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November 15, 2012

The Honorable Patty Murray
Chairman
The Honorable Susan Collins
Ranking Member
Subcommittee on Transportation, Housing
and Urban Development, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Tom Latham
Chairman
The Honorable John Olver
Ranking Member
Subcommittee on Transportation, Housing
and Urban Development, and Related Agencies
Committee on Appropriations
House of Representatives

Subject: *Flexible Funding Continues to Play a Role in Supporting State and Local Transportation Priorities*

The nation's surface transportation system is critical to the economy and affects the daily life of most Americans. However, the system is under growing strain, and the cost to repair and upgrade the system to safely and reliably meet current and future demands is estimated in the hundreds of billions of dollars. State and local governments must maintain existing systems while making efficient use of transportation dollars at a time when revenues to support the Highway Trust Fund—the major source of federal highway and transit funding—are eroding.¹ For this and other reasons, funding surface transportation remains on GAO's High-Risk List.²

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)³ introduced several Federal Highway Administration (FHWA) programs that provided states and urbanized areas

¹According to the Congressional Budget Office's August 2012 baseline projections for the Highway Trust Fund, the highway account of the Highway Trust Fund will end fiscal year 2012 with a balance of \$8.7 billion and the transit account will end the fiscal year with a balance of \$4.7 billion. Both accounts are estimated to be unable to meet obligations sometime in fiscal year 2015.

²GAO, *High Risk Series: An Update*, [GAO-11-278](#) (Washington, D.C.: February 2011).

³Pub. L. No. 102-240, 105 Stat. 1914 (Dec. 18, 1991).

flexibility in selecting projects to be funded with federal-aid highway funds.⁴ As federal dollars are often tied to a single mode of transportation, these programs are distinctive in the flexibility they grant to states and urbanized areas to implement a wide variety of transportation projects.⁵ In particular, states and metropolitan planning organizations (MPO) may use FHWA's Surface Transportation Program (STP) and Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds, which we refer to as flexible funding throughout this report, for transit projects.⁶ Subsequent reauthorization acts—including the most recent surface transportation reauthorization, Moving Ahead for Progress in the 21st Century (MAP-21)—have continued to provide this flexibility.⁷ This flexibility also extended to certain Federal Transit Administration (FTA) Urbanized Area Formula Program funds prior to the enactment of MAP-21.

In 2007, we reported on trends in flexible-funding use since the enactment of ISTEA (1992 to 2006).⁸ The Consolidated and Further Continuing Appropriations Act of 2012 required us to review how states have used their authority to transfer federal funding between highway and transit programs.⁹ To respond to that mandate, this report examines the extent to which states have transferred flexible funding between highway and transit programs since 2007 and the factors that affected the decisions of selected states and urbanized areas to transfer flexible funding and the outcomes of those decisions.¹⁰ Similarities and differences to the previous flexible-funding report are noted, as appropriate.¹¹

To determine the extent to which flexible funding has been transferred between highway and transit programs, we obtained data on STP and CMAQ funds transferred from FHWA's Financial Management Information System to FTA's Transportation Electronic Awards Management system from 2007 to 2011, including the amounts transferred, the programs to which the funds were transferred, and the state and urbanized areas that transferred the

⁴Title 23, as amended provides that title 23 funds made available for transit projects may be transferred to and administered under Chapter 53 of title 49. See 23 U.S.C. § 104(f).

⁵Urbanized areas are geographic areas with a population of 50,000 or more, as designated by the U.S. Census Bureau.

⁶A number of federal-aid highway programs other than STP and CMAQ may be used on transit projects. See, for example, 23 U.S.C. §§ 103(b)(6), 147, and 204. However, STP and CMAQ funds account for the majority of the funds transferred, so we did not consider these other programs in our analysis. In addition, we limited our review to federal funds that can be used for capital projects and that require a state or local decision to transfer the funds from one mode to another. Therefore, we excluded planning funds and congressionally directed funds from our analysis.

⁷Pub. L. No. 112-141, 126 Stat. 405 (Jul. 6, 2012).

⁸GAO, *Highway and Transit Investments: Flexible Funding Supports State and Local Transportation Priorities and Multimodal Planning*, [GAO-07-772](#) (Washington, D.C.: July 26, 2007).

⁹Pub. L. No. 112-55, div. C, title I, § 124, 125 Stat. 552, 654 (Nov. 18, 2011).

¹⁰While FHWA and FTA actually transfer the funds, for purposes of this report, we attribute the transfer of flexible funding to the states since the funds are transferred at the request of state and MPO officials.

¹¹Although we report on similar trends in states' use of flexible funding to those identified in [GAO-07-772](#), we did not intend to fully replicate those trends for purposes of this review. In addition, the different time periods covered by the two reports could account for some of the variability in the trends identified. As a result, direct comparisons between the two reports may not be appropriate.

funds.¹² This data included funds transferred under the American Recovery and Reinvestment Act of 2009 (Recovery Act).¹³ In addition, we obtained data on the types of projects for which the funds were transferred. FHWA officials also provided us with data on STP and CMAQ funds used for transit projects administered by FHWA and Urbanized Area Formula Program funds transferred from FTA to FHWA. Based on interviews with FHWA and FTA officials on how the data were collected and corroborated, and interviews with state and local officials about the accuracy of the data provided, we determined that the data were sufficiently reliable for purposes of our review. To determine the factors that affected selected state and urbanized area decisions to transfer flexible funding and the outcomes of those decisions, we selected 5 states (Arkansas, California, Oregon, Pennsylvania, and Vermont) and 10 urbanized areas within those states for in-depth interviews. We selected states based on the amount of flexible funding transferred within the state, the portion of flexible funding transferred, the portion of their transit funding coming from flexible funding, and whether the state had transferred FTA Urbanized Area Formula Program funding to highway projects. We selected urbanized areas based on the amount of flexible funding they received relative to other urbanized areas in the state and population. We also selected states and urbanized areas based on whether they were included in the 2007 flexible-funding report. Within each state, we interviewed officials from the state department of transportation, the FHWA division office, and the FTA region with jurisdiction over that state. Within each urbanized area, we interviewed officials from the MPO and a transit operator. We asked these officials about decisions to use flexible funding and the impact of this funding on highway and transit projects.

We conducted this performance audit from January 2012 to November 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See enclosure I for more detailed information about our scope and methodology.

Results in Brief

From 2007 to 2011, FHWA apportioned about \$53 billion in flexible funding to states, which is about 29 percent of total federal-aid highway funding apportioned to the states during that time. States transferred about \$5 billion, or 10 percent of their apportioned flexible funding, to FTA for transit projects.¹⁴ Four states—California, New Jersey, New York, and Virginia—accounted for the majority of flexible funding transferred to FTA for transit projects. The portion of flexible funding transferred and the impact of the transferred funding on the total transit funding available in the states varied considerably. For example, while four states transferred more than 25 percent of their apportioned flexible funding to FTA for transit projects from 2007 to 2011, 16 states transferred less than 2 percent of their apportioned flexible funding over this period. In addition, transferred flexible funding accounted for over

¹²Data from FHWA and FTA regarding amounts transferred for highway or transit projects reflect fiscal year values throughout this report. Additionally, for purposes of this report, we use the term “transfer” to refer to FHWA funds transferred to FTA or FTA funds transferred to FHWA.

¹³Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009).

¹⁴For purposes of this report, we analyzed the total flexible funding transferred to FTA for transit projects from 2007 to 2011.

50 percent of the available federal transit funding in Vermont compared to New York, where flexible funding accounted for about 5 percent of the total federal transit funding available to the state. Urbanized areas over 1 million in population received most (more than 75 percent) of the transferred flexible funding.

