



# Daily Report for Executives™

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## Transportation

America's national surface transportation network is in crisis, writes Jack L. Schenendorf, of Counsel, Covington & Burling LLP. Without additional transportation investment, the United States economy will suffer. While raising motor fuel taxes, which comprise the majority of federal transportation receipts, would be one solution, there does not seem to be the current political will to do so. Schenendorf proposes two alternative solutions, a Federal Interstate User Fee and a Federal Motor Carrier User Fee, to supplement current federal transportation revenues in order to restore and modernize the transportation network.

### Modernizing U.S. Surface Transportation System: Inaction Must Not Be an Option

By JACK SCHENENDORF AND ELIZABETH BELL

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**O**n April 15, 2011, Rep. Paul Ryan (R-Wis.) stood on the floor of the House to discuss the financial health of the U.S. economy. "Let me ask you this," he said of the 2008 financial crisis:

What if your President and your member of Congress saw it coming? What if they knew why it was happening, when it was going to happen, and more importantly they knew what to do to stop it and they had time to stop it but they didn't, because of politics? . . . We cannot avoid this choice. To govern is to choose. We are making a choice even if we don't act. And that's the wrong choice.<sup>1</sup>

Ryan asked these questions during the debate on the fiscal year 2012 budget. But his remarks could apply

<sup>1</sup> 157 Cong. Rec. H2900 (Apr. 15, 2011).

equally, if not more so, to the impending transportation crisis facing the United States.

For decades, the United States has underinvested in the national surface transportation network. As a result, the aging, congested network is in need of repair and does not have adequate capacity to accommodate future population and economic growth. Despite the persistent calls of policy groups, as well as independent, government-sponsored commissions and studies, for increased investment, the Highway Trust Fund (HTF)—the primary vehicle for federal surface transportation funding—has been perpetually underfunded.

Should this pattern of government inaction continue, our economy, which depends on the efficient and safe transportation of goods and people, will suffer as our surface transportation network literally grinds to a halt. U.S. businesses will become less competitive in the global marketplace. U.S. companies will be forced to locate plants to other countries where transportation services are adequate. U.S. private-sector jobs will be lost. And the American people will suffer, in terms of lost job opportunities, longer and more stressful commutes, and a lower standard of living.

In other words, this transportation crisis is predictable. President Obama and members of Congress can see it coming. They know why it is happening. They know when it is going to happen, and they have time to stop it. Most importantly, they know what to do to stop it—and, in fact, revenue-raising solutions to maintain and improve our surface transportation network can be implemented almost immediately. The problem has been politics. There has not been the political will to raise the federal motor fuel or diesel fuel taxes that comprise the majority of federal surface transportation funding, even though study after study, and report after report, has recommended doing so.

To make meaningful improvements to the national surface transportation system, Congress must raise additional revenues. Ideally, Congress would do so by implementing the independent, bipartisan recommendations regarding motor and diesel fuel taxes. If this does not happen and no new revenue is raised, a reduction in spending will result, further exacerbating the transportation crisis. Thus, it is imperative that Congress develop alternative mechanisms to supplement existing revenues in the Highway Trust Fund. The primary purpose of this paper is to propose two such alternative mechanisms. They are:

1) a Federal Interstate User Fee for all vehicles using the Interstate Highway System, with its revenue dedicated to modernizing the interstate to meet the demands of the 21st century; and

(2) a Federal Motor Carrier User Fee, with its revenue dedicated to freight-related transportation improvements benefiting the trucking industry.

These targeted user fees have three characteristics in common: they appropriately place the costs of maintaining and improving the federal-aid highway system on its users, they can be implemented relatively easily, and most importantly, they tackle the problem of highway funding on a comprehensive, national level.<sup>2</sup>

<sup>2</sup> Though mechanisms for investing in public transportation (such as buses and rail transportation) are beyond the scope of this white paper, a user fee or use tax could also be imposed to raise funds for public transit systems. See, e.g., National Sur-

The next section of this paper provides background information on state of the Highway Trust Fund and its funding challenges. These challenges mandate significant, rather than patchwork, policy changes. After the challenges are described, the paper discusses the importance of the national surface transportation network to our economy, and the key principles necessary to creating viable funding solutions. Especially important is the need for a consistent federal policy that is truly national, rather than focused on state- or local-level fixes. The two solutions noted above are then discussed, including details of design, administration, and policy advantages.<sup>3</sup>

The federal surface transportation network is a crucial and dangerously neglected driver of our economy. To put it bluntly, failure to adequately fund the maintenance and expansion of this system is not an option. As a country, we can't avoid making the choice to address this problem—and inaction is the wrong choice.

**State of Highway Trust Fund: Burning Platform** In the 1950s, President Dwight D. Eisenhower had a vision of a unified nation. Without a robust, federally-supported transportation system, he stated, the United States “would be a mere alliance of many separate parts.”<sup>4</sup> In 1956, the federal government established the Highway Trust Fund (HTF) to help realize President Eisenhower's vision. Created by the Highway Revenue Act of 1956, the HTF is a financing mechanism that accounts for tax receipts dedicated for expenditures on highways and transit needs. Currently, the HTF houses two accounts: one for the highway program, and one for public transit.

Since its inception, the HTF has been funded by taxes on motor fuels and vehicles. By linking transportation-related taxes with transportation-related funding, the HTF ensures that the costs of the new federal highway system are primarily borne by its users. Through the ample revenue they provided to the HTF, the Eisenhower generation helped build not only a state-of-the-art highway system, but also one that included extra capacity for generations of drivers to come.

