective than others. Where there are large differences in the degree of national interest in broad program areas, it is difficult to develop apportionment formulas that distribute Federal funds in proportion to national interests.

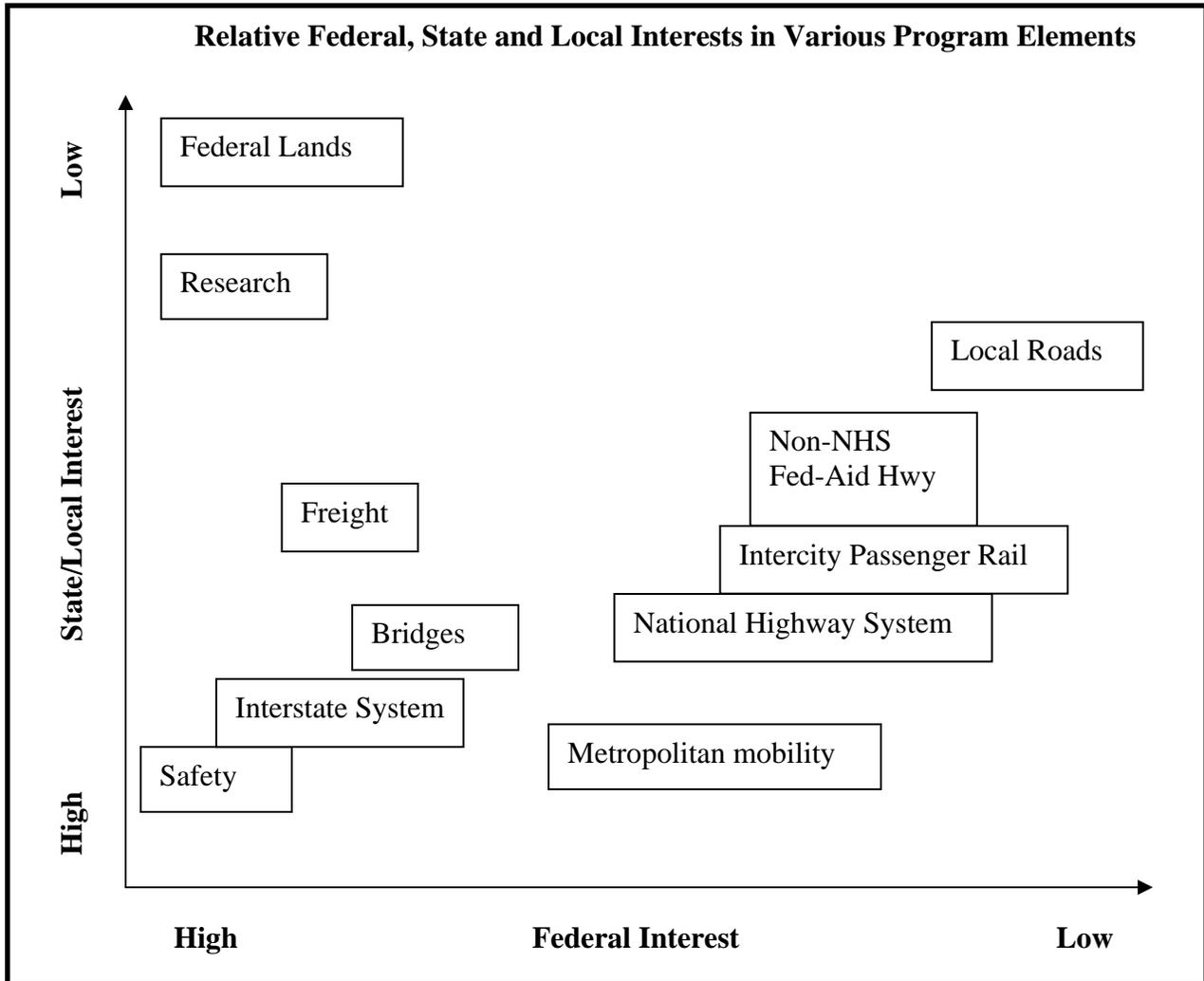


Figure 1

**Functional orientation.** Another suggestion has been to refocus Federal programs around functional areas (e.g., freight, metro mobility, etc.) rather than modes. One uncertainty with such a proposal is how effective it could be without commensurate realignments at the State and local levels. Changes in this direction at the Federal level certainly could help move State and local transportation agencies to make similar changes, but especially at the State level there would be significant institutional barriers to overcome in some States.

