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[ISTEA [Intermodal Surface Transportation Efficiency Act]] [loose] [2]

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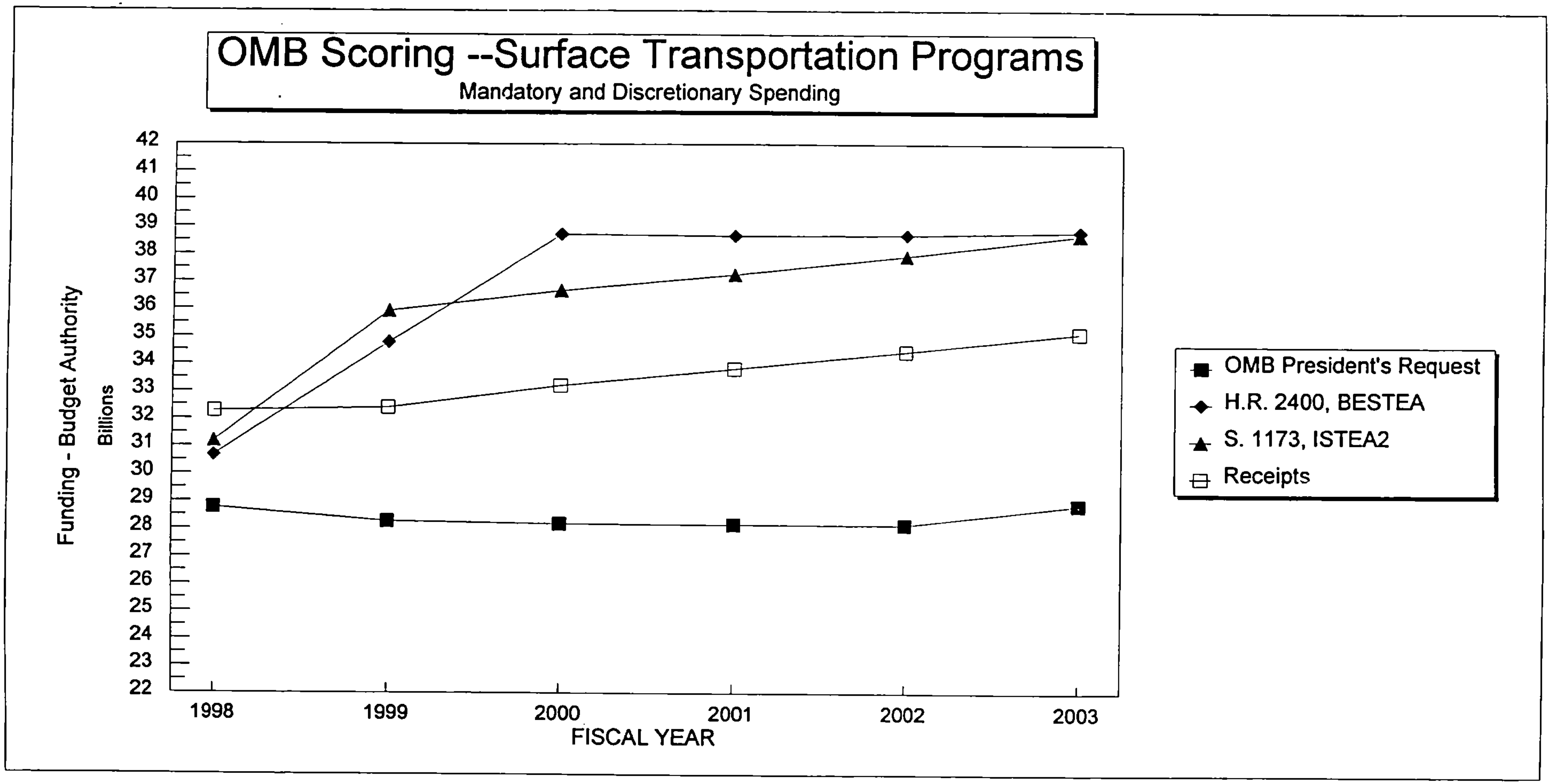
ISTEA
FUNDING AND SCORING
ISSUES

April 22, 1998

Briefing Outline

- Comparison of Total Spending in Baseline, President's Budget, House and Senate Bills
- OMB vs CBO Scoring
- Mandatory vs. Discretionary Spending
- Trust Fund vs General Fund
- Offsets/Senate Budget Resolution
- HTF Revenues
- Other Issues



OMB Scoring --Surface Transportation Programs
Mandatory and Discretionary Spending
Funding - Budget Authority
Billions
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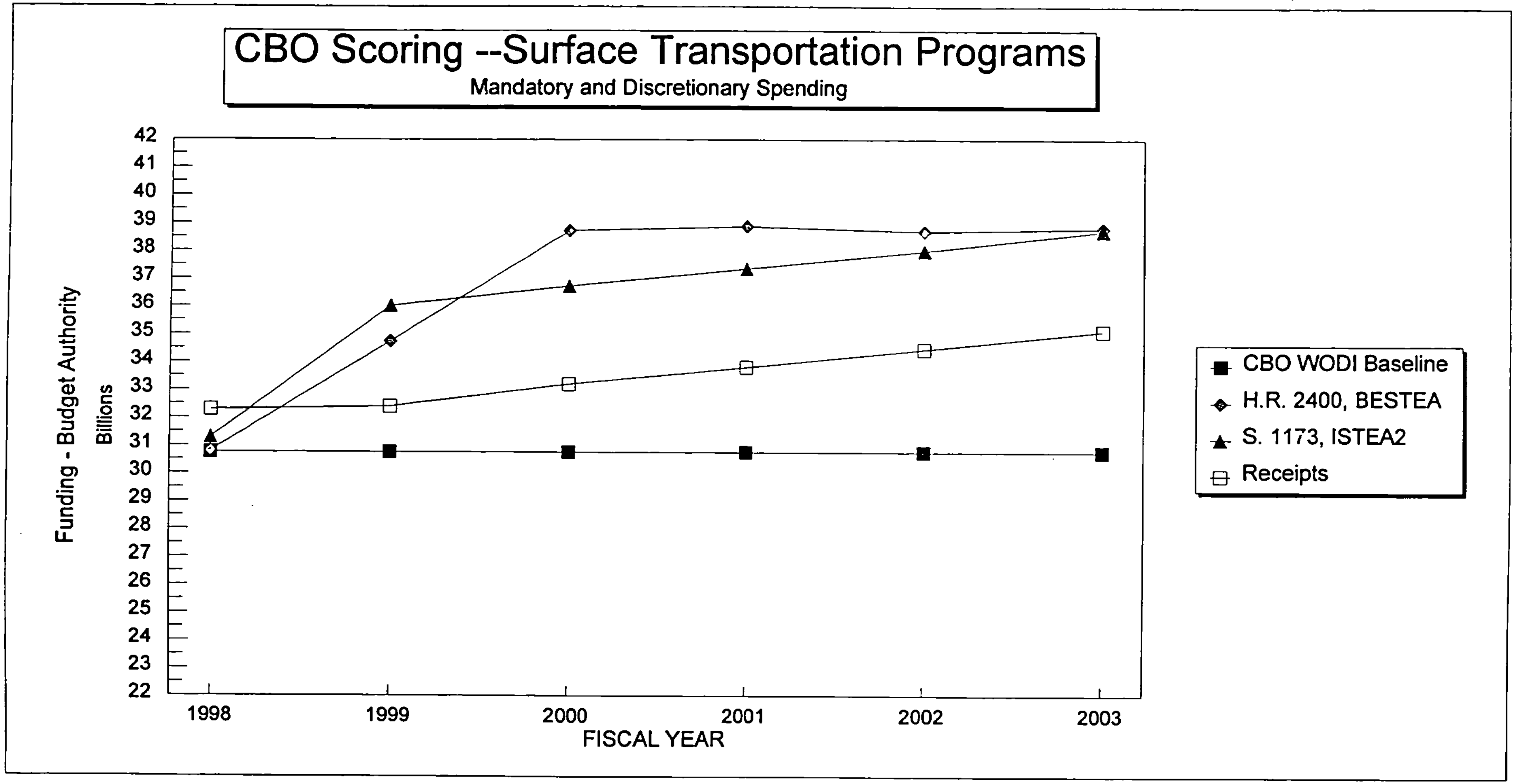
2003
FISCAL YEAR
OMB President's Request
H.R. 2400, BESTEA
S. 1173, ISTEA2
Receipts



CBO Scoring --Surface Transportation Programs
Mandatory and Discretionary Spending
Funding - Budget Authority
Billions
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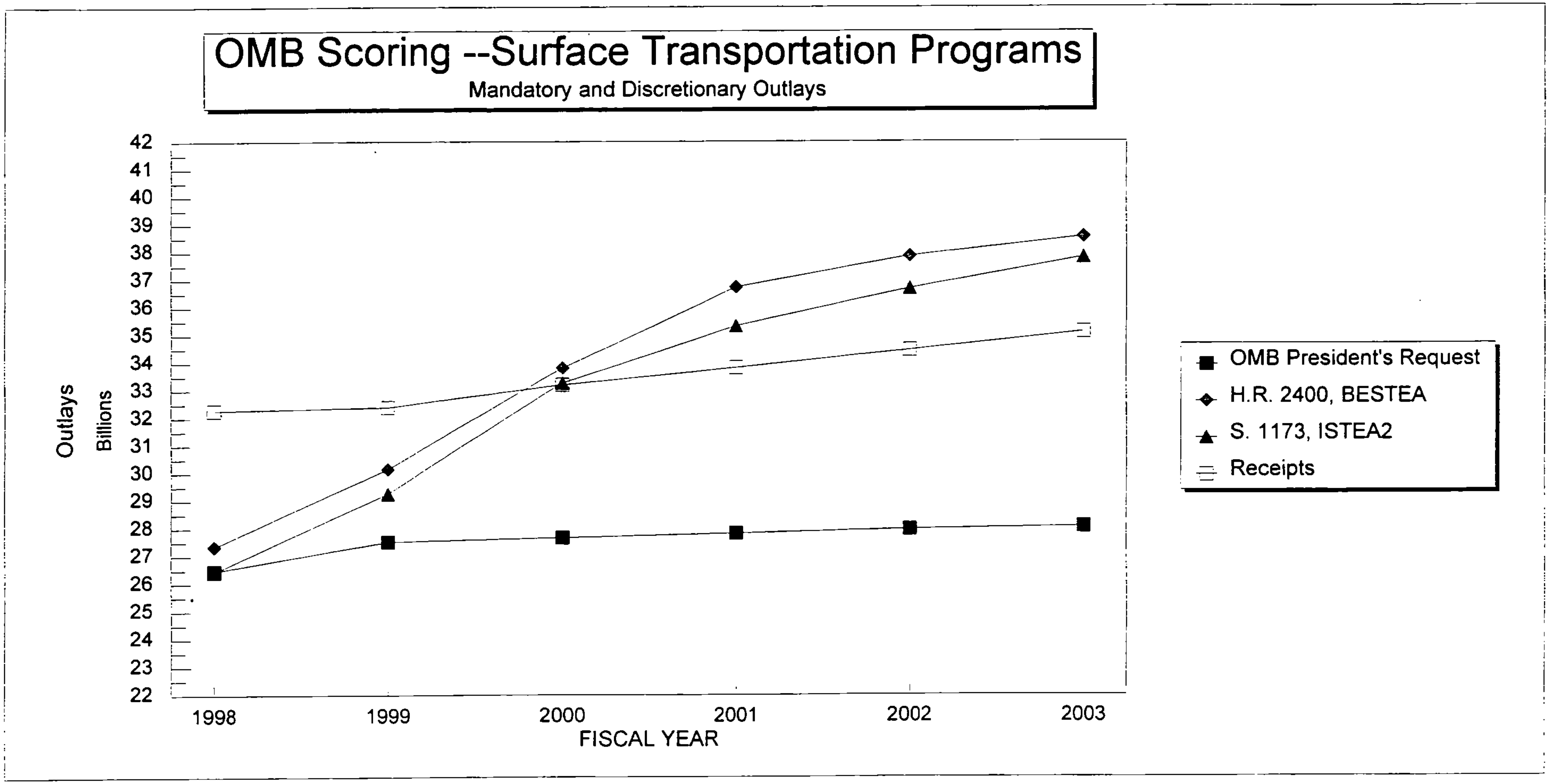
CBO WODI Baseline
H.R. 2400, BESTEA
S. 1173, ISTEA2
Receipts


OMB Scoring --Surface Transportation Programs
Mandatory and Discretionary Outlays
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Outlays
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FISCAL YEAR
OMB President's Request
H.R. 2400, BESTEA
S. 1173, ISTEA2
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2 A

Surface Transportation Programs
Mandatory and Discretionary Spending
(dollars in millions)

	1998	1999	2000	2001	2002	2003	6-Yr. Total
OMB President's Request:1/							
Budget Authority	28,768	28,256	28,160	28,132	28,123	28,850	170,289
Outlays	26,472	27,251	27,672	27,822	27,967	28,062	165,246
CBO WODI Baseline:							
Budget Authority	30,747	30,747	30,747	30,747	30,747	30,747	184,482
Outlays	27,178	28,277	28,687	28,749	28,558	28,557	170,006
CBO WIDI Baseline:							
Budget Authority	30,747	30,771	30,800	30,828	30,857	30,887	184,890
Outlays	27,179	28,423	29,235	29,821	30,236	30,900	175,794
OMB WIDI Baseline:1/							
Budget Authority	30,715	30,738	30,761	30,784	30,809	30,833	184,640
Outlays	26,447	27,347	28,232	28,788	29,457	30,040	170,311
HR 2400, BESTEA - OMB Scoring							
Budget Authority	30,671	34,775	38,713	38,660	38,688	38,803	220,310
Outlays	26,596	28,823	32,889	35,743	37,165	37,883	199,099
HR 2400, BESTEA - CBO Scoring							
Budget Authority	30,798	34,730	38,719	38,866	38,693	38,808	220,614
Outlays	27,346	30,150	33,805	36,734	37,866	38,549	204,450
S. 1173, ISTEA2 - OMB Scoring							
Budget Authority	31,187	35,921	36,661	37,254	37,935	38,681	217,639
Outlays	26,442	29,266	33,272	35,325	36,679	37,806	198,790
S. 1173, ISTEA2 - CBO Scoring							
Budget Authority	31,288	36,008	36,717	37,350	37,993	38,712	218,068
Outlays	27,218	30,412	34,567	36,718	37,794	38,878	205,587

1/ The President's Budget proposed to change the presentation of obligation limitations as budget authority, the above table shows budget authority on a comparable basis. The outlays are not impacted in either case because the contract authority would not be available for obligation.

NOTE: OMB outlays assume FY 1998 Enacted for all discretionary programs. CBO assumes simple authorizations may be appropriated in supplemental action. For CA programs OMB and CBO assume the same obligation limitations.

Comparison of House and Senate ISTEA Reauthorizations with Alternative projections
(Outlays in millions)
Six Year Totals: 1998 to 2003

HR 2400, BESTEA

	OMB Scoring	CBO Scoring	OMB President's Request	CBO WODI Baseline	OMB WIDI Baseline	CBO WIDI Baseline
Outlays	199,099	204,450	165,246	170,006	170,311	175,794

HR 2400 OMB Scoring Less

	CBO Scoring	OMB President's Request	CBO WODI Baseline	OMB WIDI Baseline	CBO WIDI Baseline
Outlays	-5,351	33,853	--	28,788	--

HR 2400 CBO Scoring Less

	OMB President's Request	CBO WODI Baseline	OMB WIDI Baseline	CBO WIDI Baseline
Outlays	--	34,444	--	28,656

S. 1173, ISTEA2

	OMB Scoring	CBO Scoring	OMB President's Request	CBO WODI Baseline	OMB WIDI Baseline	CBO WIDI Baseline
Outlays	198,790	205,587	165,246	170,006	170,311	175,794

S. 1173 OMB Scoring Less

	CBO Scoring	OMB President's Request	CBO WODI Baseline	OMB WIDI Baseline	CBO WIDI Baseline
Outlays	-6,797	33,544	--	28,479	--

S. 1173 CBO Scoring Less

	OMB President's Request	CBO WODI Baseline	OMB WIDI Baseline	CBO WIDI Baseline
	--	35,581	--	29,793

CBO Scoring of Surface Transportation Programs
Mandatory and Discretionary Spending
(dollars in millions)

	Enacted 1998	1999	2000	2001	2002	2003	6-Yr. Total	6-YR Total Less WODI Baseline
CBO WODI Baseline:								
Budget Authority	30,747	30,747	30,747	30,747	30,747	30,747	184,482	N/A
Outlays	27,178	28,277	28,687	28,749	28,558	28,557	170,006	N/A
Discretionary								
BA	1,061	1,061	1,061	1,061	1,061	1,061	6,366	N/A
Outlays	25,212	26,520	27,146	27,542	27,502	27,597	161,519	N/A
Mandatory								
BA	29,686	29,686	29,686	29,686	29,686	29,686	178,116	N/A
Outlays	1,966	1,757	1,541	1,207	1,056	960	8,487	N/A
HR 2400, BESTEA - CBO Scoring								
Budget Authority	30,798	34,730	38,719	38,866	38,693	38,808	220,614	36,132
Outlays	27,346	30,150	33,805	36,734	37,866	38,549	204,450	34,444
Discretionary								
BA	1,203	714	315	260	185	155	2,832	-3,534
Outlays	25,231	27,770	30,957	33,663	34,666	35,296	187,583	26,064
Mandatory								
BA	29,594	34,016	38,404	38,606	38,509	38,654	217,783	39,667
Outlays	2,115	2,379	2,848	3,071	3,200	3,253	16,866	8,379
S. 1173, ISTEA2 - CBO Scoring								
Budget Authority	31,288	36,008	36,717	37,350	37,993	38,712	218,068	33,586
Outlays	27,218	30,412	34,567	36,718	37,794	38,878	205,587	35,581
Discretionary								
BA	1,617	2,194	2,432	2,391	2,420	2,463	13,517	7,151
Outlays	25,252	28,660	33,022	35,492	36,703	37,867	196,996	35,477
Mandatory								
BA	29,671	33,814	34,285	34,959	35,573	36,249	204,551	26,435
Outlays	1,966	1,752	1,545	1,226	1,091	1,011	8,591	[illegible]

CBO Scoring of Surface Transportation Programs
Mandatory and Discretionary Spending
(dollars in millions)

	Enacted 1998	1999	2000	2001	2002	2003	6-Yr. Total	6-YR Total Less WIDI Baseline
CBO WIDI Baseline:								
Budget Authority	30,747	30,771	30,800	30,828	30,857	30,887	184,890	N/A
Outlays	27,179	28,423	29,235	29,821	30,236	30,900	175,794	N/A
Discretionary								
BA	1,061	1,085	1,114	1,142	1,171	1,201	6,774	N/A
Outlays	25,213	26,666	27,694	28,614	29,180	29,940	167,307	N/A
Mandatory								
BA	29,686	29,686	29,686	29,686	29,686	29,686	178,116	N/A
Outlays	1,966	1,757	1,541	1,207	1,056	960	8,487	N/A
HR 2400, BESTEA - CBO Scoring								
Budget Authority	30,798	34,730	38,719	38,866	38,693	38,808	220,614	35,724
Outlays	27,346	30,150	33,805	36,734	37,866	38,549	204,450	28,656
Discretionary								
BA	1,203	714	315	260	185	155	2,832	-3,942
Outlays	25,231	27,770	30,957	33,663	34,666	35,296	187,583	20,276
Mandatory								
BA	29,594	34,016	38,404	38,606	38,509	38,654	217,783	39,667
Outlays	2,115	2,379	2,848	3,071	3,200	3,253	16,866	8,379
S. 1173, ISTEA2 - CBO Scoring								
Budget Authority	31,288	36,008	36,717	37,350	37,993	38,712	218,068	33,178
Outlays	27,218	30,412	34,567	36,718	37,794	38,878	205,587	29,793
Discretionary								
BA	1,617	2,194	2,432	2,391	2,420	2,463	13,517	6,743
Outlays	25,252	28,660	33,022	35,492	36,703	37,867	196,996	29,689
Mandatory								
BA	29,671	33,814	34,285	34,959	35,573	36,249	204,551	26,435
Outlays	1,966	1,752	545	1,226	1,091	1,011	8,591	[illegible]

OMB and CBO Scoring Differences

- CBO scores BESTEA $5.4 billion more in outlays than OMB scoring and ISTEA2 with $6.8 billion more in outlays. There are three primary reasons for these differences:

  -- Outlay Rates - CBO uses slightly different outlay rates for the three biggest ISTEA programs (see following table). For Federal-aid highways, the largest account in the reauthorization bills, CBO uses a 7 year rate while OMB uses a 9 year rate. For Transit, CBO uses a slightly faster rate for both the Formula Grant and Discretionary Grant programs.

  -- Outlays Prior - The manner in which CBO estimates outlays from pre-FY 1998 balances results in higher outlays during the 1998-2003 reauthorization period. CBO uses a subjective method of projecting these outlays while OMB primarily relies on its outlay rates. In highways, this results in a $600 million difference over the reauthorization period under each bill.

  -- 1998 Authorizations. CBO assumes all the FY 1998 authorizations will be outlaid, including those not funded in the FY 1998 appropriations bill. OMB does not assume any new funding will be provided in 1998 and, therefore, does not include these outlays. This difference is most pronounced in the Senate bill, where $600 million in FY 1998 authorizations are included in CBO totals, but not OMB.

- CBO scores ISTEA2 with $1.1 billion more in outlays over six years than BESTEA, even though CBO scores ISTEA2 with $2.5 billion less in budget authority. This is because $9.3 billion in BESTEA is directed towards demos, which outlay slower than regular Federal-aid highway funds. OMB scores ISTEA2 with slightly less outlays than BESTEA. The lower BESTEA outlays resulting from the demos are less than the outlays foregone because OMB does not assume that all of ISTEA2's additional 1998 budget authority will be outlaid.

COMPARISON OF OMB and CBO OUTLAY RATES FOR FHWA FEDERAL-AID HIGHWAY AND TRANSIT PROGRAMS
(in billions of dollars)

:y/Account		Budget Resources FY 98 enacted	Outlay Rates bud yr	by+1	by+2	by+3	by+4	by+5	by+6	by+7	by+8
al Highway Administration:											
OMB	Federal-aid Highways	21.5	27%	41%	16%	5%	3%	3%	2%	2%	1%
CBO	Federal-aid Highways		27%	42%	17%	6%	4%	2%	2%		
al Transit Administration:											
OMB	Formula Grants..	2.5	5%	20%	30%	20%	20%	5%			
CBO	Formula Grants..		8%	20%	29%	19%	19%	5%			
OMB	Discretionary Grants.................................	2.0	5%	22%	22%	20%	16%	10%	5%		
CBO	Discretionary Grants 1/............................		5%	22%	22%	20%	16%	5%	5%	5%	
	beginning in FY 2000...........................		18%	22%	22%	20%	16%	2%			
	beginning in FY 2001...........................		12%	22%	22%	20%	16%	5%	3%		

1/ Beginning in FY 2000, CBO applies a different outlay rate to the Discretionary Grants program, because CBO believes that the large obligated balances created by the new BA will outlay faster than the current rate.

Mandatory vs. Discretionary Spending

- Mandatory Spending Defined. In ISTEA, the equity programs, e.g., minimum allocation, and highway demonstration programs are exempt from the obligation limitation and therefore mandatory.

- Mandatory Spending Comparison. BESTEA and ISTEA2 have similar total budgetary resources levels, but significantly different mixes between mandatory and discretionary spending (see following table). BESTEA includes $16.5 billion in mandatory outlays from 1998-2003, while ISTEA2 includes only $8.2 billion in mandatory outlays. The primary difference being the $5.6 billion in outlays for demos in the BESTEA.

- House PAYGO Offsets. In total, BESTEA has a PAYGO cost of $8.3 billion. No offsets have been identified to date.

- Scoring Demos as Mandatory. Previously, these projects were scored as discretionary because, even though they are exempt from an obligation limitation, it was assumed that they were under the control of the Appropriations Committee. That is, the Appropriators could choose to impose an obligation limitation on these projects and thereby restrict their funding. However, a Parliamentarian ruled that the Appropriators could not exert control over these projects. Therefore, according to the Budget Enforcement Act (BEA), spending for these projects is mandatory. CBO and OMB agree on this issue.

- Excluding Demonstration from the Baseline. As a matter of law, expiring programs are included in the baseline only if they have current year outlays of $50 million or more. Individual demo projects do not meet this threshold and therefore were not continued in the baseline. This reduced the baseline for ISTEA programs by $6.3 billion for 1998-2003 and increased the offsets required for BESTEA. Demos constitute discrete projects and not a program because each project's funding is separable from every other project. That is, if funding were eliminated for one project in the bill, the total bill funding would decrease. Eliminating funding for an eligible project within a program does not reduce total spending, those funds remain available for another eligible project.

Note: A 1997 OMB letter to Representative Oberstar detailing these demonstration project scoring changes are included after the following table.