The number of drivers using the highway system since the HTF was created has increased drastically, especially over the last 30 years. From 1980-2006, vehicle miles traveled increased 97 percent for automobiles and 106 percent for trucks. In 2007, drivers traveled about 3 trillion vehicle-miles and 5 trillion passenger-miles on public highways, along with 1.3 trillion ton-miles of freight (about 30 percent of the total).

In the past three decades or so, however, the total number of highway lane miles grew only 4.4 percent. As a result, hours of delay per traveler almost tripled from 1982-2005, and total hours of delay increased fivefold. In urban areas alone, congestion resulted in 4.8 billion hours of traveler delays and consumption of an additional 3.9 billion gallons of fuel in 2009. Freight movements have been similarly affected: the top 25 truck bottlenecks in the U.S. (primarily at interstate inter-

face Transportation Policy and Revenue Study Commission, *Transportation for Tomorrow* 5-18 (Dec. 2007).

<sup>3</sup> Should the reader want information on even more potential solutions, Appendix I briefly describes other, short- to medium-term revenue-raising possibilities. Appendix II provides a comprehensive list of federal revenue options from recent government studies.

<sup>4</sup> Remarks of February 22, 1955.

changes) account for about 37 million truck hours of delay each year.

These problems aren't only the result of a steadily growing usage, but also of deteriorating conditions. As of 2006, more than half of total vehicle miles traveled on the federal highway system occurred on roads that were not in good condition. More than one-quarter of the nation's bridges are structurally deficient or functionally obsolete.<sup>5</sup>

How did we get from having one of the world's pre-eminent transportation systems to an overburdened system that is steadily falling into a state of disrepair? The heart of the problem is this: while we have been benefiting from the expenditures of the generation that helped to build the Interstate Highway System, we have failed to make adequate federal investments of our own.

Though national surface transportation expenditures have increased over time, they have not kept pace with national growth. Expenditures on highway maintenance and improvements are shared by local, state, and federal governments. When growth in vehicle miles traveled is taken into account, real highway spending across all these levels of government has fallen by nearly 50 percent since the creation of the HTF.<sup>6</sup> The federal contribution to highway spending, in particular, has remained fairly constant, falling behind rather than responding to additional infrastructure demand.<sup>7</sup>

The vast majority of federal-level highway funding is provided through the HTF. Currently, about 90 percent of HTF revenue is derived from excise taxes on motor fuels.<sup>8</sup> These taxes are set at 18.4 cents per gallon of gasoline and 24.4 cents per gallon of diesel, but are not indexed for inflation and have not been raised for almost two decades. The tax has lost about 33 percent of its purchasing power since it was last raised.<sup>9</sup> At the same time, recent legislation—most notably the Transportation Equity Act for the 21st Century and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users—substantially boosted federal highway spending.<sup>10</sup>

As a result of the economic downturn, declining real receipts, and increasing outlays, the HTF is in a solvency crisis. Since, by law, the HTF cannot incur a negative balance, Congress has been forced to authorize three emergency funding infusions totaling \$34.5 billion since 2008.<sup>11</sup> Yet short-term and long-term

shortfalls still loom—and investment needs continue to grow.

In both business and government, many managers and executives recognize the term “burning platform,” a crisis so severe that it necessitates radical and immediate change. The term's origins are traced back to the story of a man working on an oil platform in the North Sea. One night, a fire erupted, forcing the worker to the end of the platform. As the fire approached, the worker had to make a decision: submit to the fire, or jump into the waters of the North Atlantic. Although a dive into the sea is a drastic move, the worker simply couldn't wait until the fire engulfed the entire platform.

It is the position of this white paper that, in terms of funding our national surface transportation system, we are standing on a burning platform. Drastic action is necessary.

The first step is to reform federal surface transportation programs. Existing programs should be thoroughly reviewed, consolidated to the maximum degree possible, reoriented toward performance, and refocused on the national interest. Project delivery must be streamlined. And at the very least, a multi-year reauthorization bill should ensure that receipts are in line with outlays.<sup>12</sup>

As needed as it is, reform alone will only throw a bucket of water on the conflagration. What is really feeding the fire is increased transportation demand and usage. For example, both passenger and truck travel are anticipated to grow at an annual rate of approximately 2 percent through 2035.<sup>13</sup> Current federal policies will not be able to keep pace with that growth.

What the HTF truly needs is a significant and immediate increase in revenue. Even if every dollar raised for transportation needs by our financial and institutional structures is utilized in the most effective manner, the current level of funding would not be adequate to maintain the operational performance and physical condition of the highway system.<sup>14</sup> Indeed, revenues generated by current law will only provide enough resources to cover less than half of what is needed to maintain our highways through 2035. Similarly, those revenues will only meet about 35 percent of what is needed to *improve* our highway system.<sup>15</sup>

We can no longer take advantage of the investments of prior generations. Instead of struggling to meet the bare minimum requirements for maintenance, we should anticipate the future needs of the highway system and ensure those needs are met. Instead of watching the fire consume the current policy platform, we need to jump off.