Officials from our selected states and urbanized areas told us that they based their decisions on whether to use flexible funding for transit projects on state and local priorities, available funding sources, and state and local policies. In particular, the decision to use flexible funding for transit projects stems from state and metropolitan planning processes that identify priority transportation projects. Additionally, the availability of other funding sources for transit projects and state and local policies, such as those setting aside flexible funding for transit projects, affect these decisions. State and local officials told us that although flexible funding generally has not made up a large portion of overall transit funding provided to a region, the funds have had a large impact on the ability of these selected states and localities to meet their transportation needs. Agency officials also told us that they appreciate the flexibility in how these funds can be used. Officials in the states and urbanized areas told us that although flexible funding transferred to transit resulted in fewer dollars for highways, the overall impact on their ability to implement highway projects is not significant.

Background

State departments of transportation and local governments are responsible for building and maintaining highways and other roadway-related infrastructure in the United States. The federal-aid highway program, which is administered by FHWA, provides funding for this purpose from the highway account of the Highway Trust Fund. FHWA distributes highway funds to the states through annual apportionments established by statutory formulas and through the award of discretionary grants; in 2011, about \$40 billion in federal-aid highway funding was made available to states.¹⁵ Funds come through several different programs, each with specific uses and eligibility requirements. States generally have broad discretion to choose the projects that will be funded with these moneys. After determining that a project meets federal requirements and that sufficient funds are available, FHWA approves the project and incurs an obligation for the project selected by the states.¹⁶ After states make expenditures on the projects, they request reimbursement from FHWA for the federal share of eligible costs. States supplement federal funds for highway programs—and provide required matching funding—with non-federal revenues such as taxes and user fees.

Constructing, maintaining, and operating public transit systems are generally the responsibilities of local agencies, such as transit operators, city governments, or county

¹⁵Under MAP-21, FHWA will provide each state with a lump sum formula apportionment based on the amount of formula funds that the state received under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), then will divide this lump sum among individual programs pursuant to a formula provided in MAP-21. This differs from SAFETEA-LU's approach to apportionment, which relied on a separate formula for each program, overlaid by an adjustment to address equity concerns.

¹⁶An obligation is a commitment that creates a legal liability of the government for the payment of goods and services ordered and received. Payment may be made immediately or in the future. An agency incurs an obligation, for example, when it awards a grant or enters into a contract.

governments.¹⁷ Federal funds for public transportation are generally administered by FTA and are funded through a combination of general fund revenues and the mass transit account of the Highway Trust Fund. States and urbanized areas are apportioned formula funding on an annual basis, and this funding can be used by transit operators for capital expenses and, in the case of transit operators located in urbanized areas with populations under 200,000, for operating expenses. Transit operators and other recipients may also receive discretionary grants for capital expenditures such as vehicle purchases and system construction or expansion. One such discretionary program is FTA's Capital Investment Grant program, which, among other things, provides capital funds to help many states, cities, and localities plan and build new or expand existing fixed-guideway systems,¹⁸ often called New Starts projects. Since the early 1970s, a significant portion of the federal government's share of new capital investment in mass transportation has come through the New Starts program.¹⁹ In 2011, FTA provided about \$10 billion in funding to transit agencies and states through its formula and discretionary grant programs. Recipients of FTA funds request reimbursement from FTA as costs are incurred. Additional funding for transit comes from state or local taxes and operating revenue such as passenger fares and parking fees.

In the early 1990s, Congress decided that a flexible, intermodal approach to transportation programs was needed to address growing transportation needs in the face of budgetary constraints and the diversity of transportation priorities in different parts of the country. Enacted in December 1991, ISTEA sought to provide flexible, comprehensive solutions to transportation problems and expanded modal choice options by including substantial flexibility to transfer funds between FHWA and FTA-formula program funding categories. Subsequent reauthorizations, including MAP-21, as well as the Recovery Act, continued this flexibility.²⁰

In particular, STP and CMAQ funds administered by FHWA may be used on a range of projects, including transit and highways, and are collectively referred to as flexible funding for purposes of this report. When these funds are spent directly on transit or transferred to FTA from FHWA, they are primarily used for transit capital projects, such as vehicle purchases, transit infrastructure construction, and finance costs for eligible capital projects. In addition, CMAQ funds transferred to FTA may be used for operating costs for new or expanded services.

A portion of STP flexible funding is allocated for use in localities rather than states, allowing local authorities to determine how these funds will be used. In particular, MPOs—which are

¹⁷Public transportation is regular and continuing general or special transportation service provided to the public. It includes service by buses, subways, rail, trolleys, and ferryboats. It also includes paratransit services for seniors and persons with disabilities as well as vanpool and taxi services operated under contract to a public transportation agency.

¹⁸Fixed-guideway systems use and occupy a separate right-of-way for the exclusive use of public transportation services, such as fixed rail and exclusive lanes for buses and other high-occupancy vehicles.

¹⁹GAO, *Public Transit: Funding for New Starts and Small Starts Projects, October 2004 through June 2012*, [GAO-13-40](#) (Washington, D.C.: Nov. 14, 2012).

²⁰The Recovery Act provided more than \$48 billion for transportation investments in early 2009. FHWA administered \$27.5 billion of these Recovery Act funds, \$26.6 billion of which was apportioned to states for highway infrastructure investments. These funds were distributed to states under rules governing STP and as such were eligible to be transferred to FTA for transit projects. See, GAO, *Recovery Act: Funding Used for Transportation Infrastructure Projects, but Some Requirements Proved Challenging*, [GAO-11-600](#) (Washington, D.C.: June 2011).

composed of representatives of local elected officials, state transportation officials, other transportation stakeholders, and, under certain circumstances, transit operators—in urbanized areas over 200,000 in population have the authority to select projects for funding. Some states have chosen to further allocate flexible funding to these areas. In addition to highway program funds that have transit eligibility, Urbanized Area Formula Program funds administered by FTA can be transferred to FHWA for use on highway projects under certain circumstances.²¹ Table 1 provides details on eligible uses for STP, CMAQ, and Urbanized Area Formula Program funds as well as guidelines on how these funds may be transferred.

Table 1: Eligible Uses and Apportionment Guidelines for STP, CMAQ, and Urbanized Area Formula Program Funds

Program (2011 funding levels)	Eligible uses	Apportionment guidelines^a	Transfer guidelines
FHWA programs			
Surface Transportation Program (\$9.2 billion)	A wide range of projects, including construction, reconstruction, resurfacing, operational improvements for highways and bridges, and bike and pedestrian projects. Capital costs for transit projects, including vehicles and facilities.	STP funds are apportioned to states based on a state's number of lane miles and vehicle miles traveled on federal-aid highways and payments into the highway account of the Highway Trust Fund.	Projects that are eligible under the original program may be administered by FHWA or transferred to FTA. To transfer the funds, the state department of transportation sends a request that the funds be transferred, with the concurrence of the MPO if the project is within a metropolitan planning area, to the FHWA Division Office.
Congestion Mitigation and Air Quality Improvement Program (\$2.4 billion)	CMAQ funds may only be used in areas that do not meet, or have not met, federal air quality standards. ^b May be used for transit operating assistance for new or expanded service for three years.	CMAQ funds are apportioned to states based on the severity of their air quality problem and population in areas that fail to meet air quality standards. ^b	
FTA program			
Urbanized Area Formula Program (\$4.5 billion) ^c	Transit capital, planning, and operating assistance to urbanized areas with populations over 50,000 and capital and planning assistance only for urbanized areas over 200,000.	Apportioned based on formulas. Urbanized areas with populations 50,000 to 199,999 receive funds based on population and population density; those with populations of 200,000 and more receive funds based on a combination of transit measures, population, and population density.	May transfer funds to highway projects if: (1) the MPO approves and has provided notice to affected transit providers, (2) the MPO determines all local transit needs are being addressed, (3) FTA determines the funds are not needed for investments required by the Americans with Disabilities Act. ^d

Source: GAO analysis of FHWA and FTA data.

²¹Prior to the enactment of MAP-21, urbanized areas over 200,000 in population, known as Transportation Management Areas, could transfer Urbanized Area Formula Program funds to FHWA for highway projects if they could not be used for operating assistance. Other areas lacked this transfer authority. Under MAP-21, FTA's Urbanized Area Formula Program funds can no longer be transferred to FHWA.