**National plan.** Another factor contributing to the lack of program focus is the fact that there is no overarching national plan for surface transportation. The term “plan” has significantly different meanings to different advocates – from statements of principles, generic or specific goals, processes for collective allocation decisions, to a specific list of investments and actions at specific locations. The attractiveness of a “national plan” has been reflected in much testimony to the Commission. Over the years several national transportation policy statements have been developed as well as more focused freight policy statements, but these have not included specific improvement plans. The Interstate System is perhaps the only example of a national plan to construct a specific system of facilities. It is quite different than the National Highway System that was designated in 1993. The Interstate System represented new highways with specific design and performance standards whereas the National Highway System was simply a system of existing highways for which no design or performance standards were established. It was a way to focus Federal investment on a broader system of highways than the Interstate System, but without design or performance standards the general public is hardly aware the NHS exists.

Soon after the NHS was designated, there was an initiative to develop a National Transportation System (NTS). This originally was envisioned to be a map of nationally significant transportation facilities, but during an extensive outreach process there was widespread concern and opposition to the idea of developing a map of a designated NTS. The NTS initiative was refocused toward the development of a process for evaluating the Nation’s transportation system. Like the NHS, this NTS has not had a major influence on focusing surface transportation programs, although it did highlight the importance of multimodal transportation solutions.

**Reducing or eliminating redistribution across States.** The trend in the last several highway bills has been to address the redistribution across States of Federal funding by assuring certain levels of “returns” to the States, bringing each State’s share of the overall funding closer to its total relative contribution of user fees. This is contrary to focusing Federal funding on national priorities. In recent reauthorizations a number of States have pushed to get back even larger shares of their HTF. It has been posed that a compelling programmatic recommendation would be required for Congress to abandon the equity bonus.

## **Ineffective Investment Decisions**

Factors that have been raised before the Commission that contribute to less than optimal investment decisions include:

- (1) lack of performance standards;
- (2) significant amount of earmarking;
- (3) lack of requirements for investment analyses such as benefit-cost analysis;
- (4) inflexibilities in the current funding arrangement that prevent State and local transportation agencies from implementing the most effective mix of improvements;
- (5) distribution of highway funding exclusively through State highway agencies that may have different priorities than local transportation agencies;

**This paper represents draft briefing material; any views expressed are those of the authors and do not represent the position of either the Section 1909 Commission or the U.S. Department of Transportation.**

(6) Federal regulations that limit tolling of Interstate Highways;

(7) institutional arrangements that constrain effective intermodal planning, linkages between transportation and land use decisions, and the effective use of operational strategies.

Each of these factors is noted in the charts at the end of this briefing paper along with potential changes that could help remove barriers to more effective decisionmaking. Several common threads run through these issues:

**Increased flexibility for State and local transportation agencies.** There is a perceived need to allow State and local transportation agencies to address problems with the mix of capital and operational strategies that best meets their local context, but the related need for performance standards to hold them accountable for meeting performance targets. While considerable work has been done on techniques to measure performance, there are few examples of using performance standards to hold grant recipients accountable for achieving pre-determined levels of performance at the overall program level. Developing performance standards that would be applicable to all States and metropolitan areas would be a challenge since local conditions are so different. The approach with the greatest probability of success would be a hybrid set of strategies where ranges for goals are adopted nationally; in tandem with intermediate targets that are negotiated at the regional, State, and local levels.

**‘Stovepiped’ grant institutions.** Another theme that cuts across several issues relates to the stovepiping of programs by mode. This affects not only effective decisionmaking but also the ability to focus on important national interests. Recommendations have been made in the past to reorganize the U.S. Department of Transportation along functional lines, but have never gotten very far, in part because of the current jurisdictional arrangements for transportation programs in Congress. Nevertheless a recommendation in combination with new program designs and accountability would likely get more serious consideration.

**Earmarking of specific grants outside standard programs and decision processes.** The problem of earmarking affects both decisionmaking and the ability to focus the program on key areas. Recently most discretionary programs intended to address important issues that cannot be addressed through traditional formula programs have been heavily earmarked. There is a great reluctance to take advantage of the potential benefits of discretionary programs for fear that earmarking would immediately erode such benefits. Like the state-by-state guarantees that have become institutionalized in highway programs, earmarking has become so institutionalized it will be very difficult to eliminate.

## **Inefficient Program Finance**

Another set of issues that have come up in different contexts relate to current methods for financing highways. The purpose of including this feature in the program listing is not to address it as a demand management tool or as a revenue tool but to identify the issues associated with governance and role.

(1) matching program funding with the relative interest in different program elements by level of government;

**This paper represents draft briefing material; any views expressed are those of the authors and do not represent the position of either the Section 1909 Commission or the U.S. Department of Transportation.**

(2) remove the perverse incentives associated with rewarding grantees for failing to adopt asset management and successful investment programs, and penalizing grantees for addressing not only the infrastructure needs of their constituents but also in the national interest; and

(3) removing barriers to innovative finance including infrastructure banking, value capture, tolling, and private sector involvement (this reference is NOT exclusively concessions), in highway and transit projects.