## Action, Inaction, and Economic Growth

The significant changes required to maintain and improve our highways are not only needed for the convenience and the safety of individual drivers—although these are important concerns. A deteriorating public

<sup>5</sup> For these and other statistics, see, for example, National Surface Transportation Infrastructure Financing Commission, *Paying Our Way: A New Framework for Transportation Finance* 22 (Feb. 2009); Congressional Budget Office, *Alternative Approaches to Funding Highways* 1-3 (Mar. 2011).

<sup>6</sup> National Surface Transportation Infrastructure Financing Commission, *supra* n.5, at 34.

<sup>7</sup> *Id.*

<sup>8</sup> The remaining revenue comes from a sales tax on certain trucks and tractors, taxes on truck tires, and a heavy vehicle use tax. See, e.g., Congressional Budget Office, *supra* n.5, at 2.

<sup>9</sup> See, e.g., American Association of State Highway and Transportation Officials, *The Forum on Funding and Financing Solutions for Surface Transportation in the Coming Decade: Conference Report 2* (Jan. 2011).

<sup>10</sup> National Surface Transportation Infrastructure Financing Commission, *supra* n.5, at 43.

<sup>11</sup> American Association of State Highway and Transportation Officials, *supra* n.9, at 4.

<sup>12</sup> Of course, without additional revenues, balancing receipts and outlays would require a reduction in funding, which would further exacerbate the investment crisis.

<sup>13</sup> National Surface Transportation Policy and Revenue Study Commission, *supra* n.2, at 5-16.

<sup>14</sup> *Id.* at 4-3.

<sup>15</sup> American Association of State Highway and Transportation Officials, *supra* n.9, at 6.

highway system also powerfully impacts the wellbeing of the U.S. economy.

The remainder of Rep. Paul Ryan's April 15 remarks, cited at the beginning of this white paper, emphasized the need for budget reform as a necessary aid to economic growth. Ryan considered budget changes crucial to the preserve America's promise of prosperity to the next generation. Without providing for the future, he argued, the United States will slide into decline.

Again, these remarks apply, and urgently, to our transportation infrastructure.

Our national highway network is a critical driver of our national economy. It is a rare example of a physical government infrastructure that reaches every American—if not individual drivers, then individuals who consume goods and services that could only be provided thanks to state-to-state transportation. It increases productivity and lowers transaction costs. It has been instrumental in enhancing mobility, and thus providing access to jobs, education, and other opportunities that have increased the quality of life in the United States.

If no action is taken, that is, if no investments are made to maintain and improve the highway system to accommodate greater demand for access to goods and services, access to these benefits will be limited.

A recent report by the McKinsey Global Institute shows just how far behind the U.S. has fallen in terms of building a 21st-century infrastructure. Compared with the 139 countries examined by the World Economic Forum's Global Competitiveness Report 2010-2011, the U.S. ranks 23rd on overall quality of infrastructure, behind countries such as Canada, France, Germany, and Japan. This represents a precipitous drop over the past decade: In 2000, the U.S. ranked 7th.<sup>16</sup>

Worse still, our inadequate infrastructure imposes unnecessary additional costs on the U.S. economy and American taxpayers. The McKinsey report goes on to estimate that increasing road congestion in the United States already costs more than \$85 billion a year. On a per traveler basis, this annual cost ranges from \$1,084 in very large urban areas to \$384 in suburban and rural locations.<sup>17</sup>

At a time of increasing global competition and uncertain economic growth, the United States can't afford to undermine the benefits that a well-functioning transportation system provides or allow inaction to impose additional costs on U.S. travelers. U.S. jobs, the U.S. economy, and this country's position as a global economic leader are at stake.

## Evaluating Appropriate Solutions

In response to the pending transportation crisis, dozens of solutions have been proposed by public policy groups and government commissions with respect to raising HTF revenue.<sup>18</sup> Rather than repeat that litany of options, this white paper proposes two *new* solutions, based broadly on concepts found in previous studies,

<sup>16</sup> McKinsey Global Institute, *Growth and Renewal in the United States: Retooling America's Economic Engine* 52 (Feb. 2011).

<sup>17</sup> *Id.* at 53.

<sup>18</sup> For the breadth of options reviewed by these government commissions, please see Appendix II.

which meet three general principles. All three of these principles are important for creating revenue-raising mechanisms that are efficient, viable, and best reflect the scope of the federal highway system and its role in the U.S. economy.

First, proposed solutions should approximate a true user fee as closely as possible. The HTF's major revenue stream, motor fuel taxes, is an example of a revenue-raising solution that attempts to place the responsibility for maintaining and improving the highway system on its actual users. Revenue options that hew as closely as possible to user fees are fairer and more economically efficient, causing the individuals who impose costs on the system (for example, by increasing the need for repairs through a high level of use) to pay those costs, rather than obligating non-users to shoulder the burden.

Second, the solutions should be relatively easy to implement. As this white paper suggests, the problem of federal highway funding requires an urgent response. Moreover, ease of implementation usually—though not always—translates into less costly and more politically viable programs.

The third and most important principle is the need for a truly national investment policy. Highway Account funding is focused on the federal-aid eligible highways that make up about 25 percent of the nation's 4 million miles of roads but carry more than 85 percent of the vehicle miles traveled annually.<sup>19</sup> Modernizing these highways, especially the major highways that make up the National Highway System (which includes the Interstate System) will require significant, sustained investment over a considerable period of time. The HTF is uniquely suited for this type of investment.