^aThe apportionment calculation methodology was changed under MAP-21. Rather than providing individual authorizations for the STP and CMAQ programs, a single lump sum was authorized for all apportioned programs under 23 U.S.C. § 104. The authorized lump sum is first distributed among the states based on each state's fiscal year 2012 combined apportionments. The amount determined for each state is then distributed within that state among its apportioned programs.

^bUnder SAFETEA-LU, each state is guaranteed a minimum apportionment of 0.5 percent of the year's total program funding. These funds can be used anywhere in the state for projects eligible under either CMAQ or STP.

^cThe Urbanized Area Formula Program grant funds also include Growing States and High Density States formula funds in the total.

^dUnder MAP-21, FTA's Urbanized Area Formula Program funds can no longer be transferred to FHWA.

When states or urbanized areas use flexible funding on transit projects, they may leave the funds in the state's FHWA account, in which case the state receives reimbursement from FHWA as costs are incurred. Alternatively, the state—usually in conjunction with the MPO or the local agency implementing the project—may request that these funds be transferred to FTA to be administered through one of several eligible FTA programs.²² Once funds are transferred to FTA for a project, the funds are awarded to a transit operator or other recipient.²³ The recipient will receive reimbursement from FTA as costs are incurred. The states and localities are required to make the same non-federal matching share they would have made if the funds were used for highway purposes and administered by FHWA.²⁴ FTA's Urbanized Area Formula Program funds had to be transferred to FHWA if they were to be used for highway projects.

Federal laws and regulations require that projects proposed for highway and transit funding be based on comprehensive metropolitan and statewide transportation-planning processes.²⁵ State, regional, and local government agencies and transit operators must operate within these requirements to receive federal funds. For example, to receive federal funding, projects must be included in a state transportation improvement program that demonstrates sufficient funds are available to implement the program.

Amounts of Flexible-Funding Transfers Have Been Small Nationwide and Have Varied Impact on Transit Funding in States and Urbanized Areas

Over the last 5 years, states transferred a small portion of federal-aid highway program and available flexible funding to FTA for transit projects. FHWA apportioned about \$53 billion in flexible funding to states from 2007 to 2011. This figure represents about 29 percent of total federal-aid highway funding apportioned to the states during that time.²⁶ Although states

²²Funds transferred from FHWA to FTA are transferred to one of three FTA programs—Urbanized Area Formula Program, Nonurbanized Area Formula Program, or Elderly and Persons with Disabilities Program. These funds are transferred from the highway account to the mass transit account of the Highway Trust Fund.

²³77 Fed. Reg. 1786, 1810 (Jan. 11, 2012). Once the funds are transferred to FTA they must be obligated within the period of availability of the formula program to which they were transferred. In the event that the funds are not obligated for the intended purpose within the period of availability, they become available to the governor for any eligible capital transit project.

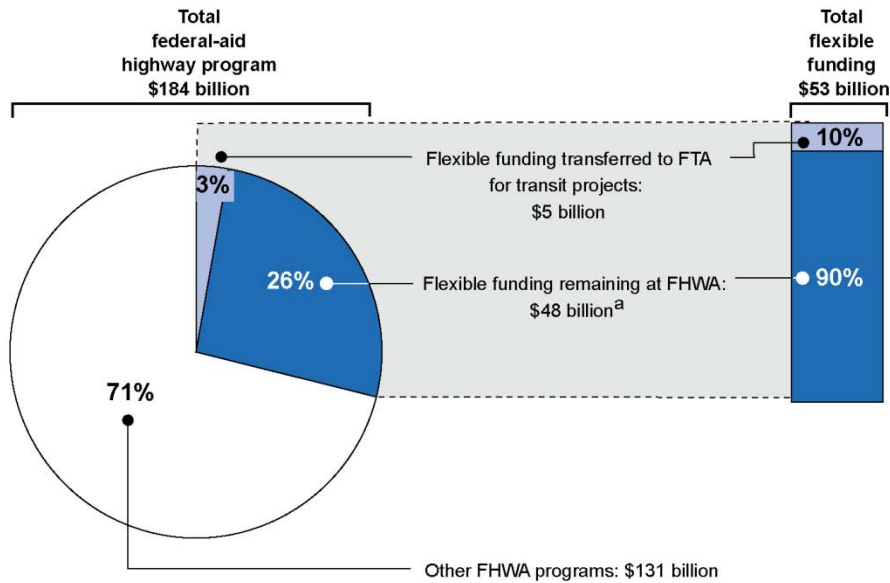
²⁴With few exceptions, federal funds for highways must be matched by funds from other sources—usually state and local governments. The matching requirement on most projects is 80 percent federal and 20 percent state or local funding.

²⁵23 U.S.C. §§ 134-135, 49 U.S.C. §§ 5303-5304, 23 C.F.R. Part 450, and 49 C.F.R. Part 613.

²⁶The total amount of flexible funding apportioned to the states eligible to be transferred includes the programmatic distribution of Equity Bonus funds. Under SAFETEA-LU, a portion of Equity Bonus funds are added to the apportionments of the six "core" federal-aid highway formula programs, of which the STP and CMAQ programs are included.

could have transferred all of the flexible funding to FTA to use on transit projects, states instead transferred about \$5 billion (almost 10 percent) of these funds to FTA. The flexible funding that was not transferred to FTA, about \$48 billion, remained at FHWA to be used mostly for other highway projects.²⁷ The portion of funds transferred to FTA for transit projects is similar to the portion identified in our 2007 report. From 1992 to 2006, states used about 3 percent of their total federal-aid highway funding for transit projects. This figure amounted to 13 percent of available flexible funding.²⁸ Figure 1 shows the amount of flexible funding transferred to FTA from 2007 to 2011 in relation to overall federal-aid highway program and available flexible funding.

Figure 1: Flexible Funding: Portion of the Total Federal-Aid Highway Program and Portions Transferred to FTA and Remaining at FHWA, 2007 to 2011



Source: GAO analysis of FHWA and FTA data.

Note: Totals do not include Recovery Act funds transferred from FHWA to FTA for transit projects.

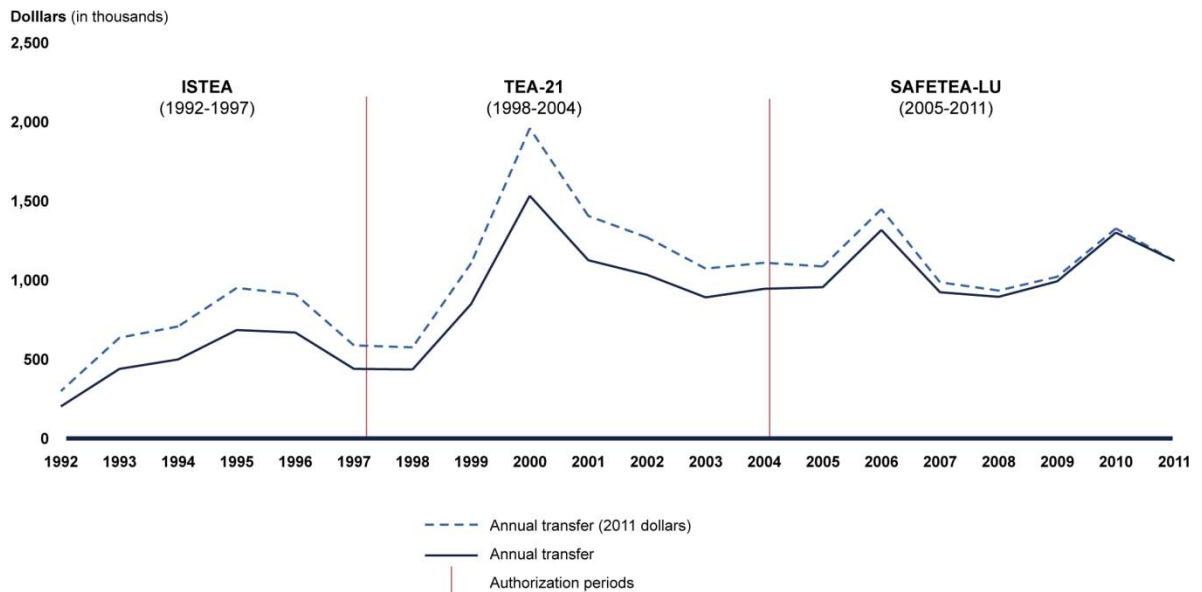
^aAbout \$281 million of the flexible funding remaining at FHWA was obligated to projects with a transit component.