**Barriers to adoption of pricing.** Even if there is an accepted role for pricing, but there are obstacles to be overcome in many States before pricing could be widely used.

- Pricing on Interstate highways currently is not allowed except under one of several pilot programs authorized in SAFETEA-LU.
- Several metropolitan areas with serious congestion already are beginning to implement pricing, although typically on HOT lanes or express toll lanes rather than on an areawide or facility-wide basis.
- Areawide pricing is being carefully studied in several metropolitan areas in tandem with improved transit service for those who cannot afford to pay the congestion toll and cannot alter their travel patterns.
- There has been discussion that pricing is not an end in itself, but rather a method for making more efficient use of existing capacity and a means for identifying where investment in capacity improvements would be most effective.
- While the primary motivation for pricing usually is demand management, it can raise substantial amounts of revenue. How that revenue should be used is an important public policy issue, but the answer may not be the same for every jurisdiction.

**Responsiveness of financing mechanisms.** This briefing paper is not intended to get into the appropriate level of funding, but several stakeholder groups have raised the issue that most revenues going into the Federal Highway Trust Fund as currently constituted do not increase with increasing price levels. In periods of rapidly increasing construction costs like we now face, the failure of revenues to track price increases has unintended consequences on real investment levels. Many view indexing as just another way to increase taxes, but many other taxes such as the income tax vary with changes in the economy without there having to be an explicit change in rates. Several options have been discussed including indexing the fuel tax or changing the tax from a gallonage to a sales tax.

**Allocation of scarce resources.** Assuming the Federal Government does not get enough money to support all the program areas in which it may have an interest, priorities must be set. It may be more efficient to focus limited Federal resources on those areas with the highest national interest and do them well, rather than spreading resources too thinly across programs for which there is a lesser national interest and doing none of the programs effectively. Of course, determining which programs have the greatest national interest and deserve at least some level of Federal funding is a point of debate.

**This paper represents draft briefing material; any views expressed are those of the authors and do not represent the position of either the Section 1909 Commission or the U.S. Department of Transportation.**

## **Programmatic Deficiencies – Correlation Across Policies**

Several other issues have been raised with the design of current programs that do not fit in the above categories but should be considered. Transportation policies certainly interact and operate within a large set of domestic policies. Mismatches appear to include:

- incentives for energy reduction,
- providing options for mass transit use including intercity passenger rail, and
- priorities for research and technology development are targeted to national needs.

**Inconsistency with energy policy.** Energy is becoming a more critical transportation issue for several reasons including the national security implications of our increasing reliance on foreign oil, much of which comes from highly unstable parts of the world, and growing concern about reducing greenhouse gas emissions that contribute to global climate change. Since the 1970s transportation energy consumption has been an issue, but its prominence has increased substantially in the last several years. Market mechanisms currently are not strong enough by themselves to significantly reduce transportation energy consumption. Many Americans still value horsepower more than fuel economy, although there are signs that that may be changing. Lifestyles and land use patterns make it difficult to get appreciable changes in mode splits, especially in the short run. If transportation is to make a significant contribution to reducing energy consumption, current subsidies of the more energy efficient modes such as transit and intercity passenger rail would have to be increased. Many other programmatic changes can make small contributions to energy reduction, but the point is that it will take explicit and strong policy changes to have any real effect on overall transportation energy consumption.

**Stimulating critical mass of investment in intercity passenger rail.** One of those changes which is highlighted here is the Federal role in intercity passenger rail service. There appears to be great support for a greater Federal role in intercity passenger rail if funding comes from beyond sponsoring localities and the farebox. The nature of policy changes has not been fleshed out to date. There are several options – linking investment in intercity passenger rail to reductions in investment requirements for highway and airport construction being one.

**Dependency on high quality, leading edge research and data.** There has been relatively little discussion to date about the need for research and improved data upon which to make transportation policy and program decisions, but this is one area where there is a clear Federal role. Ambivalence has been demonstrated in prior authorization cycles reflect the failure to have an effective champion in the debate as well as an assumption that such functions would be undertaken even without one. History has shown that neither result is true. Research and data collection activities are two of the first things to be cut when funding is tight and that certainly has been true for Federal transportation research. In addition to budget reductions, there also has been a growing trend to earmark research. Research and development will be critical to some of the advanced technologies like VII we will need to improve both safety and system performance. Improved data will be essential to measuring changes in system performance and other impacts of future transportation programs.