Split Between Mandatory and Discretionary Spending in Reauthorization Bills
($ in millions)

Spending Scenarios

	1998		1999		2000		2001		2002		2003		1998-2003	
	BR	OL	BR	OL	BR	OL	BR	OL	BR	OL	BR	OL	BR	OL
President's Request														
Discretionary	27,062	24,553	27,016	25,568	27,017	26,250	27,017	26,623	27,017	26,964	27,017	27,202	162,146	157,160
Mandatory	890	1,919	774	1,683	683	1,422	628	1,199	608	1,003	608	860	4,191	8,086
Total	27,952	26,472	27,790	27,251	27,700	27,672	27,645	27,822	27,625	27,967	27,625	28,062	166,337	165,246
BESTEA														
Discretionary	27,062	24,553	32,257	26,576	35,674	30,201	35,619	32,677	35,544	33,978	35,514	34,662	201,670	182,647
Mandatory	2,257	2,043	2,765	2,247	3,209	2,688	3,209	3,066	3,313	3,187	3,313	3,221	18,066	16,452
Total	29,319	26,596	35,022	28,823	38,883	32,889	38,828	35,743	38,857	37,165	38,827	37,883	219,736	199,099
ISTEA II														
Discretionary	27,048	24,547	35,870	27,633	36,627	31,875	37,176	34,096	37,825	35,587	38,545	36,813	213,091	190,551
Mandatory	738	1,895	754	1,633	770	1,397	787	1,229	804	1,092	821	993	4,674	8,239
Total	27,786	26,442	36,624	29,266	37,397	33,272	37,963	35,325	38,629	36,679	39,366	37,806	217,765	198,790

Compared to President's Budget

	1998		1999		2000		2001		2002		2003		1998-2003	
	BR	OL	BR	OL	BR	OL	BR	OL	BR	OL	BR	OL	BR	OL
BESTEA														
Discretionary	0	0	5,241	1,008	8,657	3,951	8,602	6,054	8,527	7,014	8,497	7,460	39,524	25,487
Mandatory	1,367	124	1,991	564	2,526	1,266	2,581	1,867	2,705	2,184	2,705	2,361	13,875	8,366
Total	1,367	124	7,232	1,572	11,183	5,217	11,183	7,921	11,232	9,198	11,202	9,821	53,399	33,853
ISTEA II														
Discretionary	(14)	(6)	8,854	2,065	9,610	5,625	10,159	7,473	10,808	8,623	11,528	9,611	50,945	33,391
Mandatory	(152)	(24)	(20)	(50)	87	(25)	159	30	196	89	213	133	483	153
Total	(166)	(30)	8,834	2,015	9,697	5,600	10,318	7,503	11,004	8,712	11,741	9,744	51,428	33,544

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

April 18, 1997

The Honorable James L. Oberstar
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Oberstar:

Thank you for your letter of February 24, 1997, requesting a change in the scoring of highway programs in the President's 1998 Budget.

Your letter raises two issues: the appropriateness of the budgetary scoring of highway projects not subject to the Federal-aid limitation (so-called exempt projects), and their exclusion from the mandatory baseline of the President's Budget.

As you know, the exempt highway projects are scored as mandatory budget authority and mandatory outlays in the President's 1998 Budget. The rationale for this scoring is that these projects are not subject to the control of the Appropriations Committee, and therefore, should not be scored as discretionary. Outlays from exempt highway projects were first scored as mandatory in the President's 1997 Budget. Prior to that they were classified as discretionary.

The President's 1997 Budget made this change as a direct result of changes made by the Congress during its deliberations on transportation appropriations bills. During consideration of these bills, several attempts by the Appropriations Committee to limit spending for the exempt projects, including limiting the obligations of programs that were exempt from limitation, were rejected. This challenged the prevailing assumption that such exempt projects could be controlled by actions taken by the Appropriations Committee. Since the Appropriations Committee had no apparent mechanism at its disposal to control spending on exempt projects, their scoring was changed to mandatory.

This change was made in consultation with the Budget and Appropriations Committees and the Congressional Budget Office (CBO), as required by the Budget Enforcement Act (BEA). None of these Committees or offices objected to the proposed change. The mandatory classification of highway exempt projects was described in the President's 1997 Budget (Analytical Perspectives volume, p. 202) and the accompanying letter from the Director of OMB to the Chairmen of the Budget and Appropriations Committees and others. Both the President's 1997 and 1998 Budgets are consistent with CBO scoring of the highway exempt projects.

The second issue you raise is the treatment of the exempt projects in the mandatory baseline. As a result of the reclassification of the exempt projects as mandatory, they are now treated differently in the baseline. Consistent with the treatment of other mandatory spending that is explicitly capped or time limited, exempt projects could not be extended indefinitely in the baseline. Quite the contrary, both the House and Senate Transportation Committees have consistently specified the exact amount of spending for exempt projects. To assume permanent extensions of mandatory exempt highway spending in the baseline would, in effect, disregard previous Congressional actions that were clearly specified in enacted legislation, and we understandably can not do that under current law. CBO's treatment is consistent with OMB's.

This scorekeeping change is consistent with the BEA procedures and concepts. Each of the changes to which you object has been coordinated with OMB's Congressional counterparts and is consistent with CBO scoring. This revised treatment of transportation contract authority will ensure that legislation is scored to the committee responsible for reporting the spending. Scoring the committee responsible for the outlays is the fundamental scoring principle of the budget enforcement controls created by the BEA.

The President recognizes the importance of infrastructure spending. The President's 1998 Budget sought to maximize infrastructure spending with the constraints of balancing the budget and competing priorities. However, I recognize that the budget request is just the start of a long deliberative process. I look forward to working with you on this issue during these deliberations to achieve an end that meets our mutual goals.

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Sincerely,

Franklin D. Raines
Director

Identical Letter Sent to The Honorable Thomas E. Petri, The Honorable Bud Shuster, and The Honorable Nick J. Rahall, II

Trust Fund vs. General Fund Programs

- President's Budget proposed funding all surface transportation programs from the Highway Trust Fund (HTF). BESTEA would fund $3.5 billion, or 2% percent of the total, from the General Fund. ISTEA2 would fund $12.7 billion, or 6% of the total, from the General Fund. This is an issue primarily for the Senate bill.

- Several Administration priorities are General Funded in ISTEA2 and BESTEA:
  - -- ISTEA2 (Senate): Welfare to Work, 20% of transit capital, planning, and research programs; and NHTSA Operations and Research
  - -- BESTEA (House): Welfare to Work and NHTSA Operations and Research

- Senate. The proportionately larger General Fund share is particularly important for transit programs. During the ISTEA era, transit received 98% of its TF authorizations but received only 57% of the $14 billion in General Fund authorizations. Therefore, it is likely that the 20 percent of transit programs coming from the General Fund may not receive appropriations.

  A possible solution would be to insist that if overall spending is reduced, then (1) transit's share of the reduction first be taken from the GF authorizations, and (2) a portion of the remaining transit GF authorization be replaced with some of the HTF CA given up by highways.

- The General Fund vs Trust Fund split issue is also important if a Chafee/Bond, or receipt based, scenario is adopted because general funded programs will not be included in a Chafee/Bond scenario. The Mass Transit Account of the Highway Trust Fund currently collects 2.85 cents of the gas tax, with estimated receipts of $27.8 billion from 1998-2003. The NEXTEA proposed funding for transit of $31 billion over the same time period, while the House provides $37.6 billion and the Senate $41.5 billion. Therefore, if a decision is made to pursue a revenue-constrained proposal (e.g., Chafee-Bond), the result would be lower levels of funding for transit programs than those proposed in the President's Budget.

  A possible solution in this scenario would be to insist that the receipts in the new receipts-constrained fund be allocated between highways and transit according to their share of the authorizations in the current bills.

- House. The House T&I Committee have stated that they are not committed to funding all of the General Fund programs. This only puts the Welfare to Work program and NHTSA Operations and research at risk.

ISTEA REAUTHORIZATIC.
TRANSIT GENERAL FUND/TRUST FUND SPLIT

	1998	1999	2000	2001	2002	2003	Six-Year Total
NEXTEA							
General Fund BA........................	583	0	0	0	0	0	583
Trust Fund BA............................	4,771	5,110	5,110	5,110	5,110	5,246	30,457
Total BA....................................	5,354	5,110	5,110	5,110	5,110	5,246	31,040
BESTEA							
General Fund BA........................	784	414	150	150	150	150	1,798
Trust Fund BA............................	4,894	5,625	6,316	6,316	6,316	6,316	35,783
Total BA....................................	5,678	6,039	6,466	6,466	6,466	6,466	37,581
ISTEA2							
General Fund BA........................	938	1,806	1,774	1,793	1,812	1,832	9,955
Trust Fund BA............................	4,920	5,053	5,190	5,330	5,473	5,621	31,586
Total BA....................................	5,858	6,859	6,964	7,123	7,285	7,453	41,541

NHTSA GENERAL FUND/TRUST FUND SPLIT

	1998	1999	2000	2001	2002	2003	Six-Year Total
NEXTEA							
General Fund BA........................	75	0	0	0	0	0	75
Trust Fund BA............................	310	393	393	393	393	403	2,283
Total BA....................................	385	393	393	393	393	403	2,358
BESTEA							
General Fund BA........................	87	87	87	87	87	87	524
Trust Fund BA............................	264	325	375	375	375	375	2,089
Total BA....................................	351	412	462	462	462	462	2,613
ISTEA2							
General Fund BA........................	87	95	95	87	87	87	539
Trust Fund BA............................	232	239	244	249	263	274	1,502
Total BA....................................	320	334	339	336	351	362	2,041

RAIL GENERAL FUND/TRUST F[illegible]PLIT

	1998	1999	2000	2001	2002	2003	Six-Year Total
NEXTEA							
General Fund BA........................	30	30	30	32	20	20	160
Trust Fund BA............................	789	810	833	855	878	730	4,895
Total BA....................................	819	840	863	887	898	750	5,055
BESTEA							
General Fund BA........................	71	271	71	71	36	36	553
Trust Fund BA............................	0	0	0	0	0	0	0
Total BA....................................	71	271	71	71	36	36	553
ISTEA2							
General Fund BA........................	10	10	10	10	10	10	10
Trust Fund BA............................	0	10	220	200	250	300	980
Total BA....................................	10	20	230	210	260	310	990

*NEXTEA numbers include Amtrak. BESTEA and ISTEA2 do not.

FHWA GENERAL FUND/TRUST FUND SPLIT

	1998	1999	2000	2001	2002	2003	Six-Year Total
NEXTEA							
General Fund BA........................	300	0	0	0	0	0	300
Trust Fund BA............................	23,013	22,877	22,781	22,753	22,744	23,332	137,500
Total BA....................................	23,313	22,877	22,781	22,753	22,744	23,332	137,800
BESTEA							
General Fund BA........................	305	115	130	75	35	5	665
Trust Fund BA............................	24,515	28,144	31,790	31,792	31,895	32,040	180,176
Total BA....................................	24,820	28,259	31,920	31,867	31,930	32,045	180,841
ISTEA2							
General Fund BA........................	495	345	360	305	265	360	235
Trust Fund BA............................	24,290	28,471	29,086	29,577	30,131	30,604	172,159
Total BA....................................	24,785	28,816	29,446	29,882	30,396	30,964	172,394

TOTAL GENERAL FUND/TRUST FUND SPLIT

	1998 1/	1999	2000	2001	2002	2003	Six-Year Total
NEXTEA							
General Fund BA........................	987	30	30	32	20	20	1,117
Trust Fund BA............................	28,883	29,189	29,117	29,111	29,125	29,711	175,135
Total BA...................................	29,871	29,219	29,146	29,142	29,144	29,730	176,252
BESTEA							
General Fund BA........................	1,247	887	438	383	308	278	3,541
Trust Fund BA............................	29,673	34,094	38,481	38,483	38,586	38,731	218,048
Total BA...................................	30,920	34,981	38,919	38,866	38,894	39,009	221,589
ISTEA2							
General Fund BA........................	1,530	2,256	2,239	2,195	2,174	2,289	12,685
Trust Fund BA............................	29,442	33,773	34,740	35,356	36,117	36,799	206,227
Total BA...................................	30,973	36,029	36,978	37,551	38,292	39,088	218,911

1998 BA totals are the sum of FY 1998 Appropriations of BA plus any additional CA above the appropriated amount for that program.

Offsets - BESTEA and The Senate Budget Resolution

BESTEA

- The House Bill includes language in Title X that requires the House to identify offsets for any additional spending included in the bill. As written, this provision would require offsets for any spending above a 1998 freeze.

- By CBO scoring, the language would require $34.4 billion in offsets. OMB estimates it would be $33.8 billion.

- The bill does not include any offsets and the T&I Committee has said offsets will be provided in Conference.

Senate Budget Resolution

- In the case of the Senate, the offsets are included in the Senate Resolution, not ISTEA 2.

- The offsets included in the Senate Resolution total $18.8 billion by CBO scoring and $16 billion by OMB. All of these offsets are already included in the President's Budget or are being used by Congress in other bills. The offsets include:

    - VA Tobacco ($10.5 billion), TANF, Food Stamps and Medicaid ($3.6 billion), Social Services Block Grant ($3.1 billion), FHA Guaranteed Loans ($1 billion), other ($.6 billion)

- The budgetary resource levels for surface transportation programs in the Senate Budget Resolution is estimated to be $195 billion over 6 years. At this level, the SBR underfunds ISTEA2 by about $23 billion in budgetary resources. This assumes funding surface transportation at the levels intended by the SBC, regardless of the impact on other programs.

- In formulating their Resolution, the Budget Committee attempted to add $25.9 billion in ISTEA 2 spending ($18.5 in outlays) to fund the difference between S. 1173 as originally proposed and S. 1173 as passed. However, S. 1173 was significantly higher than the WODI baseline.

- The impact of the Resolution on Function 400 is that ISTEA 2 is not fully funded, FAA and Coast Guard are ~~kept~~ at or reduced below FY 1998 enacted. If ISTEA 2 were fully funded, all other Function 400 would have to be reduced by 12.1 percent. If the reduction were taken to all other NDD, it would require an across the board 2.5 percent reduction to fully fund the Senate bill..

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FY 1999 Senate Budget Resolution - Function 400 Discretionary Summary

(in millions of dollars)

	FY 1998 BA	FY 1998 OL	FY 1999 BA	FY 1999 OL	FY 2000 BA	FY 2000 OL	FY 2001 BA	FY 2001 OL	FY 2002 BA	FY 2002 OL	FY 2003 BA	FY 2003 OL	FY 1999-2003 BA	FY 1999-2003 OL
Function 400 (Baseline):														
WODI Baseline	13,735	39,980	13,735	40,934	13,735	41,622	13,735	41,969	13,735	41,864	13,735	41,956	68,675	208,345
Adjust Highways for BBA (Outyears)	—	—	—	-2,300	—	-2,100	—	-1,700	—	-900	—	-500	—	-7,500
Add back 1998 BBA adjustment	—	—	—	817	—	331	—	117	—	78	—	39	—	1,382
Function 400 Baseline (Adjusted)	13,735	39,980	13,735	39,451	13,735	39,853	13,735	40,386	13,735	41,042	13,735	41,495	68,675	202,227
Function 400 (Policy):														
Function 400 Baseline (Adjusted)	13,735	39,980	13,735	39,451	13,735	39,853	13,735	40,386	13,735	41,042	13,735	41,495	68,675	202,227
Take all Pres. Bud. Cuts	—	—	-918	-490	-1,145	-779	-1,312	-850	-1,308	-916	-1,296	-930	-5,979	-3,965
Unspecified Cuts (5/15/20/25/35)	—	—	83	-720	10	-1,035	-23	-996	-427	-1,180	-639	-1,111	-996	-5,042
Function 400 Policy (pre-ISTEA add)	13,735	39,980	12,900	38,241	12,600	38,039	12,400	38,540	12,000	38,946	11,800	39,454	61,700	193,220
ISTEA Add	-35	20	1,000	2,159	1,100	4,361	1,100	5,260	1,200	5,554	1,400	5,646	5,800	22,980
Senate Budget Resolution	13,700	40,000	13,900	40,400	13,700	42,400	13,500	43,800	13,200	44,500	13,200	45,100	67,500	216,200
Transit increase (over WODI)	—	—	1,000	50	1,100	269	1,100	538	1,200	793	1,400	1,045	5,800	2,695
Senate Agreement Deal ($18.6 over BBA)	—	—	—	1,271	—	3,289	—	4,230	—	4,821	—	5,033	—	18,644

Budgetary Resources and Outlays Assumed in Resolution for ISTEA Programs:	FY 1998 BA	FY 1998 OL	FY 1999 BA	FY 1999 OL	FY 2000 BA	FY 2000 OL	FY 2001 BA	FY 2001 OL	FY 2002 BA	FY 2002 OL	FY 2003 BA	FY 2003 OL	FY 1999-2003 BA	FY 1999-2003 OL
Highways	N/A	N/A	25,585	22,250	26,085	24,294	26,585	25,361	27,085	26,005	27,585	26,226	132,925	124,136
Transit	N/A	N/A	5,449	4,423	5,499	4,571	5,599	5,111	5,699	5,474	5,899	5,804	28,145	25,383

NOTE: There appears to be a disconnect between the outlays provided for Highway programs and the budgetary resources funded by those outlays. This results in an unallocated cut (see first line of detail table).

TITLE X—CONDITIONS FOR IMPLEMENTATION OF FUNDING

SEC. 1001. CONDITIONS FOR IMPLEMENTATION OF FUNDING.

(a) PURPOSE.—The purpose of this section is to ensure that all additional spending provided by this Act above the levels assumed for those programs under section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 in the baseline projections contained in the Congressional Budget Office document entitled "Revised Baseline Budget Projections for Fiscal Years 1999–2008," dated March 3, 1998, except that for programs with discretionary outlays the projections shall assume obligation authority at the 1998 enacted level and that the programs shall be adjusted for the transfer of general fund programs to the trust fund, is fully offset through mandatory and discretionary offsets set forth in this Act.

(b) DUTY IMPOSED ON SECRETARY.—The Secretary of Transportation shall not apportion, allocate, or obligate any funds authorized or provided by this Act unless it contains a section stating that the conditions set forth in subsection (c) have been met.

(c) ENUMERATION OF SPECIFIC CONDITIONS.—The conditions referred to in subsection (b) are that this Act shall contain provisions that offset any increase in outlays

Highway Trust Fund (HTF) Revenues
($ in millions)

	1998	1999	2000	2001	2002	2003	Total 1998-2003
Receipts	26,063	38,614	33,201	33,812	34,448	35,107	201,245
Interest	1,386	1,431	2,115	2,470	2,883	3,312	13,597
Total	27,449	40,045	35,316	36,282	37,331	38,419	214,842

Increase in HTF Revenues

- The Taxpayer Relief Act of 1997 (TRA) shifts the 4.3 cent motor fuels tax formerly deposited in the General Fund for deficit reduction into the HTF instead. This increases the HTF receipts by about $7.1 billion per year. The HTF receipts increase dramatically between 1998 and 1999 because the TRA also delayed 2 months of 1998 deposits of motor fuels tax receipts into the HTF until 1999. This was done to show a declining deficit between 1998 and 1999.

Spending Outpaced Revenues

- The House and Senate will argue that HTF receipts should not be collected to mask the size of the deficit and that their bills just spend the motor fuel taxes for the purpose for which they are collected. These statements are simply inaccurate. Historically, spending has exceeded receipts but fallen short of receipts plus interest. The large amount of interest received by the HTF is attributable to spending decisions in the late 1960s and early 1970s which temporarily increased the HTF balances significantly.

  - From 1956-1995, total outlays from the HTF exceeded excise tax receipts by $6.3 billion, but fell short of receipts plus interest by $19 billion.
  - From 1980 to 1995, HTF outlays outpaced tax receipts by $14.2 billion.
  - In recent years, HTF outlays have been less than receipts because of additional receipts being transferred to the HTF.
  - GAO estimates that the General Fund has provided additional highway funding of $39.3 billion from 1957-1996.
  - Both the House and Senate bills provide contract authority in excess of total receipts and interest. (However, in terms of outlays, the House and Senate spend less.)

Other Issues

- $9 Billion HTF Balance Reduction. The House reduces the start of year HTF balance in 1999 by $9 billion. The Transportation and Infrastructure Committee claims that this "turnback" justifies the higher spending levels in BESTEA. However, this proposal does not generate any PAYGO savings.

- $15 Billion in Interest Savings. BESTEA eliminates the accrual of interest on the HTF and the House Transportation and Infrastructure Committee has stated that this action saves $15 billion. This figure represents the CBO estimate of interest that would have accrued from 1998-2003 under the CBO baseline. The Committee's claim, though, is incorrect. First, since BESTEA dramatically increases spending, accrued interest is significantly less. In addition, the estimated savings of $15 billion does not take into account the $9 billion reduction in the HTF balances (discussed above), which in turn reduces interest accrued. The elimination of interest does not generate any PAYGO savings.

- $26 Billion in Offsets. The House Transportation and Infrastructure Committee has claimed that BESTEA would require only $26 billion in offsets. However, the Committee makes some assumptions that make this figure less credible. For example, the Committee assumes that certain unidentified programs would not obligate completely. In addition, this estimate is calculated off of the CBO WIDI baseline rather than the WODI baseline. The WODI baseline is referenced in Title X of BESTEA which outlines how the offset for BESTEA is to be calculated. In addition, the Committee claims "credit" for certain programs, such as Appalachian Highways, which are being moved from the General Fund to the HTF. The Committee has not shared any other details regarding the derivation of this figure.

POTUS / ZS/TBA Meeting

@ $\boxed{4/21/98}$ Cabinet Room w/ VPOTUS

GS: Presentation

$34 billion over

4 ways

(1) Squeeze out NDD - lower caps

(2) Mandatory

(3) $\boxed{\text{Surplus}}$ (risky)

(4) Kick - fight out year by year

Challenge: $\boxed{\text{Solve it by not allowing squeeze}}$
+
$\boxed{\text{Not allowing Surplus}}$

~~[illegible]~~ [Not have to decide all options]

Must ensure right approach
+
not ~~allowing~~ forcing an outcome

L.Skai:

POTUS: What if hold till after Soc Sec
+ see if any surplus left

Bonus: Try to spread out
+ go along with future gas tax
fo.

Can hedge on specifics
mass transit, Welf, Cities

The attached tables show the cost of various ISTEA reauthorization options, including:

- The President's Budget.

- H.R. 2400 -- BESTEA. Over six years, outlays exceed Presbud by $34 billion.

- S. 1173 -- ISTEA 2. Over six years, outlays exceed Presbud by $33 billion.

- Scenario A -- "Immediate implementation of spending equals receipts" -- Budgetary resources (BR) set equal to 100 percent of Highway Trust Fund tax receipts in each of the years FY98 - FY03. Over six years, outlays exceed Presbud by $22.7 billion.

- Scenario B -- "Full implementation beginning in '99" -- BR set at the level in the President's Budget for '98, and set equal to 100 percent of Highway Trust Fund tax receipts in each of the years FY99 - FY03. Over six years, outlays exceed Presbud by $19.0 billion.

- Scenario C -- "Phased implementation 1" -- BR set at the level in the President's Budget in '98, and set equal to 88 percent of HTF receipts in '99, 89 percent of receipts in '00, 90 percent of receipts in '01, 95 percent of receipts in '02, and 100 percent of receipts in '03. Over six years, outlays are $8.5 billion over Presbud.

- Scenario D -- "Phased implementation 2" -- BR set at the levels in the President's Budget through '99, and then set equal to 89 percent of receipts in '00, 90 percent of receipts in '01, 95 percent of receipts in '02, and 100 percent of receipts in '03. Over six years, outlays are $8.0 billion over Presbud.

- Scenario E -- "Phased implementation 3" -- BR set at the levels in the President's Budget through '00, and then set equal to 90 percent of receipts in '01, 95 percent of receipts in '02, and 100 percent of receipts in '03. Over six years, outlays are $6.6 billion over Presbud.

- Scenario F -- "Phased implementation 4" -- BR set at the levels in the President's Budget through '01, and then set equal to 95 percent of receipts in '02, and 100 percent of receipts in '03. Over six years, outlays are $4.5 billion over Presbud.

- Scenario G -- "Phased implementation 5" -- BR set at the levels in the President's Budget through '02, and then set equal to 100 percent of receipts in '03. Over six years, outlays are $1.6 billion over Presbud.