²⁷In addition, about \$281 million in flexible funding was obligated for transit projects administered by FHWA. For example, flexible funds used for park and ride facilities are primarily highway projects, but also have a transit component.

²⁸Our 2007 report analyzed the amount of funds used, or obligated, for transit projects from 1992 to 2006, including funds that were transferred to FTA and those that were administered directly by FHWA. For purposes of this report, we analyzed the total flexible funding transferred to FTA for transit projects.

Overall, from 2007 to 2011, an average of \$1 billion a year in flexible funding was transferred to FTA for transit projects. Although the total amount transferred has varied from year to year, it has averaged about \$1 billion a year in inflation-adjusted 2011 dollars since the passage of the Transportation Equity Act for the 21st Century (TEA-21) in 1998 to the end of the SAFETEA-LU authorization period in 2011 (see fig. 2). According to FHWA and FTA officials, the variability in flexible-funding transfers is primarily because of state and local priorities, which may include more transit projects in one year than the next. For example, New Jersey transferred about \$272 million in flexible funding to FTA in 2010 compared to \$130 million in 2009, an increase of almost 110 percent.

Figure 2: Annual Flexible-Funding Transfers to FTA for Transit Projects across Authorization Periods, 1992 to 2011



Source: GAO analysis of FHWA and FTA data.

Note: the totals in 2009 and 2010 do not include Recovery Act funds transferred to FTA for transit projects.

In addition to the \$5 billion transferred to FTA for transit projects from 2007 to 2011, states also transferred about \$89 million in FTA Urbanized Area Formula Program funds to FHWA for highway projects. This represents less than 1 percent of FTA Urbanized Area Formula Program funds²⁹ apportioned to urbanized areas over 200,000 in population from 2007 to 2011. About 86 percent, or \$76 million, of the funds transferred from FTA to FHWA were in Los Angeles, California, for its congestion demonstration project to convert high-occupancy vehicle lanes to high-occupancy toll lanes.³⁰

The Amounts and Portions of Flexible Funding Transferred Varied by State

Although the total amount of flexible funding transferred was a small portion of available flexible funding, the amount transferred varied considerably from state to state. In particular, four states—California, New Jersey, New York, and Virginia—collectively accounted for more than half of the total amount of flexible funding transferred to FTA from 2007 to 2011. In contrast, seven states—Arkansas, Delaware, Hawaii, Mississippi, North Dakota, South Dakota, and Wyoming—did not transfer any flexible funding to FTA for transit projects during this period. The states that transferred the largest amounts of flexible funding over the last 5 years changed somewhat since we last reported on flexible funding in 2007. At that time, three states—California, New York, and Pennsylvania—accounted for over half of the funds transferred from 1992 to 2006, and three states had not transferred any funds.³¹

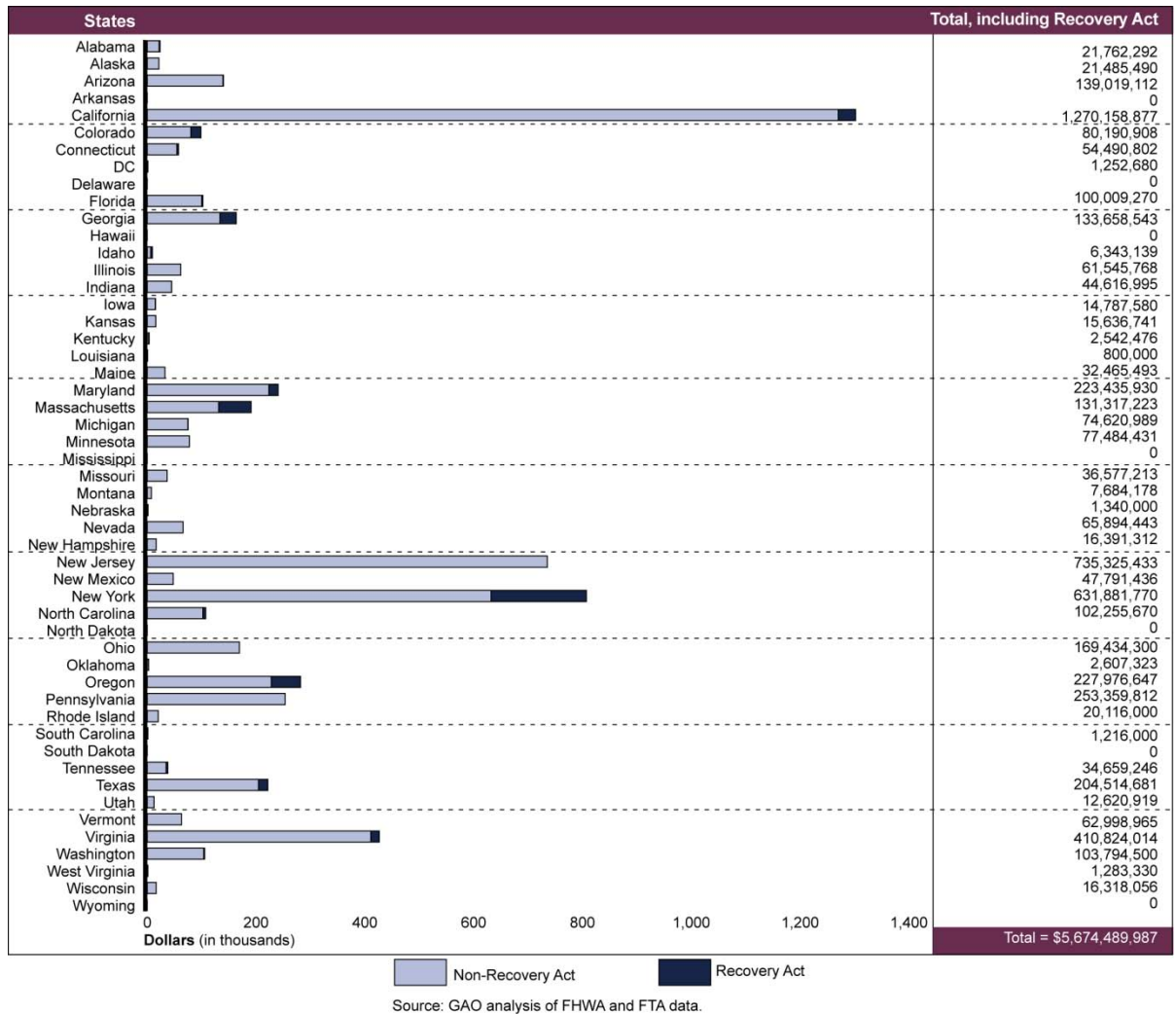
²⁹The Urbanized Area Formula Program funds also include Growing States and High Density States formula funds.

³⁰In 2007, we reported that according to FHWA data, about \$55 million of FTA funding had been transferred to FHWA for use on highway projects since ISTEA was enacted through 2006.

³¹Delaware, North Dakota, and South Dakota have not transferred any flexible funding to FTA for use on transit projects since ISTEA was enacted.

In 2009 and 2010, states also transferred to FTA \$443 million in flexible funding made available through the Recovery Act. New York accounted for 40 percent of the Recovery Act flexible funding transferred.³² Figure 3 shows the total flexible funding, including Recovery Act flexible funding, transferred by state from 2007 to 2011.