## **National Allocation Decisions – Streamlining Discretionary Grantmaking through Tiered Evaluation**

In contrast to formula or block grants, discretionary grants which bring additional Federal funding to a specific community have been made, explicitly or implicitly through the legislative processes, on the basis of Federal evaluation of project merits. This can result in complex and cumbersome analysis, procedural requirements, and step-wise approval processes. While it is necessary to assure that investments are being made wisely, there is a risk that the time and resources needed to assess project merits can outweigh the benefits of making valid decisions. The tendency is to prescribe a one-size-fits-all approach which, while perhaps appropriate to the largest and most complex projects, is particularly inappropriate for smaller, less complex proposals.

**Determination of merit as threshold criteria.** Project merit usually has several dimensions to be assessed and assurances provided by the applicant. These include:

- project benefits at least exceed project costs (or that a higher return-on-investment threshold is met),
- project sponsor has adequate financial resources to provide the required non-Federal funding,
- project is economically viable over its useful life (operating and maintenance costs are covered), and
- project sponsor has the capacity to deliver the project in an effective way (on-time and on-budget).

**Adoption of a tiered set of expectations.** One approach to streamlining discretionary grant-making is to develop stratified or tiered evaluation requirements. In such a system, projects which meet certain criteria would be subject to streamlined evaluation processes or even granted automatic approval. Key characteristics which might warrant such reduced requirements include:

- Small size or simplicity—projects below a certain size threshold.
- Defined characteristics—projects which have characteristics and well established benefits which clearly exceed costs
- Defined financing arrangements—projects which have characteristics which clearly can be financed, either because of small size with respect to the project sponsor’s resources, or because of project characteristics which make it self-financing
- High Levels of Non-Federal Funding—project with a very small Federal share
- Highly Qualified Project Sponsors—projects proposed by sponsors with a good track record, or with outstanding technical qualifications

**Experience to date.** The FTA New Starts Program has begun to apply some of these concepts. SAFETEA-LU created the Small Starts category with reduced evaluation requirements for projects below a certain cost and level of Federal involvement. FTA’s implementing guidelines introduced the Very Small Starts concept which provides for an automatic finding that the project meets cost-effectiveness requirements based on certain project characteristics. In addition, in the Small Starts program, FTA automatically finds that a project meets local financial commitment requirements if its operating costs are relatively small with respect to the

**This paper represents draft briefing material; any views expressed are those of the authors and do not represent the position of either the Section 1909 Commission or the U.S. Department of Transportation.**

project sponsor's overall budget. FTA is exploring expanding these concepts in the recent NPRM on New Starts and Small Starts, and is considering further changes for its reauthorization proposal.

## State and Local Allocation Decisions – Streamlining Project Development Processes

In contrast to discretionary grants, decisions as to how to allocate within the jurisdiction of the grantee funding to projects with competing priorities, modes, and locations, can be burdensome in terms of time and resources. Information compiled by FHWA reveals that major highway projects take about 13 years to get from project initiation to open to traffic. This analysis has also isolated a number of sources of delays.

While it is necessary to assure that investments are being made wisely, there is a risk that the time and resources needed to assess project merits can outweigh the benefits of making valid decisions. The tendency is to prescribe a one-size-fits-all approach which, while perhaps appropriate to the largest and most complex projects, is particularly inappropriate for smaller, less complex proposals. To reduce overall project delivery time for major highway projects, the time to complete environmental reviews must be shortened, in conjunction with other measures that address conventional strategies for implementation of projects once they clear environmental review.

**Issues associated with 4(f) and other permit processes can add significant time to EISs.** A substantial portion of this time, historically about 3 years and currently about 5 years, is consumed by preparing an environmental impact statement (EIS). Reducing this time, in conjunction with other measures, has the potential to substantially reduce the overall project delivery time.

FHWA historical data shows that EISs with 4(f) took almost 2 years longer than EISs without 4(f); EISs with 404 permits also took almost 2 years longer than EISs without 404 permits. It should be noted that 4(f) and Section 404 are different decision making frameworks. Unlike other permits, they have an open-ended standard requiring agency to "prove a negative." It can be very difficult for an agency to demonstrate that this standard has been met. Since the focus of 4(f) and Section 404 are on avoidance of a specific resource, they can result in less important resources driving decision, thus missing opportunity for achieving greater overall public good

**Issues associated with Environmental Impact Statements (EISs).** Practical experience with the NEPA process and the outcome of project decisions challenged in court proceedings have resulted in the following expectations:

- A minimum level of analysis is necessary in all environmental areas regardless of project issue areas.
- Robust documentation is expected for all resource areas.
- A significant time allowance is needed for developing the required documentation level.
- Thus EISs have gotten longer but not necessarily better.
- Regulations can require an analysis of some alternatives that may not be realistic

**This paper represents draft briefing material; any views expressed are those of the authors and do not represent the position of either the Section 1909 Commission or the U.S. Department of Transportation.** 10

- Fear of litigation has resulted in over-documentation
- Currently, extensive editing of the FEIS occurs to address litigation vulnerability.