Surface Transportation Reauthorization Funding
Highway Trust Fund Receipt Based Scenarios
(Mandatory and Discretionary $ in billions)

	1998	1999	2000	2001	2002	2003	6 - Year Total
President's Budget							
BR	28.0	27.8	27.7	27.7	27.7	27.6	166.5
OL	26.5	27.3	27.7	27.8	28.0	28.1	165.4
HR 2400, BESTEA							
BR	29.3	35.0	38.9	38.8	38.9	38.8	219.7
OL	26.6	28.8	32.9	35.7	37.2	37.9	199.1
S 1173, ISTEA2							
BR	27.8	36.6	37.4	38.0	38.6	39.4	217.8
OL	26.4	29.3	33.3	35.3	36.7	37.8	198.8
Scenario A							
BR	32.3	32.4	33.2	33.8	34.4	35.1	201.2
OL	27.4	29.7	31.3	32.3	33.3	34.2	188.1
Scenario B							
BR	28.0	32.4	33.2	33.8	34.4	35.1	196.9
OL	26.5	28.3	30.6	32.0	33.0	34.0	184.4
Scenario C							
BR	28.0	28.5	29.5	30.4	32.7	35.1	184.3
OL	26.5	27.4	28.3	29.1	30.4	32.3	173.9
Scenario D							
BR	28.0	27.8	29.5	30.4	32.7	35.1	183.6
OL	26.5	27.3	28.0	29.0	30.4	32.2	173.4
Scenario E							
BR	28.0	27.8	27.7	30.4	32.7	35.1	181.8
OL	26.5	27.3	27.7	28.3	30.0	32.1	172.0
Scenario F							
BR	28.0	27.8	27.7	27.7	32.7	35.1	179.0
OL	26.5	27.3	27.7	27.8	29.0	31.6	169.9
Scenario G							
BR	28.0	27.8	27.7	27.7	27.7	35.1	174.0
OL	26.5	27.3	27.7	27.8	28.0	29.7	167.0

Scenarios **For scenarios A -- G, funding levels are set equal to a percentage of total Highway Trust Fund receipts as noted below. (PB=President's Budget)**

	1998	1999	2000	2001	2002	2003
Scenario A	100%	100%	100%	100%	100%	100%
Scenario B	PB	100%	100%	100%	100%	100%
Scenario C	PB	88%	89%	90%	95%	100%
Scenario D	PB	PB	89%	90%	95%	100%
Scenario E	PB	PB	PB	90%	95%	100%
Scenario F	PB	PB	PB	PB	95%	100%
Scenario G	PB	PB	PB	PB	PB	100%

Surface Transportation Reauthorization Funding
Highway Trust Fund Receipt Based Scenarios
(Mandatory and Discretionary $ in billions)

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	1998	1999	2000	2001	2002	2003	6 - Year Total
President's Budget							
BR	28.0	27.8	27.7	27.7	27.7	27.6	166.5
OL	26.5	27.3	27.7	27.8	28.0	28.1	165.4

Delta From President's Budget

	1998	1999	2000	2001	2002	2003	6 - Year Total
HR 2400, BESTEA							
BR	1.3	7.2	11.2	11.1	11.2	11.2	53.2
OL	0.1	1.5	5.2	7.9	9.2	9.8	33.7
S 1173, ISTEA2							
BR	(0.2)	8.8	9.7	10.3	10.9	11.8	51.3
OL	(0.1)	2.0	5.6	7.5	8.7	9.7	33.4
Scenario A							
BR	4.3	4.6	5.5	6.1	6.7	7.5	34.7
OL	0.9	2.4	3.6	4.5	5.3	6.1	22.7
Scenario B							
BR	0.0	4.6	5.5	6.1	6.7	7.5	30.4
OL	0.0	1.0	2.9	4.2	5.0	5.9	19.0
Scenario C							
BR	0.0	0.7	1.8	2.7	5.0	7.5	17.8
OL	0.0	0.1	0.6	1.3	2.4	4.2	8.5
Scenario D							
BR	0.0	0.0	1.8	2.7	5.0	7.5	17.1
OL	0.0	0.0	0.3	1.2	2.4	4.1	8.0
Scenario E							
BR	0.0	0.0	0.0	2.7	5.0	7.5	15.3
OL	0.0	0.0	0.0	0.5	2.0	4.0	6.6
Scenario F							
BR	0.0	0.0	0.0	0.0	5.0	7.5	12.5
OL	0.0	0.0	0.0	0.0	1.0	3.5	4.5
Scenario G							
BR	0.0	0.0	0.0	0.0	0.0	7.5	7.5
OL	0.0	0.0	0.0	0.0	0.0	1.6	1.6

Scenarios **For scenarios A -- G, funding levels are set equal to a percentage of total Highway Trust Fund receipts as noted below. (PB=President's Budget)**

	1998	1999	2000	2001	2002	2003
Scenario A	100%	100%	100%	100%	100%	100%
Scenario B	PB	100%	100%	100%	100%	100%
Scenario C	PB	88%	89%	90%	95%	100%
Scenario D	PB	PB	89%	90%	95%	100%
Scenario E	PB	PB	PB	90%	95%	100%
Scenario F	PB	PB	PB	PB	95%	100%
Scenario G	PB	PB	PB	PB	PB	100%

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 20 1998

To: Frank Raines
Jack Lew
Josh Gotbaum
Chuck Kieffer
Larry Stein
Gene Sperling
Chuck Marr

From: Michael Deich MD

Subject: Budget cost of possible ISTEA compromises

The attached table compares the cost of various surface transportation options relative to the President's Budget. The options include the House bill, the Senate bill, and various options that would phase in the principle that spending should equal trust fund receipts. Perhaps the most striking feature of the table is the extent to which the House and Senate bills spend in excess of receipts (under the House bill, spending would be $18 billion greater than receipts). Compared to the House bill, we could save nearly $15 billion in outlays over the budget window simply by keeping '98 spending at enacted levels and by limiting spending in the period '99-'03 to receipts collected in each year. And allowing the principle of "spending equals receipts" to be phased in more slowly over '99-'03 would cost substantially less than immediate implementation of the principle.

NOTES:

- these estimates for use OMB scoring. Because CBO uses faster outlay rates, the six-year cost to implement "spending equals receipts" under CBO scoring would be higher;
- the estimates for BESTEA and the Senate bill differ slightly from the estimates handed out on 4/17. The difference is due entirely to rounding errors. Estimates that tie exactly to the estimates of 4/17 will be available shortly.
- the House, Senate and Administration bills each split the funding between highways and transit in slightly different proportions. The options for "spending equals receipts" all assume a highway/transit split similar to that in the Administration's bill.
- the estimates were prepared by David Worzala, Kim Nakahara and Mark Schwartz.

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Surface Transportation Reauthorization Funding
Highway Trust Fund Receipt Based Scenarios
(Mandatory and Discretionary $ in billions)

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President's Budget	1998	1999	2000	2001	2002	2003	Total
BR	28.0	27.8	27.7	27.7	27.7	27.6	166.5
OL	26.5	27.3	27.7	27.8	28.0	28.1	165.4

Delta From President's Budget

HR 2400, BESTEA	1998	1999	2000	2001	2002	2003	Total
BR	1.3	7.2	11.2	11.1	11.2	11.2	53.2
OL	0.1	1.5	5.2	7.9	9.2	9.8	33.7
S 1173, ISTEA2							
BR	(0.2)	8.8	9.7	10.3	10.9	11.8	51.3
OL	(0.1)	2.0	5.6	7.5	8.7	9.7	33.4
Scenario A							
BR	4.3	4.6	5.5	6.1	6.7	7.5	34.7
OL	0.9	2.4	3.6	4.5	5.3	6.1	22.7
Scenario B							
BR	0.0	4.6	5.5	6.1	6.7	7.5	30.4
OL	0.0	1.0	2.9	4.2	5.0	5.9	19.0
Scenario C							
BR	0.0	0.7	1.8	2.7	5.0	7.5	17.8
OL	0.0	0.1	0.6	1.3	2.4	4.2	8.5
Scenario D							
BR	0.0	0.0	1.8	2.7	5.0	7.5	17.1
OL	0.0	0.0	0.3	1.2	2.4	4.1	8.0
Scenario E							
BR	0.0	0.0	0.0	2.7	5.0	7.5	15.3
OL	0.0	0.0	0.0	0.5	2.0	4.0	6.6
Scenario F							
BR	0.0	0.0	0.0	0.0	5.0	7.5	12.5
OL	0.0	0.0	0.0	0.0	1.0	3.5	4.5
Scenario G							
BR	0.0	0.0	0.0	0.0	0.0	7.5	7.5
OL	0.0	0.0	0.0	0.0	0.0	1.6	1.6

Scenarios **For scenarios A -- G, funding levels are set equal to a percentage of total Highway Trust Fund receipts (excluding interest) as noted below. (PB=President's Budget)**

	1998	1999	2000	2001	2002	2003
Scenario A	100%	100%	100%	100%	100%	100%
Scenario B	PB	100%	100%	100%	100%	100%
Scenario C	PB	88%	89%	90%	95%	100%
Scenario D	PB	PB	89%	90%	95%	100%
Scenario E	PB	PB	PB	90%	95%	100%
Scenario F	PB	PB	PB	PB	95%	100%
Scenario G	PB	PB	PB	PB	PB	100%

Surface Transportation Reauthorization Funding
Highway Trust Fund Receipt Based Scenarios
(Mandatory and Discretionary $ in billions)

DRAFT

enarios

Below are 6 scenarios for funding Surface Transportation Programs compared to the President's Budget (PB). In each case, funding levels are set equal to a percentage of total Highway Trust Fund receipts (excluding interest). In each case, highways receives 81% of the total receipts, transit receives 18%, and highway safety receives 1%. These percentages are equal to the percent of CA authorized in the Administration's NEXTEA proposal.

	1998	1999	2000	2001	2002	2003
Scenario A	100%	100%	100%	100%	100%	100%
Scenario B	PB	100%	100%	100%	100%	100%
Scenario C	PB	88%	89%	90%	95%	100%
Scenario D	PB	PB	89%	90%	95%	100%
Scenario E	PB	PB	PB	90%	95%	100%
Scenario F	PB	PB	PB	PB	95%	100%
Scenario G	PB	PB	PB	PB	PB	100%

	1998	1999	2000	2001	2002	2003	6 - Year Total
President's Budget							
BR	28.0	27.8	27.7	27.7	27.7	27.6	166.5
OL	26.5	27.3	27.7	27.8	28.0	28.1	165.4
HR 2400, BESTEA							
BR	29.3	35.0	38.9	38.8	38.9	38.8	219.7
OL	26.6	28.8	32.9	35.7	37.2	37.9	199.1
S 1173, ISTEA2							
BR	27.8	36.6	37.4	38.0	38.6	39.4	217.8
OL	26.4	29.3	33.3	35.3	36.7	37.8	198.8
nario A							
[illegible]	32.3	32.4	33.2	33.8	34.4	35.1	201.2
OL	27.4	29.7	31.3	32.3	33.3	34.2	188.1
Scenario B							
BR	28.0	32.4	33.2	33.8	34.4	35.1	196.9
OL	26.5	28.3	30.6	32.0	33.0	34.0	184.4
Scenario C							
BR	28.0	28.5	29.5	30.4	32.7	35.1	184.3
OL	26.5	27.4	28.3	29.1	30.4	32.3	173.9
Scenario D							
BR	28.0	27.8	29.5	30.4	32.7	35.1	183.6
OL	26.5	27.3	28.0	29.0	30.4	32.2	173.4
Scenario E							
BR	28.0	27.8	27.7	30.4	32.7	35.1	181.8
OL	26.5	27.3	27.7	28.3	30.0	32.1	172.0
Scenario F							
BR	28.0	27.8	27.7	27.7	32.7	35.1	179.0
OL	26.5	27.3	27.7	27.8	29.0	31.6	169.9
Scenario G							
BR	28.0	27.8	27.7	27.7	27.7	35.1	174.0
[illegible]	26.5	27.3	27.7	27.8	28.0	29.7	167.0

M21:55

Dorothy Robyn
04/19/98 06:05:34 PM

Record Type: Record

To: Gene B. Sperling/OPD/EOP, Sally Katzen/OPD/EOP, Jake Siewert/OPD/EOP

cc: Jonathan A. Kaplan/OPD/EOP, Melissa G. Green/OPD/EOP
Subject: DOT Announcement of Proposed PBO for Air Traffic Control

On Monday at 1 pm, Secretary Slater, FAA Administrator Jane Garvey, and former congressman Norm Mineta will announce the Administration's legislative proposal for FAA air traffic control services (ATS) to be centralized in a Performance-Based Organization; the VP previewed the announcement in Memphis on Friday. The goal is to allow the FAA to operate more like a business. Specifically, air traffic control services for commercial aviation (not general aviation) would be funded by cost-based user fees, and the air traffic portion of the FAA would be run by a COO.

(These proposals are largely in line with recommendations by the Mineta-chaired National Civil Aviation Review Commission, to which OMB and NEC were "agency liaisons." NCARC's embrace of user fees followed a similar recommendation by the earlier White House Commisison on Aviation Safety and Security -- the "Gore Commission". I served as a member of the Gore Commission in Laura Tyson's place, and the NEC was the major champion of user fees. Because appropriators and discount carriers prefer the current ticket tax, user fees are controversial.

Slater and Garvey will also announce the FAA's proposed authorization bill. Most notable is our proposal to increase from $3 to $4 the amount that local airport authorities can, if they choose, charge for Passenger Facility Charges (per passenger ticket) to meet expected growth demand. The major carriers oppose giving local authorities any discretion to raise PFCs.

Attached are some DOT-prepared background materials, including talking points, press release and PBO/user fee fact sheet.

U.S. DEPARTMENT OF TRANSPORTATION
TALKING POINT ON CLINTON ADMINISTRATION PROPOSAL TO ESTABLISH PERFORMANCE-BASED ORGANIZATION FOR AIR TRAFFIC CONTROL
(READ ONLY)
APRIL 20, 1998

Background

Transportation Secretary Slater, FAA Administrator Garvey and former Congressman (and chair of the recent National Civil Aviation Review Commission) Norm Mineta will announce the Clinton Administration's legislative proposal for a Performance-Based Organization (PBO) for the air traffic control functions of the FAA at a news conference on Monday, April 20 at 1 p.m.

[Vice President Gore Friday in Memphis "previewed" the announcement. See attached]

They will also announce a separate legislative proposal to increase from $3 to $4 the amount that local airport authorities can charge for Passenger Facility Charges (per passenger ticket) to meet expected growth demands. This second proposal would also allow states more flexibility in their matching funds with respect to FAA state airport block grants.

Talking points

- The administration's proposal would create a performance-based organization for air traffic control services that will enable us to better meet the challenges of dynamic growth in aviation in the future.

- The PBO is a concept developed by the National Partnership for Reinvention and this legislation was specifically developed by the National Civil Aviation Review Commission at the recommendation of the White House Commission on Aviation Safety and Security chaired by the Vice President.

- The PBO would be run by a Chief Operation Officer reporting to the FAA Administrator and be financed by user fees from commercial aviation and federal resources derived from public use and general aviation aircraft in a special budget category. The budget category allows air traffic control services to more easily meet the demands of aviation growth.

- (Only if pushed) It is not a separate corporation for air traffic control as previously proposed by the administration in 1993.

White House Plans to Let F.A.A. Charge Fees

WASHINGTON, April 18 (AP) — The Clinton Administration, in an effort to make the Federal Aviation Administration run more like a business than a Government agency, is developing a plan to let the F.A.A. charge fees for its services, Vice President Al Gore said on Friday.

Mr. Gore said President Clinton planned to offer legislation that would make the agency more businesslike and make the air traffic control system more performance-based.

Both will be "highly responsive to user needs and will insure that the users of the aviation system receive good value in return for the fees they pay," Mr. Gore said.

Mr. Gore previewed the plan at a runway dedication at Memphis International Airport in Tennessee. The details are to be announced on Monday.

The change, which would have to be approved by Congress, stems from the Administration's National Performance Review, a 1993 study that examined how Government could act more like a business.

The plan appears designed to address a common complaint among those involved in aviation that the F.A.A., which supervises air travel across the country, is subject to the financing whims of Congress.

Congress increased the agency's 1998 budget by $785 million, to $9.1 billion, but that was only after fatal accidents in 1996 — the crash of T.W.A. Flight 800 off Long Island and of a Valujet flight into the Florida Everglades — raised questions about airline security. The agency has also said that it lacks the money to modernize its air traffic control system.

Its plan to replace 1960's-era radar equipment with satellite-based technology is far behind schedule and over budget.

Also, the agency was recently sued by the Air Transport Association, a group representing major airlines, which contended that the agency was wrong to approve a $1.25 billion project connecting the New York subway system with Kennedy International Airport.

The agency has tried to rebound, most recently on Tuesday when a "Safer Skies" initiative was announced by Mr. Gore; the Transportation Secretary, Rodney Slater, and the F.A.A. administrator, Jane Garvey. Developed with aircraft makers and the airlines, the initiative is a plan to fix the most common causes of aircraft accidents.

Two Men Sentence

LOS ANGELES, April 18 (AP) Two men who staged car accide to collect insurance money h pleaded guilty to voluntary m slaughter for a freeway crash t killed a family of three.

Each of the men, Isidro Gon Medina, 37, and Esteban Galvez lano, 30, was sentenced to 11 year prison on Friday after plead guilty to three counts of volunt manslaughter.

Investigators said one of the fendants was driving a Mercury C gar and purposely slammed on brakes so a truck would crash int on the freeway in 1996.

FOR IMMEDIATE RELEASE
APA XX-XX
Monday, April 20, 1998
Contact: Henry J. Price
Phone: 202- 267-8521

4·17·98
7 pm

Secretary Slater Announces Proposal for Safer, More Business-Like FAA to Meet the Growing Demands of 21st Century Aviation Traffic

WASHINGTON, D.C. -- U.S. Secretary of Transportation Rodney E. Slater and Federal Aviation Administrator Jane Garvey today unveiled two legislative initiatives enabling the FAA to meet the challenge of dynamic growth in the nation's aviation system, hire additional aviation safety inspectors and make investments improving safety and service to airline travelers and shippers.

The first proposal builds on an industry, labor and government consensus to establish a Performance-based Organization (PBO) to operate a more business-like air traffic control system. It also incorporates an innovative funding mechanism to improve aviation safety and efficiency. The second proposal increases flexibility of the FAA and airports to fund vital infrastructure projects.

"In ten years, one billion people will fly -- compared to 600 million last year -- and more and more cargo will be moved by air across America and around the globe," said Secretary Slater. "The reinvention proposals that we forward to Congress today, crafted in concert with industry and labor, are an important step toward safely meeting the growing aviation demands of the 21st century."

"Since becoming FAA administrator last year, I have focused agency attention on improving aviation safety, security and system efficiency," said Garvey. "These proposals address the financing we need to carry out that mission, and provides for more innovative and user-friendly ways for the agency to do its job for the American people."

In 1997, in examining ways to improve aviation safety, security and efficiency, the National Civil Aviation Review Commission (NCARC), representing government, industry, labor and the traveling public recommended that the FAA organize its air traffic control services organization into a PBO and establish a "fee for service" mechanism to fund it. The White House Commission on Aviation Safety and Security also recommended development of a user fee system last year.

A PBO is a discrete management unit based upon clear management objectives, measurable goals, customer service standards and specific targets for improved performance. Under the PBO concept, agencies are expected to shift from a focus on adherence to required processes to a focus on customers and achieving program results by establishing clear measures of performance, granting the head of the agency authority to deviate from specified government-wide rules and holding the head of the agency clearly accountable for achieving results.

According to the proposal, the daily operations of the FAA Air Traffic Services (ATS) would be centralized in a PBO. It would be supervised by a chief operating officer, appointed by and under the authority of the FAA administrator with clear responsibilities for providing efficient services spelled out in an annual performance agreement.

A newly created subcommittee of the FAA Management Advisory Council would be explicitly charged with overseeing the PBO. ATS employees will continue to be government employees with the same rights and benefits as other agency workers.

Under the new proposal, the ATS would allow the FAA to more rapidly propose, adopt and advance new technologies. New air traffic user fees will be held in an ATS fund to finance the PBO. The fund would have a unique budgetary status, allowing financing appropriated spending without following government-wide restraints such as budget caps. By adopting user fees, the proposal also anticipates a reduction in existing aviation excise taxes.

To extend the FAA's broad range of aviation safety, security and efficiency programs, the proposal calls for funding for FAA operations to increase by 5.5 percent to $5.6 billion in FY 1999. This will allow the agency to hire 185 more air traffic controllers and 150 additional aviation inspectors.

The second proposal continues President Clinton's strong investments in airports, designating $1.7 billion in FY 1999 for airport grants and programs. In addition, the proposal calls for an increase in the amount airport authorities can charge for Passenger Facility Charges from $3 to $4. These extra funds will help airport authorities carry out important local improvements critical to growth. The FAA reauthorization recommends that the FAA state block grant program be expanded to all eligible states and the program allow a more flexible matching funds share requirement.

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FAA News

Federal Aviation Administration, Washington, DC 20591

FOR IMMEDIATE RELEASE
DRAFT
Monday, April 20, 1998
Contact: Henry J. Price

FACT SHEET
FEDERAL AVIATION ADMINISTRATION
AIR TRAFFIC SERVICES IMPROVEMENT ACT OF 1998
AND REAUTHORIZATION PROPOSAL

Performance Based Organization (PBO) for Air Traffic Services

"Because the FAA's Air Traffic Services organization (including the research, development, and acquisition of equipment used by the air traffic controller) fits this description of the PBO extraordinarily well, and because the commission believes that operation of air traffic services in a more businesslike manner is crucial, the commission recommends that the existing Air Traffic Services and research acquisitions organization be formed into a PBO."

-- National Civil Aviation Review Commission (NCARC)
"Avoiding Aviation Gridlock & Reducing the Accident Rate --
A Consensus for Change," December 1997

- The PBO would be comprised of Federal Aviation Administration (FAA) Air Traffic Services (ATS), Research and Acquisitions and related operational activities most closely involved with the day-to-day activities of the aviation industry. This should enable these to run with a more customer-focused and business-like approach.
- The PBO will closely follow the template established by Vice President Al Gore's National Partnership for Reinvention (NPR).
- A Chief Operating Officer will be appointed by the FAA administrator to manage the PBO
  - The officer will sign an annual performance agreement and be accountable for results.
- FAA employees who provide ATS services would remain federal employees, with the same rights and benefits
- Existing labor agreements would remain in place.
- The PBO proposal has been supported by:
  - The NCARC;
  - The NPR; and
  - The White House Commission on Aviation Safety and Security.

- more -

Air Traffic Service Fees

The FAA administrator should be empowered and directed to develop and implement, after approval of the new PBO board, a schedule of charges for all commercial users of the ATC system."
-- NCARC Report
December 1997

- The revenue stream for the PBO will be cost-based through the establishment of a cost accounting system and then institution of cost-based user fees for air traffic services
- User fees will be derived from the cost accounting system and internationally accepted economic principles.
- The cost accounting system will also improve the efficiency of the entire FAA giving tools to measure effectiveness and productivity;
- General aviation will pay the fuel tax at the current level.
- Aviation excise taxes would be lowered after user fees are in place. Excise taxes would fund safety, security, airport improvements, public use aircraft (including military), and part of the general aviation services.
- The ATS user fee proposal has been supported by:
  - The NCARC;
  - The NPR; and
  - The White House Commission on Aviation Safety and Security; and

? repeats p. 1

delete

New Budget Category

"Without change, passengers will pay more and receive less-efficient ATC service in the form of more delays."
-- NCARC report
December 1997

- The PBO will have a third budget category for both its user fees and spending.
- This will remove the PBO from the discretionary spending caps and allow the FAA, its customers and Congress to more easily meet the projected operational and capital spending needs for air traffic modernization.

FAA Funding – Highlights

- Airport Improvement Program (AIP) -- $1.7 billion for each fiscal years 1999 through 2002.
- FAA facilities and equipment -- $2.1 billion for fiscal 1999 and such sums as necessary fiscal years 2000 through 2002.
- Research, engineering and development -- $290 million for fiscal 1999 and such sums as necessary fiscal years 2000 through 2002.
- FAA operations -- $5.6 billion for fiscal 1999 and such sums as necessary fiscal years 2000 through 2002.
- Total FAA funding for fiscal 1999 -- $9.7 billion.

- more -

Other higlights

- **Passenger Facility Charges** -- An increase of $1 in the level of allowed Passenger Facility Charges (PFCs) will provide opportunities for increased infrastructure expenditure, especially by larger airports. This will also benefit smaller airports by increasing their share of AIP grant money reserved for their use.

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An electronic version of this news release is available via the World Wide Web at: www.faa.gov

3/19/98

The Honorable Bud Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Timely enactment of comprehensive, multi-year legislation reauthorizing the Nation's surface transportation programs is a top priority of the Clinton Administration, as I know it is for you and your Committee. We appreciate your commitment to act on H.R. 2400, the Building Efficient Surface Transportation and Equity Act (BESTEA), this month in committee and to move to consideration by the full House by April 1. I share your hope that final passage can occur by May 1.

It is critical that the legislation produce a balanced surface transportation program that provides for the mobility needs of our country while supporting our key national priorities. These include making our transportation system as safe and accessible as possible, protecting the human and natural environment, rebuilding our transit and highway systems, and advancing America's economic growth and competitiveness.

