Commission Briefing Paper 5C-05

Current Mechanism through which the Federal Interest in Transportation is Exerted

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Introduction

This paper is part of a series of briefing papers to be prepared for the National Surface Transportation Policy and Revenue Study Commission authorized in Section 1909 of SAFETEA-LU. The papers are intended to synthesize the state-of-the-practice consensus on the issues that are relevant to the Commission's charge outlined in Section 1909, and will serve as background material in developing the analyses to be presented in the final report of the Commission.

This paper presents information that augments the historical description in paper 5C-01, Evolution of the Federal Role in Surface Transportation; the two papers introduce themes that are explored in three related papers: 5C-02 Characteristics of the Federal-aid Surface Transportation Program, 5C-03 Development of Future Federal Surface Transportation Program Options, and 5C-04 Identification of Opportunities to Improve the Leveraging Potential of Federal Transportation Funding with other Public Sector and Private Sector Resources.

Background and Key Findings

The current mechanisms through which the federal government influences transportation decision-making have been developed over time as the federal role in transportation has evolved and changed. The mechanisms through which the federal government exerts the national interest are in large part ways in which it interfaces with state/regional government and the private sector. In the exercise of some federal roles, such as the promulgation of regulations, the mechanism and the role are the same. In contrast, the federal government exerts its interests through a wide variety of funding mechanisms. Those funding mechanisms are embodied primarily in the provisions of the federal-aid program, which itself has evolved and changed in its 90-year history. Current roles and mechanisms have yet to be tested against the challenges of the 21st century.

Introduction

Over time and in response to a variety of federal interests, the federal role in transportation has changed and remains varied. The National Surface Transportation Policy and Revenue Study Commission has identified a set of priority national interest goals relative to transportation: promoting economic growth and competitiveness, national defense and emergency preparedness, improving mobility, improving safety, reducing energy/environmental impacts, leveraging new technology and preservation of mature infrastructure.

In one way, the response to such diverse federal interests is reflected in the multiple federal administrations within US DOT that exercise the federal role in transportation; those that are concerned with surface transportation are the Federal Highway Administration, the Federal

Motor Carrier Safety Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Federal Transit Administration, the Research and Special Programs Administration, the Bureau of Transportation Statistics, and the Surface Transportation Board. In addition, other federal executive departments also play a part in the federal government's role in transportation, including the Environmental Protection Agency, Homeland Security, Defense, Health and Human Services (accessibility), Interior and Commerce (endangered species), and the Advisory Council on Historic Preservation.

Among the primary federal roles in surface transportation now are:

- funding, loans and related financial mechanisms for transportation infrastructure development and operations by others
- promulgation of policy; standards, regulation and enforcement
- creation of new government or quasi-government agencies to plan and to own and operate transportation, e.g., Amtrak
- planning, research and technology development

Unlike its role in waterways and waterborne transportation, the federal government currently owns very little surface transportation infrastructure (with some exceptions, primarily roads and transit facilities that provide access to or within federal lands, national parks and Indian reservations), and, thus, is not extensively involved directly in infrastructure development, operation or maintenance.

As described in paper 5C-01A, Evolution of the Federal Role in Surface Transportation, it is not possible to consider the federal role without also taking into account the role of other levels of government and of the private sector. Many of the mechanisms through which the federal government exerts the national interest are ways in which it interfaces with state/regional government and the private sector.

Federal Funding

The current federal-aid program is part of SAFETEA-LU, the 6-year multi-modal surface transportation authorization adopted in 2005. SAFETEA-LU authorizes $193.1 billion dollars in federal funds for highways and $52.6 billion dollars for transit. However, there are differences between the structure of the funding program for transit and the structure of the highway program. For example, the transit program includes a larger relative percentage of federal discretionary "grant" funding for "New Starts," generally high cost capital projects, "Small Starts," less expensive, but still new capital projects, and FTA high priority and Congressionally-earmarked bus and bus facility projects. The "allocated" portion of the highway program is proportionately much smaller and predominantly allocated by Congressional earmarks.

Conversely, the highway program includes a minimum guarantee requirement that requires that each state receive a certain percentage of total funds based on the amount of fuel tax revenues generated by that state. In fact, the largest dollar component of SAFETEA-LU ($40.9 billion) is dedicated to achieving that so-called "equity" provision. The transit program has no comparable geographic distribution mandate. (However, as described in paper 5C-01A, Congress has set and, through its earmarks, is directly involved in the FTA's application of the criteria by which

such federal New Starts transit grant funds are awarded, so the program does reflect some expected geographic distribution of the qualified projects.)

The federal funding programs also employ a number of different mechanisms toward achieving their ends. Those mechanisms assert the federal interest by the amount of federal funds available for one purpose or another, the revenue source and how that source can be used, the federal share of eligible project costs (which in turn "leverage" the corresponding state/local and/or private "match" requirement), the categorization of formula vs. federal discretionary/allocated funds, categorical or flexible funding restrictions on the use of specific fund components, and process and accountability requirements and conditions on acceptance and use of the funds.