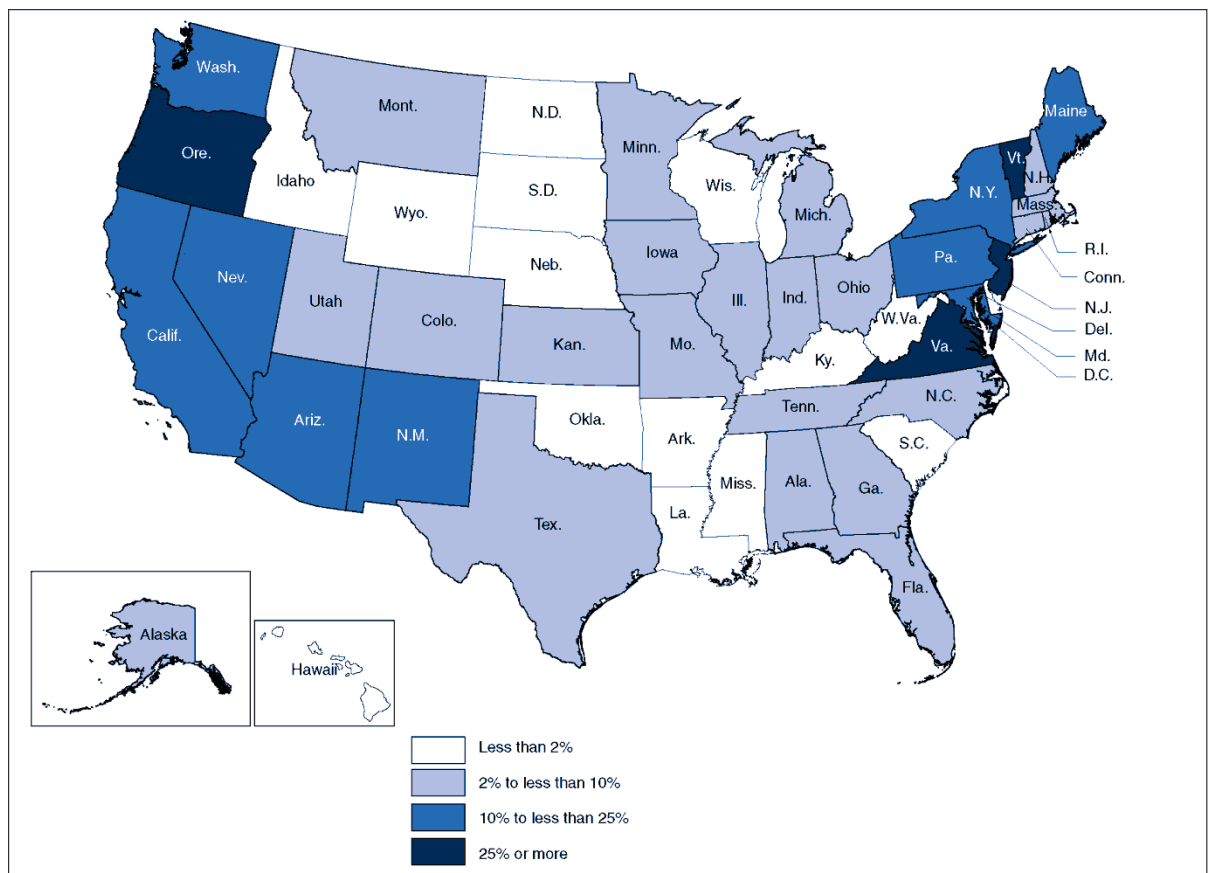
Figure 3: Flexible Funding Transferred to FTA for Transit Projects, by State, 2007 to 2011 (in Nominal Dollars)



³²We reported in September and December 2009 that New York transferred \$175 million in Recovery Act flexible funding to FTA for a project to rehabilitate eight vehicular ramps, one pedestrian bridge, and one parking lot to provide access to the St. George Ferry Terminal on Staten Island. The project is being administered by the New York City Department of Transportation. This project is the single largest use of Recovery Act funds for an individual project in New York State. See GAO, *Recovery Act: Funds Continue to Provide Fiscal Relief to States and Localities, While Accountability and Reporting Challenges Need to be Fully Addressed (New York)*, [GAO-09-1017SP](#) (Washington, D.C.: Sept. 23, 2009) and GAO, *Recovery Act: Status of States' and Localities' Use of Funds and Efforts to Ensure Accountability (New York)*, [GAO-10-232SP](#) (Washington, D.C.: Dec. 10, 2009).

Although a few states accounted for over half of the total amount of flexible funding transferred to FTA, the portion of flexible funding transferred varied among the states. For example, New Jersey transferred over half of its apportioned flexible funding to FTA for transit projects from 2007 to 2011. Three other states also transferred at least 25 percent of their apportioned flexible funding during this period, whereas 16 states transferred less than 2 percent. Our 2007 report showed similar variation in the portion of flexible funding transferred among the states. Specifically, from 1992 to 2006, California transferred nearly 40 percent of its apportioned flexible funding for transit projects and 3 other states and Washington, D.C., transferred at least 25 percent. Over the last 5 years, Washington, D.C. has transferred less than 1 percent of its flexible funding to FTA. Figure 4 illustrates the state-by-state proportion of flexible funding transferred to FTA for transit projects.

Figure 4: Percentage of Apportioned Flexible Funding Transferred to FTA for Transit Projects, by State, 2007 to 2011



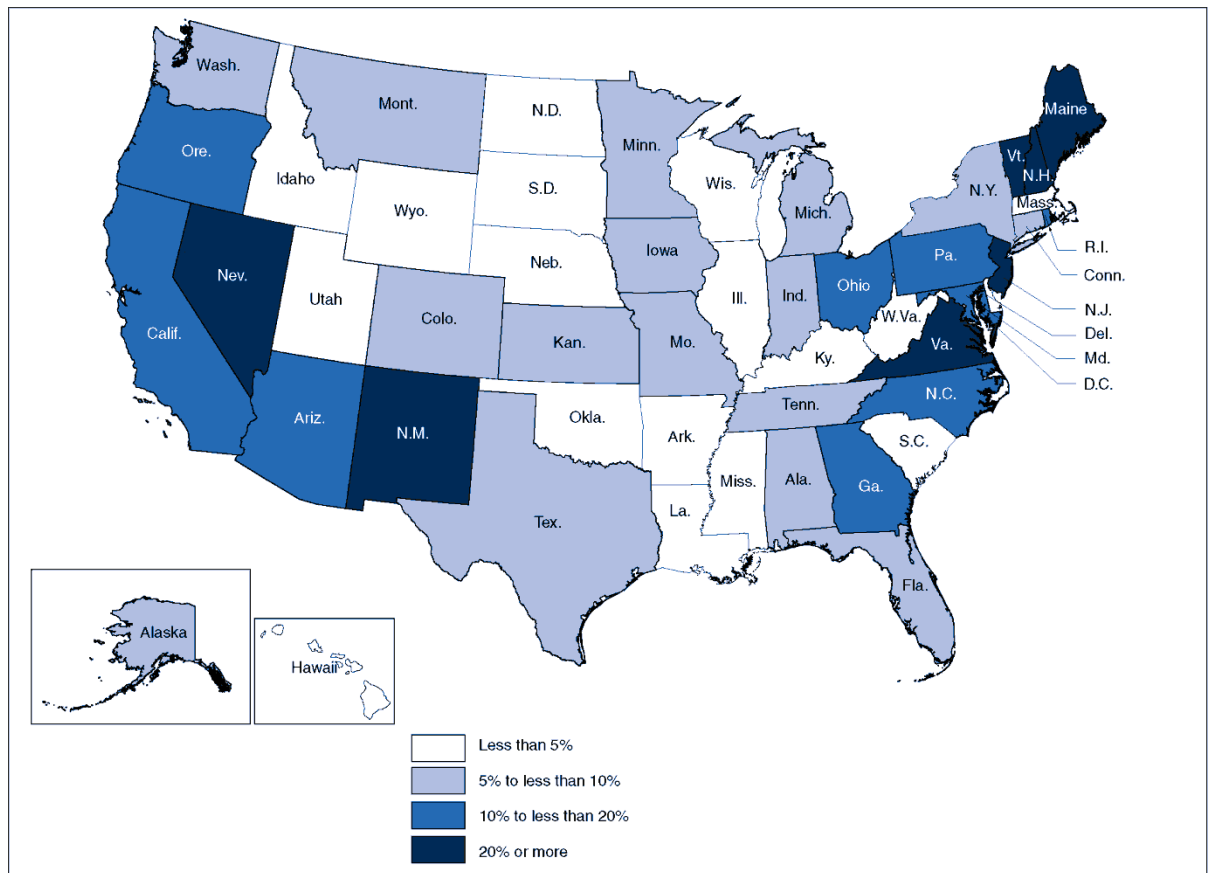
Sources: GAO analysis of FHWA and FTA data, Map Resources (map).