We are pleased that BESTEA includes many of the provisions advanced by the President last spring. There are significant and solid areas of agreement. Like the President's proposal, BESTEA is a multi-year bill that builds upon the successes of ISTEA by retaining the basic program structure for transit and core highway programs, including the bridge program, as well as continuing the effective metropolitan and statewide planning processes. The bill demonstrates a strong, ongoing commitment to safety. And, it retains ISTEA's highly successful environmental programs including the Congestion Mitigation and Air Quality Improvement Program, transportation enhancements, scenic byways and recreational trails programs -- programs that have resulted in innovative, low-polluting transportation alternatives across the country. BESTEA also firmly supports Intelligent Transportation Systems technologies.

Retention of the Disadvantaged Business Enterprise program will ensure that minority- and women-owned businesses have the opportunity to compete for transportation contracts. We urge you to reinstate the minimum uniform certification criteria for this program, to reduce burdens and improve fairness in the certification process. The border crossing and trade provisions, similar to those in the Administration's proposal, will facilitate improvement of transportation at border crossings, thus making it possible to realize the positive economic benefits from the North American Free Trade Agreement.

While there is much that BESTEA and the Administration's proposal have in common, we have some serious concerns about a number of provisions in BESTEA.

Funding Provisions: The proposal to remove the Highway Trust Fund from the unified Federal Budget would undermine our mutual commitment to achieve a balanced budget and force cuts in other important national programs. The President's Transportation Fund for America should be pursued instead, and we are ready to work with you for its enactment. The Administration also strongly opposes mandatory spending for "high priority" or demonstration projects.

Safety: Although we applaud the safety provisions in BESTEA, we do have a number of concerns. You have made a strong commitment in BESTEA to reducing drunk driving on our Nation's highways, and we encourage the next step -- inclusion in BESTEA of a .08 blood alcohol level as the national standard. An equally strong companion program to combat drugged driving is essential. It is clear that seat belt use saves lives. Accordingly, it is important that BESTEA encourage the States to improve their seat belt usage rates to 85 percent or enact primary seat belt laws. The Department of Transportation frequently plays a significant role in promoting effective safety measures, such as the use of child safety seats, seat belts, and drunk driving countermeasures, to State legislatures when they deliberate on these issues. Any amendment to limit the Department's current ability to perform this important function will seriously compromise our efforts to reduce the personal and economic losses resulting from vehicle crashes.

We strongly oppose selective exemptions from Federal truck size and weight limitations or hours of service requirements as these exemptions pose a serious threat to all motorists. We believe legislative restrictions on access to electronic records will only benefit carriers with poor safety records and ineffective safety management systems -- the carriers that expose the public to the greatest risk of injury.

Environment: We have serious reservations about the environmental streamlining provisions of the bill. Although we support streamlining the Federal process, we believe most of the bill's goals can be accomplished administratively, and therefore the current provisions regarding the National Environmental Policy Act (NEPA) need to be deleted or substantially modified. We strongly oppose the proposed pilot program that would delegate to the States the existing statutory responsibilities assigned to Federal agencies. States are already provided a substantial role in preparing the environmental analyses required by NEPA; the Department, as lead agency for Federally assisted transportation projects, should continue to be responsible for ensuring that the environmental impacts of those projects are considered from a national perspective.

Welfare to Work: We are pleased that BESTEA includes an Access to Jobs program to help people move from welfare rolls to payrolls. The limit on the number of projects and the low funding levels, however, will make it difficult, if not impossible, for State and local communities to succeed in moving people from welfare to work.

Transit: We are pleased that BESTEA defines transit capital to include preventive maintenance, thus paralleling the highway capital definition. Placing a cap on preventive maintenance, however, negates the effectiveness of this provision, and we urge that the cap be removed.

National Park Roads and Parkways: We urge funding for National Park roads and parkways at the level proposed by the Administration. Close to 50 percent of the park roads currently are rated in poor condition and, as the number of visitors increases, even more funding will be needed to maintain these roads and provide transit solutions in congested parks.

Intermodalism: We are disappointed that BESTEA fails to build upon the ISTEA commitment to intermodalism. The Administration's flexibility provisions would allow State and local governments to use National Highway System and Surface Transportation Program funds for publicly owned rail and intercity bus passenger projects, as well as publicly owned intercity freight rail infrastructure.

Research and Technology: We are pleased that BESTEA provides sufficient funding for data programs so that we are better able to measure the efficiency and effectiveness of the Nation's transportation system. Given the importance of research and technology in improving the safety and efficiency of our transportation system, we are concerned, however, about the lack of support for research and technology deployment. These investments are essential for spurring technological innovation in transportation in this country, as well as fostering the technological breakthroughs in transportation for the 21st century.

Innovative Financing: We urge you to provide additional innovative financing tools such as the State infrastructure bank and credit enhancement provisions supported by the Administration.

Finally, I want to reiterate the detailed safety, environmental, and mobility concerns contained in my September 16, 1997 letter to you. We hope that the Committee will carefully consider our comments as you continue your deliberations. We are encouraged by your commitment to timely action and look forward to working with you to resolve any outstanding concerns.

The Office of Management and Budget advises that it has no objection, from the standpoint of the Administration's program, to submission of these views for the consideration of the Committee.

Sincerely,

Rodney E. Slater

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

June E. O'Neill
Director

April 9, 1998

Honorable Pete Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As you requested, the Congressional Budget Office has prepared the enclosed cost estimate for S. 1173, the Intermodal Surface Transportation Efficiency Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Clare Doherty (for the federal costs of highway, safety, rail and research programs), who can be reached at 226-2860, Kristen Layman (for the federal costs of transit programs), who can be reached at 225-3220, Marjorie Miller (for the state and local impact), who can be reached at 225-3220, and Pearl Richardson and Alyssa Trzeszkowski (for federal revenues), who can be reached at 226-2691.

Sincerely,

James L. Blum

for June E. O'Neill

Enclosure

cc: Honorable Frank R. Lautenberg
Ranking Minority Member

Honorable John H. Chafee
Chairman
Committee on Environment and Public Works

Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works

Honorable Alfonse M. D'Amato
Chairman
Committee on Banking, Housing, and Urban Affairs

Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs

Honorable John McCain
Chairman
Committee on Commerce, Science, and Transportation

Honorable Ernest F. Hollings
Ranking Democrat
Committee on Commerce, Science, and Transportation

Honorable William V. Roth, Jr.
Chairman
Committee on Finance

Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

April 9, 1998

S. 1173
Intermodal Surface Transportation Efficiency Act of 1998

As agreed to by the Senate on March 12, 1998

SUMMARY

S. 1173 would reauthorize the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) for the years 1998 through 2003. For that six-year period, the bill would provide contract authority totaling $171.3 billion for the Federal Highway Administration (FHWA), $1.1 billion for the National Highway Traffic Safety Administration (NHTSA), and $31.5 billion for the Federal Transit Administration (FTA). H.R. 2400 also would authorize the appropriation of $12.5 billion—in addition to amounts already appropriated for 1998—for the 1998-2003 period for programs managed by the Department of Transportation (DOT).

Of the $204 billion in contract authority that would be provided by this bill, $4.1 billion would be for spending that is exempt from annual obligation limitations. The exempt spending would be for the proposed minimum guarantee program, which would replace an existing program called minimum allocation. (Another exempt program, emergency relief, is permanently authorized at $100 million a year; S. 1173 would not change that authorization.)

CBO estimates that outlays for programs covered by this legislation would grow from an estimated $27 billion in 1998 to close to $39 billion in 2003. Relative to CBO's current-law projections, S. 1173 would result in an additional $34 billion in outlays over the 1998-2003 period, assuming appropriations action consistent with the obligation and authorization levels specified in the bill. (Those current-law projections do not assume future appropriations for discretionary programs.)

S. 1173 would reauthorize the State Infrastructure Bank Program (SIB) and includes the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), which would establish a new transportation credit program. The Joint Committee on Taxation (JCT) expects that both of these programs would probably result in an increase in tax-exempt financing and a consequent loss of federal revenues. JCT estimates revenue losses over the

1999-2003 period of $28 million for SIB and $225 million for TIFIA. The bill would also impose fees on the recipients of credit provided under TIFIA, and would require that those fees be recorded in the budget as "miscellaneous receipts" (revenues). CBO estimates that the TIFIA fees would increase federal revenues by $225 million over the 1999-2003 period, offsetting the TIFIA-related revenue loss. Other provisions of the bill would also affect revenues. On balance, the net change in revenues through 2003 would be a loss of $16 million.

Because S. 1173 would affect direct spending and receipts, pay-as-you go procedures would apply. S. 1173 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), but they would not impose costs on state, local, or tribal governments in excess of the threshold established by that act ($50 million in 1996, indexed annually for inflation).

DESCRIPTION OF THE BILL'S MAJOR PROVISIONS

Titles I and II of S. 1173 would reauthorize FHWA's federal-aid highways program. For the components of the program that are subject to annual obligation limitations, the bill would provide contract authority of $23.8 billion in 1998, $27.7 billion in 1999, $28.1 billion in 2000, $28.6 billion in 2001, $29.0 billion in 2002, and $29.5 billion in 2003. (Those amounts include a total of $530 million over the six years for credit subsidies under TIFIA.)

Title I would establish a new funding mechanism for apportioning some of the highway funds to states. The new program would be called "minimum guarantee;" it would replace an existing apportionment process known as "minimum allocation." Some of the funds provided under the minimum guarantee program would be exempt from annual obligation limitations.

Because the emergency relief program is permanently authorized under current law, its costs of $100 million a year are not included in the above totals for contract authority that would be provided by S. 1173.

Title III would reauthorize NHTSA's highway safety programs and FHWA's motor carrier safety program. The bill would provide contract authority of $171 million in 1998, $183 million in 1999, $188 million in 2000, $185 million in 2001, $190 million in 2002, and $199 million in 2003 for the NHTSA highway safety program. The bill also would authorize appropriations of $372 million over the 1998-2003 period for operations and research at NHTSA, and $12 million over the same period for NHTSA to maintain the national driver register, which contains the driving records of individuals. In addition, S. 1173 would provide contract authority of $90 million in 1998, $110 million in 1999, $107 million in 2000, $104 million in 2001, and $100 million in 2002 and 2003 for FHWA's motor carrier safety program.

In addition to the authorizations of appropriations noted above, S. 1173 would authorize the appropriation of $2.7 billion for highway, highway safety, and rail programs, and $106 million for two existing programs conducted by the Research and Special Programs Administration (RSPA) over the 1998-2003 period.

Title V would authorize federal mass transit programs for fiscal years 1998 through 2003. Over that six-year period, S. 1173 would provide contract authority—from the Highway Trust Fund—totaling $17.3 billion for the trust fund share of expenses and $14.2 billion for the major capital investment program. In addition, the bill would authorize the appropriation—from the general fund of the Treasury—of $9.7 billion over fiscal years 1998 through 2003 for a variety of transit programs. (Of that amount, approximately $400 million has already been appropriated for 1998.) S. 1173 would retain almost all of the transit programs and formulas for distributing funds that were authorized in ISTEA. The bill also would retain all of the existing set-asides for administrative expenses, programs for the elderly and disabled, and university transportation center programs. In addition, the legislation would authorize two new transit activities: an access-to-jobs program and a clean fuels program.

Title VI would extend Highway Trust Fund excise taxes through fiscal year 2005 and make several other changes that would affect federal revenues.

S. 1173 would require the Secretary of Transportation to complete numerous studies and to submit subsequent reports. In addition, the bill would require the General Accounting Office (GAO) to conduct several highway and transit studies.

Other provisions would not have any significant budgetary impact and are not discussed in this estimate.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that outlays under S. 1173 would total about $206 billion over the 1998-2003 period. Of that amount, $197 billion would be discretionary outlays and $8.6 billion would be direct spending outlays.

The estimated budgetary impact of S. 1173 is shown in the following table. The projections of baseline spending under current law cover the highway and transit programs that were authorized in ISTEA.

	By Fiscal Year, in Millions of Dollars					
	1998	1999	2000	2001	2002	2003
DIRECT SPENDING						
Baseline Spending Under Current Law						
Estimated Budget Authority	29,686	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	1,966	1,757	1,541	1,207	1,056	960
Proposed Changes						
Estimated Budget Authority	-15	4,127	4,698	5,272	5,886	6,563
Estimated Outlays	0	-6	4	19	35	50
Total Spending Under S. 1173						
Estimated Budget Authority	29,671	33,814	34,385	34,959	35,573	36,249
Estimated Outlays	1,966	1,752	1,545	1,226	1,091	1,011
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law						
Budget Authority [a]	1,046	0	0	0	0	0
Estimated Outlays	25,197	26,300	26,976	27,696	28,134	28,806
Proposed Changes						
Estimated Authorization Level	571	2,194	2,432	2,391	2,420	2,463
Estimated Outlays	56	2,361	6,046	7,796	8,570	9,062
Total Spending Under S. 1173						
Estimated Authorization Level	1,617	2,194	2,432	2,391	2,420	2,463
Estimated Outlays	25,252	28,660	33,022	35,492	36,703	37,867
CHANGES IN REVENUES						
Estimated Revenues [b]	0	-13	6	6	-12	-3

a The 1998 level is the amount appropriated for that year.
b Negative numbers denote an estimated loss of revenues, positive numbers denote an increase in revenues.

Of the $197 billion in total estimated outlays subject to appropriation, about $189 billion would come from contract authority, and $8 billion would come from amounts authorized to be appropriated by S. 1173 or already appropriated in prior years. The costs of this legislation fall within budget function 400 (transportation).

Enacting S. 1173 also would affect revenues. JCT estimates that the authorization of TIFIA—the new transportation credit program—and the reauthorization of the SIB program would increase levels of tax-exempt debt, resulting in a loss of revenues to the federal government totaling $253 million over the 1998-2003 period. CBO estimates that fees collected under the TIFIA provisions would increase revenues by $225 million over the same period. Provisions in Title VI would increase revenues by $12 million over the period, resulting in a net loss in revenues of $16 million from 1999 through 2003.

BASIS OF ESTIMATE

Implementing S. 1173 would affect direct spending, spending subject to appropriation, and governmental receipts (revenues). In particular, the bill would provide $204 billion in contract authority (a form of direct spending) from 1998 through 2003 for the federal-aid highways program, the NHTSA safety grants program, the FHWA motor carrier safety grants program, and all FTA programs. The figures in the above table include an additional $600 million in contract authority for the emergency relief program; that funding is provided under current law. Most of the outlays from this contract authority would be controlled by annual obligation limitations imposed through the appropriation process. All of the projected outlays controlled by appropriation action, whether from appropriated budget authority or annually limited contract authority, are shown in the table under "Spending Subject to Appropriation." Because a portion of the new minimum guarantee program would be exempt from obligation limitations, some of the outlays for that program as well as the outlays from emergency relief are included in the table under "Direct Spending."

Direct Spending

S. 1173 would authorize funding for a new federal-aid highways activity that would be partly exempt from obligation limitations—the minimum guarantee program. Under this legislation, $4.1 billion in spending authority for the minimum guarantee would be exempt from obligation limitations over the 1998-2003 period. In addition, $600 million for the emergency relief program would continue to be exempt from obligation limitations over the same period (as is the case under current law).

Minimum Guarantee. Under procedures specified in the Balanced Budget and Emergency Deficit Control Act, the baseline projections assume continued funding for the minimum allocation program (which would be replaced by minimum guarantee funding). The amount of the minimum guarantee program that would be exempt from the obligation limitations would be equal to the amounts projected for the minimum allocation program in the March 1997 baseline: $639 million for 1998, $654 million for 1999, $670 million in 2000, $687 million in 2001, $704 million in 2002, and $721 million in 2003. CBO assumes that this new program would have the same obligation rates and outlay rates as projected for the existing minimum allocation program.

Emergency Relief. The emergency relief program, the other federal-aid activity under current law that is exempt from obligation limitations, is permanently authorized. S. 1173 would not change the emergency relief program, which receives $100 million each year.

Other. This bill would give the Secretary of Transportation the authority to establish separate funds in the U.S. Treasury to collect payments and revenues from nongovernmental organizations. This would affect direct spending through the collection of offsetting receipts and the subsequent spending of those receipts. CBO estimates that the net direct spending effects would be negligible in each year.

The bill also would reduce the contract authority for NHTSA's traffic safety program in 1998 by $24 million. This reduction in the contract authority for 1998 would require a reduction in 1998 obligations because there are no unobligated balances in the NHTSA account. CBO estimates that the reduction in obligations in 1998 would reduce outlays from direct spending by $16 million over the 1998-2003 period.

Spending Subject to Appropriation

For purposes of this estimate, CBO assumes that the amounts authorized for highway programs would be appropriated for each fiscal year. Outlay estimates for all of the spending subject to appropriation are based on historical spending patterns for the affected programs. Because most of the outlays from contract authority are governed by annual obligation limitations in appropriation acts, they are discretionary and are included in the table as estimated outlays subject to appropriation. To estimate such outlays, CBO used the obligation limitations specified in the bill. For example, the bill's obligation limitation for federal-aid highways for 1998 is identical to the obligation limitation established in the Department of Transportation and Related Agencies Appropriation Act of 1998 (Public Law 105-66). For programs that do not have obligation limitations specified in the bill, we assume that obligations would be equal to the contract authority provided in each year, except that the 1998 obligation limitations established in Public Law 105-66 would apply.

Of the $12.5 billion in authorizations of new appropriations, the bill would allocate $2.7 billion for new highway, highway safety, and rail programs, $384 million for existing NHTSA programs, $106 million for existing RSPA programs, and $9.3 billion for transit programs.

Highways, Highway Safety, and Rail. S. 1173 would authorize several new highway activities subject to the obligation limitation for federal-aid highways. The two biggest new programs are called "minimum guarantee" and "ISTEA transition." (Part of the minimum guarantee program is direct spending and was discussed above.) The amounts of contract authority that would be provided for these programs are based on formulas specified in the bill and were calculated by FHWA. In calculating the projections used for this cost estimate, FHWA used factors from the fall of 1997.

For the minimum guarantee program, we estimate that the gross annual levels would be $1.2 billion for each of fiscal years 1998 and 1999, $1.3 billion a year for 2000, 2001, and 2002, and $1.5 billion for 2003. Of these amounts, the exempt portions identified above (equal to about half of the program's spending) would result in direct spending, while the remainder would be subject to the annual obligation limitations for federal-aid highways.

The amounts of contract authority estimated for ISTEA transition are $872 million for 1998, $880 million for 1999, $884 million for 2000, $867 million for 2001, $757 million for 2002, and $658 million for 2003.

Another new program that would be controlled by federal-aid obligation limitations is safety belt incentive grants. Over the 1998-2003 period, S. 1173 would provide $400 million in contract authority for such grants. In addition, the bill would require the Secretary of Transportation to calculate the budgetary savings relating to federal medical costs, including savings in the Medicare and Medicaid programs, attributable to increased seat belt usage, and distribute those savings to the states that had caused those budgetary savings. Any additional funds provided to states under this authority would be direct spending. But CBO expects that additional spending, if any, would be negligible because the likelihood that the provisions of the bill would significantly increase seat belt usage is small and the impact of any change in seat belt usage on Medicare and Medicaid spending would likely be negligible and difficult to identify.

S. 1173 would authorize the appropriation of $2.7 billion over the 1998-2003 period for new highway, highway safety, and rail programs. The bill would authorize appropriations totaling $750 million to states for trade corridor and border crossing grants, $300 million for the joint partnership for advanced vehicles program, $100 million for the ferry and ferry terminal program, $950 million for magnetic levitation grants, and $600 million for a variety of other programs.

In addition, the bill would authorize the appropriation of such sums as are necessary for transportation assistance for Olympic cities. Based on information from the United States Olympic Committee and Congressional sources, we estimate that costs would total $335 million over the 1999-2003 period. Funds would be used primarily for building roads, as well as for aviation and transit needs.

Transit. Over the 1998-2003 period, S. 1173 would authorize the appropriation of $9.7 billion for transit programs, of which about $400 million has been appropriated for 1998. In addition, $200 million has already been appropriated for the Washington Metropolitan Area Transit Authority (WMATA).

The bill would authorize the appropriation of $250 million for a new access-to-jobs program for each fiscal year from 1998 through 2003. For the other new program—the clean fuels initiative—the bill would authorize funding of $200 million each year, of which $100 million would be contract authority and $100 million would come from appropriations. Outlay estimatess are based on historical spending rates for formula programs.

Research and Special Programs Administration (RSPA). S. 1173 would reauthorize the hazardous materials program within the RSPA research and special programs account. The bill would authorize the appropriation of $100 million over the 1998-2003 period. In addition, S. 1173 would authorize the appropriation of $6 million over fiscal years 1999 and 2000 for the RSPA's one-call notification program.

Miscellaneous. S. 1173 would authorize subsidy appropriations of $530 million over the 1998-2003 period for the proposed TIFIA credit program. In addition, the bill would require DOT to conduct numerous studies and publish subsequent reports. CBO estimates that the cost of completing the studies and preparing the reports would be several million dollars each year. Finally, the bill would require GAO to complete studies and subsequently publish reports. According to GAO, the cost of completing these studies and reports would not be significant.

Revenues

Title I of S. 1173 would provide for a federal credit program for such facilities as border crossings, multistate trade corridors, intermodal facilities, toll roads, and other facilities that generate their own revenue streams through user charges. The credit program, which is intended to complement other funding and to leverage private co-investment, could include secured loans, loan guarantees, and lines of credit, up to a maximum amount of credit ranging from $1.2 billion in 1998 to $2.0 billion in 2003. That program is expected to leverage new issues of tax-exempt bonds and result in a net increase in the volume of outstanding tax-exempt debt. The Joint Committee on Taxation estimates that this program would result in revenue losses totaling $225 million over the 1999-2003 period.

The bill would also establish annual fees to be paid by the recipients of credit under the proposed TIFIA credit program. The fees would be based on a percentage of the average amount of outstanding federal credit. Under the Federal Credit Reform Act, such fees would generally be considered to be a part of the credit financing and would be incorporated in the subsidy estimates. S. 1173, however, would direct that collections of the TIFIA fees be deposited in the general fund of the Treasury as "miscellaneous receipts" (revenues). CBO estimates that the TIFIA fees would increase revenues by $225 million over the 1999-2003 period, exactly offsetting the estimated loss in revenues from additional tax-exempt financing under TIFIA.

Title I would also reauthorize the State Infrastructure Bank Program (SIB). The SIB program allows states to elect to use federal-aid highways funds, subject to the obligation limitation, to provide capitalization for SIBs. Funds in a SIB provide credit enhancements and serve as a capital reserve for bond and debt financing for infrastructure projects that are expected to generate their own source of funding during operation. This program also allows states, with the consent of the Secretary of Transportation, to enter into interstate compacts to provide for the financing of multistate projects. The reauthorization would also give states greater flexibility in determining the amount of federal funds they can use to capitalize SIBs. We anticipate that the projects financed through SIBs would be financed primarily with tax-exempt debt, thus increasing the total volume of tax-exempt debt and reducing federal revenues. The Joint Committee on Taxation estimates that this program would result in revenue losses totaling $28 million over the 1999-2003 period.

The Senate Finance Committee's substitute amendment to S. 1173, which was adopted as Title VI by the Senate, would extend the Highway Trust Fund excise taxes through 2005, and both the income tax credit for ethanol and the ethanol excise tax exemptions through 2007. These changes would increase revenues by $44 million over the 1999-2003 period. Other major provisions in the amendment would create tax-exempt bonds for private-sector construction of highways and would delay the indexing for all qualified transportation benefits in 1999, resulting in a net revenue loss of $32 million over the 1999-2003 period. Together, the provisions in Title VI would result in a net increase of $12 million in revenues over the 1999-2003 period.

In addition, S. 1173 would increase some of the penalties and fines for violations of highway safety regulations. CBO expects that the increase in collections as a result of these changes would not be significant.

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted. Also, only changes in direct spending outlays and changes in receipts are subject to pay-as-you-go requirements; the discretionary outlays from contract authority subject to obligation limitations are not included as pay-as-you-go effects because those outlays are controlled by appropriation acts.

	By Fiscal Year, in Millions of Dollars										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	-6	4	19	35	50	67	84	101	119	184
Changes in receipts	0	-13	6	6	-12	-3	-37	9	-6	-1	-20

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 1173 contains mandates as defined in UMRA, but they would not impose costs on state, local, or tribal governments in excess of the threshold established by that act ($50 million in 1996, indexed annually for inflation). One section of this bill would limit the liability of an employer requesting safety performance records on job applicants and of persons providing such information. This section would impose a mandate on state governments by preempting any contradictory state laws. Another mandate might be imposed by the section of the bill extending the reach of federal motor carrier safety regulation to cover small vehicles transporting passengers for compensation. This could affect a small number of vehicles operated by state or local governments.

PREVIOUS CBO ESTIMATES

On October 7, 1997, CBO provided a cost estimate for S. 1173, as reported by the Senate Committee on Environment and Public Works on October 1, 1997. The bill as adopted by the Senate includes funding for transit programs, highway safety programs, and research and special programs, which was not in the reported version. The Senate-approved bill also incorporates additional amendments that would affect federal revenues and highway spending.

On January 23, 1998, CBO provided a cost estimate for S. 1271, the Federal Transit Act of 1997, as reported by the Senate Committee on Banking, Housing, and Urban Affairs on October 8, 1997.

