STATEMENT OF
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BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY
UNITED STATES SENATE

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Good afternoon. Thank you for the opportunity to appear before you today to discuss the treatment of unobligated balances by the Department of Transportation (DOT) and how they affect the Department's budgeting and programming process. To put this discussion into context, I would like to briefly describe the Department's programs that are funded with the resources provided by the Congress.

The President's fiscal year (FY) 2007 budget request for the Department totals $65.6 billion in budgetary resources to support major investments in transportation nationwide that are vital to the health of our Nation's economy and the American way of life. This includes over $41 billion for highway infrastructure investment and for highway safety programs. An additional $8.7 billion has been requested for Federal transit grant programs that when combined with state and local funding will be used, among other things, to construct new fixed guideway and non-fixed guideway transit projects, purchase bus and transit railcars, and replace, rehabilitate and refurbish existing transit systems. Over $13.6 billion has been requested to build, maintain, and operate the Nation's air traffic control system; oversee commercial and general aviation safety through regulation and inspection; and improve the capacity and safety of airports. Combined, these investments account for over 95 percent of the Department's FY 2007 budget request.

Typically Federal operating programs – such as those that fund the salaries and expenses of railroad safety inspectors – are funded year-by-year through the annual appropriations process and these funding resources are outlayed during the same fiscal year. At DOT such programs constitute a very small portion of our total budget. Instead, the majority of the Department of Transportation's program dollars support major capital investment projects – like highway, transit, and airport construction – that generally take several years to complete. As a result, funding for these programs also needs to be available over multiple years and linked to the project's overall construction cycle. As infrastructure projects progress, the specific funds linked to the project are obligated as they are needed to complete construction phases. Because this often happens over a long period of time, a sizable portion of each year's funding is likely to remain unobligated and unexpended for several years.

For the Federal-aid Highway Program, the primary reason for large unobligated balances is the application of statutory budgetary controls known as obligation limitations. These limitations, set in the annual appropriation process control the use of contract authority authorized in the multi-year highway authorization acts. Typically, the limitation on obligations is lower than the amount of new contract authority each year, so a portion of the contract authority is at least temporarily unavailable for obligation. At the end of fiscal year 2005, $23 billion of the $34.4 billion in Federal-aid Highway Program unobligated balances reflected the cumulative effect of annual obligation limitations. This explains why the Department of Transportation had an unobligated balance of over $43 billion at the end of FY 2005, with approximately $34.4 billion of these unobligated balances attributed to the Federal-Aid Highway program alone. A table that shows the unobligated balances for the Department at the end of FY 2000 through FY 2005 is attached.

The unobligated balances that result from the slow spending patterns of capital infrastructure projects typically cannot be directed to other funding needs. Congress has given the Department limited flexibility in shifting funds from one purpose to other purposes within an agency. Title 31 of the United States Code, Section 1301 – known as the "purpose statute" – states that:

- Appropriations are to be applied only to the objects for which the appropriations have been made, except as otherwise provided by law;
- Reappropriation and the diversion of the unexpended balance of an appropriation for a purpose other than that for which the appropriation originally was made is accounted for as a new appropriation; and,
- A regular annual appropriation is not available for more than one year unless the law in which the appropriation appears expressly provides an availability of more than one year.

These restrictions ensure that funding provided continues to support its original purpose.

In addition to the "purpose statute," the Department is subject to the reprogramming provisions included in our annual appropriations act. Section 710 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Public Law 109-115) requires a reprogramming action when funds are to be shifted that would, among other things:

- Create a new program;
- Eliminate a program, project or activity;
- Increase funds or personnel for a program, project, or activity for which funds have been denied or restricted by the Congress;
- Result in funds directed for a specific activity by either the House or Senate Committees on Appropriations to be used for a different purpose;
- Augment existing programs, projects, or activities in excess of $5,000,000 or 10 percent, whichever is less;

- Reduce existing programs, projects, or activities by $5,000,000 or 10 percent, whichever is less; or
- Create, reorganize, or restructure a branch, division, office, bureau, board, commission, agency, administration, or department different from the Congressional budget justifications or the table accompanying the Statement of the Managers accompanying the Department's annual appropriations act, whichever is more detailed.

For designated high-priority items of interest to the House and Senate Appropriations Committees, as reflected in report language and on the reprogramming baseline reports that the Department submits to the Appropriations Committees pursuant to Section 710, any proposed change in funding (even if the change is below the "normal" size thresholds) requires notification to the Appropriations Committees.

There are a few exceptions to these rules that provide some limited flexibility to shift funds to other programs. For example, the Secretary of Transportation is authorized to transfer funds appropriated for any part of the Office of the Secretary (OST) to any other part of the Office of the Secretary, provided that no appropriation for any office is increased or decreased by more than 5 percent by all such transfers. The Federal Aviation Administration (FAA) is authorized to transfer up to 2 percent of funds from any budget activity funded within is Operations appropriation, excluding aviation regulation and certification, to any other budget activity within Operations, provided that no budget activity is increased or decreased by more than 2 percent. Finally, the Federal Transit Administration's Administrative Expenses appropriation is authorized to transfer funds appropriated for an office of the Federal Transit Administration, provided that no appropriation for an office is increased or decreased by more than a total of 5 percent by all such transfers. Any OST, FAA or FTA transfers over these thresholds require formal reprogramming notification. We have found these tools to be helpful in managing our programs and in addressing small funding needs between programs.

In the Federal-aid Highway Program, there is considerable flexibility for States to transfer their apportioned (formula) funds to other formula programs where they would be more useful to the State. Similar flexibility does not exist for funds statutorily designated for specific projects, except for the flexibility provided by the section 1603 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU). Section 1603 provides an exception for projects designated before fiscal year 1991. Under this provision, funds remaining from a pre-1991 designation, either unobligated or obligated on an inactive project, may be used instead by the State for any project eligible under the Surface Transportation Program, the most flexible of the highway formula programs.

The Congress has authorized another mechanism to use within the Federal Highway Administration programs that we have found to be very effective. That process, known as "August redistribution" is provided for in the Department's annual appropriations acts and allows for redistribution of obligation authority that expires that fiscal year. If that obligation authority cannot be used by the end of the fiscal year due to schedule slippages, funding changes etc., then it is made available to States that can obligate these additional amounts before the end of the fiscal year. As a result, Federal-aid highway dollars are available to support as many projects as possible within the envelope of resources in a given fiscal year. Given the complex nature of Federal infrastructure projects and the timelines needed to complete them, this redistribution process has been an effective approach for managing highway transportation dollars wisely.

Finally Mr. Chairman, you asked me to address whether or not DOT's unobligated balances expire. In some cases unobligated balances do expire, based on the number of years Congress has made the funds available in the Department's annual appropriations act or in authorizing statutes. Some of our programs have three-year availability and some have no limit to availability. Unobligated balances that expire may stay within an account for up to five additional years and can be used only to cover upward adjustments of prior-year obligations. Generally, we adhere to the principle of "first-in-first-out" where our oldest funds are used first. According to law, after the five-year period, the remaining unobligated resources are returned to Treasury. For the Federal-aid Highway Program, funds must be obligated within the period of availability. Funds that are obligated within the availability period but not expended, and no longer required, may be recovered and reobligated pursuant to 23 USC 118(d) and 31 USC 1301(a).

Thank you for the opportunity to appear before you today. I would be happy to answer questions.

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