**Redundancies in the NEPA Process.** DEISs represent the culmination of several years of public involvement, coordination and collaboration with resource agencies, and planning some of which could be done prior to NEPA formally beginning to ensure it is fully recognized in the NEPA process. Unfortunately, the current process can create numerous redundancies, including the need to backtrack in order to revisit alternatives that were previously rejected and/or to duplicate environmental analyses that were previously endorsed during planning and/or scoping and may not be formally recognized by other agencies when done outside the formal NEPA process. Another frequent by product is that repetitive additional analyses and studies for issues that have already been adequately addressed prior to the start of the NEPA process are again prepared.

**Options for addressing these issues can be addressed either through statutory or regulatory approaches.** Changes would be needed in the current legal and regulatory framework for environmental reviews before any significant time-savings such as those identified above to be realized. Specifically, the following elements of the current framework must be changed:

- Statutory options would require revision to the United States Code (USC), either amending Section 4(f) of the Department of Transportation Act of 1966 (49 USC Section 1653(f)) or creating a new documentation standard for less complex EIS projects
  - Change decision-making framework so agency must demonstrate that they are acting in the public interest instead of having to prove a negative (i.e., instead of having to prove that there is "no feasible and prudent alternative")
  - Change emphasis on avoiding 4f resource by clarifying that "prudent alternatives" do not include those that have a greater adverse effect on other important resources or community values
  - Legislatively provide for a simplified NEPA Class of Action, communicating (to the courts as well to executive agencies) that the Congress expects focused and simplified EIS documentation for projects with few and relatively low significant impacts
- Regulatory Options would require modification to existing regulations, specifically (1) Clean Water Act Section 404 Regulations and (2) CEQ's Regulations for Implementing NEPA (40 CFR 1500-1508)
  - Revise 404 regulations to give greater emphasis to balancing the determination of the least environmentally damaging practicable alternative (LEDPA) with other considerations
  - Revise 404 regulations to give proposing federal agency greater role in determining the LEDPA

- Revise CEQ regulations on “all reasonable alternatives” to provide additional factors to allow narrowing of number of alternatives considered to “reasonable alternatives”
  - Alternatives should be appropriate for project level (rather than planning-level) decisions
  - Alternatives should reflect community values
  - Alternatives should reflect funding realities
- Revise CEQ Regulations for Implementing NEPA to allow for a single EIS rather than the current requirement for a draft and final EIS:
  - In parallel with revisions to CEQ regulations, FHWA would set minimum conditions for what must occur during a “robust scoping” period before publishing the NOI and formally beginning NEPA. Some requirements could include:
    - Determination on general project location
    - Determination of mode choice
    - Development of a risk management plan
  - Handle impacts identification and mitigation issues early by considering them in an integrated fashion looking at overall resources rather than in a sequential, project-by-project basis
  - Addressing some of the major issues upfront, such as alternatives and mitigation, to provide for a more comprehensive EIS and fewer comments on the document, proceeding to a Record of Decision.

•

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DESIGN</b> <b>Lack of National Program Focus</b>	Many existing categorical programs bear little relationship to current Federal interest.	<ul style="list-style-type: none"> <li>• Significantly reduce number of categorical programs</li> <li>• Limit Federal programs to issues with a clear national interest</li> <li>• Set differential match for programs with lower national interest</li> </ul>	<ul style="list-style-type: none"> <li>• Unless they are linked to performance standards, increased use of block grants or categorical programs in order to provide more flexibility dilutes the national focus on key goals</li> <li>• Differential matches if done across modes can distort decision-making “level playing field”</li> </ul>
	Surface transportation programs are oriented by mode rather than by function making it difficult to develop effective multimodal approaches to cross-cutting national priorities	<ul style="list-style-type: none"> <li>• Reorient programs by function (e.g., freight, metropolitan mobility, safety)</li> <li>• National performance standards would contribute to effectively targeting multimodal initiatives and funding to priority program areas.</li> </ul>	Capacity and authority of institutions/recipients of funds to plan and make decisions along functional lines rather than modal lines would be critical.
	No comprehensive national transportation policy or plan to guide multimodal transportation investment <ul style="list-style-type: none"> <li>• No national plan for moving interstate commerce</li> <li>• No national plan for intracity or intercity passenger movement</li> <li>• No national plan or policy for coordination of highway, rail, and airport capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Develop comprehensive national transportation policy or plan to guide multimodal transportation investment               <ul style="list-style-type: none"> <li>○ Using criteria</li> <li>○ Using specific project map</li> <li>○ Promote metro and intermodal linkages</li> </ul> </li> <li>• Within this plan, develop a national freight plan with components for each mode involved in freight transportation               <ul style="list-style-type: none"> <li>○ Using criteria</li> <li>○ Using specific project map</li> </ul> </li> <li>• Promote cost-effective intracity transit &amp; regional intercity passenger rail plans and systems               <ul style="list-style-type: none"> <li>○ Using grants</li> <li>○ Using other incentives</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Plan must have corresponding program and financing plan to be effective.</li> <li>• Discretionary programs carry application burdens &amp; bias.</li> <li>• A plan that does not consider cost-effectiveness will not contribute to meeting critical transportation needs.</li> <li>• Strong lead role for the development and execution of the plans cannot be underestimated; collaboration is key ingredient but insufficient; historical dependence upon states as key stakeholders ignores modern influence of cities and regions</li> </ul>

