



Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: Clarifying Guidance on Flexibilities in Fiscal Constraint

Date: May 15, 2017

From: Hari Kalla, Acting Associate Administrator
Planning, Environment and Realty, FHWA

The purpose of this message is to provide clarifying guidance on the flexibilities in fiscal constraint. A number of States and project sponsors have been hesitant to initiate new projects out of concern that they don't have the funds to complete them. One belief is that fiscal constraint limits their ability to initiate a project. This is not a correct assumption; States can begin the environmental review process without having the "dollars in the bank" to construct the project. A State may start the environmental review process for a project without demonstrating fiscal constraint; however, funding for a subsequent phase of the project (e.g., final design, right-of-way (ROW) acquisition, or construction) must be shown in the STIP/TIP before FHWA can sign a Record of Decision (ROD), Finding of No Significant Impact (FONSI), or approve the Categorical Exclusion (CE). The STIP should include all sources of revenue for a project and can only include projects for which full funding can reasonably be anticipated to be available. For projects in metropolitan planning areas, estimated full project costs need to be shown in the MTP. Also, States have flexibility when identifying "reasonably available" funds in the STIP, including new tolls, taxes, tax increases, new bonds, or other innovative finance mechanisms.

This is not new guidance or a modification to existing guidance; it is a clarification existing guidance. A copy of the clarifying guidance is attached for your information and use. You are encouraged to share and discuss this information with your State DOT or MPO.

Please be aware that HEP is currently updating existing fiscal constraint guidance including "Supplement to January 28, 2008 Transportation Planning Requirements and Their Relation to NEPA Process Completion; February 9, 2011" and "Financial Planning and Fiscal Constraint for Transportation Plans and Programs Questions & Answers, April 15, 2009". These guidance documents are still valid and the updated versions should be available later this year.

Should you have questions or require additional information, please contact Harlan Miller at 202-366-0847, or Harlan.Miller@dot.gov. Thank you.

Hari

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[Original web link: https://www.fhwa.dot.gov/planning/clarify_fiscal_constraint.cfm]

Clarifying Fiscal Constraint Guidance

5/15/2017

This document clarifies the fiscal constraint requirements for States and Metropolitan Planning Organizations (MPOs) and encourages the use of fiscal constraint flexibilities.

1. What is fiscal constraint?

Since 1991, fiscal constraint has been a key component of the statewide and metropolitan transportation planning processes. Fiscal constraint means that a Metropolitan Transportation Plan (MTP), Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) include sufficient financial information to demonstrate that the projects in the MTP, TIP, and STIP can be implemented using committed, available, or reasonably available Federal, State, local, and private revenues, with the assurance that the federally supported transportation system is being adequately operated and maintained. Some examples of reasonable funding assumptions are discussed in the table below:

EXAMPLES OF "REASONABLY AVAILABLE" ASSUMPTIONS	
New Tolls	A new toll or other user fee dedicated to a particular project or program may be reasonable if there is clear evidence of support by the Governor, legislature, and/or other appropriate local/regional decision-makers.
New Taxes	A new tax for transportation purposes requiring local and/or State legislation and/or support from the Governor is reasonable if there is clear evidence of sufficient support (both governmental and public) to enact the new tax and a strategy exists for securing those approvals within the time period for implementing the affected projects.
Increase in Existing Taxes	If a State or local jurisdiction has past historical success in incrementally increasing gas taxes for transportation purposes, it is reasonable to assume that this trend (and the historic rate of increase) over a comparable period of time will continue.

New Bonds or Innovative Finance Mechanisms	A new bond or other financing mechanisms issued for a particular project or program may be reasonable if there is clear evidence or a history of support by the legislature, Governor, and/or other appropriate decision-makers and a strategy exists with milestones for securing those approvals within the time period for implementing the affected projects or program.
Increased Transit Fares	If a transit operator has past historical success in incrementally increasing transit fares, it is reasonable to assume that this trend (and the historic frequency of increase) over a comparable period of time will continue.
Future Authorizations	When the horizon year for a project in the STIP/TIP or MTP extends beyond the current authorization period for Federal program funds, available funds may include an extrapolation based on historic authorizations of Federal funds that are distributed by formula.

2. What is the relationship between NEPA and fiscal constraint?

A State may start the environmental review process for a project without demonstrating fiscal constraint; however, funding for a subsequent phase of the project (e.g., final design, right-of-way (ROW) acquisition, or construction) must be shown in the STIP/TIP before FHWA can sign a Record of Decision (ROD), Finding of No Significant Impact (FONSI), or approve the Categorical Exclusion (CE). The STIP should include all sources of revenue for a project and can only include projects for which full funding can reasonably be anticipated to be available. For projects in metropolitan planning areas, estimated full project costs need to be shown in the MTP. For illustrative purposes, the STIP can include additional projects that would be included in the adopted STIP if reasonable additional resources beyond those identified in the financial plan were to become available.

Fiscal constraint allows the planning process to advance only those projects that a State, MPO, or local agency can afford to implement and are environmentally and/or financially feasible. Planning and Environmental Linkages studies can be used to evaluate project feasibility and costs before launching into NEPA reviews.

Examples of planning and environmental linkages (PEL) include a Tier I Environmental Impact Statement (EIS), corridor study, or feasibility study. These studies can be conducted without demonstrating fiscal constraint in the MTP. PEL studies allow a State or MPO to do advanced planning that can be used in the NEPA process. If a Tier I EIS includes a decision that could result in a federally-funded implementation action (such as the purchase of ROW), the project must be listed in the MTP and STIP/TIP, with one subsequent phase listed in the existing STIP/TIP. Further, full funding must be reasonably be anticipated to be available for the project within the time period expected to complete the project before the Tier I ROD can be signed. The subsequent phase (Tier II) will be the

continuation of the NEPA process. A Tier I project cost estimation may be broader (e.g., use of banding) than for the regular projects.

3. What are the implications of fiscal constraint for non-attainment and maintenance areas?

In air quality nonattainment and maintenance areas, projects included in the first two years of the TIP and STIP require funds to be "available" or "committed". Available funds are funds derived from an existing source historically used for transportation purposes, such as Federal authorized and/or appropriated funds. Committed funds are funds that have been dedicated or obligated for transportation purposes. In addition, in nonattainment and maintenance areas, fiscal constraint must be demonstrated on Plan and TIP before transportation conformity can be determined.

[Original web link: https://www.fhwa.dot.gov/planning/clarify_fiscal_constraint_guidance.cfm]