Notes: The amount of flexible funding available to be transferred may be greater than the apportioned amount because states may have transferred other federal-aid highway funding to their STP or CMAQ apportionments prior to transferring the funds to FTA.

Totals do not include Recovery Act funds transferred to FTA for transit projects.

The flexible funding also had a varying impact on the availability of transit funding across the states. For example, flexible funding accounts for over 50 percent of the available federal transit funding in Vermont compared to New York, where flexible funding accounted for about 5 percent of the total federal transit funding available to the state. Similarly, we reported in 2007 that over 40 percent of the FTA funding used in Vermont from 1992 to 2006 was from flexible funding.³³ According to officials from the state transportation department in Vermont, the transit dollars available to Vermont are inadequate to meet their identified transportation goals. In particular, fewer transit dollars are available to Vermont due to its small population and its lack of urbanized areas over 200,000 in population. As a result, the state uses flexible funding to help meet its transit needs. Figure 5 shows the portion of FTA funding in each state that came from flexible funds.

Figure 5: Percentage of Total FTA Funding from Flexible Funding, 2007 to 2011



Sources: GAO analysis of FTA data, Map Resources (map).

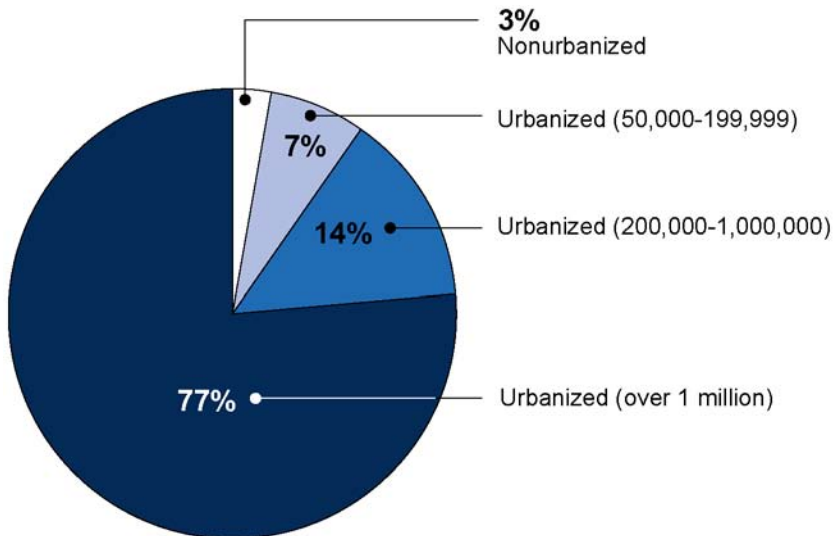
Note: Totals do not include Recovery Act funds transferred to FTA for transit projects and exclude planning, research, and oversight funds.

³³In 2007, we reported on the total transit funds used, or obligated, as a proportion of all FTA funds used, or obligated. For purposes of this report, we analyzed flexible funding transferred in the state as a portion of total transit funding apportioned to the states.

Flexible Funding Transfers Are Concentrated in Large Urbanized Areas and Used for Various Purposes

From 2007 to 2011, about 77 percent of flexible funding transferred to FTA for transit projects was to urbanized areas with populations of over 1 million (see fig. 6). Almost 30 percent of this funding was transferred to the New York-Newark urbanized area. When we reported on flexible funding in 2007, about 79 percent of flexible funding transferred to FTA had been used in urbanized areas.³⁴

Figure 6: Flexible-Funding Transfers by Population, 2007 to 2011



Source: GAO analysis of FTA data.

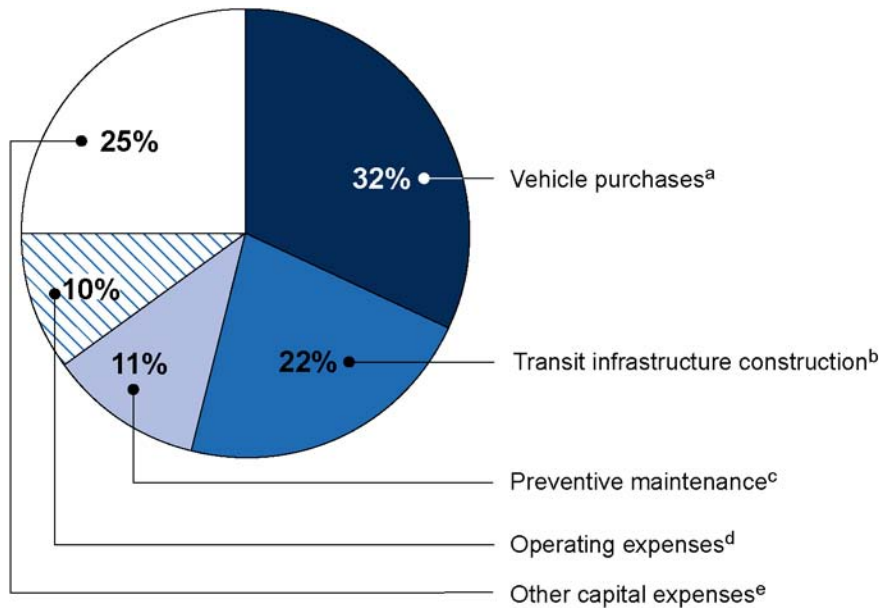
Notes: Totals exclude about \$29 million in flexible funding transferred to the Elderly and Persons with Disabilities Program, which is less than 1 percent of all flexible funding transferred from 2007 to 2011.

Values may not total to 100 percent because of rounding.

³⁴In 2007, we reported on the population of the area in which flexible funding was used, or obligated. For purposes of this report, we analyzed the population of the areas in which flexible funding was transferred to FTA for transit projects.

Of the flexible funding transferred to FTA for transit projects from 2007 to 2011, almost a third was awarded for vehicle purchases, including rail cars and motor vehicles, such as buses and vans (see fig. 7). Other capital expenses, such as leases and finance costs, accounted for a quarter of the funds transferred. Transit infrastructure construction—which includes engineering and design, acquisition, construction, and rehabilitation and renovation costs—accounted for 22 percent of the funds transferred. The remaining transferred funds were awarded for preventive maintenance activities (11 percent) and operating expenses (10 percent). Our 2007 report also showed that from 1992 to 2006, the majority of flexible funding was used for vehicle purchases.

Figure 7: Flexible Funding Administered by FTA by Project Type, 2007 to 2011



Source: GAO analysis of FTA data.

Note: The data do not include flexible funding obligated in grants in which flexible funding was commingled with other funding in the same grant.

^aVehicle purchases: purchase and rehabilitation of both bus (all bus, van, and station wagons) and rail (light, heavy, and commuter rail) vehicles. Does not include ferry boats or spare parts.

^bTransit infrastructure construction: engineering and design, acquisition, construction, rehabilitation and renovation.

^cPreventive maintenance: All maintenance costs related to vehicles and non-vehicles such as the activities, supplies, labor, services, and associated costs to preserve or extend the functionality of the asset.

^dOperating expenses: Costs of providing new transportation services, including, but not limited to, labor, fuel, administrative costs, and maintenance.