On November 7, 1998, CBO provided a cost estimate for S. 1115, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 4, 1997. That version of S. 1115 is identical to the one-call notification authorization language passed by the Senate.

On March 27, 1998, CBO provided a cost estimate for H.R. 2400, as reported by the House Committee on Transportation and Infrastructure on March 25, 1998. S. 1173 would reauthorize many of the same programs that are covered by H.R. 2400; however, S. 1173 contains some additional authorizations of appropriations and a transportation credit program that are not included in H.R. 2400. There are several other differences between H.R. 2400 and S. 1173. For example, the two bills have significantly different effects on outlays from direct spending. In particular, H.R. 2400 would increase the portion of federal-aid highways spending that is exempt from annual obligation limitations by more than $8 billion over the 1998-2003 period, relative to the current law baseline, while S. 1173 would increase outlays from direct spending by only about $100 million over the same period. On the other hand, S. 1173 would establish higher obligation limitations for highway spending. In total, CBO estimates that outlays—from both direct spending and appropriation action—would be $205.6 billion over the 1998-2003 period for S. 1173 and $204.4 billion over the same period for H.R. 2400.

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04/13/98

COMPARISON OF H.R. 2400 AND ALTERNATIVE CBO PROJECTIONS
--Outlays In Billions of Dollars --

6-Year Total for the 1998-2003 Period				Differences in 6-Year Totals		
H.R. 2400	Baseline	WODI	Current Law	H.R. 2400 versus Baseline	H.R. 2400 versus WODI	H.R. 2400 versus Current Law
204	176	170	172	29	34	33

H.R. 2400: The Building Efficient Surface Transportation and Equity Act of 1998, as reported by the House Committee on Transportation and Infrastructure. CBO has not completed a review of the bill as passed by the House. The House-passed version incorporates an amendment (to the committee-approved version) that would authorize funding of $150 million a year for the proposed Access to Jobs program. The committee version authorizes $42 million a year. Other changes to the committee version of the bill also might affect the estimate of costs.

Baseline: CBO baseline projections, including adjustments for anticipated inflation.

WODI: CBO baseline projections without discretionary inflation.

Current Law: CBO's current-law projections, which assume continuation of programs that are funded by contract authority (a form of direct spending), but do not assume future appropriations for discretionary programs. The CBO cost estimate dated March 27, 1998, for H.R. 2400, as reported by the House Committee on Transportation and Infrastructure, compares H.R. 2400 to the "current-law projections."

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Estimated Outlays for Highway & Transit Programs
(Billions of Dollars, by Fiscal Year)

	H.R. 2400, Committee Version			CBO Baseline		
Year	Outlays from CA	Outlays from BA	Outlays Total	Outlays from CA	Outlays from BA	Outlays Total
1998	26.6	0.8	27.3	26.4	0.8	27.2
1999	30.1	0.1	30.1	27.6	0.8	28.4
2000	30.9	2.9	33.8	28.3	0.9	29.2
2001	34.3	2.4	36.7	28.9	1.0	29.8
2002	36.3	1.5	37.9	29.2	1.0	30.2
2003	37.6	0.9	38.6	29.8	1.1	30.9
6-yr sum	195.8	8.6	204.4	170.3	5.5	175.8

		WODI		Current-Law Projections		
Year	Outlays from CA	Outlays from BA	Outlays Total	Outlays from CA	Outlays from BA	Outlays Total
1998	26.4	0.8	27.2	26.4	0.8	27.2
1999	27.4	0.8	28.3	27.6	0.5	28.1
2000	27.7	1.0	28.7	28.3	0.2	28.5
2001	27.7	1.0	28.7	28.9	0.1	28.9
2002	27.5	1.1	28.6	29.2	-0.0	29.2
2003	27.5	1.1	28.6	29.8	-0.1	29.8
6-yr sum	164.3	5.7	170.0	170.3	1.4	171.7

CA. Contract Authority (provided in authorization legislation). The outlays shown include both direct spending and spending controlled by annual obligation limitations in appropriations acts.

BA: Discretionary Budget Authority (provided in appropriations acts).

SPENDING UNDER H.R. 2400 -- BY ACCOUNT
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Contract Authority						
NHTSA SAFETY GRANTS - includes FHWA funds						
Contract Authority	187	248	298	298	298	298
Estimated Outlays	178	211	257	279	292	298
FHWA Motor Carrier Safety grants						
Contract Authority	85	125	150	150	150	150
Estimated Outlays	80	98	132	150	150	150
Federal-aid subject to the obligation limitation						
Contract Authority	22,171	25,253	28,431	28,433	28,432	28,577
Estimated Outlays	19,975	22,231	25,147	27,424	28,075	28,470
Federal-aid exempt from obligation limitation						
Total CA	2,256	2,785	3,210	3,210	3,312	3,312
emergency relief	100	100	100	100	100	100
high priority projects	1,026	1,399	1,678	1,678	1,772	1,772
minimum allocation	1,131	1,266	1,431	1,431	1,441	1,441
Estimated Outlays	2,115	2,379	2,848	3,071	3,200	3,253
Major Capital Investment						
Contract Authority	2,197	2,412	2,613	2,613	2,613	2,613
Estimated Outlays (includes priors)	1,961	1,989	2,170	2,264	2,397	2,543
Formula Grants						
Contract Authority	2,698	3,213	3,553	3,553	3,553	3,553
Estimated Outlays	2,260	3,213	276	1,041	2,082	2,757
UTC						
Contract Authority	0	0	6	6	6	6
Estimated Outlays	0	0	1	3	5	5
Administration						
Contract Authority	0	0	52	52	52	52
Estimated Outlays	0	0	47	52	52	52
Planning & Research						
Contract Authority	0	0	92	92	92	92
Estimated Outlays	0	0	11	49	77	88
Subtotals						
Contract Authority	29,594	34,016	38,404	38,406	38,509	38,654
Estimated Outlays	26,569	30,099	30,889	34,333	36,331	37,817

Note: Outlays shown above are a combination of direct spending (exempt programs) and spending subject to appropriation (programs subject to obligation limitations)

SPENDING UNDER H.R. 2400 – BY ACCOUNT
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
(1) Accounts Authorized in H.R. 2400						
NHTSA & FHWA Operations and Research						
Authorization Level	75	75	75	75	75	75
Estimated Outlays	67	70	72	74	75	75
NHTSA NDR						
Authorization Level	2	2	2	2	2	2
Estimated Outlays	1	2	2	2	2	2
Olympics						
Authorization Level	0	110	125	70	30	0
Estimated Outlays	0	41	98	108	72	18
Rail						
Authorization Level	75	271	71	71	36	36
Estimated Outlays	39	288	81	78	57	43
Formula Grants						
Budget Authority	290	68	0	0	0	0
Estimated Outlays	-189	-1,100	2,165	1,821	1,145	698
UTC						
Budget Authority	6	6	0	0	0	0
Estimated Outlays	8	7	5	3	1	1
Administrative Expenses						
Budget Authority	48	50	0	0	0	0
Estimated Outlays	45	49	5	0	0	0
Planning & Research						
Budget Authority	92	90	0	0	0	0
Estimated Outlays	89	94	85	47	19	8
Access to Jobs						
Budget Authority	42	42	42	42	42	42
Estimated Outlays	2	23	40	42	42	42
(2) Other Accounts Included in CBO Estimate of Bill Totals						
Appalachian Development Highway System						
Budget Authority	300	0	0	0	0	0
Estimated Outlays	81	126	45	30	18	0
FHWA safety grants						
Contract Authority	0	0	0	0	0	0
Estimated Outlays	3	2	0	0	0	0
NHTSA ops						
Budget Authority	75	0	0	0	0	0
Estimated Outlays	91	45	23	13	6	5
Miscellaneous Trust Fund expenditures						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	53	51	48	34	27	15

SPENDING UNDER H.R. 2400 -- BY ACCOUNT
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
(2) Continued						
State infrastructure banks						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	98	23	8	5	5	3
Miscellaneous appropriations from the general fund						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	160	132	97	51	18	13
WMATA						
Budget Authority	200	0	0	0	0	0
Estimated Outlays	208	192	141	83	48	14
Interstate Transfer						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	16	5	3	0	0	0
Research, Training, Human Res.						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	5	2	0	0	0	0
Subtotals						
Discretionary BA*	1,203	714	315	260	185	155
Estimated Outlays	777	50	2,916	2,402	1,535	933
Totals						
Budget Authority	30,798	34,730	38,719	38,866	38,693	38,808
Estimated Outlays	27,346	30,150	33,805	36,734	37,888	38,549

* Discretionary BA = Budget authority already appropriated plus additional authorization levels contained in H.R. 2400, as reported by the Committee on Transportation and Infrastructure.

Note: The above estimates are for the committee-reported version of H.R. 2400. They do not reflect any changes to costs attributable to amendments that were adopted in the House-passed version. For example, the House-passed version contains a higher annual authorization level ($150 million vs. $42 million) for the proposed Access to Jobs program. CBO has not completed a review of the amendments incorporated into the House-passed version of H.R. 2400.

SPENDING UNDER THE
CBO BASELINE WITH DISCRETIONARY INFLATION (WIDI)
FOR PROGRAMS COVERED BY H.R. 2400
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Contract Authority*						
NHTSA SAFETY GRANTS - includes FHWA funds						
Contract Authority	195	195	195	195	195	195
Estimated Outlays	178	187	194	195	200	205
FHWA Motor Carrier Safety grants						
Contract Authority	90	90	90	90	90	90
Estimated Outlays	80	85	87	89	91	94
Federal-aid subject to the obligation limitation						
Contract Authority	23,742	23,742	23,742	23,742	23,742	23,742
Estimated Outlays	19,975	21,335	22,158	22,931	23,323	23,911
Federal-aid exempt from obligation limitation						
Contract Authority	739	739	739	739	739	739
Estimated Outlays	1,966	1,757	1,541	1,207	1,056	960
Major Capital Investment						
Contract Authority	2,263	2,263	2,263	2,263	2,263	2,263
Estimated Outlays	1,961	1,951	1,985	2,012	2,054	2,140
Formula Grants						
Contract Authority	2,657	2,657	2,657	2,657	2,657	2,657
Estimated Outlays	2,260	2,310	2,363	2,420	2,478	2,537
Subtotals						
Contract Authority	29,686	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	26,420	27,624	28,338	28,853	29,202	29,847

* Under WIDI, obligation limitations increase with discretionary inflation from the level of the 1998 obligation limitations

Note: Outlays shown above are a combination of direct spending (exempt programs) and spending subject to appropriation (programs subject to obligation limitations).

SPENDING UNDER THE
CBO BASELINE WITH DISCRETIONARY INFLATION (WIDI)
FOR PROGRAMS COVERED BY H.R. 2400
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Appalachian Development Highway System						
Budget Authority	300	307	314	322	329	337
Estimated Outlays	81	209	259	295	320	327
FHWA safety grants						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	3	2	0	0	0	0
NHTSA Operations - gf						
Budget Authority	75	77	80	82	84	87
Estimated Outlays	91	90	90	90	88	90
NHTSA Operations -tf						
Budget Authority	72	74	77	79	81	84
Estimated Outlays	65	68	72	76	80	82
Miscellaneous Trust Fund expenditures						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	53	51	48	34	27	15
State Infrastructure Banks						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	98	23	8	5	5	3
Miscellaneous appropriations from the general fund						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	160	132	97	51	18	13
Next generation high speed rail						
Budget Authority	20	20	21	21	22	22
Estimated Outlays	26	28	28	28	21	22
Alaska railroad						
Budget Authority	10	10	10	11	11	11
Estimated Outlays	6	10	10	10	11	11
Formula Grants						
Budget Authority	240	245	251	257	263	269
Estimated Outlays	-195	-173	-67	24	108	129
UTC						
Budget Authority	6	6	6	6	7	7
Estimated Outlays	8	7	6	6	6	6

(continued)

SPENDING UNDER THE
CBO BASELINE WITH DISCRETIONARY INFLATION (WIDI)
FOR PROGRAMS COVERED BY H.R. 2400
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
	Spending from Discretionary Appropriations					
Administrative Expenses						
Budget Authority	46	48	50	52	54	56
Estimated Outlays	45	48	50	51	54	56
Planning & Research						
Budget Authority	92	94	96	98	101	103
Estimated Outlays	89	94	97	100	102	104
WMATA						
Budget Authority	200	204	209	214	219	225
Estimated Outlays	208	202	196	195	193	195
Interstate Transfer						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	16	5	3	2	0	0
Research, Training, Human Res.						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	5	2	0	0	0	0
Subtotals						
Budget Authority	1,061	1,085	1,114	1,142	1,171	1,201
Estimated Outlays	759	798	897	968	1,034	1,053
Totals:						
WIDI Budget Authority**	30,747	30,772	30,800	30,828	30,857	30,887
Estimated Outlays	27,179	28,423	29,235	29,821	30,236	30,900

** Total of Mandatory Budget Authority (Contract Authority) and Discretionary Budget Authority.

SPENDING UNDER THE CBO BASELINE WITHOUT DISCRETIONARY INFLATION (WODI) FOR PROGRAMS COVERED BY H.R. 2400
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Contract Authority*						
NHTSA SAFETY GRANTS - includes FHWA funds						
Contract Authority	195	195	195	195	195	195
Estimated Outlays	178	186	188	187	187	187
FHWA Motor Carrier Safety grants						
Contract Authority	90	90	90	90	90	90
Estimated Outlays	80	85	85	85	85	85
Federal-aid subject to the obligation limitation						
Contract Authority	23,742	23,742	23,742	23,742	23,742	23,742
Estimated Outlays	19,975	21,205	21,688	22,017	21,913	21,970
Federal-aid exempt from obligation limitation						
Contract Authority	739	739	739	739	739	739
Estimated Outlays	1,968	1,757	1,541	1,207	1,056	960
Major Capital Investment						
Contract Authority	2,263	2,263	2,263	2,263	2,263	2,263
Estimated Outlays	1,961	1,949	1,969	1,985	1,971	2,011
Formula Grants						
Contract Authority	2,657	2,657	2,657	2,657	2,657	2,657
Estimated Outlays	2,260	2,260	2,260	2,260	2,260	2,260
Subtotals						
Contract Authority	29,686	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	26,420	27,442	27,732	27,720	27,472	27,473

* Under WODI, obligation limitations for 1999 through 2003 are assumed to equal the 1998 obligation limitations.

Note: Outlays shown above are a combination of direct spending (exempt programs) and spending subject to appropriation (programs subject to obligation limitations)

SPENDING UNDER THE CBO BASELINE WITHOUT DISCRETIONARY INFLATION (WODI) FOR PROGRAMS COVERED BY H.R. 2400
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Appalachian Development Highway System						
Budget Authority	300	300	300	300	300	300
Estimated Outlays	81	207	252	282	300	300
FHWA safety grants						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	3	2	0	0	0	0
NHTSA Operations - gf						
Budget Authority	75	75	75	75	75	75
Estimated Outlays	91	88	86	84	81	79
NHTSA Operations -tf						
Budget Authority	72	72	72	72	72	72
Estimated Outlays	65	67	69	71	72	72
Miscellaneous Trust Fund expenditures						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	53	51	48	34	27	15
State Infrastructure Banks						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	88	23	8	5	5	3
Miscellaneous appropriations from the general fund						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	160	132	97	51	18	13
Next generation high speed rail						
Budget Authority	20	20	20	20	20	20
Estimated Outlays	26	28	28	27	20	20
Alaska railroad						
Budget Authority	10	10	10	10	10	10
Estimated Outlays	6	10	10	10	10	10
Formula Grants						
Budget Authority	240	240	240	240	240	240
Estimated Outlays	-195	-129	11	124	218	240
UTC						
Budget Authority	6	6	6	6	6	6
Estimated Outlays	8	7	6	6	6	8

(continued)

SPENDING UNDER THE
CBO BASELINE WITHOUT DISCRETIONARY INFLATION (WODI)
FOR PROGRAMS COVERED BY H.R. 2400
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
			Spending from Discretionary Appropriations			
Administrative Expenses						
Budget Authority	46	46	46	46	46	46
Estimated Outlays	45	45	45	45	46	46
Planning & Research						
Budget Authority	92	92	92	92	92	92
Estimated Outlays	89	94	96	97	97	96
WMATA						
Budget Authority	200	200	200	200	200	200
Estimated Outlays	208	202	195	191	186	184
Interstate Transfer						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	16	5	3	2	0	0
Research, Training, Human Res.						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	5	2	0	0	0	0
Subtotals						
Budget Authority	1,061	1,061	1,061	1,061	1,061	1,061
Estimated Outlays	758	835	954	1,029	1,087	1,083
Totals:						
WODI Budget Authority**	30,747	30,747	30,747	30,747	30,747	30,747
Estimated Outlays	27,178	28,277	28,687	28,749	28,558	28,557

** Total of Mandatory Budget Authority (Contract Authority) and Discretionary Budget Authority.

BASELINE SPENDING UNDER CURRENT LAW
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Contract Authority						
NHTSA SAFETY GRANTS - includes FHWA funds						
Contract Authority	195	195	195	195	195	195
Estimated Outlays	178	187	194	195	200	205
FHWA Motor Carrier Safety grants						
Contract Authority	90	90	90	90	90	90
Estimated Outlays	80	85	87	89	91	94
Federal-aid subject to the obligation limitation						
Contract Authority	23,742	23,742	23,742	23,742	23,742	23,742
Estimated Outlays	19,975	21,335	22,158	22,931	23,323	23,911
Federal-aid exempt from obligation limitation						
Contract Authority	739	739	739	739	739	739
Estimated Outlays	1,966	1,757	1,541	1,207	1,056	960
Major Capital Investment						
Contract Authority	2,263	2,263	2,263	2,263	2,263	2,263
Estimated Outlays	1,961	1,951	1,995	2,012	2,054	2,140
Formula Grants						
Contract Authority	2,657	2,657	2,657	2,657	2,657	2,657
Estimated Outlays	2,260	2,310	2,363	2,420	2,478	2,537
Subtotals						
Contract Authority	29,686	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	26,420	27,626	28,339	28,854	29,202	29,847

Note: Outlays shown above are a combination of direct spending (exempt programs) and spending subject to appropriation (programs subject to obligation limitations).

SPENDING UNDER CURRENT LAW
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Appalachian Development Highway System						
Budget Authority	300	0	0	0	0	0
Estimated Outlays	81	126	45	30	18	0
FHWA safety grants						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	3	2	0	0	0	0
NHTSA Operations - gf						
Budget Authority	75	0	0	0	0	0
Estimated Outlays	91	45	23	13	6	5
NHTSA Operations - tf						
Budget Authority	72	0	0	0	0	0
Estimated Outlays	65	25	8	2	0	0
Miscellaneous Trust Fund expenditures						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	53	51	48	34	27	15
State Infrastructure Banks						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	98	23	8	5	5	3
Miscellaneous appropriations from the general fund						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	160	132	97	51	18	13
Next generation high speed rail						
Budget Authority	20	0	0	0	0	0
Estimated Outlays	26	20	12	8	0	0
Alaska railroad						
Budget Authority	10	0	0	0	0	0
Estimated Outlays	6	6	0	0	0	0
Formula Grants						
Budget Authority	240	0	0	0	0	0
Estimated Outlays	-195	-269	-244	-200	-145	-134
UTC						
Budget Authority	6	0	0	0	0	0
Estimated Outlays	8	6	3	1	1	0
Administrative Expenses						
Budget Authority	46	0	0	0	0	0
Estimated Outlays	45	4	0	0	0	0

SPENDING UNDER CURRENT LAW
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Planning & Research						
Budget Authority	92	0	0	0	0	0
Estimated Outlays	89	83	44	18	9	4
WMATA						
Budget Authority	200	0	0	0	0	0
Estimated Outlays	208	192	141	93	48	14
Interstate Transfer						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	16	5	3	0	0	0
Research Training Human Res.						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	5	2	0	0	0	0
Subtotals						
Budget Authority	1,061	0	0	0	0	0
Estimated Outlays	758	453	187	56	-12	-81
Totals						
Budget Authority	30,747	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	27,178	28,079	28,526	28,910	29,190	28,766

Congressional Budget Office

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Additional Information:

Attached are tables with summary and account-level detail for S.1173 (as agreed to by the Senate).

04/14/98

COMPARISON OF S. 1173 AND ALTERNATIVE CBO PROJECTIONS
--Outlays in Billions of Dollars --

6-Year Total for the 1998-2003 Period				Differences in 6-Year Totals		
S. 1173	Baseline	WODI	Current Law	S. 1173 versus Baseline	S. 1173 versus WODI	S. 1173 versus Current Law
206	176	170	172	30	36	34

S. 1173: The Intermodal Surface Transportation Efficiency Act of 1998, as agreed to by the Senate on March 12, 1998.

Baseline: CBO baseline projections, including adjustments for anticipated inflation.

WODI: CBO baseline projections without discretionary inflation.

Current Law: CBO's current-law projections, which assume continuation of programs that are funded by contract authority (a form of direct spending), but do not assume future appropriations for discretionary programs. The CBO cost estimate dated April 8, 1998 for S. 1173, as agreed to by the Senate, compares S. 1173 to the "current-law projections".

04/14/98

Estimated Outlays for Highway & Transit Programs
(Billions of Dollars, by Fiscal Year)

	S. 1173			CBO Baseline		
Year	Outlays from CA	Outlays from BA	Outlays Total	Outlays from CA	Outlays from BA	Outlays Total
1998	26.4	0.8	27.2	26.4	0.7	27.2
1999	29.9	0.5	30.4	27.6	0.8	28.4
2000	33.4	1.2	34.6	28.3	0.9	29.2
2001	35.0	1.7	36.7	28.9	0.9	29.8
2002	35.8	2.0	37.8	29.2	1.0	30.2
2003	36.7	2.2	38.9	29.8	1.0	30.9
6-yr.sum	197.2	8.4	205.6	170.3	5.4	175.7

	WODI			Current-Law Projections		
Year	Outlays from CA	Outlays from BA	Outlays Total	Outlays from CA	Outlays from BA	Outlays Total
1998	26.4	0.7	27.2	26.4	0.7	27.2
1999	27.4	0.8	28.3	27.6	0.4	28.1
2000	27.7	0.9	28.7	28.3	0.2	28.5
2001	27.7	1.0	28.7	28.9	0.0	28.9
2002	27.5	1.1	28.5	29.2	-0.0	29.2
2003	27.5	1.1	28.5	29.8	-0.1	29.8
6-yr.sum	164.3	5.6	169.9	170.3	1.3	171.6

CA: Contract Authority (provided in authorization legislation). The outlays shown include both direct spending and spending controlled by annual obligation limitations in appropriations acts.

BA: Discretionary Budget Authority (provided in appropriations acts).

SPENDING UNDER S. 1173 – BY ACCOUNT
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Contract Authority						
NHTSA SAFETY GRANTS - includes FHWA funds						
Contract Authority	171	183	188	185	190	199
Estimated Outlays	172	171	181	182	187	193
FHWA Motor Carrier Safety grants						
Contract Authority	90	110	107	104	100	100
Estimated Outlays	80	92	109	106	103	100
Federal-aid subject to the obligation limitation						
Contract Authority	23,751	27,714	28,131	28,553	29,006	29,508
Estimated Outlays	19,975	23,113	26,644	28,437	29,137	29,808
Federal-aid exempt from obligation limitation						
Total CA	739	754	770	787	804	821
emergency relief	100	100	100	100	100	100
minimum guarantee	639	654	670	687	704	721
Estimated Outlays	1,966	1,760	1,551	1,228	1,091	1,011
Major Capital Investment						
Contract Authority	2,221	2,279	2,341	2,404	2,468	2,535
Estimated Outlays (includes priors)	1,960	1,964	2,078	2,146	2,246	2,393
Formula Grants						
Contract Authority	2,699	2,774	2,849	2,926	3,005	3,086
Estimated Outlays	2,260	2,774	2,849	2,926	3,005	3,086
Subtotals						
Contract Authority	29,671	33,814	34,385	34,959	35,573	36,249
Estimated Outlays	26,412	29,873	33,411	35,025	35,768	36,688

Note: Outlays shown above are a combination of direct spending (exempt programs) and spending subject to appropriation (programs subject to obligation limitations).