Highway Program

As with the "equity" component, most of the federal highway aid program consists of formula funding to the states for different purposes that reflect the federal interest, including dedicated components devoted to improvements to rural and urban roads that are part of the National Highway System ($30.5 billion), preservation/preventive maintenance of the Interstate Highway system ($25.2 billion), bridge maintenance ($20.4 billion), safety -- specifically reduction in traffic fatalities and series injuries ($5.1 billion), construction of Appalachian corridor highways in 13 states ($2.4 billion), and coordinated border infrastructure ($0.8 billion). States are accountable to the federal government for how the funds are used within these formula funding components, but have some discretion and flexibility as to the nature of specific projects.

Two of the formula funding components – the flexible Surface Transportation Program and Congestion Mitigation and Air Quality improvement program -- are allocated through the federally-mandated regional planning process by MPOs/TMAs. The regions have considerable discretion as to the type of projects on which these funds are spent, within the defined purposes of each program. STP funds can be spent on any federal-aid highway, any bridge project, transit capital (and intercity bus facility) projects, carpooling, safety, bicycle and pedestrian projects, and transportation control measures. CMAQ funds can be spent on measures that affect traffic flow, transit improvements, conversion to cleaner fuels, ride-sharing, employee trip-reduction programs, and bicycle and pedestrian improvements. Thus, even though these components ($32.5 billion under SAFETEA-LU for the STP program, and $8.6 billion for CMAQ) are part of the highway program, these funds can also be spent on transit.

There also are a number of discretionary or allocated components in the highway program, although of considerably lesser amounts than most of the formula funds. The largest of these ($14.9 billion in SAFETEA-LU) is for Congressionally earmarked "high priority" projects. Two of the remaining allocated components include $4.5 billion for planning, research, design and construction of roads and transit facilities providing access to or within public lands, national parks and Indian reservations and $2.3 billion for research, development and technology deployment activities. The other two components of the allocated portion of the program are designed to encourage state investment in construction of highway projects in corridors of national significance to promote economic growth and international or interregional trade ($1.9 billion) and for high cost projects of national or regional significance ($1.8 billion).
The federal government pays all of the cost of transportation facilities accessing/within public lands, and between 50 and 100 percent of research and development projects. The mechanism of leveraging federal funds is used to a different extent in other program components. The federal

program continues to pay 90 percent of the cost of Interstate Highway system preservation; it also pays 90% of the traffic fatality/series injury reduction safety projects. The remainder of the highway program components provide for 80 percent of the cost to be borne by the federal government.

Transit Program

The formula portion of the federal transit aid program consists of three components: Urbanized Area (over 50,000 population) formula grants ($18.7 billion), Fixed Guideway Modernizations to maintain infrastructure over seven years old in areas of over 200,0000 population ($6.1 billion), and Non-Urbanized (less than 50,000 population) capital and operating assistance ($1.9 billion).

The discretionary New Starts program is provided $8.0 billion under SAFETEA-LU, with another $4.3 billion provided for bus and bus facilities.

In the SAFETEA-LU legislation, the federal government provides 80 percent of the funding for all transit capital projects (formula and discretionary) and 50 percent of the operating funding for systems in Non-Urbanized areas. In practice, however, the intense competition for limited New Starts funding, and the criterion in the FTA evaluation process that requires and rewards state/local and private funding "match" means that, in effect, no more than 50-60 percent of the cost of these transit projects will be paid by the federal government. Because of the difficulty of the evaluation process, and its demanding criteria that favor projects that further the defined federal interest -- and disfavor others – localities/regional transit authorities often forego seeking any New Starts funding for some projects.

Other Safety Program Components

The federal program also includes components administered through the Federal Motor Carrier Safety Administration ($2.52 billion in SAFETEA-LU for motor carrier safety grants, licensing and information systems) and the National Highway Traffic Safety Administration ($3.13 billion for safety programs, research, countermeasures and performance and incentive grants).

Federal Financing Mechanisms

Among the many innovations of the landmark ISTEA bill of 1991, continued through SAFETEA-LU, are support for innovative financing mechanisms, encouragement of public-private partnerships (PPP) in financing infrastructure, and highway pricing mechanisms to manage congestion.