^eOther capital expenses: all other items such as leases, training, finance costs, and mobility management.

Three Primary Factors Affect Decisions to Use Flexible Funding, and Flexible Funding Can Have an Important Role in Transit Operations

States' and Urbanized Areas' Decisions to Use Flexible Funding Are Based on Transportation Priorities, Availability of Other Funding Sources, and State and Local Policies

In general, the decision to use flexible funding for transit projects stems from state and local planning processes that identify priority transportation projects, including highway and transit projects, for the state and regions. Officials in the states and localities we selected to interview told us that the decision to use flexible funding for transportation projects is generally made after the state identifies its priority transportation projects and determines

the amount and type of funding available for those projects. States try to maximize the available funds to the priority projects identified in their transportation plans, and as such, focus on whether projects meet the eligibility requirements for the use of the funds. Flexible funding programmed at the state level is often used for roads, including construction of roadways and related projects to manage road usage, such as traffic-signal coordination projects. For example, Caltrans, the state transportation department for California, uses most of its STP funds for highway projects. According to Caltrans officials, the STP funds they control are combined with state funds and allocated to the State Highway Operation and Protection Program, which is used to maintain the integrity of the state's highways and bridges. Similarly, according to officials at the Arkansas Highway and Transportation Department, the state spent over two-thirds of the CMAQ funds they received from 2007 to 2011 for a major interstate interchange construction project. In contrast, officials at the Vermont Agency of Transportation told us they spend the majority of their CMAQ funds on projects that support transit because the state places a priority on reducing congestion, improving air quality, and meeting the transportation needs of its residents, many of whom are elderly and rely on transit to meet their basic mobility needs.

In the urbanized areas, officials with whom we spoke also told us that they base the decisions to use flexible funding on the transportation priorities in their regions. For example, officials at the Southwestern Pennsylvania Commission, the MPO in Pittsburgh, told us that they are currently primarily focusing on funding a backlog of highway and bridge projects because of their long list of structurally deficient bridges and highways in need of capital maintenance in the metropolitan area from which funds would have to be transferred. Similarly, according to officials from the Metropolitan Transportation Commission, the MPO in San Francisco, funding decisions are based on the prioritization of projects stemming from the region's long-range plan, such as the rehabilitation of transit and local roads and bike and pedestrian improvements. These officials noted the long-range plan is the culmination of a significant planning effort, including local stakeholder input and outreach.

The availability of other federal, state, and local funding for transit also plays a role in state decisions to use flexible funding for transit projects. For example, officials at the Vermont Agency of Transportation said that since Vermont is a sparsely populated state, it receives fewer FTA formula funds relative to other states, as these funds are distributed largely based on population. Therefore, the state relies on flexible funding to support its priority of providing alternative transportation choices to its residents, which according to Vermont Agency of Transportation officials, is different from some other states that choose to use the funds for highway projects. The availability of state- and local-funding sources also plays a role in states' decisions to use flexible funds for transit projects. For example, Caltrans officials told us that restrictions on the use of state gas tax revenues for transit has led them to use flexible funding to purchase buses.

At the regional level, the availability of other funding also factors into urbanized areas' decisions to use flexible funding for transit projects. For example, officials from a Los Angeles transit operator stated that matching transportation priorities with available funding is "like a big puzzle." In addition, according to an official with Metroplan, the MPO in Little Rock, Arkansas, it has not transferred flexible funding to transit in the past 7 years because the transit operator has not requested it, in part because of their difficulty securing local funding. This local funding is needed to match the federal funding, as well as for support to operate any new transit equipment such as buses. In other cases, urbanized areas may use flexible funding to leverage other funds, including other federal funds. For example, an official with

Metro, the MPO in Portland, Oregon, told us the transit operator uses flexible funding to leverage other federal funds by using them to service bonds that the region holds in anticipation of future New Starts funds. This official also said the transit operator would be unable to leverage state and local contributions for New Starts projects without flexible funds.

Various state and local policies also affect state and urbanized areas' decisions to use flexible funding. Some states and urbanized areas have policies for setting aside flexible funding for transit projects. For example, the Pennsylvania Department of Transportation's financial guidance designates that \$25 million of the state's flexible funding be set aside each year for transit. The state's two largest transit operators, Philadelphia's Southeast Pennsylvania Transportation Authority and Pittsburgh's Port Authority of Allegheny County, receive the majority of these funds. Oregon also sets aside a portion of its STP funds to be used for non-highway purposes and recently implemented a new competitive program to use these funds for transit projects for elderly and disabled residents. Some urbanized areas also have policies or agreements regarding flexible funding. For example, officials with the Harrisburg Area Transportation Study, the MPO, told us they have had an agreement since 2001 that they have renewed every 2 years to provide half of their CMAQ funding to the city's transit operator.

Flexible Funding Can Play an Important Role in Selected States' and Urbanized Areas' Transit Operations

State and local officials we spoke with noted that, although flexible funding does not make up a large portion of overall transit funding provided to a region and is a small portion of a transit operator's budget, the funding has a large impact on the ability of states and localities to meet their transportation needs. Many of the state and local officials we spoke with, including those who have not used flexible funding, told us they appreciate the flexibility these funds provide, which allows them to use a multi-modal approach in funding their transportation systems. The following examples illustrate how flexible funding has been used in selected states and urbanized areas and the impact the funding has had, according to the officials with whom we spoke.

- *Purchasing new vehicles.* In Harrisburg, Pennsylvania, flexible funding allowed the transit operator to upgrade its aging bus fleet from one of the oldest fleets in the state to one of the newest. Similarly, in the San Francisco area, Bay Area Rapid Transit is using flexible funding, along with other FTA funding, to replace 40-year old railcars on its system.
- *Starting new service.* Burlington, Vermont, and Harrisburg, Pennsylvania, used flexible funding to provide new commuter bus routes using CMAQ funds.³⁵ Specifically, in Burlington, the transit operator started three new suburban commuter bus routes in the past 5 years and expanded service on its interregional bus route between Burlington and Montpelier, a route that has experienced significantly increased ridership since it began service in 2003.
- *Financing rail projects.* In Portland, Oregon, the transit operator relies on flexible funding to pay the debt service on bonds issued to partially fund the local share of several New

³⁵CMAQ funds can be used to fund operations for 3 years of new transit service or the expansion of existing service. This flexibility allows the transit agencies to grow ridership on the new route for 3 years while it secures new revenue sources to fund operations.

Starts projects. Transit officials there told us the ability to use flexible funding as part of an overall funding package for large capital investments has been instrumental in meeting the region's rail priorities.

- *Improving bike and pedestrian access.* In Pittsburgh, Pennsylvania, flexible funding has been used to, among other things, install bike racks on buses. Additionally, in Portland, Oregon, flexible funding provided by the Recovery Act was used for bike and pedestrian improvements along an interstate.
- *Avoiding service cuts.* In Pennsylvania, flexible funding has been used as an emergency measure on a few occasions to sustain transit operations and avoid service cuts.³⁶ Specifically, the state transferred \$7 million in flexible funding to Philadelphia's Southeastern Pennsylvania Transportation Authority in fiscal year 2010 and \$45 million to Pittsburgh's Port Authority in fiscal year 2011. These funds were used on eligible capital expenses, such as preventive maintenance, allowing other state funds to be used for operating expenses. According to a Port Authority official, these emergency stop-gap funds allowed the agency to stay financially solvent and avoid service cuts and fare hikes. However, officials at the Southwestern Pennsylvania Commission emphasized that these emergency transfers were increasingly controversial because of the region's many existing high-priority transportation needs, which must compete for limited funds.

Officials from the states and urbanized areas we spoke with noted that although highway dollars transferred to transit projects result in fewer dollars for highway projects, the overall impact on highway spending is not significant. State and local officials also noted that the decision to transfer flexible funding is based on states' transportation spending priorities and that there is not enough funding for the highway or transit project needs identified.