SPENDING UNDER S. 1173 – BY ACCOUNT
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
(1) Accounts Authorized in S. 1173						
NHTSA & FHWA Operations and Research						
Authorization Level	72	62	62	62	62	64
Estimated Outlays	65	61	61	61	62	63
NHTSA NDR						
Authorization Level	2	2	2	2	2	2
Estimated Outlays	1	2	2	2	2	2
Olympics						
Authorization Level	0	110	125	70	30	0
Estimated Outlays	0	41	98	108	72	16
Light Rail						
Authorization Level	10	10	10	10	10	10
Estimated Outlays	7	8	12	10	10	10
School Transportation Safety						
Authorization Level	0	0	0	0	0	0
Estimated Outlays	0	0	0	0	0	0
RSPA Hazmat						
Authorization Level	15	16	17	17	18	18
Estimated Outlays	16	16	16	17	17	18
RSPA one-call						
Authorization Level	0	1	5	0	0	0
Estimated Outlays	0	0	3	2	1	0
Trade Corridor Grants						
Authorization Level	125	125	125	125	125	125
Estimated Outlays	26	99	126	133	125	125
Magnetic Levitation						
Authorization Level	0	0	200	200	250	300
Estimated Outlays	0	0	80	160	220	260
Joint partnerships for advanced vehicles						
Authorization Level	50	50	50	50	50	50
Estimated Outlays	15	50	52	53	50	50
Transportation and environmental cooperative						
Authorization Level	5	5	5	5	5	5
Estimated Outlays	1	5	5	5	5	5
Excise Fuel Reporting System						
Authorization Level	10	2	2	2	2	2
Estimated Outlays	4	6	4	2	2	2
Ferry Boat Construction						
Authorization Level	0	20	20	20	20	20
Estimated Outlays	0	5	14	17	19	20

SPENDING UNDER S. 1173 – BY ACCOUNT
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Remote sensing and spatial information						
Authorization Level	0	10	10	10	10	10
Estimated Outlays	0	8	10	10	10	10
Railway Highway Crossing Elimination						
Authorization Level	15	15	15	15	15	15
Estimated Outlays	2	9	15	14	15	15
Covered Bridges						
Authorization Level	0	10	10	10	10	10
Estimated Outlays	0	3	7	8	9	10
Formula Grants						
Budget Authority	194	180	182	204	217	230
Estimated Outlays	-199	-695	-544	-317	-134	-8
UTC						
Budget Authority	6	6	6	6	6	6
Estimated Outlays	8	7	6	6	6	6
Administrative Expenses						
Budget Authority	46	53	55	56	58	60
Estimated Outlays	45	52	55	56	58	59
Planning & Research						
Budget Authority	142	167	171	178	181	186
Estimated Outlays	95	124	152	168	178	182
Access to Jobs						
Budget Authority	250	250	250	250	250	250
Estimated Outlays	6	75	200	300	305	250
Clean Fuels Program (GF Portion)						
Budget Authority	100	100	100	100	100	100
Estimated Outlays	4	28	48	72	91	110
Transit Equity Program						
Budget Authority	0	1,000	1,000	1,000	1,000	1,000
Estimated Outlays	0	57	372	579	781	936

SPENDING UNDER S. 1173 -- BY ACCOUNT
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
(2) Other Accounts Included in CBO Estimate of Bill Totals						
Appalachian Development Highway System						
Budget Authority	300	0	0	0	0	0
Estimated Outlays	81	126	45	30	18	0
FHWA safety grants						
Contract Authority	0	0	0	0	0	0
Estimated Outlays	3	2	0	0	0	0
NHTSA operations and research						
Budget Authority	75	0	0	0	0	0
Estimated Outlays	91	45	23	13	6	5
Miscellaneous Trust Fund expenditures						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	53	51	46	34	27	15
State infrastructure banks						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	98	23	8	5	5	3
Miscellaneous appropriations from the general fund						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	160	132	97	51	18	13
WMATA						
Budget Authority	200	0	0	0	0	0
Estimated Outlays	208	192	141	93	48	14
Interstate Transfer						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	16	5	3	0	0	0
Research, Training, Human Res.						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	5	2	0	0	0	0
Subtotals						
Discretionary BA*	1,616	2,195	2,432	2,391	2,421	2,463
Estimated Outlays	807	540	1,156	1,694	2,026	2,191
Totals						
Budget Authority	31,289	36,008	38,817	37,350	37,993	38,712
Estimated Outlays	27,218	30,413	34,567	36,719	37,795	38,878

* Discretionary BA = Budget authority already appropriated plus additional authorization levels contained in S. 1173 as passed by the Senate.

SPENDING UNDER THE
CBO BASELINE WITH DISCRETIONARY INFLATION (WIDI)
FOR PROGRAMS COVERED BY S. 1173
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Contract Authority*						
NHTSA SAFETY GRANTS - includes FHWA funds						
Contract Authority	195	195	195	195	195	195
Estimated Outlays	178	187	194	195	200	205
FHWA Motor Carrier Safety grants						
Contract Authority	90	90	90	90	90	90
Estimated Outlays	80	85	87	89	91	94
Federal-aid subject to the obligation limitation						
Contract Authority	23,742	23,742	23,742	23,742	23,742	23,742
Estimated Outlays	19,975	21,335	22,158	22,931	23,323	23,911
Federal-aid exempt from obligation limitation						
Contract Authority	739	739	739	739	739	739
Estimated Outlays	1,966	1,757	1,541	1,207	1,056	960
Major Capital Investment						
Contract Authority	2,263	2,263	2,263	2,263	2,263	2,263
Estimated Outlays	1,861	1,951	1,995	2,012	2,054	2,140
Formula Grants						
Contract Authority	2,657	2,657	2,657	2,657	2,657	2,657
Estimated Outlays	2,260	2,310	2,363	2,420	2,478	2,537
Subtotals						
Contract Authority	29,686	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	26,420	27,624	28,338	28,853	29,202	29,847

* Under WIDI, obligation limitations increase with discretionary inflation from the level of the 1998 obligation limitations.

Note: Outlays shown above are a combination of direct spending (exempt programs) and spending subject to appropriation (programs subject to obligation limitations)

**SPENDING UNDER THE
CBO BASELINE WITH DISCRETIONARY INFLATION (WDI)
FOR PROGRAMS COVERED BY S. 1173
(Millions of Dollars, by Fiscal Year)**

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Appalachian Development Highway System						
Budget Authority	300	307	314	322	329	337
Estimated Outlays	81	209	259	295	320	327
FHWA safety grants						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	3	2	0	0	0	0
NHTSA Operations - gf						
Budget Authority	75	77	80	82	84	87
Estimated Outlays	91	90	90	90	89	90
NHTSA Operations -tf						
Budget Authority	72	74	77	79	81	84
Estimated Outlays	65	68	72	76	80	82
Miscellaneous Trust Fund expenditures						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	53	51	48	34	27	15
State Infrastructure Banks						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	98	23	8	5	5	3
Miscellaneous appropriations from the general fund						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	160	132	97	51	18	13
RSPA hazardous materials subaccount						
Budget Authority	15	15	16	16	16	17
Estimated Outlays	16	15	16	16	16	17
Formula Grants						
Budget Authority	240	245	251	257	263	268
Estimated Outlays	-195	-173	-67	24	108	129
UTC						
Budget Authority	6	6	6	6	7	7
Estimated Outlays	8	7	6	6	6	6

(continued)

SPENDING UNDER THE
CBO BASELINE WITH DISCRETIONARY INFLATION (WIDI)
FOR PROGRAMS COVERED BY S. 1173
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Administrative Expenses						
Budget Authority	46	48	50	52	54	56
Estimated Outlays	45	48	50	51	54	56
Planning & Research						
Budget Authority	92	94	96	98	101	103
Estimated Outlays	89	94	97	100	102	104
WMATA						
Budget Authority	200	204	209	214	219	225
Estimated Outlays	208	202	198	185	193	195
Interstate Transfer						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	16	5	3	2	0	0
Research, Training, Human Res.						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	5	2	0	0	0	0
Subtotals						
Budget Authority	1,046	1,071	1,098	1,126	1,155	1,185
Estimated Outlays	743	775	874	945	1,019	1,037
Totals						
WIDI Budget Authority**	30,732	30,757	30,785	30,812	30,841	30,871
Estimated Outlays	27,163	28,400	29,213	29,799	30,221	30,884

** Total of Mandatory Budget Authority (Contract Authority) and Discretionary Budget Authority

SPENDING UNDER THE CBO BASELINE WITHOUT DISCRETIONARY INFLATION (WODI) FOR PROGRAMS COVERED BY S. 1173
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Contract Authority*						
NHTSA SAFETY GRANTS - includes FHWA funds						
Contract Authority	195	195	196	195	195	195
Estimated Outlays	178	186	189	187	187	187
FHWA Motor Carrier Safety grants						
Contract Authority	90	90	90	90	90	90
Estimated Outlays	80	85	85	85	85	85
Federal-aid subject to the obligation limitation						
Contract Authority	23,742	23,742	23,742	23,742	23,742	23,742
Estimated Outlays	19,975	21,205	21,688	22,017	21,913	21,970
Federal-aid exempt from obligation limitation						
Contract Authority	739	739	739	739	739	739
Estimated Outlays	1,966	1,757	1,541	1,207	1,056	960
Major Capital Investment						
Contract Authority	2,263	2,263	2,263	2,263	2,263	2,263
Estimated Outlays	1,961	1,949	1,989	1,965	1,971	2,011
Formula Grants						
Contract Authority	2,657	2,657	2,657	2,657	2,657	2,657
Estimated Outlays	2,260	2,260	2,260	2,260	2,260	2,260
Subtotals						
Contract Authority	29,686	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	26,420	27,442	27,732	27,720	27,472	27,473

* Under WODI, obligation limitations for 1999 through 2003 are assumed to equal the 1998 obligation limitations.

Note: Outlays shown above are a combination of direct spending (exempt programs) and spending subject to appropriation (programs subject to obligation limitations)

SPENDING UNDER THE CBO BASELINE WITHOUT DISCRETIONARY INFLATION (WODI) FOR PROGRAMS COVERED BY S. 1173
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Appalachian Development Highway System						
Budget Authority	300	300	300	300	300	300
Estimated Outlays	81	207	252	282	300	300
FHWA safety grants						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	3	2	0	0	0	0
NHTSA Operations - gf						
Budget Authority	76	75	75	75	75	75
Estimated Outlays	91	88	86	84	81	79
NHTSA Operations - tf						
Budget Authority	72	72	72	72	72	72
Estimated Outlays	65	67	68	71	72	72
Miscellaneous Trust Fund expenditures						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	53	51	48	34	27	15
State Infrastructure Banks						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	98	23	8	5	5	3
Miscellaneous appropriations from the general fund						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	180	132	97	51	18	13
RSPA hazardous materials subaccount						
Budget Authority	15	15	15	15	15	15
Estimated Outlays	16	15	15	15	15	15
Formula Grants						
Budget Authority	240	240	240	240	240	240
Estimated Outlays	-195	-129	11	124	218	240
UTC						
Budget Authority	6	6	6	6	6	6
Estimated Outlays	8	7	6	6	6	6

(continued)

SPENDING UNDER THE CBO BASELINE WITHOUT DISCRETIONARY INFLATION (WODI) FOR PROGRAMS COVERED BY S. 1173
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Administrative Expenses						
Budget Authority	46	46	46	46	46	46
Estimated Outlays	45	45	45	45	46	46
Planning & Research						
Budget Authority	92	92	92	92	92	92
Estimated Outlays	89	94	96	97	97	96
WMATA						
Budget Authority	200	200	200	200	200	200
Estimated Outlays	208	202	195	191	188	184
Interstate Transfer						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	16	5	3	2	0	0
Research, Training, Human Res.						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	5	2	0	0	0	0
Subtotals						
Budget Authority	1,046	1,046	1,046	1,046	1,046	1,046
Estimated Outlays	742	812	931	1,007	1,072	1,068
Totals:						
WODI Budget Authority**	30,732	30,732	30,732	30,732	30,732	30,732
Estimated Outlays	27,162	28,254	28,664	28,727	28,543	28,542

** Total of Mandatory Budget Authority (Contract Authority) and Discretionary Budget Authority

BASELINE SPENDING UNDER CURRENT LAW
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Contract Authority						
NHTSA SAFETY GRANTS - includes FHWA funds						
Contract Authority	195	195	195	195	195	195
Estimated Outlays	178	187	194	195	200	205
FHWA Motor Carrier Safety grants						
Contract Authority	90	90	90	90	90	90
Estimated Outlays	80	85	87	89	91	94
Federal-aid subject to the obligation limitation						
Contract Authority	23,742	23,742	23,742	23,742	23,742	23,742
Estimated Outlays	19,975	21,335	22,158	22,931	23,323	23,811
Federal-aid exempt from obligation limitation						
Contract Authority	739	739	739	739	739	739
Estimated Outlays	1,966	1,757	1,541	1,207	1,056	960
Major Capital Investment						
Contract Authority	2,263	2,263	2,263	2,263	2,263	2,263
Estimated Outlays	1,961	1,951	1,995	2,012	2,054	2,140
Formula Grants						
Contract Authority	2,657	2,657	2,657	2,657	2,657	2,657
Estimated Outlays	2,280	2,310	2,363	2,420	2,478	2,537
Subtotals						
Contract Authority	29,686	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	26,420	27,626	28,339	28,854	29,202	29,647

Note: Outlays shown above are a combination of direct spending (exempt programs) and spending subject to appropriation (programs subject to obligation limitations).

SPENDING UNDER CURRENT LAW
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Appalachian Development Highway System						
Budget Authority	300	0	0	0	0	0
Estimated Outlays	81	126	45	30	18	0
FHWA safety grants						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	3	2	0	0	0	0
NHTSA Operations - gf						
Budget Authority	75	0	0	0	0	0
Estimated Outlays	91	45	23	13	6	5
NHTSA Operations -tf						
Budget Authority	72	0	0	0	0	0
Estimated Outlays	65	25	8	2	0	0
Miscellaneous Trust Fund expenditures						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	53	51	48	34	27	15
State Infrastructure Banks						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	98	23	8	5	5	3
Miscellaneous appropriations from the general fund						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	160	132	97	51	18	13
RSPA hazardous materials subaccount						
Budget Authority	15	0	0	0	0	0
Estimated Outlays	16	3	0	0	0	0
Formula Grants						
Budget Authority	240	0	0	0	0	0
Estimated Outlays	-195	-269	-244	-200	-145	-134
UTC						
Budget Authority	6	0	0	0	0	0
Estimated Outlays	8	6	3	1	1	0
Administrative Expenses						
Budget Authority	46	0	0	0	0	0
Estimated Outlays	45	4	0	0	0	0

SPENDING UNDER CURRENT LAW
(Millions of Dollars, by Fiscal Year)

	1998	1999	2000	2001	2002	2003
Spending from Discretionary Appropriations						
Planning & Research						
Budget Authority	92	0	0	0	0	0
Estimated Outlays	89	83	44	18	9	4
WMATA						
Budget Authority	200	0	0	0	0	0
Estimated Outlays	208	192	141	93	48	14
Interstate Transfer						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	16	6	3	0	0	0
Research Training Human Res						
Budget Authority	0	0	0	0	0	0
Estimated Outlays	5	2	0	0	0	0
Subtotals						
Budget Authority	1,046	0	0	0	0	0
Estimated Outlays	742	430	175	48	-12	-81
Totals:						
Budget Authority	30,732	29,686	29,686	29,686	29,686	29,686
Estimated Outlays	27,182	28,056	28,514	28,902	29,190	29,766

BASELINE SPENDING, CURRENT LAW VS HR 2400
(Millions of Dollars, FY 1998-03)

	CURRENT LAW TOTAL	H.R. 2400	H R. 2400 OVER CURR LAW	WODI BASELINE	H.R. 2400 OVER WODI
Spending from Contract Authority					
NHTSA SAFETY GRANTS - includes FHWA					
Contract Authority	1,170	1,625	455	1,170	455
Estimated Outlays	1,160	1,515	355	1,113	402
FHWA Motor Carrier Safety grants					
Contract Authority	540	810	270	540	270
Estimated Outlays	527	758	231	504	254
Federal-aid subject to the ob lim					
Contract Authority	142,453	161,298	18,845	142,453	18,845
Estimated Outlays	133,634	151,323	17,689	128,769	22,554
Federal-aid exempt from ob lim					
Contract Authority	4,434	18,065	13,631	4,434	13,631
Estimated Outlays	8,488	16,866	8,378	8,488	8,378
Major Capital Investment					
Contract Authority	13,579	15,061	1,482	13,579	1,482
Estimated Outlays	12,112	13,304	1,192	11,826	1,478
Formula Grants					
Contract Authority	15,941	20,123	4,182	15,941	4,182
Estimated Outlays	14,367	11,629	(2,738)	13,560	(1,931)
UTC					
Budget Authority	0	24	24	0	24
Estimated Outlays	0	14	14	0	14
Administrative Expenses					
Budget Authority	0	208	208	0	208
Estimated Outlays	0	203	203	0	203
Planning & Research					
Budget Authority	0	368	368	0	368
Estimated Outlays	0	225	225	0	225
Subtotals					
Contract Authority	178,117	217,582	39,465	178,117	39,465
Estimated Outlays	170,288	195,837	25,549	164,260	31,577

OMB - cuts baseline by real programs, auth. as Hwy. Demos.

BASELINE SPENDING, CURRENT LAW VS HR 2400
(Millions of Dollars, FY 1998-03)

	CURRENT LAW TOTAL	H.R. 2400	H.R. 2400 OVER CURR LAW	WODI BASELINE	H.R. 2400 OVER WODI
Spending from Discretionary Appropriations					
Appalachian Development Highway System					
Budget Authority	300	300	0	1,800	(1,500)
Estimated Outlays	300	300	0	1,422	(1,122)
FHWA safety grants					
Budget Authority	0	0	0	0	0
Estimated Outlays	5	5	0	5	0
NHTSA Operations - gf					
Budget Authority	75	75	0	449	(374)
Estimated Outlays	181	181	(0)	509	(328)
NHTSA Operations -tf					
Budget Authority	72	464	392	432	32
Estimated Outlays	100	444	344	416	28
Miscellaneous Trust Fund expenditures					
Budget Authority	0	0	0	0	0
Estimated Outlays	228	228	(0)	228	0
State Infrastructure Banks					
Budget Authority	0	0	0	0	0
Estimated Outlays	142	142	0	142	0
Misc appropriations from the gen fund					
Budget Authority	0	0	0	0	0
Estimated Outlays	470	470	(0)	470	0
Next generation high speed rail					
Budget Authority	20	0	(20)	120	(120)
Estimated Outlays	66	0	(66)	149	(149)
Alaska railroad					
Budget Authority	10	0	(10)	60	(60)
Estimated Outlays	12	0	(12)	56	(56)
Rail					
Budget Authority	0	558	558	0	558
Estimated Outlays	0	583	583	0	583
Formula Grants					
Budget Authority	240	358	118	1,440	(1,082)
Estimated Outlays	(1,187)	4,539	5,726	270	4,269
UTC					
Budget Authority	6	12	6	36	(24)
Estimated Outlays	19	25	6	39	(14)
Administrative Expenses					
Budget Authority	48	98	50	274	(176)
Estimated Outlays	50	100	50	272	(172)

BASELINE SPENDING, CURRENT LAW VS HR 2400
(Millions of Dollars, FY 1998-03)

	CURRENT LAW TOTAL	H.R. 2400	H.R. 2400 OVER CURR LAW	WODI BASELINE	H.R. 2400 OVER WODI
Spending from Discretionary Appropriations					
Planning & Research					
Budget Authority	92	182	90	552	(370)
Estimated Outlays	248	343	95	569	(226)
WMATA					
Budget Authority	200	200	0	1,200	(1,000)
Estimated Outlays	696	696	(0)	1,166	(470)
Interstate Transfer					
Budget Authority	0	0	0	0	0
Estimated Outlays	24	24	(0)	24	0
Research, Training, Human Res.					
Budget Authority	0	0	0	0	0
Estimated Outlays	7	7	0	7	0
Olympics					
Budget Authority	0	335	335	0	335
Estimated Outlays	0	335	335	0	335
Access to Jobs					
Budget Authority	0	252	252	0	252
Estimated Outlays	0	191	191	0	191
Subtotals					
Budget Authority	1,061	2,832	1,771	6,383	(3,531)
Estimated Outlays	1,362	8,613	7,251	5,744	2,869
Totals:					
Budget Authority	179,178	220,414	41,236	184,480	35,934
Estimated Outlays	171,650	204,450	32,800	170,004	34,446

THE WHITE HOUSE

WASHINGTON

DATE: 4/24/98

TO: Gene Sperling

FROM: White House Counsel Dawn C.
Room 125, OEOB, x6-7901

Adarand Reply Brief

- [ ] FYI
- [ ] Appropriate Action
- [ ] Let's Discuss
- [x] Per Our Conversation
- [ ] Per Your Request
- [ ] Please Return
- [ ] Other

ORAL ARGUMENT IS REQUESTED

No. 97-1304

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ADARAND CONSTRUCTORS, INC.,

Plaintiff-Appellee

v.

RODNEY E. SLATER, Secretary of Transportation, et al.

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

REPLY BRIEF FOR THE FEDERAL APPELLANTS

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IN THE UNITED STATES COURT OF APPEALS
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

REPLY BRIEF FOR THE FEDERAL APPELLANTS

I

CONGRESS HAD A COMPELLING INTEREST IN REMEDYING THE EFFECTS OF DISCRIMINATION ON FEDERAL CONTRACTING

Although it ultimately held the Department of Transportation's Subcontracting Compensation Clause (SCC) and federal aid programs to be unconstitutional on narrow tailoring grounds, the district court found that Congress had a compelling interest in enacting the statutes that support these DOT programs — remedying the effects racial discrimination has had on the ability of minorities to share in the benefits of federal government contracting. In our opening brief, we explained why the district court's holding was wrong with respect to the narrow tailoring portion of its strict scrutiny analysis. Adarand and amici now challenge, on a variety of grounds, the district court's analysis of the government's compelling interest. These challenges are without basis, however, as they fail to acknowledge the important differences in authority between Congress and a state or local legislative body, and the vast body of evidence supporting the congressional findings.

A. Congress Is A National Legislature With Broad Authority To Remedy Nationwide Problems Of Discrimination.

1. Federal Courts Must Defer To Congress's Authority To Make Findings Concerning National Problems.

Adarand and amici Pacific Legal Foundation (PLF) and Associated General Contractors (AGC) assert that the district court gave undue deference to Congress's finding of a compelling interest in remedying the effects nationwide discrimination has had on federal construction contracting. Adarand mischaracterizes the nature of the district court's analysis, and fails to recognize the significant distinctions in the remedial authority of Congress, as national legislature and coequal branch of government, and that of a state legislature or local city council — distinctions frequently reaffirmed by the Supreme Court and still relevant under strict scrutiny.

The district court properly recognized that strict scrutiny now applies to federal as well as to state and local race-conscious action (App. 202-203).[1] The district court did not, as Adarand and amici allege, blindly defer to Congress's authority under § 5 of the Fourteenth Amendment. Rather the court found it unnecessary to resolve the question (expressly not addressed by the Supreme Court) of the precise extent of that authority and the deference owed to findings made pursuant to it.[2] The court rested its analysis instead on Congress's unique authority to legislate

[1] References to "App. _" are to pages in the Appellants' Appendix filed with our opening brief.

[2] Adarand argues that § 5 authorizes Congress to enforce equal protection guarantees only against the states, and therefore cannot provide any basis for deference regarding the SCC, which affects only direct federal contracting (Br. 36). If, as we argue, courts should defer when

nationwide remedies for nationwide problems (App. 205-206).[3] Applying strict scrutiny, the district court therefore concluded that, in order to establish a compelling interest justifying national, race-conscious legislation, Congress must have a strong basis in evidence of discriminatory barriers facing minority-owned businesses in federal construction contracting nationwide (App. 206).[4]

Congress acts to ensure state compliance with equal protection rights, at least equal deference is due to congressional efforts to assure that federal programs do not inadvertently perpetuate discrimination. See Rostker v. Goldberg, 453 U.S. 57, 64 (1981) (noting that "customary deference accorded the judgments of Congress" is based on the fact that members of Congress have taken the same oath as federal judges "to uphold the Constitution of the United States"). Moreover, Adarand fails to note that, even if § 5 does not apply directly to DOT's use of the SCC in its own contracts, it would be directly applicable and would require appropriate judicial deference when the constitutionality of the separate "federal aid" program is considered, since that program does involve regulation of state action. See Fullilove v. Klutznick, 448 U.S. 448, 476 (1980) (plurality). See discussion in Part III, infra, at pp. 24-25. Nothing in the Supreme Court's decision in this case changed existing law in that respect. See Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 230-231 (1995). Finally, AGC's claim that the SCC improperly regulates private parties (Br. 10-11) is simply incorrect; the SCC does not require prime contractors to do anything, but rather serves as one means of implementing the congressional intent that federal government spending not perpetuate the effects of discrimination.

[3] The discussions by Adarand and amici of the nature and scope of Congress's § 5 authority (Adar. Br. 35-36, AGC Br. 7-14, PLF Br. 14-15) are largely beside the point. While the Fourteenth Amendment does contain an express constitutional grant of authority to enforce equal protection rights, and therefore reinforces the unique role played by Congress in enacting national legislation to prevent and remedy racial discrimination (see, e.g., City of Richmond v. J.A. Croson Co., 488 U.S. 469, 490 (1989) (opinion of O'Connor, J.) (noting that Congress has specific constitutional mandate to secure guarantees of Fourteenth Amendment and so may "identify and redress the effects of society-wide discrimination")), that nationwide remedial authority derives from other sources as well, including the Thirteenth and Fifteenth Amendments, the Spending Clause, and the Commerce Clause. Because the challenged legislation is clearly within Congress's Spending Clause power and does not involve the invalidation of any state law, the Supreme Court's decision in City of Boerne v. Flores, 117 S. Ct. 2157 (1997), has no bearing on this case. Finally, AGC's argument that § 5 is inapplicable because it does not authorize federal government discrimination (Br. 13-14) is circular, as it is based on the false assumption that Congress lacked a valid remedial purpose for enacting the challenged legislation. See Fullilove, 448 U.S. at 476-478 (MBE program is proper exercise of § 5 authority).