Previous reports on the issue of highway funding often raise solutions such as credit enhancement programs, bonding, state-level tolling, national or state infrastructure banks, and private-public partnerships. These options, while worthwhile and clearly part of the solution, are not the complete solution. Such programs will not generate enough revenue for the system-wide, sustained investment that is needed over the long term. Moreover, they tend to reside at the local- and even project-level. State and local governments are subject to different and more narrowly-focused political pressures than the federal government. If funding fixes are aimed only at changes on the state- and local-level, there is a danger that the transportation system would become balkanized—to the detriment of the national network.

The focus in creating the federal-aid highway system was the concept of a country unified by a nationwide infrastructure. In today's highly competitive global economy, this vision is more important than ever. Only a strong federal role will help realize this unity, allowing for systemic improvements in both high-traffic and low-traffic states. There is also the issue of fairness. A very costly project in State A may be needed because of traffic destined for other distant states. It is not fair to ask the citizens of State A to pay the whole tab for a project that benefits millions of people across the network. The costs of modernizing the national network should be borne by all of the users of the network.

<sup>19</sup> See, e.g., Congressional Budget Office, *supra* n.5, at 1.

This approach is consistent with the federal role in transportation throughout our nation's history.<sup>20</sup> From President George Washington's support for federal construction, maintenance, and repair of existing and future lighthouses, buoys and public piers for rendering navigation "easy and safe";<sup>21</sup> to presidential hopeful Henry Clay's support for capital improvements; to President Abraham Lincoln's support for the transcontinental railroad; to President Theodore Roosevelt's support of the Panama Canal; to President Franklin Roosevelt's support for a cross-country, high-level road system; to President Dwight Eisenhower's support of the Interstate Highway System and the Highway Trust Fund; and to President Ronald Reagan's support for increased motor fuel user fees to preserve and modernize the federal-aid highway network, the federal government has been instrumental in the development of our nation's strong surface transportation network.

Thus, the solutions recommended below focus on increasing the receipts of the HTF for countrywide distribution.

### Motor Fuel Excise Tax: Missed Opportunity

One obvious solution that meets the three criteria outlined in the previous section is an increase in the motor fuel and diesel fuel excise taxes. Political opposition to any such increase, however, would appear to make this solution unlikely, at least in the near term.

As mentioned above, motor fuel taxes on diesel and gas constitute about 90 percent of HTF receipts. These taxes are charged at a flat rate per gallon that is set by Congress. The current tax rates on motor fuels are 18.4 cents per gallon for gasoline and 24.4 cents per gallon for diesel fuel. An increase in these rates is long overdue; Congress has not changed the rates since 1993, and because they are not indexed for inflation, their efficacy as a revenue-raising tool has diminished substantially over the past 18 years. Had the federal gas tax rate of 18.4 cents per gallon been indexed using the Consumer Price Index for all Urban Consumers, beginning in 1993, the tax rate in 2008—the year of the HTF's first emergency infusion—would be 27.5 cents per gallon.<sup>22</sup>

Because the motor fuel tax is already in place as the primary funder of the HTF, implementation of a tax increase or an indexing solution is straightforward and could be easily accomplished, at least technically. Moreover, the motor fuel tax approximately places the cost of maintaining and improving the highway system on users of that system. Although the tax is collected at the fuel terminal level, it is passed on to drivers at the pump.

Despite enjoying widespread support as the best and most appropriate HTF fix, at least for the short- and medium-term, a motor fuel tax increase is unlikely to

<sup>20</sup> The federal role in transportation policy is rooted in the U.S. Constitution itself. Article I, Section 8, clause 3 provides that Congress has the power to regulate interstate commerce, a power which includes the regulation of interstate transportation. In terms of highways themselves, the Constitution is even more explicit, granting Congress the power to "establish . . . post Roads" in Article I, Section 8, clause 7.

<sup>21</sup> An Act for the establishment and support of Lighthouses, Beacons, Buoys, and Public Piers, ch. 9, 1 Stat. 53 (1789).

<sup>22</sup> See National Surface Transportation Infrastructure Financing Commission, *supra* n.5, at 41.

happen.<sup>23</sup> Historically, motor fuel taxes have received a reasonable degree of public and political acceptance.<sup>24</sup> In the face of the current political opposition to any tax increases, however, the viability of this solution seems too low at this time.

If Congress does not increase the current motor and diesel fuel taxes, it should, nevertheless, consider indexing them to inflation. This would at least preserve the current purchasing power of those taxes and be a part of the solution to the transportation investment crisis.

### Recommended Solutions: Targeted Federal User Fees

If there is not the political will for a motor fuel tax increase, other solutions exist that could avoid or minimize the pushback against raising taxes. This white paper suggests two such solutions: (1) a Federal Interstate User Fee (FIUF) and (2) a Federal Motor Carrier User Fee (FMCUF). Note that in both cases, these targeted user fees are meant to supplement, rather than replace, existing motor fuel taxes and other HTF revenue sources. If the solutions are adopted, these existing HTF revenue sources could be used to repair and modernize other portions of the national surface transportation network.<sup>25</sup>

#### Federal Interstate User Fee

The Federal Interstate User Fee (FIUF) would impose a user fee on interstate highway users.

#### FIUF Design

The FIUF would impose a use-based fee on all interstate highway users. This fee would be collected through a system like E-ZPass that would detect entry onto and exit from interstate highways. No tollbooths or other major structures would be constructed in order to collect the user fee. Rather, the system would be completely electronic. Standardized transponders could be included on newly manufactured vehicles and retrofitted to older models. Entry and exit data would be collected by electronic readers stationed at highway on- and off-ramps.