The introduction of the ***Transportation Infrastructure Finance and Innovation Act*** (TIFIA) by the federal Government as a viable option for transportation projects greatly increases the availability of lower-cost capital for transportation projects. TIFIA, which provides $2.5 billion in annual credit assistance, improves access to capital markets, employs flexible repayment terms, offers potentially more favorable interest rates than can be found in the private capital markets, and facilitates earlier completion of large capital intensive projects due to the market's uncertainty over the timing of revenues. SAFETEA-LU authorizes a total of $610 million through 2009 to pay the subsidy cost (similar to a commercial bank's loan reserve requirement) of supporting Federal credit under TIFIA. To encourage broader use of TIFIA financing, the threshold required for total project cost is lowered to $50 million ($15 million for ITS projects), and eligibility is expanded to include public freight rail facilities or private facilities providing

public benefit for highway users, intermodal freight transfer facilities, access to such freight facilities and service improvements to such facilities including capital investment for ITS.

The ***Railroad Rehabilitation and Improvement Financing Program*** is the TIFIA-like program through which FRA may provide direct loans and loan guarantees. These loans may be used for acquiring, improving, or rehabilitating intermodal or rail equipment or facilities including track, components of track, bridges, yards, buildings, and shops; for refinancing outstanding debt incurred for these purposes; and for development or establishment of new intermodal or railroad facilities. Eligible borrowers include railroads, state and local governments, government-sponsored authorities and corporations, and joint ventures including at least one railroad.

To provide the opportunity for new sources of investment capital to finance our nation's transportation infrastructure system, SAFETEA-LU expanded bonding authority for ***private activity bonds*** by adding highway facilities and surface freight transfer facilities to a list of other activities eligible for exempt facility bonds. Qualified projects, which must already be receiving Federal assistance, include surface transportation projects eligible under Title 23, international bridge or tunnel projects for which an international entity authorized under Federal or state law is responsible, and facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities related to the transfers). These bonds are not subject to the general annual volume cap for private activity bonds for state agencies and other issuers, but are subject to a separate national cap of $15 billion.[1]

SAFETEA-LU established a new ***State Infrastructure Banks (SIBS)*** program which allows all states, Puerto Rico, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands to enter into cooperative agreements with the Secretary of Transportation to establish infrastructure revolving funds eligible to be capitalized with Federal transportation funds authorized for fiscal years 2005-2009. This program gives states the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment.[2]

PPP activity in the roads sector is quite strong currently, and several transit systems are also under consideration by state/local and private entities.

Regulation

As described in paper 5C-01, most federal highway and transit regulation is imposed as a condition of receipt of federal funds; by accepting federal aid funds, states and transit authorities are subject to a number of regulations related to planning, funding and decision-making processes. While flexibility as to how states/regions may use federal funds has increased, so has complexity in the regulations regarding processes, particularly relative to planning requirements, e.g., early involvement and consultation with all interested parties in planning and project development and mandating special efforts to engage all communities. Also, Federal requirements for the planning of transportation infrastructure have evolved and become linked with federal policy and practices related to the National Environmental Policy Act, including requirements for the involvement of resource agencies and affected communities earlier in the

[1] FHWA, "A Summary of Highway Provisions in SAFETEA-LU," http://www.fhwa.dot.gov/safetealu/summary.htm
[2] FHWA, "A Summary of Highway Provisions in SAFETEA-LU"

planning process. Changes in planning techniques and processes were introduced to make the planning process more responsive and sensitive to such defined federal interests as land use development patterns, dislocation of homes and businesses, environmental degradation, energy consumption, transportation for the disadvantaged, traffic congestion, and environmental justice.

In addition, transit rail operations are subject to some federal regulations related to rail operations in general (e.g., sounding horns at intersections). The 1990 Americans with Disabilities Act imposed specific requirements on public transit for accessibility. The 1991 Omnibus Transportation Employee Testing Act requires drug and alcohol testing of safety-sensitive public transit employees, as well as railroad and other transportation workers.

The federal government continues to regulate freight railroads, although to a much lesser extent than in the past, through the Surface Transportation Board, and the ongoing safety regulation of the Federal Railroad Administration. The FRA's Office of Safety employs some 415 federal safety inspectors; it also trains state railroad safety inspectors certified to inspect and enforce federal regulations.

Railroads continue to be subject to the Railway Labor Act and the Railroad Retirement Act, Railroad Unemployment Insurance Act and Railroad Retirement Tax Act, although the "labor protection" provisions were removed for Amtrak by the 1997 Amtrak Reform Act.

Ownership, Operation and Maintenance

Created by Congress, Amtrak provides intercity passenger rail operations. The service continues to be popular with riders and state and local governments, who increasingly have stepped in to increase subsidies in order to keep the service in operation.

Potential Future Mechanism of Developing Integrated Transportation Networks

The USDOT Office of Intermodalism promotes and coordinates efficient intermodal transportation policies among the modes. In 2006, the US Government Accountability Office provided testimony on the challenges associated with the federal role in developing and use of intermodal facilities, including the lack of specific national goals and funding programs. One recommended strategy would be a fundamental shift in federal transportation policy's focus on local decision making by increasing the role of the federal government in order to develop more integrated transportation network