[4] Contrary to Adarand's suggestion (Br. 30), Congress need not demonstrate a current pattern of "deliberate exclusion of minorities" in the construction industry, but rather that the pervasive and persistent effects of past discrimination on minority participation in federal contracting

The district court's analysis is entirely consistent with the Supreme Court's decisions in Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995), and City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989). In Croson, the Court drew an express distinction between the remedial authority of Congress and that of state and local governments. "That Congress may identify and redress the effects of society-wide discrimination does not mean that * * * States and their political subdivisions are free to decide that such remedies are appropriate." 488 U.S. at 490 (opinion of O'Connor, J.) (emphasis added). A state or local government has only "the authority to eradicate the effects of private discrimination within its own legislative jurisdiction." Id. at 491-492 (emphasis added). By contrast, Congress has the jurisdiction and authority to address problems of discrimination that are "society-wide" in scope through legislation with nationwide application.

Nothing in the Supreme Court's Adarand decision eliminates this fundamental distinction. The Court in Adarand merely clarified the standard of review that courts should apply to federal racial classifications; it did not limit Congress's legislative authority. While strict scrutiny mandates that courts examine legislative motives closely to determine which classifications are truly "'benign' or 'remedial'" and "to 'smoke out' illegitimate uses of race," Adarand, 515 U.S. at 226 (quoting

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continue. See Adarand, 515 U.S. at 237 (government may act in response to "both the practice and the lingering effects of racial discrimination against minority groups"); id. at 269 (Souter, J., dissenting) (noting that majority decision does not affect principle that "constitutional authority to remedy past discrimination is not limited to the power to forbid its continuation, but extends to eliminating those effects that would otherwise persist and skew the operation of public systems"). Similarly, Adarand's assertion that the government must provide evidence of discrimination "by the federal government or its employees" (Br. 35 n.31) is simply incorrect. The federal government spends immense sums procuring goods and services, and Congress has a compelling interest in ensuring that its procurement activities do not perpetuate the effects of private discrimination that has tended to exclude minority firms from equal participation in federal contracting. See Croson, 488 U.S. at 492 (opinion of O'Connor, J.) ("It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.").

Croson, 488 U.S. at 493 (opinion of O'Connor, J.)), it does not reduce Congress to the level of a city council before a federal court. See Croson, 488 U.S. at 489 (opinion of O'Connor, J.) ("other governmental entities might have to show more than Congress before undertaking race-conscious measures: 'The degree of specificity required in the findings of discrimination and the breadth of discretion in the choice of remedies may vary with the nature and authority of the governmental body'") (quoting Fullilove v. Klutznick, 448 U.S. 448, 515-516 n.14 (1980) (Powell, J., concurring)); cf. Adarand, 515 U.S. at 228 (noting that "strict scrutiny does take 'relevant differences' into account"). Under strict scrutiny, while the federal government must narrowly tailor race-conscious action to serve Congress's compelling interest, the judicial inquiry into that interest is different from the inquiry a federal court makes when determining whether a local governmental entity has acted with a compelling interest.

Nor does the application of strict scrutiny, as Adarand contends, require this Court to ignore crucial institutional differences between Congress, a coequal branch of the federal government, and a city council or local school board. See Adarand, 515 U.S. at 230 ("requiring that Congress, like the States, enact racial classifications only when doing so is necessary to further a 'compelling interest' does not contravene any principle of appropriate respect for a co-equal branch of the Government"); see also Fullilove, 448 U.S. at 472 (plurality) ("When we are required to pass on the constitutionality of an Act of Congress, we assume 'the gravest and most delicate duty that this Court is called on to perform'") (quoting Blodgett v. Holden, 275 U.S. 142, 148 (1927)).[5] As the district court observed, "[t]here is a fundamental difference between the record of

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[5] See generally Walters v. National Ass'n of Radiation Survivors, 473 U.S. 305, 319-320 (1985) ("we begin our analysis here with no less deference than we customarily must pay to the duly enacted and carefully considered decision of a coequal and representative branch of our

congressional hearings * * * and the 'highly conclusionary statement of a proponent' of the plan challenged in Croson" (App. 207). The extensive history of congressional hearings and findings supporting the legislation challenged in this case does not, as Adarand would have this Court believe, amount to "no more than self-serving, conclusory characterizations" (Br. 33), but rather demonstrates that Congress has given careful and repeated consideration over the years both to the problem it sought to address and the means by which it should do so. The congressional statements and findings to which Adarand objects "were made after exercising the significant and well-recognized fact finding authority vested in that body" (App. 207-208). See Turner Broad. Sys., Inc. v. FCC, 117 S. Ct. 1174, 1189 (1997) (noting in context of First Amendment challenge that congressional findings are entitled to deference because Congress is far better equipped than judiciary to "amass and evaluate the vast amounts of data" bearing upon legislative questions) (quoting Walters, 473 U.S. at 331 n.12).

2. Strict Scrutiny Does Not Require Congress To Make Local Findings.

PLF's reliance (Br. 9-10) on Croson for the proposition that the federal government must make specific findings concerning effects of discrimination in each and every state and local market before enacting national legislation affecting those jurisdictions is misplaced. In Croson, the Court rejected the City of Richmond's attempt to justify a "rigid [30%] racial quota" in the awarding of City contracts where the City presented no evidence of discrimination in the Richmond construction

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Government," and "[t]his deference to congressional judgment must be afforded even though the claim is that a statute Congress has enacted effects a denial of the procedural due process guaranteed by the Fifth Amendment"). The Supreme Court's Adarand decision left this principle undisturbed. See City of Boerne, 117 S. Ct. at 2171-2172 (enactments of Congress enjoy "presumption of validity," and "[i]t is for Congress in the first instance to 'determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment'") (quoting Katzenbach v. Morgan, 384 U.S.641, 651 (1966)).

industry. 488 U.S. at 499-500, 504. This does not establish, however, that Congress may not exercise its nationwide jurisdiction to address a national problem at the national level, but rather must make localized, market-by-market findings for each covered local jurisdiction throughout the country. Neither the Supreme Court nor this Court has ever imposed such an impossible burden, and Adarand and amici cite no authority for such a proposition. Indeed, the Supreme Court has firmly established that when Congress acts to combat the effects of racial discrimination that it has found to exist on a nationwide scale, its legislation applies to every state and locality without the necessity of individual findings that circumstances in each locality, if unaffected by the legislation, would violate the Equal Protection Clause. See Oregon v. Mitchell, 400 U.S. 112, 133-134 (1970) (Black, J.); id. at 147 (Douglas, J.); id. at 231-236 (Brennan, White, Marshall, J.J.).[6]

B. Abundant Evidence Supported Congress's Finding That § 8(d)'s Race-Conscious Presumption Was Necessary To Remedy Continuing Effects Of Discrimination On Minority Participation In Federal Contracting.

Congress had more than sufficient evidence to support its conclusion that remedial action was necessary to redress the racially discriminatory exclusion of minority-owned businesses from federal contracting opportunities. Strict scrutiny does not require Congress to make the kind of formal findings of fact that would be required in a district court proceeding. It requires only that Congress have a "strong basis in evidence" for its belief that remedial action is necessary. See

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[6] In addition, more detailed and specific findings may be necessary to support a rigid 30% set-aside in one local market, such as that struck down in Croson, than to support a flexible 5% or 10% national goal. The SCC is quite different from the rigid quota struck down in Croson. Because no federal prime contractor is required by the SCC to use a disadvantaged business enterprise (DBE) subcontractor, actual use of the SCC will likely vary according to the availability of qualified DBEs in each market. Cf. Croson, 488 U.S. at 504 (noting that national program upheld in Fullilove included a waiver procedure in recognition of the varying scope of the problem in different market areas).

Croson, 488 U.S. at 500 (quoting Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 277 (1986) (plurality)). The testimony, reports, and statistics available to Congress more than adequately supply that strong basis. Although the government must bear the initial burden of coming forward with a strong basis in evidence demonstrating Congress's compelling interest in a race-conscious affirmative action program, "[t]he ultimate burden [of proof] remains with [the challenging party] to demonstrate the unconstitutionality of" the program. Concrete Works of Colo. v. Denver, 36 F.3d 1513, 1522 (10th Cir. 1994) (quoting Wygant, 476 U.S. at 277-278), cert. denied, 514 U.S. 1004 (1995). This Adarand has failed to do. Neither Adarand nor amici have presented evidence contradicting the extensive and detailed findings made by successive Congresses over the past two decades concerning the continuing need to remedy the effects of racial discrimination on federal contracting. Indeed, Adarand has failed to make more than "conclusory allegations" concerning the congressional findings relied on by the district court. Concrete Works, 36 F.3d at 1524.

In support of its findings, Congress has primarily considered two types of evidence. During the past two decades Congress has had the benefit of numerous reports and statistics bearing on the question of the continuing need for programs to assist minority-owned and other disadvantaged small businesses to participate fully and equally in federal contracting. In addition, in its many hearings concerning the unique obstacles confronted by minority-owned businesses in federal contracting, Congress has also heard the testimony of hundreds of individual witnesses, complementing the empirical evidence and contributing to the strong basis in evidence supporting the need for assistance to minority-owned firms. See Concrete Works, 36 F.3d at 1520. This combination of extensive empirical and anecdotal evidence, only a fraction of which can be summarized here, more than adequately supports Congress's determination that the effects of discrimination continue to hinder the ability of minority-owned firms to secure a fair share of federal contracts and subcontracts, as well as federally assisted state and local projects.[7]

1. Legislative record. Congress enacted the Small Business Act, 15 U.S.C. 631 et seq., in 1953 to provide various forms of assistance to small businesses. By the late 1970s, however, Congress had determined, on the basis of reports, statistical evidence, and its own hearings, that existing programs had done little to help small minority-owned firms. See Small and Minority Business in the Decade of the 80's Pt. 1: Hearings Before the House Comm. on Small Business, 97th Cong., 1st Sess. 4, 118 (1981) (Small and Minority Business). Congress found "that small businesses owned by socially and economically disadvantaged persons have developed slowly and that among such businesses are minority small businesses, which * * * have been unable to overcome negative conditions impacting upon them," and that "it is in the national interest to expeditiously ameliorate these negative conditions faced by many minority and other socially and economically disadvantaged businesses." H.R. Conf. Rep. No. 1714, 95th Cong., 2d Sess. 20-21 (1978), reprinted in 1978 U.S.C.C.A.N. 3879, 3881.[8] In 1978, therefore, Congress amended §8 (d) of the Small Business Act, 15 U.S.C. 637(d), to establish that it was the policy of the United

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[7] Contrary to Adarand's suggestion (Br. 34 n.30), the government was not required to make the many thousands of pages of congressional reports, hearing testimony, and statistical studies part of the evidentiary record in this case. Although the government attached to its summary judgment motion a summary of that vast evidentiary record to assist the court (App. 99-111), the legislative history and other documents are themselves a matter of public record. For a more comprehensive overview of the evidence available to Congress, see 61 Fed. Reg. 26,050-26,063 (1996) (U.S. Br. Addendum 4).

[8] Congress recognized, however, "that other Americans may also suffer from social disadvantagement because of cultural bias," such as "a poor Appalachian white person who has never had the opportunity for a quality education or the ability to expand his or her cultural horizons." 1978 U.S.C.C.A.N. at 3882.

States that small businesses owned by socially and economically disadvantaged individuals should have the "maximum practicable opportunity" to participate in federal contracts and subcontracts. Pub. L. No. 95-507, § 211(d), 92 Stat. 1767. The amended § 8(d) also established a presumption that members of specified minority groups found by Congress to have been excluded from participation in government contracting due to racial discrimination should be regarded as socially and economically disadvantaged.

One year earlier, Congress had sought to address the same problem through § 103(f)(2) of the Public Works Employment Act (PWEA) of 1977, Pub. L. No. 95-28, 91 Stat. 116-117, which provided that state and local recipients of federal grants for public works projects must agree, to the extent possible, to spend 10% of the grant funds with "minority business enterprises" (MBEs). The Supreme Court upheld the constitutionality of the MBE provision in Fullilove v. Klutznick, 448 U.S. 448 (1980), and Chief Justice Burger's plurality opinion cited the "abundant evidence from which [Congress] could conclude that minority businesses have been denied effective participation in public contracting opportunities by procurement practices that perpetuated the effects of prior discrimination." Id. at 477-478.[9] That evidence included "evidence of a long

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[9] Although the plurality did not use the term "strict scrutiny," it recognized "the need for careful judicial evaluation to assure that any congressional program that employs racial or ethnic criteria to accomplish the objective of remedying the present effects of past discrimination is narrowly tailored to the achievement of that goal," and therefore conducted "a most searching examination." Fullilove, 448 U.S. at 480, 491. The plurality further stated that the MBE provision would survive judicial review under any of the analyses articulated in the various opinions in Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978). See Fullilove, 448 U.S. at 492. Justice Powell, concurring, agreed that the plurality's analysis substantially accorded with his own adoption in Bakke of a strict scrutiny standard, and that the MBE provision was "a necessary means of advancing a compelling governmental interest." Fullilove, 448 U.S. at 496 (Powell, J., concurring). The Supreme Court in Adarand did not overrule Fullilove, but rather held only that, "to the extent (if any) that Fullilove held federal racial classifications to be subject to a less rigorous standard, it is no longer controlling." 515 U.S. at 235 (emphasis added).

history of marked disparity in the percentage of public contracts awarded to minority business enterprises," which Congress had found resulted "not from any lack of capable and qualified minority businesses, but from the existence and maintenance of barriers to competitive access which had their roots in racial and ethnic discrimination."[10] 448 U.S. at 478; see also id. at 506 (Powell, J., concurring) (in light of evidence before Congress, "court must accept as established the conclusion that purposeful discrimination contributed significantly to the small percentage of federal contracting funds that minority business enterprises have received").

Congress continued to hold hearings and make findings concerning the continuing disadvantages racial discrimination imposed on minority firms in federal contracting. At hearings conducted during the 1980s, witnesses testified about personal experiences of discrimination in obtaining supplies, see, e.g., Small and Minority Business at 26; being excluded from the "good old boy network," id. at 34, 37; and discrimination by financial institutions and others, id. at 106, 277. In 1987, the House Committee on Small Business found that "discrimination and the present effects of past discrimination" continued to hinder minority business development, and that minority businesses continued to "receive a disproportionately small share of Federal purchases," with more than half of that share coming through the sheltered market of the § 8(a) program. H.R. Rep. No.

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[10] The provision's sponsor noted that, in fiscal year 1976, minorities constituted 15-18% of the population, but that less than 1% of federal procurement was with minority business enterprises. Fullilove, 448 U.S. at 459 (citing 123 Cong. Rec. 5,098 (1977) (remarks of Rep. Mitchell)). The Court also cited a 1975 committee report finding that only 3% of the country's businesses were owned by minority individuals. Fullilove, 448 U.S. at 465 (quoting H.R. Rep. No. 94-468 at 1-2 (1975)). The 1977 Report of the House Committee on Small Business found that "[t]he very basic problem disclosed by the testimony is that, over the years, there has developed a business system which has traditionally excluded measurable minority participation * * * . Currently, we more often encounter a business system which is racially neutral on its face, but because of past overt social and economic discrimination is presently operating, in effect, to perpetuate these past inequities." Fullilove, 448 U.S. at 466 n.48 (quoting H.R. Rep. No. 94-1791 at 182 (1977)).

460, 100th Cong., 1st Sess. 18 (1987). The Committee noted that in fiscal year 1986, only 1.6% of federal subcontract dollars went to small disadvantaged businesses. H.R. Rep. No. 100-460 at 37. According to 1987 census data, however, minority-owned firms constituted 8.9% of all businesses. See The State of Small Business: A Report of the President 334 (1992).[11] In 1988, Congress amended the Small Business Act to establish a 5% government-wide goal for federal contract participation by small disadvantaged businesses, including minority-owned firms. See Pub. L. No. 100-656, § 502, 102 Stat. 3881; 15 U.S.C. 644(g).

In 1982, Congress first established the 10% goal for disadvantaged business enterprise (DBE) participation in federally assisted highway and mass transit projects. That goal, contained in § 105(f) of the Surface Transportation Assistance Act (STAA), Pub. L. No. 97-424, 96 Stat. 2100, was expressly modeled on the PWEA provision upheld in Fullilove. See S. Rep. No. 4, 100th Cong., 1st Sess. 11 (1987), reprinted in 1987 U.S.C.C.A.N. 66, 76. Congress reauthorized the 10% goal (which now included businesses owned by women) in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. No. 100-17, 101 Stat. 145-146, after holding hearings examining the continuing need to remedy the effects discrimination has had on the ability of minority businesses to share in public construction contracting.[12] On the basis of that "extensive testimony and evidence," Congress concluded that "barriers still remain" to participation by minorities and women in the highway and mass transit construction industry. S. Rep. No. 100-4 at 11, reprinted in 1987 U.S.C.C.A.N. at 76. Four years

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[11] The State of Small Business is an annual report submitted by the SBA to Congress.

[12] See, e.g., The Disadvantaged Business Enterprise Program of the Federal-Aid Highway Act: Hearing Before the Subcomm. on Transp. of the Senate Comm. on Environment and Pub. Works, 99th Cong., 1st Sess. (1985) (addressing capacity of minority-owned firms in relation to goal).

later, Congress again reauthorized the program in § 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. No. 102-240, 105 Stat. 1919-1921. Thus Congress has repeatedly reexamined the DBE program and concluded that it is still necessary. Congress has continued throughout the 1990s to oversee and reevaluate both the ISTEA and Small Business Act goals.[13]

2. Additional evidence. Recent evidence obtained by the government continues to support the constitutionality of the SCC. See Concrete Works, 36 F.3d at 1521 (court may consider post-enactment evidence in support of challenged legislation). In 1992, the U.S. Commission on Minority Business Development concluded that the continuing severe underrepresentation of minorities in business was not due to "choice or chance," but rather was caused by "[d]iscrimination and benign neglect." Final Report 60 (1992). In 1992, minorities owned 9% of all businesses, but received only 4.1% of federal contracting dollars — despite the Small Business Act and STURAA/ISTEA goals. See State of Small Business 362 (1994).

In addition, following Croson, many state and local governments undertook formal disparity

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[13] See, e.g., City of Richmond v. J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business, 101st Cong., 2d Sess. 34-35, 39-42, 46-48, 51-53, 57-70 (1990) (testimony on continuing discrimination against minority-owned businesses); The Meaning and Significance for Minority Business of the Supreme Court Decision in the City of Richmond v. J.A. Croson Co.: Hearing Before The Legislation And National Security Subcomm. of the House Comm. on Government Operations, 101st Cong., 2d Sess. 30-39, 94-110, 129-142 (1990) (same); see id. at 111-128 (detailed testimony on discrimination in the construction industry); Problems Facing Minority and Women-Owned Small Businesses In Procuring U.S. Gov't Contracts: Hearing Before the Commerce, Consumer, and Monetary Affairs Subcomm. of the House Comm. on Government Operations, 103d Cong., 1st Sess. 19, 47-48, 57-60 (1993) (negative perceptions of and discrimination against minority business); Discrimination in Surety Bonding: Hearing Before the Subcomm. on Minority Enterprise, Finance, and Urban Development of the House Comm. on Small Business, 103d Cong., 1st Sess. (1993) (continuing discrimination in surety bonding).

studies to determine whether there was evidence of continuing racial discrimination in their contracting markets. An analysis of 39 such studies from around the country found significant underutilization of black, Hispanic, Asian, and Native-American-owned businesses based on their availability in every industry.[14] See 61 Fed. Reg. at 26,061-26,062 (U.S. Br. Addendum 4). The effects of discrimination account for much of this continuing disparity. In 1994, the House Committee on Government Operations found on the basis of hearing testimony that discrimination has denied minorities "opportunities to develop business skills and attitudes, to obtain necessary resources, and to gain experience" -- all essential to small business success. H.R. Rep. No. 870, 103d Cong., 2d Sess. 5 (1994). The Committee further found that, as a result, "many predominantly minority communities are desperately short of employment opportunities created by small businesses." Ibid. Finally, the Committee found that minority-owned firms face particular difficulties in the construction industry, which is dominated by "old buddy" networks and family firms, and tends to exclude minority firms. Id. at 15 & n.36. Congress has heard extensive testimony regarding the exclusion of minority firms from established networks of prime contractors, suppliers, and others. See generally 61 Fed. Reg. at 26,058-26,061.

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[14] Although Congress may legislate on a national basis without making locality-by-locality findings, the record reflects significant evidence of continuing effects of discrimination in Colorado construction contracting. The district court noted a "serious pattern of discrimination" identified in the Denver disparity study cited by amici below (App. 208). Moreover, in Concrete Works, this Court discussed extensive evidence of discrimination in the construction industry in the Denver Metropolitan Statistical Area, including an uncontested report by the United States General Accounting Office showing an "actual disparity between the utilization of minority contractors and their representation in the local construction industry," as well as DOT findings of underutilization on airport construction contracts and Denver's own disparity studies. 36 F.3d at 1524-1527. Although the Court found that plaintiff had identified material disputes of fact sufficient to preclude summary judgment for the City, 36 F.3d at 1528-1529, it characterized Denver's evidence as "substantial" and "particularized and geographically targeted." Id. at 1530.

Discrimination in commercial lending continues to handicap minority-owned businesses. The Committee heard testimony that, particularly in the construction industry, the "negative perception of minority business" creates reluctance by commercial lenders to take the same risks with a minority-owned business that they would with a nonminority-owned business. H.R. Rep. No. 103-870 at 6-8; see also Availability of Credit to Minority-Owned Small Business: Hearing Before the Subcomm. on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Comm. on Banking, Finance and Urban Affairs, 103d Cong., 2d Sess. 19-20, 22, 27 (1994); see generally 61 Fed. Reg. at 26,057-26,058 (U.S. Br. Addendum 4).[15] Such disparities create a "cycle of negativity," in which minority firms cannot grow and succeed due to difficulties in obtaining financing, which in turn reinforces prejudicial attitudes that make access to capital even more difficult because of the perceived risk. Final Report at 6. Providing access to federal subcontracting opportunities can help break this cycle by helping minority firms demonstrate to lenders that they will be able to secure contracts and repay loans. Congress has also heard extensive testimony regarding similar problems of discrimination in surety bonding. See Discrimination in Surety Bonding at 2-3, 7-9, 16, 18, 25-26, 41; H.R. Rep. No. 103-870 at 14-16.

In sum, it is beyond dispute that Congress, over the course of two decades, has reviewed the relevant evidence and has consistently found that minority-owned businesses suffer from the effects of racial discrimination, that those effects hinder the ability of minority firms to participate equally in federal contracting, and that remedial legislation is necessary to address these problems. Adarand provides no evidence to the contrary.

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[15] Indeed, a recent study of the Denver, Colorado, area shows significant disparities in the loan denial rate between whites and minorities, even after controlling for other factors. Univ. of Colorado, Survey of Small Business Lending in Denver, p. v (1996).

II

BOTH THE SCC AND THE ISTEA AND SMALL BUSINESS ACT GOALS ARE NARROWLY TAILORED

A. The Rebuttable Presumption Of Disadvantage Is Not Unconstitutionally Overinclusive Or Underinclusive.[16]

Adarand argues that the § 8(d) presumption of disadvantage used in the SCC (and also applicable to the ISTEA federal aid program) is overinclusive because it applies to all members of the specified groups without an individualized determination whether each beneficiary has suffered discrimination. Like the district court, Adarand mistakes for a constitutional defect an aspect of the SCC that actually makes it far more narrowly tailored than the purely race-based MBE program upheld in Fullilove.