Fees would be set at the level necessary to reimburse states for the federal share of the costs of restoring the Interstate Highway System to a state of good repair and the costs of expanding and modernizing the system, including projects for the improvement of international points of entry and exit. Personal and commercial travelers would pay for use of the interstate system in proportion to the costs associated with that use while maintaining the current allocation of highway cost responsibility. In addition, fees could be set at rates that differ by geographic areas to account for costs associated with repair and modernization. For example, the fee on

<sup>23</sup> We recognize that an increase in motor fuel taxes would not be a sustainable, long-term solution. See, e.g., *id.* at 102-103, 106 (discussing factors that would make motor fuel taxes less effective, such as fuel efficiency improvements and environmental concerns). Our recommended solutions, discussed in the next section, provide long-term revenue-raising options that are not exposed to the weaknesses of the motor fuel taxes.

<sup>24</sup> See *id.* at 106.

<sup>25</sup> Examples of FIUF, FMCUF, and base revenue projects can be found in Appendix III.

less-congested portions of the interstate might be less than the fee on highly-congested portions.<sup>26</sup> The fees would *not* be designed to control the level of traffic or to “price out” drivers from using the interstate.

FIUF revenue would be collected automatically on a periodic basis, for example, monthly. Interstate Highway users would, likewise, receive periodic statements detailing their highway use and the resulting charges. Fees for commercial vehicles would be collected through businesses; individual drivers would receive personal statements. All fees would be deposited into a newly created subaccount within the existing Highway Account of the HTF.

### **Administration and use.**

All FIUF fees collected would be used to repair and, more importantly, modernize the Interstate Highway System. Fees would be used to reimburse states for the federal share of funds expended on the interstate. Revenues in the HTF’s Highway Account would no longer be used on interstate projects but instead would be used to upgrade the remaining federal-aid highways, including the major non-interstate highways on the National Highway System.

Under the FIUF program, no other policy changes with respect to interstate highway projects would be made. Projects would be developed, planned, approved and constructed by states in the same manner as they are today.<sup>27</sup> In other words, the federal-state partnership would remain unchanged. The only structural difference would be the source of federal funding. FIUF revenues, rather than HTF Highway Account revenues, would be used to reimburse states for the federal share of interstate highway projects.

<sup>26</sup> Exemptions or credits for low-income drivers could also be incorporated into the administration of the FIUF, depending on the costs and complexities involved. The cost of the exemptions or credits should, however, be borne by the General Treasury, not the HTF.

<sup>27</sup> As stated earlier, it is the position of this white paper that, as a crucial first step, the federal surface transportation system must be reformed, including by consolidating projects, reorienting the federal program towards performance, refocusing on the national interest, and streamlining project delivery. The projects that the FIUF and FMCUF fund, like all other federal-aid projects, would be done in accordance with such reforms.

To ensure that interstate users pay only at the level necessary for repair and improvement of the Interstate Highway System, user fee rates would be adjusted annually. To facilitate fair and precise fee-setting, Congress would create an independent entity to set or adjust the fees in accordance with the policies established by Congress. The entity would be comprised of experts, including stakeholders such as representatives from the motor carrier industry, passenger vehicle groups like AAA, and state highway departments, and would be responsible for the ministerial task of periodically adjusting the user fee rates to ensure adequate revenue to reimburse the states. This process would be transparent and would include reports to Congress and the executive branch.

Aside from setting fees, the independent entity described above could also make recommendations to the states and the Department of Transportation regarding interstate projects of national priority, such as interstate expansion, the improvement of international points of entry and exit, and freight improvements of national commercial importance. Finally, the entity could serve a public affairs and educational role by keeping the public informed of the goals and accomplishments of FIUF investment.

## **Federal Motor Carrier User Fee**

The second recommended alternative solution, the Federal Motor Carrier User Fee (FMCUF), is similar to and meant to complement the FIUF. Since the FIUF program reaches all drivers, trucks, too, would be responsible for paying the FIUF. Unlike the FIUF, which is limited to only interstate highways, the FMCUF would be imposed on commercial trucks’ usage of all roads.

### **FMCUF Design.**

The FMCUF would be imposed on the same use-basis as the FIUF. Unlike the FIUF, however, the FMCUF program would take advantage of tracking equipment already installed on most trucks for fleet management purposes. Monitoring equipment (usually, though not always, GPS-based) allows companies in the freight industry to efficiently monitor vehicle location, direction, and speed. This technology would be used to calculate FMCUF liability. Importantly, trucks would not be double-charged for use of the interstate; rather, that use would be recorded through the FIUF program.

FMCUF fees would be collected on a monthly basis. Fee payers—primarily freight-related businesses—would receive detailed statements on vehicle usage. Collected FMCUF fees would flow to a dedicated subaccount within the existing Highway Account of the HTF.

### **Administration and use.**

The FMCUF program would be administered by the same entity as the FIUF. This entity would set FMCUF fees on an annual basis in accordance with the policies established by Congress. Ideally, FMCUF fees would vary based on geographical location.

