



Infrastructure is Infrastructure. Let's Treat It That Way.

The federal government's current partial shutdown highlights some critical issues in public transit funding and programmatic oversight that are readily avoidable through a combination of minor statutory adjustments and some reasonable changes in policies and procedures within the Federal Transit Administration (FTA). The current shutdown may be an anomaly in terms of its duration and underlying political issues, but there is an ongoing reality: lapses, gaps and delays in surface transportation appropriations and authorizations have been a regular part of the federal landscape for decades, and frequently inflict unwanted and unnecessary uncertainty upon states and transit agencies, and upon the communities and people that rely on our nation's surface transportation infrastructure.

The Community Transportation Association of America recognizes the constitutional roles and responsibilities of our federal government's executive and legislative branches, and realizes that these roles will, from time to time, put the executive and legislature at odds with each other in ways that disrupt the routine functioning of the federal government. That is one of the hallmarks of our nation's unique form of representative democracy, but it does not justify holding the country's public transit systems and operations hostage as a consequence of these political differences. Today, Americans are missing transportation trips to the doctor and grocery as, to-date, approximately \$1 billion in available FTA drawdowns have been delayed. Therefore, we call for the following steps to be taken.

Continuity of Operations is the Priority

First, the Federal Transit Administration needs to have a policy goal, supported by statute and enforceable under law, to assure the continuing flow of its formula grants to states and urbanized areas for as long as authorizations are in effect, and to minimize the disruptions that may arise during limited-term extensions of authorizations. Continuity and predictability are paramount. There need to be tested and viable contingency plans that FTA can execute any time there is either a lapse or short- to moderate-term extension of its authorizations and appropriations. As part of this contingency planning, FTA should examine its policies and procedures surrounding when and how its grantees can draw down funds that already have been obligated toward transit programs and projects, and when and how its grantees can expend the non-federal share of already approved and

awarded transit grants, while awaiting FTA action on the federal portion of these projects' financing.

Secure, Reliable Funding Can – and Should – be the Rule

Second, Congress needs to give equal budgetary treatment to all expenditures from the Highway Trust Fund, whether from its Highway Account or its Mass Transit Account. The Highway Trust Fund is supported primarily by the collection of excise taxes on motor fuels, and other user fees, and therefore is not part of the federal government's general revenues. The same taxes and user fees support both accounts, so there is no logical reason why the Highway and Mass Transit Accounts' expenditures should be treated differently from one another. CTAA calls on Congress to make a technical correction to 23 USC Section 118(a), with conforming amendments elsewhere in statute, that would assure uniformity in how both federal highway and federal transit expenditures from the Highway Trust Fund, once authorized, are apportioned to states and urbanized areas, and made available for obligation. This simple step would have absolutely no impact whatsoever on federal budgeting and appropriations, but would achieve the following:

- Full-year apportionments of formula grants would be made to states and urbanized areas at the beginning of each fiscal year, assuring predictability and reliability of federal transit funding;
- FTA formula grantees would be able to carry over unobligated contract authority throughout the availability of apportioned funding, allowing them to draw down federal transit funds even during temporary lapses in appropriations; and
- The federal government retains fiscal control over the outlays of funding by setting overall FTA obligation limitations as part of the annual appropriations process, just as has been the case with FHWA trust fund obligations for decades.

There Cannot Be Federal Funding without Federal Personnel

Third, it is essential that FTA staff be available to oversee and assist grantees at all times. Ironically, FTA guidance and assistance is most necessary when there are lapses or delays in routine funding, so those are the worst possible times for FTA staff furloughs or reductions. Therefore, CTAA calls on Congress to make a technical change to establish that FTA's administrative expenses as authorized 49 USC Section 5338(e)(1) are derived from the Mass Transit Account of the Highway Trust Fund; this would be identical to the statutory structure at 23 USC Section 104(a) that provides for FHWA administration of the federal-aid highway program.

There are other ways that administrative personnel could be available to oversee FTA formula grants during lapses of appropriations. One alternative could be for the Secretary of Transportation to designate some personnel within the FTA Office of Program Management as excepted employees whose duties are essential to the preservation of life or – in the case of transit grants – property, even during periods of lapsed appropriations.

Another alternative could be for FTA's contingency planning to include temporary delegation of formula grant administration and oversight to counterpart FHWA headquarters and division offices (this could in turn have reciprocity through which FHWA could turn to FTA for program administration during its interruptions in authorizations). Those alternative strategies could work in some cases, but are needlessly complicated, when a simple statutory adjustment at Section 5338(e)(1) can assure continuity of FTA administration and oversight, irrespective of appropriations status.