**This paper represents draft briefing material; any views expressed are those of the authors and do not represent the position of either the Section 1909 Commission or the U.S. Department of Transportation.**

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DESIGN</b> <b>Lack of National Program Focus</b>	Program lacks maintenance of effort criteria to ensure that State maintains its funding commitment when Federal funding is increased	Institute maintenance of effort requirements to assure that States do not substitute increased Federal funds for State and local funding.	
	The current “equity bonus” assures that at least 92% of a State’s contribution to the HTF is returned to the State. This makes it difficult to pursue national priorities that may not be spread across the States.	Eliminate the equity bonus so that Federal funds can be allocated to programs of projects with the greatest national interest, regardless of location.	Some States have advocated 95% return of their HTF contributions. To achieve any meaningful targeting of funds to national priorities while maintaining such an equity bonus requires large increases in overall program size.
	Under current institutional arrangements, national freight improvement needs are not adequately considered	<ul style="list-style-type: none"> <li>• Create freight performance standards that States would be responsible for meeting. Establish a separate freight program with dedicated funding</li> <li>• Remove barriers to adequate freight and passenger rail investment</li> </ul>	<ul style="list-style-type: none"> <li>• If freight program were not sufficiently flexible to accommodate all potential options, improvements selected might not be most effective.</li> <li>• Unless public sector has the authority to influence investment based on public goals rather than profit maximization, goals of freight plan/program unlikely to be achieved.</li> <li>• A separate freight program that was not adequately coordinated with other programs might lead to sub-optimal decisions.</li> </ul>

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DESIGN</b> <b>Ineffective Investment Decisions</b>	There are no common performance standards to hold State and local agencies accountable for improving key aspects of transportation system performance.	Establish specific performance standards and hold State and local agencies receiving federal funds accountable for meeting standards of: <ul style="list-style-type: none"> <li>• Safety</li> <li>• System condition</li> <li>• System performance</li> </ul>	<ul style="list-style-type: none"> <li>• Programs with broad eligibility and flexibility that were not disciplined by accountability for meeting strong performance standards would lead to poor investment decisions.</li> <li>• Performance standards without accountability likely will not be effective</li> </ul>
	Significant earmarking under the current program, both among apportioned and within discretionary program funds	Create program delivery framework that reduces/eliminates earmarking <ul style="list-style-type: none"> <li>• Thru Commission or another independent mechanism.</li> <li>• Thru statutorily adopted strict criteria.</li> </ul>	<ul style="list-style-type: none"> <li>• Discretionary programs have been subject to substantial earmarking with either attendance political bias. The potential exists with an independent Commission as well.</li> <li>• The degree of flexibility of criteria inhibits flexibility and unforeseen approaches and innovation.</li> </ul>
	Current program has no requirements that investments be cost-beneficial.	<ul style="list-style-type: none"> <li>○ Require formal assessment of project benefits and costs as is widely done in many other countries and other forms of infrastructure.</li> <li>○ Included into C/B are performance attributes such as reduced emissions, energy consumption, economic development, as well as travel time.</li> </ul>	Requirements for rigid benefit-cost analysis are likely to be burdensome, biased toward quantifiable aspects, add a governmental approval step (level unknown), and increase time for project approval.