As with the FIUF program, no other policy changes with respect to freight projects would be made.<sup>28</sup> Funds disbursed from the FMCUF subaccount would be allocated solely to freight improvements, especially freight bottlenecks, high-cost freight projects, and freight projects of national significance, including intermodal facilities. These projects would be over and above the freight projects funded under the base program by existing HTF revenues. The FMCUF funds would not be geographically restricted, but would be used for freight projects throughout the country. The expert body that sets the FMCUF fees could also make recommendations regarding projects to which FMCUF receipts should be directed.

## Use of Existing Revenue

As mentioned above, if the FIUF and the FMCUF are adopted, existing HTF revenues would be freed for other uses. Specifically, existing HTF revenues would no longer be used on interstate projects, since the new FIUF program would fund all interstate projects. Likewise, freight projects funded by the FMCUF would no longer be funded from that revenue.

Using the FIUF and FMCUF programs as a supplement, rather than a replacement, is a crucial part of the transportation funding solutions described above. While the interstate is the backbone of the U.S. highway system, carrying about a quarter of all vehicle miles traveled annually, all federal-aid eligible highways combined carry approximately 85 percent. These non-interstate highways will need to be repaired and upgraded to meet current and future transportation needs. By guiding existing HTF revenues from the motor fuel excise tax and other sources towards these non-interstate roads, the FIUF and FMCUF programs will aid the improvement of the *entire* National Highway System.

## Advantages of FIUF, FMCUF Solutions

The FIUF and FMCUF, if designed and implemented as described, clearly meet the three principles that this white paper considers important to successful HTF funding solutions and would have a number of other economic and policy advantages. Specifically, an HTF revenue-raising framework that incorporates the FIUF and FMCUF:

- *Is based on a true user fee principle.* The FIUF and FMCUF are true user fees. While the motor fuel tax and the other current revenue sources of the HTF reach users indirectly—they tax vehicles and transportation-related goods, not highway use—the FIUF and FMCUF place the burden of funding interstate highway improvements squarely on individual drivers, based on their highway travel.<sup>29</sup>

<sup>28</sup> As with the FIUF program, FMCUF projects would be implemented in accordance with the federal transportation program reforms mentioned in the previous footnote and earlier in this white paper.

<sup>29</sup> The concept of implementing targeted user fees to pay for certain transportation costs is not new. For example, President George W. Bush's administration opposed an increase in the gas tax, but proposed to raise billions through transportation user fees such as an aviation security fee, a rail safety fee, and an aviation cost-based fee.

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- *Is relatively easy to implement.* The FIUF and FMCUF could be implemented in the medium-term, if not the short-term. Implementation of the FIUF and FMCUF would require a non-negligible amount of investment, but the technology and even some infrastructure (existing structures at highway entry and exit points in the case of the FIUF, for instance) are already present.

- *Represents a truly national investment policy.* FIUF and FMCUF revenues would be distributed to projects across the Interstate Highway System and would not be restricted to certain states or localities. By design, the FMCUF would be dedicated to national freight projects, and the FIUF program would generate sufficient revenue to upgrade the Interstate Highway System to once again be the crown jewel of the U.S. transportation system. The interstate is the backbone of this system: even though it makes up a little more than 1 percent of our road mileage, it carries more than 24 percent of the vehicle miles traveled annually.<sup>30</sup>

- *Modernizes our national transportation network.* The revenue from the FIUF and FMCUF programs would be specifically tailored and dedicated to meet interstate and freight improvement needs. The additional revenue would not only allow the U.S. to modernize these parts of its surface transportation system, but would also free up existing HTF resources for the rest of the national network—allowing for improvement of the entire federal-aid highway system.

- *Modernizes federal financing mechanisms.* Aside from helping to modernize our highway system, the FIUF and FMCUF programs would also modernize the way our government collects revenue: namely, through automated, electronic means. This collection system could provide an important policy model for future programs. In addition, given increased concerns about fuel prices and oil dependence, a move to targeted highway user fees represents a much-needed step towards post-gas tax revenue strategies. And, by setting a national policy regarding Interstate Highway usage, the programs will prevent the balkanization that could occur as a result of state and local tolling policies.

- *Minimizes individual driver privacy concerns.* Unlike revenue-raising proposals based on tracking all vehicle miles traveled, the FIUF minimizes individual privacy concerns by only recording entry and exit points onto the interstate system. Similar systems, such as E-ZPass, I-Pass, and FasTrak, are already used by and have gained widespread acceptance in many states.

- *Represents a politically feasible and fair solution.* As explained above, the FIUF and FMCUF are user fees, not taxes. Moreover, the FIUF and FMCUF are strongly linked to increased expenditures—the fees are set only to meet freight and interstate modernization needs. There is no demand-pricing component to the fees,

<sup>30</sup> See National Surface Transportation Policy and Revenue Study Commission, *supra* n.2, at 4-8.

which are geared towards current investment, not paying debt. The link between fee payment and use of revenues not only makes economic sense, but also allows users to know what they are getting for their fee payments, which should increase public acceptance of the fees.

- *De-politicizes the fee adjustment process.* The technical fee-adjustment authority under the FMCUF and FIUF programs would reside in the expert body described above, not in Congress. Unlike the motor fuel tax, then, the FIUF and FMCUF would not be held hostage to political inertia, and could be more easily adjusted to meet the needs of the surface transportation system.