Explaining the Necessity for Federal Action

Why has CTAA called for the three steps described above? For a simple illustration, take a look at the FHWA and FTA pages from the U.S. Department of Transportation's "Operations [Plan] During a Lapse in Annual Appropriations," (link: <https://www.transportation.gov/sites/dot.gov/files/docs/mission/budget/328471/consolidated-december-2018-shutdown-plan-final.pdf>) as published in December 2018. Here's the FHWA plan:

FEDERAL HIGHWAY ADMINISTRATION

Personnel Summary

- Staff at Work
 - Life and Safety Excepted Staff: 0
 - Staff funded by multi-year appropriations, indefinite appropriations, or contract authority: 2,682
 - Staff supporting lawful continuation of other functions (e.g., support for Life and Safety positions): 0
- Total Staff at Work 2,682
- Staff to be Furloughed: 0
- Total Staff: 2,682

Summary of Continuing Operations

- All operations continue as normal during a lapse in annual appropriations.
- Highway Trust Fund operations would continue during a lapse in annual appropriations. FHWA positions are primarily funded by authorized contract authority and paid out of the Highway Trust Fund.
- Although FHWA positions are mostly funded from the Highway Trust Fund, FHWA employees working on certain projects and activities may be paid from non-Highway Trust Fund funding sources, including multi-year appropriations (allocations of BUILD Transportation Grants funding and advances from other agencies through the Miscellaneous Trust Funds account) and reimbursable authority.

Summary of Suspended Activities

- None. Activities funded with contract authority, carryover multi-year appropriated budget authority, or reimbursable authority.

Assessment of Liquidating Cash

- FHWA has sufficient liquidating cash to continue operations during a lapse in annual appropriations.

Special Circumstances

- Not applicable.

Shutdown Checklist

- Plans are up-to-date and approved by the Administrator.

In contrast, here's FTA's current "shutdown" operations plan:

FEDERAL TRANSIT ADMINISTRATION

Personnel Summary

- Staff at Work
 - Life and Safety excepted staff: 9
 - Staff funded by multi-year appropriations, indefinite appropriations, or contract authority:
 - Program Oversight: 23
 - Hurricane Sandy Recovery: 25
 - Lower Manhattan Recovery Office: 2
 - Total: 50
 - Staff supporting lawful continuation of other functions (e.g., support for Life and Safety positions): 6
- Total Staff at Work: 65
- Staff to be Furloughed: 493
- Total Staff: 558

Summary of Continuing Operations

- In the absence of appropriations, limited functions funded from prior year unexpired appropriations would continue. These would include Hurricane Sandy activities funded from the 2013 Disaster Relief Appropriations Act (25 staff), program oversight (23 staff) authorized under 49 U.S.C. 5327 and 49 U.S.C 5338(f) funded with prior year contract authority, and activities in the Lower Manhattan Recovery Office (2 staff) funded by emergency supplemental appropriations after 9/11.
- FTA would also have 15 excepted staff to perform life and safety activities authorized in MAP-21 and oversee the lawful continuation of other functions, including 7 available for Washington Metropolitan Area Transit Authority (WMATA) safety incident notification and response. FTA also has contract support funded from prior year unexpired appropriations for WMATA safety oversight.

Summary of Suspended Activities

- FTA would not continue any of its unfunded core agency functions. No grants, cooperative agreements, contracts, purchase orders, travel authorizations, or other documents obligating funds would be executed.
- FTA would discontinue reimbursements to transit agencies for ongoing operations and construction projects to enable them to provide transit services and pay employees and contractors.
- FTA would not obligate grant funds for projects carried out by approximately 1,300 grantees throughout the country as FTA staff that perform these functions are not considered excepted employees. FTA grants primarily fund operating expenses and capital projects.
- For projects under development, FTA staff would not carry out environmental, legal, civil rights, and other reviews essential for advancing projects to the point of obligation, since these are not related to immediate issues of life and safety.
- FTA would not make grant payments using FTA's Financial Management Systems or vendor payments to contractors using the DELPHI accounting systems regardless of the fiscal year cited since appropriations would not be available to pay the salaries of the staff certifying the payments.
- Program oversight activities would continue but only with funds provided by prior year appropriations. Most oversight activities are performed by contractors.
- FTA would also not obligate or outlay funds for research and technical assistance activities because appropriations would not be available to pay the salaries of the staff executing the payments.

Assessment of Liquidating Cash

- FTA has sufficient liquidating cash to support several months. However, FTA would not outlay funds because appropriations would not be available to pay the salaries of staff executing payments.

Special Circumstances

- Certain contract support functions funded with prior year or other available appropriations would continue unless contracting officer representatives (CORs) are needed to supervise on-site contract staff. CORs are generally not considered excepted employees, unless they are required to enable the continuance of an otherwise authorized or exception function that would be significantly impaired without such services.

Shutdown Checklist

- Shutdown plans are up-to-date and will be approved by the Administrator and senior staff prior to implementation.
- The Office of Human Resources has identified each position subject to a furlough, and preparations are in place to notify affected staff.
- Logistics are in place to provide for an orderly recall of employees and a return to normal operations, once annual appropriations are restored.

The contrast between FHWA and FTA is stark. Disruptive as they are, the orderly shutdown procedures from FTA make eminent sense for the management of programs subject to annual appropriations from the federal government's general revenues. Such procedures should not have to be invoked when trying to manage programs such as FTA's formula grants, which derive from an independently funded federal trust fund. The Highway Trust Fund was set up for a purpose, and CTAA reminds Congress and the president's administration that we need to maintain this trust across all surface transportation modes, now more than ever.