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DESIGN Ineffective Investment Decisions</b>	Categorical programs constrain State and local agencies from applying the most effective transportation solutions within the local context, even though there is already considerable flexibility to shift funds among programs.	<ul style="list-style-type: none"> <li>• Reduce the number of categorical programs</li> <li>• Replace categorical programs with block grants that would be tied to achieving certain performance standards.</li> </ul>	Block grants or additional program flexibilities would dilute efforts toward national goals unless disciplined by accountability for meeting strong performance standards.
	All highway funds must flow through the State highway agency. State and local priorities are not always the same in metropolitan areas, and State agencies might apply different and less effective solutions to problems than local agencies.	<ul style="list-style-type: none"> <li>• Have some portion of funding to address metropolitan mobility go directly to metropolitan areas.</li> <li>• Mandate coordination and consensus between and among metro areas, States, regions.</li> </ul>	Providing funding directly to metropolitan/regional entities could compromise the operation of State highways, including Interstate Highways, unless State and local transportation planners have institutional capacities to adequately plan and achieve effective coordination.
	Separate highway and transit funding makes it difficult in some instances to apply the right mix of funding to most effectively meet specific local needs	Provide funding along functional lines (e.g., metro mobility, freight, safety) rather than along modal lines. Allow broad eligibility for use of funds.	Unless recipients of funds also have the ability to make decisions along functional lines rather than modal lines, optimal decisions might not be possible.
	No national public transportation policy to guide major investment decisions. Federal funding decisions are based on “project readiness” without regard to national interest/significance (FIFO pipeline system).	Designate broad geographical areas and standards of national interest/significance for which project development and funding would be prioritized, e.g. percentage of national population, travel, or economic growth.	If overall program share is apportioned to ensure nation-wide funding availability, funding would be diverted away from national goal.
	Federal regulations limit tolling of Interstate Highways	Remove Federal prohibitions on tolling Interstate Highways	Without some safeguards the public interest might not always be protected.

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DESIGN</b> <b>Ineffective Investment Decisions</b>	Existing planning process does not effectively link transportation and land use decisions	Promote process thru requirements or incentives/disincentives or performance targets in which linkages between transportation and land use are stronger	Strong potential conflicts between National and local interests in interstate commerce and safety likely to be compromised when coordinating transportation and land use.
	Current institutional arrangements do not promote effective intermodal planning and project implementation	<ul style="list-style-type: none"> <li>• Promote institutional framework for more effective intermodal planning and project implementation</li> <li>• Realign USDOT along functional lines rather than modal lines</li> </ul>	Realignment of programs at one level of government may be ineffective if agencies at other levels of government cannot adapt.
<b>PROGRAM DESIGN</b> <b>Inefficient Program Finance</b>	Lack of highway pricing leads to inefficient highway use	Provide greater incentives for more efficient highway pricing.	Highway pricing without consideration of transportation alternatives may be inequitable.
	Revenue sources supporting the HTF do not keep pace with rising construction costs	<ul style="list-style-type: none"> <li>• Index revenue sources to inflation</li> <li>• Change fuel tax to a sales tax rather than a gallonage tax</li> <li>• Establish independent commission to recommend user fee rates.</li> <li>• Promote/create incentives for the use of all potential revenue sources</li> </ul>	<ul style="list-style-type: none"> <li>• Not all revenue sources are equally desirable from an equity or efficiency perspective. Many of the revenue sources that are easiest to increase are also among the least desirable on equity and efficiency criteria.</li> <li>• Fuel prices are quite volatile. Changing fuel tax to a sales tax would subject revenues to much wider swings, both up and down, than the current gallonage-based tax.</li> </ul>
	Under current program Federal Government collects taxes for programs that have little or no Federal interest.	Promote principle that each level of government should collect taxes for and finance improvements for which it has the predominant interest.	Abrupt changes in funding responsibilities may have unintended consequences if responsibilities cannot be met immediately.

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DESIGN</b> <b>Inefficient Program Finance</b>	Current program contains barriers to tolling and private sector involvement in highway projects	Remove barriers to tolling and private sector participation and encourage private sector investment where it is in the public interest	Without some safeguards the public interest might not always be protected.
<b>PROGRAM DESIGN</b> <b>Correlation Across National Policies</b>	Program contains few incentives to reduce transportation energy consumption	Structure program with incentives to reduce transportation energy consumption	Unless carefully considered, incentives could have unintended consequences on various parts of the economy
	Intercity passenger rail is not eligible for Federal funding	Make intercity rail eligible for federal funding	Unless mechanisms are established to evaluate the cost-effectiveness of intercity passenger rail investments, investment may not be desirable
	Poorly targeted research program does not provide the data or technology to address most urgent transportation issues	Remove earmarks from research program and target funds to most urgent data and technology issues	Research has become highly earmarked in recent years. Increasing research funding without removing the earmarks could reduce the effectiveness of the program.
<b>PROGRAM DELIVERY</b> <b>National Allocation Decisions</b>	Competition among projects for additional resources from the Federal government begins with providing information in a manner that allows for evaluation of project merits. Even though the intent includes transparency and fairness, procedural requirements have resulted in complex and cumbersome analyses.	A one-size-fits-all approach can be eliminated in favor of a system where criteria are established based on the required information. Strata or tiered expectations can be developed by which expectations are established and applications can be streamlined. Threshold criteria could include: <ul style="list-style-type: none"> <li>• Size or simplicity of project</li> <li>• Degree of knowledge and thus predictability concerning project type</li> <li>• Complexity of financing</li> <li>• Experience of sponsors</li> <li>• Level of Federal funding</li> </ul>	Looking at individual projects and opportunities do not address the national interest in such facilities. Simplified applications and processes may lead to standardized approaches that do not produce the information that is tailored to performance impacts and goal achievement at the regional level.