- *Will lead to increased revenues without increasing the federal debt.* The FIUF and FMCUF would not require an increase in existing taxes, the deficit, or debt. The FIUF and FMCUF programs are based on a pay-as-you-go principle: Because current user fees would pay directly for any increased investment, after implementation costs are covered, no new taxes or general fund appropriations would be necessary to support the modernization of the highway system. In fact, increased infrastructure investment will in the long-term lead to robust economic growth, which will generate greater revenue—a result recognized by deficit-reducing plans like the Bowles-Simpson Commission.<sup>31</sup>

- *Helps solve the short- and long-term HTF crisis.* Without further action, looming HTF spending cuts will likely be enacted in the near future. These cuts will further exacerbate the HTF crisis without making a single step towards a long-term solution. The FIUF/FMCUF framework, on the other hand, will not only help solve this short-term fiscal problem, but lead to increased investment in the longer term. The FIUF and FMCUF programs would restore the mission and the vision of the federal surface transportation program, with its focus on interstate and freight projects of broad national importance.

## Conclusion

At a time when the financial well-being of this country is in the political spotlight, one crucial piece of U.S. economic health has been consistently ignored—the quality of our federal highway system. Once one of the preeminent transportation systems in the world, these roads have fallen into disrepair, and the federal account through which they are funded has faced years of solvency crises. By continuing to neglect our highways, we are essentially neglecting the functioning—and the future—of our economy.

Solutions exist, however, that can reverse the decline of the highway infrastructure. Given the political resistance to proposals to raise the motor fuel excise tax, this paper recommends two new, alternative solutions—in particular, user fees to improve the interstate and that are dedicated to national freight projects—that are available to be implemented in the short term or medium term.

<sup>31</sup> The National Commission on Fiscal Responsibility and Reform, *The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform* 12 (Dec. 1, 2010). In terms of investment in the U.S. transportation system, the Commission recommended a 15-cent per gallon increase in the gas tax dedicated solely to transportation funding. *Id.* at 24.

Given the urgency of the transportation crisis, inaction is no longer an option. Rather than wait for this wholly predictable crisis to descend on our country, enacting solutions now to balance the Highway Trust Fund and expand the highway system will restore our transportation infrastructure to its rightful and necessary place as the world-class, unifying network that its builders envisioned.

## Appendix I

In addition to the recommendations in the primary text of this white paper, the following four options are also viable solutions. These options, however, fail to fully meet the principles outlined above. Nonetheless, due to their potential as revenue-raising mechanisms, they warrant brief discussion below.

### Registration Fee Increase

All states impose an annual vehicle registration fee, and at least half the states raise more than a quarter of their dedicated transportation revenues through this mechanism.<sup>32</sup> One possible way to raise additional HTF revenues would be to impose a flat federal registration fee in addition to any state charges. The fee would be set by the Congress and would flow to the Highway Account of the HTF. Because the fee would be collected through states' existing systems, this option could be implemented with little additional cost. Unless fees become particularly high, however, the revenue potential of this solution may be limited. And although vehicle-related, the registration fee is not as user-based as the FIUF and FMCUF programs detailed in the main body of this paper.

### Infrastructure Bonds

Debt-financing, particularly via the use of tax-exempt bonds offered by state and local governments, is a traditional source of funds for transportation infrastructure. This solution would expand the state and local bond concept to the national level by attracting investors through an issuance of federal infrastructure bonds. Federal infrastructure bonds would essentially function as war-bond-like debt instruments that would allow the public to invest in the federal highway system. While a targeted infrastructure bond issuance is a viable revenue-raiser, this solution lacks a direct link to highway users.

### Oil-related solutions

Various oil-related taxes and tariffs could be imposed on producers and importers in order to raise funds for the HTF. For example, a straightforward tariff on oil, charged as either a fixed amount per barrel or as a percentage of the value of imported oil, could be imposed.<sup>33</sup>

A more complex system, but one which would more directly affect oil consumption, would involve imposing a tax on oil consumption plus a tariff on imports of refined petroleum.<sup>34</sup> The oil tax would be constructed as a percentage tax on each barrel of oil consumed in the

<sup>32</sup> National Surface Transportation Infrastructure Financing Commission, *supra* n.5, at 75.

<sup>33</sup> *Id.* at 81.

<sup>34</sup> RAND Corporation, *The Option of an Oil Tax to Fund Transportation and Infrastructure* 5-6 (2011).

United States. The rate of the tax would be adjusted on an annual or semi-annual basis (primarily to ensure that consumers are not penalized during periods when oil prices spike). The tax would be collected at the refinery level. To prevent international refiners from obtaining an undue advantage, imports of refined petroleum products would incur a tax equivalent to the oil tax. Similarly, exporters would receive a tax credit or rebate equivalent on the oil used to produce exported products.

As other studies have noted, an oil tax or tariff could be set so as to internalize various external costs associated with the consumption of petroleum products, including environmental and national security costs.<sup>35</sup> An oil tariff alone could also promote U.S. energy independence. While these may be desirable policy outcomes, one drawback to a broad oil tax is that it is not user-based; the tax on barrels of oil that are not eventually used as fuels (or as asphalt) would nonetheless flow to the HTF. While it may be possible to apportion the revenue raised by the oil tax according to use, such a sys-

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<sup>35</sup> See, e.g., *id.* at 10-14.

tem may be administratively difficult and lead to delays in implementation. Additionally, because a tax on oil would necessarily place a greater burden on certain households (for example, because of regional weather differences) and businesses that consume more oil, political opposition to an oil tax may be heavy or insurmountable.