The flexibility provided by these federal funds also allows states and urbanized areas to make decisions that often benefit both highways and transit purposes. For example, flexible funding can be transferred to FTA for transit projects when highway projects are delayed, ensuring that the funds are spent. Transit officials in Harrisburg, Pennsylvania, told us they received flexible funding when a road replacement project fell through because they could get the funds under contract quickly. In these situations, flexible funding allows states and urbanized areas to best match the funds with the most pressing and highest priorities.

³⁶As we reported in 2007, at the end of 2004, Pennsylvania's governor proposed that more than \$400 million of FHWA funds be transferred to transit to address transit agencies' operating-budget shortfalls and avoid service cuts and fare increases.

Agency Comments

We provided the Department of Transportation with a draft of this report for its review and comment. The Department of Transportation provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the Secretary of Transportation and other interested congressional committees. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have questions about this report, please contact me at (202) 512-2834 or wised@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in enclosure II.



David J. Wise
Director
Physical Infrastructure Issues

Enclosure I: Scope and Methodology

To determine the extent to which states have transferred flexible funding between highway and transit programs from 2007 to 2011, we obtained data on Surface Transportation Program (STP) and Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds transferred from the Federal Highway Administration's (FHWA) Financial Management Information System (FMIS) to the Federal Transit Administration's (FTA) Transportation Electronic Awards Management system, including the amounts transferred, the FTA programs to which the funds were transferred, and the states and urbanized areas that transferred the funds. These data also separately identified American Recovery and Reinvestment Act of 2009 funding transferred from FHWA to FTA for transit projects. We obtained additional information from FTA on the types of projects for which the funds were transferred as well as the total FTA funding apportioned to the states, and from FHWA on the total federal-aid highway program, STP, and CMAQ funds apportioned to the states. These data were provided on an annual basis from fiscal year 2007 to fiscal year 2011. We used these data to calculate the total amount of flexible funding transferred in each state, the portion of available flexible funding transferred, and flexible funding transferred as a portion of a state's available transit funding. Using the information on the programs to which the flexible funding was transferred, along with 2000 U.S. Census Bureau data, we calculated the population of the areas to which the flexible funding was transferred.³⁷ We also used the data to make comparisons to trends identified in the previous flexible-funding report, as appropriate. Although we did not independently verify the data provided, we interviewed FHWA and FTA officials about how the data were collected, limitations of the data, and how the data were corroborated between the modal administrations. We also obtained additional data from FHWA and FTA on flexible funding transferred and highway and transit funding apportioned to the states in fiscal year 2006. We compared the 2006 data provided for our current review to the 2006 data provided for the previous flexible-funding report for data reliability purposes. In addition, we asked officials at the FHWA division offices, FTA regions, and state departments of transportation and metropolitan planning organizations (MPO) in selected states and urbanized areas to corroborate the amount of flexible funding transferred in the selected states. In addition to the flexible funding transferred from FHWA to FTA, FHWA officials also provided data from FMIS on flexible funding that was used for transit projects under FHWA administration. FHWA officials told us that state officials code these projects as having a transit component in FMIS, but we did not independently verify that the states correctly coded these projects. FHWA officials also provided us with information about the Urbanized Area Formula Program funds transferred from FTA to FHWA for highway projects. FTA officials verified the amounts transferred and also provided supporting documentation on the transfers. Based on our verifications, we determined that the data were sufficiently reliable for purposes of this report.

³⁷ According to FTA officials, flexible funding transferred to the Nonurbanized Area Formula Program is transferred to areas under 50,000 in population. Funds transferred to the Urbanized Area Formula Program under state administration are transferred to areas between 50,000 and 199,999 in population, whereas those under urbanized area administration are transferred to areas over 200,000 in population. Funds transferred to the Elderly and Persons with Disabilities Program can be transferred to any area of the state. FTA officials provided us with additional data on the population of the flexible funding transferred to this program in California and Oregon, which accounted for the majority of the funding transferred. We used 2000 U.S. Census Bureau data to identify the urbanized areas over 1 million in population.

To determine the factors that affected selected state and urbanized area decisions to transfer flexible funding and the outcomes of those decisions, we selected 5 states and 10 urbanized areas for in-depth interviews. To select states, we used four measures: (1) the amount of flexible funding transferred from highways to transit, (2) the proportion of a state’s flexible-funding apportionment transferred to transit, (3) the proportion of the state’s transit funding coming from flexible funding, and (4) the amount of states’ Urbanized Area Formula Program funding transferred to highway projects. We selected four states that ranked in the top 10 for at least two of these measures—California, Pennsylvania, Oregon, and Vermont. Three of these states—California, Vermont, and Pennsylvania—had been included in our 2007 report. California was the only state we selected that had transferred Urbanized Area Formula Program funds to highways from 2007 to 2011.³⁸ We also selected one state—Arkansas—that had not transferred flexible funding to FTA for transit projects during this period. We chose Arkansas in particular because Arkansas had previously transferred flexible funding for transit projects.³⁹ Within these selected states, we chose at least one urbanized area to include in our in-depth interviews. In the states that used a relatively high amount of transferred flexible funding on transit, we selected urbanized areas that were included in the 2007 report, as well as those that received the largest portion of the state’s flexible funding for transit. Additionally, in Pennsylvania we spoke with officials in Harrisburg to obtain the perspective of a relatively smaller urbanized area. In Arkansas—because there was not an urbanized area that had used a significant amount of transferred flexible funding on transit—we selected the largest urbanized area in the state. We also selected two other areas within Arkansas—one city below 200,000 in population, and one that was recently designated as above 200,000 and as such will soon be allocated flexible funding directly. We selected the states and urbanized areas using a nonprobability sample, and, consequently, the results cannot be used to make inferences about the entire population. Table 2 shows the states and urbanized areas included in our review.

Table 2: States and Urbanized Areas Selected for In-depth Interviews

	State	Urbanized areas
States using relatively more flexible funding on transit	California	Los Angeles
		San Francisco
	Pennsylvania	Philadelphia
		Pittsburgh
		Harrisburg
	Vermont	Burlington
Oregon	Portland	
State using no flexible funding on transit	Arkansas	Little Rock
		Fayetteville
		Pine Bluff

Source: GAO.

³⁸California accounted for 86 percent of the Urbanized Area Formula Program funds transferred to FHWA for highway projects from 2007 to 2011.

³⁹From 1992 to 2006, Arkansas had transferred about \$9.6 million in flexible funding to FTA for transit projects, according to data obtained for our 2007 flexible funding report.

In each state we interviewed officials from the state department of transportation, the FHWA division office, and the FTA region with jurisdiction over the state. Within each urbanized area, we interviewed officials from the MPO and a transit operator. Specifically, the transit operators we spoke to were:

- Los Angeles County Metropolitan Transportation Authority;
- Bay Area Rapid Transit (San Francisco);
- Southeastern Pennsylvania Transportation Authority (Philadelphia);
- Port Authority of Allegheny County (Pittsburgh);
- Capital Area Transit (Harrisburg);
- Chittenden County Transportation Authority (Burlington);
- TriMet (Portland);
- Central Arkansas Transit Authority (Little Rock);
- Ozark Regional Transit (Fayetteville); and
- Pine Bluff Transit.

We asked these officials about how they make decisions to use flexible funds, including what factors play a role in this decision, and the impact of this funding on highway and transit projects. We also collected and reviewed documentation from the states and urbanized areas, including projects funded using flexible funding, and prior reports on the use of flexible funding by states and urbanized areas. We also interviewed representatives of the following associations to obtain their views on flexible funding: the American Association of State Highway and Transportation Officials, the American Public Transportation Association, the Association of Metropolitan Planning Organizations, the National Association of Regional Councils, and the Community Transportation Association of America.

Enclosure II: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the contact above, Susan Zimmerman, Assistant Director; Colin Fallon; Kathleen Gilhooly; Terence Lam; Emily Larson; Hannah Laufe; Nancy Lueke; and Elizabeth Wood made key contributions to this report.

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