**This paper represents draft briefing material; any views expressed are those of the authors and do not represent the position of either the Section 1909 Commission or the U.S. Department of Transportation.**

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DELIVERY Project Development Processes</b>	Section 4(f): <ul style="list-style-type: none"> <li>• provides little flexibility or balance</li> <li>• increases analysis and evaluation needs, increasing the time needed for these analyses in the NEPA process</li> <li>• frames the requirements in terms of proving a negative rather than a more positive environmental decision</li> </ul>	Section 4(f) decision-making framework could be changed to: <ul style="list-style-type: none"> <li>• require sponsors to demonstrate that they are acting in the public interest (program or project is feasible and prudent and meets the best overall public interest) rather than proving a negative (no feasible and prudent alternative)</li> <li>• eliminate the need to seek avoidance of a resource first, allowing the process to focus on positive results to the property</li> <li>• exclude from the Section 4(f) process those transportation improvement projects which will actually result in a benefit and enhance the value of the Section 4(f) resource</li> <li>• allow elimination of avoidance alternatives from consideration and analysis that are not practicable from an engineering perspective or do not meet the project’s purpose and need as defined by the NEPA process</li> </ul>	Avoid resistance if include in the statutory report language that explains the intended effect: <ul style="list-style-type: none"> <li>• Maintains protection of 4(f) resources based on their relative merits.</li> <li>• Balances consideration of 4(f) resources with other environmental factors and overall public interests.</li> <li>• Defines the alternative selection criteria to include consideration of specific factors:               <ul style="list-style-type: none"> <li>○ relative importance and value of the resource being impacted;</li> <li>○ views and opinions of the officials with jurisdiction over the resource;</li> <li>○ relative severity of the adverse effects of the resource;</li> <li>○ ability to mitigate the adverse effects; and</li> <li>○ magnitude of the adverse effects on other resources resulting from selection of an alternative that avoids impacts to the 4(f) resource.</li> </ul> </li> </ul>

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DELIVERY Project Development Processes</b>	Clean Water Act Section 404 Regulations can be contrary to balancing public interests.	Section 404 regulations could be amended to give greater emphasis to other public interest considerations in addition to protecting aquatic resources and to give proposing federal agency a greater role in determining the Least Environmentally Damaging Practicable Alternative (LEDPA).	
	CEQ regulations do not allow for a reasonable narrowing of the range of alternatives to be considered.	CEQ regulations on “all reasonable alternatives” should provide for further narrowing of alternatives considered “reasonable” so that alternatives are appropriate for project level (rather than planning level) decisions, reflect community values, and reflect funding realities.	
	CEQ and FHWA NEPA regulations can be modified to reduce documentation needed for environmental reviews.	<ul style="list-style-type: none"> <li>• A new process should be created to allow for a single EIS rather than requiring both a DEIS and FEIS, and to provide that a Notice of Intent only be issued when a commitment to the project has been established.</li> <li>• A simplified NEPA class of actions with lower documentation requirements should be established for less complex EIS projects with few and relatively low significant impacts.</li> </ul>	

Issue	Features of Current Program Contributing to Problem	Program Features that Could Address the Problem	Program Features that Could Exacerbate the Problem
<b>PROGRAM DELIVERY</b> <b>Project Development Processes</b>	Significant delays could be avoided if the environmental review and permitting procedures for transportation projects could be consolidated into a single process.	The new process could either: <ul style="list-style-type: none"> <li>• Establish mandatory time frames with enforceable deadlines for all approvals and permits on transportation projects, where failure to meet time frames is deemed to be an approval; or</li> <li>• Create a “one-stop” environmental review process by delegating responsibility for permit decisions and other environmental approvals to DOT.</li> </ul>	