### **Existing Revenue Streams.**

A portion of international customs fees could be dedicated to the HTF to cover the costs of improvements related to the movement of goods into and out of ports of entry. It would also be possible to dedicate a portion of corporate taxes from industries reliant on truck transportation.

### **General Treasury Option.**

A final option that would offer little by way of user-targeting, but would be fairly simple to implement, involves using General Treasury funds to supplement the HTF's existing revenue streams. Again, however, a General Treasury option would move away from user-based taxation, and would potentially be an unstable source of funding.

## Appendix II

### Summary Chart: Highway Trust Fund Revenue Sources

#### POTENTIAL FEDERAL REVENUE OPTIONS

Categories based on evaluations by the National Surface Transportation Policy Commission and Financing Commission.<sup>[1]</sup>

Strong to Moderate	Weak	Not recommended
Automobile tire tax	Auto-related sales tax	Federal tax on local parking fees
Carbon tax/cap and trade	Bicycle tire tax	Federal tax on local transit fares
Container fee	Congestion pricing	Minerals severance tax
Customs duties	Dedicated income tax	Petroleum franchise tax
Freight waybill tax	Driver's license surcharge	Value-added tax
General fund transfer	Freight ton-mile tax	Vehicle inspection and traffic citation surcharge
Harbor maintenance tax	General sales tax	Vehicle personal property tax
Heavy vehicle use tax	Innovative finance	Windfall profits tax
Motor fuel excise tax		
Sales tax on motor fuels		
Tariff on imported oil		
Truck tire tax		
Truck/trailer sales tax		
Vehicle miles traveled fee		
Vehicle registration fee		
Vehicle sales tax		

[1] National Surface Transportation Policy and Revenue Study commission, *Transportation for Tomorrow* 5-38 (December 2007); National Surface Transportation Financing Commission, *Paying Our Way: A New Framework for Transportation Finance 96* (February 2009). Note that the solutions above are *federal*, rather than state or local, options.

## Appendix III

### Examples of FIUF, FMCUF, and HTF Projects

#### Federal Interstate User Fee (FIUF).

The FIUF would be used on projects to modernize the Interstate Highway System and make it, once again, the crown jewel of our national surface transportation network and the envy of the world. For example, FIUF revenues would be used to:

- Restore the Interstate Highway System, which is reaching 40-50 years of age, to a state of good repair through an aggressive program of preservation, including projects to substantially rehabilitate, or in some cases replace, many of its 55,000 bridges; and reconstruct major portions of its 210,000 lane miles.

- Improve system performance by applying the full range of intelligent transportation systems (e.g., navigation systems, traffic signal control systems, real-time parking guidance and notification systems, and vehicle detection and notification systems) and aggressive systems of operation and management strategies.

- Replace aging interchanges that have become major bottlenecks with interchanges that have wider lanes and geometric designs to allow higher volumes of cars and trucks to exit and merge more safely at higher speeds.

- Reduce congestion by adding additional lane miles to urban and rural interstates, where appropriate.

- Expand the Interstate Highway System, where appropriate, to provide connections to new and emerging centers of population and commerce.

#### Federal Motor Carrier User Fee (FMCUF).

The FMCUF would be used exclusively on freight projects that benefit the trucking industry. For example, FMCUF revenues would be used to:

- develop a national strategic freight plan;
- create and fund a national freight program;
- reduce congestion on national and regional non-interstate freight corridors; and

- invest in intermodal connectors (access roads and other systems that efficiently connect the shipment of goods involving more than one mode of transportation) to the nation's ports, rail terminals, and air cargo hubs.

#### Base Highway Trust Fund (HTF) Program.

Since the FIUF would be used to fund all interstate projects, existing HTF revenues would be freed to invest in the non-Interstate portion of the federal-aid highway system, which is no less important to the national transportation network. These base HTF revenues would be used to:

- Preserve and modernize the 115,000 miles of the non-Interstate National Highway System, including important corridors such as the Avenue of the Saints, Transamerica Corridor, Hoosier Heartland Industrial Corridor, Great Lakes/Mid-Atlantic Corridor, Heartland Expressway, U.S. 395 (Calif., Nev., Ore., Wash.),

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CANAMEX, Ports-to-Plains, Wisconsin Development Corridor, Capital Gateway Corridor, East-West Corridor, SPIRIT Corridor, Theodore Roosevelt Expressway, and Camino Real Corridor, among others.

- Address urban congestion through operational improvements and, where necessary, increased capacity.

- Improve rural highways to keep U.S. agriculture competitive, especially lower-classification federal-aid roads that link farm and local roads with the National Highway System.

- Upgrade narrow, two-lane, rural roads that cannot safely carry the kind of trucks now moving across the United States to support the renewable fuels industry, wind farm energy production, and the development of other energy resources.

- Improve rural highways to handle the growth in international and domestic trade moving through the heartland of America.

- Preserve and upgrade, where necessary, the Strategic Highway Network (STRAHNET), a network of highways that are important to the United States' strategic defense policy and that provide defense access, continuity, and emergency capabilities for defense purposes. STRAHNET Connectors—highways that provide access between major military installations and ports—would also be maintained and upgraded where appropriate.

- Provide connectivity between urban and rural America, and address seasonal congestion and bottlenecks associated with interstate tourism, especially at national parks.

- Provide adequate access to new and emerging cities and towns so that our highway system will be the unifying network that President Eisenhower envisioned.