Given the abundant evidence of continuing effects of discrimination on federal subcontracting opportunities for minorities, Congress could have used (as it did in the legislation upheld in Fullilove) a simple race-based classification to assist only minority-owned businesses. Instead, Congress decided to enact a remedy that would take factors other than race into account. It therefore defined eligibility for § 8(d) programs in terms of social and economic disadvantage, so that members of other ethnic and cultural groups that have suffered discrimination (including Caucasians) could also benefit. Under § 8(d), members of the specified minority groups are entitled only to a rebuttable presumption of disadvantage, while all others have the opportunity to qualify for the same benefits by establishing disadvantage on an individual basis. What Adarand and the

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[16] Adarand alleges that "[t]he Government seeks to eviscerate strict scrutiny as a dual test and to replace it with a unitary requirement of compelling interest, with no requirement of narrow tailoring" (Br. 33 n.28). The government has made no such argument, and indeed devoted a substantial portion of its opening brief to explaining why the SCC program is narrowly tailored.

district court fail to recognize, however, is that the compelling interest supporting the initial race-based presumption is not remedying disadvantage generally, but rather remedying the effects of specifically racial discrimination. The presumption is not overinclusive in a constitutional sense merely because some individuals entitled to the presumption of disadvantage might not be able to make an individualized showing of disadvantage; rather, the statute reflects Congress's judgment that it is more likely than not that a given member of the specified minority groups has suffered some disadvantage due to discrimination. See H.R. Conf. Rep. No. 95-1714 at 21-22, reprinted in 1978 U.S.C.C.A.N. at 3882. The use of a rebuttable presumption, rather than an absolute entitlement, merely refines and narrows the program without placing additional obstacles of proof in the way of the very persons Congress primarily intended to assist.[17]

As explained in our opening brief (U.S. Br. 26-27), there is no basis for Adarand's contention (Br. 11) that the Constitution limits beneficiaries of race-conscious affirmative remedial measures to individual victims of proven discrimination.[18] See Wygant, 476 U.S. at 287 (O'Connor, J., concurring). Adarand also argues that DOT's proposed new regulations governing

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[17] By its very terms, § 8(d)'s rebuttable presumption cannot be underinclusive, since no one is excluded from participating if qualified. The mere fact that individuals who are not members of the specified groups must demonstrate disadvantage does not render the program unconstitutional (Adar. Br. 13, 18). Without such a requirement, it would be impossible to make participation available to members of groups not included in the statutory presumption. Nor would it be possible to specify in advance every possible group that might be able to claim disadvantage from racial, ethnic, or cultural bias.

[18] Croson is not to the contrary. The Court in Croson held that the City had failed to identify any prior discrimination within its jurisdiction against the racial groups benefited by the set-aside, 488 U.S. at 507, and the Court's statement that the plan's "absolute preference" did not require individualized inquiry into whether a particular MBE had experienced discrimination, 488 U.S. at 508, must be viewed in that context. The optional nature and flexibility of the SCC program, the aspirational nature of the statutory goals it seeks to further, and the fact that the DBE provision is not based solely on race, further distinguish the programs at issue in this case.

certification of DBEs, see 62 Fed. Reg. 29,548, 29,565-29,566 (1997), are irrelevant because the statutory presumption is mandatory (Br. 13 n.9). To the contrary, Congress intended the presumption to be rebuttable, see S. Rep. No. 100-4 at 28, reprinted in 1978 U.S.C.C.A.N. at 92, and DOT has always treated it as such. To the extent, however, that certifying agencies have in practice lacked an official standard for determining when the presumption is rebutted, the new regulations, once finalized, will help to ensure that the ISTEA program and DOT's use of the SCC are as narrowly tailored as possible, and will place the burden on certifying agencies rather than third parties to determine whether a particular individual is economically disadvantaged. Because Adarand seeks only prospective relief, consideration of the current and future implementation of the program is critical to a determination of constitutionality.

B. The § 8(d) Presumption Is Narrowly Tailored To Remedy The Effects Of Discrimination Identified By Congress.

Adarand argues (Br. 15-17) that the use of race in the § 8(d) definition of social and economic disadvantage is not narrowly tailored because Congress failed to identify the discrimination it sought to remedy with sufficient particularity. This argument is essentially identical to Adarand's challenge to the district court's finding that Congress had a compelling interest in remedying discrimination.

The discrimination Congress sought to remedy in the Small Business Act and ISTEA is not "generalized, amorphous, societal discrimination" (Br. 15). Rather, it is the specific and concrete effect past and present racial discrimination by contractors, lending institutions, and others has had on the ability of minority businesses to secure an equitable share of federal contracting and subcontracting dollars. The SCC is precisely tailored to remedy those particular effects of discrimination by encouraging federal prime contractors to use DBEs as subcontractors.[19] Adarand is also wrong in stating (Br. 27) that the SCC program is not narrowly tailored because its date of termination has not yet been set. The SCC program, although in a modified form (see U.S. Br. Addendum 3), continues to exist because Congress has identified a continuing need for it. As we explained in our opening brief (U.S. Br. 30-31), the Small Business Act and ISTEA goals that the SCC furthers are subject to regular oversight and review by Congress. Indeed, the ISTEA DBE program will soon expire unless Congress decides to reauthorize it.

C. The Goals For DBE Participation Established By The Small Business Act And ISTEA Are Reasonable And Narrowly Tailored.

As explained in our opening brief, the Small Business Act sets a 5% annual government-wide goal for participation in federal contracting by small businesses owned and controlled by socially and economically disadvantaged individuals (including qualified individuals not belonging to the specified minority groups). 15 U.S.C. 644(g). The statute requires, however, that individual agency goals must "realistically reflect the potential of" small disadvantaged businesses to perform federal contracts and subcontracts. 15 U.S.C. 644(g)(2). The SCC also furthers ISTEA's goal of 10% participation by DBEs, which ISTEA defines as including small businesses owned by women (WBEs). Adarand contends that these relatively modest goals are "irrational" and not based on any reasonable estimate of the availability of minority (and female) contractors (Br. 24). To the contrary, the goals are clearly reasonable in light of the statistical evidence before Congress (see

[19] Adarand fails to note that the SCC no longer provides any incentive to prime contractors to use DBEs, but rather merely provides for reimbursement of any actual costs incurred (U.S. Br. 34, Addendum 3).

discussion in Part I, supra, at pp. 12-14).[20] Moreover, the goals may be waived or modified where appropriate.[21]

In 1987, a year before it enacted the Small Business Act's 5% goal for participation in federal contracting and subcontracting by small disadvantaged businesses, including (but not limited to) minority-owned businesses, the House Report noted that 6% of all businesses were minority-owned. H.R. Rep. No. 100-460 at 18. More recent figures support the continued validity of that goal. In 1992, minority-owned firms constituted 11.4% of all firms in the United States and 9.1% of construction firms. U.S. Dep't of Commerce, 1992 Economic Census: Survey of Minority-Owned Business Enterprises, Summary 6 (1996). The 10% DBE participation goal set in STURAA and reauthorized in ISTEA is similarly well-founded, as it includes not only minority-owned businesses, but also small businesses owned by other individuals who can demonstrate

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[20] This Court has held that a municipality may rely on disparity studies and general data reflecting the number of MBEs available in the market in support of a minority business program. Concrete Works, 36 F.3d at 1528. This Court rejected the argument (Adar. Br. 24 n.22) that such data alone are insufficient, at least in the absence of any "credible information" presented by plaintiff as to the actual size or capacity of the MBEs. Ibid. Adarand has supplied no such evidence here. Moreover, because Congress sought to remedy not just ongoing discrimination, but also the effects of past discrimination on the development of minority-owned businesses, one of the express purposes of the SCC is to help smaller minority firms to grow and succeed by encouraging federal prime contractors to provide training and assistance to DBE subcontractors (U.S. Br. Addendum 3).

[21] As explained in our opening brief (Br. 5, 8), the Small Business Act and ISTEA goals are flexible rather than mandatory, are renegotiated on an annual basis, and may be waived in certain circumstances. Contrary to Adarand's assertion (Br. 26), the goals are tailored both according to geographic region and industry. See, e.g., S. Rep. No. 1140, 95th Cong., 2d Sess. 10 (1978), reprinted in 1978 U.S.C.C.A.N. 3866, 3872 (agency goals should take into account "the availability of small minority owned businesses in relev[a]nt lines of work" and "the location where the work is to be performed"). Thus, the CFLHD's goal is set to reflect the availability of DBEs and WBEs for highway construction contracting in the Central region, and may be very different from the goal set for another federal agency or geographical area.

disadvantage, and in particular, businesses owned by women. In 1992, women owned 32.1% of all firms in the United States, and 183,695 of 1,829,620, or 10%, of all construction firms. State of Small Business 61, 64 (1995); 1992 Economic Census at 97.

Adarand also argues that the Small Business Act and ISTEA goals are unconstitutional because Congress has not set a separate and independent sub-goal for each eligible minority group (Br. 21). Adarand thus seeks to impose on Congress a new and impracticable requirement for which there is no support in the decisions of the Supreme Court or this Court. The Supreme Court in Croson did not strike down the City of Richmond's 30% set-aside because the eligible minority groups were aggregated, but rather because the City provided no evidence of discrimination against any of the groups.[22] Likewise, in Concrete Works, this Court found no fault with the City of Denver's aggregation of various minority groups in a single annual MBE participation goal, see 36 F.3d at 1515-1516 & n.1, but rather based its decision on factual disputes concerning the overall underutilization of MBEs, see 36 F.3d at 1530-1531.

D. Congress Enacted § 8(d)'s Race-Conscious Presumption Only Because Race-Neutral Remedies Were Inadequate.

The district court correctly rejected Adarand's contention that Congress did not consider

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[22] In addition, Adarand draws an improper parallel between the inclusion of various ethnic groups in the § 8(d) presumption and the inclusion of similar groups in the plan struck down in Croson (Adar. Br. 20). Again, Adarand fails to recognize Congress's authority to "identify and redress the effects of society-wide discrimination" on minority contracting with the federal government. Croson, 488 U.S. at 490 (opinion of O'Connor, J.) (emphasis added). The Court in Croson objected to Richmond's "random inclusion of racial groups that, as a practical matter, may never have suffered from discrimination in the construction industry in Richmond," since "[i]t may well be that Richmond has never had an Aleut or Eskimo citizen." 488 U.S. at 506 (emphasis added). By contrast, Congress determined that Native Americans (including Aleuts and Eskimos) in the United States as a whole have experienced social and economic disadvantage affecting their ability to participate in federal contracting, and Adarand again supplies no information or data to the contrary.

and use race-neutral remedies before using a race-based presumption to remedy the effects of discrimination (App. 215-216). Congress had previously enacted both anti-discrimination legislation and legislation to provide assistance to small businesses, but found that small minority-owned businesses continued to face unique obstacles in access to federal contracting opportunities.[23] As explained in Part I, supra, Congress had long provided extensive assistance to small businesses generally under the Small Business Act (and continues to do so), but found that, despite that assistance, minority-owned businesses continued to be disproportionately excluded from participation in government contracting. Similarly, the passage of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, and other antidiscrimination laws did not end the exclusion of minority individuals from the craft unions that would have provided them with the skills and experience to form successful small businesses. See, e.g., United Steelworkers of Am. v. Weber, 443 U.S. 193, 198 n.1 (1979) ("[j]udicial findings of exclusion from crafts on racial grounds are so numerous as to make such exclusion a proper subject for judicial notice"). Nor has enactment of the Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq., fully remedied discrimination in access to capital. Based on the continuing record of demonstrable underutilization of minority firms, Congress therefore found it necessary to enact legislation specifically designed to open up federal contracting and subcontracting opportunities to minority-owned businesses.

Nor are the problems Congress sought to remedy merely race-neutral, as Adarand alleges (Br. 28). For example, while many small businesses face difficulty obtaining adequate capital, not all small businesses face racial discrimination by commercial lenders. Similarly, many may lack a

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[23] In asserting that Congress has failed to use race-neutral alternatives, Adarand ignores the extensive race-neutral measures Congress has enacted, and instead relies on a statement by a single federal employee saying that he has not used race-neutral programs (Br. 29 & n.26).

track record, but not all are further handicapped by a tendency of prime contractors to attribute greater risks to using minority-owned firms. Congress found that the obstacles facing minority-owned small businesses were not simply the same obstacles common to all small business, but rather were a direct legacy of racial discrimination. See Small and Minority Business at 4. The race-based presumption in § 8(d), and the ISTEA DBE program, directly address the additional barriers faced by minority-owned firms by encouraging federal prime contractors to consider DBEs as subcontractors and states to open up contracting opportunities to DBEs.

III

THE DISTRICT COURT'S JUDGMENT EXTENDS BEYOND THE SCOPE OF THIS CASE

Our opening brief explained why the district court clearly erred in extending its judgment beyond the SCC to the separate and distinct ISTEA federal aid program, through which DOT provides federal funds to states and localities for state and local transportation projects (Br. 35-47). Specifically, we pointed out (1) that the sole focus of this long-running litigation has always been DOT's use of the SCC in its own direct federal contracts, (2) that the district court's order exceeded the specific terms of the Supreme Court's remand, (3) that the record in this case is inadequate to permit any determination concerning the constitutionality of the federal aid program, which is operated under different terms at a different governmental level, and (4) that Adarand has not established standing to challenge the federal aid program. Adarand has failed to respond to any of these points, and indeed has little to say in support of the district court's judgment beyond reiterating the court's statement that Adarand's challenge to the SCC necessarily implicates the statutes and regulations that provide the legal authority for DOT's use of the SCC (Br. 36-38). But this proposition — that a district court, having found on the basis of specific facts in a particular case that one means by which the government attempts to achieve a statutory goal is unconstitutional, may, without conducting any further legal or factual analysis, broadly declare unconstitutional all other government programs that in any way seek to further the same goal — is without foundation in logic or case law.[24]

Indeed, Adarand itself stresses (Br. 24 n.23) that "[t]he program challenged here is the federal program, implemented by federal officials," not the federal aid program implemented by state officials (emphasis added). Moreover, Adarand's argument that the court properly reached the ISTEA program is inconsistent with its argument that § 5 of the Fourteenth Amendment does not apply in this case because the SCC is not directed toward state conduct, since ISTEA clearly is directed toward state conduct (Adar. Br. 9; see also AGC Br. 7-9). Had Adarand challenged the constitutionality of the ISTEA federal aid program, the Supreme Court would have been required to determine the extent to which deference to Congress's exercise of its § 5 authority is appropriate. See Adarand, 515 U.S. at 230-231 (finding it unnecessary to reach this question). Like the program upheld in Fullilove (and unlike the SCC), the federal aid program involves congressional regulation of state action for purposes of remedying discrimination, and thus constitutes a direct exercise of Congress's § 5 powers. See Fullilove, 448 U.S. at 476-478; Metro Broad., Inc. v. FCC, 497 U.S. 547, 605-607 (1990) (O'Connor, J., dissenting) ("Congress has considerable latitude,

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[24] We do not argue, as Adarand suggests (Br. 37-38), that the district court should not have analyzed the relevant statutes to determine whether the SCC is constitutional. On the contrary, we believe that these statutes, as well as the subcontracting clause they authorize, are constitutional. We take issue, however, with the district court's failure to recognize that this case did not properly raise a challenge to the federal aid program, that the federal aid program involves entirely different governmental actors and terms of implementation, and that the parties did not have the opportunity to litigate any issues concerning the federal aid program or to develop an appropriate record describing its implementation in practice.

presenting special concerns for judicial review" when it exercises § 5 remedial powers with respect to the states, as it did in the program upheld in Fullilove); see also Croson, 488 U.S. at 490 (opinion of O'Connor, J.) (noting that Congress "has a specific constitutional mandate to enforce the dictates of the Fourteenth Amendment"). The fact that neither the Supreme Court nor the district court have even considered this issue with respect to the federal aid program further underscores the fact that the district court's judgment is overly broad.

CONCLUSION

As stated in our opening brief, the judgment of the district court should be reversed, or, alternatively, the case should be remanded to give all parties a full opportunity to present appropriate evidence on the question whether the federal aid program is narrowly tailored.

Respectfully submitted,

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The New York Times

June 24, 1988, Friday, Late City Final Edition

SECTION: Section A; Page 31, Column 2; Editorial Desk

LENGTH: 792 words

HEADLINE: America Is Buckling and Leaking

BYLINE: By Bill Clinton; Bill Clinton is the Governor of Arkansas and immediate past chairman of the National Governors Association.

BODY:
America is falling apart, literally.

Federal budget pressures and changes in the Federal tax law in the 1980's have steepened a decline in public works spending that dates to the 1950's. If the downward trend continues, Americans will see increasing evidence of deterioration in our highways, water and sewer systems, bridges and other building blocks of the nation's infrastructure.

Whatever strategy our next President uses to spur our economic growth, one thing is certain: Our infrastructure is just barely adequate to support our current level of economic activity, and our current rate of infrastructure improvement and investment falls vastly short of tomorrow's needs.

In a 1984 study, for example, Arkansas's cities and counties reported $862.9 million of critical repair and replacement projects needed for streets, roads and drainage, bridges, water, waste-water facilities and solid waste collection and disposal facilities. The National Transportation Safety Board said recently that it would take $51.4 billion just to replace or rehabilitate all the deficient bridges in the country.

A recent report by the National Council on Public Works Improvement contained some alarming statistics. The share of public works spending at all levels of government has declined drastically, from nearly 20 percent of total expenditures in 1950 to less than 7 percent in 1984. Total public spending on infrastructure has dropped from 3.6 percent of gross national product in 1960 to 2.6 percent in 1985. Measured in 1984 dollars, state and local capital investment peaked in 1972 at $34 billion; annual Federal outlays for capital peaked at $25 billion in the late 1970's.

Declining public works investment will inevitably undercut the benefits of private capital investment. **If our basic transportation, water supply and waste disposal systems continue to deteriorate, more money will come out of the private sector's bottom line, thus eroding American productivity.**

In many ways, disinvestment in public works is as serious a national problem as the budget and trade deficits. Clearly, the next President and Congress must develop a cohesive strategy for meeting these needs.

No single sector of government can afford or manage the revitalization of our nation's economic foundation alone. **We need to combine strategy with flexibility at all levels, guided by three main principles: 1. Accelerated spending of the Federal highway, transit, aviation and waterways trust funds**. 2. Greater control over infrastructure spending at local levels. 3. More financing of public works by those who benefit from them.

The Federal Government must provide clear and flexible leadership by spending more of our infrastructure trust funds. Billions of taxpayer dollars that were earmarked for infrastructure improvement are idling in Government accounts, collecting interest and being counted against the deficit to give a false impression of deficit reduction.

In addition, the Federal Government must allow state and local governments more options on how to spend Federal money. Too often, these monies come with complicated and unworkable matching programs and local spending requirements that cannot always be met on a timely basis, resulting in delays that often increase costs substantially.

There should also be a shift in Federal policy on tax-exempt bonds. By imposing restrictions on this market to increase revenues, the Federal Government has increased the cost of capital to state and local governments. This, in turn, creates greater demand for the limited Federal grant monies available and reduces overall infrastructure investment. For states and localities to use tax-exempt bonds to meet public needs, the Government must provide more flexibility than is now permitted. under present law.

Tax revision has had a further destructive impact on local finance. The alternative minimum tax has reduced the number of purchasers of tax-exempt bonds while driving up the bonds' cost in capital-poor states like Arkansas. In effect, the Government is shifting responsibility for meeting more public needs down to the state and local level while restricting the tools we need to respond.

States and localities also need to act. If the Federal Government does its part by reducing restrictions on municipalities' ability to raise capital, then local governments must make effective use of the money by creating rational capital budgeting processes and developing programs of planned maintenance and repair.

The infrastructure catch-up game we are playing in many of our major cities right now is horrendously expensive and inefficient, as the Williamsburg Bridge closing demonstrated vividly to New Yorkers. It also compromises our future.

Arkansas Democrat-Gazette

February 14, 1991, Thursday

LENGTH: 608 words

HEADLINE: SEE END OF TEXT Federal highway funds rise //Arkansas to get more, but also must pay more Associated Press JEFFEREY STINSONNEWS WASHINGTON Arkansas
would get $92 million more in federal highway money next year and $645 million more over the next five years under President Bush's new transportation proposal provided the state can come up with additional matching money to pry it loose.$105 billion proposed transportation plan is Arkansas's share of a proposed 39 percent increase in federal highway funding nationally through 1996. The president's proposal also calls for an increase next year in mass transit aid to Little Rock and North Little Rock.

BODY:
. WASHINGTON Arkansas would get $92 million more in federal highway money next year and $645 million more over the next five years under President Bush's new transportation proposal provided the state can come up with additional matching money to pry it loose.

The increase unveiled Wednesday as part of Bush's five-year, $105 billion proposed transportation plan is Arkansas's share of a proposed 39 percent increase in federal highway funding nationally through 1996.

The president's proposal also calls for an increase next year in mass transit aid to Little Rock and North Little Rock.

Specifically, the amount of money from the federal Highway Trust Fund that would be available to the state for road and bridge work under the president's plan would rise from $146 million this year to $238 million next year, and to $361 million in 1996. That's a total five-year gain of $645 million over the current amount.

But federal highway dollars will be harder for states such as Arkansas to come by because the president has proposed that states put more so-called "matching" dollars up front to get the money for the work.

On average right now, the states pay 15 percent of the cost of highway projects with the federal government paying the rest, up to the amount allotted to states under the federal distribution formula.

Under the president's proposal, states would have to provide about 30 percent to get the federal dollars.

Gov. Bill Clinton who has consistently complained that Washington collects fuel taxes from Arkansas motorists without returning it said last week Arkansas would have to increase its state gasoline tax at least a penny per gallon, and maybe more, to qualify for the new, higher levels of federal money available.

Specifically, the president's plan calls for the states to pay for 25 percent of the work on roads not part of the interstate highway system that will be included in a newly designated national highway system.

For work on the interstates, the states still will have to come up with just 10 percent of the money.

For other roads that won't be part of the national system, or which aren't part of the interstate system, the states would have to put up 40 percent of the money to get the federal dollars.

The states, however, would have greater flexibility to shift federal transportation dollars between local projects, including mass transit projects.

And the proposal recommends removing restrictions on using federal dollars to build and repair toll roads. It would allow states to pay for up to 35 percent of their toll road work with federal money.

The federal Highway Trust Fund, which has about a $20 billion surplus, is funded through federal taxes on motor fuel. The money coming into it will increase this year because Congress last year raised the federal tax a nickel a gallon, with 2.5 cents of it going into the trust fund and the other half going to reduce the bloated federal deficit.

Governors like Clinton have repeatedly complained that the federal government collects the money from the states, then sits on it and borrows against it to pay for deficit budgets.

And now, they argue, the president and Congress have tapped into what traditionally has been a key source of state revenue to try to hold deficits down.

Under the new match proposal, which the Arkansas Gazette reported last week, Clinton complained that the states would have to raise their state gasoline taxes to get Highway Trust Fund money that is rightfully theirs. CAPTION: ON THE HOME FRONT: President Bush unveils a $105 billion five-year plan Wednesday to improve highways and mass transit systems.<

PRESIDENT CLINTON ON HIGHWAY FUNDS

1992: President-Elect Clinton Said He Wanted To Increase Transportation Funding In First Press Conference. President Clinton, responding to question about how specifically he would create jobs at his first press conference after elected president in 1992, said,

> "The second thing that we will do is to try to accelerate the investment of our country in infrastructure in terms of road projects, water projects, other projects of that kind that are already on line with the plans there and ready to go in the first year with the commitment that I have to transfer defense cuts into domestic investment. So I want to try to increase transportation funding and those kinds of things to put people to work and they have a lot of spin-off job creation." [President-Elect Clinton News Conference (Reuters Transcript Report), 11/12/92]

1991: Candidate Clinton Called For Accelerated Release of Highway Trust Funds. According to the December 19, 1991 *Boston Globe*, while campaigning in 1991, "Clinton said Bush, and President Reagan before him, long refused to spend millions of dollars that built up in a trust fund supported by taxes earmarked for highway construction."

"'*When we needed public works programs, they slowed down spending because it gave the false impression*' that the highway surplus was helping to balance the budget, Clinton said in an earlier meeting with New Hampshire voters in Hampton. The trust fund operates independently from the accounting of the national budget."

"Vast sums are already on hand, Clinton said, and '*all that money should be put out in the next six months to jump-start the economy.*'" [Boston Globe, 12/19/91]

The November 22, 1991 *Orlando Sentinel Tribune* reported that while campaigning in Florida, "Clinton struck his theme of reordering the nation's priorities to invest more money in education, rebuilding the country's infrastructure such as roads and sewers, and research and development. He urged...speeding up highway spending to spur the economy. [Orlando Sentinel Tribune, 11/22/91]

1991: Then-Governor Clinton Called Hoarding Highway Funds A Mistake. Agreeing with a plan by Senator Dale Bumpers (D-AR) to use federal highway funds to create jobs, then-Governor Clinton said, "I believe it would be an economic stimulus no doubt about it. It's one way to put some investment into the lagging parts of the country." [Arkansas Democrat-Gazette, 2/4/91]

> Clinton: "We the nation's governors have always taken the position that it was a mistake for the administration to hoard the Highway Trust Fund. Our people pay those taxes in

good faith with the promise the money will, in turn, be released to their roads." [Arkansas Democrat-Gazette, 2/4/91]

The February 14, 1991 *Arkansas Democrat-Gazette* reported that "Governors like Clinton have repeatedly complained that the federal government collects the money from the states, then sits on it and borrows against it to pay for deficit budgets." [Arkansas Democrat-Gazette, 2/14/91]

1988: Then-Governor Clinton Wrote In Op-Ed That Federal Gov't Must Provide Leadership By Spending More Highway Trust Fund Money. In a June 24, 1988 *New York Times* op-ed piece entitled "America Is Buckling and Leaking" then-Governor Bill Clinton wrote, "The Federal Government must provide clear and flexible leadership by spending more of our infrastructure trust funds. Billions of taxpayer dollars that were earmarked for infrastructure improvement are idling in Government accounts, collecting interest and being counted against the deficit to give a false impression of deficit reduction." [New York Times, 6/24/88]