

# The FAST Act Expires; the Department of Transportation Initiates Shutdown Procedures

October 1, 2021

At midnight on September 30, 2021, the law authorizing federal surface transportation programs, the Fixing America's Surface Transportation Act (FAST Act; P.L. 114-94), as extended, expired. The House is considering the Senate-passed Infrastructure Investment and Jobs Act (H.R. 3684), which would reauthorize surface transportation programs. In the absence of new authority to expend from the Highway Trust Fund (HTF), the Department of Transportation (DOT) has begun to shut down the programs and activities supported by the HTF and furlough staff.

The Anti-Deficiency Act (ADA; [31 U.S.C. §1341](#)) prohibits agencies from incurring obligations that are in advance of appropriations except in certain circumstances. This means that transportation programs and activities supported by money from the general fund of the U.S. Treasury must be appropriated. In contrast, HTF funding is a form of budget authority, known as contract authority, which by law may be obligated prior to an appropriation and is effectively an exception under the ADA. However, the authority to make new obligations from the HTF must be authorized, and that authorization expired September 30, 2021.

The highway taxes that support the HTF have not expired, and their revenues will continue to be deposited into the HTF. Under current authority, the motor fuel and tire taxes expire at the end of September 30, 2022, and the heavy vehicle use tax expires at the end of September 30, 2023.

According to DOT's September 28, 2021, [shutdown plan](#), all HTF-funded personnel not needed to fulfill excepted activities under the ADA (such as life, safety, and the protection of property), or funded with appropriations, would be furloughed. Approximately 3,700 employees in the four DOT surface transportation agencies discussed below would be affected.

## Federal Highway Administration (FHWA)

With the expiration of the FAST Act, as extended, approximately 2,600 of FHWA's employees are expected to be furloughed. Under the DOT shutdown plan, 65 of FHWA's HTF-funded staff and 91 non-HTF-funded staff would likely continue to work. According to the plan, all Federal-Aid Highway programs would cease, because the vast majority of FHWA activities are funded from the HTF. FHWA would continue to make timely payments on obligations that were incurred before the lapse in

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IN11768

authorization. However, because of the lapse, there is no authority to obligate funds from the HTF for new projects under the Federal-Aid Highway Program. Annual apportionments for FY2022 will not be provided to the states on October 1, 2021, because there is no authorization to do so.

Because FHWA is honoring requests for reimbursement for projects obligated prior to the authorization lapse, there is likely to be minimal immediate impact on the states. However, as time passes, the absence of federal participation in funding new projects could create planning problems for the states and lead to fewer calls for bids on new federally funded highway projects.

### **Federal Transit Administration (FTA)**

With a lapse in authorization, of its 595 employees, FTA is furloughing 32 employees funded from the HTF. Because the agency's administrative costs are mainly paid through appropriations rather than with money from the HTF, 563 FTA employees are expected to continue working. FTA will reimburse transit agencies for costs under its formula programs, which are HTF-funded, if they were obligated prior to the authorization lapse. However, no new formula program funds will be available as of October 1, 2021. Payments for construction projects supported by the general-funded Capital Investment Grants program can also continue.

### **Other DOT Surface Transportation Administrations**

The Federal Motor Carrier Safety Administration (FMCSA) is furloughing 798 of its 1,225 employees. The agency is continuing to make timely payments to contractors and grantees on obligations incurred prior to October 1, 2021. FMCSA will, however, cease all activities except those funded by offsetting collections or excepted under the ADA to protect life and property.

The National Highway Traffic Safety Administration (NHTSA) plans to furlough roughly half of its 602 employees whose compensation is funded from the HTF. Activities supported by the HTF would not continue, including NHTSA's Highway Safety Research and Development activities and new grants under the Highway Traffic Grant Account. However, NHTSA has sufficient cash on hand to pay for obligations incurred before October 1, 2021.

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